

Land at Broom Hill / Brislington Meadows, Broom Hill, Bristol

**Appendices - Planning Proof of Evidence of
Paul Connelly BA (Hons) DipUP MRTPI
on behalf of the Appellant**

Appeal Ref: APP/Z0116/W/22/3308537

Volume 2 - Appendices

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Appendix 1: Schedule of other relevant development plan policies

Other Relevant Development Plan Policies

1. This appendix contains a list of other development plan policies that I consider to be relevant to the consideration of the Brislington Meadows Planning Appeal - reference 3308537.
2. These policies are in addition to those included within Section 5 of the Planning Proof, which addresses only those policies that are relevant to the *main matters* under consideration.

Bristol Local Plan: Core Strategy adopted June 2011 ('the Core Strategy')

- Policy BCS7 - Centres and Retailing
- Policy BCS10 - Transport and Access Improvements
- Policy BCS11 - Infrastructure and Developer Contributions
- Policy BCS13 – Climate Change
- Policy BCS16 – Flood Risk and Water Management

Site Allocations and Development Management Policies (adopted July 2014) ('the DMP')

- Policy DM9 – Local Centres
- Policy DM16 – Open Space for Recreation
- Policy DM22 - Development Adjacent to Waterways
- Policy DM23 – Transport Development Management

Bristol Local Plan: Core Strategy adopted June 2011

Policy BCS7: Centres and Retailing

3. Broomhill Road/Fermaine Avenue is identified as a Local Centre in the Hierarchy of Centres referred to in Policy BCS7. The policy states that Town, District and Local Centres will be focuses for the development of, among other uses, higher density forms of residential development provided the centre is suitable for such development and has a high level of accessibility by public transport, cycling and walking.
4. Policy goes on to state that uses which contribute to maintaining the vitality, viability and diversity of centres will be encouraged.
5. This policy is not referred to in the Officer's Report, which would appear to be an omission given that the Appeal Scheme is immediately adjacent to the school and nursery that are within in the Local Centre, and that the proposals include a pedestrian and cycle connection directly into the heart of the Local Centre from the proposed development. The proximity and accessibility between the proposals and the centre, local services and a wide range of land uses and community facilities is fundamental to the sustainability of the allocation and Appeal Scheme as stated in BSA1201.

Policy BCS10 - Transport and Access Improvements

6. The Development Principles under Policy BCS10 state that *"Development proposals should be located where sustainable travel patterns can be achieved, with more intensive, higher density mixed use development at accessible centres and along or close to main public transport routes. Proposals should minimise the need to travel, especially by private car, and maximise opportunities for the use of walking, cycling and public transport."*
7. The policy also makes it clear that *"developments should be designed and located to ensure the provision of safe streets and reduce as far as possible the negative impacts of vehicles such as excessive volumes, fumes and noise."*
8. The site does comprise a sustainable location, accessible by walking, cycling and by public transport and with convenient access to Broomhill Local Centre and other local services.
9. The submitted Air Quality Assessment (CD1.24) demonstrates that impacts from the site are considered to be acceptable. There was no concerns raised by the Council's Pollution Control officer (CD3.15)
10. The submitted Transport Assessment (CD1.15) and the transport technical note prepared by Mr David Tingay and appended to this evidence (Appendix 8) demonstrates why the scheme is acceptable in terms of transport and access.

Policy BCS11 - Infrastructure and Developer Contributions

11. This policy requires development to provide, or contribute towards the provision of, measures to directly mitigate its impact, which will be secured through the use of planning obligations.
12. Policy BCS11 is referred to in the fifth reason for refusal. The draft heads of terms for planning obligations provided in Appendix A of the draft SoCG reflect the requirements of the Council as informed by pre-application discussion.

Policy BCS13 – Climate Change

13. Policy BCS13 states that Development should mitigate climate change through measures including, among other things: *"Patterns of development which encourage walking, cycling and the use of public transport instead of journeys by private car."*

14. One of the reasons that the housing allocation for the Appeal Site was considered by the Council to be appropriate, as stated in the explanatory text with Site Allocation BSA1201, is because the site is in a sustainable location close to the Local Centre.
15. This policy was not referred to in the Council's SoC (CD10.1) but, in my opinion, this is very relevant to consideration of the Appeal Scheme.

Policy BCS16 – Flood Risk and Water Management

16. This policy requires that *"All development will...be expected to incorporate water management measures to reduce surface water run-off and ensure that it does not increase flood risks elsewhere. This should include the use of sustainable drainage systems (SUDS)."*
17. The policy has not been raised by the Council as a reason for refusal and the Flood Risk Officer has no objection to the Appeal Scheme's outline proposals (CD3.2).

Site Allocations and Development Management Policies (DMP)

Policy DM9 – Local Centres

18. Policy DM9 requires that development within the Local Centres identified on the Policies Map (CD5.4), including Broomhill Road/Fermaine Avenue will be expected to, among other points, *"...generate a reasonable level of footfall..."*.
19. This policy is not referred to in the Officer's Report (CD10.2), and I acknowledge that the Appeal Scheme is not a use proposed within the Local Centre. However, the proximity of the development, being immediately adjacent to the community facilities within the Local Centre, and the convenience of direct walking and cycling connection proposed, will help to generate a reasonable level of footfall within the Local Centre.

Policy DM16 – Open Space for Recreation

20. This policy expects development to ensure that open space for recreation is provided to meet the minimum quality, access and quantity standards set out in Appendix 1 of the DMP.
21. Policy DM16 is referred to in the fifth reason for refusal insofar as no agreement has been reached on a S106 agreement.

Policy DM22 - Development Adjacent to Waterways

22. This policy sets out requirements to which development which is adjacent to, or contains, waterways will be expected to adhere. In summary, the

requirements address public access issues, enhancement of recreation opportunities and the management of nature conservation and drainage.

23. The Appeal Scheme is considered contrary to Policy DM22 according to the Summary section of the Impact on Landscape and Design in the Officer's Report (CD10.2), but the policy is not referred to in any of the reasons for refusal.
24. The Appeal Site lies adjacent to the Brislington Brook. The brook sits outside of Homes England's landholding and the redline of the Appeal Scheme and does not form part of the drainage strategy. The character of the brook is natural, passing through dense vegetation, separated from the Appeal Site by very approximately 17 metres depth of scrub. The brook is generally not visible due to the overgrown nature of the hedgerows and is not considered to be a prominent feature having no recreational or leisure role given ecological and landownership constraints.
25. It is however intended that the proposed wet grassland areas are accessible via boardwalks resulting in enhanced recreational and leisure value in the vicinity of the brook. Beyond that there is no recreational opportunity in relation to the brook and there is no public access currently or proposed.
26. I do not believe this policy to be relevant to consideration of the Appeal Scheme.

Policy DM23 – Transport Development Management

27. Policy DM23 states that *"Development should not give rise to unacceptable traffic conditions and will be expected to provide:*
 - i. Safe and adequate access for all sections of the community within the development and onto the highway network including designs which secure low vehicle speeds; and*
 - ii. Adequate access to public transport including, where necessary, provision for public transport improvements; and*
 - iii. For appropriate transport improvements to overcome unsatisfactory transport conditions created or exacerbated by the development; and*
 - iv. For pedestrians and cyclists including, where appropriate, enhancing the pedestrian and cycle network and, for major non-residential schemes, providing adequate changing, shower, storage and drying facilities for cyclists.*

Proposals should be supported by a Transport Assessment and/or a Travel Plan where development is likely to have a significant traffic impact."

28. Policy DM23 is referred to in the fifth reason for refusal insofar as no agreement has been reached on a S106 agreement regarding Homes

England's commitment to off-site pedestrian and cyclist-related highways safety improvements.

29. The Council's highways officer is otherwise satisfied with the proposals (CD3.14).
30. A technical proof of evidence prepared by Mr Tingay and addressing Transport Matters is appended to the Planning proof (Appendix 8).

**Appendix 2: Response to Rule 6 Statement of
Case Heritage and Archaeology (January
2023) prepared by The Environment
Partnership**

Brislington Meadows - Response to Rule 6 Statement of Case Heritage and Archaeology

Project	Brislington Meadows	Author	Amir Bassir BSc PGCert MCIfA
Date	09/01/22	Checked	Francis Hesketh
Doc Ref	7507.43.016	Approved	Jason Clarke BSc (Hons) MA MCIfA
Version	1.1	Purpose	To respond to Rule 6 Statement of Case and also wider Third-Party comments submitted in relation to the appeal.

My name is Amir Bassir. I am a Principal Historic Environment Consultant for the Environment Partnership (TEP) Ltd. I have a degree in archaeology and geology and have been a heritage professional archaeologist since 2009, having worked in commercial archaeology for 14 years and as a consultant since 2018. I am a full member of the Chartered Institute for Archaeologists (CIfA). I conduct my profession to the standards required by the Institute's Code of Conduct (CIfA 2022).

- 1.1 The Rule 6 Statement of Case, paragraph 9.4.1 states “We note that the Appellant has not addressed the heritage and archaeology impacts of their proposal”. We do not accept this.
- 1.2 A staged approach was undertaken to investigating and understanding the development site's historic environment conditions and assessing the potential impacts of development.
- 1.3 The Desk-Based Historic Environment Assessment produced by The Environment Partnership (TEP) Ltd¹ submitted with the application (Core Doc ref. CD1.18), comprised a desk-based review of the historic environment conditions of the site and a 1km study area which was assessed as appropriate to the scale of development. The assessment included a review of available historic maps, a search of the Historic Environment Record held by Bristol City Council and was supported by a walkover of the site to assess the site's potential to include heritage assets and to assess intervisibility with known heritage assets and their settings. The assessment considered the potential effects of development on the heritage significance of the Avon Valley and Brislington Conservation Areas, as well as the Grade II* Listed Church of St Luke and Grade II* Listed Church Hill House. The development site in its current form is considered to provide a minor positive contribution to the heritage significance of the conservation areas as representing the remains of post-medieval enclosed landscape that formerly bordered Brislington Common. The significance of effect of the proposed development on the heritage significance of the conservation

¹ TEP 2020, *Brislington Meadows Brislington, Bristol Historic Environment Desk-Based Assessment*, The Environment Partnership, unpublished, ref 7507.022.002

areas was assessed as being at the lower end of less than substantial harm due to minor changes within their setting. This is considered an unavoidable consequence of site allocation and conversion of rural land to residential. The development site is assessed as not contributing to the heritage significance of the Grade II* Listed buildings.

