



# Planning Proof of Evidence for the Appellant Abacus Projects Limited and Deeley Freed Estates Limited

## Land at Inglewood, Torbay APP/X1165/W/20/3245011

15 December 2020

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## Endorsement

1. I am a member of the Royal Town Planning Institute (RTPI) and have been since 2002. I hold a BA (Hons) degree in Urban Planning and Management and also a Diploma in Town Planning both gained at Nottingham University in the period 1994-1998.
2. I have over twenty years practical post qualification experience in the profession, firstly at a national housebuilder, Redrow Homes between 1998 and 2000; secondly with a planning and environmental consultancy, RPS between 2001 and 2014 (Mason Richards Partnership between 2001 and 2004, before the Partnership was acquired by RPS). I was promoted to the role of Technical Director in 2007.
3. I am currently Head of Planning and a Partner in the Practice of Alder King Property Consultants and have been since 2014. Alder King provides property and planning services principally in the commercial property sector from its offices in Bristol, Exeter, Swindon, Taunton, Cardiff, Gloucester, and Truro.
4. My practical experience includes dealing with planning matters concerning development particularly on land across the South West and South Wales for public and private sector clients.
5. I was initially instructed by the appellant in July 2019 to assess and prepare representations on Torbay Council's draft 2019 Housing Land Supply Position Statement. I had no prior involvement in the planning application prior to this date, but took full planning consultancy responsibility for the appeal process after the Appellant's agent at Stride Treglown left that practice in summer 2019.
6. The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

## 1.0 Introduction

- 1.1 I have prepared this proof of evidence in support of an appeal made under s.78 of the Town and Country Planning Act 1990 by Abacus Projects Limited and Deeley Freed Estates Limited (the Appellant) against the failure of Torbay Council (TC) to determine planning application ref: P/2017/1133 within the prescribed time.
- 1.2 This evidence examines the planning policy basis for assessment of this proposal and the consideration of a number of material considerations that are also relevant to the determination of the appeal. To that end this evidence seeks to establish whether TC can demonstrate a five year supply of housing land as required by paragraph 73 of the National Planning Policy Framework (NPPF). On the basis that it cannot the evidence goes on to consider the implications of applying the 'tilted balance' in accordance with paragraph 11(d)(ii) of the NPPF and the weight that should be afforded to otherwise restrictive development plan policies. Given the significant deficit in the land supply I conclude that the tilted balance should be given significant weight in the determination of this appeal. Irrespective of the tilted balance the evidence seeks to consider conformity with the Development Plan and even in a flat-balance scenario the extent to which the appeal proposals comply with Policy,
- 1.3 The evidence then goes on to apply the planning balance concluding that the benefits of allowing the appeal would significantly and demonstrably outweigh any adverse impacts of doing so, when assessed against the policies in the NPPF taken as a whole.
- 1.4 Whilst I consider that the tilted balance is clearly engaged in this case I also consider the outcome in the event that an ordinary planning balance applies.
- 1.5 It is not my intention to repeat what is contained within the full Statement of Case submitted in January 2020 but to reflect on the reasons for refusal that were established at Committee in February 2020 and the further amplification provided in the Council and Rule 6 Party's Statements of Case and subsequent Position Statements. The passage of time and delays to the scheduling of the Inquiry due to COVID-19 also necessitate consideration of the housing land supply position as at 1 April 2020.



## 2.0 The Correct Approach

- 2.1 The starting point for decision making is Section 38(6) of the Planning and Compulsory Purchase Act 2004, which states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 2.2 The development plan in this instance is the Torbay Local Plan (TLP)<sup>1</sup> and Brixham Peninsula Neighbourhood Plan (BPNP)<sup>2</sup>. Relevant material considerations include Government policy guidance contained within the National Planning Policy Framework (NPPF)<sup>3</sup> and National Planning Practice Guidance (NPPG)<sup>4</sup>, other ministerial statements and legal obligations.
- 2.3 Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay;*
  - or*
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
- 2.4 The Statement of Common Ground establishes that the implication of falling below a five year supply of land is that paragraph 11(d) of the NPPF is engaged.
- 2.5 Paragraph 14 of the NPPF provides that in situations where the paragraph 11d presumption applies to housing proposals the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, though subject to 4 criteria all applying. Hence, even where there is a shortfall against the five year requirement the presumption may not be engaged even where there is a shortfall against the five year requirement because the LPA can demonstrate a three year supply of housing land. In this case TC cannot demonstrate even a three year housing land supply. On the basis of both the April 2019 and April 2020 monitoring data, and applying paragraph 11d and footnote 7, the most important policies for determining the appeal are regarded by the NPPF as being out of date.

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<sup>1</sup> Core Document 6.16

<sup>2</sup> Core Document 6.17

<sup>3</sup> Core Document 6.34

<sup>4</sup> Core Document 6.35

- 2.6 The relevant tests for this appeal are contained within NPPF paragraphs 11(d)(i) and (ii). Torbay Council's (TC) Statement of Case<sup>5</sup> contends that the appeal proposals fail the test in 11(d)(i) insofar as the harm to the natural beauty of the South Devon AONB provides a clear reason for refusal. For the reasons set out in the evidence of Mr Leaver, and this evidence, that contention is not accepted. . The landscape evidence of my colleague Peter Leaver concludes that the appeal proposals do not result in unacceptable harm to the special landscape qualities of the AONB and comply with Local Plan Policy SS8 in that regard. As a consequence it is entirely appropriate to proceed to the test in 11(d)(ii).
- 2.7 The issue of the weight to be afforded to out-of-date development plan policies has been subject of scrutiny through the courts. In *Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC* [2020] EWHC 518 (Admin)<sup>6</sup>, the following key principles are established:
1. Paragraph 11(d)(ii) does not require development plan provisions to be excluded from consideration and that decision-makers may take them into account when conducting the tilted balance exercise.
  2. There is no legal justification for requiring the tilted balance in paragraph 11(d)(ii) and the s38(6) balance to be applied in two separate stages in sequence. The decision taker can apply the two balances together or separately.
  3. Where paragraph 11(d)(ii) is triggered because of a housing land supply shortage, it is for the decision-maker to decide how much weight should be given to the policies of the development plan, including the "most important policies" referred to in paragraph 11(d). This should involve consideration of whether or not the policies are in substance out-of-date and, if so, for what reasons.
  4. A decision-maker may also take into account for example the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future.
- 2.8 At the heart of NPPF paragraph 11 is the presumption in favour of sustainable development. In effect, it asks of local authorities to not withhold the grant of planning permission on sustainable sites where the policies to deliver housing are failing. That proposition is qualified and paragraph 11(d)(i) may provide a reason to protect land from development regardless of delivery shortcomings if the application of the particular policies in the NPPF set out in footnote 6 (though not policies in the development plan) provide a clear reason for refusing the proposed development. Paragraph 11(d)(ii) requires the decision taker to consider any adverse impacts, but to only refuse permission where those impacts significantly and demonstrably outweigh the benefits of the proposal.
- 2.9 The adverse impacts referred to in paragraph 11(d)(ii) can reasonably be considered in the context of the policies of the development plan, but the failure of that plan to have delivered the necessary quantum of housing needs to be carefully considered. That is the purpose of the application of the tilted balance; it is to encourage the decision-maker to take account of the benefits of the provision of housing and to make that a primary consideration in the determination process. All relevant development plan policies may

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<sup>5</sup> Paragraph 10.7 TC Statement of Case

<sup>6</sup> CD8.5

continue to have weight afforded to them, but that must be considered in light of the development plan's track record of delivery. Have the policies of the development plan delivered against its own strategic objectives and requirements? For the reasons set out below, the Torbay Development Plan has had ample opportunity to prove itself as a tool for facilitating development; however to date it has singularly failed to do so.

### 3.0 Five Year Housing Land Requirement

- 3.1 The table below is an extract from the December 2020 Statement of Common Ground which reflects the agreed position in respect of the five year housing land requirement at 1 April 2020. The position at April 2019 (that is referred to the original Statements of Case) is set out for comparison purposes at **Appendix 1**:

	@1 April 2020	@10 December 2020
Torbay LP Housing Requirement 2012-20	3,485	n/a
Completions 2012-2019/20	2,907	n/a
Shortfall 2012-2019/20	578	n/a
Five Year Requirement 1 April 2020 to 31 March 2025	495 dwellings x 2 years plus 555 dwellings x 3 years= 2,655	Standard method of 586 dpa x 5yrs = 2,930
Plus shortfall	3,233	N/A
<b>Plus Shortfall and 5% Buffer</b>	<b>3,395</b>	<b>3,076</b>
Annualised 5YHLS figure (5% buffer)	679	615
<b>Plus Shortfall and 20% Buffer</b>	<b>3,880</b>	<b>3,516</b>
Annualised 5YHLS figure (20% buffer)	776	711

**Table 1: April 2020 Five Year Housing Requirement Scenarios**

- 3.2 The five year requirement increases from the April 2019 baseline of 3,009 homes at April 2020 for two principal reasons:
- 1) Completions of 188 in 2019/2020 do not meet the Local Plan annual requirement of 495 homes and thus the shortfall increases; and
  - 2) The five year requirement increases further because the Local Plan anticipates a phased increase of the annual requirement over time so there is one less year of 495 homes and one year more of 555 (ie an increase of 60 homes).
- 3.3 The five year housing land requirement increases from 3,009 homes at April 2019 to 3,395 in 2020 if a 5% buffer is applied. For the reasons rehearsed in the Statement of Common Ground and below, the situation in Torbay is complicated by two important factors:
- 1) The Local Plan was five years old on 10 December 2020 and the five year requirement diverts to the standard methodology after this date, as per the requirements of footnote 37 of NPPF paragraph 73. TC has confirmed at its Cabinet Meeting on 17 November 2020 (**Appendix 2**) that its strategic policies have been reviewed and do need updating. The Statement of Common Ground establishes that the

standard method for Torbay is presently circa 586 dwellings per annum. Whilst the figure might well be tested through the Local Plan process, the reality is that as from 10 December 2020, the 586 dpa figure is used in calculating the five year requirement. There is no ‘wriggle room’ to claim it should be anything else and there won’t be until either the Government updates the standard methodology and new figures are released, or the current and any other figure is properly tested through local plan examination; and

- 2) TC will fail the Housing Delivery Test (HDT) for the monitoring period 1 April 2017 to 31 March 2020 and be required to add a 20% buffer to the five year requirement. This matter is explored further below but, as was explained by the Council during the 30<sup>th</sup> November Case Management Conference (CMC), the Council accept that it was appropriate to apply the 2020 HDT calculation in determining this appeal. However, it may be that others may seek to contend otherwise and it is in that context is important to set out the extent of the shortfall, how it is arisen and what if any steps have been (or will be) taken to effectively remedy it.

**Housing Delivery Test**

- 3.4 As noted at the CMC, although not yet published by MHCLG (at the time of writing), the position in respect of the 2020 HDT results are a matter of fact. The 2020 results are shown below with a comparison against the 2019 returns:

Year	Number of Homes Required					Number of Homes Delivered					HDT
	2016/2017	2017/2018	2018/2019	2019/2020	Total	2016/2017	2017/2018	2018/2019	2019/2020	Total	
2019	400	495	495	n/a	<b>1,390</b>	326	410	531	n/a	<b>1,267</b>	<b>91%</b>
2020	n/a	495	495	495	<b>1,485</b>	n/a	410	531	188	<b>1,129</b>	<b>76%</b>

**Table 2: 2019/2020 HDT Results**

- 3.5 It is worth noting that the 2018 results, against a requirement of 1,295 homes and delivery of 1,144 homes resulted in a HDT measure of 88%. In 2019 and 2020, TC has had to produce an ‘action plan’. As a consequence of continued underperformance, in accordance with NPPF paragraph 73c and footnote 39 it will become a 20% buffer authority when the 2020 HDT results are published given it will fall below the 85% threshold.
- 3.6 As an aside, although NPPF paragraph 14(d) has a consequence in context of the three year supply requirement, it is interesting to note that TC is only 1% above the 75% threshold in the NPPF footnote 7. If it were lower (and without recently made Neighbourhood Plans in place) that would mean the presumption in paragraph 11d would apply, irrespective of the supply position.
- 3.7 Rolling that theory on, in 2021 the three year requirement would again be 1,485 homes; it may be more appropriate to use the standard method (or a combination thereof) in which case it would be 1,758 homes. Using TCs 2020/21 Housing Land Supply Statement (July 2020), and applying a pro-rata rate for windfalls

(390/5yrs) and small sites (235/5yrs) added to the trajectory from large sites (142), a reasonable estimate for completions in 2020/21 would be 267 homes.

3.8 The 2021 HDT measure is likely to be in the order of 66% based on a requirement of 1,485 homes and completions of 986 over the three year period (531+188+267). Against the standard method requirement of 1,758 (586x3) the measure would be 56%. By November 2021 the BPNP will be more than two years old and the protection afforded by NPPF paragraph 14a will not apply. In November 2021 the presumption in NPPF paragraph 11d will apply irrespective of the housing land supply position. In order to meet the 75% threshold, completions in 2020/21 would need to be 600 homes. Completions since the start of the plan period in 2012 average 363 homes, with the highest monitoring year returning 531 completions. Since 1981 completions have averaged 430 homes<sup>7</sup>. Completions of 600 homes have never happened before and is not going to happen in 2020/21 in a year so affected by Covid-19 and a clear lack of supply in any event. The position can be summarised as:

Monitoring Year	Number of homes required	Number of homes delivered	HDT Measure	Implications
November 2018	1,295	1,144	88%	Action Plan
November 2019	1,390	1,267	91%	Action Plan
November 2020	1,485	1,129	76%	20% buffer
November 2021 Local Plan	1,485	986	66%	NPPF paragraph 11d presumption applies regardless of supply position.
November 2021 Standard Method	1,758	986	56%	

**Table 3: HDT results and forecast**

3.9 The position in January 2021 is dire. It requires urgent action to remedy the situation. It may be observed that these failings are not new and if this appeal was being determined under the terms of the 2012 NPPF it would have been considered in circumstances where TC had a record of persistent under-delivery having failed to meet the annual requirement in five out of the last eight years. TC has failed the HDT in the last two years (since its inception) and on both occasions has been required to produce a Housing Delivery Test Action Plan (HDTAP). Clearly the 2019 version<sup>8</sup> has not yielded a positive upturn and for the reasons set out below the 2020 version<sup>9</sup> is unlikely to either. The position is worsening year on year.

3.10 It is difficult to understand the logic that TC would ‘prefer’ to see the appeal site brought through the new Local Plan<sup>10</sup>. The crisis is now; delivery cannot afford to wait to 2023 before the Local Plan is adopted (see **Appendix 2**) before consent can be forthcoming. In that scenario, delivery of housing completions at the appeal site would probably be five years from now following grant of outline consent, site disposal,

<sup>7</sup> Paragraph 2.6.1 Torbay Housing Delivery Test Action Plan (August 2020)

<sup>8</sup> Core Document 6.15

<sup>9</sup> Core Document 6.36

<sup>10</sup> Paragraph 10.4 of TC Statement of Case

submission of reserved matters and discharge of conditions, followed by a start onsite and delivery of enabling infrastructure. The need to deliver more homes on alternative sites in Torbay is now; delay is simply not tenable.

3.11 The August 2019 HDTAP states at paragraph 4.3.2 that,

*“The current Local Plan is relatively recent however, meeting the standard methodology housing figure will be a significant challenge. An update of the Plan will be essential if the prospect of a five year supply is to be achieved. There will need to provide suitable resources in order to enable an update to the Local Plan.”*

3.12 Paragraph 4.6.2 goes on to state,

*“Clearly the key action arising in relation to land supply and indeed to ensure that new development is suitably planned and of a high quality, will be the review of the Local Plan.”*

3.13 Since these statements were made in August 2019, there has been no action whatsoever. In the August 2020 HDTAP, the very same statements are repeated<sup>11</sup> that only confirm this. It is interesting to see that the HDT is working effectively. Torbay has had two years to rectify the position through HDTAPs. They have not worked and it is now time to apply the 20% buffer. As noted above, in another year the tilted balance will apply in any event regardless of the land supply.

3.14 A new LDS was only agreed at Cabinet on 17 November 2020. The process has barely begun. The LDS projects adoption of a LP Review in September 2023 but this seems wildly optimistic as does the promise of a regulation 22 submission version by November 2021.

3.15 There are also repeated references for the need for an early review throughout the Local Plan (Policy SS1 also refers). The problem is not going to be resolved soon by virtue of a range of new allocations coming forward through a new Local Plan. It is too late for that. Eventually a Plan review will be in place but that in itself will not guarantee a five year supply under the terms of the new tests of deliverability. An allocation alone is not enough to establish deliverability. Any such sites aren't likely to make a contribution to the supply for many years (certainly by the time the plan has progressed and permissions secured). There is no quick fix and it is necessary to acknowledge that the Plan has failed to deliver and the Neighbourhood Plans have not met the challenge to bolster supply. In the circumstances, it is necessary to take appropriate action.

3.16 Establishing a five year supply is of critical importance. However, it would appear likely that the presumption in paragraph 11d will apply for at least the next 3 years given the likelihood of continued failure to meet the HDT standards and the five year requirement. Only approval of proposals such as those at the appeal site will enable there to be any prospect of a significant upturn in the position.

3.17 It is important not to lose sight of the importance of delivering affordable homes as part of the appeal proposals. The 2020 HDTAP recognises that there is a particular need for affordable housing in Torbay and that there is a shortage in the local stock (just under 10% of the overall stock in Torbay compared the national average of just under 20%). The HDTAP confirms at paragraph 2.9.2 that,

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<sup>11</sup> Paragraphs 4.3.2 and 4.6.1 Torbay Housing Delivery Test Action Plan (August 2020)



*“The core findings of the ORS assessment was that there was a need for 404 social rented dwellings and 96 intermediate affordable homes in Torbay per year. Desk-top work by Torbay Council indicates that given the gap between house prices/rents and earnings, this figure continues to be an accurate reflection of need amongst forming households.”*

3.18 This is in line with the Local Plan Inspector’s finding who reports,

*“The updated Exeter and Torbay Housing Market Assessment 2011 identifies a need for 820 dwellings a year in Torbay, 60% of which would need to be affordable dwellings.”<sup>12</sup>*

3.19 The situation has not improved at all during the plan period to date. The Inspector went on to conclude that increasing the market sector housing in order to secure more affordable housing would be inappropriate for a number of reasons. These reasons are fair and understood, but it is incumbent on TC to deliver the housing requirement in full so as to at least not exacerbate the problem further. It has singularly failed to do so.

3.20 The 2018 Annual Monitoring Report (AMR)<sup>13</sup> reports that as at April 2018, there were 1,074 households on the Devon Home Choice register in housing need. Affordable housing completions in Torbay in 2016/17 were 42 units, compared to 46 units in 2015/16. The 2019 AMR<sup>14</sup> confirms the number at April 2019 to be 1,073 households in need. I am advised by TC that the current figure is 1,321 households on the waiting list. The situation is only worsening.

3.21 The section of the HDTAP concludes at paragraph 2.10.3 with the following statement,

*“Housing can, and does, bring major social and economic benefits and is essential for the provision of affordable homes, for which there is a pressing need. But it cannot be seen in isolation from the wider economy. Nor will the wider community – including the three large Neighbourhood Forums – accept the need for growth if they do not feel that it is benefiting them, or it is being imposed irrespective of environmental consequences. Without the wider economic improvement, granting planning permission for more homes is a little like pushing string.”*

3.22 This is a curious statement at best but perhaps underlines some of the key problems affecting the ability to ever resolve the crisis. To what extent does the provision of affordable homes (and market homes) ever benefit the majority of existing households and specifically those that are members of the Neighbourhood Forums? As Chapter 7 of my evidence sets out, there are actually many direct and indirect benefits of housing development but these can be difficult for some to perceive. Unless existing households are concealing other households the answer to the above question is probably “very little” and if those forums are unable or are unwilling to take a more holistic view of the needs of other sections of Torbay society then it is probably true that officers will forever be ‘pushing string’ in any bid to try to rectify the clear and present problem. Seemingly there are households in need of a home that aren’t being provided with one simply because it provides no benefit to existing households or results in economic improvement. That is neither credible nor fair. Whilst the matter could (and perhaps in an ideal world would) be tested through the LP

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<sup>12</sup> Paragraph 25, 2015 LP Inspectors Report (CD 7.3c)

<sup>13</sup> CD 6.41

<sup>14</sup> CD 6.42



Review, more urgent positive intervention is required and it begins with allowing this appeal and enabling the delivery of 112 desperately needed affordable homes.

- 3.23 The appeal proposals reflect a policy compliant scheme and do not seek to introduce a viability case to reduce the quantum of affordable housing. The provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay. Both the Local Plan and Neighbourhood Plan make great play of the need for more affordable housing in the Brixham Peninsula. Whilst the Neighbourhood Plan seeks to identify land for 685 homes in line with Local Plan requirements, the vast majority of allocations are on (small scale) previously developed sites that do not trigger the affordable housing threshold in Policy H2. It is hard to envisage how the sites identified will deliver any meaningful quantum of affordable housing over the plan period.

## 4.0 Five Year Housing Land Supply

4.1 TCs 2020 Five Year Housing Land Supply Statement (August 2020) establishes a baseline supply of 2,038 homes in the period 1 April 2020 to 31 March 2025. The robustness of the 2,038 homes supply is considered below. Based on the requirement figures above, the following position emerges; this table is reproduced in the agreed Statement of Common Ground:

	@1 April 2020	@10 December 2020
Requirement plus 5% Buffer	3,395	3,076
Resulting number of years supply (based on 2,038 dwellings)	3.00 years	3.31 years
Requirement plus 20% Buffer	3,880	3,516
Resulting number of years supply (based on 2,038 dwellings)	2.63 years	2.90 years

**Table 4: Number of years supply based on TCs August 2020 HLS Statement**

4.2 In short, it is understood that TC accepts that it has, at most, 2.90 years supply of housing against its five year requirement under the NPPF .As evidenced above, TC has a very poor track record of delivery. The table below seeks to establish the robustness of TCs five year supply since the start of the plan period against the number of homes actually delivered within the same period:

5 Year Period	Supply	Completions	% of supply delivered	Number of completions required to achieve supply
2012-17	2,701	1,778	65.83%	
2013-18	2,846	1,939	68.13%	
2014-19	2,797	2,024	72.36%	
2015-20	2,093	1,863	89.01%	
2016-21	2,291	1,455*	63.51%*	836 per annum*
2017-22	2,362	1,129**	47.80%**	616 per annum**
2018-23	1,967	n/a	n/a	n/a
2019-24	1,504	n/a	n/a	n/a
2020-25	2,038	n/a	n/a	n/a

\*with one year remaining

\*\*with two years remaining

**Table 5: Assessment of delivery against supply**

4.3 The table shows that TC has never met the stated supply in any five year period and in reality has rarely got close. With one year left of the five year period to 2021, TC would have to achieve 836 completions in 2020/21 to hit the target, which I have already established there is no prospect of. With two years left of the

period to 2022, completions of 616 per annum would be required, which is equally unlikely. The evidence suggests that TC has over-promised and under-delivered year on year and there is nothing to suggest that trend won't continue. The supply of 2,038 homes must be treated with caution from the outset.

4.4 The table below assesses the overall trend in supply over the course of the plan period:

Year	5 year Requirement	Cumulative Shortfall	5 Year Requirement (+5%)	TC Supply	No of years supply
2012/13	2,000	0	2,100	2,701	<b>6.43 yrs</b>
2013/14	2,095	151	2,358	2,846	<b>6.03 yrs</b>
2014/15	2,190	105	2,410	2,797	<b>5.80 yrs</b>
2015/16	2,285	156	2,563	2,093	<b>4.80 yrs</b>
2016/17	2,380	148	2,654	2,291	<b>4.31 yrs</b>
2017/18	2,475	222	2,832	2,362	<b>4.17 yrs</b>
2018/19	2,535	307	2,984	1,967	<b>3.29 yrs</b>
2019/20	2,595	271	3,009	1,504	<b>2.50 yrs</b>
2020/21	2,655*	578	3,395 or 3,880 with 20% buffer	2,038	<b>3.00 yrs or 2.63 yrs with 20% buffer</b>
	2,840**	n/a	3,076 or 3,516 with 20% buffer	2,038	<b>3.20 yrs or 2.90 yrs with 20% buffer</b>

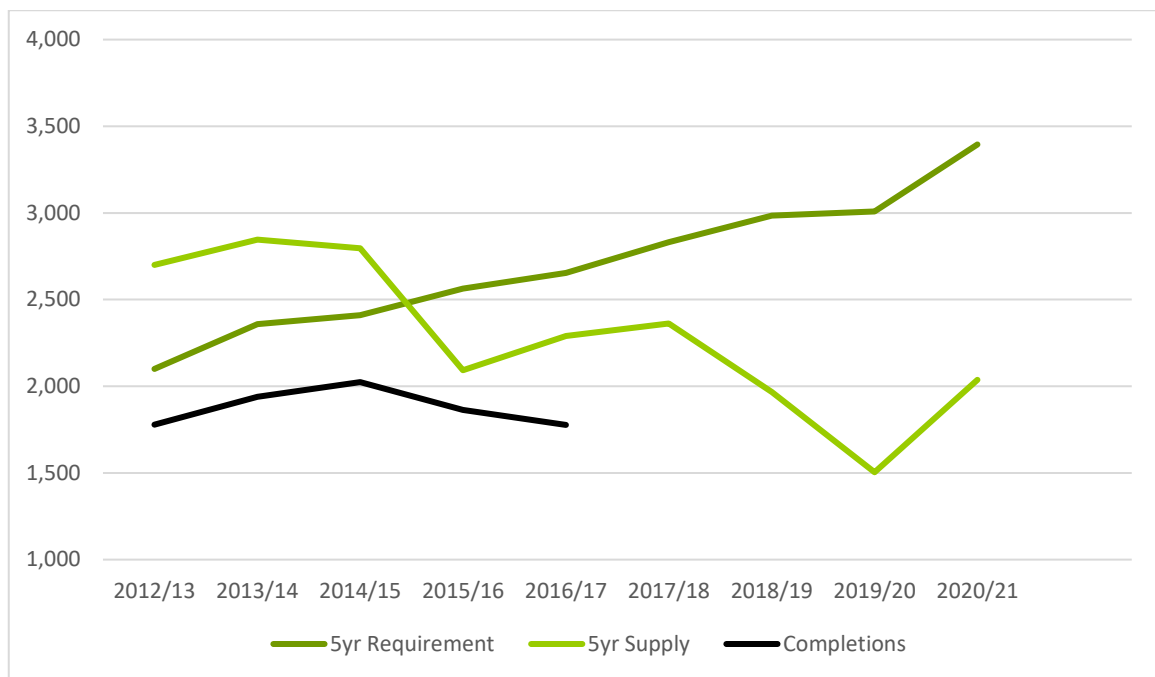
\*Local Plan Rate

\*\*Standard method rate

**Table 6: TC Supply position over Plan period**

4.5 The table shows that the supply has consistently diminished over time. Naturally a robust position is established in the early years and as required, a five year supply could be demonstrated as the Local Plan was moving towards adoption in 2015. It has gone backwards ever since and shows that the Local Plan and subsequent Neighbourhood Plan policies have proven entirely ineffective. What is all the more remarkable is that TC has not sought to facilitate any meaningful intervention strategy despite the need to produce HDTAPs in the past two years. It should be a long way down the LP Review route by now but is still at inception stage.

4.6 The figure below shows the effect; the completions line shows how many homes were delivered in the five year period against the supply at the start of that five year period. The completions figure for 2016/17 assumes 267 completions in 2020/21.



**Figure 1: 5Yr Requirement, Supply and Completions within the 5 year period since the start of the LP period**

- 4.7 The problem in Torbay is not a new one. There is clear evidence of past under-delivery since the start of the plan period in 2012. At no stage of the plan period has the level of cumulative completions been in surplus. The five year requirement has grown year on year. As the requirement increases, the level of supply has decreased and the deficit has grown (see further analysis below). This is a wholly unsustainable position that cannot easily be rectified. It amply justifies the application of the tilted balance and, where appropriate, granting planning permission on sustainable sites that are not presently subject of allocation in either the LP or NP.

#### **1 April 2019 Base date**

- 4.8 Paragraph 6.9 of the appellant's Statement of Case references the letter of 28 August 2019<sup>15</sup> confirming the Officer's position that the Council cannot demonstrate a three year supply of housing against the five year requirement at April 2019. The Officer's view has been endorsed by the Council, as the Council's Statement of Case and relevant appendices<sup>16</sup> refer. It is also confirmed at paragraph 5.1 of the Statement of Common Ground agreed between the appellant and TC in March 2020.
- 4.9 The appellant's position on the sites that can contribute to the definition of deliverable is rehearsed in its July 2019 representations<sup>17</sup> and is not repeated here. The representations advanced a case to demonstrate that a supply of 1.28 years existed.
- 4.10 The Council's stance, established in the endorsed Five Year Supply Statement (February 2020)<sup>18</sup> responds to the consultation it undertook in July 2019. In July 2019 it asserted that a supply of 3.29 years existed but

<sup>15</sup> CD 3.4(b)

<sup>16</sup> Appendix 11, TC Statement of Case

<sup>17</sup> Appendix 4, Appellant's Statement of Case

<sup>18</sup> CD 6.18

Officers considered the position in light of representations submitted and in accordance with up to date policy and guidance discounted a number of sites that are not subject to detailed consent, or had any clear evidence to suggest that consent and delivery would be forthcoming soon.

4.11 In seeking to derive a robust supply position the Council sought Counsel's opinion on a variety of sites but was advised that no additional sites should be included (**Appendix 3(iii)** refers). The February 2020 Statement establishes a final supply position of 2.5 years at 1 April 2019.

#### **1 April 2020 Base Date**

4.12 The passage of time has enabled 1 April 2020 to be used as the base date for the purposes of assessing the appeal proposals.

4.13 The consultation version of the five year position statement was published in May 2020<sup>19</sup>. It established a supply of 1,881 homes, equivalent to 2.77 years supply. Alder King made representations to the consultation statement on behalf of the appellant (**Appendix 3**) and concluded that a supply of 1,391 homes existed, equivalent to 2.05 years with a 5% buffer (1.79 years with a 20% buffer).

4.14 That submission is still considered robust, albeit progress has been made on some sites since the submission of the representations.

4.15 Following receipt and consideration of all representations TC produced a final position statement in August 2020<sup>20</sup> that yielded a final supply 2,038 homes that appears somewhat conveniently to result in precisely 3.00 years supply. For the reasons set out above, TCs supply has not once proven to be robust and given the change in approach from May to August there is little to suggest that the position for 2020-25 is any more so.

4.16 BTC has produced a position statement that both TC and the appellant has responded to. Four sites are referenced in that response<sup>21</sup> that are critiqued in turn below. The four sites feature in the HDTAPs and it is therefore important to understand what progress has been made. In respect of the three Council-owned sites, paragraph 5.1.3 of the August 2019 HDTAP states,

*"The immediate focus is upon three key sites which cannot currently be considered deliverable for the purposes of five year supply:*

- *Collaton St Mary Future Growth Area, Paignton.*
- *Preston Down Road , Paignton*
- *Victoria Square, Paignton"*

4.17 That statement disappears from the August 2020 HDTAP despite there being no obvious progress on the sites in the intervening 12 month period. It is not clear what the change in circumstance is said to have

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<sup>19</sup> CD 6.37

<sup>20</sup> CD 6.38

<sup>21</sup> for the reasons dealt with below, one further site at Stoodley Knowle is added to that list of sites to be considered

arisen to warrant their inclusion now. Their planning status (either in terms of policy or applications) has not advanced at all.

- 4.18 I have not sought to repeat what is already contained within the position statement schedule or the representations submitted on the May 2020 HLS consultation paper (**Appendix 3**). However, those representations remain relevant now in context of a decision to be taken.

#### **Preston Down Road and Stoodley Knowle**

- 4.19 Put simply the site has very little “policy pedigree” and has in many respects the same policy status as the appeal site. The Local Plan suggests that it could form an allocation within the Paignton Neighbourhood Plan (PNP) but the PNP provides no support for it; rather it recognises the strong public objection<sup>22</sup> to it such that it should not be developed.

- 4.20 The site is Council-owned and went through an unsuccessful tender process over the summer. The responsibility has now fallen to TorVista (the newly formed development arm of the Torbay Development Agency) to deliver the site. Perhaps an application will be forthcoming in 2021 and, given the land supply crisis, would fall to be favoured under the terms of the tilted balance. That is as maybe, but to make such an assumption at this stage would be inappropriate. It would, and strongly so, smack of predetermination and would be to deny the public the proper process of consultation. It may also appear to inhibit the position of the LPA to properly assess the application proposals against any environmental constraints that are identified during the preparation of any application. To assume delivery before the proper planning process has been carried out (or, indeed, even commenced) fails the necessary tests of the definition of deliverable in the NPPF Glossary.

- 4.21 It is worth noting that there is one site not covered in the May representations, since it was introduced following the consultation exercise into the final August 2020 statement. It is the site at Stoodly Knowle (69 dwellings). In its summary response paper<sup>23</sup> that accompanies the final August 2020 statement, the officer response states,

*“Stoodley Knowle – accept and include. An application (P/2019/1330) was submitted prior to 31st March, but was not included in the draft schedule because it could have undermined the development management process. However, the site had a realistic prospect, at 31st March 2020, of being deliverable, which has been confirmed following approval at Committee in July.”*

- 4.22 Two matters arise from this:

- 1) The site still does not have outline planning consent some 6 months after being reported to committee. No evidence has been presented to demonstrate delivery, and on that basis the site should be discounted from the supply.
- 2) It is hard to reconcile the valid point that has been raised elsewhere (that to put a site into the list of deliverable sites identified within the five year supply, but without any status – such as via an allocation or with a planning permission - should be rejected as inappropriate). It is quite correct, and to do so

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<sup>22</sup> See ‘objectives’ on p.64 of the PNP

<sup>23</sup> CD 6.39

would be prejudicial to the determination of that application and would undermine the development management process. It is hard to understand how TC can take an entirely different view at Preston Down Road. On the basis that it is a Council-owned site, surely it should be taking an even more cautious view so as not to be seen to be pre-determining the outcome of the process? Indeed, to do so (or appear to do so) is, to put it mildly, legally fraught.

- 4.23 Preston Down Road is identified in both the 2019 and 2020 HDTAP. The only additional wording in the 2020 HDTAP is to state at paragraph 5.3.2 that,

*“Land Release Funding has been awarded to unlock land for development at Preston Down Road and the TDA are in the process of procuring a development partner for the sites, due to be confirmed by September 2020 with a planning application likely to be submitted by Spring 2021. The TDA is also addressing ecology matters, and the sites’ former status as a local nature reserved has been confirmed by the Council not to be necessary.”*

- 4.24 Since the HDTAP was published in August 2020, the procurement process has proven unsuccessful with no development partner having been identified. It is not clear whether the spring 2021 application submission is still realistic or in what form it will take (outline, full, hybrid). TorVista is a new and unproven public sector developer and it is far from clear how quickly it can mobilise and generate the resources necessary to deliver homes in a timely manner. Regardless, for the reasons set out above neither Preston Down Road nor Stoodley Knowle should form part of the five year supply.

#### **Collaton St Mary**

- 4.25 The Council-owned element of the future growth area (also known as Little Blagdon Farm) was identified in the original July 2019 HLS consultation statement, the justification being,

*“Allocated in Local Plan as part of Future Growth Area. Application submitted for junction. Successful application for Land Release Fund funding. Preparatory site investigations being undertaken. Application due to be submitted 2020.”*

- 4.26 It was however removed from the final February 2020 supply on the basis of representations received and lack of any evidence of delivery. That is also consistent with the wording of the 2019 HDTAP (paragraph 5.1.3) referenced above.