- 1.4 The development was noted as having the potential to impact on two non-designated heritage assets consisting of possible medieval ridge and furrow cultivation remains and the site of a former post-medieval farmstead. Archaeological surveys carried out as part of the application did not provide evidence for ridge and furrow remains or medieval activity. An additional review of archival evidence was carried out in November 2022; this research revealed that the linear striations visible on modern lidar, and which were initially assessed as possible ridge and furrow remains, do not respect the position of a former hedgerow visible on a 1791 map of the site (see also Francis Hesketh Proof of Evidence, Appendix D). This hedgerow was removed by the time of the 1846 Tithe map. As such, the striations could not have been formed prior to 1791 and are no longer considered as evidence for medieval ridge and furrow cultivation and have instead been attributed to late post-medieval or modern agricultural activity. The initially identified heritage asset of possible ridge and furrow remains is therefore no longer considered to have heritage significance. The site of the post-medieval farmstead is considered to be of negligible heritage significance.
- 1.5 The assessment noted that the proposed development had the potential to impact on as-yet unknown buried archaeological remains and recommended that further evaluation work be carried out at the pre-determination stage in order assess the below ground conditions. This recommendation was confirmed through consultation with the Bristol City Councils Principal Historic Environment Officer.
- 1.6 In accordance with the recommendations of the desk-based assessment a geophysical survey was undertaken of the development site². This work was undertaken by a registered organisation with the Chartered Institute for Archaeologists and in accordance with a Written Scheme of Investigation which was submitted to the Council's Principal Historic Environment Officer for approval prior to commencement of works. The survey successfully identified a range of anomalies of probable archaeological origin which were interpreted as a possible area of settlement dating to the Romano-British period.
- 1.7 Following the completion of geophysical survey, a trial trench evaluation was carried out to investigate and characterise the archaeological remains³. The survey was designed to target features of probable archaeological origin as well as to test features of unknown origin and negative areas. The work was carried out by a registered

² Wessex Archaeology 2020, *Brislington Meadows, Brislington, Bristol, Detailed Gradiometer Survey Report*, Wessex Archaeology, unpublished, ref 239880.03

³ Cotswold Archaeology, 2022, *Brislington Meadows Brislington, Bristol, Archaeological Evaluation*, Cotswold Archaeology, unpublished, ref CR0810_1

organisation with the Chartered Institute for Archaeologists and in accordance with a Written Scheme of Investigation. The survey confirmed the presence of archaeological remains consisting of ditched enclosures dating to the Roman period. The work also provided evidence for Roman glass working activity in the vicinity of the excavated trenches which is considered by the Council's Principal Historic Environment Officer to be unique to this site in the Bristol region and of great archaeological significance.

- 1.8 The staged approach to investigating the site's historic environment conditions and potential to include archaeological remains is considered to be consistent with ClfA guidance as well as Bristol City Council's 'Archaeology and Development' guidance, SPD7⁴. The surveys are considered to have successfully characterised the site's historic environment conditions and are sufficient to allow an informed determination to be made by the Council on heritage and archaeology matters.
- 1.9 In responding to the application, Bristol City Council's Principal Historic Environment Officer has not objected to the application and has requested that a Condition for a programme of archaeological works be attached to ensure the preservation by record of these remains, to be secured by a condition which the Appellant has agreed. This is consistent with paragraph 205 of NPPF⁵, policy DM31 of Bristol Local Plan⁶ and SPD7.
- 1.10 The Rule 6 Statement of Case argues that the archaeological remains at Brislington Meadows must be protected in accordance with NPPF, BCS2 and DM31, as being equivalent importance to nationally significant heritage assets and that development would lead to substantial harm.
- 1.11 Footnote 68 of paragraph 200 of the NPPF states that "*Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.*"
- 1.12 Policy DM31 implements policy BCS22 of the Core Strategy⁷ and details how the council proposes to secure the conservation of heritage assets. It recognises that heritage assets are a finite non-renewable resource and great weight should be given to the conservation of designated heritage assets:

"Development that has an impact upon a heritage asset will be expected to conserve and, where appropriate, enhance the asset or its setting. Scheduled monuments and other non-designated archaeological sites of equivalent importance should be

⁴ Bristol Local Development Framework, Supplementary Planning Document number 7, Archaeology and Development, adopted March 2006

⁵ National Planning Policy Framework, 2021

⁶ Site Allocations and Development Management Policies, Local Plan, Adopted July 2014

⁷ Bristol Development Framework, Core Strategy, Adopted June 2011

preserved in situ. In those cases where this is not justifiable or feasible, provision should be made for excavation and record with an appropriate assessment and evaluation. The appropriate publication/curation of findings will be expected."

- 1.13 The non-designated heritage assets and archaeological remains identified within the development site are considered to be of low (local) heritage significance. The development site may include archaeological remains relating to glass-working of the Roman period which is considered by the Council's Principal Historic Environment officer to be of moderate (regional) heritage significance. No known archaeological remains within the site are considered to be of equivalent to national significance.
- 1.14 The known archaeological remains recorded within the site are of up to moderate (regional) significance and the development is likely to have an impact on these assets. This impact can be mitigated by a programme of archaeological works with the results being made available for public dissemination in accordance with NPPF paragraph 205.
- 1.15 Supporting documents referenced in the Statement of Case (R6.3) note additional alleged heritage assets not included in TEP's heritage assessment including the remains of a stock pond visible on early Ordnance Survey mapping, a mid-19th century find of a box containing nails, finds of prehistoric stone tools and fragment of Roman pottery from the Brislington Meadows site, and a footpath which may have been in use since the medieval period. If considered as part of a heritage assessment these would be assessed as being of negligible or at most low heritage significance. The impact of development is likely to be none or, at most, at the lower end of less than substantial harm.

**Appendix 3: Extract from DEFRA Local Sites:
Guidance on their Identification, Selection
and Management (2006)**

Legislative and Policy Context

Treatment within the Planning System

5. *Planning Policy Statement 9: Biodiversity and Geological Conservation* provides a statement of national planning policy for biodiversity and geological conservation in England. It recognises that Local Sites have a fundamental role to play in helping to meet overall national biodiversity targets, contributing to the quality of life and the well-being of the community and in supporting research and education. Local Development Frameworks should identify all local nature conservation areas on the proposals map⁴.
6. Criteria based policies should be established in Development Plan Documents within the Local Development Framework against which proposals for any development on or affecting such sites will be judged. Clear distinctions should be made between the hierarchy of international, national, regional, and locally designated sites.
7. *Planning Policy Guidance Note 17: Planning for Open Space, Sport and Recreation* sets out the Government's policies for the protection and creation of open spaces, sports and recreational facilities. Local authorities are expected to protect all open space required by communities and they should assess community needs for open space, sport and recreation and carry out audits of open space and sporting and recreational facilities. It recognises that open space of high quality or of particular value to a local community should be identified and given protection by local authorities through appropriate policies in plans. Areas of particular quality may include open spaces that also benefit biodiversity and geodiversity. Local Authorities should take account of the various functions of open space, including that of providing havens and habitats for flora and fauna, when deciding on the most appropriate way to treat such spaces.
8. Government's announcement on the rationalisation of local authority plans (ODPM, November 2002) identifies Local Biodiversity Action Plans as one of the plans to be subsumed into Community Strategies. Local authorities will need to demonstrate that local biodiversity planning has been considered within their Community Strategy and that Community Strategies as a whole are informed by the purposes of biodiversity planning.

Section 74 of the Countryside and Rights of Way Act 2000

9. Every minister and Government department has a duty to have regard to the purpose of the conservation of biological diversity in the exercise of its functions; and to take, or promote the taking by others, of steps to further the conservation of the habitats and species which together are of principal importance for the conservation of biodiversity⁵.

Biodiversity Strategy for England

10. This is the principal means by which Government in England will discharge the section 74 duties referred to above, and this includes the promotion of a more consistent approach to the operation of Local Sites systems, ('Working with the Grain of Nature' Defra, 2002, pp 24 and 58).

⁴ See sections 2.20-2.23 of Planning Policy Statement 12: Local Development Frameworks

⁵ List of the habitats and species is available at <http://www.defra.gov.uk/wildlife-countryside/cl/habitats/habitats-list.pdf>

Appendix 4: Extract from PPS12: Local Development Frameworks

8. Adopted proposals map

- 8.1 The adopted proposals map should:
- identify areas of protection, such as nationally protected landscape and internationally, nationally and locally-designated areas and sites, and Green Belt land;
 - show areas at risk from flooding; and
 - allocate sites for particular land use and development proposals included in any adopted development plan document and set out the areas to which specific policies apply.
- 8.2 District planning authorities should include on their adopted proposals map, minerals and waste matters including safeguarding areas, and any minerals and waste allocations which are adopted in a development plan document by the county council.
- 8.3 Inset maps may be used to show policies for part of the authority's area, such as the policies for area action plans, which must all be shown on the adopted proposals map. Where inset maps are used, the geographical area they will cover will be identified on the main adopted proposals map. The boundaries of each inset map must be shown precisely on the adopted proposals map but the policies shown on the inset must not appear on the main adopted proposals map.

**Appendix 5: Extract from PPS9: Planning for
Biodiversity and Geological Conservation: A
Guide to Good Practice**

- 4.33 The Core Strategy will provide the strategic framework for preparing more detailed plans for the LDF. Much of the information gathering and SA work carried out to produce the Core Strategy will apply to the preparation of any further plans and need not be duplicated unless it is considered out of date. Evidence gathering and analysis should concentrate on the specific impacts arising from the more detailed content of these subsequent plans, such as allocating specific sites for development.

Site Specific Allocations, Action Area Plans and other Development Plan Documents

- 4.34 The Core Strategy will contain a limited suite of overarching policies, incorporating objectives in respect of biodiversity and geological conservation, which provide the strategic hooks for more detailed policies in further DPDs.
- 4.35 The local authority will need to prepare a Site Specific Allocation DPD to apply the development allocations set out in the Core Strategy and to apply these to specific areas of land which, on adoption of the plan, are picked up in the proposals map. The Site Specific Allocation DPD may need to indicate areas of land designated for their biodiversity or geodiversity value and the nature of that designation, in order to clarify relationships with development allocations. In addition to allocating land for development, a Site Specific Allocation DPD or Area Action Plan could be used to meet PPS9 requirements by identifying specific areas for the restoration and enhancement of biodiversity or geological conservation identified in the Core Strategy.
- 4.36 Policies relating to designated sites may form part of a broader, criteria-based policy within the Core Strategy but may require more detailed policy treatment in an additional DPD or SPD. The location of these sites should be kept up to date by amending the LDF proposals map whenever a Sites Specific Allocation DPD, Area Action Plan or other DPD is adopted covering the area where the site is located.