- 4.27 By July 2020 Little Blagdon Farm had found its way back into the supply (75 dwellings) despite a lack of any meaningful progress. Certainly no planning application has been submitted. The only planning permission that exists is for demolition of the existing buildings and access into the site. This was approved in September 2019 and was not deemed sufficient at the time to warrant inclusion in the February 2020 HLS. Nothing has changed since.

- 4.28 The only difference between the two HDTAPs is to state that Land Release Funding exists and at paragraph 5,2.5 of the 2020 version that,

*“The TDA have confirmed that a development partner should be appointed September 2020, with a full application expected in March 2021, and development intended to start in 2023.”*

- 4.29 Much like at Preston Down Road that procurement process proved unsuccessful over summer 2020 but this is not a site that Tor Vista is willing and able to deliver. The site has therefore gone back out to the market with the hope of securing a development partner by the end of the year. It is not clear what the implications are for the Land Release Funding if that process fails to deliver a partner.
- 4.30 It is wholly unrealistic to anticipate that a full application will be submitted by March 2021. Until such time as there is greater certainty of delivery, and clear evidence of it, this site should not feature in the five year supply.

#### **Victoria Centre**

- 4.31 As with the other sites considered above there are few differences between the 2019 HDTAP and the 2020 version in respect of this site. The 2020 update does however include ostensibly encouraging text at paragraphs 5.4.1 and 2,

*A Development Brief for the Garfield Road site (part of the Victoria Square wider area) was published earlier this year and approval has recently been granted for the demolition of this part of the car park. The Council has received £900,000 to unlock this site, enabling residential development to be brought forward via TorVista, the council's housing company, ensuring residential is brought forward at pace. A full planning application for redevelopment scheduled to be submitted in April 2021.*

*The site and its redevelopment is included within the Council's Future High Street Funding bid, an announcement for which is expected in Autumn 2020.*

- 4.32 These are positive statements, albeit news is still awaited in respect of the High Street Funding bid and the extent to which the site (and any offsite flood defence work) is dependent on it. I do not dispute the clear will to see the site redeveloped even though there is no explicit support for it in the PNP. It is however interesting to note that the following statement from the 2019 HDTAP has been removed (though without explanation) from the 2020 version:

*"There is a flooding issue around the Victoria Square site, and this will mean it may need to be subject to a sequential test, and will need to be subject to an exceptions test for flooding. The sequential test indicates that it is not possible to meet Torbay's housing need entirely in areas with a lower risk of flooding, taking into account wider sustainable development objectives. The exceptions test requires it to be shown that development would provide wider sustainability benefits to the community that outweighs the flood risk, and that development can be made safe for its lifetime without increasing flood risk elsewhere (NPPF 158-160)."<sup>24</sup>*

- 4.33 It is not clear whether a sequential test has actually been carried out and if so whether it is NPPF paragraph 158 compliant. Certainly, the above text unhelpfully appears to conflate the sequential and exceptions tests. What is clear is that the Council cannot not jump straight to the exceptions test. Certainly the exceptions test has not been carried out and it remains to be seen how residential proposals may conflict with the PNP. It is not clear to what extent strategic offsite defence works are required (and need to be designed, funded, undertaken and completed) before development can proceed. It is not clear how safe means of escape can

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<sup>24</sup> Paragraph 5.4.2, Housing Delivery Test Action Plan (August 2019)



be delivered. Until such time as these matters are resolved through the planning application process then little reliance can be placed on delivery. There seems acceptance of this given the entirety of the 85 dwellings in the supply are phased for year five (2024/5). If a planning application is targeted for April 2021 then it seems that the Council fully anticipates a long, difficult and protracted planning process. There should be no reliance on completions from this site until that process is complete.

### **Edginswell**

4.34 The July 2020 HLS suggests a trajectory of 75 dwellings within the five year period with first completions (15) in 2022/23. It is acknowledged that this trajectory arises from the agent for the lead developer's May 2020 consultation response but nevertheless seems wildly optimistic.

4.35 The HLS explains that a Planning Performance Agreement was signed in November 2019 (**Appendix 4**). Appendix 1 of that PPA contains a detailed list of phases and stages of planning preparation. In May 2020, the agent for the developer reported,

*"In terms of other actions undertaken, these include detailed technical discussions between Cavanna Homes' consultant team, the Council and statutory undertakers. In addition, an Environmental Impact Assessment Scoping Opinion Request has been submitted whilst an initial meeting with Local Councillors and the Neighbourhood Planning Forum has been held."*

4.36 That level of progress does not appear to take the applicant beyond the first of the five phases before the application is submitted. They are in effect nearly 12 months behind schedule and at best may be able to submit a planning application before the end of 2021. It remains to be seen what appetite Cavanna Homes has to make continued progress at this pace, not least given the likely huge infrastructure cost burden that is likely to be incurred before meaningful completions can be realised.

4.37 Factoring in the delay already incurred, if the rest of the PPA programme were to be met, planning permission might be forthcoming in summer 2022. The PPA does not seem to factor in a timescale for discharge of conditions but it seems highly unlikely that a start onsite will be made in 2022. In that sense there seems absolutely no prospect of achieving 15 completions by March 2023.

4.38 A more reasonable and certain trajectory needs to be advanced that is based on up to date evidence before any reliance can be placed on Edginswell delivering within the five year period.

### **Five Year Supply Conclusion**

4.39 As set out in paragraph 2.6 of my evidence, a decision-maker may take into account the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future. These are all measures that Torbay Council has failed against. The shortfall is very substantial, the reason for the shortfall is that despite the writing being on the wall years ago it has taken few proactive steps to remedy the shortfall, and new allocations that might remedy the situation are at least three years from securing permission.

4.40 I do not consider that TC can demonstrate a three year supply of housing land. The 2,038 supply figure is unjustified and appears artificially derived to establish a 3.00 years supply position when published in August 2020.

- 4.41 The imposition of a 20% buffer will establish that TC does not have a three year supply of land against its own inflated supply figure. There is no doubt that the 20% buffer will be imposed.
- 4.42 The situation will not improve during 2021; it will only worsen. TC will fail the HDT by an even greater extent in November 2021 and the tilted balance will apply irrespective of the land supply position.
- 4.43 To deny the application of the tilted balance would be inappropriate and short sighted, particularly given the very short period of time before the 20% buffer is, upon any basis, formally established. To dismiss the appeal on this basis alone would only be to delay the inevitable to nobody's advantage. It would result in a lost year of potential delivery at the appeal site that would achieve absolutely nothing and deny people in need of a home that is required now. It would create additional pressure on Council resources to process another planning application at the appeal site in spring/summer 2021. Those resources would be far better spent processing other planning applications that could also make a meaningful contribution to supply, and progressing the Local Plan.

## 5.0 Application of the Tilted Balance

- 5.1 In terms of other material considerations identified by Section 38(6) it is necessary and appropriate to apply the tests in NPPF paragraph 11(d). TC cannot demonstrate a three year supply of housing land against the five year housing requirement. Since the appellant contends that there is no clear reason for refusing the development proposed on the basis of the impact on the AONB (ie paragraph 11(d)(i)), the tilted balance prescribed in paragraph 11(d)(ii) of the NPPF must be applied.
- 5.2 It is important to stress that the tilted balance applies not to penalise local authorities but to offer a clear and fair means of meeting government policy for housing and to try to alleviate the housing crisis with immediate and proactive action. It is there as a means of enabling proposals for sustainable development where the Local Plan has failed to deliver and the timescales associated with any Local Plan review are not able to respond quickly enough. It is not 'a stick to beat' local authorities with; it is an enabling and assisting mechanism to meet a clear need and should be seen as such.
- 5.3 The relevant policies of both the Local Plan and Neighbourhood Plan remain relevant to the determination of this appeal. The plan-led system lies at the heart of planning for development and Section 38(6) gives primacy to it in the process of decision-making. However, the process does not end there. Section 38(6) refers to 'unless other material considerations indicate otherwise' and both the NPPF and Policy SS3 of the Local Plan refer accordingly.
- 5.4 The tilted balance is engaged and the extent of underperformance and the inability for TC to have responded to (and are now unable to given the timescales associated with the preparation of a new Local Plan) requires it to be given significant emphasis and weight. There has been ample opportunity to address the problem but there has been no effective action. There is no obvious remedy and by the time any new Local Plan is adopted the problem will only be substantially worse.
- 5.5 Policy SS13 (Five year housing land supply) recognises that there might be a lag to meeting the annual requirement in early years of the plan period and presents a staggered approach to increasing the housing requirement over time. Despite this it has still fallen short of even the lower targets in the first half of the plan period. Policy SS13 sets out that where there is a shortfall the Council will either:
- 1) Bring forward additional housing land from later stages of the Plan;
  - 2) Identify additional sites through new site allocation development plan documents; and
  - 3) Consider favourably applications for new housing, consistent with Policy SS2, H1 and other policies of this Plan;
- 5.6 In the Monitoring Chapter of the Local Plan, paragraph 7.5.16 states:
- "It is recognised however that proposals for new development may be brought forward prior to this formal five year Plan review. Any such proposals would need to be accompanied by comprehensive supporting evidence to demonstrate, firstly, that there will be no unacceptable harm to biodiversity and landscape considerations, and secondly, that the proposal was consistent with the overall Local Plan Growth Strategy set out in Policy SS1."*

- 5.7 For the reasons set out in the next chapter of my evidence the appellant contends that the objectives of policy are met and there is no harm to biodiversity and landscape considerations.
- 5.8 TC has not actioned any of the above save for looking to bring some of the Future Growth Areas forward from the latter stages of the Plan period. This has not always proven as straightforward as it ought, as the recent appeal decision that awarded full costs to the appellant at Collaton St Mary ably demonstrates<sup>25</sup>. There is enough guidance in the Local Plan to have afforded TC ample opportunity to respond to the deficit.
- 5.9 The new Local Plan review is still at inception stage despite the fact that it should now be nearing adoption. There has been no reason to withhold its preparation. The housing requirement pressure will be more acute than it is now even if the latest LDS timetable is met (ie adoption in 2023). It is not my intention to analyse the standard method or TCs contention that it presents a misleading picture of need in Torbay<sup>26</sup>. That will be a matter for the future Local Plan review process to determine and will not be resolved until Local Plan examination.
- 5.10 Until the November Cabinet Meeting the Local Development Scheme had not been updated since March 2017<sup>27</sup>. The 2017 LDS states at Section 3.5 – ‘Site Allocations Development Plan Document (provisional)’, *‘where there appears to be a lack of deliverable housing sites to provide for the 5 year requirement, the Council will seek to bring forward additional housing sites through a number of mechanisms, including: Promotion of outline planning applications, or a Local Development Order, for the land south of White Rock, as per Policy SS1 (Growth strategy for a prosperous Torbay), paragraph 4.1.41 and the Local Plan Inspector’s Report.*
- If these measures do not result in at least a 5 year supply of housing land, or if the Neighbourhood Forums are unable to allocate sufficient housing land, the Council will produce a Site Allocations DPD allocating additional sites (in the context of Policies SS1 - Appendix C, SS12 and SS13).’*
- 5.11 The LDS advocates a staged approach that specifically identifies the land south of White Rock (ie the appeal site) as a first stage to resolving a five year supply deficit. If that outline application (or LDO) process had not resulted in a five year supply then the next stage would have been to progress a Site Allocations DPD, assuming that the Neighbourhood Forums were unable to allocate sufficient land to meet the five year requirement. That approach is entirely consistent with the Local Plan, and no doubt was written as a direct consequence of the recommendations of the Local Plan Examination Inspector which I deal with further below.
- 5.12 Evidently the Council has reneged on its support for the appeal site. This is all the more surprising given the failure of the Neighbourhood Forums to allocate sufficient land. Solutions to the problem were identified in Policy SS13 and in the 2017 LDS but no action was taken.

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<sup>25</sup> APP/X1165/W/20/3250977 (CD 9.7)

<sup>26</sup> Paragraph 10.5 of TC Statement of Case

<sup>27</sup> CD 6.40

### **Context to Policy SS13 and previous consideration of the appeal site**

- 5.13 It is important to recognise the context behind Policy SS13 and the 2017 LDS references to the site. The text stems from Keith Holland's Local Plan Examination Inspector's Report<sup>28</sup> which sets out that in relation to White Rock 2 (ie the appeal site) that,

*60. The strong local opposition to development on White Rock 2 is understood. However in the context of the need to find additional housing land as a consequence of the Initial Findings, subject to environmental safeguards this land was regarded at the MM stage by the Council as one of the best alternative green field locations for sustainable growth in Torbay. There are very limited options for strategic housing growth sites in Torbay and having regard to its relationship to existing development and the White Rock 1 site, it is considered that the Council has good reasons to regard the site as potentially offering an opportunity for strategic development.*

*61. The Council has chosen to follow the first option and says that development of the site should be considered in 5 years when the Plan is scheduled to be reviewed. There are several disadvantages to this approach. First, Government policy clearly looks to local authorities in their local plans to identify sites or broad locations for housing growth for at least 10 years and preferably for 15 years (NPPF paragraph 47). Second, there is an immediate need to provide as much strategic certainty as possible, not least to allow effective NP to be produced. Third, although it is a matter for the Neighbourhood Plan Forums working with the Council, to finally resolve how much housing is allocated to the three different neighbourhood plan areas, it is clear that there could be a problem with identifying sufficient medium and long term housing land. Finally a comprehensive review of the Plan will itself take some time. To wait until the Plan has been completely reviewed would run a high risk of the site not being available for development, if environmentally acceptable, when it or some alternative might be needed.*

*62. The difficulty is that the necessary "in combination" AA under Regulation 61 of the Habitats and Species Regulations (2010) cannot be done at this point in time to the satisfaction of Natural England. Furthermore the Council says that the necessary work on outstanding issues relating to the impact on greater horseshoe bats and the adjoining AONB cannot be completed for at least 12 months. In these circumstances it is agreed that the Council is right to exclude the land as a Future Growth Area at present. However if the necessary work is undertaken and shows that from an environmental point of view the site is developable, there is nothing to stop the Council from carrying out a partial review of the Plan as soon as it has the necessary evidence. This course of action would enable sensible medium term planning to be undertaken in a timely fashion not least because in 12 months the Council should be much better informed about the likely medium and long term housing supply position as a consequence of the neighbourhood planning process.*

- 5.14 The 2017 LDS and the Inspector's Report that precedes it establish that the Council considered the appeal site to be an appropriate and sustainable location for growth, and reflects the fact that the only reason the site does not feature in the current Local Plan is by virtue of the HRA issues at the time of the Local Plan

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<sup>28</sup> CD 7.3c

examination. The Statement of Common Ground confirms that the HRA matters have been satisfactorily resolved, subject to the delivery of the proposed mitigation.

- 5.15 The LP Inspector had identified the problems of the Plan and the pre-cursor to the above paragraphs is a concern expressed by the Inspector (in paras 55-57) in relation of the lack of reassurance that the Neighbourhood Plans would allocate sufficient land to provide an ongoing five year supply. His concerns were well justified and he makes clear that the disadvantage of not having an adequate supply of housing land should not be under-estimated<sup>29</sup>.
- 5.16 The recently approved LDS and associated officer report (**Appendix 2**) contains no information or advice as to how the deficit will be bridged in the interim. Whilst the approach approved at Cabinet is to undertake a strategic policy review only, this is unlikely to significantly speed up the plan preparation process. It is after all the strategic policies that centre on the housing and economic growth requirements. The spatial strategy, and strategic allocations for growth are the most contentious and time consuming aspects of any plan. The only realistic solution for the foreseeable future and certainly next 3-4 year period (ie until such time as new allocations can start to deliver) is to apply the presumption and positively support sustainable development. There is no other option. The alternatives presented in the Local Plan and 2017 LDS (LDOs, Site Allocations DPD) could have worked but the lack of any decisive action has meant that those options will not be effective.
- 5.17 Policy SS3 of the Local Plan (presumption in favour of sustainable development) can be applied whether it be in a 'flat balance' scenario (ie where the important policies are not out of date) or a 'tilted' one (ie where they are). It references a positive approach and working proactively with applicants to find sustainable solutions where they will evidently provide a balanced approach to improving economic, social and environmental conditions. It is a permissive policy but is also subject to the same tests in NPPF paragraph 11(d) where there is a shortfall in housing land supply.
- 5.18 TC does not contend that the appeal proposals conflict with this policy other than in the sense of the alleged harm to the AONB causing sufficiently adverse impact on the AONB to refuse the application. It does not contend that the appeal proposals fails any other element of Policy SS3 or any other test of sustainable development.
- 5.19 TCs Statement of Case sets out that it considers the appeal proposals to be in conflict with the Local Plan but does not articulate how or why<sup>30</sup>. It goes on to consider issues of prematurity and the applicability of the standard method. Neither issue is relevant to this appeal.
- 5.20 TC correctly identifies that under the terms of NPPF paragraph 49, given the early stage of Local Plan preparation any reason relating to prematurity cannot be credibly relied upon. Paragraph 10.5 of the TC Statement of Case references the fact that the plan making process would allow a proper consideration of the level of need and potential options for meeting development needs. The level of need is well

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<sup>29</sup> Paragraph 56, LP Inspectors Report (October 2015) CD7.3c

<sup>30</sup> Paragraph 10.3 TC Statement of Case

established; it does not need further testing. Waiting for a Local Plan review will be of no benefit whatsoever to the people and households that need homes.



## 6.0 Conformity with the Development Plan

6.1 Whilst the tilted balance is engaged by reason of the absence of a five year housing land supply (and, in the these particular circumstances in Torbay, the absence of a three year housing land supply) it is important to establish the most important policies for the determination of the appeal that are out of date. The putative refusal reasons allege conflict with the following:

- Policies SS2, SS8.3, SDB1, SDB3 and C1 of Torbay Local Plan 2012-30; and
- Policies BH3, BH4, BH9, E1, E2, E3 and E6 of the Brixham Peninsula Neighbourhood Plan.

6.2 It may be noted that the most important policies do not need to be restricted to just those used in the refusal reasons<sup>31</sup>; to that end I consider the following to also be part of the 'basket' of important policies:

- Policies SS1, SS3, SS11, SS12 and SS13, H1 and H2 of the Torbay Local Plan.

6.3 This is a proposal of significant scale in the Torbay context and lies outside of the settlement boundary where under the terms of Policy C1 development of this scale is normally resisted. The appeal proposals do not sit within the 8 limited exceptions listed in Policy C1. There are however inconsistencies within the Plan that suggest the intention of Policy C1 is not to rule out major development 'in the countryside' completely. If it were to be applied in isolation then it would be difficult to apply the tests of Policy SS3 fairly. There would then be no prospect of any (non-allocated) greenfield site in Torbay being allowed even if it met the tests in the first part of the policy. Full weight cannot be prescribed to Policy C1 and the need to significantly boost the supply of housing must, in the context of Torbay, be given great weight in the balancing exercise.

6.4 Policy C1 is a relatively typical example of such policies found in many local plans where settlement boundaries are used. The Policy is generic in nature and would ultimately stymy any proposal for development on greenfield land outside of the Future Growth Areas (FGAs). That cannot be consistent with the Government's message when applying the tilted balance. This Policy is relevant but clearly cannot be given full weight. The plan, when taken as a whole must be to favour proposals for sustainable development particularly where there such an acute failure to deliver in the local authority area.

6.5 The last part of Policy C1 is applicable and for the reasons set out below and in the evidence of my colleagues Mr Leaver and Mr Harvey the appeal proposals conform to the need to protect, conserve or enhance landscape characteristics and visual quality, and further establish no adverse impacts (subject to mitigation) on the SAC or other important habitats. Indeed, the planning officer in his report to Committee on 10 February 2020<sup>32</sup> (where putative reasons for refusal were established) acknowledges at paragraph 1.20 that,

*"The applicants have gone to significant efforts to minimise the biodiversity, landscape, highways and other impact of the proposal and have revised the scheme in dialogue with the LPA, AONB Partnership and other consultees. Extensive mitigation of potential impacts on the greater horseshoe bat sustenance zone, cirl*

<sup>31</sup> See Wavendon Properties judgment (CD 8.13)

<sup>32</sup> CD 10.1



*buntings and other species, through managed agriculture and provision of darkened flight paths is proposed. Landscaping and indicative layout seek to minimise the impact on the South Devon AONB and creating a good quality living environment.”*

- 6.6 The potential for major development on greenfield sites within the Policy C1 ‘countryside’ is supported by Policy SS1 (and in terms of the appeal site Policy SS1 is referred to in the 2017 LDS):
- “Major development proposals outside the built-up area and Future Growth Areas, will need to be the subject of environmental assessment. This will need to take account of the impacts of the proposed development itself and the cumulative impact of development.”*
- 6.7 Policy SS2 establishes that growth outside the established built up area should be within identified FGAs. However, the Policy does allow for greenfield development outside of the FGAs subject to similar tests as set out in SS1 (as confirmed at Paragraph 4.1.41).
- 6.8 Paragraph 4.1.30 explains that development on greenfield sites is required in the latter part of the plan period. It states that the FGAs are “likely” to be the source of greenfield supply. It does not state that FGAs can be the only source of supply and this is reiterated in the SS1 policy wording above that does not preclude development at other greenfield locations. The refusal reasons do not cite conflict with Policy SS1 and to that end, with or without the tilted balance in play I consider the appeal proposals to be in conformity with both SS1 and SS2.
- 6.9 Policy SS3 makes clear that where relevant policies are out of date at the time of making the decision, the Council will grant planning permission unless material considerations indicate otherwise, taking into account the benefits versus adverse impacts and specific policies in the NPPF that would indicate the development should not gain planning permission. That is clearly pertinent in this case.
- 6.10 In a flat-balance scenario Policy SS3 creates a permissive context for sustainable development and seeks to enable development proposals to be approved where they will evidently provide a balanced approach to improving economic, social and environmental conditions. The following section of my evidence seeks to establish that the appeal proposals will improve all three of those conditions.
- 6.11 This sentiment is further expressed in Policy SS11 (Sustainable Communities). TC has not expressed any conflict with the criteria of this policy.
- 6.12 The second refusal reason alleges specific conflict with Policy SS8 criterion 3, which relates to development outside of the AONB. TC seeks to argue that footnote 6 of the NPPF in relation to paragraph 11(d)(i) and the adverse effect that the appeal proposals have on the AONB provides a clear reason for refusing the development proposed. That is not correct. The NPPF provides that it is only the application of those policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing proposed development. Footnote 6 refers to policies within the Framework. The first part of paragraph 172 of the NPPF provides that great weight should be given to conserving and enhancing landscape and scenic beauty in, so far as relevant here, Areas of Outstanding Natural Beauty. That is not a policy that of itself provides a clear reason for refusing proposed development of the sort found within footnote 6. The second part of the policy deals specifically with major development within the AONB. If relevant, that may fall within the characterisation of policies that provide such a clear reason. The appeal

proposal does not. That is not to say that development outside of and the impact on the AONB is not important. I do not consider that Policy SS8(3) is in conflict with the NPPF nor does it give rise to the disapplication of the tilted balance. If it is contended that it is materially different to the NPPF then it would be inconsistent with it and may properly be regarded as out of date. In either event the tilted balance will remain engaged.

- 6.13 Irrespective of the weight to be prescribed to Policy SS8 the landscape evidence of my colleague Mr Leaver establishes that the development as proposed would have negligible or only minor adverse effects on the setting and special qualities of the AONB and those effects have been found to be not significant. Landscape and scenic beauty overall would not be materially adversely affected and the appeal proposal would not result in an unacceptable impact on the special qualities of the designated area.
- 6.14 To that end I consider the appeal proposals to be in conformity with Policy SS8 and, so far as relevant, in conformity paragraph 172 of the NPPF; paragraph 11(d)(i) of the NPPF is not triggered.
- 6.15 Policy SS12 (Housing) confirms that housing provision will be carefully monitored to maintain a rolling five year supply. It goes on to state that where there is evidence that there is a need to bring forward additional housing, appropriate locations will be identified through cross-boundary review of strategic land availability. This task has not been undertaken despite the critical shortfall in supply.
- 6.16 I have referenced the provisions of Policy SS13 (Five Year Supply) at paragraph 5.5 of my evidence. TC has not actioned a five year Local Plan review quickly enough against the terms expressed in the Policy or at paragraph 4.5.47. A shortfall has been evident since 2015/16; the action promised under paragraph 4.5.49 has not materialised and the Neighbourhood Plans have failed to step up to the challenge. It is also regrettable that the Council has not followed its protocols in the 2017 LDS.
- 6.17 Policy SS13 (Five Year Supply) references the need for conformity with Policy H1 (Applications for New Homes). This is a criteria-based policy against which proposals for new homes on unallocated sites will be assessed. There is no suggestion that the appeal proposals fail when assessed against the criteria. Whilst it cannot necessarily conform to criterion 6 (maximising the re-use of urban brownfield land), that has to be weighed against the tilted balance being in play, the insufficient supply from that source and criteria 1 and 2 of the policy (and other policies of the plan) that stress the need to meet the objectively assessed need and maintain a rolling five year supply.
- 6.18 Policy H2 relates to affordable housing and establishes a 30% requirement on sites of more than 30 dwellings. Paragraph 6.4.1.7 refers to the pressing need; the next paragraph recognises that there are few large sites that can deliver a meaningful quantum of affordable housing. Paragraph 6.4.1.10 confirms that the need to create mixed, prosperous and balanced communities will be taken into account in considering all proposals, particularly where there is a requirement to provide affordable housing. These appeal proposals will deliver a policy compliant level of affordable housing (112 homes) which will undoubtedly make a significant contribution to meeting that pressing need. I consider that conformity with this policy should be given substantial weight in the determination of this appeal.
- 6.19 The appeal site falls within the Brixham Strategic Policy Area (Policy SDB1) but is at the very northern edge of it. There is merit in appreciating the location of the appeal site within its locational context as the extract from the LP Key Diagram below highlights:



**Figure 2: Extract of Local Plan Key Diagram**

- 6.20 The appeal site does not fall within the Policy SDB3 area of the 'Brixham Urban Fringe and AONB'. It does not fall within this particularly 'sensitive location' to which the Policy refers. Paragraph 5.4.3.1 of the LP confirms that the nationally and internationally important constraints that impact on Brixham's setting are recognised in the relatively low housing and employment requirements set out in Policy SDB1. The appeal proposals are not related to it nor do they impact on Brixham's setting.
- 6.21 On the Key Diagram, the entirety of the appeal site (save for the southern tip of the site) falls within the SDP3.5 Paignton North and Western Area Policy area. Whilst the SDP3.5 Policy makes clear that the designation relates specifically to the White Rock development area immediately north of the appeal site, it gives a greater indication that the site should be read in the context of that growth area and Paignton/Goodrington/White Rock, as opposed to Brixham itself.
- 6.22 The rather messy subdivision of areas in Torbay gives rise to some level of logical disconnection. Indeed policy SDP1 would, in that sense and in its own terms, appear more apt for the consideration of the appeal site. Clearly, I recognise that it relates to land on the other side of the SDB1 policy boundary. However, if the terms of Policy SDP1 Paignton were read in isolation, then it would feel more relevant and applicable to the consideration of the appeal proposals than perhaps any other policy:

*"Development sites to the west of Paignton will be delivered through neighbourhood planning and masterplanning to provide employment and family housing opportunities. This will be underpinned by*

*enhanced transport infrastructure along the Western Corridor and A385 Totnes Road and will take account of environmental sensitivity through a green infrastructure led design approach.”*

- 6.23 Paragraph 5.3.1.4 states that the development areas require a high quality of design and appropriate landscaping to protect and enhance ‘the rural backdrop of the area’ but makes no mention of the AONB. In providing further explanation and requirements of the development areas, there is no mention of the AONB.
- 6.24 In the Officer’s report (**Appendix 5**) that considered the original outline application reference P/2011/0197<sup>33</sup> for the adjoining White Rock development, there is no reference to the AONB nor is there any suggestion of adverse impacts upon it. Under the terms of the old Local Plan the majority of that site fell under the designation of an Area of Great Landscape Value (now dropped) and the western bowl and central area fell under the designation of a ‘Countryside Zone’. The former sought to ensure development maintains or enhances the special landscape character of the area and the latter seeks to protect against urban sprawl and the merging of developments.
- 6.25 The Officers report sets out that,
- “The proposal seeks to provide strategic landscape planting and the strengthening of existing landscape buffers along the southern and eastern borders of the site to mitigate any likely visual impact of the proposal as it would be perceived. As the proposal is in outline with only indicative information the reserved matters stage is expected to provide further appreciation of this matter, with the potential to secure appropriate positioning, scale and elevation treatment that could aid in lessening the developments prominence.”*
- 6.26 Whilst a number of subsequent reserved matters submissions were made, in one of the more significant submissions (P/2015/1126) for 217 dwellings, the delegated report (**Appendix 6**) again makes no mention of the AONB but simply states that,
- “Longer distance views from the south and west are a key consideration but are capable of mitigation”*
- 6.27 I readily accept that each application must be determined on its own merits and that even though the appeal site and White Rock share a common boundary, it is necessary to consider the impact of the appeal proposals on the setting of the AONB independently of any previous assessment under now superseded policy. The value of the AONB was however as important in 2011 (outline determination) and 2015 (reserved matters) as it is now and there is merit in noting the inconsistency in approach to the proposal now under consideration.

### **Conclusions on the Local Plan**

- 6.28 When looked at as a whole I consider the appeal proposals to be in conformity with the Local Plan. That is so whether one considers either a tilted balance or flat balance scenario. Policy SS3 sets out a clear presumption in favour of the development. In a flat balance scenario I consider the appeal proposals to meet the tests for social, economic and environmental improvement. They also constitute material

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<sup>33</sup> Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup>A1/A3 use and student accommodation

considerations that weigh strongly in favour of the proposed development. In a tilted balance scenario, the same applies and for the reasons set out in my next chapter I consider the benefits of the proposal to significantly and demonstrably outweigh the any adverse impacts when assessed against the policies in the NPPF.

### **The Neighbourhood Plan**

- 6.29 I have considered the issue of the tilted balance above. Since TC is unable to demonstrate a three year supply of land, that balance must apply equally to the Neighbourhood Plan.
- 6.30 It is worth reflecting on why that should be so. The Government places great emphasis and encouragement to neighbourhood planning. When the tilted balance is in play, paragraph 14 of the NPPF seeks to give additional significance to those areas where the community has made clear its vision for an area through the preparation of a 'made' neighbourhood plan. It does this by establishing that any conflict with the neighbourhood plan is unlikely to significantly and demonstrably outweigh the benefits even where the presumption in NPPF paragraph 11(d) is triggered.
- 6.31 However, the 4 criteria in paragraph 14 which all have to be met are there in order to ensure delivery of housing can be facilitated where need is not being met. In this instance, TC is failing to deliver in spectacular fashion. The circumstances are extreme. TC has under-delivered and has failed to remedy the situation through any appropriate action. It has failed the Housing Delivery Test and will do so again in 2020 and 2021 to a greater degree than ever before. Whilst the Government supports neighbourhood planning, such plans along with the local plan cannot take precedence and 'at any cost' over other important planning needs. The cost at the moment is to the many households in Torbay that need a home that TC seems unwilling or unable to provide. That is not a sustainable situation and the NPPF seeks only to guard against it and provide a supportive framework to remedy the situation as quickly as practicable.
- 6.32 It is also worth noting that Torbay is in the relatively unique position of being a district that is covered entirely by its three neighbourhood plans. It is not just the case that the Brixham community might feel compromised by Torbay's failure to deliver and maintain supply, it applies equally to Paignton and Torquay. Those who participated in the preparation of the three NPs may consider that they can feel aggrieved but the application of the tilted balance should not be regarded as a penalty; it is to ensure that the delivery of housing can be facilitated when the need is not being met. I refer again to the statement in the HDTAP that establishes that the Forums and the communities they serve will only support development where it benefits them. That in my opinion is not a fair and reasonable stance to adopt and that stance has in large measure led to the problems the Authority faces today. All three Neighbourhood Forums need to be an effective part of the planning system; the LPA should ensure that there is cooperation across the three areas to ensure timely delivery of housing across Torbay. That has simply not happened.
- 6.33 Quite clearly the appeal site is not allocated for development in either the LP or NP (Policy BH3). It lies outside of defined settlement boundaries. Policies BH4 and E2 of the NP do not present a complete bar on development outside of settlement boundaries; they simply reference the need to adhere to the criteria in LP Policy C1. It is not clear why the refusal reason references Policy BH9 as this is a policy related to rural affordable housing exceptions schemes.



- 6.34 Policy E1 further references LP Policy C1 and goes on to establish that development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the NPPF and other statutory documents including the AONB Management Plan. The landscape evidence of my colleague Peter Leaver demonstrates how the appeal proposals meet these tests.
- 6.35 Policy E3 of the NP references settlement gaps. The appeal site falls within one such gap. The policy confirms that development within the gaps must again meet the criteria of LP Policy C1 but goes on to state that no development that visually or actually closes the gaps between these urban areas will be supported.
- 6.36 I acknowledge that not all greenfield sites in Torbay are subject to a settlement gap designation. Policy E3 comes to be considered in context of the tilted balance in favour of development. That does not make the policy irrelevant that it nonetheless materially affects its weight when the decision-maker comes to consider whether the appeal proposals erode the gap to such an extent that its conflict with the policy intent is so significant as to justify dismissal. The evidence of my colleague Peter Leaver addresses the three key criteria in the explanation of Policy E3 which establishes that:
1. The appeal proposals allow the open characteristic of the gap to be maintained;
  2. The appeal proposals do not result in coalescence and the merging of settlements; and
  3. The appeal proposals do not prejudice the role of the gap that will remain to physically connect to and interact with the wider landscape.
- 6.37 To that end, whilst I acknowledge the conflict with the policy that seeks to afford the gap complete protection, the evidence of Mr. Leaver establishes that through detailed assessment the characteristics of the gap that the NP seeks to protect can be maintained. The proposal does not contravene the purposes or rationale of the policy as set out in paragraphs 5.20 to 5.24 of the BPNP, in as far as they relate to landscape and visual considerations. The evidence confirms that the visual functions of the Settlement Gap identified in Policy E3 of the BPNP will continue to be provided.
- 6.38 Policy E6 refers to views identified in, among others, the Galampton Design Statement, the Landscape Character Assessment (LCA) and the Brixham Urban Fringe Landscape Assessment. There is no reference to particular views across or from the site in the Galampton Village Design Statement or the Brixham Urban Fringe Landscape Assessment. No particular views or vistas are identified on the Neighbourhood Plan Map in relation to the policy.
- 6.39 The evidence of my colleague Mr Leaver establishes that the appeal proposals accounts for and safeguards public views out across the site toward Fire Beacon Hill in the South Devon AONB from the northern stretch of the A3022. The extent, layout, design and mitigation proposals for the scheme also respect views over the site towards Torbay from the AONB. In Mr Leaver's judgement, the proposal is in accord with policy E6.
- Development Plan Conclusions**
- 6.40 The most important policies for determining this appeal as identified in paragraphs 6.1 and 6.2 above are out of date by virtue of the fact that the Council cannot demonstrate a three year supply of deliverable housing sites.