International sites

- 4.37 The legal protection afforded to international sites is described in OPDM/Defra Circular 06/2005, 01/2005. Local authorities will need to ensure that, in preparing LDFs, this legal protection is not prejudiced. PPS9 requires that international sites are identified on the adopted proposals map. However the statutory protection enjoyed by these sites means that policies to protect these areas should not form part of the LDF. It would be good practice to include within DPD explanatory text which cross-references to legal protection as interpreted in OPDM/Defra Circular 06/2005, 01/2005 and which also explains the policy protection Government gives to pSPAs, cSACs and Ramsar sites.

Sites of Special Scientific Interest (SSSIs)

- 4.38 PPS9 requires that SSSIs are given a high degree of protection under the planning system through appropriately worded policies in plans. Paragraph 8 of PPS9 sets out the Government's policies for developments likely to have an adverse effect on SSSIs. LDFs should not repeat this but it would be good practice for local authorities to make appropriate cross-reference to it where impacts on SSSIs form a criterion within broader LDF policy. This will ensure that development control decisions apply Government policy.
- 4.39 The legislative regime governing SSSIs is set out in Part II of the Circular. This includes the duty imposed on local authorities by Section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the special features of SSSIs. LDFs must be prepared in accordance with this duty and may contain spatial policies which encourage local authorities to meet it through routes other than development control. This might include securing enhancement of SSSIs which fall within the ownership of the planning authority or which are otherwise capable of being addressed through its broader functions.

Locally and regionally protected sites

- 4.40 Local authorities should consider how local sites can be protected and enhanced. The Core Strategy will indicate how the authority and its partners intend to promote biodiversity and geological conservation. Good practice would be to include a strategy for local sites which would include positive proposals for protection and enhancement and how they will work to this end with landowners and developers of these sites. They should be identified within Site Specific Allocations DPDs so that they appear on the adopted proposals map and should include site specific policies for them.

Previously developed land

- 4.41 PPS9 recognises that the re-use of previously developed land is part of a sustainable approach but that, where these sites have significant biodiversity and geological interest of recognised local importance, the aim should be to retain and incorporate it into the site. Local authorities should not repeat this as a policy within the LDF but should consider the presence of such 'brownfield biodiversity' when developing the evidence base for a LDD or when considering allocating sites for development and the content of criteria-based policies.
- 4.42 It would be advantageous if any biodiversity value of previously developed sites was identified early in the process of developing a LDF. Its protection could then be addressed through appropriate DPD policies and site allocations and by producing design guidance and development briefs as SPD. Good practice in incorporating biodiversity/geodiversity into the design of development on previously developed sites could form part of a SPD advocating wider good practice in sustainable design. This could encourage outcomes such as that described in the following case study.

**Appendix 6: Proof of Evidence of Mr Alex
Rogers (Lambert Smith Hampton) on Housing
Need and Housing Land Supply Position
(January 2023)**

**PLANNING,
REGENERATION +
INFRASTRUCTURE**

**A Review of Housing
Evidence and 5YHLS
of Bristol
City Council**

APP/Z0116/W/22/3308537
Land at Broom Hill / Brislington
Meadows
Broomhill Road
Bristol
BS4 4UD

Homes England
January 2023

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1.0 EXPERIENCE AND SCOPE OF EVIDENCE

1.1 Experience

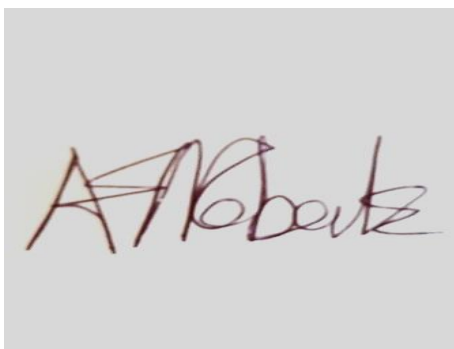
- 1.1.1 My name is Alex Roberts; I have a Joint Honours Degree in Urban and Regional Planning and Geography, I am an Associate Member of the Royal Town Planning Institute and a Member of the Institute of Economic Development. I am a Director of Lambert Smith Hampton's (LSH), Planning, Regeneration + Infrastructure team. My work specialises in undertaking planning evidence base projects including the assessment of housing land supply and the calculation of housing need.
- 1.1.2 I have a wide range of experience and have held various positions in private consultancy and local government. Before joining LSH in 2021, I was a Planning Director at a national planning consultancy for 6 years, prior to this I held the post of Development Plan Manager at Tamworth Borough Council.
- 1.1.3 Between 2004 and 2006, I worked at Swansea University. Whilst at the university I undertook research into and assessments of the 2001 Census and in particular changes to urban populations since 1991. Through this work I wrote articles and papers with colleagues. I also taught undergraduate courses on the use of statistical analysis and geographic information systems (GIS) in research.
- 1.1.4 In 2006, I took up the position of Planner within the Cassidy Group. I undertook work identifying development opportunities across England and promoted the development of sites through the development plan process.
- 1.1.5 In 2007, I began working with Wakefield Council as a Senior Planner, within the Spatial Policy department. Whilst at the Council I assisted regional colleagues on the preparation of the Yorkshire and Humber Regional Strategy, in respect of housing and employment need. I prepared and gave evidence regarding housing need and supply at the examination of the Council's Core Strategy, Area Action Plan and Site Allocations DPD.
- 1.1.6 In 2012, I joined Tamworth Borough Council as Development Plan Manager, a post which I held for 3 years. Within that time, I prepared and represented the Council at the examination of the Tamworth Local Plan (adopted 2016). I also represented the Council at a sub-regional and regional level on strategic planning issues, with particular focus on housing, employment, and transport.
- 1.1.7 I have advised many local planning authorities, developers and housebuilders on housing need and housing land supply matters and the calculation of the Standard Method for several years. In total I have acted as expert witness on these matters in excess of 40 appeals, in addition to appearing at Local Plan examinations across England.

1.2 Scope of this Report

- 1.2.1 LSH have been instructed by Homes England to prepare a technical report, which reviews evidence on Housing Need (inc. Housing Mix and Affordable Housing) and Housing Land Supply Position of Bristol City

Council. This report sets out the Appellant's position on these matters for the appeal. I have led the preparation of this report, colleagues in my team, based at the LSH Bristol office also undertook site visits.

- 1.2.2 I confirm that this evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I also confirm that the opinions expressed are my true and professional opinions.



Signed:

Alex Roberts, Director, Lambert Smith Hampton
10 January 2023

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2.0 INTRODUCTION

2.1 Overview

- 2.1.1 Lambert Smith Hampton (LSH) were instructed by Homes England to undertake a review of Bristol City Council's position on Housing Need, Affordable Housing and their Five Year Housing Land Supply (5YHLS) position in support of the forthcoming public inquiry and in light of the City Council's non-determination of an application for the redevelopment of land at Brislington Meadows (22/01878/P):

Application for Outline Planning Permission with some matters reserved - Development of up to 260 new residential dwellings (Class C3 use) together with pedestrian, cycle and vehicular access, cycle and car parking, public open space and associated infrastructure. Approval sought for access with all other matters reserved. (Major) | Land At Broom Hill/Brislington Meadows Broomhill Road Bristol BS4 4UD

- 2.1.2 This report has been appended to the Proof of Evidence of Mr Paul Connelly (LDA Design) and forms the basis of the Appellant's position on the topic specific Statement of Common Ground on 5YHLS matters, which is being prepared separately to this report with the Local Planning Authority (LPA).
- 2.1.3 An appeal is currently being undertaken by Homes England against Bristol City Council's non-determination of the planning application within the statutory determination period.
- 2.1.4 The review of Bristol City Council's 5YHLS position is undertaken to establish an up to date position on the Council's Land Supply.
- 2.1.5 The report will be structured as follows:
- Overview of the relevant National Planning Policy Framework and Planning Practice Guidance sections and the proposed changes to the National Planning Policy Framework;
 - Overview of relevant case law and appeal decisions;
 - Review of the Council's Development Plan Status including the emerging Plan and timescales for production;
 - An assessment of housing need in Bristol;
 - The Council's published 5YHLS Position;
 - The review undertaken by LSH of the 5YHLS position;
 - A more realistic position given the review;
 - A review of affordable housing need and past delivery in the Local Authority Area;
 - A review of housing mix delivered over the extant plan period and impact of the proposed scheme on supply and mix of housing
 - Summary and conclusions

3.0 NATIONAL PLANNING POLICY AND GUIDANCE

3.1 National Planning Policy and Guidance

3.1.1 This chapter will set out the applicable National Planning Policy Framework and Planning Practice Guidance paragraphs relating to Five Year Housing Land Supply, housing need and housing mix.

i) Local Housing Need

3.1.2 The most recent NPPF was published in July 2021 and came into force with immediate effect. Chapter 5 of the Framework covers delivering a sufficient supply of homes.

3.1.3 Paragraph 61 states that the local housing need should be calculated using the standard method unless there are exceptional circumstances to justify an alternative approach:

“To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.”

3.1.4 Paragraph 74 states that local planning authorities should identify and update annually a five-year supply of deliverable housing against their housing requirement. Further detail is provided in the Planning Policy Guidance (PPG), which states at paragraph 004 Reference ID: 68-004-20190722 that:

“an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals. They can do this one of two ways:

- *using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);*
- *‘confirming’ the 5 year land supply using a recently adopted plan or through a subsequent annual position statement”*

3.1.5 The housing requirement, used in the 5YHLS assessment, should either be that set out in the Local Plan where it is less than five years old, or the Local Housing Need (LHN) as calculated by the standard method where the adopted Local Plan is in excess of five years old.

“Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.”

- 3.1.6 In the context of paragraph 74, LHN is defined by reference to Annex 2 of the Framework which states that the Local Housing Need is:

“The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 61 of this Framework).”