- 6.41 The fact of the matter is that there is a critical undersupply of housing in Torbay. In the context of applying the tilted balance, Policy C1 (and other policies that might preclude development at the appeal site) is relevant but it should be afforded less weight in the decision making process.
- 6.42 Policy C1 must be read as part of the whole Development Plan. The Local Plan provides scope for advancing sustainable development on greenfield land that is not allocated in the Development Plan. In a flat balance scenario if the appeal proposals were judged against Policy SS3 and assuming the landscape and biodiversity considerations and policy references can be satisfactorily met, then I see no reason why planning permission should be withheld. In a flat balance scenario I accept that the appeal proposals will impact to a degree upon the settlement gap in BNP Policy E3, however, the evidence of my colleague Mr Leaver establishes that the proposals do not compromise the three criteria against which the proposals should be judged. To that end I consider that the appeal proposals could be found to be in conformity with the BNP even in a flat balance scenario.
- 6.43 The reality is that the tilted balance is in play and the second part of Policy SS3 is engaged, as is NPPF paragraph 11d. The evidence of Mr Leaver establishes that negligible or only minor adverse effects on the setting and special qualities of the AONB arise and those effects have been found to be not significant. To that end neither the first criterion in SS3 or NPPF 11(d)(i) are engaged; criterion 2 and paragraph 11(d)(ii) are.

## 7.0 Applying the Planning Balance

7.1 The proposed development has been informed by an assessment of the site characteristics and context which provide the Local Planning Authority with the ability and assurance that the design can be controlled through Reserved Matters to ensure that it provides a suitable, appropriate development that responds to the site's characteristics and integrates with surrounding development.

7.2 There are very significant benefits that will be delivered by the proposal as acknowledged by the planning officer in his report to Committee on 10 February 2020<sup>34</sup>,

*"1.15 Against this, the proposal has significant benefits, which must be given considerable weight. The development would provide a substantial boost to Torbay's housing supply including the provision of 30% (around 112) affordable homes. It would provide a site for a 2 Form Entry Primary School, playing field, sports courts and changing facilities, and would help deliver improved countryside access. It would provide jobs directly on-site (in the school and pub/restaurant) as well as making a contribution to provision of jobs off-site. These are very significant benefits that will need to be weighed against the proposal's impacts and the conflict with the development plan."*

7.3 I agree with the Officers assessment and summarise below the significant benefits arising from the development.

1. The appeal proposals seek the delivery of up to 373 dwellings across a range of unit sizes, 30% of which will be affordable. This is a policy compliant scheme and does not seek to introduce a viability case to reduce the quantum of affordable housing. The provision of 112 affordable homes will make a very significant contribution to meeting housing need in Torbay. Both the Local Plan and Neighbourhood Plan make great play of the need for more affordable housing in the Brixham Peninsula. Whilst the Neighbourhood Plan seeks to identify land for 685 homes in line with Local Plan requirements, the vast majority of sites comprise small scale windfall development that will deliver very few affordable homes, or in terms of allocations are on (small scale) previously developed sites that do not trigger the affordable housing threshold in Policy H2.
2. The delivery of a further 261 market homes will provide a much needed boost to the supply that is presently grossly deficient.
3. Local education delivery is supported through the provision of land for a 2 form entry primary school to meet the needs of new households arising from the appeal proposals and wider unmet need and demand for primary school places in the wider community. The need for the school is addressed at paragraphs 5.3.16 to 5.3.23 of the Officer report to Committee<sup>35</sup>. The Coast Academy consultation response is also referenced in the report and confirms that funding has been secured for opening of a school at the appeal site (and is contingent on planning permission being granted). NPPF paragraph 94 asks local authorities to give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.

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<sup>34</sup> CD 10.1

<sup>35</sup> CD 10.1



4. Provision of community facilities through the inclusion of a site for a new public house/restaurant;
5. The school and the public house/restaurant could yield up to 80 new jobs. There will be significant local demand for construction workers which could yield around 140 jobs per annum during the construction period.
6. Much wider direct and indirect benefit to the local economy as set out in a report prepared by Hatch Regeneris in November 2019 (**Appendix 7**). The report assesses the socio-economic benefits of the proposed development and references support for local business (through increasing the number of economically active households in the area and associated expenditure) increase in Council Tax and New Homes Bonus revenue.
7. Provision of significant areas of public open space in excess of policy requirements and community food growing land with their long term management secured in perpetuity via a not-for-profit management company (secured via Section 106 Agreement);
8. Delivery of biodiversity net gain as confirmed in the Update Habitat Assessment 2019<sup>36</sup>. The report identifies that the Biodiversity Metric calculation tool recorded net gains in both area/habitat and linear/hedgerow units; and
9. Provision of countryside access for existing and future residents, providing links to the wider network.

7.4 In terms of the contribution the appeal proposals can make to the five year supply, the table below sets out a timeframe for delivery of dwellings over the next five year period:

Stage	Timeframe
Secure outline consent	Spring 2020
Technical approval process for principal access	March 2022
Submission of 1 <sup>st</sup> phase reserved matters and discharge of pre-commencement and 1 <sup>st</sup> phase conditions	April 2022
Undertake mitigation planting and habitat creation	Spring 2022
Approval of 1 <sup>st</sup> phase reserved matters	April 2023
Commence infrastructure and ground works inclusive of principal access	May 2023
Commence residential development	November 2023
First residential completion/sale	May 2024
First 50 dwellings complete by	May 2025
100 dwellings complete by	April 2026

**Table 8: Development trajectory**

<sup>36</sup> CD 2.40

- 7.5 Naturally the appeal site will continue to make a meaningful contribution to the five year supply for many years to come. Any LPA requires strategic sites of this nature to provide a reliable and continuous source of supply to provide the bedrock that enables other smaller sites and windfall development to supplement the position over time.
- 7.6 These very significant benefits outweigh any identified adverse impacts arising from the development. Mitigation is provided in the form of:
1. Solutions are proposed to mitigate for any potential impacts on the South Hams SAC by providing enhanced habitat and feeding areas for Greater Horseshoe Bats and Cirl Buntings. In total over 3.5km of hedgerow would be provided (a net increase when accounting for the 450m lost in relation to White Rock mitigation) together with 22ha of cattle grazed pasture. The strategy for providing and maintaining the mitigation land is secured via a Landscape and Ecological Management Plan and Farm Management Practices Plan secured via the Section 106 Agreement which will tie the land into being managed in accordance with the agreed management practices. Currently the land can be farmed without safeguarding the habitat for Cirl Bunting and Greater Horseshoe Bats.
  2. Landscape and Visual Impacts are mitigated via embedded design solutions evolved during the course of the pre-application and post-applications stages, in response to concerns raised. This has had the effect of minimising a potential impact and includes structural and internal planting.
  3. Necessary and appropriate CIL contributions and offsite highway works.

## 8.0 Conclusions

- 8.1 A decision-maker may take into account the nature and extent of any housing shortfall, the reasons for the shortfall, the steps being taken to remedy the shortfall, and the prospects of the shortfall being reduced in the future. These are all measures that Torbay Council has failed against. The shortfall is very substantial, the reason for the shortfall is that despite the writing being on the wall years ago TC has taken few proactive steps to remedy it, and new allocations that might remedy the situation are at least three years from securing permission.
- 8.2 I do not consider that TC can demonstrate a three year supply of housing land; the 2,038 supply figure is unjustified. The imposition of a 20% buffer will establish that TC does not have a three year supply of land against its own inflated supply figure. There is no doubt that the 20% buffer will be imposed. The situation will not improve during 2021; it will only worsen. TC will fail the Housing Delivery Test by an even greater extent in November 2021 and the tilted balance will apply irrespective of the land supply position.
- 8.3 To deny the application of the tilted balance would be inappropriate and short sighted, particularly given the very short period of time before the 20% buffer is, upon any basis, formally established. To dismiss the appeal on this basis alone would only be to delay the inevitable to nobody's advantage. It would result in a lost year of potential delivery at the appeal site that would achieve absolutely nothing and deny people in need of a home that is required now.
- 8.4 The most important policies for determining this appeal are out of date by virtue of the fact that the Council cannot demonstrate a three year supply of deliverable housing sites. The Local Plan provides scope for advancing sustainable development on greenfield land that is not allocated in the Development Plan. In a flat balance scenario if the appeal proposals were judged against Policy SS3 and assuming the landscape and biodiversity considerations and policy references can be satisfactorily met, then I see no reason why planning permission should be withheld. In a flat balance scenario I accept that the appeal proposals will impact to a degree upon the settlement gap in BNP Policy E3, however, the evidence of my colleague Mr Leaver establishes that the proposals do not compromise the three criteria against which the proposals should be judged. To that end I consider that the appeal proposals could be found to be in conformity with both the LP and the BNP even in a flat balance scenario.
- 8.5 The reality is that the tilted balance is in play and the second part of Policy SS3 is engaged, as is NPPF paragraph 11d. The evidence of Mr Leaver establishes that negligible or only minor adverse effects on the setting and special qualities of the AONB arise and those effects have been found to be not significant. To that end neither the first criterion in SS3 or NPPF 11(d)(i) are engaged; criterion 2 and paragraph 11(d)(ii) are.
- 8.6 In accordance with paragraph 11d of the NPPF, the appeal proposals should be allowed. Any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits of the proposals. The benefits of the appeal proposals are wide and are significant. Allowing this appeal is necessary to secure the Council's housing land supply and on a site which has previously been recognised as a sustainable solution. In addition, it would also strengthen the ability for the Council to resist proposals in locations which have not been so recognised and which are less preferable. The site is suitable for release now and is

considered essential if the Council has any prospect of maintaining a credible supply of housing land and meeting its requirement to 2030.

## Appendix 1: 2019 Five Year Housing Land Requirement and Supply

<b>Housing Requirement at April 2019</b>	<b>Dwellings</b>
TBLP Housing Requirement 2012-19	2,990
Completions 2012-19	2,719
Shortfall 2012-19	271
Five Year Requirement 2019 to 2024	2,595
Plus Shortfall	2,866
Plus 5% Buffer	3,009
Annual Requirement	602
Supply at 1 April 2019	1,504
Number of years supply	2.5 years

## Appendix 2: Cabinet Meeting Papers (17 November 2020)

**Meeting: Cabinet**

**Date: 17 November 2020**

**Wards Affected: All**

**Report Title: Torbay Local Plan 2012-30: Five Year Review.**

**Cabinet Member Contact Details:** Mike Morey, Cabinet Member for Infrastructure, Environment and Culture. Mike.Morey@Torbay.gov.uk email

**Director/Assistant Director Contact Details:** David Edmondson, Assistant Director, of Planning, Housing & Climate Emergency. David.Edmondson@Torbay.gov.uk

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## **1. Purpose of Report**

- 1.1 Local Plans are required by law to be reviewed at least every five years from adoption. The Torbay Local Plan 2012-30 was adopted on 10<sup>th</sup> December 2015 and is therefore nearing its five year review date. The Government has set a target for all areas to have an up to date Local Plan by 2023. Torbay is one of 248 local authorities which need to review or update their Local Plan in the near future.
- 1.2 The review (in this context) is an assessment of whether the plan needs to be updated, and is a decision for the Council as Local Planning Authority to make based on planning merits. If the review concludes that an update is necessary, those parts of the Local Plan then need to be updated, following the procedures set out in the Local Planning Regulations 2012 (as amended)<sup>1</sup>.
- 1.3 A review of the Local Plan is set out at Appendix 1. This considers the Local Plan against changes that have taken place since 2015, including the 2019 National Planning Policy Framework (NPPF), the adoption of Bay-wide Neighbourhood Plans in Torbay and more recent indications of Government policy, including the "Planning for the Future" White Paper.
- 1.4 A change in housing need is the most common reason why Local Plans need updating. The NPPF states that strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly.
- 1.5 The NPPF also requires the minimum number of homes needed to be calculated using the "standard method" unless exceptional circumstances justify an alternative approach. At October 2020 this is 586 dwellings a year for Torbay, but may change. This is sufficiently different from the Adopted Local Plan to require that the Plan is updated. A local plan update is also a chance to consider more recent local evidence such as delivery rates and employment figures.
- 1.6 The assessment concludes that apart from housing numbers, the Plan remains relatively consistent with the NPPF, although there is inevitably scope to improve and shorten the Plan.

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<sup>1</sup> Unfortunately the terminology is confusing. Most people commonly call the update of a local plan a "local plan review". This report seeks to use the term "review" in its narrow sense of the assessment of whether the local plan needs to be updated.



## 2. Reason for Proposal and its benefits

*We want Torbay and its residents to thrive.*

*We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.*

*We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.*

- 2.1 The proposals in this report help us to deliver this ambition by seeking agreement of the scope of the Local Plan Update. An up to date development plan is the legal starting point for determining planning applications. It sets a framework for the delivery of affordable and market housing, contains policies on employment, tourism, reducing deprivation, and improving the built and natural environment.
- 2.2 This report seeks to reach agreement on the need for an update of the Local Plan and the scope of that update. Broadly there are three options:
- 1) To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number).
  - 2) To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number) and to carry out a light touch update of other policies to reduce repetition and make minor amendments. This is the recommended approach.
  - 3) To carry out a more detailed re-write to create a new Local Plan.
- 2.3 **Option 1** would be an assessment of whether the local plan's housing figure should be updated in line with the most recent standard methodology housing figure. It would require an update to Local Plan Policies SS1, SS2, SS12 and SS13. There may be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1). A key issue will be whether the standard methodology figure is followed. Officer advice is that Government Policy and good practice advice is that the standard methodology figure should be followed. However, no decision needs to be made on this issue as part of this report. A provisional time-line is set out in the Supporting Information section. It appears possible to complete this partial update by late Summer/Autumn 2022. A key unknown is how long the updated plan takes at examination, and whether major modifications to it are required. Over the last 5 years, plans have taken on average around 65 weeks to go through examination. A main reason for a longer examination period is issues around the Test of Soundness at paragraph 35 of the NPPF. Duty to Cooperate and Sustainability Appraisal issues can also cause significant delays.
- 2.4 **Option 2.** In practice, reviewing housing numbers will result in the need to make consequential edits to related policies, and there is scope to make the Local Plan more concise, ensure consistency with Neighbourhood Plan policies and address other environmental issues that have come to light as a result of the Sustainability Appraisal and other factors. While such minor changes would not make the current policies out of date per se, there is a scope to improve on them. Such an update to "Local Plan 1.1" could improve the Plan significantly and would only take slightly longer than option 1, with a fair prospect of adoption by Autumn 2022 (i.e. not significantly longer than Option 1) The caveats noted above also apply here.
- 2.5 Option 2 could also allow a trimming of policies where there is considered to be an overlap with Neighbourhood Plans, or where there is scope to place more detailed guidance within Supplementary Planning Documents. SPDs can be prepared quickly, although they do not have the full weight of a development plan document.

- 2.6 **Option 3.** A total rewrite of the Plan would take significantly longer to achieve than either options 1 or 2 as it would require a whole round of visioning and issues consultations. This option would provide greater opportunity to more significantly rewrite, remove and introduce policies through more far reaching updates to the Plan. However, unless a radically different course is intended, such an approach is unlikely to justify the additional time it would take, and there is a possibility that it would be overtaken by events such as the proposed White Paper. Because the amount of work entailed is the greatest of all the options, and potential soundness issues are also the most significant, it is unlikely that a plan would be adopted before mid-2024, which misses the Government's 2023 target. This option would also imply that the Local Plan is significantly out of step with government policy and other material considerations, which reduces the weight it could be given in decision making. It may have a knock on effect on Neighbourhood Plans (particularly post June 2021).
- 2.7 A fourth option has been considered, which is to argue that the Plan does not need to be updated, as the Local Plan's housing number with a backlog of under supply is actually higher than the standard methodology figure. The Local Plan contains policies to boost housing numbers in the event of a shortfall against five year supply (SS3 and SS13). This is not a recommended approach. The Council is unable to demonstrate five years' worth of deliverable housing land, which means that the Local Plan would be "deemed" to be out of date by the NPPF, and the presumption in favour of sustainable development would apply to applications for housing. Option 4 would in effect be adding a "double presumption" in favour of granting applications for housing, even where this conflicted with other Local or Neighbourhood Plan policies.
- 2.8 Irrespective of which option is chosen, in the short term housing supply will need (from December 2020) to be assessed against the current standard methodology figure, which is currently 586 dwellings per year. On this basis applications involving the supply of housing will need to be determined on the basis of the presumption in favour of sustainable development in Paragraph 11 of the NPPF. Neighbourhood Plan policies enjoy additional protection under paragraph 14 of the NPPF.
- 2.9 It is worth noting that the Courts have held that out of date policies may still carry weight in decision making<sup>2</sup>.
- 2.10 The Local Plan Working Party met on 7 October 2020 and 5 November 2020 and heard from key stakeholders. At the meeting on 5 November 2020, Officers made a recommendation to the Local Plan Working Party which was as follows:
- That the Local Plan Working Party recommend to cabinet that:
- (i) the review of the Torbay Local Plan 2012-30 in Appendix 1 be approved.
  - (ii) as per option 2 set out in this report, the scope of the update will be:  
"To carry out a partial update of policies for the supply of housing (i.e. those which set a housing number) and to carry out a light touch update of other policies to reduce repetition and make minor amendments, noting that only those policies for the supply of housing are out of date."
- 2.11 Members of the Local Plan Working Party, and Neighbourhood Forum attendees, discussed the options presented in the report alongside the review in Appendix 1.
- 2.12 Some points of clarification were raised which are noted below:
- (i) The review in appendix 1 is an officer assessment and members can take a different view on what is necessary to update

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<sup>2</sup> i.e. an assessment under paragraph 11 d)ii. of the NPPF that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits can also take local plan policies into account.

- (ii) The process for updating the plan is prescribed and includes some key stages (as well as evidence gathering, document preparation, and reflection on/consideration of consultation responses): publication of Options paper for consultation consider representations; produce a Preferred Option and consult (6 week) consider representations and Submission Version (consultation 6 weeks) and Examination subject to the Planning Inspectorate but on average takes over a year. Gant charts are proportionate to other Local Planning Authority timescales.
- (iii) That there can be no guarantee that updating the housing policies will provide a five year housing land supply as that is also dependent on planning application approvals and progress by applicants on delivering the consents.
- (iv) That there may be a marginal effect on the length of Examination depending on the scope of the amendments/updates proposed in terms of Options 1 and 2. It is for the LPA to determine what goes into the update. Examination timeframe will depend on representations made.
- (v) It was clarified that Option 1 Update of Housing Policies would only include those for the supply of housing i.e.: SS1 SS2 [et al] and STP SDP and SDB policies but not those for housing density or affordable housing for example.

2.13 During the discussion concern was raised about broadening the scope and the ability to maintain focus on those issues identified as most in need of an update, namely the housing policies and associated five year housing land supply.

2.12 Members also recognised however, that there are other aspects of the plan that whilst perhaps broadly according with the NPPF would benefit from an update given changes in circumstances. In particular matters such as planning contributions to the NHS, town centre policies, climate policies, housing density/tenure, parking and street layout were raised.

2.13 It was highlighted that Supplementary Planning Documents (SPDs) can be updated where they already exist or new proposals can be brought forward to address some matters. However, those SPDs are intended to expand upon policy or provide further detail to policies in development plan documents (DPDs), but they do not have development plan status. These documents can demonstrate how policies can be taken forward. They do not include land allocations or policies which should be subject to independent examination. These documents need to be consistent with the policies of the Local Plan.

2.14 On the particular issue of NHS contributions, the existing Planning Contributions and Affordable Housing SPD can be reviewed and updated where appropriate but any changes would need to accord with the existing Local Plan policy and cannot increase the funding envelope, meaning that contributions would be balanced against the other identified needs.

2.15 The focussed scope of the update proposed in Option 1 may, over time, need to be reconsidered but this process is available to the Council through a revised Local Development Scheme. This is because, as noted in Option 2 above, in following Option 1 there may be consequential impacts on other policies that would require edits. The scope of the update through Option 1 does not allow for that, nor does it allow for making general edits to the plan more widely.

### **3. Recommendation(s) / Proposed Decision**

The Local Plan Working Party recommends to Cabinet that:

- (i) the review of the Torbay Local Plan 2012-30 in Appendix 1 be approved and that the decision be published in accordance with Section 17 of the Planning and Compulsory Purchase Act 2004 and Regulation 10A of the Town and Country Planning (Local Plan) (England) Regulations 2012.
- (ii) as per option 1 set out in this report, the scope of the update will be:  
To assess whether the local plan's housing figure should updated in line with the most recent standard methodology housing figure. It would require an update to

Local Plan Policies SS1, SS12 and SS13. There may be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1).

- (iii) a decision on any further amendments to the plan arising from updates to the housing policies in line with the review; or identified as necessary following legislative changes; or the identified as necessary to ensure the plan is sound, be delegated to the Assistant Director of Planning, Housing & Climate Emergency in consultation with the Local Plan Working Party.
- (iv) The terms of reference of the Local Plan Working Party, to reflect the work necessary beyond the review to update the Local Plan, are amended from:

“To support the Local Planning Authority’s review of the Torbay Local Plan 2012-2030 and any other associated documents as may be deemed appropriate by the Assistant Director of Planning, Housing and Climate Emergency”

To:

“To support the Local Planning Authority’s review **and update** of the Torbay Local Plan 2012-2030 and any other associated documents as may be deemed appropriate by the Assistant Director of Planning, Housing and Climate Emergency”

## **Appendices**

Appendix 1: Local Plan PAS Toolkit Part 2: Local Plan Content Checklist.

## **Background Documents**

Torbay Local Plan 2012-2030

National Planning Policy Framework (NPPF)

(National) Planning Practice Guidance (PPG)

Torquay, Paignton and Brixham Peninsula Neighbourhood Plans.

## Supporting Information

### 4. Introduction

- 4.1 The Need to review local plans is set out in Regulation 10A of the Local Planning Regulations 2012. Paragraph 33 of the NPPF states:  
*“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future”.*
- 4.2 A review of the Local Plan, using a Planning Advisory Service Checklist is set out at appendix 1. The main issue that will trigger a need to update the plan is the government’s standard methodology local housing need figure (LHN). As October 2020 this requires 586 dwellings per year, i.e. 2930 over five years. With a 5% buffer required by the NPPF, this becomes 615 dwellings a year. It is noted that the figure may change, and the government has recently consulted upon a revised methodology which (if brought into force) would require 635 dwellings per year.
- 4.3 The standard methodology figure is higher than the Local Plan’s average growth rate (495 dwellings per year). However, the Torbay Local Plan 2012-30 has an overall requirement of 8,900 dwellings, with a stepped trajectory (set out in Policy SS13) as follows:
- 400 dwellings per year 2012/13- 2016/17
  - 495 dwellings per year 2017/18—2021/22
  - 555 dwellings per year 2022/23-2029/30
- 4.4 In the 8 years of the plan period 2012-20 there have been 2,907 net new dwellings completed, against a requirement of 3,485, making a shortfall of 578 dwellings. The average number of completions was 363 a year. The shortfall must be made up in 5 years<sup>3</sup>, making an additional 115.6 dwellings a year. With that and a 5% buffer required by the NPPF<sup>4</sup>, the requirement is currently 3,395 dwellings over five years, or 679 dwellings a year.
- 4.5 The standard methodology LHN figure is actually lower than the current figure (615 dwellings per annum (dpa) under the standard methodology plus 5% buffer; against 679 dpa under the local plan with backlog and 5% buffer). However, the difference in the figures, coupled with a shortfall in 5 year supply of deliverable sites is recommended to be sufficient to trigger a review of housing numbers. These are set out in Policies SS1, SS2, SS12 and SS13 of the Local Plan. There is likely to be a consequential impact on other policies dealing with housing supply, particularly Policy SS2 and neighbourhood area policies (SDT1, SDP1 and SDB1). However these latter policies appear robust in terms of their broader conformity to the NPPF, notwithstanding the issue of housing numbers.
- 4.6 **Corporate and Community Plan 2019-23.** Although the Local Plan predates the Corporate and Community Plan, it contains policies that address its objectives. It has policies for schools, affordable housing, local amenities and turning the tide on poverty, which are all part of the “helping people thrive” objective. It contains policies to support the economy, regenerate town centres and to make Torbay the premier resort. The Local Plan has policies on tackling climate change, recycling, flooding and transport connectivity.

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<sup>3</sup> Unless an alternative method is agreed at the Plan making stage.

<sup>4</sup> Where the Housing Delivery Test (HDT) is below 85% of the requirement for the last three years, the buffer becomes 20% (NPPF footnote 39). If the HDT is <75% the Presumption is automatically triggered.

Torbay has pioneered partnership working between communities and the council through the roll out of Bay wide neighbourhood planning.

- 4.7 **Neighbourhood Plans.** Torbay has bay wide coverage of Neighbourhood Plans, which were all “made” in June 2019. The online Planning Practice Guidance (PPG) states that:

*“Where a neighbourhood plan has been brought into force, the local planning authority should take its policies and proposals into account when preparing the local plan. Local plan policies should not duplicate those in the neighbourhood plan, and do not need to supersede them unless changed circumstances justify this. It is important for local plans to make appropriate reference to neighbourhood plan policies and proposals, and similarly for neighbourhood plans to acknowledge local plan policies that they relate to” .  
Paragraph: 006 Reference ID: 61-006-20190723”*

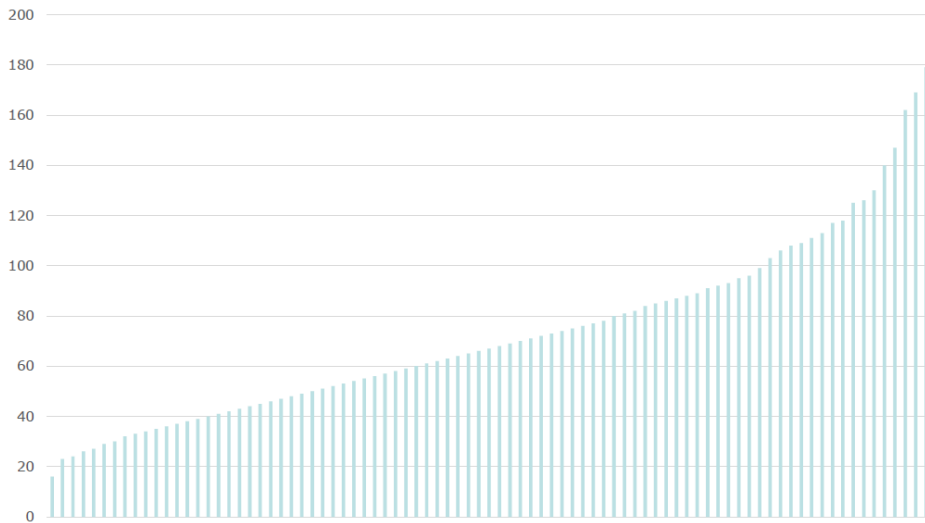
- 4.8 Whilst there are some differences between the Local Plan and the Neighbourhood Plans, these are not considered sufficiently great to necessitate a major update of the Local Plan. In particular, all three Neighbourhood Plans set out strong urban renewal policies which make best use of land, in accordance with the Local Plan and the 2019 NPPF (para 117 et seq.). The Neighbourhood Plan policies were assessed by independent examinations and by Full Council (in November 2019 and June 2019), and found to be in general conformity with the Local Plan. Where there are non-strategic differences, the Neighbourhood Plan takes precedence over the Local Plan (NPPF 30).
- 4.9 It is noted that the Planning for the Future White Paper was published in August 2020. This proposes much shorter Local Plans which allocate land for either growth, renewal or protection. These changes will require primary legislation, and the government is urging local authorities to keep plans up to date in the meantime.

## 5. Options under consideration

- 5.1 Three Options are set out in the main report: 1) to carry out a partial update of policies for the supply of housing; 2) To carry out a partial update of policies for the supply of housing and to carry out a light touch update of other policies to reduce repetition and make minor amendments; or 3) To carry out a more detailed re-write to create a new Local Plan. The second option is recommended as being the most effective.
- 5.2 In terms of timescales, the most significant unknown is examination period. Planning Inspectorate data from the last five years shows that strategic plans such as local plans take on average about 65 weeks to go through examination (post submission), with housing numbers being a significant issue at examinations.

**Figure 1: Duration of Strategic Plan Examinations over 2015-20 in Weeks (Source PINS)**

Duration by length in weeks - all strategic plans in last 5 years



5.3 Therefore, as an approximate estimate, both options 1 and 2 are likely to take until late Summer/Autumn 2022 to reach adoption. Option 3, a more comprehensive re-write is likely to take until at least 2024. It is much more difficult to provide a timescale for if significant modifications need to be made to a plan at Examination, however an estimate is provided in lighter shaded orange. Hopefully the submission of a sound plan would reduce the need for significant changes post submission.

5.4 Approximate timelines for the three options are shown below for information purposes only.

**Option 1 Partial update of policies for the supply of housing only**

Project / Task	2020					2021					2022					2023					2024														
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N
<b>Torbay Local Plan, Review and Estimated Update Timescale: Option 1. Update of Housing Numbers only.</b>																																			
First Five Year Review *																																			
Options Paper (Reg 18) consultation											P																								
Regulation 19 Consultation (Consideration of Pre-Sub Revisions*)																P																			
Submission Regulation 22**																																			
Examination**																																			
Adoption if no Main Mods or significant dispute																																			
Modifications and consultation (if needed)																																			
Adoption of Updated Local Plan																																			

Key : P Pre-submission S Submission E Examination A Adoption ) \* ( Completion deadline by December 2020) \*\* Submission may be delayed if separate revisions' consultations are required. Adoption delayed if potential Test of Soundness or Duty to Cooperate matter requires additional Modifications.

**Option 2 Update of policies for the supply of housing and to carry out a light touch update of other policies**



Project / Task	2020					2021					2022					2023					2024																										
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N
Torbay Local Plan, Review and Estimated Update Timescale: Option 2. Update of Housing Numbers and Partial Update of Policies.																																															
First Five Year Review *																																															
Options Paper (Reg 18) consultation											P																																				
Regulation 19 Consultation (Consideration of Pre-Sub Revisions*)																P																															
Submission Regulation 22**																										S																					
Examination**																																															
Adoption if no Main Mods or significant dispute																																															
Modifications and consultation (if needed)																																															
Adoption of Updated Local Plan																																															
Modification consultations are required. Adoption delayed if potential Test of Soundness or Duty to Cooperate matter requires additional Modifications.																																															

**Option3 More detailed rewrite of the Local Plan**

Project / Task	2020					2021					2022					2023					2024					2025																					
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N
Torbay Local Plan, Review and Estimated Update Timescale: Option3. Total Rewrite.																																															
First Five Year Review *																																															
Options Paper (Reg 18) consultation																P																															
Regulation 19 Consultation (Consideration Reg 18 Responses and plan drafting)																					P																										
Submission Regulation 22**																																				S											
Examination** including Main Modifications																																															
Adoption if no Main Mods or significant dispute																																															
Modifications and consultation																																															
Adoption of Updated Local Plan																																															
Key : P Pre-submission S Submission E Examination A Adoption ) * ( Completion deadline by December 2020) ** Submission may be delayed if separate revisions' consultations are required. Adoption delayed if potential Test of Soundness or Duty to Cooperate matter requires additional Modifications.																																															

5.5 Officers have considered not updating the Local Plan. The housing supply shortfall Torbay is experiencing would inevitably mean that the Local Plan is “deemed” to be out of date for proposals involving housing as set out in footnote 7 of the NPPF. The option of waiting from a new planning system proposed by the Planning for the Future White Paper has also been considered. Advice from government and the Planning Inspectorate is that local authorities should continue to update plans. The White Paper proposals are at an early stage and if they proceed will require primary and secondary legislation, and could take several years to embed. Postponing an update to the Local Plan is not considered to be a viable option as it would result in several years of uncertainty.

5.6 A full re-write of the Local Plan has also been considered (Option 3). Whilst the Local Plan is too long (at 298 pages) and some policies would benefit from clarification and simplification; the Local Plan contains policies dealing with the objectives of the Corporate and Community Plan 2019-23 (see above). Although COVID19 in particular may have triggered a need for much more flexibility in town centres, the Local Plan does contain

flexible policies for town centre regeneration. The neighbourhood plans and Masterplan Supplementary Planning Documents have added further detail to these regeneration proposals. There are also policies seeking to tackle climate change and promoting low carbon development and resilience measures.

- 5.7 Because the Local Plan is broadly consistent with the NPPF and Community Plan, such a root and branch rewrite of the Plan is not recommended to be necessary. It would be very time consuming and may go full circle and come up with a similar strategy to the existing Plan. Furthermore the plan may be overtaken by events if changes to the planning system mooted in the White Paper are progressed.
- 5.8 It is accepted that in some cases, the implementation/effectiveness of policies may benefit from clarification or improvement. Option 2 would allow for a “light touch” update so long as the fundamental thrust of policies is not changed. Further clarification could be achieved through Supplementary Planning Documents and Masterplans. Several policies in the Local Plan contain “hooks” that allow for supplementary guidance. SPD updates can be achieved in a straightforward and simpler manner, although they do not hold the same weight in decision-making as the development plan itself.

## **6. Financial Opportunities and Implications**

- 6.1 The Local Plan is a significant financial commitment, but reviewing and updating plans is a legal requirement. The Local Plan sets the framework for seeking S106 contributions and Community Infrastructure Levy (or their replacement “infrastructure levy”). A minimal update to the Local Plan will mean that the broad framework set out in the Planning Contributions and Affordable Housing SPD is likely to remain relevant, reducing the need for a “deep dive” into the SPD.

## **7. Legal Implications**

- 7.1 The Local Plan, together with neighbourhood plans constitute the “development plan”. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990).
- 7.2 Many aspects of the planning system have been clarified by the Courts. In particular, there is a debate about plans being out of date. The Courts have held that out of date policies may still be given “substantial or even full weight” by the decision maker. In particular, whilst lack of five year supply may “deem” policies to be out of date, other factors such as consistency with national policy, factual and policy changes and the reasons for a housing shortfall may all be material in considering how far a plan is assessed as being out of date, and accordingly how much weight it is reasonable to give it<sup>5</sup>.
- 7.3 The above assessment suggests that, given that the Local Plan is broadly consistent with the 2019 NPPF, and sets out a flexible approach to town centres, it is capable of carrying significant weight in planning decisions- and full weight for non-housing proposals. The housing shortfall means that applications involving the provision of housing must be determined on the basis of the presumption in favour of sustainable development; and housing proposals should be approved unless they can be shown to be significantly and demonstrably harmful (NPPF paragraph 11 d)ii, often called the “tilted balance”). However, the Local Plan may, as a planning judgement, continue to be given significant weight in decision making. Neighbourhood Plans enjoy separate protection under paragraph 14 of the NPPF, so long as they meet the conditions set out therein.

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<sup>5</sup> Holgate J in Gladman v S of S MHCLG, Corby BC and Uttlesfield DC [2020] EWHC 518 (Admin). Paragraphs 94-97. This ruling also determined that development plan policies should be considered within the “tilted balance” in paragraph 11d)ii of the NPPF.

## **8. Engagement and Consultation**

- 8.1 The Checklist has been prepared in discussion with the Planning Advisory Service. Discussions have taken place with Torbay's Neighbourhood Forums/Plan Group in relation to the Local Plan Update.

## **9. Purchasing or Hiring of Goods and/or Services**

- 9.1 Not directly applicable. Updating the Local Plan evidence base is likely to entail appointing consultants on matters such as viability.

## **10. Tackling Climate Change**

- 10.1 The Local Plan is required by law to promote sustainable development. Aspiration 5 (p37) is to respond to climate change. Whilst many policies in the Local Plan are relevant to climate change, Policy SS14 "Low carbon development and adaptation to climate change", ES1 "Energy", and ES2 "Renewable Energy and low-carbon infrastructure" are particularly relevant.

## **11. Associated Risks**

- 11.1 If a review has not been carried out inspectors at appeal may give the plan very little weight. Whilst acknowledging that the Plan is out of date will mean that the Presumption In favour of sustainable development (at paragraph 11 of the NPPF) will apply, the council will be able to argue that most aspects of the plan remain relevant and that accordingly significant weight may be given to it.
- 11.2 The Government has stated that it wants all areas to have an up to date local plan by 2023. Whilst not updating the Local Plan could result in the Government intervention to force an update, this contingency is very unlikely in Torbay's case. A more likely risk would be planning by appeal.

**Equality Impacts** Please complete this section if your proposal results in a change to services and impact on the community or parts of the community – seek advice and help from Policy, Performance and Engagement Team – equalities@torbay.go.uk

9.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	The Local Plan can help provide affordable housing, and contains policies on education and reducing child poverty.		
	People with caring Responsibilities	The Local Plan includes policies on providing and improving the quality of accommodation for people in need of care.		
	People with a disability	Policy H6 of the Local Plan requires the provision of accessible dwellings on larger developments. It contains policies for specialist accommodation (H6) and the provision of disabled parking and other accessibility matters.		
	Women or men		Neutral impact	
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>	There is a search for temporary stopping sites for Travellers taking place in parallel to the Local Plan Review.	Overall neutral. Policy H5 deals with travellers, but is a criteria based policy rather than a specific allocation.	
	Religion or belief (including lack of belief)	The local plan provides a framework for the provision of community facilities.	Overall neutral	
	People who are lesbian, gay or bisexual		Neutral impact	

	People who are transgendered		Neutral impact
	People who are in a marriage or civil partnership		Neutral impact
	Women who are pregnant / on maternity leave		Neutral impact
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	The Local Plan contains policies seeking to reduce deprivation and child poverty.	
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	The provision of housing, affordable housing and open space and recreational facilities all contribute towards better health. Policy SC1 Healthy Bat requires health impact assessments to be carried out for developments of 30+ dwellings.	
<b>10..</b>	<b>Cumulative Council Impact</b> (proposed changes elsewhere which might worsen the impacts identified above)	None direct	
<b>11.</b>	<b>Cumulative Community Impacts</b> (proposed changes within the wider community (inc the public sector) which might worsen	None direct	

	the impacts identified above)	
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## Appendix 3: Alder King Housing Land Supply Representations (June 2020)





## Torbay Five Year Housing Supply 2020: Draft Statement for Consultation

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

8 June 2020

Prepared by: Simon Fitton

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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)

Appendix 3: Counsel Opinion (January 2020)

## 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 May 2020 Consultation Statement against the nationally prescribed methodology.
- 1.2 The statement establishes that the Council cannot identify a robust land supply against the five year requirement and estimates the supply to be 2.77 years. Paragraph 6.1 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. It goes on to acknowledge that the protection afforded to Neighbourhood Plan areas by NPPF paragraph 14 does not apply given the supply is less than three years.
- 1.3 For the reasons set out below, Alder King does not consider the 2.77 years estimate to be a robust position.

## 2.0 The Housing Requirement

- 2.1 Alder King (AK) agrees with Torbay Council's (TC) methodology for the calculation of the five year housing requirement; AK notes that TC has followed the methodology advanced in its July 2019 representations and considers the five year requirement calculation of 3,395 dwellings to be robust.
- 2.2 Paragraph 6.4 of the consultation paper references past under-delivery in Torbay and that an Action Plan has been prepared in accordance with the failure to meet the relevant thresholds in the 2018 Housing Delivery Test (HDT). Paragraph 6.4 references an improvement in the position from 2018 to 2019 which relates to a spike in completions in 2018/19, albeit an Action Plan is still required as it still falls short of expectation.
- 2.3 The statement is however silent on the implications of a significant drop in the level of completions in 2019/20. Completions of 188 is a poor return on a requirement of 495 and the implications are shown below:

	Requirement					Completions					HDT
	2016-2017	2017-2018	2018-2019	2019-2020	Total required	2016-2017	2017-2018	2018-2019	2019-2020	Total delivered	
<b>2019</b>	400	470*	495	-	1,365	326	414	531	-	1,271	<b>93%</b>
<b>2020</b>	-	495	495	495	1,485	-	414	531	188	1,133	<b>76%</b>

\*This figure is taken from the published HDT but is incorrect

- 2.4 The HDT results for 2020 will mean that TC falls below the 85% threshold and will mean that a 20% buffer will need to be applied to the five year housing requirement. The Action Plan has failed to deliver. Completions in 2020/21 from major sites are anticipated to be 143 homes. At no stage in the five year period does the anticipated level of completions (not including small sites and windfalls as there is no trajectory) get close to the 495 homes per annum requirement.

- 2.5 The requirement of 3,395 dwellings is therefore somewhat of a false position. The HDT is a matter of simple arithmetic and since TC has published its completions for 2019/20 early the reality is clear. When the HDT is formally published the requirement will increase to 3,880. Against the claimed land supply of 1,881 dwellings, a supply of 2.42 years results. For the reasons set out below AK does not consider the supply of 1,881 dwellings to be robust.

## 3.0 The Housing Supply

- 3.1 Paragraph 1.4 of the statement states that calculating 5 year supply is not an exact science and inevitably involves a planning judgement. AK does not agree with this statement. The five year supply should be based on fact and certainty; of course it is hard to predict with complete accuracy the trajectory for any one site for any particular year; this is never more true in the current Covid-19 pandemic and it is impossible to predict how it will affect delivery over the next two to three years with any accuracy. However, over the course of a five year period, the total anticipated from any site should not really come down to a matter of planning judgement. This is an evidence-led exercise; if the evidence is robust then there is no need to exert any planning judgement. It cannot be based on hearsay or anecdotal evidence.

- 3.2 In some respects the NPPG extract highlighted at paragraph 4.2<sup>1</sup> of the consultation statement 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 4.3 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.

- 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, Essex<sup>2</sup> 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

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<sup>1</sup> Paragraph: 007 Reference ID: 68-007-20190722

<sup>2</sup> APP/Z1510/W/16/3162004

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.

## 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 does not consider that the following sites merit inclusion:

- **Former Paignton Police Station, Southfield Road:** Outline consent exists for 46 dwellings but reserved matters was granted for 36 dwellings in 2019. It is clear from the proposals that the scheme was revised down; the delegated report confirming that, *"the main divergence is that the scheme is for 10 fewer apartments to the number approved at outline stage and, principally as a result of this reduction, the proposal is also one storey less in height than indicatively shown at outline stage"*. Further reserved matters have been submitted (validated in February 2020) but still reflecting 36 units. Those 10 dwellings cannot be relied upon and should be discounted from the supply. The developer clearly does not intend to deliver 46 dwellings.
- **Queensway, Torquay, Southfield Road:** In February 2020 this site was identified with a supply of 6 dwellings. It is accepted that full permission exists for 12 dwellings but this dates back to an application submitted in 2007 and approved in May 2008. No other applications have been submitted since. It is assumed that the consent has been implemented and is still capable of delivery but it is not clear why the supply has increased to 11 in the space of 3 months (from

February 2020). Five units are anticipated for completion in 2020/21 so it is assumed that this is robust and developers are effectively onsite. There is no evidence to suggest that the remaining 6 units will be delivered given they are not anticipated until year 5 (2024/5). There is no logic to that estimate not least since the consent dates to 2008. Those six dwellings should therefore be discounted.

- **South Devon College (Torre Marine):** This site does not have full planning permission and to that end sits in the wrong section (ie it should fall into Category B). P/2016/1047 is an outline permission for which no reserved matters have been submitted. Clear evidence is required as a consequence and it 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 three provides no confidence. The outline consent will expire in November 2020 so there is a clear mismatch in terms of expectations for delivery.

Following the submission of representations in July 2019 the site was removed from the 2019 supply. There is no justification for its inclusion now as there has been no change in circumstance. The site should sit in category B but only if there is clear evidence of demonstrated intent; as it stands there is nothing.

- **Brixham Paint Station, Kings Drive:** Notably this site did not feature in the 2018 trajectory despite being subject to an implemented consent. It featured in the draft July 2019 consultation paper but was subsequently removed in the final February 2020 statement. The consent dates back to 2006. It is not appropriate to rely on a part implemented consent from 2006 without any evidence of delivery. The fact that it is programmed for delivery in years 3 and 4 suggests that the site has not progressed at all since the last update in February 2020. TC seems no further forward in advancing any evidence to suggest delivery will be forthcoming. It should therefore be discounted from the supply.

4.2 AK does not consider that the above sites should contribute to the supply and has discounted all or parts of them as a consequence. The supply from major sites with planning permission should therefore be reduced by 113 dwellings from the stated 694 to 581 in accordance with a:

- reduction in 10 units from 46 to 36 at Former Paignton Police Station, Southfield Road;
- reduction in 6 units from 11 to 5 at Queensway, Torquay, Southfield Road;
- reduction in 75 units and deletion from supply at South Devon College (Torre Marine); and
- reduction in 22 units and deletion from supply at Brixham Paint Station, Kings Drive

## 5.0 Part B: 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, the majority of sites 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 Not all sites are the subject of either outline or full planning permission. In some 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 (or in the numbers anticipated), whether that is in part or at all, or in the timescales originally envisaged.
- 5.3 There are a number of sites that featured in the 2019 July HLS consultation paper that were subsequently removed in the final version published in February 2020. These are examined below to understand whether there has been a change in circumstance to justify inclusion now:

- Collaton St Mary (Blagdon Farm). In 2019 AK's representations stated that, *"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."*

Little appears to have changed. It is recognised that the Taunton Development Agency (TDA) controls the site but only a detailed consent for access exists and that is presently subject of a legal challenge; it remains to be seen how that process will unfold. TC sought to test the appropriateness of whether this site could be included within the 2019 HLS and sought Counsel's opinion on this and a number of other sites (**Appendix 3**). Counsel advised TC that:

*"The existence of grant funding, and the permission for the spur road, are both relevant factors, as is the fact that the Council owns the site. They all point towards its deliverability. However, these factors alone are unlikely to persuade an inspector that "there is clear evidence that housing completions will begin on site within five years".*

*It is highly relevant that a planning application is expected in 2020. However, in order to persuade an inspector of the site's deliverability, more evidence is likely to be needed. When is that permission expected to be received? What pre-application discussions have there been? Is it likely*



*that the application will be in conformity with the adopted masterplan? Will the application be in outline or full? Is there 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 rate? And what evidence does the developer have to support their position?"*

None of these questions have been addressed and no further evidence has been advanced; it is impossible to understand what justifies its inclusion now.

- **Collaton St Mary, North of Totnes Road (Taylor Wimpey):** The site was removed from the 2019 supply on the basis that a) only an outline application had been submitted, b) it was contrary to the approved masterplan (73 units against the masterplan of 40), and c) was refused planning permission at Committee.

Taylor Wimpey has subsequently appealed the refusal and on the basis that the Council clearly does not support the scheme it is difficult to understand how it could possibly feature in the supply. TW has submitted a duplicate application in April 2020 presumably to offer an olive branch and enable TC to determine the application favourably but there is no reason to suggest it will. Indeed, it is noted that the HLS only makes provision for 40 dwellings as per the masterplan but clearly this is not what TW intends to deliver. There are clear tensions between the intentions of the developer and those of the Council and until such time as they are resolved this site cannot feature.

- **Collaton St Mary, North of Totnes Road (Bloor):** Technically the site should not feature in the 5 year supply as an outline consent is not normally sufficient to represent a clear demonstration of delivery. However, on the basis that the site will be reported to committee in June, the fact that the application is promoted by a volume housebuilder would suggest there is a reasonable probability that reserved matters will be forthcoming soon. Of course, in the event that the application is refused at committee the site would not be eligible to feature in the five year supply.
- **Totnes Road (Motel Site):** Again whilst there has been some progression with an outline application (a revised pack being submitted in March 2020), consent has yet to be granted. There is no certainty of permission or when reserved matters will be submitted and on that basis should continue to be discounted.
- **St Kilda's:** Notably St Kilda's is the only one of three Neighbourhood Plan sites that were identified in 2019, subsequently removed in February 2020 and now re-instated (the other two being Hatchcombe Lane and Westhill Garage). 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 was in relation 'pre-app discussions'. It is the same response in 2020. 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.



The commentary falls woefully short of national requirements. When considered against the SoS criteria, there is no possibility that St Kilda's should be included within the supply. There is no compelling evidence to demonstrate that St Kilda's will be delivered; the fact that it is a Torbay Development Agency (TDA) controlled site gives it no more elevated status given no evidence has been presented. The site is not even referenced in the Housing Action Plan 2019.

- **Victoria Centre:** There is no certainty of delivery even though the principle of development might be acceptable. No application has been submitted. No clear evidence has been provided; whilst a successful bid for funding might have been achieved this in itself is not sufficient. An application submitted for demolition does not constitute meaningful progress.

This is a complex site that needs to go through the planning application process before any reliance in five year supply terms can be placed upon it. It is identified within the Housing Delivery Action Plan (2019) as a site now controlled by TDA but also identifies technical constraints with the site including the need to undertake a flood risk sequential test. There appears uncertainty over what the scheme could and should yield and quotes a range between 60 and 160 dwellings. TC also sought Counsel's advice on the inclusion of this site. Counsel's advice was that:

*"It was included within the draft Statement with an indication that "Developer intends to deliver on site within 5 years", although it is not clear what evidence had been obtained from the developer. It was removed in the Statement following objections on the basis that there was no clear evidence that housing completions will begin on site within five years (see representations of Alder King and PBA).*

*On the basis of the evidence before me I consider it unlikely that an inspector would find that there was clear evidence of a realistic prospect of housing development taking place on the site within five years. However, if further evidence were available, including from the developer, of the type that I outline above in respect of the CSM Land, and that evidence pointed towards the possibility of housing development taking place within five years, it might be possible to persuade an inspector of its deliverability."*

No further evidence has been presented and until such time as it has the site should be discounted from the supply. The fact that 85 dwellings have been identified and all programmed for year 5 suggests a complete lack of certainty.

5.4 The following sites are either new for 2020 or have been carried forward from the trajectory in 2019:

- **Dairy Crest site:** This site benefits from an outline consent that has a number of detailed matters also 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.

It is programmed for delivery in year five suggesting that there is little confidence from the landowner/developer that delivery is expected anytime soon. With a site with so many technical issues to address, for it to be included in the supply there has to be compelling evidence as to how and when these matters are going to be addressed.

- **Edingswell Gateway:** This is acknowledged to be a Future Growth Area but as we have established in the case of Collaton St Mary this is not enough for it to warrant automatic inclusion. It is understood that a planning performance agreement exists which is perhaps why the site now features in the supply, but no details of it are forthcoming. We do not know what commitment to delivery there is or the timescales associated with the planning application process.

One outline application has been submitted south of Moles Lane (P/2019/0710) in July 2019 for 90 dwellings but this is contrary to the Masterplan that identifies the land for employment purposes and is subject to an objection from the lead promoter Cavanna Homes on that basis. No dwellings can be relied upon from this location until such time as there is much greater certainty over delivery.

- **Northcliffe:** This is understood to be the former hotel site demolished in the mid-1990s and identified in the Brixham Neighbourhood Plan. TC has correctly identified that the majority of allocated NP sites cannot feature in the supply as this is not sufficient status to guarantee delivery. There is no evidence presented in respect of this particular site and a target of ‘circa 15 units’ delivered in year five suggests there is none. The fact that it has been a vacant site for 25 years does not lead to any confidence that the position will change in the next five.

## Summary

5.5 The table below sets out Alder King’s position in respect of the sites in Category B:

Major Sites with demonstrated intent	Torbay	Alder King
Devonshire Park	100	100
Collaton St Mary (Blagdon Farm)	75	0
Collaton St Mary. North of Totnes Road TW)	40	0
Edingswell Gateway	60	0
Dairy Crest Site	43	0
Collaton St Mary. North of Totnes Road (Bloor)	70	70*
Totnes Road (Motel Site)	39	0
St Kildas	20	0
14-16 Midvale Road	10	10*
Victoria Centre	85	0
Northcliffe	15	0
<b>Totals</b>	<b>557</b>	<b>180</b>

\*assuming approved at committee

## 6.0 Conclusion

6.1 Given the lack of supply 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 tilted balance applies; the tests in the Local Plan are still material but so are those set out in the NPPF and NPPG.

6.2 A summary of Alder King's position is set out below:

Component	Torbay	Alder King
Five Year Requirement 2020 to 2025	3,223	3,223
<b>Plus Shortfall and 5% Buffer</b>	<b>3,395</b>	<b>3,395</b>
<b>Plus Shortfall and 20% Buffer</b>	<b>3,880</b>	<b>3,880</b>
Part A Supply (sites with full planning permission)	694	581
Part B Supply (allocated and other)	557	180
Part C Supply (small sites)	390	390
Part D Supply (windfall)	240	240
<b>Total Supply</b>	<b>1,881</b>	<b>1,391</b>
<b>Number of Years Supply with 5% buffer</b>	<b>2.77 years</b>	<b>2.05 years</b>
<b>Number of Years Supply with 20% buffer</b>	<b>2.42 years</b>	<b>1.79 years</b>

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

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

## Appendix 3: Counsel Opinion (January 2020)



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.

Ministry of Housing, Communities & Local Government  
Andrew Lynch, Decision Officer  
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London SW1P 4DF

Tel: 0303 444 3594  
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## **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

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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.**

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**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 BNLP 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 BNLP she readily accepted that it contained significant changes to the adopted strategy of housing distribution - most obviously in its dependence upon the new Garden Communities - but crucially given the enhanced role of Hatfield Peverel as part of the A12 corridor of growth. With all due respect to Mrs Jarvis her point went nowhere and it certainly does not support the proposition that she intended that the DWH proposals are out of scale with the settlement, let alone the more radical distribution point made at paragraph 2.15 of her proof.
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* (paragraphs 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, dunnock, 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 NO<sub>2</sub> concentration level of 46 µg/m<sup>3</sup> is not the NO<sub>2</sub> level at the receptor, which is the relevant level, and is 30.9 µg/m<sup>3</sup>. 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 BNLN which identifies Hatfield Peverel as a Key Service Village which has the ability to host a considerable amount of residential development; indeed, the emerging BNLN 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 BNLPP 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 BNLN. 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.

**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:

<b>Table 1: Calculation of the target for 2018-2023</b>	
<b>Stage 1: Setting the baseline: the ONS 2014 based household projections</b>	
Average annual increase in households 2018-2028 Braintree District	632
<b>Stage 2: Adjustment to take account of ONS 2018 local housing affordability data</b>	
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
<b>Stage 3: Capping the increase</b>	
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	
<b>Stage 4: Application of the buffer</b>	
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.

<b>Table 2: Summary of 5 year supply 2018-2023 by planning status as at 1 April 2018</b>	
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
<b>Total projected supply, excluding communal accommodation</b>	<b>4,810</b>

- 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:

<b>Table 3:</b>	
<b>Deliverable supply 2018-2023 from large sites with outline permission as at 1 April 2018: Updated status</b>	
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
<b>Deliverable supply 2018-2023 from large sites with Resolution to Grant as at 1 April 2018: Updated status</b>	
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 Crossing, 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>Hedingham 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
<b>Years supply</b>	<b>5.29</b>
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 2018-23	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
<b>With Outline Planning Permission, 10 dwellings or more</b>														
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 06.04.18 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/18/613/REM	Outline	Canter 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 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 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, 20/21: 27. 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; can be developed concurrently with Phase 1. As at Nov 2018, 23 plots under construction.	Site check April 2019 found 11 plots completed and 25 plots under construction.
HASA 286	BTE/16/0802/OUT	Outline	Land at Greenways Balls Chase	0	0	0	0	0	14	0	14	No		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	Yes, 4.12.2018 from agent Strutt and Parker confirming no significant constraints and site now owned by Chelsteen Homes and full application submitted.	Developer Chelsteen 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 Bellway 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/16/2096/OUT BTE/19/0494/REM	Outline	Former A1a 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 Bellway Homes. Site cleared. Current discharge of conditions application, reserved matters submission in preparation.	Reserved Matters now submitted. 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 identified 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
	BTE/16/0569/OUT	Outline	Land NE of Inworth Rd Feering	0	0	50	50	50	150	165	15	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	100	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.	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 Riverhall/Witham	0	21	87	55	0	163	163	0	Yes. 18.12.2018 and revised trajectory from developer 06.02.2019.	Full application 17/01/092/FUL submitted for Phase 2, from developer Bellway 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/19/00138/FUL granted 4.4.2019 for temporary off site construction compound. Developer is constructing the Riverhall Park site already with Phase 1 underway (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 389	BTE/15/0280/OUT BTE/18/1751/REM	Outline	Land off Western Road Silver End ("Meadow View")	0	25	51	51	51	178	350	172	Yes. 21.12.2018. Trajectory from developer	Reserved matters application expected 2018, developer Redrow Homes.	Reserved matters application for 350 homes BTE/18/1751/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 95 completions delivered within first year of which 15 were from Phase 1b which had outline.
SILV 386	BTE/16/1653 BTE/18/01172/VAR	Outline	Land east of Boars Tye Road Silver End	0	4	35	11	0	50	50	0	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/19/0635/FUL	Outline	SE side Ashen Rd. at junction with Tilbury Rd Ridgewell	0	0	0	8	8	16	16	0	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/19/0635/FUL, Beacon Hill Homes, application for 18 dwellings.
GRBA 255A	BTE/15/1354/OUT BTE/18/0187/REM	Outline	Land off Braintree Road Great Bardfield (Bardfield Walk)	0	37	0	0	0	37	37	0	Yes. 3.12.2018, trajectory from developer.	Developer Croudace 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 identified supply post 2023	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2019)	Deliverability Evidence update
EAR 3	BTE/15/0834/OUT BTE/18/0371/REM	Outline	Land at Station Road Earls Colne	0	0	15	20	21	56	0	Yes. 4.12.2018 agent (Phase 2 Planning) forecast 40 in 2019/20 and 16 in 2020/21.	Reserved matters submitted, Cala Homes	Reserved matters application pending consideration. The Council has moderated the forecast supply from the agent. Nonetheless, given the average Cala 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 Colne	0	0	25	55	0	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	0	No	BTE/16/1907 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 St Giles Developments Ltd, application reference BTE/19/00109/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/18/1912/REM	Outline	Lodge Farm, South West Witham Growth Location, off Hatfield Road	15	90	90	90	90	375	284	Yes. 21.12.2018. BDC adjusted developer trajectory.	Developer Redrow Homes. Overall capacity 750 homes. Phase 1, 91 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 95 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 2018 and with outline consent, had 67 plots under construction and 2 plots not started as at April 2018. Phase 2 now has detailed permission for 57 homes, granted 26 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.
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Outline	Land north of Conrad Road Witham	0	0	21	67	36	124	26	Yes. 1.03.2019. Trajectory from developer.	Developer Sanctuary Homes.	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.

**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 identified supply post 2023	Correspondence from Developer / Agent / Land owner	Deliverability evidence as of when AMR was published (January 2019)	Deliverability Evidence update
WIS 09	BTE/12/1071	Outline	Land south of Mollings Lane Witham	0	0	0	10	30	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	Humble Industrial Estate Great Yeldham	0	16	44	0	0	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	634			

**Adopted Plan Growth Location Sites, Without Planning Permission**

BOS6H	BTE/15/1319	Without	Land West of Panfield Lane Braintree	0	0	30	70	100	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.
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**Sites with Resolution to Approve subject to signing of Section 106 Agreement**

Estimated supply from Adopted Growth Location site, without planning permission				0	0	30	70	100	200	400			
GOSF 252 GOSF 253	BTE/17/1066/OUT	Without	Land West of Heddingham Road (Land to the north of Meadway) Gosfield	0	0	0	0	0	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 Peverel	0	0	0	46	0	46	0	Yes, 18.12.2018 and 06.02.2019, Council has used the original trajectory provided by the developer (18.12.2018).	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	165	60	Developer Countryside Properties; outline application approved in principle 27.02.18 subject to signing of Section 106 Agreement; decision issued 18 Dec 2018	Reserved Matters expected to be submitted late April/early May 2019.	
	BTE/17/1769/OUT	Without	Land East of Monleys Road Earls Colne	0	0	0	20	0	20	0	Yes, 17.12.2018, From the Hunt Property Trust. In line with agent trajectory.	Outline application approved in principle 13.02.18 subject to signing of S106 Agreement; decision issued 28.11.2018.	
Estimated supply from Sites subject of Resolution to Approve subject to signing of Section 106 Agreement				0	0	55	121	55	326	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.

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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:	
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 Ro
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 7<sup>th</sup> December 2018 to:**

[PlanningPolicy@braintree.gov.uk](mailto: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

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

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

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

<b>Site Address/Location:</b>	Site 034 Former Carier Business Park East Street Braintree
<b>Planning application reference(s):</b>	BTE/15/1366 BTE/18/613/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

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

# Site Progress cont..

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

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

<b>Other developer/site promoter/landowner comments</b>	
<b>(Internal use)</b>	

**Return by Friday 7<sup>th</sup> December 2018 to:**

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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:	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..

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

<b>Total/estimated total site capacity</b>	100
<b>Dwellings built as at 31 March 2018</b>	0
<b>Outstanding capacity as at 31 March 2018</b>	100
<b>Forecast completions Year 1: April 2018/March 2019</b>	17
<b>Forecast completions Year 2: April 2019/March 2020</b>	56
<b>Forecast completions Year 3: April 2020/March 2021</b>	29
<b>Forecast completions Year 4: April 2021/March 2022</b>	
<b>Forecast completions Year 5: April 2022/March 2023</b>	

<b>Other developer/site promoter/landowner comments</b>	
<b>(Internal use)</b>	

**Return by Friday 7<sup>th</sup> December 2018 to:**

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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 <a href="mailto:jennifer.carroll@struttandparker.com">jennifer.carroll@struttandparker.com</a>

# 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 Intial 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

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

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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 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	<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:	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 R.M.
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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## Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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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:	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"/> x	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 / GOLF COURSES
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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**Please return forms by Friday 7th December 2018**



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

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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 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..

BURT 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	
<b>Approved Planning</b>							
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	
<b>Current</b>	<b>606</b>	<b>182</b>	<b>128</b>	<b>158</b>	<b>144</b>	<b>121</b>	<b>55</b>
<b>4 in Construction</b>		30.03%					
<b>Current applications</b>							
Sudbury Road, Halstead	218	65			33	62	123
Riverview (Gimsons)	78	23			33	45	
Rickstones Road	58	17			15	43	
<b>3 Current Application</b>							
<b>Future applications</b>							
Arla 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
<b>Current + Future applications</b>	<b>1289</b>	<b>412</b>					

**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](mailto: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](http://www.savills.co.uk)



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**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**

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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

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

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

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

Is the site:

Owned by Developer  Site Actively being marketed

Sale to developer under negotiation  Site not actively being marketed

### PART C Site Progress

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



# Site Progress cont..

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

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

<b>Other developer/site promoter/landowner comments</b>	
<b>(Internal use)</b>	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)

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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 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:** 28 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](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**

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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**

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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

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

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

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

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

# Site Progress cont..

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

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

<b>Other developer/site promoter/landowner comments</b>	
<b>(Internal use)</b>	

**Return by Friday 7<sup>th</sup> December 2018 to:**

[PlanningPolicy@braintree.gov.uk](mailto:PlanningPolicy@braintree.gov.uk)

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

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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

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

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

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

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

# Site Progress cont..

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

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

<b>Other developer/site promoter/landowner comments</b>	
<b>(Internal use)</b>	

**Return by Friday 7<sup>th</sup> 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:	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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## Review of Housing Sites Identified in the 5 Year Supply 2018-2023

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### 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 019 Phase 2 Lodge Farm Witham
Planning application reference(s):	BTE/15/0430/OUT BTE/18/01912/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?	
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 events 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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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 30% 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](http://www.braintree.gov.uk) | ✉ [kathy.carpenter@braintree.gov.uk](mailto:kathy.carpenter@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

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

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

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

Is the site:

Owned by Developer  Site Actively being marketed

Sale to developer under negotiation  Site not actively being marketed

### PART C Site Progress

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

# Site Progress cont..

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

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

<b>Other developer/site promoter/landowner comments</b>	Current discussions with LPA case officer Neil Jones to combine this application with the provision of Neighbourhood Shops
<b>(Internal use)</b>	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

<b>Contact Name:</b>	Hannah Short
<b>Position:</b>	Planning and Design Co-ordinator
<b>Organisation:</b>	Linden Homes
<b>E-mail Address:</b>	
<b>Telephone Number:</b>	

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

<b>Site Address/Location:</b>	Site 051 Former Hunnable site Toppesfield Road Great Yeldham
<b>Planning application reference(s):</b>	BTE/14/1254 18/01475/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

<b>Will Housing completions begin on site before April 2023?</b>	Yes
<b>Planning Status at 31 March 2018:</b>	Outline permission
<b>Update on Planning Status:</b>	Reserved matters application submitted, and discharge of conditions



## Site Progress cont..

<b>Full/reserved matters status: approved, applied for, when planned to be submitted</b>	Submitted
<b>Details of Discharge of conditions status: submitted</b>	Submitted
<b>Information on Constraints: Actions needed before completions can be achieved</b>	
<b>Access/transport:</b>	Access via Market Grove to be be constructed, technical approval required from Essex County Council before works can commence on access.
<b>Ground conditions/ contamination:</b>	Contamination present in ground, remediation to be carried out and validation report to be approved by Braintree DC.
<b>Drainage (SUDS, flood prevention etc):</b>	Surface Water drainage strategy (outline condition 5) to be discharged by Braintree DC.
<b>Land ownership:</b>	None
<b>Other constraints (describe), including market:</b>	None

<b>Total/estimated total site capacity</b>	60
<b>Dwellings built as at 31 March 2018</b>	0
<b>Outstanding capacity as at 31 March 2018</b>	60
<b>Forecast completions Year 1: April 2018/March 2019</b>	0
<b>Forecast completions Year 2: April 2019/March 2020</b>	16
<b>Forecast completions Year 3: April 2020/March 2021</b>	44
<b>Forecast completions Year 4: April 2021/March 2022</b>	0
<b>Forecast completions Year 5: April 2022/March 2023</b>	0

<b>Other developer/site promoter/landowner comments</b>	n/a
<b>(Internal use)</b>	

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### PART A Developer/Promoter Details

<b>Contact Name:</b>	Kevin Coleman, agent Phase 2 Planning & Development Ltd
<b>Position:</b>	Mersea Homes Ltd And Hills Residential Ltd
<b>Organisation:</b>	
<b>E-mail Address:</b>	
<b>Telephone Number:</b>	

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

<b>Site Address/Location:</b>	Site 52 Land West of Panfield Lane Braintree
<b>Planning application reference(s):</b>	BTE/15/1319

Is the site:

Owned by Developer  Site Actively being marketed

Sale to developer under negotiation  Site not actively being marketed

### PART C Site Progress

<b>Will Housing completions begin on site before April 2023?</b>	Yes
<b>Planning Status at 31 March 2018:</b>	Without permission; adopted Local Plan Allocation, hybrid application for: 411 homes outline; plus 189 homes full
<b>Update on Planning Status:</b>	Planning application planned to be put before Planning Committee Spring 2019

# Site Progress cont..

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

<b>Total/estimated total site capacity</b>	600
<b>Dwellings built as at 31 March 2018</b>	0
<b>Outstanding capacity as at 31 March 2018</b>	600
<b>Forecast completions Year 1: April 2018/March 2019</b>	0
<b>Forecast completions Year 2: April 2019/March 2020</b>	0
<b>Forecast completions Year 3: April 2020/March 2021</b>	25
<b>Forecast completions Year 4: April 2021/March 2022</b>	100
<b>Forecast completions Year 5: April 2022/March 2023</b>	100

<b>Other developer/site promoter/landowner comments</b>	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.
<b>(Internal use)</b>	

**Return by Friday 7<sup>th</sup> December 2018 to:**

[PlanningPolicy@braintree.gov.uk](mailto:PlanningPolicy@braintree.gov.uk)

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

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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](#)

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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

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cid:image001.png@01D42276.B64D46B0



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**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 Cressing.

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 Cressing 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](http://www.braintree.gov.uk) | ✉ [kathy.carpenter@braintree.gov.uk](mailto:kathy.carpenter@braintree.gov.uk)

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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 Eails Colne	Crest Nicholson	Greenfield	22-May-17	50	Sep-18	Mar-19	22	0	1		As at March 2019 1 completed and 45 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 60 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 Cressing	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	Croudace 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	Croudace 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 (Usher's Meadow) Braintree	Full permission for 12 dwellings and was under construction at 1 April 2017, all 12 forecast to be completed 2017/2018. Developer Chelsteen 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	Development 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 Sibte Hedingham	Redevelopment of factory site to 193 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/18/19/17/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 Bunyan 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 Litten 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 Masefield 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/18/00195/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 Inspired 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 183 dwellings, completions started 20018/19 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 Keepmoat 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 Earls 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 Maltings Lane Witham	Developer/Site promoter Churchmanor Estates. This is the remaining residential phase from the overall Maltings 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 19.1.18. 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
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**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 0 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 0 2 1

Total change in C2 rooms 34 1 25 0 45 0 105 58



**IN THE MATTER OF:**

**5 YEAR HOUSING LAND SUPPLY  
TORBAY COUNCIL**

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**ADVICE**

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**Introduction**

- 1 I have been asked to advise Torbay Council (“the Council”) in relation to the, as yet unpublished, final version of their Five Year Housing Land Supply Statement (“the Statement”). The Statement sets out an assessment of the housing supply position from April 2019 to March 2024, concluding that the Council can demonstrate 2.5 years’ of deliverable housing supply.
- 2 The Council has sought a review of the Statement following representations from Neighbourhood Forums asserting that the Council had taken an overly restrictive approach to the concept of deliverability. The Council is concerned to ensure that its assessment of the housing supply position is sufficiently robust to withstand a challenge at a planning appeal, whilst also confirming that it has not excluded sites which could properly be categorised as deliverable and thereby suppressing the overall calculation of housing land supply.
- 3 In particular, I am asked to advise on the following specific questions:
  - (1) Whether the list of factors to be taken into account when determining the deliverability of sites which do not have permission/detailed planning permission contained in Annex 2 of the NPPF and the PPG is exclusive, or whether other factors and categories of site may be taken into account when assessing deliverability. If other factors may be taken into account, what might these factors reasonably be?
  - (2) Whether some or all of the CSM Land and/or the PDR Sites and/or the VC Land may reasonably be included in the Statement. Whether sites identified in Appendix C of the Local Plan may be considered to be site allocations.
  - (3) Whether the sites identified in Appendix C of the Local Plan may be considered to be site allocations.
  - (4) Whether the Local Planning Authority could produce separate five-year housing land supply figures for each of its three Neighbourhood Plan areas, and whether this would afford that area resilience to a district-wide housing supply shortfall.
  - (5) Generally on the implications of a shortfall against five year supply in the context of paragraph 11 of the (2019) NPPF.

- 4 The background to this matter, and in particular the history of the production of the Statement, has been helpfully set out in my instructions which I do not repeat.
- 5 My advice is structured as follows. First, I consider the general principles applicable to the concept of 'deliverability' in light of the relevant policy, guidance and case-law. Second, I address the specific questions raised in my instructions. Third, I make a number of observations in relation to the Statement.
- 6 At the outset of this advice I emphasise that, as the Court of Appeal<sup>1</sup> has recently affirmed in the strongest of terms, the assessment of housing land supply, and in particular the question of whether sites are "deliverable", is ultimately a matter of planning judgment. Further the Court clarified that in the exercise of that planning judgment decision-makers are free to determine how circumspect or otherwise they wish to be in their approach to deliverability, so long as they properly understand the policy that they are applying and their judgment falls within the generous scope that public law permits.
- 7 It follows that whilst I can - and do - provide advice as to the proper approach to the issue deliverability, as well as making observations on the robustness or otherwise of the evidence supporting the inclusion or non-inclusion of sites in the five year supply, ultimately the question of whether a particular site is considered to be deliverable is a matter of judgement, not law, and one to be made by the Council in the first instance (and in planning appeals/examinations by the Secretary of State and his inspectors).