- 3.1.7 The PPG sets out the standard method at paragraph 005 Reference ID: 2a-005-20190220 as follows:

- a) Step 1 – Setting the baseline – The projected average annual household growth over the next 10 year period using the 2014-based household projections.
- b) Step 2 – An adjustment to take account of affordability – where the median affordability ratio is above 4, an adjustment factor should be applied. The adjustment factor is to be calculated using the formula below:

$$\text{Adjustment factor} = \left(\frac{\text{Local affordability ratio} - 4}{4} \right) \times 0.25 + 1$$

- c) Step 3 – Capping the level of any increase – where a local authority adopted a local plan more than 5 years ago and has not reviewed their housing requirement figure since then, the cap is set at 40% above the higher of the most recent average annual housing requirement figure or household growth.
- d) Step 4 – A 35% uplift is applied for urban local authorities in the top 20 cities and urban centres list. As of December 2020, the list of urban local authorities was as follows; Birmingham, Bradford, Brighton and Hove, Bristol, Coventry, Derby, Kingston upon Hull, Leeds, Leicester, Liverpool, London, Manchester, Newcastle upon Tyne, Nottingham, Plymouth, Reading, Sheffield, Southampton, Stoke-on-Trent, and Wolverhampton.

ii) Buffer

- 3.1.8 Paragraph 74 of the Framework also states that in addition to the housing requirement, a buffer should be added of between 5% to 20% as follows:

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

- a) 5% to ensure choice and competition in the market for land; or

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

iii) The Housing Delivery Test (HDT) and Action Plans

3.1.9 The NPPF advises that where the HDT result indicates that housing delivery has fallen below 95% of housing requirement for the previous three years, that authority should develop a Housing Action Plan to assess the underlying cause of reduced delivery and to identify and develop actions to improve levels of delivery in future years.

iv) The definition of ‘deliverable’

3.1.10 Paragraph 74 identifies that the five year land supply of housing should be ‘deliverable’. The definition of deliverable set out in Annex 2 of the Framework is stated below. Although not a closed list, this identifies two broad categories of sites. Category A sites are small sites with extant permissions and large sites with detailed permission, here the sites are considered deliverable unless there is clear evidence that they will not be delivered. Category B sites are large sites with outline permission, allocations, sites with permission in principle, and brownfield register sites; here there has to be clear additional evidence to justify their inclusion into the land supply.

“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.”*

3.1.11 The PPG provides further guidance on the definition of deliverable relating to those sites which are Category B, Paragraph: 007 Reference ID: 68-007-20190722:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

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

Such evidence, to demonstrate deliverability, may include:

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

v) Windfall Allowances

3.1.12 As defined by the National Planning Policy Framework (NPPF) in Annex 2, windfall sites are sites that are not specifically identified in the development plan.

3.1.13 Paragraph 71 of the NPPF states that anticipated supply figures can include a windfall allowance, and that it should be realistic and based on historic trends:

“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

- 3.1.14 The Planning Practice Guidance (PPG) sets out the method for assessing Housing and Economic Land Availability. Stage 3 sets out the method for undertaking a windfall assessment. This states that:

“A windfall allowance may be justified in the anticipated supply if a local planning authority has compelling evidence as set out in paragraph 70 [now paragraph 71 above] of the National Planning Policy Framework.

Local planning authorities have the ability to identify broad locations in years 6-15, which could include a windfall allowance (using the same criteria as set out in paragraph 67 [now paragraph 68] of the National Planning Policy Framework).”

vi) Housing Mix

- 3.1.15 National Planning Policy contains applicable Policy in relation to housing mix at chapter 5.

- 3.1.16 Paragraph 60 states:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

- 3.1.17 Paragraph 62 states:

“the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).”

- 3.1.18 National Planning Policy is clear that a variety of sufficient land should come forward and that the range of housing needed by the local community should be reflected in policies. As such, proposed residential schemes must have potential to accommodate all demand in the market.

vii) Student Accommodation

- 3.1.19 The PPG at paragraph 034 Reference ID: 68-034-20190722 advises that student accommodation can contribute to land supply whether communal halls or self-contained residences.

- 3.1.20 The PPG later states that inclusion in the five year housing land supply is based upon the amount of general market accommodation that newly created student accommodation releases within the wider housing market. For instance allowing existing properties to return to general residential use, or remain in said use as opposed to being converted to student accommodation.

- 3.1.21 On this basis the PPG advises that both communal establishments and multi bedroom self contained student flats need to be subject to calculations which establish the average number of students living in student accommodation using census data.
- 3.1.22 To satisfy the requirements of the PPG, analysis to calculate the amount of homes that will be returned to the general (non-student) market must be undertaken, where the PPG advises that the only exception to this rule are studio flats.

viii) Housing Requirement

- 3.1.23 Bristol City Council's Core Strategy was adopted in June 2011. A Local Plan Review is currently being undertaken, however, the extant development plan forms the basis for housing requirement in the area, until the revised Plan is adopted by the Council.
- 3.1.24 As the strategic housing policies in the extant development plan are more than five years old, national policy requires that the housing requirement should be calculated by use of the standard method.
- 3.1.25 The Local Housing Need calculation, using the Standard Methodology for Bristol City is set out in section 6.

3.2 Proposed Changes to National Planning Policy

- 3.2.1 On December 23rd 2022, the Department for Levelling Up, Housing and Communities (DLUHC) published the open consultation titled; Levelling-up and Regeneration Bill: reforms to National Planning Policy.
- 3.2.2 The purpose of the consultation, ending 2nd March 2023, is to seek opinion on how the Government might develop revised National Planning Policy to support wider objectives.
- 3.2.3 On the 6th December, the Secretary of State (SoS) Michael Gove made a Written Ministerial Statement (WMS) which covered several issues which relate to 5YHLS matters. Including, how and when local authorities have to demonstrate a 5YHLS, the removal of a buffer to the housing requirement and how past over supply, or under supply can be considered in 5YHLS assessment.
- 3.2.4 Proposals also include a temporary policy intervention, whereby a 4 year HLS (4YHLS) would be required for those Local Authorities that are in the process of preparing a Local Plan and have progressed sufficiently in the consultation stages
- 3.2.5 Regarding The Levelling-up and Regeneration Bill (LURB): reforms to national planning policy consultation, the proposals in relation to 5YHLS and most relevant to this case are as follows:
- Maintaining the objective of delivering 300,000 homes annually from the mid-2020s. The proposed changes are aimed at helping to deliver this for instance through incentivising the adoption of Local Plans.
 - Retaining the Urban uplift of 35% in aid of delivering more homes in sustainable urban locations, which the Government intend to ensure that this is met by the relevant towns and cities and not handed down to surrounding areas.

4.0 PLANNING APPEALS AND JUDGMENTS

4.1 Planning Appeal Decisions and Relevant Judgments

4.1.1 There have been many appeal decisions and court judgments which have considered the various components to housing land supply.

4.1.2 The section below makes reference to numerous appeals and judgements across England, which are of relevance to this appeal, as listed below and discusses different aspects of housing land supply:

- Land to the East of Newport Road and to the East and West of Cranfield Road, Woburn Sands, Buckinghamshire – ref: APP/Y0435/W/17/3169314 (CD6.7)
- Land off Audlem road/Broad lane, Stapeley – ref: APP/R0660/A/13/2197532 (CD6.8)
- Land off Peter de Stapeleigh way, Nantwich – ref: APP/R0660/A/13/2197529 (CD6.9)
- Land to the south of Williamsfield Road, Hutton Cranswick – ref: APP/E2001/W/18/3207411 (CD6.10)
- Land at Poplar Hill, Stowmarket – ref: APP/W3520/W/18/3214324 (CD6.11)
- Land at Junction with Carr Road and Hollin Busk Lane, Sheffield – ref: APP/J4423/W/21/3267168 (CD6.12)
- Land South of Arlesey Road, Stotfold - ref: APP/P0240/W/21/3289401 (CD6.13)
- Little Sparrows, Sonning Common, Oxfordshire – ref: APP/Q3115/W/20/3265861 (CD6.14)
- Silverthorne Lane, Bristol – ref: APP/Z0116/V/20/3264641 (CD6.1)
- Entech House, London Road, Woolmer Green SG3 6JE – ref: APP/C1950/W/17/3190821 (Appendix 3)
- Station Approach, Lower Sydenham, London – ref: APP/G5180/W/16/3144248 (Appendix 4)
- Green Road, Woolpit, Suffolk Appeal – ref: APP/W3520/W/18/3194926 (Appendix 5)
- Land at Site of Former North Worcestershire Golf Club Ltd. Hanging Lane, Birmingham – ref: APP/P4605/W/18/3192918 (Appendix 6)
- Longdene House, Hedgehog Lane, Haslemere Appeal – ref: APP/W/16/3165974 (Appendix 7)
- Land at Home Farm, Church Hill, Pinhoe, Exeter Appeal – ref: APP/Y1110/A/14/2215771 (Appendix 8)
- Land off Darnhall, School Lane, Winsford SoS Decision on Appeal – ref: APP/A0665/W/14/2212671 (Appendix 9)
- Hallam Land Management Ltd. v SOSCLG [2018] EWCA Civ 1808 (CD6.15)

4.1.3 The Silverthorne Lane appeal decision (APP/Z0116/V/20/3264641) (CD6.1) of April 2022 by the Secretary of State (SoS) is a relevant appeal decision within Bristol City Council's planning area, which provides useful context for this appeal.

- 4.1.4 The appeal report references Bristol City Council's Five Year Housing Land Supply Position which the Council estimated to be 3.5 to 4 years. The Bristol City Council Five Year Housing Land Supply Assessment of June 2021 suggests a 3.7 year supply, which covers the 5 year period of 2020-2025.
- 4.1.5 The case was made by the appellant that this was somewhat optimistic as it assumed a significant amount of schemes that have been consented would be implemented and completed before 2025.
- 4.1.6 A case was made by the appellant's witness that the housing land supply figure at June 2021 was more likely to range from 2.59 years to 2.96 years.
- 4.1.7 It was subsequently agreed by the Council's witness that he concurred with the revised estimates stating that more recent calculations would suggest that land supply was towards the upper end of the scale suggested.
- 4.1.8 The inspector summarised that:
"The significant housing supply shortfall in Bristol is a weighty material consideration in favour of the application proposals."
- 4.1.9 Furthermore, the inspectors report states:
"The provision of housing and affordable housing in the context of Bristol not having a 5 year supply and the government policy objective of significantly boosting the supply of homes is quite clearly a benefit of significant weight."
- 4.1.10 Finally, on the issue of five year housing land supply, the report summarises:
"It is not necessary to resolve the precise figure because there is agreement on the lack of 5YHLS and the broad scale of the deficit. The provision of housing and affordable housing is a benefit attracting significant weight."
- 4.1.11 In the above case the SoS concluded that the development be allowed given the potential regeneration benefits and critically and ultimately, the contribution it would make to the supply of local homes including affordable housing.
- 4.1.12 Hallam Land Management Ltd V SoSCLG [2018] EWCA Civ 1808 (CD6.15), is a relevant judgment concerning housing land supply and how a 5YHLS shortfall should be considered in decision making.

ix) Calculating Local Housing Need

- 4.1.13 In the appeal at Land at Poplar Hill, Stowmarket, (APP/W3520/W/18/3214324) (CD6.11), the question of when should housing need be calculated was deliberated at the inquiry.
- 4.1.14 The NPPF and PPG set out a three-step procedure for calculating local housing need (LHN). The first step uses the Government's 2014-based household projections to calculate average annual household growth over a ten-year period, with the current year at the time of calculation used as the basis.
- 4.1.15 The second step is to take account of affordability using up to date workplace-based affordability ratios from the Office for National Statistics (ONS).