### **Deliverability – General Principles**

#### ***Policy and Guidance***

- 8 Paragraph 73 of the NPPF requires local planning authorities to "*identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old*". The supply of deliverable sites is to include a buffer, moved forward from later in the plan period, of either 5%, 10% or 20% depending on the circumstances.
- 9 'Deliverable' is defined in the NPPF as follows:

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<sup>1</sup> In *R(oao East Bergholt Parish Council) v Babergh District Council* [2019] EWCA Civ 220

*“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

*a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

*b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.*

10 Further guidance on the concept of “deliverability” is given in the PPG under the heading “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”<sup>2</sup>

*“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*

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<sup>2</sup> Paragraph: 007 Reference ID: 68-007-20190722. Revision date: 22 July 2019

- *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.*

11 Guidance on assessing availability, the suitability of a site for development and achievability are set out in the ‘Housing and economic land availability assessment’ section of the PPG.<sup>3</sup>

### ***Case-law***

12 As far as I am aware there are no judgments of the higher courts which directly grapple with the definition of deliverable under the NPPF 2019.<sup>4</sup> However, there are two judgments which addressed the definition of deliverable under the NPPF 2012 and, in my view, they remain of relevance to the proper interpretation under the NPPF 2019.

13 This is because, although the definition in the 2019 NPPF has been expanded to include the evidential presumptions set out in a) and b), the core of the definition – i.e, that the site be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on site within five years – is consistent with the earlier definition.

14 The first of those cases was *St Modwen Developments v SSCLG* [2017] EWCA Civ 1643. The following propositions, still relevant to the 2019 NPPF definition, can be drawn from the judgement of the Court of Appeal:

(1) Each of the three elements of the definition – i) available now; ii) offer a suitable location for development now; and iii) be achievable with a realistic prospect that housing will be delivered on site within five years – is relevant to the site’s capability of being delivered within five years: at §38<sup>5</sup>

(2) A site can be considered “deliverable” without there being certainty, or even a probability, that it will actually be delivered within five years: at §38. I consider that

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<sup>3</sup> See in particular, “What factors can be considered when assessing the suitability of sites / broad locations for development?” (Paragraph: 018 Reference ID: 3-018-20190722); “What factors can be considered when assessing availability?” (Paragraph: 019 Reference ID: 3-019-20190722); What factors should be considered when assessing achievability including whether the development of the site is viable? (Paragraph: 020 Reference ID: 3-020-20190722)

<sup>4</sup> I appreciate that there are a large number of inspector and Secretary of State decisions which have considered, and applied the 2019 NPPF definition. However, these are not binding as to the proper interpretation of the policy. Moreover, they do not espouse a consistent approach.

<sup>5</sup> The Court identified the 2012 NPPF definition containing four elements, as that definition included, as a separate element, that “development of the site is viable”. The 2019 NPPF has removed that element from the definition, although it is clear from the PPG’s guidance that viability will be a central factor in assessing on ‘achievability’.

this proposition holds true for the definition in the 2019 NPPF. The requirement that there is “clear evidence” for certain categories of site goes to the standard or quality of evidence required. It does not change the threshold that is to be applied when judging whether a site is deliverable, namely that there is a “realistic prospect”.

(3) There is a distinction between the concept of “deliverability” – which is to be judged when calculating a five-year supply of housing - and the “expected rate of delivery” – which is employed when calculating housing trajectories: at §35

(4) The evaluation of housing land supply involves the exercise of planning judgment: at §43

15 As *St Modwen* demonstrates, it is possible for a local planning authority to conclude that a site is deliverable – and include it in its five year supply – even if it is not shown as being expected to deliver within the first five years in its housing trajectory. This is because the question of deliverability is judged *inter alia* on whether a site has a *realistic prospect* of being delivered in the first five years; whereas the housing trajectory assessed the *expected rate* of delivery.<sup>6</sup>

16 In the more recent case of *R(oao East Bergholt Parish Council) v Babergh District Council* [2019] EWCA Civ 220 the Court of Appeal was again considering the 2012 NPPF, albeit by the time of the judgment the 2019 NPPF had been published, and the court made passing reference to its expanded definition of ‘deliverable’.

17 The following propositions can be derived from *East Bergholt*:

(1) The whole exercise of assessing “deliverability” of sites “*is replete with planning judgment and must always be sensitive to the facts....this may be said, in particular of the question of “achievability” – whether there is a “realistic prospect” of housing being delivered on the site within five years*” at §49.

(2) The Court held that “realistic prospect” is not a legal concept. Instead it is “*a broad concept of policy, which gives ample scope for a decision-maker’s reasonable planning judgment on the likelihood of development proceeding on site within five years*” at §49

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<sup>6</sup> That said, if there are distinctions between the LPA’s housing trajectory and its 5 year housing land supply calculations, it would be good practice for those distinctions to be explained.

(3) It is a matter for the decision-maker, exercising his or her planning judgment, to determine what level of circumspection or otherwise to apply when assessing whether a site is deliverable: at §48-§51; §53 & §60. As the Court concluded, “[p]ut simply, the degree of confidence required in the “deliverability” of sites is for the decision-maker to decide within the bounds of reasonable planning judgment”: at [51]

(4) The Court noted that in neither the original NPPF, nor the two revisions since, nor in the PPF, has the Government defined exactly what it meant by a “realistic prospect”: at §53.

18 The upshot of *East Bergholt* is that different decision-makers may apply different levels of circumspection or optimism when assessing whether there is a “realistic prospect” of sites delivering within five years. So long as the approach adopted does not fall “outside the generous scope that public law permits” – that is, so long as it is not irrational – it will not be unlawful.

### **Response to Questions**

**(1) Whether the list of factors to be taken into account when determining the deliverability of sites which do not have permission/detailed planning permission contained in Annex 2 of the NPPF and the PPG is exclusive, or whether other factors and categories of site may be taken into account when assessing deliverability. If other factors may be taken into account, what might these factors reasonably be?**

19 As I understand it, this question raises two principal issues.

20 First, whether categories of sites listed in a) and b) of the definition of ‘deliverable’ constitute a ‘closed-list’. That is, whether they are exhaustive of the types of site which are capable of being considered ‘deliverable’.

21 Second, whether the factors/types of evidence identified in the PPG<sup>7</sup> as being relevant to the issue of whether a site is deliverable are exhaustive.

22 The first issue turns on a proper interpretation of the NPPF, which is ultimately a matter of law. Unfortunately the position is far from clear.

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<sup>7</sup> As set out at paragraph 10 above.



23 On the one hand, there are a number of factors which suggest that the categories are a 'closed-list'. In particular:

- a) The PPG appears to treat the definition as applying a closed-list, distinguishing between sites which are "*considered to be deliverable in principle*" - namely those which fall within (a) - and sites "*which would require further evidence to be considered deliverable*" - namely those which fall within (b). The PPG is capable of being an aid to understanding the policy or policies to which it corresponds in the NPPF: *Braintree DC v SSCLG* [2018] EWCA Civ 610 at [36]
- b) It is unclear what standard of evidence would be apply to a site which falls neither in a) or b). It would appear unlikely that it would benefit from the evidential presumption (ie be considered deliverable in principle) which is afforded to the sites in (a). But does that mean "clear evidence" of its deliverability is needed, even though it is not mentioned in (b)? Or does some other standard of evidence apply?

24 On the other hand, there are a number of factors which suggest that the categories are not a 'closed-list'. In particular:

- a) The language of the definition is ambiguous at best. Had the Government intended that only certain categories of site were capable of being considered deliverable, then they could have easily said as much.
- b) A closed-list approach would undercut the operation of the core definition of deliverable. If the list was closed, it is possible that there could be a site which was undoubtedly available, suitable and achievable with a realistic prospect of housing being delivered within five years, but which could not be considered deliverable if it did not come within the pre-defined list in (a) or (b).
- c) There are obvious anomalies. For example, a site which benefits from a resolution to grant does not come within (a) or (b). Nor does an allocation in emerging local plan. Notwithstanding that, in certain cases, such sites could be far more likely to meet the core definition of deliverable, than a site which has merely been identified on a brownfield register.

- 25 Given this uncertainty it is unsurprising that inspectors' decisions on this issue have not been consistent.<sup>8</sup> The same ambiguity is found in a recent decision of the Secretary of State<sup>9</sup>. In that case the inspector had concluded the definition was not exhaustive and, on the facts, the sites not falling within (a) or (b) could be considered deliverable. The Secretary of State disagreed, stating that: "*since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.*"<sup>10</sup> The Secretary of State's statement is ambiguous because it is not clear whether he discounted the sites on the basis that they did not fall within either category a or b (ie treated it as a closed-list) or treated them as capable of being deliverable (ie not treating it as a closed list), but finding on the specific evidence that they were not, in fact, deliverable. Either way, the Secretary of State's view on the matter is not determinative.
- 26 My view, albeit very much on balance, is that on a proper interpretation of the NPPF the list is not closed. Given the anomalies such an approach would throw up, and how it would undercut the operation of the core definition, in my view if the Government had wanted to restrict the category of deliverable sites to an exhaustive category this would have been made clear in the language of the definition.
- 27 Thankfully, the second issue raised by this question is far more straightforward. The factors/types of evidence identified in the PPG<sup>11</sup> as being relevant to the issue of whether a site is deliverable are plainly not exhaustive. This much is clear from the wording of the PPG itself, which states that the list of evidence to demonstrate deliverability "*may include...*".
- 28 In my view, any evidence which is relevant to the question of whether a site is available, suitable and achievable with a realistic prospect of housing being delivered within five years can be taken into account. Whether a factor is relevant to the deliverability of a particular site, and what weight to give to that factor in assessing deliverability, is

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<sup>8</sup> For instance, in Woolmer Green (APP/C1950/W/17/3190821) the Inspector found the list was closed; whereas in Grange Road, Lawford (APP/P1560/W/18/3201067) this was rejected.

<sup>9</sup> LAND OFF DARNHALL SCHOOL LANE, WINSFORD, CHESHIRE (APP/A0665/W/14/22126)

<sup>10</sup> *Ibid* at [18]

<sup>11</sup> As set out at paragraph 10 above.

particularly fact-sensitive. In light of *East Bergholt* it is likely that a court would consider this to be primarily a question of planning judgment for the decision-maker.

**(2) Whether some or all of the CSM Land<sup>12</sup> and/or the PDR Sites<sup>13</sup> and/or the VC Land<sup>14</sup> may reasonably be included in the Statement.**

29 I reiterate that, whether or not a particular site is deliverable is a matter of planning judgement, not a matter of law. Therefore, in many ways, the planning officers who drew up the Statement – and who will have a better knowledge of the sites in question and their context – are in a better position than me to come to a judgment on that issue. I trust that the advice I set out above as to the proper approach to assessing deliverability will assist in making that judgement.

30 Nevertheless, for what it is worth, I provide my views on the likelihood of the Council being able to defend the inclusion of each of these three sites in its Statement – that is, a conclusion that these sites are deliverable – before an inspector on a section 78 appeal.

***CSM Land***

31 The site in question is, as I understand it, Collation St Mary (Little Blagdon). It was originally included in the draft Statement as being deliverable, and in particular having a realistic prospect of delivering 65 units with the five years.

32 The site is owned by the Council. It forms part of the Future Growth Area at Collation St Mary, an area which is the subject of a masterplan adopted in 2016. Policy SS1 of the Torbay Local Plan explains that there “*will be some initial delivery of development in the Future Growth Areas, within the first 10 years, if required to meet demand for new employment space and homes. Development in these areas will be set out in detail via masterplanning, concept plans and/or in neighbourhood plans*”. Delivery of some housing from this source in the 2019-2024 period would be consistent with the estimates identified in Policy SDP1 (Table 12) and SDP3 (Table 16).

33 I am instructed that the Council is in receipt of grant funding for the CSM (I assume for the entirety of the masterplanned area, rather than the particular site itself). Furthermore permission has been granted for the construction of a spur road to service

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<sup>12</sup> Land owned by the Council in the Collaton St Mary area of Paignton

<sup>13</sup> Two sites owned by the Council at Preston Down Road in Paignton

<sup>14</sup> Land at Victoria Square in Paignton

- future development on the CSM land, albeit that decision is the subject of a judicial review challenge (I am unsure whether the spur road is necessary to access the site in question).
- 34 No application for planning permission has yet been submitted, although one is expected in 2020.
- 35 The site was removed from the Statement following representations from Alder King and PBA that (a) the site did not fall within any of the categories required by the NPPF and (b) in the absence of a planning application, there was no clear evidence of delivery.
- 36 In my view, for the reasons I set out above, even if it is correct to conclude that the site is not allocated, this is not an insuperable barrier to it being considered deliverable. Moreover, given the policy context, and in particular, the expectation of Policy SS1 that development in these areas will be set out in detail via *inter alia* masterplanning, it is clear that the planning status of the site is, at the very least, akin to an allocated site.
- 37 The real issue is whether there is clear evidence that housing completions will begin on the site within five years.
- 38 This is a classic example where different decision makers may quite reasonably (and lawfully) take a different view of the deliverability of a site. However, in my view, it is likely that more evidence would need to be provided in order to defend any judgment that it was deliverable before a planning inspector. The existence of grant funding, and the permission for the spur road, are both relevant factors, as is the fact that the Council owns the site. They all point towards its deliverability. However, these factors alone are unlikely to persuade an inspector that "*there is clear evidence that housing completions will begin on site within five years.*"
- 39 It is highly relevant that a planning application is expected in 2020. However, in order to persuade an inspector of the site's deliverability, more evidence is likely to be needed. When is that permission expected to be received? What pre-application discussions have there been? Is it likely that the application will be in conformity with the adopted masterplan? Will the application be in outline or full? Is there 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 rate? And what evidence does the developer have to support their position?

40 If these factors are addressed, and if they support the conclusion that housing completions will begin on site within five years, then it may be possible to persuade an inspector that the Council has provided the requisite clear evidence, and the site is deliverable. Without such evidence, the Council faces an uphill task.

### ***PDR Sites***

41 There are two sites owned by the Council at Preston Down Road. Each has been assessed as having a capacity for 50 homes. The PDR sites were identified in the Local Plan within a pool of sites identified as “Possible Neighbourhood Plan housing sites” in Appendix C, Table 26. The plan explains that these were sites which, based on the SHLAA, have potential for development. Policy SS1 explains that *“The pool of developable housing sites is included in Appendix C (Table 26) to this Plan. If Neighbourhood plans do not identify sufficient sites to provide the housing requirements of the Local Plan, the Council will bring forward sites through site allocations development plan documents”*

42 The PDR sites also benefit from grant funding (although, again, I am not sure whether this funding only applies to the two sites or a wider area).

43 The PDR sites were not allocated in the Paignton Neighbourhood Plan, which unlike Torquay and Brixham Peninsula NPs, did not allocate any housing land. I am instructed that the Council intends to allocate the PDR sites in the next Local Plan update.

44 They were not included in the draft Statement.

45 Without any further evidence, it is very unlikely that including a contribution from the PDR sites in a five year housing would be defensible. Even if they are available now and offer a suitable location for development now, there appears to be little evidence – let alone clear evidence - that housing completions will begin on site within five years.

### ***VC Site***

46 Land at Victoria Square is on the brownfield register. Like the PDR Sites, it forms part of the pool of sites identified in Appendix C of the Local Plan. It is the subject of grant funding to help deliver the site. No planning application has been made, although a design brief is under preparation.

47 It was included within the draft Statement with an indication that “Developer intends to deliver on site within 5 years”, although it is not clear what evidence had been obtained from the developer. It was removed in the Statement following objections on the basis that there was no clear evidence that housing completions will begin on site within five years (see representations of Alder King and PBA).

48 On the basis of the evidence before me I consider it unlikely that an inspector would find that there was clear evidence of a realistic prospect of housing development taking place on the site within five years. However, if further evidence were available, including from the developer, of the type that I outline above in respect of the CSM Land, and that evidence pointed towards the possibility of housing development taking place within five years, it might be possible to persuade an inspector of its deliverability.

49 Finally, it is sometimes said by developers – often based on the inspector’s decision in the Woolpit case<sup>15</sup> - that evidence of a site’s deliverability must (a) have been available at the base date of the five years in question (ie here as at April 2019) and/or (b) included in its Annual Monitoring Statement. In my view this is wrong. It conflicts with the fundamental principle of public law that decision-makers are entitled to take into account all relevant considerations at the date of their decision. Therefore, if new evidence has become available which is relevant to a site’s deliverability within the five year period in question, this should be taken into account.

### **(3) Whether the sites identified in Appendix C of the Local Plan may be considered to be site allocations?**

50 In short, no.

51 Whatever the arguments for considering the CSM Land – and other Future Growth Areas subject to masterplanning – as allocations, in my view the mere identification of a site in Appendix C of the Local Plan cannot be considered to be an allocation.

52 Policy SS1 explains that:

*“In years 6-10 of the Plan (2017/18-2021/22), development will come from completion of committed and developable sites identified in Neighbourhood Plans. The pool of developable housing sites is included in Appendix C (Table 26) to this Plan. If*

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<sup>15</sup> APP/W3520/W/18/3194926



*Neighbourhood Plans do not identify sufficient sites to provide the housing requirements of the Local Plan, the Council will bring forward sites through site allocations development plan documents”*

- 53 The introductory text to Table 26 confirms that the sites identified in the table have been identified, principally through the SHLAA, as having the “potential for development”, however that they “are subject to consideration in Neighbourhood Development Plans”.
- 54 It is clear that Appendix C merely identifies sites as having potential for development. It does not, of itself, allocate them for development. This is to be achieved through further development documents, whether neighbourhood plans or a site allocation DPD brought forward by the Council.
- 55 Moreover, when a development plan document allocates a site for development it, almost invariably, provides a framework establishing how that site should be developed, e.g the type of development for which it is allocated; indicative requirements for houses/floorspace; site-specific criteria against which a planning application can be judged. This is absent from Table 26, which identifies no more than its location, name and SHLAA reference.
- 56 Following my advice above regarding the issue of closed lists, the fact that the inclusion of a site in Appendix C does not of itself constitute an allocation does not necessarily prevent such sites from being considered deliverable. However, in order to demonstrate its deliverability, clear evidence would be needed that the site was available now, suitable now, and had a realistic prospect of delivering housing within 5 years.

*(4) Whether the Local Planning Authority could produce separate five-year housing land supply figures for each of its three Neighbourhood Plan areas, and whether this would afford that area resilience to a district-wide housing supply shortfall.*

- 57 Although there is no rule of law or policy which would preclude such an assessment being undertaken, I doubt that an inspector on a planning appeal would give significant weight to such an assessment. I say that for the following reasons:

- (1) National Policy establishes the concept of a 5-year supply of deliverable housing, as well as providing the ramifications if such a supply cannot be demonstrated. It

is not a free-standing concept. As the requirement for, and calculation of, a five years supply derives solely from policy, it is at least arguable that it cannot be applied, or calculated, otherwise than in accordance with that policy.

- (2) The NPPF places the obligation on Local Planning Authorities to *“identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement” (emphasis added)*. When the NPPF 2019 was drafted neighbourhood planning was well-established. The Government could have chosen to require Local Planning Authorities to determine the housing supply with respect to neighbourhood plan areas. It did not.
- (3) The ramifications of not being able to demonstrate a 5-year supply (on which see Q5 below) would apply regardless of the performance of the individual areas with neighbourhood plans.
- (4) There may be some difficulties in calculating a “5 year supply” for neighbourhood area, eg in relation to which buffer to apply; how to assign shortfall; what windfall figure should be included etc

58 This is not to say that the performance of particular neighbourhood area in delivering housing – or the amount of housing identified as deliverable in a particular area – is irrelevant to the question of weight which should be afforded to the District’s overall shortfall in deliverable housing.

59 Plainly if an area with a neighbourhood plan has (a) a good track record of delivering housing and/or (b) sufficient deliverable/developable sites to meet the housing requirement identified in the Neighbourhood Plan, then these are relevant – and potentially highly relevant – factors, in assessing what weight to give to a District-wide shortfall. However, they can be taken into account without having to undertake a quasi-five year housing supply exercise for each area. Indeed, in my view, it may be preferable not to undertake such an analysis, as an inspector may well chose to dismiss evidence presented in such a way as being of limited relevance. In contrast if the Council or Neighbourhood Forum can point to the track record of housing delivery in the particular area and/or the amount of deliverable/developable sites in the area, such evidence may well have more resonance.

**(5) Generally on the implications of a shortfall against five year supply in the context of paragraph 11 of the (2019) NPPF**

60 The implications of a shortfall against a five-year supply are likely to be as follows:

(1) The presumption in favour of sustainable development as set out in paragraphs 11(c) and (d) of the NPPF will apply;

(2) For decision taking, the presumption in favour of sustainable development means that:

a) permission should be granted for housing proposals that accord with the development plan (Para 11(c))

b) permission should be granted for housing proposals that do not accord with the development plan, unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (ie, the application of policies identified in footnote 6) or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole – the so-called ‘tilted balance’ (Para 11(d))

(3) Where the ‘tilted balance’ applies, paragraph 14 of the NPPF provides some ‘protection’ for areas which have neighbourhood plans, where four criteria are met.<sup>16</sup> One of those criteria is that the local planning authority has at least a three

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<sup>16</sup> Paragraph 14 provides:

*“In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply [subject to transitional arrangements]:*

*a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*

*b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*

*c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and*

*d) the local planning authority’s housing delivery was at least 45% of that required over the previous three years.*

year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer). Where this cannot be shown, the 'protection' potentially provided by paragraph 14 will not apply.

- (4) As a matter of generality (although not a rule of law), if a Local Planning Authority is unable to demonstrate a 5-year supply of housing, a planning inspector or Secretary of State on appeal, is likely to give greater weight to proposals for housing, particularly those that can start delivering within in five years. Ordinarily, the greater the shortfall, the greater weight that will be attached to the delivery of housing.

### **Observations on the Statement**

61 For the purposes of this advice I have concentrated on the specific questions asked of me, rather than undertaking a comprehensive review of the deliverability of each of the sites included in, or excluded from, the Statement. In order to have undertaken such a review, it would have been necessary to have further information on each of sites in question. Moreover, as I explain above, ultimately whether or not a site is deliverable is a matter of judgment and is not a question of law.

62 That said, I make the following observations in respect of the Statement:

- (1) It would be helpful to expressly identify which sites/category of sites are considered "deliverable in principle" - ie fall into (a) within the NPPF definition - and which sites/category of sites require clear evidence of deliverability - ie fall into (b) within the NPPF definition.
- (2) For those falling into (b), I would suggest that each of the elements of deliverability is addressed - ie available now, suitable now, and achievable with a realistic prospect of delivering within five years. I appreciate that most of the debate is likely to surround the final element;

- (3) For those falling into (b), it is important that the “clear evidence” on which the Council relies to support its judgements of deliverability is identified (particularly in relation to the realistic prospect of delivering within five years)
- (4) I note that a significant number of sites were deleted from the draft Statement on the basis that there was “not sufficient evidence of progression/delivery within 5 years”. I do not know the details of these sites, but it may be worth officers checking whether this judgement still stands, having regard to my advice above about the meaning of “realistic prospect” – see §14(2). I note that a number of representations argued that sites should not be included within the Statement because there was no ‘certainty’ of delivery within 5 years – but as *St Modwen* demonstrates this is a too exacting standard to apply. Obviously, if the deleted sites fall within category (b) – which I believe most, if not all of them do, then it would be necessary to identify “clear evidence” of their being a realistic prospect of delivery within 5 years (eg site specific evidence from developers/promoters).

### **Conclusion**

63 I hope my advice will assist the Council in assessing its five-year housing land supply for the purposes of the Statement, and fully addresses the questions I have been asked. Should you require any further advice please do not hesitate to contact me.

**ROBERT WILLIAMS**  
Cornerstone Barristers  
2-3 Gray's Inn Square  
London  
WC1r 5JH

13 January 2020

## Appendix 4: Edginswell PPA (December 2019)



## PLANNING PERFORMANCE AGREEMENT (Agreed)

### Relating to

### LAND AT EDGINSWELL VALLEY, TORQUAY

#### 1. Introduction

- 1.1 This Planning Performance Agreement (PPA) covers the planning process in relation to the determination of a hybrid planning application at Land at Edginswell Valley, Torquay. The application seeks to secure full planning permission for approximately 115 homes and outline consent for approximately 435 homes at the above site (a combined total of 550 homes). The PPA is to cover the pre-application and post-submission period through to determination.
- 1.2 The agreement is made between the following parties:
  - Torbay Council; and
  - Cavanna Homes (Devon) Limited.
- 1.3 Land at Edginswell Valley is allocated for development in the adopted Torbay Local Plan (December 2015) under Policy SS2 (Future Growth Areas). The allocation at Edginswell is also considered in Policy SDT3 (Torquay Gateway).
- 1.4 To support the Local Plan, the Council approved a series of Supplementary Planning Documents (SPDs). Included within these was the Torbay Gateway (Edginswell) Masterplan (December 2015), which proposed the delivery of circa 550 homes together with 19,000 sqm of employment land at Edginswell. These uses are supported by the provision of a primary school, a village/local centre, care home, allotments and green space.
- 1.5 There is also the made Torquay Neighbourhood Plan (June 2019). It states, in Policy TS2, that major development proposals for Torquay Gateway will be supported where they contribute to meeting the objectives of the Neighbourhood Plan and they conform to the area wide masterplans adopted by the Council as SPDs.
- 1.6 The PPA aims to provide a project management framework and timetable within which to carry out the various stages of the application process.

- 1.7 Its purpose is to ensure that sufficient resources are in place, that all parties agree to the timetable and approach for the consideration of the application and there is a commitment to achieve a clear path towards enabling a fully informed decision in the most efficient way possible.
- 1.8 A PPA is appropriate in this instance due to the complex nature of the development proposals and the need for a number of issues to be resolved in pre-application discussions prior to formal submission.
- 1.9 This agreement will apply from the date the PPA is signed and shall remain in force until the decision date (being the date a planning decision is issued by the Council on the Planning Application) or unless otherwise agreed by both parties.

## **2. Development Objectives**

- 2.1 The vision for this development is:

*'To create a high quality residential-led development, setting an example in Torbay for the highest quality of design, including underpinning the creation of a special sense of place and community. It will meet the needs of the local community in terms of the provision of new market and affordable housing, the creation of significant areas of green open space, safeguarding of ecology and landscape corridors and the enhancement of sustainable transport links. The development would be in line with the policy requirements of the adopted Local and Neighbourhood Plans as well as material considerations such as the adopted Torbay Gateway SPD and the NPPF.'*

## **3. Key Matters**

- 3.1 The key matters to be addressed by the proposed development at Edginswell Valley are as follows:
  - *Housing:* The proposal will deliver a significant number of new homes for both market and affordable housing, thus responding to local need and demand;
  - *Green Infrastructure:* The proposal will provide high levels of green infrastructure in the form of informal space and movement corridors, and more formal play space;

- *Design:* The proposal will respond positively to local context and create built development to the highest possible standard in terms of sustainability, health and wellbeing, accessibility and space requirements;
- *Sustainable transport:* The proposal will prioritise sustainable forms of transport in terms of pedestrians, bicycles and access to public transport;
- *Biodiversity and Ecology:* The proposal will safeguard and maintain ecology corridors, and seek to protect and enhance existing vegetation, and achieve a net increase in biodiversity
- *Site Infrastructure:* The proposal will develop and implement a pragmatic, efficient approach to site drainage, infrastructure, utilities provision and the internal road network; and
- *Primary School and Associated Facilities:* The proposals will facilitate and accommodate the provision of a new primary school towards the later phases of development together with new community facilities.

### ***Community Engagement***

3.2 In addition to the above, community consultation and engagement is considered a key matter. Timings for the proposed engagement with the local community are set out in the project programme. However, it is proposed that a series of public exhibitions and/or website consultations will be held, together with the creation of a 'Local Steering Group' that will consist, of amongst others:

- The Torquay Neighbourhood Plan Forum;
- The Community Partnership; and
- Other interested parties.

### ***Member Involvement***

3.3 The involvement of Torbay Council members is considered important by both parties. Torbay Council will advise Cavanna Homes of the opportune time to inform and engage with Council members regarding the proposal. The input of Members is considered a critical element to the scheme and this PPA requires the Council (or its Officers) to identify appropriate opportunities to inform, present and advise members of the progress of the development.

### ***Third Party Consultation***

3.4 Meetings may be held by both parties with various statutory consultees or organisations. Within the context of this PPA, both Cavanna Homes and the Council will provide each other with full details of such meetings, with the other party being invited to attend as an observer (where relevant).

#### **4. Commitment to PPA**

4.1 The PPA is intended to act as a vehicle for Cavanna Homes and Torbay Council to come together to agree the process, tasks and timetable required to take the hybrid application to determination.

4.2 This PPA shall take effect on the Commencement Date and will continue in effect until the determination of the hybrid application. For the avoidance of doubt, the date of determination shall be the date a Decision Notice is issued in respect of the application.

4.3 Both parties will act in good faith in respect of all matters related to the applications and will work jointly in complying with their respective obligations under this PPA. In the event that there is a dispute or difference arising between the parties concerning any matter relating to the PPA, the parties shall work together to jointly enter into discussion in good faith to settle the dispute as soon as reasonably possible.

4.4 Both parties will address any requests for clarification and/or further information in a timely manner.

4.5 Both parties undertake to meet and/or discuss matters by telephone or e-mail in a spirit of co-operation and where necessary seek early resolution of any areas of misunderstanding or dispute.

4.6 Both parties will use their reasonable endeavours to adhere to the timetable for the project, as set out at Appendix 1.

4.7 However, this agreement will not fetter Torbay Council in exercising its statutory duties as the LPA. It will not prejudice the outcome of the planning application or the impartiality of Torbay Council or dedicated officers.

4.8 Equally, this agreement will not restrict or inhibit the applicant from exercising the right of appeal under section 78 of the Town and Country Planning Act 1990 (as amended).

4.9 In these terms, the PPA will terminate immediately when:

- The developer submits an appeal in relation to the planning application under section 78 of the Town and Country Planning Act 1990 (as amended) or any other relevant statutory appeal; or
- The application is 'called in' for determination by the Secretary of State.

4.10 In the event that one party believes the other is not fulfilling their duties within the PPA they will serve notice in writing to the other party and allow 5 working days for a resolution to the issue be resolved. If this timeframe passes without resolution of the issues, the PPA will cease.

## **5. Performance Standards**

5.1 Cavanna Homes agrees to use its reasonable endeavours to achieve the following performance standards at all times:

- To provide to Torbay Council - at least 2 working days prior to any meeting - all substantive and relevant documents which are relevant to that meeting and which relate to any relevant action points or agenda item identified;
- To provide Torbay Council with such additional information as may be requested within 10 working days of such written request (or such other period as may be agreed).
- To make all reasonable endeavours to work jointly with Torbay Council and to respond to requests for further information, points of clarification, or presentational material to assist with the understanding of the proposals and their communication to Members and/or the public at meetings or briefing sessions as might be appropriate.

5.2 Torbay Council agrees to use its reasonable endeavours to achieve the following performance standards at all times:

- Respond substantively to all emails, letters and telephone calls to the Council officers within 5 working days of receipt. Where circumstances beyond the reasonable control of the Council prevent compliance, Cavanna Homes shall be notified of such circumstances.
- To provide Cavanna Homes with written feedback following formal pre-application meetings within 5 working days from the date of that meeting.

- To provide Cavanna Homes within 5 working days of a meeting, the action points arising from that meeting.
- To undertake a pre-planning application submission vetting service. This will involve reviewing the information to be submitted with the hybrid application and ensuring that the reports and drawings meet the Council's requirements.

## **5. Confidentiality**

- 5.1 Pre-application advice provided by the Council is conventionally regarded as confidential at the time it is given. It is, however, subject to requests under the Freedom of Information Act 2000 or Environmental Information Regulations 2004.
- 5.2 In the interests of the Government's intention to improve transparency of data associated with viability assessment (see para 57 of the NPPF and associated Planning Practice Guidance), reports should be prepared on the basis that they will be made publicly available in full. However, information on financial viability can be commercially sensitive. In this situation, the Council will appoint an independent consultant to review the information. The developer's viability consultant will supply the commercially sensitive information directly to the consultant. The consultant will advise the Council based on this information, but not disclose the information itself. Any advice will be available to the public. In these circumstances, the Council may not require the full viability report to be published, but an executive summary will need to be produced instead.
- 5.3 If the developer believes any information submitted is exempt from publication, they should advise the Council at the time the information is submitted. The Council will then determine whether to release this information

## **6. Contact Details**

- 6.1 A team will be established to deliver the project. This team will meet regularly and will consist of Officers from the Council and members of Cavanna Homes' team. There will be a designated lead from the Council and Cavanna Homes, who will have responsibility for ensuring that project meets its stated aims and objectives.
- 6.2 The lead from the Council will also have the responsibility of ensuring that relevant Councillors and Partners are kept abreast of the project while the lead for Cavanna Homes will have similar responsibility in relation to the developer.



- 6.3 In addition, there will be a project manager for both the Council and Cavanna Homes. They will have day-to-day responsibility (with the leads) for the project.
- 6.4 This will include, but not restricted to, managing programme, co-ordinating consultees from the Council and inputs from the Cavanna Homes team, organising team meetings and managing necessary legal agreements. They will be the first point of contact for either site. Both the Project Lead and the Project Manager will be supported by a range of people to provide advice on the different aspects of the scheme. They form part of the project team for both parties and will be fully informed of their aspect of the scheme
- 6.5 The contact details for both parties are as follows (but may be updated over the course of the agreement):

Position	Who	Department	Contact details
<b>Local Planning Authority</b>			
Project Lead	Andrew England	Torbay Council	01803 208848 Andrew.England@torbay.gov.uk
Project Manager	Andrew Gunther	Torbay Council	01803 208815 Andrew.Gunther@torbay.gov.uk
	Jim Blackwell	Torbay Council	01803 207739 Jim.Blackwell@torbay.gov.uk
<b>Developer's Team</b>			
Project Lead	Ed Brown	Cavanna Homes	01803 618688 Ebrown@cavannahomes.co.uk
Project Manager	Elliot Jones	Boyer	02921 670588 elliotjones@boyerplanning.co.uk
Architect	Paul Osborne	LHC	01392 444334 POsborne@lhc.net
Highways/ Engineering	Nick Coles	Clarke Bond	01392 369098 NickColes@clarkebond.com
Ecology	Chris Turner	Green Ecology	01647 253652 christurner@green-ecology.co.uk

Arboriculture	Adam Earl	Green Ecology	01647 253652 adamearl@green-ecology.co.uk
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## **7. Project Programme**

- 7.1 The agreed project timetable is attached at Appendix 1. It is the responsibility of both parties to make reasonable efforts to adhere to the programme.
- 7.2 However, both parties will keep the timetable under review. It will be amended as necessary to take account of the comments and outcomes of the meetings and any relevant unforeseen matters that might arise.
- 7.3 Notwithstanding Paragraphs 4.7 and 4.8, both parties will seek to have agreed Heads of Terms and full draft detailed wording of a section 106 agreement in advance of the application going before the Council's Planning Committee to enable final signing and sealing of the S106 in a timely fashion.