- 4.1.16 The third step of the LHN calculation involves capping the level of increase. In this case both parties agreed that no cap need be applied for Mid Suffolk. Consequently, the LHN figure with a 20% buffer to increase chances of achieving the supply, needed to be evidenced as deliverable.
- 4.1.17 In the appeal of Land at Poplar Hill, Stowmarket, (APP/W3520/W/18/3214324) a case was made for using a previous year rather than the current year, due to availability of supply data for the purposes of comparison.
- 4.1.18 The inspector's decision letter concludes that there was no basis in published guidance for adopting this approach in the calculation of LHN, which ultimately should be made independently of supply.
- 4.1.19 In addition, regarding affordability ratios, the case was made to use a previous year of data rather than the current year.
- 4.1.20 In this appeal the Inspectors letter at paragraph 59 concludes:
"National guidance is quite clear that local housing need should be calculated with the current year as the starting point, not some previous year, and applying the most recent figures for affordability, not those of some previous year and that housing supply need only be calculated annually."
- 4.1.21 The Land at Junction with Carr Road and Hollin Busk Lane, Sheffield (APP/J4423/W/21/3267168) (CD6.12), appeal, considers the standard method and in particular step 4 of the process.
- 4.1.22 The PPG requires that an 'Urban Cities and Urban Uplift' of 35% is applied to the housing need figure of top 20 urban local authorities.
- 4.1.23 A case was made at the appeal by the Local Planning Authority that the uplift was not applicable as the base year for the housing requirement was considered as 2020/2021 (01.04.2020-31.03.2021), when the urban uplift figure took effect from June 2021, post the aforementioned period.
- 4.1.24 The inspector at paragraph 36, concludes that:
"Therefore, I consider that national guidance is quite clear that the requirements of the urban uplift applies from 16 June 2021 and there are no provisions to opt-out of avoiding the effect of the uplift from this date. I have no convincing evidence from the Council to justify why the 35% uplift should not be applied after the 16 June 2021 date."
- 4.1.25 These appeals demonstrate a need to use relevant and the most up to date evidence when calculating housing need to be used in a 5YHLS assessment.
- x) The definition of deliverable
- 4.1.26 The appeal and decision at Woburn Sands (CD6.7) covers the definition of deliverability and the base date and timescale of the evidence, by considering several court judgments and recent appeal decisions covering housing land supply matters. The Secretary of State at paragraphs 12-16 of his letter (Woburn Sands), agrees with the 5 Year Housing Land Supply analysis of the appointed Inspector at IR.12.4 to IR12.64.

- 4.1.27 At IR12.5 to 12.7 deliverability is considered, whilst this references the 2019 NPPF, there are no changes between the 2021 version on land supply matters and therefore the commentary is still relevant. Here the SoS has agreed with the Inspector, who was considering the well-known cases of St Modwen in the Court of Appeal and East Bergholt. At 12.5 the Inspector helpfully summarises that:

The Court of Appeal judgment in St Modwen found that realistic prospect did not mean a site's deliverability must necessarily be certain or probable. It also noted the distinction between deliverability and delivery in that a deliverable site does not necessarily have to be delivered.

- 4.1.28 The St Modwen judgment is still relevant when considering the definition of deliverability in the context of the 2021 NPPF.
- 4.1.29 In the appeal at Land to the south of Williamsfield Road, Hutton Cranswick – ref. APP/E2001/W/18/3207411 (CD6.10) at paragraph 27 the inspector stated:

"The appellant's position is that the Council did not adopt an approach to deliverability in line with the definition in the Glossary to the Framework. This states that (amongst other matters) for housing sites to be considered deliverable, they should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. The definition includes the need for clear evidence. The 2019 Framework has 'raised the bar' related to deliverability in comparison with earlier Framework iterations and other national advice. However there is no definition of what constitutes 'clear evidence' of future delivery and, as the appellant accepted, there is no defined minimum criterion. In my view, the appellant – in using a 'highly likely' test - has raised the bar significantly above that advised in national policy and guidance. This would make it difficult for any recently adopted plan to survive an appeal against a s78 refusal based on five year housing land supply. In contrast, I find that the Council's approach is soundly based on national policy and guidance."

- 4.1.30 This appeal clarifies that there isn't a minimum criteria to what constitutes clear evidence to demonstrate a site is deliverable. This is further supported by other decisions, such as Land off Audlem road/Broadlane, Stapeley, Nantwich and land off Peter de Stapeleigh way, Nantwich – ref. APP/R0660/A/13/2197532 (CD6.8) APP/R0660/A/13/2197529 (CD6.9).
- 4.1.31 Despite there being no definition of what a minimum criterion is for the type of evidence to demonstrate deliverability, there is obviously a need for that evidence to be provided. For example, the inspector at Entech House, London Road, Woolmer Green SG3 6JE – ref. APP/C1950/W/17/3190821, concluded that evidence presented within an excel spreadsheet, fell considerably short of that required by the NPPF.
- 4.1.32 Furthermore, in the case of the Little Sparrows, Sonning Common Appeal decision (APP/Q3115/W/20/3265861) (CD6.14) in June 2021 emphasis is placed on the requirement for up to date and actual evidence when demonstrating a five year housing land supply. The inspectors decision concludes at paragraph 20, on this issue that:

"This advice indicates to me the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned."

4.1.33 Furthermore paragraph 21 of this appeal decision states:

"Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward."

4.1.34 The Land off Audlem road/Broad lane, Stapeley (APP/R0660/A/13/2197532) (CD6.8) and the land off Peter de Stapeleigh way, Nantwich (APP/R0660/A/13/2197529) (CD6.9) decision considers the evidence required to justify deliverability. This confirms that those sites with outline permission only require additional evidence of progress to justify their inclusion, this evidence can include a written agreement with an agent/developer, or the site is on a brownfield register.

xi) Base date and timescales of evidence

4.1.35 Returning to Woburn Sands (CD6.7), at IR12.9 the inspector sets out, agreed by the SoS, that:

"...there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5 year HLS has to be available at the base date itself. Instead the PPG advocates the use of the latest available evidence"

4.1.36 At IR 12.10 and 12.11 there is a distinction made between the skewing of a land supply position by adding in additional sites, that may have come to light after the base date of an assessment and the use of information to support, or confirm the inclusion of a site already within the land supply. The Inspector references 5 other appeal decisions which took a similar approach.

4.1.37 With respect to the importance of a base date and how, or if, it should be updated, the Inspector for the Poplar Hill, Stowmarket decision (CD6.11), at paragraph 60 stated that:

[in the past]...participants in a local inquiry would have spent many hours of resources in seeking to establish, in the words of the then footnote 11, whether sites were available and offered a suitable location for development "now", ie at the time of the Inquiry; a nugatory exercise because dwellings are completed on a constant basis (and so should be removed from the pipeline) whilst new sites would be brought forward at any time (and so added to the pipeline), an exercise of chasing a will-o'-the wisp repeated successively for each appeal within a local authority's area.

Now, the exercise need not be conducted more than once a year but will inevitably be out of kilter with the most recent calculation of local housing need.

4.1.38 The importance recognised by this is Inspector is that whilst whatever the method of calculating the housing requirement may be, it is important that the assessment on the supply side of the equation, need only be done once per year, and that the addition or subtraction of sites should only be carried out on that basis, not updated for every appeal.

4.1.39 Similarly, in the appeal decision at Station Approach, Lower Sydenham, London – ref. APP/G5180/W/16/3144248 the Inspector noted that in paragraphs 17 and 18:

The final site is the former Town Hall and car park that was granted planning permission for 53 units in November 2015, after the base date of 1 April 2015. The appellants submit that the appropriate estimate is the 20 units envisaged at the base date, whereas the Council considers that the latest position should be the one on which the figures are based.

Whilst there is more up to date information now available, it seems to me that if additional units granted planning permission after the base date are to be taken into account, so should any units that have been completed after the base date and consequently removed from the future supply availability, in order to present the most accurate overall picture. This exercise had not been completed for the Inquiry and I therefore conclude that for the purposes of this appeal, the position as agreed in the SoCGH should be adhered to.

4.1.40 The Inspector recognises that if sites are added to the supply after an agreed base date, then those sites which would have been removed from the supply after that base date should be removed.

4.1.41 Land on east site of Green Road, Woolpit, Suffolk Appeal – ref. APP/W3520/W/18/3194926, in this appeal decision the Inspector discusses the definition of deliverable. It emphasizes that sites should have sufficient published evidence at the base date of the assessment to justify their inclusion into the supply, as the inclusion of additional sites after the base date skews the data by overinflating the supply without adjusting the need. Paragraph 67 of the decision notice states:

The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.

4.1.42 Within these appeals referenced, it is clear from the Inspectors that if changes to one of the following components is made to a housing land supply after the base date, then the other actions must also be carried out to ensure that the base date amongst all components remains the same. If only one component is changed then there is a misalignment in base dates, which should not be accepted.

- New sites (permissions, allocations etc.)
- Construction activity on site, taking into account completed dwellings
- Planning Status of sites – which would include if permissions have expired

4.1.43 It should be noted that there is a distinct difference between updating of baseline of the 5YHLS and using evidence post-baseline to confirm assertions made at the baseline using evidence available at that time.

4.1.44 Evidence post-dating the publication of a land supply statement, can be used, but it should only be used when it confirms the existing position of the Council. Sites should not be included in a supply, with an absence of evidence, with the hope that evidence will materialise through the following months.