## **8. Fees**

- 8.1 A fee is to be paid by Cavanna Homes to Torbay Council in relation to the undertaking of the PPA. This fee will be paid as follows:
- 8.2 A total combined PPA fee of [REDACTED]. This is to be paid in four equal tranches at the end of Phases 1, 2 and 3 with a final payment being made on validation of the application. For instance, the first payment ([REDACTED]) will be paid on the completion of phase 1 (21 February 2020).
- 8.3 Both parties note that the PPA fee relates to all pre-planning activity up to the submission of a full/outline/hybrid planning application. This fee is exclusive of any fee associated with and accompanying the submission of a planning application which will be considered and paid for separately.

## **9. Summary/Signatures**

- 9.1 The parties are committed to the principle of collaborative working and the terms of the PPA. The parties agree to the programme and timetable set out in Appendix 1 or as agreed to be amended by all parties.

Signed by the parties or their duly authorised representatives:

Signed

[Redacted signature]

.....

And duly authorised for and on behalf of Torbay Council

Date:

..... 12/12/19 .....

.....

Signed

[Redacted signature]

And duly authorised for and on behalf of Avanna Homes (Devon) Limited

Date:

[Redacted date]



STAGE	TASK	START	END
<b>PPA prep</b>	Torbay Council (TC)/Cavanna Homes (CH) meeting to discuss draft PPA	05 November 2019	05 November 2019
	PPA to be agreed and signed	06 November 2019	15 December 2019
<b>Phase 1</b>	Design/Scheme progression	15 December 2019	25 January 2020
	Agreement between parties in relation to first public exhibition and proposed members of local steering group	15 December 2019	15 January 2020
	EIA Scoping Submission	10 January 2020	10 January 2020
	EIA Scoping Review	10 January 2020	14 February 2020
	LPA EIA Scoping Response	14 February 2020	14 February 2020
	CH liaise with stat consultees	01 January 2020	31 January 2020
	CH share stat consultees comments with TC	01 January 2020	05 January 2020
	Organisation of first public exhibition or website consultation/ and internal CH discussions	02 January 2020	26 January 2020
	First public exhibition or website consultation	27 January 2020	02 February 2020
	Design Review Panel - initial consultation	27 January 2020	15 February 2020
	Design/Scheme progression	16 February 2020	20 February 2020
	TC/CH Progress Meeting 1	21 February 2020	21 February 2020
	<b>Phase 2</b>	First local steering group meeting	25 February 2020
Agree joint scope for studies/reports across themes		22 February 2020	27 February 2020

	Design/Scheme progression	28 February 2020	10 April 2020
	TC CH progress Meeting 2	11 May 2020	11 May 2020
<b>Phase 3</b>	Second Local Steering Group Meeting	17 May 2020	17 May 2020
	Design/Scheme progression	17 May 2020	12 June 2020
	TC CH Progress Meeting 3	15 June 2020	15 June 2020
<b>Phase 4</b>	Third Local Steering Group Meeting	17 June 2020	17 June 2020
	Organisation of second public exhibition or website consultation advertisement of event/consultation	17 June 2020	24 June 2020
	Preparation of material for public exhibition	24 June 2020	3 July 2020
	Second public exhibition or website consultation	06 July 2020	17 July 2020
	Design Review Panel - second meeting	22 July 2020	22 July 2020
	Fourth Local Steering Group Meeting	24 July 2020	24 July 2020
	CH present to the Councillors	28 July 2020	28 July 2020
	Design Scheme Progression	29 July 2020	28 August 2020
	TC/CH Progress Meeting	01 September 2020	01 September 2020
	Design Scheme Layout Fix	01 September 2020	01 September 2020
<b>Phase 5</b>	Confirmation of all thematic issues addressed and/or fully explored	02 September 2020	02 September 2020
	Preparation of hybrid application and pre-application vetting of submission	03 September 2020	18 December 2020
	Preparation of S.106 draft	03 November 2020	18 December 2020
	Internal Cavanna Approval Process	21 December 2020	12 April 2021
	Submission of Hybrid Application	12 April 2021	12 April 2021
	Submit Heads of Terms and S.106 draft with the application	12 April 2021	12 April 2021
	21 day consultation period	10 May 2021	10 May 2021



	TC/CH Progress Meeting 5	07 June 2021	07 June 2021
<b>Phase 6</b>	TC provide copies of all statutory consultation responses to CH	28 June 2021	28 June 2021
	Further information requested by TC to be provided by CH	28 June 2021	26 July 2021
	TC CH Progress Meeting 6	02 August 2021	02 August 2021
<b>Phase 7</b>	All outstanding additional information/clarification on S106 planning obligations	23 August 2021	23 August 2021
	TC Committee Report prepared	30 August 2021	13 September 2021
	Planning Committee/ or officer delegation	20 September 2021	20 September 2021
	Following resolution, S106 to be finalised	27 September 2021	27 September 2021
	Decision notice issued	04 October 2021	04 October 2021
	Discharge conditions	11 November 2021	11 November 2021



## Appendix 5: Officer Report relating to P/2011/0197



## **Planning Officer Report**

### **Application Number**

P/2011/0197

### **Site Address**

Land West Of  
Brixham Road  
Paignton  
Devon  
TQ4 7RZ

### **Case Officer**

Mr Scott Jones

### **Ward**

Blatchcombe

### **Description**

Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup>A1/A3 use and student accommodation, approximately 15 hectares of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application)

### **Updated Executive Summary / Key Outcomes**

The application is an outline planning proposal that returns to committee following its consideration at the November 2011 meeting.

The proposal remains unchanged and is a mixed use scheme for housing, employment land and open space / community facilities on a site partly designated for employment and partly undeveloped and unallocated farmland within the Saved Local Plan. The committee are reminded that it is an EIA (Environmental Impact Assessment) application due to the magnitude of the potential environmental impacts and the sensitivity of the site, and as such the application is accompanied by a full Environmental Statement.

Officers consider that the scheme will provide the potential for significant investment in the area that would bring forward a balanced development of employment, housing and associated community facilities. This is also

supported by substantial off-site ecological enhancement works and improved public access into the countryside by way of a proposed circular woodland walk.

The scheme provides the opportunity to secure significant investment in Torbay and to provide economic growth and stimulus.

For the sake of clarity the November Committee resolution was as follows;

*Deferred for further negotiations in relation to the ecological impact, the vehicular junction/access opposite Kingsway Avenue and the terms of the Section 106 Legal Agreement. The item was also deferred for confirmation in writing that the Environment Agency was now satisfied with the proposed drainage strategy.*

Detail on the progression of the four key outstanding issues cited above is discussed below along with an update on other matters of relevance. All previous considerations are detailed in the reproduced committee report from November 2011.

### **Updated Recommendation**

Site Visit; Conditional approval (conditions to be delegated to the Executive Head of Spatial Planning), subject to the finalised resolution of matters in respect to ecology, and written confirmation from the EA in respect to their support for the flood drainage strategy, and subject to the signing of a S106 legal agreement in terms acceptable to the Executive Head of Spatial Planning within 6 months of the committee date.

### **Summary of progress on the four outstanding matters;**

#### ***1. Ecology***

The key issue is considered to be the implications of the development upon the European SAC (Special Area of Conservation) at Berry Head, where the favourable status of the Greater Horseshoe Bat roost, including the surrounding foraging area, should be maintained. Wider issues include the implications upon Cirl Buntings, an identified Priority Species and wider biodiversity concerns.

The Council's ecological advice has concluded that the scale of development is unlikely to give rise to any significant cumulative impact as long as other development proposals in the surrounding area also provide adequate on-site mitigation and compensation measures. These measures should provide for the continued use of strategic flyways and continuity of flight corridor features for the Greater Horseshoe Bat. Appropriate measures should be secured through planning conditions and/or S.106 Agreements as necessary to protect the favourable status of the Berry Head roost and foraging area.

The Authority is awaiting comment from Natural England in respect to their view on the detail and conclusions of the Habitat Regulations Assessment

summarised above. Natural England have been concerned that information submitted does not provide clear assurances that the development would achieve a net biodiversity gain consistent with requirements associated with the NERC Act and PPS9 *Biodiversity and Geological Conservation*.

The RSPB have highlighted that ciril buntings thrive in the area and that not all of the previous concerns have been fully addressed to adequately compensate for the loss of year-round ciril bunting habitat. The RSPB recommended that a financial contribution via a section 106 agreement should be made to the Council to secure ciril bunting habitat acquisition and management elsewhere if further land management and enhancement nearby cannot be secured directly.

However, the ecological advice from the Council's consultants and the view of officers is that, pending further discussion with Natural England and RSPB, the matter of the ecological impact of the development can be satisfactorily resolved. As such, officers recommend approval on ecology grounds, subject to the resolution of the outstanding detailed matters with Natural England/RSPB.

## **2. Access arrangements on to Brixham Road**

The Authority's Strategic Transportation Team now accept a second junction arrangement and are supportive of the revised junction detail on to the Brixham Road. This support is contingent upon the revised proposal for improvements to the Long Road junction and on the revised approach to the design of the new junction opposite Kingsway Avenue. This support is also subject to suitable detail, conditions and financial contributions in order to address matters of detail in the alterations to the highway.

In summary the Authority's highway advice is that the current proposals should be supported by the following;

- £15,000 for signing and lining along Long Road South from the College to Stoke Road, and in Gibson Road / Kingsway Avenue
- A refundable £25,000 bond to be used after 2 years of 50% of the site (units + residential) being occupied should rat running become an identified data led problem in either Long Road South or Kingsway. Costs of monitoring should be borne by the Applicant.
- Highways SPD contribution for general improvements to the Western Corridor to enable this development
- Sustainable transport SPD contributions to provide:
  - a. a quality bus service through the site 7 days a week to service residents, employment, retail and leisure facilities on the site as well as to and from it



b. well signed external links to the on site green corridor provision, connecting beyond the site boundaries to areas within reasonable walk / cycle distances along safe, sustainable routes and specifically to:

i. Education Sites:

1. South Devon College,
2. Paignton Community College,
3. Roselands Primary School, and
4. White Rock Primary

ii. Cherrybrook Medical Centre,

iii. Sainsburys, and

iv. The local shops in Kingsway

- A robust Residential Travel Plan and an area wide framework Business Travel Plan for the employment areas, which will require individual occupiers to develop their own Business Travel Plans.

- All construction details including design layout and material specifications are to be agreed with the Highways Department under a Section 278 Agreement.

It is anticipated that a highways officer will be available to respond to questions on this issue at the committee meeting.

### **3. S106 terms**

An independent viability assessment has been carried out and discussions about the viability of the scheme and the consequent content of the s106 agreement are ongoing. Officers will be requesting that the detail of the heads of terms of the s106 agreement be delegated to the Executive Head of Spatial Planning for final resolution. Further information has been requested in relation to the viability of the proposals and the cash flow for the developer which will ultimately determine the extent of the Agreement.

Matters currently being discussed as potential s106 heads of terms include the following:

1. The provision of on-site affordable housing. The current offer from the developer has increased from 15% to 20%, discussions are ongoing as to whether or not this is the appropriate figure. In any event a deferred contributions arrangement should be secured in relation to any matter not achieving the Council's current policy position in relation to the current viability of the project.

2. Phasing arrangements to secure the timely provision of affordable housing, serviced employment land, employment buildings, commuted payments, highway works, strategic landscaping, public open space and other key elements of the scheme.

3. A commuted sum payment to defray the costs of infrastructure (current offer £500,000), including education, off-site highway works, public transport, libraries etc) - subject to resolution of IVA and to incorporate a deferred contributions arrangement in the event that the contribution falls below the Council's policy, subject to further negotiations on the viability of the scheme.

4. CHP Plant - Delivery of future-proofing infrastructure to serve a Combined Heat & Power supply. Total cost of all work, including building, boilers and pipe work to serve development has been costed at £2M. The precise level of future proofing is to be agreed.

#### 5. Western Bowl

- Completion of 40,000 sq ft of employment space, capable of single or multiple occupation, triggered in accordance with the phasing plan
- Construction of new access and spur road to service the site and the 40,000 sqft building within 6 months of planning consent.
- Implementation of strategic landscaping, strategic drainage and flood attenuation early in the phasing of the development
- The provision of additional employment space in the Western Bowl at agreed trigger points in the phasing of the scheme or alternative arrangements to secure employment provision, subject to further negotiations on the viability of the scheme.

The purpose behind the above is to secure the delivery of employment space in the Western Bowl. In the absence of clauses to secure its provision, the employment space is unlikely to be delivered, as the viability assessment demonstrates that the development in the Eastern bowl is subsidising the Western Bowl.

At the present time the developer is willing to sign up to an agreement to deliver 20-40,000 sqft, but not the remainder of the employment space in the Western Bowl.

It is noted that there is employment provision in the Eastern Bowl that will make a significant positive contribution to Torbay's employment space.

#### 6. Eastern Bowl

- Innovation Centre land to potentially be provided free of charge to Council, with freehold interest and serviced. Acceptance that the Council be required to deliver Innovation Centre within specified period (TBA), or develop an alternative acceptable scheme.
- New access to be provided very early in the development, possibly 6 months from OPP (without prejudicing reserved matters).

#### 7. Other Matters

- Provision of potential drainage infrastructure as deemed necessary, subject to outstanding comments from the Environment Agency.
- Provision of further ecological enhancement measures, as deemed necessary through ongoing discussions with Natural England and the RSPB

#### **4. Drainage and Flood Risk:**

The Water Resources chapter of the EA and the Flood Risk Assessment by Clarkebond, dated February 2011, provide an assessment of the drainage capacity of the site and the risk of flooding as a result of the proposed development.

The FRA document also sets out appropriate measures to reduce flood risk. The Environment Agency has requested further information in this regard and this was submitted on 01 November. This latest information provides a strategy for the sustainable drainage of the surface water within the Western Bowl. As identified at the bottom of page 2 of the supporting information from Clarkebond, dated 31 October, the strategy includes the following:

- provide soakaways where practical – subject to confirmation through site soils testing,
- in the absence of confirmed site soils a worse case strategy is presented assuming that infiltration is not feasible, the worse case strategy is presented on the basis of:
  - providing permeable paving to the site car parking (where practical),
  - provide a new on-line attenuation basin to accommodate up to the 100 year event with 30 % allowance for Climate Change
  - provide a complex control to restrict discharge from the proposed on – line attenuation basin to Greenfield Runoff Rate (as identified in the original FRA).
- The scheme also provides 3 No. new gullies or the modification of the existing hedge line to naturally shed flows from the road to the existing attenuation basin (lagoon).
- Provide a 100m<sup>3</sup> sump within the existing attenuation basin (lagoon).

The result of this strategy will be that the site will be self sufficient in drainage terms and will not rely on the existing lagoon near to Long Road. In addition, the strategy includes improvements to resolve existing flooding problems on Long Road.

The responses of South West Water, the Environment Agency and the Council's drainage engineer in respect of this revised strategy are awaited, but it is anticipated that the response will be positive, given the ongoing discussions that have taken place between the applicant and these organisations.

It will remain necessary for the applicant to carry out foul drainage investigations to establish whether capacity is available in the public sewer network. If the

result of these investigations leads to the requirement for improvements to the network, these will need to be funded by the developer.

Planning conditions will be required to secure the appropriate surface water drainage scheme and to ensure that development does not commence until foul drainage investigations and the identified improvements have been undertaken.

As such, officers recommend approval on drainage grounds, subject to the resolution of the outstanding detailed matters with the Environment Agency.

### **Summary Of Updated Consultation Responses**

For previous comments please refer to accompanying details within the reproduced November 2011 committee report.

Update comments:

#### *Natural England:*

Latest correspondence states that Natural England will comment shortly on the conclusions of the Authority's HRA (Habitat Regs Assessment), in respect to effect on the local Greater Horseshoe Bat colony. Natural England maintains the view that the current mitigation does not satisfy NERC and PPS9 responsibilities in respect to protected species and wider biodiversity protection.

#### *RSPB:*

A response to the updated November ecology statement advised that not all of the previous concerns have been fully addressed and therefore to adequately compensate for the loss of year-round habitat it is recommended that the Authority seek a financial contribution via a S106 to secure cirl bunting habitat acquisition and management elsewhere.

#### *Environmental Protection & Consumer Health:*

It would be prudent to attach a condition in respect to the submission of detailed plans for the new dwellings proposed adjacent to the existing business premises including the mitigation methods that they will be using to prevent the residents being caused a nuisance from an already established business.

### **Conclusions**

The proposal provides the potential for significant investment in the area which would bring forward a balanced development of housing with associated community facilities. This will be likely to benefit the established local community, and will provide a range of employment opportunities through the local centre, office development and industrial units.

The mix of uses and the broad development proposals are considered commendable in terms of their planning merit and the fostering of regeneration and economic benefit for Torbay.

The four key outstanding matters, in respect to access, ecological mitigation, resolution of the detail of the 106 agreement, and comments from drainage experts, are either resolved or close to resolution.

Officers support the scheme and consider that the outstanding matters can now be delegated to the Executive Head of Spatial Planning for resolution.

PLEASE REFER TO THE PREVIOUS COMMITTEE REPORT BELOW FOR THE FOLLOWING;

- SITE DETAILS
- DETAILED PROPOSALS
- SUMMARY OF REPRESENTATIONS
- SUMMARY OF CONSULTATION RESPONSES
- PREVIOUS CONSIDERATIONS /CONCLUSIONS AND RECOMMENDATIONS

**Conditions -**

Full schedule to be completed, conditions to be delegated to the Executive Head of Spatial Planning

## **PREVIOUS COMMITTEE REPORT – NOV 2011 -**

### **Executive Summary / Key Outcomes**

The application is an outline planning proposal for a mixed use scheme for housing, employment land and open space / community facilities, for a site partly designated for employment and partly undeveloped and unallocated farmland within the Saved Local Plan. This is an EIA (Environmental Impact Assessment) application due to the magnitude of the potential environmental impacts and the sensitivity of the site. As such the application is accompanied by a full Environmental Statement.

Holistically the proposal provides the potential for significant investment in the area that would bring forward a balanced development of employment, housing and associated community facilities, supported by substantial off-site ecological enhancement works and improved public access into the countryside by way of a proposed circular woodland walk.

The mix of development is considered acceptable and the proposal is supported on planning merit subject, principally, to the resolution of i) the access arrangements to the eastern bowl adjacent to Brixham Road, ii) suitable off site ecological enhancement to mitigate against potential implications upon protected species, and iii) the resolution of outstanding s106 viability matters. These matters appear resolvable should the Committee be minded to approve the scheme and it is therefore anticipated that members would be in a position to approve subject to the resolution of the outstanding matters.

### **Recommendation**

Site Visit; Conditional approval (conditions to be delegated to the Executive Head of Spatial Planning), subject to the satisfactory resolution of matters in respect to ecology, access, viability, flood risk (in respect of further comment requested from the Environment Agency), the views of Environmental Protection in respect of the submitted noise assessment; and subject to the signing of a S106 legal agreement in terms acceptable to the Executive Head of Spatial Planning within 6 months of the committee date.

### **Site Details**

The application site comprises a 39 hectare plot of land bound to the east by Brixham Road and to the north in part by buildings off Long Road and in part by Long Road itself. The southern boundary of the site also comprises the Authority boundary between Torbay and South Hams. At present there are a number of



buildings to the east of the site and recently constructed road infrastructure which has been constructed in connection with earlier approvals at the site. The developed and previously developed portions of the site comprise 6.8 hectares. The site comprises two topographical 'bowls' one to the west and one to east of the site, with higher ground towards the centre of the site.

To the south and west are a number of wooded areas; Waddeton Road Plantation, Shopdown Copse and Peter's Copse. A number of hedgerows cross the site.

The eastern section of the site is allocated in the Saved Local Plan for new employment uses surrounded by strategic landscaping. The remainder of the site is within the Countryside Zone and the majority of the site (excluding the area to the north east adjacent to Long Road and accessed via Waddeton Close) is within an Area of Great Landscape Value. Brixham Road, running north/south to the east of the development site, is part of the Major Road Network.

The extent of additional land within the applicants control is also indicated on the submitted O/S plan and the extent of land within the applicants control provides the opportunity to secure appropriate off-site landscaping and ecological mitigation.

### **Detailed Proposals**

This application is in outline with all matters reserved except for access. Therefore all drawings and illustrative material submitted with the application are indicative apart from those which detail the new junctions and accesses into the site. One of these is proposed from the eastern bowl onto Brixham Road, approximately opposite the Kingsway Avenue junction. The second is from Woodview Road into the western bowl, between existing employment buildings within the Woodview Road industrial estate.

The eastern part of the site would accommodate the following uses:

- 11,495 sqm employment (offices)
- Energy centre
- 350 dwellings
- Student accommodation (approx 50 units)
- 392 sqm general retail
- 1,188 sqm food retail
- Community building

The western part of the site would accommodate the following uses:

- Up to 25,319 sqm employment floorspace within use classes B1 (office), B2 (General industry) and/or B8 (Storage and distribution). This is indicated as being distributed between 8 buildings.

The masterplan drawings indicate 8.4 hectares of public open space including local areas of play, local areas of equipped play, a grass football pitch adjacent to the community buildings, and a multi-use games area. An area of allotments is also proposed.

A number of areas of off site mitigation in the form of woodland planting are proposed. The total provision extends to some 9Ha and whilst the vast majority of this planting was required by the 2005 consent relating to the business park, additional planting is proposed around the Western Bowl. In addition, changes have been made to the planting following the initial submission of the scheme, these changes effectively provide a more continuous link for the woodland walk that is proposed within the new woodland and provide enhance connectivity for biodiversity purposes.

This is an EIA (Environmental Impact Assessment) application due to the magnitude of the potential environmental impacts and the sensitivity of the site. As such the application is accompanied by a full Environmental Statement (ES). The ES provides details on the following areas of assessment:

Landscape and Visual Impact  
Lighting Impacts  
Ecology and Nature Conservation  
Cultural Heritage  
Water Resources  
Traffic and Transport  
Noise and Vibration Impacts  
Socio Economic Effects

These issues have been considered in detail in consultation with relevant statutory and non-statutory bodies and the prime material considerations are covered within the main body of this report.

### **Summary Of Consultation Responses**

#### *Torbay Design Review Panel:*

Comments on the live outline application commend the clarity of the proposal and the evolution of the scheme and the improvements from the previous scheme. Key points noted are;

1. The entrance to the development, in particular the nature of the junctions to Brixham Road is critical to the success of the development both in terms of place-making and in making the vital connections to Goodrington.
2. Questioned the potential to lessen the dominance of the roundabout infrastructure inherited from the business park aspirations in the eastern bowl area.
3. Supports the more successful integration of the park, amenity area and open

spaces.

4. Questioned the layout around the retail unit and the potential to provide a more continuous, balanced street scene.

5. The road infrastructure supporting the configuration of the housing was thought to be very conventional and the site could sustain more innovative and bespoke street design.

6. A sense remains that the landscape strategy is filling in the gaps or being used as screening rather than helping to determine the character of the place.

7. Pleased to see the emerging strategy for district heating.

*Natural England:*

Natural England object to the proposed development on the basis that the application contains insufficient information to effectively determine the impacts upon the Greater Horseshoe Bat interest associated with the South Hams SAC (Special Area of Conservation).

Considerations of impact include that the proposed development is within the identified sustenance zone and within 400metres from a strategic flyway.

Further information, provided on 21 October 2011, is considered not to have satisfied matters in respect to methodology, off-site biodiversity enhancements, biodiversity losses and gains, and green infrastructure.

*RSPB:*

The site is located in an area that is extremely valuable for cirl buntings, which is a rare and priority species. Parts of the site have been recorded as breeding territory and further territories have been recorded within a 1km radius of the site. Negative impacts at construction and post-development stages have been identified and the RSPB consider that should permission be granted, consent should be made conditional on the following;

- no vegetation clearance during the breeding season
- existing habitat of value for cirl buntings should be retained where possible
- where there is a loss of cirl bunting habitat on site there should be mitigation, ideally via off site replacement habitat
- should replacement habitat not be secured, funding to secure appropriately managed land within the Borough should be sought via S106.

*The Barn Owl Trust:*

Although the Environmental Statement provides no evidence at any of the surveyed buildings within the site, the surrounding area does provide suitable foraging habitat for Barn Owls. The trust holds 53 records of Barn Owls within a 5km radius of the site. There is hence good reason to believe that Barn Owls may use the area and the lack of provision within the development is a wasted opportunity. Considering the duty to have regard to the purpose of conserving biodiversity the trust recommends that permanent provision be sought in at least

two buildings on the periphery of the site, ideally facing West or South, in line with Natural England advice '*Barn Owls and Rural Planning Applications*'.

*Torbay Coast and Countryside Trust:*

Comment provided in respect of biodiversity, green infrastructure/ access to the countryside, food growing, orchard provision, open space and water management. The trust states that the scheme incorporates a number of commendable green infrastructure features, they confirm that the woodland walk is welcomed, as is allotment space and the potential for a community orchard. Comments do however conclude that current proposals still do not sufficiently address the loss of biodiversity onsite, specifically in regard to the impact upon the Greater Horseshoe Bat. In this regard the trust advises that significant amendments should be made to address the issues before the application is determined.

*Environment Agency:*

Measures over and above those identified within the Flood Risk Assessment by Clarkebond, dated February 2011, will need to be implemented, as failure to achieve such measures risks an increase in flood risk which would be contrary to guidance in PPS25. Supplementary comments, dated 28 September 2011, state that, although improvements have been made, there remains a degree of uncertainty as to flood risk that will need to be addressed prior to determination. At the very least a revised Drainage Strategy Drawing should be submitted.

Since these comments have been made further information has been submitted for consideration and it is anticipated that this will overcome the Environment Agencies outstanding concerns in this respect. This matter is considered further within the main body of the report.

*Drainage Department:*

The proposals for the surface water drainage within the eastern bowl are in accordance with a previously agreed drainage strategy for this area. This involves the assumption of individual soakaways for each residential property, which may however be precluded due to ground conditions. An alternative strategy should be identified if this is proven to be the case. The tanked attenuation feature in the western bowl is accepted, following discussions and agreement with South West Water. It would also be beneficial for the detailed design stage to identify elements of car parking and highways which could be constructed using permeable paving in order to further reduce surface water runoff and reduce the risk of flooding.

*South West Water:*

The details of the scheme are acceptable in terms of the potential impact upon the public surface water drainage network.

Regarding foul drainage investigations are required to establish whether capacity

is available in the public sewer network. The investigations would need to be funded by the developer as will any improvements necessary and planning permission should not be granted until any developer financial contributions are secured by way of a S106. Until such time as the investigations have been undertaken and the cost of any improvements identified, it is suggested that planning conditions are attached to preclude development until such time as the investigation has been carried out and any necessary improvements have been completed at the developer's expense.

*Police Architectural Liaison Officer:*

The development has the potential to alter the social structure of the area. However these potential changes can be mitigated by good design which can be applied when the detailed reserved matters applications are made.

*Devon County Council:*

As the adjoining mineral planning authority the Council does not wish to raise any objection.

*Strategic Transport / Highways:*

Whilst there is support for the development in general from highways, there is concern over the proposals to provide an additional unrestricted traffic lighted junction into the site. Although the proposal for further growth in the area is acceptable, with appropriate contributions towards the western corridor improvements, the case for the need for a further signalised junction has not been successfully made.

There are already four signalised junctions with a further junction already agreed within a 1.8km stretch of the Brixham Road, which is part of the Major Distributor Network. Policy states that new access points will not be permitted where they would reduce road safety or detract or conflict with the function of the route. Although the Traffic Assessment attempts to show that the delay is acceptable, any signalised junction introduces a delay to a network and for a major network this is unnecessary delay. Highways contend that such delay would fall foul of the policy on conflicting within the function of the route.

The existing junction on Long Road has already been provided to give access to this area. However, a new second access for public transport, pedestrians and cyclists would be agreeable.

£500,000 highway contributions should be sought to support the following improvements;

- Provision of an additional lane heading North West away from the Long Road Junction
- Provision of an additional lane heading South East towards the Long Road Junction

- Provision of an additional lane between Yalberton Road and Borough Road

*Environmental Protection & Consumer Health:*

A number of investigations have been carried out previously in the development area and results show that the level of contamination is minimal and that only arsenic is at an elevated level. Although arsenic is naturally occurring it nevertheless can have serious health impacts. It is therefore advised that a full survey of the residential areas be carried out and mitigation measures be put in place if necessary. The proposal is recommended for approval with conditions relating to ground investigations.

*Torbay Development Agency:*

The TDA has requested that a minimum of 40,000 square feet of commercial units are built prior to the completion of a certain number of residential dwellings in order to ensure the tandem delivery of homes and jobs. There is no minimum specification required for these units other than that each unit should be delivered with the necessary infrastructure and wiring to connect into the energy centre or bolt on solar and PV panels. It is envisaged that the remainder of the commercial units would be delivered on a pre-let basis. The delivery of units could be secured via phasing arrangements / delivery triggers in the s106. The delivery of key elements of the scheme is to be subject to further consideration once the full independent viability assessment is available.

## **Summary Of Representations**

*Community Consultation -*

The application is accompanied by a Statement of Community Involvement. The scheme has been subject to extensive community engagement and has changed over time to reflect comments made by community and other stakeholders. Early engagement took place at pre-application stage and following the submission of the application the White Rock Neighbourhood Forum was set up to ensure that the community and all relevant stakeholders were fully involved in the consultation process. The relevant stakeholder groups included the community partnership, local councillors, and South Devon College.

Extensive exhibitions have been held consisting latterly of a three day exhibition in a local hall and consultation boards within two local libraries. In order to ensure that knowledge of the event reached potential interested leaflets were posted to 400 local residents and a number of public notices were placed in the local press. Key stakeholders were also contacted by letter.

174 people attended the three day exhibition and 41 comments were received via the optional feedback forms.

It was considered that the sessions and formal responses generally identified



that the cumulative effect of a number of proposals within the area was a concern, particularly in relation to traffic.

Further consultation with the interested parties was undertaken in November 2010 with a Project Team feedback which discussed the key issues which were raised.

Feedback in relation to the public consultation exercise itself has been very positive and it is considered that the local community has been included successfully in this process. In fact many have viewed this as a potential exemplar scheme for community engagement that sets a benchmark standard for other developers to follow.

The following lists the key issues raised in the representations, a copy of all the representations has been provided for members:

- Traffic congestion
- Concerns about new junction
- Danger to pedestrians and cyclists
- Concerns about rat-running/large vehicles in residential areas & country lanes
- Concerns about the food retail
- No need for new retail
- No need for commercial premises/many vacant available
- Departure from local plan
- Loss of open space/habitats/agricultural land
- No need for new housing
- Concern that housing would be unaffordable
- Student accommodation should be closer to college
- Development would result in need for more health care facilities
- Cumulative impact with other developments in vicinity needs to be considered
- Damaging to tourism industry
- Concerns about flooding
- Impact of proposed footpaths on adjacent farm
- Advantages to community from open space, woodland and allotments
- Need for housing

### **Relevant Planning History**

P/1994/0914 – Erection of buildings for classes B1, B2 and B8 use together with associated works (in outline) – PER – 03/03/1995

P/1999/1641 – Variation of condition (b) of planning application P/1994/0914 to extend period for outline approval to March 2002 – PER – 31/01/1999

P/199/1642 – Construction of service roads and groundworks incidental to the use of land uses (employment)- PER – 31/01/1999

P/2001/1047 – Erection of employment units for classes B1, B2 and B8 – PER – 18/10/2001

P/2001/1662 – Erection of employment units for class uses B1m B2 and B8 additional land for car parking and first floor accommodation – PER – 18/02/2002

P/2003/1057 – Erection of employment units for class B1, B2 and B8 uses – PER – 11/08/2003

P/2003/1693 – Erection of employment units for class B1, B2 and B8 uses with car parking – PER – 02/12/2003

P/2004/1621 – Outline application for the erection of buildings comprising a business park totalling not more than 55,740 sqm of accommodation (including ancillary accommodation) comprising a hotel/conference facility (use class C1), Creche (use class D1), restaurant and/or public house (use class A3/A4), Health and fitness centre (use class D2) and small scale retail units (falling within use classes A1, A2 and/or A3) with associated infrastructure and engineering works to facilitate access, parking, landscape and drainage requirements (in outline) – PER - 04/08/2005

P/2006/1843 – Roads, sewers, attenuation tanks and enabling works – PER – 11/04/2007

P/2007/0970 – Construction of roads, sewers, attenuation tanks, utilities/services, street furniture and enabling works, lighting and landscaping works – PER – 15/08/2007

P/2010/1379 – Formation of 61 bed hotel (c1) and pub/restaurant (A3/A4 with associated car parking and landscaping – PER – 25/05/2011

### **Key Issues / Material Considerations**

#### **Principle and Planning Policy -**

It is first recognised that the proposal is a departure from the provisions of the local plan, as a substantial part of the residential element sits over land designated for employment use, which was granted permission as such in 2005 but has not come forward. For the ease of understanding, this previous approval is considered to relate to an area of the site loosely termed as the 'eastern bowl'.

The proposal also introduces development adjacent to Shopdown Copse on land loosely termed as the 'western bowl'. For clarity the western bowl is an area of undeveloped farmland sited immediately adjacent to the existing Woodview Road business park, although this is visually severed from the eastern bowl by a raised

copse. This commercial and industrial development on the western bowl is in lieu of the allocation for employment on the eastern bowl, which is now to provide a mix of uses, but primarily residential development.

The overall scheme mix provides the right conditions for employment land to come forward, and will also result in a balanced development that would create jobs, housing and community facilities.

Although it is noted that the application is in outline with only access fixed, the large amount of contextual detail submitted provides for a strategic approach that will deliver housing, offices and retail within the eastern bowl in order to enable employment development to come forward in the western bowl.

#### *Employment provision*

The proposed employment development provides industrial (B-Class), office and retail opportunities, supportive of Local Plan Employment Policies, which seek new jobs and economic regeneration within sustainable locations that can be easily accessed. The retention of employment land previously established, albeit predominantly moved from the eastern bowl to the western bowl, also satisfies the retention of specifically allocated land.

In regard to the movement of the employment development away from the allocated site there is acceptance that the choice of location within the Western Bowl is a suitable location for such a development. This would extend and support the existing established employment site on Woodview Road and would also provide fresh opportunities for a full range of businesses from large-scale employers down to those requiring starter units. The proposed site is also retained within a location that can encourage sustainable travel to work patterns, as it sits close to established residential areas and strong public transport links.

#### *Residential element*

The proposed housing on land designated for employment within the eastern bowl adjacent to Brixham Road appears acceptable in terms of its general planning merit, as provision is made for employment elsewhere within the site. As the scheme provides replacement serviced employment land within the area of the western bowl, supplemented by office and retail development maintained within the eastern bowl, the addition of housing within the scheme supports rather than weakens the employment potential of the site. Such higher value uses enable the development to provide a robust mix that facilitates employment generation and the creation of a sustainable community.

The Government's Draft National Planning Policy Framework has recently been issued for consultation and indicates the Government's intention to introduce a 'presumption in favour of sustainable development' and a clear intention to increase the supply and delivery of housing. The ministerial forward to the document indicates that development that is 'sustainable' should be approved

without delay. The draft NPPF also requires that the Local Plan meets the full requirements for market and affordable housing, and planning authorities should maintain a 5 year (plus 20%) supply of specific deliverable sites. Whilst this direction of travel is not established fully, due to the draft nature of the NPPF it is considered material to consider the nature of the development in this context.

There is also a significant amount of information about the extent of housing need most recently identified in the Exeter and Torbay Strategic Housing Market Assessment (2011 Update) which highlights a need for the delivery of around 820 dwellings a year. The evidence of need is likely to continue to be a material consideration even when the Localism Bill becomes law. Whilst this need should be measured against the significant constraints to development in Torbay, it is likely that the Council will seek to provide around 500 dwellings per year within the forthcoming plan period.