4.1.45 In the SoS decision; Land at Site of Former North Worcestershire Golf Club Ltd. Hanging Lane, Birmingham – ref. APP/P4605/W/18/3192918, the Inspector makes reference to the Woolpit appeal decision (ref. 3194926) and recognises that additional sites should not be included into the supply after the base date of the assessment. However, any additional information after the base date on the existing sites can be used to further justify its inclusion. Paragraph 14.48 states:

The parties agree that the base date for the 5YHLS is 1 April 2018 and that the supply should be assessed at that base date. [6.5] As noted by Inspector Stephens in the Woolpit decision, (paragraph 67) this requires a clear cut-off date as including sites beyond that date skews the data by overinflating the supply without a corresponding adjustment of need. A site granted permission after 31 March should not, therefore, be included in the sites with permission categories within the 5YHLS. However, this does not mean that all information gathered after the cut-off date is irrelevant where, for example, this serves to confirm that assumptions made when deciding what should be in the supply were well founded.

4.1.46 In Longdene House, Hedgehog Lane, Haslemere Appeal – ref. APP/W/16/3165974 it is again emphasized that for a site to be considered deliverable, the site has to have sufficient evidence at the base date of the assessment. This decision makes it clear that whilst a reserved matter gained after the base date may be used to support the inclusion of the site, the site requires sufficient evidence of its deliverability at the base date to justify its inclusion. Paragraph 39 of the decision notice states:

I share some of the appellant's concerns about the implications of changes in the Framework to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the Guidance. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing

completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.

xii) Student Accommodation in the Land Supply

- 4.1.47 As acknowledged by the inspector's decision letter at the Land at Junction with Carr Road and Hollin Busk Lane, Sheffield (APP/J4423/W/21/3267168) (CD6.12) appeal, the PPG at paragraph 034 Reference ID: 68-034-20190722 advises that student accommodation can contribute to land supply whether communal halls or self-contained residences.
- 4.1.48 The PPG states that this is based upon the amount of accommodation that newly created student accommodation releases within the wider housing market, for instance allowing existing properties to return to general residential use, or remain in said use as opposed to being converted to student accommodation.
- 4.1.49 On this basis the PPG advises that both communal establishments and multi bedroom self-contained student flats need to be subject to calculations which establish the average number of students living in student accommodation using census data.
- 4.1.50 The inspector's decision for the above appeal notes that to satisfy the requirements of the PPG, analysis to calculate the amount of homes that will be returned to the general (non-student) market must be undertaken, where the PPG advises that the only exception to this rule are studio flats.
- 4.1.51 The decision goes on to state that it is clear in PPG that the ratio is not 1:1 and that consideration should be given to the growth in the student cohort against supply.
- 4.1.52 In the case of the above appeal the inspector suggested that if growth was the same as the supply of new student accommodation that it was unlikely that any stock would be released from student to general use.
- 4.1.53 Furthermore, the inspector suggested that no convincing evidence had been provided by the Council on analysis of student growth subsequently demonstrating how much market housing would be released had been undertaken.
- 4.1.54 The inspectors report concluded:

"Without demonstration on the part of the Council that the 2,763 were adding to overall housing supply, and not simply meeting the needs of a growing student population, then they should be discounted. The effect of this view is to further reduce the number of years' worth of supply which the appellant calculates, in addition to the application of the Cities and Urban Areas Uplift, would provide a supply of 3.25 years. Even if I were to be persuaded that the urban uplift should not be applied, removing the student accommodation would take the supply to below 5 years."

- 4.1.55 At the appeal at Home Farm, Exeter (APP/Y1110/A/14/2215771) the inspector draws a similar conclusion, citing a lack of evidence and consequentially, the removal of student accommodation from the supply.
- 4.1.56 In addition, in the SoS decision at Darnhall, Winsford, (APP/AO665/W/14/2212671) the same conclusion is drawn

xiii) Extent of the Shortfall:

- 4.1.57 In the case of Hallam Land Management Ltd. v SOSCLG [2018] EWCA Civ 1808 (CD6.15), the central issue in that case was the question of: how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land?
- 4.1.58 The important principle for present purposes is that in housing appeals, the decision-maker will normally have to identify at least the broad magnitude of any shortfall in housing land supply, but it is important for a local planning authority to understand the magnitude of the shortfall, and logically why one is present, how long the shortfall will persist and what the planning authority will do to reduce the shortfall.

“The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of Hopkins Homes.”

4.2 Summary

- 4.2.1 In summary, in assessing whether a Local Planning Authority can demonstrate a five-year supply of housing land, the key principles are:
- For the purposes of calculating a five-year land supply, the housing requirement is either that contained within a development plan which is less than five years old since adoption, or where there is no up to date plan, the housing requirement is that defined by paragraph 74 of the Framework, i.e local housing need.
 - Local Housing Need (LHN) should be calculated using the standard method according to the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG).
 - Local authorities need to identify and update annually five years’ worth of supply of specific deliverable sites for housing against their housing requirements, with an additional buffer of 5%, 10% or 20% as determined by the HDT (Paragraph 74 of the Framework).
 - There is a requirement to undertake an assessment once a year, however there are no restrictions on undertaking more than one assessment each year. It is important to maintain the base date of the assessment and that components of this should not be updated independently on an ad-hoc basis.

- Sites that can go in the supply are split between category A and B. With regards to Category B, the Framework requires Category B sites, should be suitable, available and achievable and that there is a realistic prospect completions will begin in five years to be included in the five-year land supply.
- Clear evidence is required to support sites which are within category B. Whilst there is no minimum criteria for clear evidence, Inspectors and the PPG are clear as to what could constitute this and also what has not been acceptable.
- Sites should not be added to the supply post the base date, however evidence could be used post base date to support sites included at the base date cut off point
- The magnitude of the shortfall is likely to be material for the reasons given in Hallam Land Management Ltd and SoS CLG (CD6.15) and Eastleigh Borough Council and the planning authority should understand why a shortfall exists and identify how the shortfall will be reduced.
- Student accommodation can contribute to the five year housing land supply, however the extent to which it contributes should be considered and measured as per PPG and excluded from supply where the subsequent benefit of student accommodation to the general market cannot be demonstrated.

5.0 COUNCIL'S DEVELOPMENT PLAN STATUS

5.1 The Extant Development Plan

- 5.1.1 Bristol City Council's Core Strategy was adopted in June 2011. The Core Strategy outlines the amount of residential development to be delivered between 2006 and 2026 with focus primarily on brownfield (previously developed) land and subsequently open space where brownfield opportunities are unavailable.
- 5.1.2 Policy BCS5 of the Core Strategy envisages that a total of 30,600 new homes will be provided between 2006 and 2026 where a minimum target was set at 26,400. The Core Strategy suggests that the lower target was set to:
- "ensure that specific targets for new homes are not set at a level which could lead to pressure to develop in locations which would conflict with the with the objectives of the Core Strategy"*
- 5.1.3 Furthermore, Policy BCS5 of the Core Strategy concludes that:
- "Therefore, the minimum target is 26,400 which can be delivered from the identified supply. This target figure of 26,400 will be used in calculations of five year supply of land for housing."*
- 5.1.4 Paragraph 4.5.19 of the Core Strategy acknowledges the contribution that small sites can play in the supply and delivery of homes, however, goes on to suggest that it does not form part of the identified supply (equating to 26,400 homes). However, it is suggested that about 4,200 homes would arise from small sites from 2012 through to 2026, therefore relatively likely contributing to the delivery of the envisaged 30,600 homes by 2026.
- 5.1.5 Furthermore, Policy BCS5 states that:
- "The appropriate level of new homes will be reviewed within 5 years of the adoption of the Core Strategy"*
- 5.1.6 However, contrary to this statement, no evidence can be found to suggest that this review ever took place and it is only now that the Local Plan review is taking place.
- 5.1.7 The Bristol City Council Local Plan comprising the 'Site Allocations and Development Management Policies Local Plan' (SADMP) was adopted July 2014. The Local Plan and Core Strategy form the statutory development plan which directs decisions on planning applications. The SADMP Plan also contains development management policies as well as site allocations.
- 5.1.8 Whilst the whole extant development plan for Bristol is currently undergoing review, the Core Strategy and SADMP Plan for the extant development plan for Bristol and were adopted eleven and eight years ago respectively. Therefore, the strategic housing policies within the Core Strategy are now much more than 5 year old.

5.2 The Emerging Development Plan

- 5.2.1 A Local Plan Review is currently underway. The new Plan will outline the development of Bristol over the next twenty years. The Council are currently consulting on a regulation 18 version of the plan as well as a Housing Need Paper. This closes at the end of January 2023
- 5.2.2 The review follows the cessation of work on a Spatial Development Strategy for the West of England Combined Authority (WECA) where the new Local Plan will set the new homes target for Bristol.
- 5.2.3 The Local Plan Review includes proposals for the delivery of 33,500 homes by 2036, including regeneration and growth areas with capacity for over 11,500 homes, a total of seventy allocations with capacity for 4,400 homes and a suite of policies which incentivise sustainable development.
- 5.2.4 The Local Development Scheme (LDS) sets out the timescales for the Plan review and production. This states that:
- Plan publication for formal representations (Regulation 19) – Summer 2023
 - Plan submission (Regulation 22) – Autumn 2023
 - Plan examination hearings (Regulation 24) – Early 2024
 - Inspector's Report (Regulation 25) – Mid 2024
 - Plan adoption (Regulation 26) – Autumn 2024
- 5.2.5 Provided the ambitious timetable of the LDS is upheld, Bristol City Council will have a new Local Plan, allocations and a suite of policies adopted as of Autumn 2024, at the earliest.
- 5.2.6 The emerging plan is at a very early stage and therefore, should be afforded no weight in the decision making process, as discussed in the evidence of Mr Paul Connelly. For 5YHLS purposes, proposed allocations, on that planning status alone, are unlikely to be deliverable. And as set out in paragraph 61 of the NPPF, any alternative method to calculate Local Housing Need, from the Standard Methodology, should only be used once adopted through a Local Plan.

5.3 The Council's Record of Housing Delivery

- 5.3.1 Since the Core Strategy's inception in 2006, and according to the latest 2021 Development Monitoring Report Monitoring Report, a total of 26,258 net additional dwellings have been built, equating to on average 1,750 dwellings per annum.
- 5.3.2 The Core Strategy envisaged 30,600 homes by 2026, where a further 4,342 net dwellings will have to be built in what would have been the remaining 5 years of the strategic housing policy, for that Plan.
- 5.3.3 The envisaged delivery of 30,600 homes by 2026 is based upon a Plan adopted in 2011 for which a review on the appropriate level of homes should have taken place in 2016, however, there is no evidence to suggest that this review took place.

5.4 Housing Delivery Test and Action Plan

- 5.4.1 The Housing Delivery Test (HDT) is an annual measurement of housing delivery in any given area of relevant Plan-making authorities. This provides for a more up to date assessment of the delivery of housing in Bristol against Local Housing Needs.
- 5.4.2 The HDT was introduced in 2018 by the Ministry for Housing, Communities and Local Government where measurement results have been published in every year since.
- 5.4.3 The table below outlines the results of the HDT for Bristol City Council since 2018.

Table 1. HDT Results for Bristol City Council 2018-2021

Year	HDT Result	Consequence
2018	99%	N/A
2019	87%	Action Plan and 20% buffer
2020	72%	Action Plan, 20% buffer and Presumption
2021	74%	Action Plan, 20% buffer and Presumption

Source: Housing Delivery Test Measurements 2018-2021

- 5.4.4 Bristol City Council have never achieved 100% of their HDT target. The most recent result for 2021 (74%) demonstrates that the delivery of housing was substantially below the housing requirement over the previous three years. In accordance with the HDT consequence thresholds as per the PPG paragraph: 047 Reference ID: 68-047-20190722, Bristol City Council should have produced a total of 3 Housing Action Plans, one in every year since and including 2019.
- 5.4.5 However, despite this, the only HDT Action Plan that appears to have been produced by Bristol City Council was in July 2022, following the publication of the HDT results in January 2022. Accordingly, it appears that Bristol City Council have failed to follow national guidance designed to increase the supply of deliverable homes. There is no apparent good reason for this failure.
- 5.4.6 The July 2022 Action Plan states it was produced in line with the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) as a result of less than 95% in the HDT being achieved. Furthermore, as only 74% was achieved, the other HDT consequences came into immediate effect whereby, a 20% buffer was applied to the five year housing land supply, and there was an automatic presumption in favour of sustainable development, irrespective of the Council's 5YHLS position.
- 5.4.7 The HDT Action Plan outlines the actions that Bristol City Council are taking to increase housing delivery. The actions include:

- Bristol Local Plan – Prioritising the development and delivery of a revised Local Plan in order to support the delivery of homes in the area. The ambitious timescales for production are set out at paragraph 5.2.4.
- Project 1000 Affordable Housing Delivery Plan 2022 -2025 – The Plan adopted in February 2022 builds upon the Housing Delivery Plan of 2017 and has five key actions:
 - 1) Creation of a Housing Delivery Team;
 - 2) Management of a single annual housing delivery programme;
 - 3) Simplified governance and decision making;
 - 4) Interventions to remove barriers delaying delivery; and
 - 5) Revised policy and guidance.
- Funding – Continued support and investment in housing delivery including investment in the establishment of a new housing delivery vehicle, with 2000 council homes built over the next seven years. Funding used to ensure affordable housing is delivered.
- Structure and governance – the Housing Delivery Team and Housing Delivery Board as well as the Construction and Development Team all support housing delivery.

5.4.8 Whilst the action plan was produced in line with the consequences of the HDT outlined in the PPG, it is unlikely that in the time that has elapsed since, that significant progress will have been made against the actions outlined above and in the action plan. It is also unclear when any positive benefits outlined in the Action Plan would start to come forward. Given the substantial scale of under delivery in the last three years and the size of the shortfall of the housing land supply now, it would be unlikely that the actions outlined by the Council above could address these issues in the short term, if ever.

5.5 Summary

- The Bristol Core Strategy was adopted over 10 years ago and the Local Plan 'Site Allocations and Development Management Policies Local Plan' over 8 years ago and as such the NPPF requires that the five-year housing land supply be calculated based upon the standard method.
- The Core Strategy is the extant Plan and has effectively 4 years to run, in which time it will need to deliver 1,086 dwellings in each of the remaining years in order to achieve the 30,600 homes envisaged by the Core Strategy by 2026.
- As a result of prolonged under delivery of housing, Bristol City Council, has been subject to all three consequences of the HDT in 2019,2020, and 2021. It appears that only one action plan was produced in this time, contrary to National Policy, and it is unlikely that this will address the problem of under-delivery.
- A review of the Local Plan is underway and includes proposals for the delivery of 33,500 homes by 2036. However, according to the Local Development Scheme as per paragraph 5.2.4 Plan Adoption isn't

anticipated until Autumn 2024, where in addition, there will inevitably be some lead in times on development sites.

6.0 HOUSING NEED

6.1 The National Housing Crisis and in Bristol

- 6.1.1 The national housing crisis has been well documented and evidenced in a vast array of documents, including the causes, its implications and the necessary response as briefly described below.
- 6.1.2 The housing crisis has arisen largely as a result of the discrepancy between the number of homes built and the need. As far back as the Barker Review in 2004, it was identified that there was a need to build circa 250,000 homes per annum nationally to prevent spiraling house prices and a shortage of affordable homes. However, in the period 2004 to 2012, an average of only 178,000 homes per annum were built in England.
- 6.1.3 The NPPF was first introduced in 2012 containing the Government objectives to significantly boost the supply of housing and to meet housing needs. However, in the period from 2012 to 2016, delivery worsened and an average of only 155,000 homes per annum were built.
- 6.1.4 As a result of the continued shortfall against the need identified in the Barker Review, the Select Committee on Economic Affairs to the House of Lords identified a need to deliver 300,000 homes per annum in the Building More Homes report, July 2016. This number has been confirmed as being needed by the Government in the Budget 2018, the Technical Consultation on Updates to National Planning Policy and Guidance, October 2018 and Planning for the Future, March 2020 and most recently in December 2022 as part of the LURB consultation, as set out in section 3 of this report. In the period 2016-18, an average of 210,000 homes were built, still short of the Barker Review and Government's own target.
- 6.1.5 In response, the Government published the NPPF in 2018 which subject to minor revisions in 2019 and 2021 made further changes in seeking to address the under-delivery of housing across England and the existing backlog in housing supply through a number of mechanisms including the use of the standard method for calculating the minimum local housing need. In the period 2018-21 an average of 234,000 homes have been built which represents a significant improvement but still below the 250,000 or 300,000 targets.
- 6.1.6 The most recent set of proposed changes to National Planning Policy and consultation on wider reforms, still seeks to deliver 300,000 new homes a year and places the 20 largest urban areas in England at the centre of these plans.
- 6.1.7 This short summary demonstrates that housing delivery nationally has not come close to meeting Government objectives over the previous 15 years in any single year and also illustrates that there is a substantial cumulative shortfall in housing supply that has been building up. Indeed, since 2004 there have been a total of 3,188,961 completions as compared to a need for 4,250,000 based on just the need for 250,000 identified in the Barker Review. This is a shortfall of over a million homes in 17 years.
- 6.1.8 As housing need has significantly exceeded the supply, the greater competition for those houses that do exist has had an uplifting effect on the average market value of properties with adverse implications on the

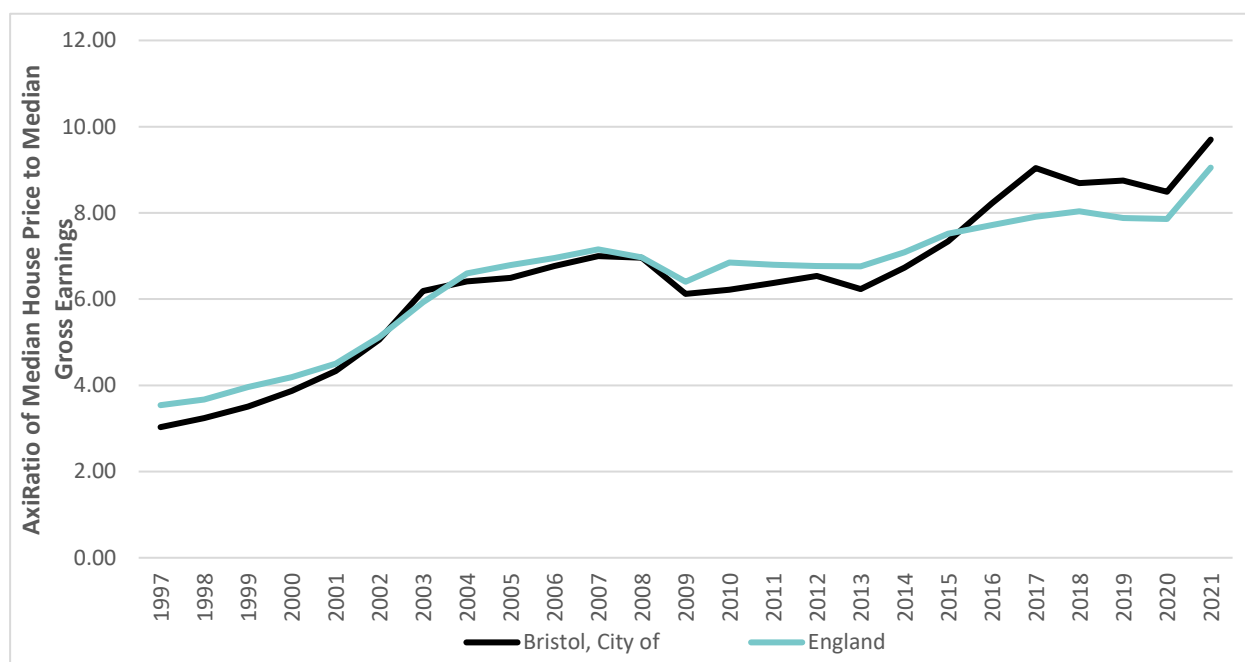
accessibility of the housing market to households. There are many statistics which demonstrate the decreasing accessibility of the market including (but not limited to):

- The lower quartile house price to lower quartile earnings ratio increased from 6.27 to 8.04 from 2004 to 2021 in England according to the DLUHC;
- The median house price to median earnings ratio increased from 6.60 to 9.05 from 2004 to 2021 in England according to the DLUHC;
- The average house price across the UK increased from £153,482 in 2004 to £247,535 in 2021 according to Nationwide, an increase of just over 60%.
- The percentage of overcrowded households has increased from 2.5% to 3.5% from 2003/04 to 2019/20 in England according to the DLUHC;
- The number of concealed families has increased from 161,254 in 2001 to 275,954 in 2011 across England according to the Census; and
- The number of households living in shared dwellings has increased from 65,998 in 2001 to 77,955 in 2011 across England according to the Census.