The Ministerial Statement accompanying the 'Planning for Growth' White Paper indicates a presumption in favour of development except where it would compromise key sustainable development principles and as stated, the emerging National Planning Policy Framework encourages growth and looks set to retain a 5 year housing supply target plus 20%.

The proposed site at White Rock will enable the provision of some 350 dwellings in a sustainable location, served by good transport links and services. The housing development will also act as a pump priming use for the development of serviced employment land within the Western Bowl. The mixed use nature of the scheme will ensure that there is an appropriate balance of uses in order to provide for a vital and viable community.

With employment potential safeguarded and housing policy set out above, the key further consideration in respect to the housing subsequently falls on the suitability of the site which has not previously been designated for such a use. Policy guidance outlines that housing schemes should be sustainable and respond to the local housing need, within appropriate locations. They should provide an appropriate mix and density, ensure good access to facilities and infrastructure, and avoid physical and environmental constraints. The scheme is considered to be consistent with these aims. In regard to environmental constraints, although the matters of land contamination and flood risk appear acceptable, ecological constraints remain unresolved and will be discussed later in this report.

#### *Community / open space provision*

In addition to the housing and employment land, the scheme proposes a large degree of public open space, which includes 8 hectares of informal open space, a full size grass football pitch, a multi use games area, equipped play facilities and further open greenspace for allotments / community orchards. The provision of these supportive community facilities, including a community pavilion building,

is considered entirely appropriate and is inline with the objectives of providing balanced developments that meet the wider recreational needs of the area. The inclusion of these land uses is considered a significant positive aspect of the development. Certain of these elements, such as the extent of public open space and the provision of the community pavilion.

To conclude, in respect to principle and planning policy, the scheme provides a complimentary and extensive mix of uses within a sustainable location close to established transport links, employment land and residential suburbs. The scheme is therefore considered to sit comfortably with Local Plan Housing, Employment and Retail Strategies, notwithstanding that the scheme departs from land use allocations within the Local Plan.

Notwithstanding these points it is also accepted that the proposals should not adversely affect the built or natural environment and the implications of the development, most importantly in terms of landscape and ecology, will be discussed separately within this report.

#### **Retail -**

The eastern bowl is expected to provide a local centre with retail space and offices. The retail assessment (dated September 2011) provided with the application, followed discussions with officers. The retail assessment demonstrates that the retail provision is appropriate in this case.

The store will provide for primarily top-up and basket shopping with limited provision for weekly shopping for smaller (single and double person households). The retail impact of the store is not assessed as being significant, the shop will anchor a new local centre to support both the new development and existing housing at Kingsway and the wider Goodrington area over the Brixham Road. The impact on existing retail provision within the local and wider Paignton area is assessed as being very limited (see para 3.4.14 of the retail assessment in particular for detail).

#### **Economy -**

The masterplan proposes approximately 39,700m<sup>2</sup> of employment related floor space, which is distributed across both the eastern and western bowls. Approximately 13,895m<sup>2</sup> within the Eastern Bowl (including retail provision) and approximately 25,805m<sup>2</sup> within the Western Bowl.

The western bowl is intended to provide flexible serviced accommodation for larger employment providers. Although with flexibility in mind it is also envisaged that the development will also look to cater for starter units.

In terms of job creation the development is expected to create between 1170 and 1350 full time equivalent jobs (including the adjacent hotel and pub site on the

corner of the Long Road junction which has been annexed from the proposal and is currently being developed out).

The scheme, when taken as a whole, is considered to support the growth and expansion of the area as a significant employment provider for Torbay. It is however pertinent to appreciate that with distinct areas and forms of development, in conjunction with the relocation of the bulk of the employment land away from that which is designated, it is vital to ensure a balanced delivery of uses. Delivery of the employment provision in this context is key, and further discussion will need to be had to cement agreement on the delivery milestones for the employment generating uses within the s106 agreement.

The concept of higher value uses, such as residential, providing pump priming in order that serviced employment land can come forward, makes it important to tie down the phasing between the various elements of the scheme. This will ensure the delivery of all of the core elements. It is envisaged that suitable phasing arrangements can be provided through appropriate clauses within an accompanying S106 legal agreement.

#### **Ecology / Environmental Enhancement -**

*Ecology* - The proposal seeks to address the ecological implications of the development upon the favourable status of the Greater Horseshoe Bat and provide biodiversity off setting for that which is lost to development. The development includes significant off-site landscape and ecological enhancements that seek to address the on-site impacts largely focused around the implications of the loss of potential foraging land for the bats.

The lighting assessment submitted with the application looks at the likely impact on lighting levels both from a visual impact perspective and in relation to the likely impact on wildlife (most notably bats). The assessment provides the background against which a detailed lighting strategy can come forward at reserved matters stage.

As matters stand Natural England object to the proposals and negotiations between the developer, Natural England and Kestrel Consultants (the ecologists acting on behalf of the Council in this case) are ongoing.

Wider concerns pertaining to the likely impact upon Cirl Buntings and Barn Owls are also under discussion.

There would appear scope for resolution of this matter and it is requested of members that resolution to grant is subject to the acceptable conclusion of this matter to the satisfaction of the Executive Head of Spatial Planning in consultation with Natural England and the Council's instructed ecologists.

Kestrel Consultants are to provide Habitats Regulations advice to the Council in



this regard and it is anticipated that this advice will clarify the approach that should be taken to the ecological mitigation measures in this case.

#### Landscape -

The majority of the site sits under the designation of an Area of Great Landscape Value and the western bowl and central area sits under the designation of a Countryside Zone. The former seeks to ensure development maintains or enhances the special landscape character of the area and the latter seeks to protect against urban sprawl and the merging of developments.

The topography of the site and its rural hinterland is characteristically that of undulating farmland with intermittent settlements and minor rural roads. From visual assessments submitted with the application it is apparent that there are sporadic strategic viewpoints towards the site from afar.

The proposal seeks to provide strategic landscape planting and the strengthening of existing landscape buffers along the southern and eastern borders of the site to mitigate any likely visual impact of the proposal as it would be perceived.

As the proposal is in outline with only indicative information the reserved matters stage is expected to provide further appreciation of this matter, with the potential to secure appropriate positioning, scale and elevation treatment that could aid in lessening the developments prominence.

However, as matters stand by setting development within the two bowls and using the higher points for less impacting development, i.e. the provision of public open space and community facilities, the development, together with the strategic landscape planting, provides a suitable scheme for ensuring the suitable protection of the landscape character.

#### **Access -**

There are to be three principle vehicular access points into the development, the existing access off Long Road supplemented by two new access points. One access looks to serve the eastern bowl off Brixham Road and one of which serves the western bowl development off Woodview Road within an area of existing industrial development.

#### *Brixham Road Access:*

A new signalised junction is proposed off Brixham Road which will form a crossroads with Kingsway Avenue with an integrated pedestrian crossing. The access is proposed in order to supplement the existing access off Long Road for the residential development and to provide simpler navigation to the proposed local centre. As the Brixham Road is part of the Major Road Network Local Plan Policy T18 provides key policy guidance, which outlines that new access points

will not be permitted where they would reduce road safety or detract from the or conflict with the function of the route. As matters stand technical data has been submitted to support the functionality of the signalised junction.

The Authority's Highways Department accept that the junction could work, however they do not support this option as they believe it would conflict with the function of the Major Road Network. They maintain that there is sufficient capacity within the existing Long Road junction and that there is no technical requirement for a second junction. They have also expressed that should a second access be considered it should be more submissive to the function of the major road network and should be non-signalised junction.

The applicant has expressed that there are wider benefits to accepting a signalised junction, which technical data shows would work, in that it would improve connectivity with the neighbouring estates and community facilities (such as schools) and improve the internal layout and general connectivity to the local centre in this part of the site.

It is anticipated that a highways officer will be available to respond to questions on this issue at the committee meeting.

*Woodview Road Access:*

The access point into the employment area in the western bowl is considered acceptable as it does not conflict with the function of the existing route.

*Drainage and flood risk:*

The Water Resources chapter of the EA and the Flood Risk Assessment by Clarkebond, dated February 2011, provide an assessment of the drainage capacity of the site and the risk of flooding as a result of the proposed development.

The FRA document also sets out appropriate measures to reduce flood risk. The Environment Agency has requested further information in this regard and this was submitted on 01 November. This latest information provides a strategy for the sustainable drainage of the surface water within the Western Bowl. As identified at the bottom of page 2 of the supporting information from Clarkebond, dated 31 October, the strategy includes the following:

- provide soakaways where practical – subject to confirmation through site soils testing,
- in the absence of confirmed site soils a worse case strategy is presented assuming that infiltration is not feasible, the worse case strategy is presented on the basis of:
- providing permeable paving to the site car parking (where practical),
- provide a new on-line attenuation basin to accommodate up to the 100 year

event with 30 % allowance for Climate Change

- provide a complex control to restrict discharge from the proposed on – line attenuation basin to Greenfield Runoff Rate (as identified in the original FRA).
- The scheme also provides 3 No. new gullies or the modification of the existing hedge line to naturally shed flows from the road to the existing attenuation basin (lagoon).
- Provide a 100m<sup>3</sup> sump within the existing attenuation basin (lagoon).

The result of this strategy will be that the site will be self sufficient in drainage terms and will not rely on the existing lagoon near to Long Road. In addition, the strategy includes improvements to resolve existing flooding problems on Long Road.

The responses of South West Water, the Environment Agency and the Council's drainage engineer in respect of this revised strategy are awaited, but it is anticipated that the response will be positive, given the ongoing discussions that have taken place between the applicant and these organisations.

It will remain necessary for the applicant to carry out foul drainage investigations to establish whether capacity is available in the public sewer network. If the result of these investigations leads to the requirement for improvements to the network, these will need to be funded by the developer.

Planning conditions will be required to secure the appropriate surface water drainage scheme and to ensure that development does not commence until foul drainage investigations and the identified improvements have been undertaken.

### **Ground investigations and noise assessment -**

The Environmental Statement provides a noise assessment for both during and after construction and the application also includes a comprehensive ground conditions report.

In respect of ground conditions, it is considered, following a response from the Council's Environmental Protection team, that the report is satisfactory and the matter of further on-site investigation can be dealt with by way of conditions. Comments are awaited in respect of the noise assessment report, however, it is not envisaged that there will be an over riding concern in that regard.

### **Climate change -**

The application has an embedded sustainability strategy that has sought to reduce energy consumption and fossil fuel emissions through a tiered hierarchy of using less energy, supplying energy efficiently and assess potential use of low or zero carbon sources. The sustainability statement submitted in support of the application demonstrates the developments capacity to adapt to future demands.

In addition, it sets out the development's provision of appropriate sustainable energy resources and the way in which the scheme operates within environmental limits.

All homes will, as a minimum, target the Codes for Sustainable Homes standard, with later phases expected to reach Code levels 4 or 5.

The indicative masterplan allows for a site-wide district heating and power distribution centre, which could also potentially serve adjacent users within the area. The delivery of such a system is subject to a detailed viability assessment. The scheme could potentially either deliver a site/district heating and power system, or future proof the development with the infrastructure for future delivery.

The approach to drainage will deal with storm water as close to source as possible and within the confines of the site. The site is well located and well provided in terms of local services, public transport, and connectivity.

### **Viability / S106 / CIL -**

The developer accepts that the proposals may generate the need for financial contributions for social and physical infrastructure. The scheme is currently being appraised in respect to its viability and a summary document is expected to be presented to members prior to the committee. Notwithstanding this the developer has identified the following heads of terms;

#### Proposed S106 Heads of Terms –

1. Development Phasing and associated 'enabling' works to deliver serviced employment land in the western bowl.
2. Affordable housing.
3. Off-site landscaping and landscape management plan for the off-site works.
4. Transport improvements
5. Western corridor road studies.
6. One-off or phased contributions inline with the Council's SDP in regard to:

- Stronger communities
- Education
- Lifelong learning
- Greenspace and recreation
- Waste and recycling
- Monitoring obligations

### **Conclusions**

The proposal provides the potential for significant investment in the area which would bring forward a balanced development of housing with associated community facilities, which could also benefit the established local community,

along with differing forms of employment provided by a local centre, office development and industrial units.

The broad parameters of this outline proposal are considered commendable in terms of their planning merit and the fostering of regeneration and economic benefit for Torbay.

Notwithstanding the above there are key outstanding matters, in respect to achieving the right access solution, a suitable level of ecological mitigation, and establishment of the situation of viability. All three matters require further justification or adaptation, but they each appear to have the potential for positive resolution should the committee be minded to delegate matters to the Executive Head of Spatial Planning.

**Conditions -**

Full schedule to be completed

**Condition(s) / Reason(s)**

01. Prior to the commencement of development, details of the provision to be made for foul water drainage and the disposal of sewage from the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with those agreed details. Reason: To provide a satisfactory form of development

02. No vegetation clearance that involves the removal of habitats such as scrub or hedges, including bramble patches, shall occur during the established breeding season for Cirl Buntings unless otherwise submitted to and agreed in writing by the Local Planning Authority. Reason: To limit the potential impact upon the Cirl Bunting population, in accordance with Policy NC5 of the Saved Adopted Torbay Local Plan 1995-2011.

03. Prior to the commencement of works, a survey shall be carried out to determine the level of arsenic and shall be submitted to and approved in writing by the Local Planning Authority. This shall include all of the following elements unless specifically excluded, in writing, by the Local Planning Authority. 1. The results of the arsenic survey and risk assessment and method statement based on those results giving full details of the remediation measures required and how they are to be undertaken. 2. A verification report on completion of the works set out in (1) confirming the remediation measures have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting. Reason: To ensure a suitable form of development that protects human health

04. No building hereby permitted shall be occupied, and no connection to the public sewerage system shall take place, until all improvements to the public sewerage network, rendered necessary by the development site as a whole, have been completed to the Local Planning Authority's satisfaction. Reason: To provide a satisfactory form of development

### **Informative(s)**

01. This application has been the subject of consideration under the Habitats Regulations, under which an Appropriate Assessment was carried out. It has been determined that, subject to the relevant provisions in this notice and the accompanying legal agreement, this proposal will not have an adverse effect on the integrity of the South Hams SAC.

02. The strategic landscaping scheme that shall be sought via condition shall, for each relevant phase, include indications of all existing trees and hedgerows on the land, and details of any to be retained along with details of the quantity, size, species and position of all new trees, hedges and shrubs to be planted, together with an indication of how they integrate with the proposal in the long term with regard to their mature size and anticipated routine maintenance. The approved landscaping scheme shall be implemented in accordance with the phasing plan for the development in order that the implementation of the new planting can be achieved in tandem with the development.

03. This application is accompanied by a legal agreement under s106 of the Town and Country Planning Act, 1990.

04. This proposal constitutes EIA (Environmental Impact Assessment) development and as such an Environmental Statement (ES) was submitted with the application. The submitted ES was considered as part of the determination of this application.

### **Approved Plans**

X Proposed Layout - A059729/A/01 (Received 21/02/11) - (Version C)  
X Access Design Statement - 14912 (Received 21/02/11) - (Version 2)  
X OS / Map / Site Location - 14912\_POO1 (Received 21/02/11)  
Proposed Layout - 1101 R04 (Received 26/11/12) - (Version General Arrangement)

### **Refused Plans**

### **Relevant Policies**

BES - Built environment strategy  
BE1 - Design of new development



ES - Employment and local economy strategy  
E1 - New employment on identified sites  
E119D - Long Road South, Paignton (New Policy)  
E5 - Employment provision on unidentified sit  
E9 - Layout, design and sustainability  
TS - Land use transportation strategy  
T1 - Development accessibility  
T2 - Transport hierarchy  
T3 - Cycling  
T18 - Major Road Network  
T22 - Western Corridor  
T26 - Access from development on to the highwa  
NCS - Nature conservation strategy  
NC1 - Protected sites - internationally import  
NC5 - Protected species  
LS - Landscape strategy  
L2 - Areas of Great Landscape Value  
L4 - Countryside Zones  
L8 - Protection of hedgerows, woodlands and o  
L9 - Planting and retention of trees  
L10 - Major development and landscaping  
EPS - Environmental protection strategy  
EP1 - Energy efficient design  
EP7 - Contaminated land  
CFS - Sustainable communities strategy  
CF6 - Community infrastructure contributions  
CF7 - Educational contributions  
HS - Housing Strategy  
H2 - New housing on unidentified sites  
H9 - Layout, and design and community aspects  
SS - Shopping strategy  
S11 - New Local Centres  
T7 - Access for people with disabilities  
T25 - Car parking in new development  
T27 - Servicing  
H6 - Affordable housing on unidentified sites  
H10 - Housing densities  
H11 - Open space requirements for new housing  
RS - Recreation and leisure strategy  
W7 - Development and waste recycling faciliti  
EP3 - Control of pollution

## Appendix 6: Officer Report relating to P/2015/1126

**Application Number**

P/2015/1126

**Site Address**Land West Of Brixham Road  
Paignton**Case Officer**

Carly Perkins

**Ward**

Blatchcombe

**Description**

Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated development.

**Executive Summary/Key Outcomes**

Outline consent was granted in April 2013 for approximately 37,000 square metres of employment space, 350 new homes and a local centre under reference P/2011/0197 and subsequent reserved matters applications were approved under references P/2013/1229 and P/2014/0071. The application site relates to the eastern bowl of the wider White Rock site and is largely grassed scrubland. Part of the wider site is under construction under the approved reserved matters scheme P/2013/1229 with a number of homes complete.

The application site has been split in to two parts, the larger part of the site is to the west of Waddeton Road and south of Moor View Industrial Estate and the smaller part is to the west of Brixham Road. The site that separates these two parts is currently under construction under reference P/2013/1229.

The application that is subject to this report is for reserved matters for the appearance, landscaping, layout and scale of 217 dwellings and the associated internal highway network, open space and landscaping. This application accommodates a higher proportion of two bedroom units over the previously approved reserved matters applications. The access arrangements to both parts of the site remains the same as previously approved with access via Brixham Road which connects to a central roundabout on to Waddeton Road and Long Road.

A further full application for an additional 44 dwellings is subject to a separate application. For clarity these are shown on the plans but have not been considered as part of this application.

The increase in density that would result from this revision of the residential layout on the site would result in a form of development that fails to meet the objectives of the NPPF and Policies SS11, H1, DE1 and DE3 in the Torbay Local Plan, which seek to provide a high quality of development that provides a good standard of amenity for future occupiers. The proposal would result in an overdevelopment of the site. There are a number of clear indicators of overdevelopment, leading to a poor quality development, including:

- o Inadequate provision of off-street parking (leading to increased on-street parking and a car dominant development);
- o Remote parking in relation to proposed homes;
- o The close proximity of dwellings to hedgerows and the reduced quality of proposed landscaping;
- o The poor quality residential environment as a result of the separation distances between dwellings.

### **Recommendation**

Refusal (reasons at end of report)

### **Statutory Determination Period**

13 weeks, the determination date was the 20th February 2016 however this has been exceeded to allow for officer negotiations and revised plans to be submitted.

### **Site Details**

Outline consent was granted in April 2013 for approximately 37,000 square metres of employment space, 350 new homes and a local centre under reference P/2011/0197 and subsequent reserved matters applications were approved under references P/2013/1229 and P/2014/0071. The application site relates to the eastern bowl of the wider White Rock site and is largely grassed scrubland. Part of the wider site is under construction under the approved reserved matters scheme P/2013/1229 with a number of homes complete.

The application site has been split in to two parts, the larger part of the site is to the west of Waddeton Road and south of Moor View Industrial Estate and the smaller part is to the west of Brixham Road. The site that separates these two parts is currently under construction under reference P/2013/1229. To the south of both sites is open countryside which forms part of the Off Site Landscape and Ecology Management Plan, including tree planting and a woodland walk.

### **Detailed Proposals**

The proposal is to construct 217 dwellings, a mixture of detached, semi detached and terrace dwellings and apartments of which 20% are affordable and open space provision.

The application represents a revised proposal for 217 of the 350 dwellings approved at outline stage. This application accommodates a higher proportion of two bedroom units over the previously approved reserved matters applications. The access arrangements to both parts of the site remains the same as previously approved with access via Brixham Road which connects to a central roundabout on to Waddeton Road and Long Road.

As with the approved scheme reserved matters applications for this site, the

proposal has been broken down in to three character areas:

The 'Neighbourhood Core' is the main frontage of the development onto the primary street and local centre. The development within this element is a dense form of development composed of terraced three storey dwellings.

The 'Residential Core' forms the majority of the site includes a range of secondary streets. This area is made up of a combination of two storey terraces, semi-detached and detached properties.

The 'Countryside Edge' is located around the perimeter of the site and many of the dwellings within this section being detached however there are also examples of detached and terrace dwellings.

The density of the application site is approximately 33 dwellings per hectare with this ranging from 28 dwellings per hectare within the 'Countryside Edge' character area to 75 dwellings per hectare within the 'Neighbourhood Core'.

Excluding apartments which have a 1:1 parking ratio, there are 35 dwellings on the site which have only 1 parking space which amounts to approximately 19% of dwelling houses with 1 parking space.

The proposals include some on-site landscaping and open space provision.

The current proposal has been screened in terms of the need for an Environmental Impact Assessment and determined that an EIA is not required.

### **Summary Of Consultation Responses**

Arboricultural Officer: Comparative study across both applications indicates tree numbers may be similar, however there is no schedule to confirm this. Plans supporting P/2013/1229, specifically 'On plot landscaping plans 1-7 of 7 40200\_LP(90)\_213 Rev E' formed the conclusion of a series of meetings between the L.A. and agents for the applicant and were considered to offer a balanced compromise between the amenities of the new residents and public realm areas and softening and landscape integration from external view receptors. Tree species have been largely varied from the negotiated plans noted above to smaller and/ or more columnar narrow type trees, presumably in recognition of the denser layout and increased unit numbers. The overall effect is to lessen the positive attributes that would be delivered from the arboricultural features on site and leave a tree population of smaller sized and reduced life span that would not offer long term desired benefits either internally or when viewed externally. Key junctions and principal roads were proposed to include more large sized trees, where now the use of more columnar tree form is proposed. The eastern edge of the site abutting Brixham Road proposes only 3 columnar trees of limited visual impact planted in grass. This location is an opportunity to enhance the arrival at the site but to also offer a sense of enclose

to residents of these units. I would suggest this curtilage requires detailed further consideration in tree planting and landscape terms. It is recommended that the scheme, now varied from the previous submission has by virtue of the increased numbers of units reduced the visual efficacy of the softening internal landscaping, substituting narrow trees from large or wider canopied trees will prevent the site achieving visual 'maturity' on a landscape basis detrimental to the amenities of the new development and its residents and visitors. These comments apply generally across the site but bear more weight at principal road junctions and boundaries shared with the AONB and Brixham Road.

Further comments from the Arboricultural Officer are expected in relation to the revised plans which have been submitted to attempt to overcome the concerns noted within the original consultation response above.

Senior Strategy and Project Officer: From a number of site visits in the area, the developments to have been completed in the vicinity do appear to have a shortage of off road car parking, resulting in vehicles parked in the roads and pavements. It is agreed that in this out of centre location a minimum of two parking spaces plus space for two cycles should be provided, in accordance with Policy TA3 and Appendix G of the new Adopted Local Plan. If in garages, please can you ensure that these meet the size requirements in the note to Appendix G (i.e. 3.3m x 6m).

It is not satisfactory for cars to have to reverse significant distances to get into the allotted parking spaces (units 77, 378,379). It is also agreed that locating parking away from the dwellings is likely to result in on-street parking. This is particularly the issue with the parking court for 37-52 but also for 53-57 and 140-144.

Police Architectural Liaison Officer: Recommendations made in relation to Building Regulations - Approved Document Q - Security and Secured By Design.

Green Infrastructure Co-ordinator: The Public Open Space provided is in accordance with the indicative layout approved at outline stage, and that approved through the previous reserved matters application (P/2013/1229), and thus the principle is accepted. The Design Statement states that around 20 allotment spaces (4 within the Ridge Park area outside of this application) will be provided and also refers to orchard planting in this area (section 4.10). Drawing 151102 L 02 03 appears to show 21 allotments within the red line for this application and an additional 5 plots within the Ridge Park area. The orchard planting does not appear to be shown on the submitted plans.

Further information regarding the allotment area is required prior to determination including:

- o Confirmation regarding the number of allotment plots to be provided.
- o How the allotment area will be laid out prior to residents taking on plots for



- cultivation.
- o Details regarding the proposed orchard planting (location, proposed species, tree sizes, numbers/densities and planting methods).

It is noted that on-going management of the allotment and orchard planting (as well as other on-site landscape and ecological features) is provided through the on-site LEMP secured through the discharge of condition 10 of the outline application. It is suggested that an informative is added to any planning approval noting that the development must be carried out in strict accordance with both the on and off site LEMPs. It should be noted that Torbay Council is currently in discussion with Linden Homes regarding progress with the LEMP works.

The Design Statement states that "The Locally Equipped Areas for Play (LEAP) within the POS are to be detailed and delivered by Torbay Council". Whilst Torbay Council's Natural Environment Services team are happy with this approach, a suitable financial contribution for both capital (development of design and purchase of equipment) and revenue will need to be agreed and secured through a supplementary s106 agreement if this is the case. This will need to be agreed prior to determination; James Nicholas and Neil Coish should be contacted in this regard.

As for the previous reserved matters application (P/2013/1229), a condition should be secured to ensure that there is no form of external lighting on the elevations facing hedgerows along the southern boundary (plots 371 - 378 and plots 391 and 392) and along Waddeton Road (plots 169, 170, 370) to avoid adverse impacts on bats.

Natural England: No objection in terms of statutory nature conservation site, Natural England advises that the proposal is unlikely to affect any statutorily protected sites. Natural England does not wish to comment on this development proposal in relation to protected landscapes however advises that the South Devon AONB unit may wish to comment. The application has not been assessed in relation to the impacts on protected species.

Environment Agency: The site is Flood Zone 1 and sites in the Critical Drainage Area are dealt with by standing advice.

Landscape Consultant: Of particular relevance to the consideration of this application are the approved off-site landscape mitigation/enhancement works (LEMP secured by S106) which includes significant belts of woodland planting on land to the south, including a belt (around 25m wide) immediately south of the southern boundary. This planting will provide a strong landscape buffer between the development and undeveloped countryside to the south. Therefore, planting within the site is primarily to contribute to the internal character/sense of place of the site and the amenity of residents, as opposed to the assimilation of the development within its wider context.

The outline application included a house typology schedule (Dunmarino Associates dwg. no 13009 HTP 01 Rev. J). This indicated detached houses on the southern edge of the site. The proposals show a mix of detached and semi-detached houses resulting in an increase in housing density on this boundary. Whilst this would have a slight effect on the visual permeability of the development in more immediate views this is not considered to be a particular issue of concern given the structural planting proposed to the south which will contain the site in time.

Of particular concern is the very close relationship of buildings in plots 169, 170, 370-371, 390 and 391 to the existing boundary hedge. There appears to be a high likelihood of damage to occur to the hedge and associated rooting area (reference to any submitted Arboricultural Assessment should identify the minimum root protection area for this hedge), when taking account of working areas required for construction. Buildings in plots 170, 370-371 are also, by virtue of their proximity to the hedge, to be readily apparent rising above in views from Waddeton Road. It is recommended that further consideration of the proposals is required to address these issues.

The houses in plot 391 and 392 are very close to the hedge and likely to result in shading to the south elevation as the hedge and off site planting develops, resulting in pressure to cut back. It is recommended that the design of these plots is reconsidered

How is the boundary hedge to be protected? The hedge should be retained in single ownership to ensure it is managed in a consistent and appropriate manner. How is it to be accessed for management purposes?

The internal landscape proposals appear to have been 'watered down' considerably from the detailed landscape plans provided by Stride Treglown (although we are unclear about the status of these plans and whether they have been approved previously). The proposals now (as shown on Clifton Emery Design dwg no 151102 L 08 01) show very little landscape variation with the principal focus on hedge planting (laurel and hornbeam) to the boundaries of front gardens throughout the scheme and scattered tree planting. The previous Stride Treglown (ST) drawings showed greater variation in treatment which is desirable. Overall therefore the current proposals appear to be a significant 'step back' in terms of the creation of a more varied, interesting external environment and sense of place. It seems entirely reasonable (and depending upon the status of earlier ST drawings) to require the approach to be reconsidered.

There is no indication that details have been provided indicating proposed plant sizes, densities and outline soft landscape specification. This should be checked and, if not provided as part of the application, It is recommended that this information should be requested pre-determination.

Tree species:

- o Prunus avium 'Plena' is shallow rooting and may cause future problems with disruption of hard surfaces.
- o Betula pendula can be brittle with age and their incorporation in the scheme needs to be considered carefully. Their mature stature, relative to their location on the southern side of plots 177-181, may result in their future removal by householders. The inclusion of some trees on the southern side of this street would be desirable and give a more varied street scene.
- o We recommend that confirmation is obtained that the location of trees relative to services has been considered and that trees proposed can actually be achieved.
- o Some trees are located very close to buildings and confirmation should be obtained that these are practical relative to adjoining foundations (as NHBC guidelines).

It is recommended that any areas proposed to be offered for adoption by the Council are identified at this stage to allow further consideration on their acceptability.

Affordable Housing Delivery Officer: Comments awaited.

Senior Design and Heritage Officer: Comments awaited in relation to the Building for Life Assessment.

South Devon AONB Manager: Comments awaited.

South Hams District Council: No comments received.

### **Summary Of Representations**

1 representation received. Issues raised:

- o Removal of facilities - the outline application proposed A1/A3 uses which have not been included in this application
- o Overdevelopment - the development is dense and does not provide facilities
- o Impact on local area - pressure on services, highway, wildlife and employment
- o Contrary to local and national policies - the proposal does not take in to account the need to consider employment opportunities of the occupants of the housing and therefore occupants will travel outside of the Bay.

### **Relevant Planning History**

P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development APPROVED

P/2014/0071 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 APPROVED

P/2015/0918 Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development (Variation of condition P1 of P/2013/1229 - MMA to units 37, 94 and 237 to allow wheelchair access) APPROVED

P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 PENDING CONSIDERATION subject to the outcome of this application

P/2015/1229 Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated dwelling - THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2011 DO NOT MAKE PROVISION FOR PUBLIC COMMENT ON REQUESTS FOR SCREENING/SCOPING OPINIONS EIA NOT REQUIRED

P/2016/0094 Erection of 44 dwellings and associated infrastructure PENDING CONSIDERATION

P/2016/0188 Approval of appearance, landscaping, layout and scale in relation to a sports pavilion PENDING CONSIDERATION (Variation of condition P1 of P/2014/0071)

### **Key Issues/Material Considerations**

The key issues to consider are the principle of development, appearance, scale, layout and highways matters, parking, waste and recycling facilities and residential amenity.

#### **Principle:**

Outline consent has been granted for the mixed use development of the site. This application was approved subject to extensive consultation and was subject to Habitat Regulation Assessment and was accompanied by a detailed Environmental Statement. The principle of development was established by this application and subsequently two reserved matters applications were approved for the residential elements of the site.

This application is in accordance with the indicative layout and delivers affordable housing as set out within the section 106 agreement. The scheme provides 20% affordable housing across the two sites, a schedule of the tenure is awaited. Comments from the Delivery Officer on the level of affordable housing and the tenure are awaited and will be verbally presented to the Committee.

Condition 2 of the outline application required the scheme to score at least 8

'greens' when scored against Building for Life criteria. This assessment is ongoing and will need to take in to account the revised drawings submitted. The results of this assessment will be provided to the members at committee once complete.

#### Appearance:

There are various different house types across the two parts of the site, the majority of which are simple and contemporary in design with slate grey tiled pitched roofs, rendered or full bricked walls and upvc windows, doors and fascias. The house types are largely grouped into distinct areas in line with the different character areas. The majority of dwellings are rendered with subtle changes in render colour and feature brick panels and plinth to add interest. In the lower density areas of the site full brick dwellings have been included to define the character areas throughout the development. If approved it is recommended that a condition regarding the submission of details of external materials to ensure a high quality residential environment.

The appearance of the dwelling houses is considered acceptable and in keeping with the remainder of the approved residential scheme that is not subject to this reserved matters application.

#### Scale:

The visual impact of the development was a key factor of the outline application. This resulted in the location of the residential element of the scheme being contained within a 'bowl' in the landscape, with open amenity space to the east on the ridge. An off-site LEMP was produced which included extensive tree planting along the south of the site to help further screen the development particularly from the Stoke Gabriel and Galmpton Areas (South and West). An on site LEMP has also approved which helps provide further landscaping enhancements.

As was the case with the previously approved reserved matters applications, the tallest properties are limited to a particular character area ('Neighbourhood Core') helping to define the urban form. The remainder of the site is limited to two storeys. The scale of the development has increased with the increased density of the dwellings in order to provide additional two bedroom dwellings. As a result the features of the individual character areas approved as part of the original reserved matters applications, particularly those within the lower density areas of the site, have been weakened somewhat. The 'Countryside Edge' whilst still relatively spacious in comparison to the 'Neighbourhood' and 'Residential Core' areas, has become more dense with an increase in semi-detached and terrace dwelling arrangements. In comparison to that previously approved the quality of the scheme is considered to have weakened particularly within the 'Countryside Edge' character area. However the dwellings in this area continue to feature open intervals creating the feeling of space between built form and no more than approximately 16m of built form in a single stretch and in some cases garages

also allow for larger gaps to be maintained at first floor level. Within the 'Neighbourhood Core' and 'Residential Core' character areas the density has also increased with increased numbers of terraced dwellings. However in these areas, the character is of a higher density and therefore the level of built form is considered to sit much more comfortably and therefore the scale of physical development in these areas is considered acceptable.

The number of dwellings has increased and therefore so has the density. It is accepted that there is scope to increase the density of development on the site. However the resulting development needs to meet the objective of providing high quality living environment for all residents. A core planning principle in the NPPF is to "secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings". This point is reiterated at para. 58 of the NPPF which states that decisions should aim to ensure that developments "create attractive and comfortable places to live, work and visit".

In this case the revision to the scale of development has implications for the quality of residential environment that will be created. As identified below the proposed changes result in a greater number of dwellings on the site with a car parking level that falls short of that required by Policy TA3 in the Torbay Local Plan. This shortfall is an indicator that the scale of development on the site is excessive resulting in the proposed layout failing to meet the objectives of Policy H1 and DE3 which seek to provide a good level of amenity for occupiers.

#### Layout and Highways Matters:

The principle access points to the development are from Long Road and Brixham Road. A new section of road is already in situ, enhancing Waddeton Road and including a roundabout with access in to the development site. As was the case with the previous reserved matters applications, the road layout within the scheme is focused on the provision of a number of principle access roads to sections of the development with cul-de-sacs leading off each route. With the exception of the private drives which adopt block paving and the key frontage on to the area of open space to the western edge of the larger part of the site, the roads are of a traditional design with asphalt roads and footways to one side. Highway bands with rumble strips are proposed at key junctions to encourage the reduction in speeds at these points.

The layout provides good permeability into the site with access routes through for both vehicles and pedestrians. The layout remains largely the same as previously approved in terms of the road layout and remains acceptable.

#### Parking:

The previously approved reserved matters schemes had a number of dwellings which only benefitted from one parking space. The percentage of dwellings with only one parking space approved as part of the original reserved matters schemes was 8%, on balance this was considered acceptable and in accordance



with policy at the time of decision with policy T25 of the Torbay Local Plan 1995-2011 (now superseded) noting parking requirements as maximum guidelines. The current scheme refers to only part of the wider residential development and 66 of the plots only benefit from one parking space, of these 66 plots 31 are apartments. This equates to 19% of dwelling house plots benefitting from only one parking space, each of these dwellings has a minimum of two bedrooms. Policy TA3 and the associated appendix G states that the Council will require appropriate provision of car, commercial vehicles and cycle parking spaces in all new development and that development proposals will be expected to meet the guideline requirements as set out in Appendix G. Appendix G states that dwelling houses will be expected to provide two parking spaces per dwelling unit and explains that in locations such as town centres where there is a greater choice of transport, this standard may be reduced. The application site is not within a town centre location and whilst there may be some services within walking distance of the development this is not extensive and due to the scale of the development one parking space per dwelling house for 19% of the dwelling house plots is likely to result in on-street parking issues. It is noted that a high portion of the dwelling houses which benefit from only space are located within the areas of the development which are subject to the highest density. In addition it is in these areas where there are also examples of remote parking which is also likely to result in occupiers parking vehicles on the street outside their dwelling houses rather than in parking courts located away from their dwelling houses.

The percentage of dwellings with only one parking space approved as part of the previous reserved matters application is a material consideration and has been considered as part of this recommendation. The current scheme exceeds this percentage and would not meet the policy requirement set out within policy TA3 and appendix G of the Torbay Local Plan 2012-2030. On balance having considered both the previously approved schemes that are capable of implementation and the current policy requirements, the reduced number of parking spaces is not considered acceptable. Whilst the overall parking ratio (excluding apartments) may be 1.9 spaces to every one dwelling, it is noted that this is in part skewed by the number of dwellings which benefit from more than 2 spaces and irrespective of this, the number of dwellings which only benefit from 1 parking space remains unacceptable.

The increased density of dwelling houses has limited the amount of space available for off road parking provision. At the current parking ratio, landscaping has helped to limit the impact of the parking on the wider street scene however additional parking provision as required to meet the requirements of policy TA3 and appendix G would be likely to result in streets dominated by off street parking provision to the front of dwelling houses. Similarly if the current parking ratio were to be pursued, the streets are also likely to become car dominated with an increased likelihood of on street parking by both occupiers and their visitors. A reduced density of development would enable a parking provision in line with

policy requirements without detriment to the overall character of the street however negotiations with the applicant indicate that this is not a route they wish to pursue. It is therefore concluded that the proposed development does not comply with Policy TA3 in the Torbay Local Plan.

Garages do fall short of the dimensions required by policy TA3 and appendix G of the Torbay Local Plan. However having considered the approved reserved matters schemes, on balance this is not on its own considered to warrant the refusal of the application as this would not result in a greater impact when compared against the approved scheme. This same consideration cannot be made when considered in terms of off road parking bays, as the percentage of dwellings with only one parking space is greater than that previously approved.

Each of the properties has access to the rear gardens to enable waste and cycle storage provision to be provided. Where properties don't benefit from rear gardens or garage provision separate cycle and waste provision is provided. All properties in the scheme are to have dedicated recycling and waste storage facilities and cycle stores as secured by condition 4 of the original outline consent.

#### Landscaping

As part of the outline application, off-site landscape mitigation and enhancement works (Landscape and Ecological Management Plan secured by S106) includes significant belts of woodland planting on land to the south, including a belt immediately south of the southern boundary. This planting will provide a strong landscape buffer between the development and undeveloped countryside to the south. The increased housing density is not considered to have a significant effect on the visual permeability of the development in light of the structural planting proposed to the south which will act to contain the site once established. In addition and in light of this structural planting the proposal is not considered to result in significantly greater impact in views from the AONB to the south or views from the South Hams. South Hams District Council and the South Devon AONB unit have been asked if they wish to comment, no comments have been received to date.

Officer negotiations have resulted in a revised landscaping scheme. Whilst formal comments are awaited from the Council's Arboricultural Officer it is understood that the revised scheme does accord with officer comments provided during the course of the application and will complement the development. Landscaping is proposed to break up the rows of parking provision and screen parking courts, the landscaping proposals help to soften the scheme and whilst the increased density has defined the level of landscaping proposed the overall landscaping proposals are considered acceptable on balance. Comments from the Arboricultural Officer will be verbally presented to the Committee. Within the consultation response from the Landscape Consultant, reference is made to several plots within the 'Countryside Edge' that are positioned in close proximity

to the existing hedgerow. Five of these plots are located in a closer position to the hedge on to Waddeton Lane than the previously approved reserved matters scheme. Further work is required on this area of the scheme for it to be acceptable. The applicant could consider measures to amend the position of these dwellings to improve this relationship and overcome this issue.

Comments from the Council's Green Infrastructure Officer are noted. The allotments have been omitted from this part of the wider outline application site and repositioned to the west of the red line boundary. Orchard planting has instead been included within the area previously noted as allotments. The Officer has been reconsulted on this change and any comments received will be presented to the Committee.

### Residential Amenity

There are 217 new dwellings being provided within the scheme, this comprises:

2 one bed flats  
28 two bed flats  
58 two bed houses  
85 three bed houses  
42 four bed houses  
2 two bed coach houses

There a good range of house sizes, the majority of the properties benefit from rear gardens with the exception of the apartments/flats and one of the coach houses. The sub-text to policy DE3 of the Torbay Local Plan 2012-2030 recommends 55sqm of private amenity space for dwelling houses and 10sqm for flats. Whilst the gardens sizes fall below this recommended guideline in some instances having considered the availability of public open space provided as part of the development on balance the level of private amenity space is considered acceptable. Similarly having considered the previously approved scheme it is considered that the dwellings are acceptable in terms of internal floor space and are largely well proportioned internally.

For the majority of plots the level of inter-visibility is limited due to the layout of the dwellings and separation distances. There is an exception where the separation distance is limited to 17m, this falls below what is generally recognised as an optimum separation distance to prevent inter-visibility between dwellings that are positioned back to back. The standard of residential amenity that would be achieved in this area falls below the level that would normally be expected and is another indicator that the density of development is excessive for this site. Further work is required on this area of the scheme for it to be acceptable. The applicant could consider measures to amend the floor plans of these dwellings, amend window positions to allow only off set views or include obscure glazing to limit the impact on this reduced separation distance, in order to overcome this issue.

As explained in earlier paragraphs the level of parking provision does not meet the requirements of policy TA3 and the associated appendix G. This would have an impact on the residential amenities enjoyed by the occupants of the development. A reduced density of dwellings would improve this situation.

Comments from the Police Architectural Liaison Officer are noted and have been reiterated to the applicants and included within the revised scheme as appropriate.

### **Conclusions**

In conclusion, the submitted scheme fails to meet the objectives of Policies SS11, H1, DE1 and DE3 in the Torbay Local Plan to provide a high quality form of development with a good level of amenity for all residents. The proposal constitutes overdevelopment of the site by reason of the number of dwellings that would have a lower level of off street parking than is required by Policy TA3. This would inevitably result in a proliferation of on street parking, which would have a harmful effect on the character, quality and function of the area. The proposed form of development would detract from the residential amenities of occupants and is therefore considered contrary to Policies in the Torbay Local Plan and the NPPF and would be unacceptable.

### **Condition(s)/Reason(s)**

01. The proposal would fail to deliver a high quality living environment or a good standard of amenity for future occupants in accordance with paragraph 17 of the National Planning Policy Framework and policies SS11, H1 and DE3 of the Torbay Local Plan 2012-2030. The proposal would constitute overdevelopment of the site and as a consequence, a lack of suitable parking provision for future occupants which would result in on street parking problems to the detriment of the overall quality and function of the area and the amenities of future occupants of the development. As such the proposal is contrary to paragraphs 17, 56, 58 and 64 of the National Planning Policy Framework and policies SS11, H1, DE3, TA3 and Appendix G of the Torbay Local Plan 2012-2030.

### **Relevant Policies**

H1LFS - Applications for new homes\_  
SS11 - Sustainable Communities Strategy  
DE1 - Design  
DE3 - Development Amenity  
DE2 - Building for life  
C4 - Trees, hedgerows and natural landscape  
SS8 - Natural Environment  
TA3 - Parking requirements

## Appendix 7: Hatch Regeneris Report (November 2019)





# Inglewood

## Socio-Economic Benefits Statement



November 2019



# Background & Scope of Report

Hatch Regeneris was commissioned by Abacus Projects Limited to produce a socio-economic benefits statement for the proposed Inglewood development.

Hatch Regeneris is a specialist economic development and regeneration consultancy providing evidence-based socio-economic research and analysis to both public and private sector clients across the United Kingdom and internationally.

## The Site in Context

**Location:** The site proposed as 'Inglewood' is within the Torbay district area which lies in Devon, in the South West of England. It sits approximately 3.5km to the south of the centre of Paignton, which has a population of 67,000 and 4.5km to the west of Brixham, which has a population of 17,000. Further afield to the north lies Torquay. Plymouth and Exeter are the nearest cities and are located 30-40km from the site.

**Planning Policy:** The Torbay Local Plan (2012-2030), adopted in 2015, is the key statutory Local Plan relevant to the site. In addition, the site is within the Brixham Neighbourhood Plan area and is adjacent to the boundary of the Paignton Neighbourhood Plan area. Both neighbourhood plans were 'made' in June 2019. The Brixham Neighbourhood Plan is now part of the statutory development framework for the area in which the site sits.

Abacus Projects Limited and other stakeholders in the vicinity contend that Torbay cannot demonstrate a 3-year housing land supply and therefore the relevant policies in the local and neighbourhood plan are considered out of date.

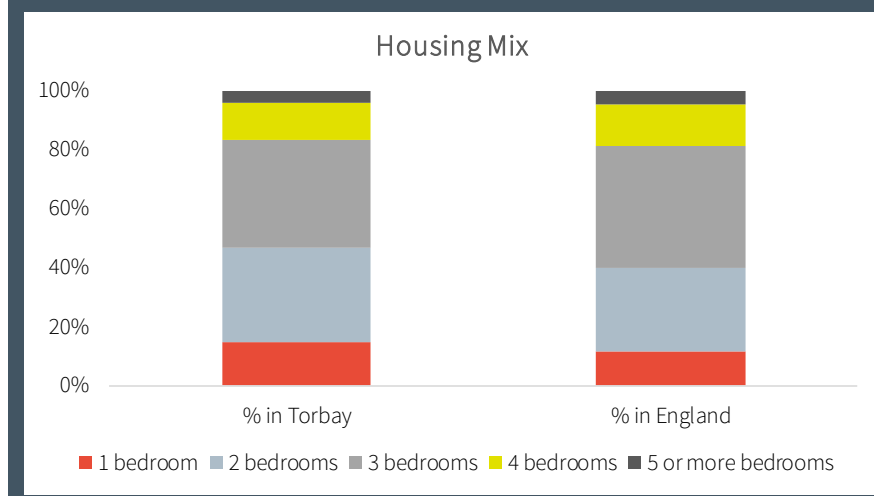
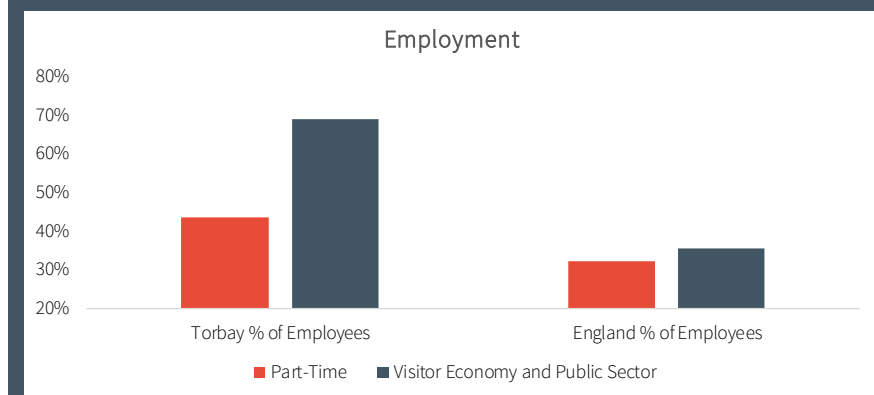
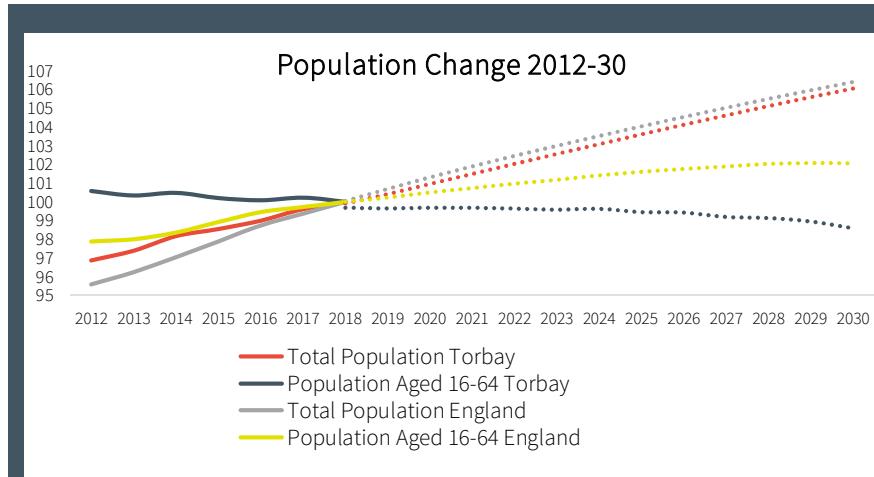
**Proposal:** The Design & Access Statement<sup>1</sup> produced in March 2018 contains details of the proposed Inglewood development. The proposals are for up to 373 dwellings (30% of which will be affordable) with provisions for a new primary school with nursery and a public house.





# Essential Socio-Economic Context

- + **Population<sup>2</sup>** – Torbay has a population of approximately 135,800. Just 57% (77,000) of the population are of core working age (16-64 years old), lower than the England average by 6%. 35,900 (26%) of the population in Torbay are over the age of 64, higher than the England average by 8 percentage points. There is a high dependency ratio with 76 ‘dependents’ per 100 people of core working age compared to an average of 60 nationally. During the adopted Local Plan period (2012-2030) the percentage of elderly people is projected to rise by over 6%, to 31% from a 2012 base of 25%. This compares to a national average of 7%.
- + **Labour supply<sup>3</sup>** – Torbay’s labour force is 75,300 strong, of which 59,400 (79%) are economically active, the same rate as is seen nationally. The local economic activity rate rose by 3% from 2012 to 2018. Over the same period the unemployment rate in Torbay fell from a rate of 8% in 2012 to 5% in 2018. In comparison the national unemployment rate was 4% in 2018.
- + **Employment<sup>4</sup>** – Torbay has a total of 46,000 employees, 31,800 (69%) of which are employed in the visitor economy or public sector. 20,000 (43%) employees work on a part-time basis. The proportions of visitor economy/public sector and part-time employees are considerably above national averages, respectively 33% and 11% higher in Torbay than England.
- + **Housing stock<sup>5</sup>** – Torbay has a housing stock of over 66,300. There is a higher prevalence of 1 and 2 bedroom accommodation in comparison to 3 or more bedroom accommodation, with 46% of Torbay’s households having 1 or 2 bedrooms compared to a 40% average in England. Average house prices are £195,000 compared to an average of £240,000 across England.
- + **Households<sup>6</sup>** – The latest ONS household projections suggest an average household size of 2.17 in Torbay compared with just under 2.4 in England. The quality of housing is a key issue for some of Torbay’s residents: 45% live in the top 20% most deprived Lower Layer Super Output Areas (LSOAs) (ONS defined ‘small areas’ with an average population of approximately 1,600) in England for indoor deprivation.
- + **Fiscal context<sup>7</sup>** – In 2018/19 Torbay Council collected £81 million of Council Tax, £33 million in Businesses Rates and received £1.5 million of New Homes Bonus Grant.



# Key Socio-Economic Challenges

It is evident from local policy and a review of the range of available socio-economic data that Torbay faces important and continuing long term challenges going forward. It is important that Torbay addresses its poor economic performance in order to utilise its 'under-sold potential'<sup>8</sup>.

## Ageing Population

Torbay recognises that it has a significantly ageing population<sup>2</sup>. An estimated 26% of the current population is aged 65 or over, higher than the England average by 8 percentage points. This is projected to rise to 31% by 2030 (rising at the same rate as England). In addition the number of people aged over 85 is expected to increase by around 1,000 (23%) over the next decade. Older residents contribute to the economic well-being of the area, but generate pressure on health and social care infrastructure, and on the long term economic sustainability of an area. Torbay must attract and retain the younger population necessary to support an ageing population (for example, the workforce for care; younger population to replace labour as older workers retire).

## Falling Working Age Population

The core working aged population (16-64 year olds) is projected to fall by 1.4% from 2018 levels to 2030<sup>2</sup>. This is a constraint on economic growth and one recognised in Torbay's Local Plan, which highlights the need to attract and retain younger people. To grow its core working aged population Torbay needs new, viable and sustainable housing.

## Low Income Levels

The area faces the challenge of relatively low income levels. Resident based median earnings are lagging behind the national average, just £19,000 compared to £24,300 nationally. The picture is stark for workplace based earnings, which are just £15,500 in Torbay. This is consistent with the dominance of the visitor economy and the public sector in the area, where earnings levels are likely to be lower than is the case in sectors including manufacturing and business services<sup>9</sup>.

## Deprivation

Torbay ranks within the top 15% most deprived districts in England. This is due to the prevalence of areas with high levels of deprivation, especially in Torquay and Paignton. 16% of LSOA areas within Torbay are within the 10% most deprived LSOAs nationally<sup>10</sup>. In part, this is likely to reflect an economy in which lower paid and seasonal employment have a prominent role, and the absence of nearby major employment centres offering a wide range of higher paid employment.

## Unemployment and Business Formation

Despite a high prevalence of part time and lower value working employment opportunities the unemployment rate is still above the national average, 5% compared to 4% nationally. In 2017 there were just 6 business births per 1,000 working aged people compared to an average of 10 across England.<sup>11</sup> Partners in Torbay recognise these issues, and have invested in measures to encourage business start-ups and participation more generally through support services and other related interventions.

## Affordability

The median house price in Torbay is £195,000, considerably below the average for England of 240,000<sup>5</sup>. Despite lower house prices, the median house price to income ratio is above the national average, 8.8 in Torbay compared to 8.0 nationally. The challenge for Torbay is to provide a range of housing options that meet the needs of households on lower than average incomes, an issue in an area where lower paid employment (for example, in the tourism and retail sectors) is a feature.

# Socio-Economic Opportunities

Analysis of the current socio-economic context for Torbay, together with a review of relevant local strategies and plans point to the following socio-economic opportunities for Torbay which are relevant to the assessment of the potential impacts of the proposed Inglewood development.

## Tourism

Torbay is recognised as a leading UK visitor destination for holidaymakers. It attracts over 4.5 million visitors a year who spend over £435 million annually in the area<sup>12</sup>. Whilst this is a seasonal industry, it is a major employer which requires a substantial supply of labour, many of whom live locally given the need for a flexible workforce. The English Riviera Destination Management Plan, 2017-21 (DMP)<sup>13</sup> identifies priorities to develop all year round tourism, offer new products, attract new domestic and international visitors, increase the value of tourism and attract new investment.

## Large Catchment Population

Torbay's Local Plan makes several references to the area's large resident catchment population. It describes the presence of a 'huge' resident population within a 20-30 minute radius of the area. This is presented as a factor that helps to make the area attractive to investors, implicitly connecting the size of the population to economic opportunity. This is echoed in Torbay's Economic Strategy (2017-22) which recognises the crucial role that housing has both in the performance of Torbay's economy and to future investment.

## Regeneration and Development

One of the key opportunities this area faces is to regenerate its towns. To achieve successful regeneration it is important that the area attracts new jobs, skills and increases its resident working aged population through the provision of housing developments which attract a population who will wish to live, visit and spend in Torbay's towns.

## Entrepreneurship

Whilst it recognises the challenges it faces in supporting business start-ups and survival rates, Torbay's Economic Strategy points to an entrepreneurial spirit in the resident population that it seeks to encourage action to enable young people to start businesses, to improve business survival rates and the retention of growing businesses in the area are part of the policy mix being pursued locally. Boosting the number of younger people moving to the area, and increasing the size of the local consumer market more generally, are measures which will assist in meeting this objective.

## Skills and Education

Torbay's Economic Strategy<sup>14</sup> highlights the priority attached to broadening its skills base and raising the level of skills in the resident workforce. A range of current and proposed facilities and services are identified in the Strategy to achieve this. The need to develop skills is connected in the Local Plan with the area's ability to grow existing businesses and attract new ones.

## Improved Infrastructure

The 3.4 mile long South Devon Link Road opened between Torbay and Newton Abbot in 2015 and has significantly improved connection into Torbay. As well as improving access into Torbay for those working and running businesses in the area, improvements to transport infrastructure are identified as enabling better access to Exeter, Plymouth and Bristol. In turn, the implication is that living in Torbay may be a more viable residential option for residents commuting to work elsewhere.



# Socio-Economic Impacts of Housing Development

Housing development contributes directly and indirectly to an area's economy. The remaining sections of this report set out the impacts that Inglewood would be expected to generate including:

- + **Construction:** Temporary but significant economic activity associated with the construction process. These benefits are both direct (ie on the site itself) and in the wider area.
- + **Population and labour supply:** Permanent impacts as a new housing development accommodates additional residents in an area. A substantial proportion of these residents would be expected to be in work, or available to work.
- + **Household spending:** Households spend income on goods and services, which has a positive impact on businesses by supporting employment.
- + **Jobs:** The proposed development of a family pub and school at Inglewood would support local jobs and in turn spending in the area's economy.
- + **Housing supply:** New housing supply contributes to the overall stock in an area and to the range of market and affordable homes available. Torbay has a legal obligation to increase its housing land supply. Indirectly, new housing is part of the overall requirement nationally to increase the supply of housing to tackle the affordability problem.
- + **Fiscal benefits:** New housing and commercial development will generate additional Council Tax receipts, New Homes Bonus payments and business rates income.
- + **Wider impacts:** There are a series of impacts which are hard to measure but an important part of the contribution made by new housing development.

Each of these impacts is described in more detail in the next section.



# Temporary Benefits

## Construction Impacts

The indicative total value of the construction investment for Inglewood is £68 million. This comprises:

- + £50 million for the construction of homes. It is estimated that the cost of a 2FE school would be around £3.5 million and a further c.£1 million for the pub facility.
- + £13.5 million in infrastructure costs.

This represents a major investment which would generate jobs on the site itself, in the businesses supplying goods and services directly to the project and in the wider supply chain. These are the **direct and indirect** economic benefits.

In addition, local residents who work on the construction would be expected to spend some of the income they receive on household goods and services, and other forms of spending, in Torbay. These are the **induced** impacts.

Based on £68 million of spending over an 8 year period, it is estimated that the Inglewood development would generate demand for up to **140 workers** per annum, with a majority of these roles expected to be on-site at different times of the year and in different phases of development.

There is potential for the developer to put in place measures that encourage the recruitment and training of local workers. It is currently estimated that 25% of all recruitment could be local.

A shortage of construction skills within the Torbay area may require some of the construction workforce to be drawn from a wider area, but it also presents opportunities to invest in the skills development of local residents. The construction industry has a strong reputation for the delivery of apprenticeships and training.



# Permanent Impacts

## Population

Based on the current average household size in Torbay (2.17) The development of 373 homes would generate a resident population of **820**.

However, this would represent the low end in the size of Inglewood's population, since it uses an average figure for an area which is acknowledged to have an older than average population and therefore smaller household sizes.

The indicative mix of housing by bedroom numbers is as follows:

- + 1 bedroom: 9
- + 2 bedroom: 102
- + 3 bedroom: 185
- + 4 bedroom: 77

Drawing on 2011 Census data (which remains the most comprehensive source available), average household sizes by the number of bedrooms have also been applied. Using this approach, the resident population of Inglewood would be c. **870**, which represents the high end of the range for the purposes of this assessment. This implies an average household size of 2.34, which better reflects the likelihood that the development will attract families.

Research indicates that new housing developments are more likely to be occupied by first-time buyers and younger households. Research by the National House Building Council (NHBC)<sup>15</sup> shows that 75% of new home registrations are to people aged 25-64, with 66% in the 25-44 year old cohort. This underlines the likelihood that the population of Inglewood would include a majority of younger people and families.





# Permanent Impacts

## Labour Supply

The starting point in understanding the impacts on Torbay's resident labour supply is the estimated core working age population (16-64). Applying the Torbay average of 57%, it is estimated that this cohort of Inglewood's population would amount to **460-495**.

However, housing market research shows that new build developments are more likely to attract younger residents, so it is reasonable to assume that the population of 16-64 year olds is likely to be higher than the Torbay average. At 65% (slightly higher than the England average of 63%), the range would be **525-565**. This would better represent the population expected of a new residential development.

This part of Inglewood's resident population would be the core part of the labour supply contributed by the development to Torbay. Taking current economic activity rates in Torbay, it is estimated that the number of residents expected to be in work or seeking work would be **415-445**.

In addition, some of Inglewood's residents over the age of 65 would also be expected to be in work, with a growing proportion of older workers in the labour force and increases in the state pension age.

Inglewood's working population will have a mixed occupational and skills profile. It is estimated that of the working population, approximately 25% will be in higher managerial and professional roles, 12% will be in associate professional and tech roles, 27% will be in skilled trades, machine operative and elementary occupations, 13% will be in leisure and care occupations and 11% will be in admin sales and customer service.

The labour supply impact of the proposed development will directly contribute to local priorities both to attract and retain younger working people, and boost Torbay's skills base to support its economy.



# Permanent Impacts

## Household Spending

Inglewood would generate economic benefits to Torbay through household spending. This is amongst the more difficult impacts to estimate, since total household spending and how much is retained in Torbay will depend on many factors including particularly the occupations and workplaces of residents, household incomes and where and how they consume goods and services.

Average annual household spending (all main categories of spending excluding mortgage payments and rent) for South West England stood at c. £23,000 per annum in 2018. Household income levels in Torbay are likely to be lower, with recent government data (ONS)<sup>16</sup> pointing to Gross Disposable Household Income per head of £17,100 in 2017.

Assuming that Inglewood succeeds in attracting incoming working residents from elsewhere in the South West would imply total household spending of **£8.6 million per annum**, a proportion of which would be captured by local businesses including food and drink retailers, clothing, household goods and other comparison goods providers, transport providers and a wide range of service businesses.

How much spending would be retained in Torbay is difficult to establish accurately. Torbay's latest Retail Study Update was completed in 2013, and there have been significant increases in online shopping since then which are likely to have changed spending patterns.

Given Torbay's location, it is likely that relatively high levels of spending on convenience goods (food and drink) would be retained locally. At 15-20% total retention, this would imply **£1.3 to £1.7 million** retained in the local economy. Spending of this order would support additional local employment in businesses serving household demand.





# Permanent Impacts

## Employment

The proposed development includes a public house of 800 sq m internal area at a gateway location to Inglewood. The pub is likely to secure trade both from the community living in the development and from the wider area.

The number of jobs the pub will generate will depend on the operator and type of facility that is delivered. A family pub with restaurant and function room, for example, generates a larger number of employment opportunities than more basic operations (bar and bar food).

Applying average employment densities, an 800 sq m public house could support **30-40 jobs** ranging from managerial staff to elementary occupations, and offering full and part-time employment.

Space is allocated as part of the proposed development for a two form entry (2FE) primary school which would be capable of accommodating 420 children at capacity, plus potentially pre and after school provision. A school of this size would be expected to have perhaps **35-40 FTE** staff.

Both the operation of the public house and the school would generate additional local economic impacts through the purchase of goods and services in the area to support operations, and through the expenditure of staff living locally. Applying a basic local multiplier of 1.1, this would imply an additional 7-8 jobs in the local area.



# Permanent Impacts

## Housing Supply

Inglewood would make an important contribution to Torbay's housing stock, which is known to be extremely low. The indicative mix of houses by number of bedrooms is given in the table, below, and it is understood that 30% of dwellings would be affordable.

**Schedule of Proposed Development**

Bedrooms	Apartments	Houses	Total
1	9	-	9
2	18	84	102
3	-	185	185
4	-	77	77
		<b>Total</b>	<b>373</b>

70% of the development's residential units have 3 or more bedrooms. This will assist in Torbay's acknowledged need to diversify its housing supply, with the area having a higher than average proportion of 1 to 2 bed homes. The supply of new 3 and 4 bedroom housing should also assist in attracting families to the area, addressing issues around the ageing profile of the resident population.

The proposed development also has the potential to make an important contribution to local housing delivery targets. Policy SS1 of the Torbay Local Plan sets an annual average requirement of 495 dwellings per annum from 2012 to 2030<sup>8</sup>. The development of 373 homes would therefore provide 4% of the total housing requirement of the plan period and 75% of the one year average requirement.

The delivery of 30% affordable housing, which is in line with the Local Plan target, will provide a significant boost to the delivery of affordable housing which has been underdelivered in Torbay in recent years.



# Permanent Impacts

## Fiscal Benefits

Council Tax: Torbay Council will receive approximately **£0.5million** per year from residents of the development in Council Tax.

New Homes Bonus: New Homes Bonus payments are subject to a complex formula which takes account of the net change in housing stock in a local authority area over a baseline figure. Treating Inglewood as delivering net additional housing stock, and assuming that the properties were band D (ie 373) would imply a theoretical NHB payment of **£2.6 million** over 4 years, or c. **£0.65 million** per annum. In practice, the NHB calculation is based on the housing units an area delivers above a baseline change in the housing supply the Government expects an area to achieve (0.4% of the total housing stock).

Developer contributions: Torbay Council commenced charging CIL in 2017 for new dwellings and larger out-of-town retail and food and drink developments. Where appropriate, developer contributions can provide benefits to Torbay and its residents. The proposed development would also be expected to generate substantial Section 106 revenue to Torbay Council.

Business Rates: Limited data is published on business rates payable by public house/restaurants of the type envisaged for Inglewood. By way of comparison, three establishments (a Harvester, a Beefeater and a Stonehouse Carvery) in Torbay have rateable values currently ranging from £117,000 to £172,000.

\* Note: the new homes bonus is only paid if the target growth of 0.4% new homes is hit.

## Wider Benefits

Residents will benefit from the encouragement of active travel by the promotion of pedestrian cycle routes and green corridors on the site and connecting into the local area. The proposed development includes the provision of a woodland walk which will provide health and wellbeing benefits to residents and the wider community able to use this area.

In addition to its impacts in diversifying Torbay's housing stock, the provision of new, good quality housing should send positive signals to the development sectors about the potential for new investment in Torbay.

Torbay Council has identified the need for additional primary school places in Paignton due to the scale of housing development in the area. The proposed development includes an allocation of a site capable of being developed for a 2FE primary school. As well as meeting evident demand from the local area, a new school has the potential both to be an attractor of families to the area, and a contributor more generally to supporting the longer-term sustainability of public services.

Finally, the local area will benefit from increased demand for facilities which are likely to come under pressure through a combination of an ageing population and budget constraints. Demand from new residents will support the viability of local services and facilities, although it is recognized that this creates requirements for additional resources to service increased demand.

# Conclusions

This report has set out the range of measurable and wider socio-economic benefits the proposed development of Inglewood has the potential to generate for Torbay. Importantly, each of the benefits the report describes addresses one or more of the socio-economic challenges and opportunities Torbay faces. The key impacts are summarised in the table below.

**Inglewood Socio-economic Impact - Summary Table**

	<b>Impacts</b>	<b>Total impact</b>
<b>Construction</b>	Demand for construction workers	140 workers per annum
<b>Population</b>	Generation of resident population	820 – 870 residents
<b>Labour supply</b>	Residents in work	415 – 445 residents
	Retained expenditure in the local economy	£1.3 – £1.7 million
<b>Household spending</b>	% Household Expenditure Retained in Local Area	20%
	Gross Jobs Supported by Expenditure	97
<b>Employment</b>	Jobs supported by public house	30 – 40 FTE jobs
	Jobs supported by primary school	40 FTE jobs
	Council tax paid by residents per annum	£0.5 million
<b>Fiscal benefits</b>	New homes bonus paid to the council per annum	£0.65 million
	Business rates revenue per annum (based on comparators)	c. £100,000
<b>Housing</b>	Affordable housing units	112 units
	Open market housing units	261 units



# References

- + <sup>1</sup> Stride Treglown, 2018, *'Planning Design & Access Statement, Inglewood, Paignton'*
- + <sup>2</sup> ONS, 2019, *'Mid-year Population Estimates'*. / ONS, 2016, *'Population Projections'*
- + <sup>3</sup> ONS, 2019, *'Annual Population Survey'*, January – December 2018 – 2012
- + <sup>4</sup> ONS, 2019, *'Business Register and Employment Survey'*, 2018 employees data
- + <sup>5</sup> ONS, 2019, *'House price to workplace-based earnings ratio'*. / ONS, 2011, *'Census'*. / MHCLG, 2017, *'Dwelling stock'*
- + <sup>6</sup> ONS, 2018, *'2016-based Household Projections for England'*; Torbay Council, 2018, *'2018 - 2020 Joint Strategic Needs Assessment for Torbay'* (% of population living in areas amongst 20% most indoor environment deprived in England [DCLG])
- + <sup>7</sup> Torbay Council, 2019, *'Financial Reports & Accounts for the year 2018/19'*
- + <sup>8</sup> Torbay Council, 2015, *'Torbay Local Plan'*
- + <sup>9</sup> ONS, 2018, *'Annual Survey of Hours and Earnings'*
- + <sup>10</sup> MHCLG, 2019, *'Index of Multiple Deprivation'*
- + <sup>11</sup> ONS, 2018, *'Business Demography'*. / ONS, 2019, *'Mid-year Population Estimates'*
- + <sup>12</sup> Torbay Council, 2017, *'Torbay Economic Strategy'*
- + <sup>13</sup> Torbay Council, 2017, *'The English Riviera Destination Management Plan 2017-21'*
- + <sup>14</sup> Torbay Council, 2017, *'Torbay Economic Strategy 2017-2022'*
- + <sup>15</sup> NHBC, 2018, *'New Home Statistics Annual Review'*, 2017, Table 6
- + <sup>16</sup> ONS, 2019, *'Detailed household expenditure by countries and regions'*, financial year ending 2018.

# Methodology

Impact area: The area used to assess impact was Torbay as this aligns with the Local Planning policy for the site.

For the purposes of the assessment, it is assumed that the proposed development is completed and fully occupied, and that the population is net additional to the area.

Key assumptions:

1. Population estimates based on the applicant's indicative mix of housing and a combination of ONS households projections data (average household size) and 2011 Census data on household sizes by number of bedrooms.
2. Labour supply calculations are based on the estimated population aged 16-64 of the proposed development drawing on ONS Mid Year Population Estimates, evidence on the populations of new build housing developments and ONS Annual Population Survey data (economic activity and employment rates).
3. Estimated employment is based on the proposed floorspace of commercial development and the number of staff anticipated for a completed 2FE primary school. Public house employment is calculated using Homes and Communities Agency Employment Densities Guide (2015), giving number of jobs per sq m of floorspace, and cross-checked against online data on the staff numbers typically associated with facilities of this type. School staffing data is based on Department for Education School Workforce data (2019) with an allowance for administrative and other school staff.
4. Fiscal impacts
  - + New Homes Bonus calculated using estimated council tax revenue and applying bonus payments for affordable housing. It should be noted that the figures assume that the 373 dwellings are all eligible for the calculation.
  - + Council tax calculated on the assumption of 50% of properties in band C and 50% in band D.
  - + Business rates data based on the latest Valuation Office Agency (VOA) data for similar establishments in Torbay.

*This report contains the expression of the professional opinion of Hatch Regeneris (the trading name of Hatch Associates UK). It is based upon information available at the time of its preparation. The quality of the information, conclusions and estimates contained in the report is consistent with the intended level of accuracy as set out in this report, as well as the circumstances and constraints under which this report was prepared.*

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