- 6.1.9 It is clear that housing supply was not meeting housing need creating adverse effects on accessibility to housing. These effects manifest themselves in real households facing real difficulty and often being unable to access appropriate housing.
- 6.1.10 Evidence demonstrates that there is a housing crisis in Bristol too, as is for the country as a whole. Within this report it is identified that housing needs have not been met, affordable housing needs have not been met and the sufficient number of properties with an appropriate number of bedrooms have not been delivered.
- 6.1.11 The average sale price, for all house types in Bristol grew from £138,959 in 2004 up to £362,919 by October 2022. This is an increase of more than 150%, substantially more than the increase experienced by the country.
- 6.1.12 The future supply of housing in Bristol looks bleak, with a substantially low supply of housing now and little prospect of this being addressed in the short term.
- 6.1.13 The Council have taken little action to address this issue over the years. Review of plans have not materialized, plans have been withdrawn from examination and a proactive approach to understanding housing delivery in the city is absent.
- 6.1.14 Chart 1 below demonstrates the effect this has had on Bristol . Since 1997 affordability in Bristol had been better than the rest of England, increasing at a similar rate, until around 2003 when they became similar. This continued roughly to 2013 and then began to change. The rate of increasing affordability (worsening)

ratios in Bristol outpaced that of England, sharply in 2015 and experienced another sharp rise in 2021. The affordability ratio in Bristol is now almost 10.00, almost triple the level from 1997.

Chart 1. Ratio of median house price to median gross annual workplace-based earnings Bristol and England.



Source: ONS

6.2 Local Housing Need Figure to be used in this inquiry

- 6.2.1 As set out in paragraph 6.2.7 below, the housing requirement is 20,335 dwellings, or 4,067 per annum. This is calculated by using the Standard Methodology set out in the PPG. Guidance is clear, in that housing need is calculated independently of supply and that the most up to date information should be used to calculate housing need, irrespective of when the most recent annual position on housing supply may have been published.
- 6.2.2 The NPPF at paragraph 73, states that when a local planning authority's adopted strategic policy for housing is more than five years old, then Local Housing Need should be calculated using the standard methodology, as per the PPG. Neither the NPPF or PPG offer any alternative in these circumstances.
- 6.2.3 Step 4 of the Standard Method, the Urban Cities and Urban Uplift should be applied, to the calculation of housing need, from the 16 June 2021. There are no provisions to delay this, as set out above need is calculated irrespective of supply.
- 6.2.4 In Bristol City Council's circumstance, even though their 5YHLS position statement is from the period 1st April 2020, with a supply estimation from that same date, the calculation of Local Housing Need must use

the most up to date information for when this appeal is determined. Which will be 4,067 dwellings per annum.

- 6.2.5 The table below sets out the standard method calculation for Bristol City Council which results in a LHN figure of 3,389 dwellings per annum.

Table 2. Standard Method Calculation – Bristol City Council

Step 1 - Setting the baseline	
2023 Households	206,213
2033 Households	224,723
Average Annual increase 2023-2033	1,851
Step2 – Affordability Adjustment	
2021 affordability ratio	9.7
Affordability adjustment	1.35625
Adjusted figure	2,510
Step 3 – capping the increase	
40% cap	2,591
Annual LHN requirement	2,510
Step 4 – Cities and Urban Centres Uplift	
35% Urban Lift	3,389

- 6.2.6 As per the framework, a buffer is then applied to the LHN, the buffer is determined by the Housing Delivery Test. The HDT 2021 test result for the City of Bristol is 74% and therefore a 20% buffer should be applied.

Table 3. Housing Delivery Test Results – Bristol City Council 2021

	Year	Dwellings
Number of homes required	2019	2,440
	2020	2,180
	2021	1,577
	Total	6,197
Number of homes delivered	2019	1,666
	2020	1,412
	2021	1,533
	Total	4,611
Housing Delivery Test: 2021 measurement		74%
Housing Delivery Test: 2021 consequence		Presumption

6.2.7 Applying this 20% buffer to the LHN of 3,572 equates to an annual housing requirement of 4,067 dwellings.

Table 4. Housing Requirement Calculation – Bristol City Council

Step 1 - Setting the baseline	
2023 Households	206,213
2033 Households	224,723
Average Annual increase 2023-2033	1,851
Step2 – Affordability Adjustment	
2021 affordability ratio	9.7
Affordability adjustment	1.35625
Adjusted figure	2,510
Step 3 – capping the increase	
40% cap	2,591
Annual LHN requirement	2,510
Step 4 – Cities and Urban Centres Uplift	
35% Urban Lift	3,389
Addition of buffer	
HDT Result	74%
Addition of Buffer (20%)	4,067
Housing Requirement	
5-year Housing requirement as of 1st January 2023	20,335
Annual housing requirement	4,067

6.2.8 The annual housing requirement is 4,067 in Bristol, which equates to 20,335 over 5 years.

6.3 Housing Requirement in the Emerging Local Plan and Supporting Evidence Base

6.3.1 A Local Plan Review is currently underway. The new Plan will outline the development of Bristol over the next twenty years. The Council are currently consulting on a regulation 18 version of the plan as well as a Housing Need Paper. This closes at the end of January 2023

6.3.2 The Council have published as part of their regulation 18 Local Plan Consultation, a paper titled *Reviewing the demographic evidence for the City of Bristol to establish local housing need*, the paper is dated November 2022. In short, the purpose of the paper is to calculate a lower housing need figure for the City Council's Local Plan, than calculated when using the standard methodology.

6.3.3 Paragraph 61 of the NPPF sets out how the number of homes needed should be calculated.

To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

- 6.3.4 The two key elements of this paragraph are that firstly Local Housing Need must be calculated using the Standard Methodology and that secondly, only if exceptional circumstances justify it, an alternative approach can be used.
- 6.3.5 The PPG follows the NPPF and clarifies that whilst the standard method is not mandatory, the expectation is that it will be used, and other methods would only be used in exceptional circumstances
- 6.3.6 This paragraph is referenced in the Council's evidence paper, however the exceptional circumstances for Bristol City to use an alternative method are not set out.
- 6.3.7 The PPG at paragraph: 001 Reference ID: 2a-001-20190220, housing need is defined:
Housing need is an unconstrained assessment of the number of homes needed in an area. Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken separately from assessing land availability, establishing a housing requirement figure and preparing policies to address this such as site allocations. For further details on how constraints should be considered once a housing need figure has been identified, please see....
- 6.3.8 This paragraph makes clear that the calculation of housing need, is unconstrained and that constraints to the delivery of homes should only be considered once a housing figure is calculated. This sets the context in which exceptional circumstances, as referred to in paragraph 61 of the NPPF need to be considered in. Exceptional circumstances shouldn't be taken from the supply side of housing delivery, as there are already clear avenues, including consequential actions, in the NPPF and PPG for arriving at a lower housing supply than may be required. Exceptional circumstances when considering an alternative to the standard methodology, should therefore be identified within the demand side.
- 6.3.9 The November 2022 paper for the City Council, does not set out any basis for exceptional circumstances to the standard methodology, to justify the alternative approach used. It states in the final paragraph, 63 that it is evidence-led, based on robust, reliable and realistic assessment of need and that it provides a positive and ambitious target which is appropriate for developing a Local Plan for Bristol. However, such claims cannot be made. An alternative approach has to be justified; the justification of an alternative policy can only be tested at the examination of the Local Plan. Paragraph 35 of the NPPF states that:

Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are 'sound' if they are:

...

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

- 6.3.10 Therefore until such a time when the emerging Local Plan is found to be sound and adopted, an alternative figure should not be used and no weight should be afforded to the calculation.
- 6.3.11 It is not necessary to review, in detail, the alternative approach set out in the November 2022 paper, for the reasons set out above that only the Standard Method should be used to calculate LHN now. However, in addition to the lack of exceptional circumstances being set out, the paper also fails to address several other key areas.
- 6.3.12 The method set out in the paper, uses the 2018 SNPP as it's demographic basis. However, the PPG is absolutely clear, this should not be used as more recent household projections do not reflect under delivery and declining affordability. PPG paragraph: 005 Reference ID: 2a-005-20190220 states that:
The 2014-based household projections are used within the standard method to provide stability for planning authorities and communities, ensure that historic under-delivery and declining affordability are reflected, and to be consistent with the Government's objective of significantly boosting the supply of homes.
- 6.3.13 Instead, in the Council's approach adjustments are made to the 2018 projection, by manipulating the household formation rate, an allowance for higher migration and then applying an amount for historic under supply. This equates to a need for 2,600 dwellings per annum. Compared to the 3,389 dwellings per annum calculated using the standard methodology, this is 789 dwellings per annum lower.
- 6.3.14 The method set out in the paper also fails to reconcile the absence of step 4 of the standard methodology, which is the urban centres uplift. As set out in previous sections of this report, the urban centres uplift is a key element of the Government's approach to reaching the delivery of 300,000 new homes each year. The importance of this is emphasized by Government by specifically including it at the proposed paragraph 62 of the NPPF changes:
The Standard Method incorporates an uplift for those urban local authorities in the top 20 most populated cities and urban centres. This uplift should be accommodated within those cities and urban centres themselves unless it would conflict with the policies in this Framework and legal obligations
- 6.3.15 As set out at the start of this section, should an area not be able to accommodate the urban centres uplift, a supply side solution should be sought, and not the adjust the need. That incorrect approach is how Bristol City Council have calculated housing need, as set out in their November 2022 paper.

6.4 Summary

- 6.4.1 The housing requirement for Bristol City, over the next 5 years is 20,335 dwellings, or 4,067 per annum. This is calculated by using the Standard Methodology set out in the PPG. Guidance is clear, in that housing need is calculated independently of supply and that the most up to date information should be used to calculate housing need, irrespective of when the most recent annual position on housing supply may have been published.
- 6.4.2 In Bristol City Council's circumstance, even though their 5YHLS position statement is from the period 1st April 2020, with a supply estimation from that same date, the calculation of Local Housing Need must use the most up to date information for when this appeal is determined. Which will be 4,067 dwellings per annum.
- 6.4.3 The Local Housing Need, as calculated by the Standard Methodology, is the only calculation of housing need that should be used in this appeal. No other figure should be considered.
- 6.4.4 The alternative proposed by the City Council should not be used, as clearly stated above. Further to this, the approach has not been tested at a local plan examination, it is therefore not robust or capable of justifying an alternative approach. Specifically the approach uses a projection the Government has advised against using and ignores the Government's urban centres uplift which is currently and is set to remain a key element of achieving the Government's housing delivery ambitions.

7.0 BRISTOL CITY COUNCIL'S FIVE YEAR HOUSING LAND SUPPLY POSITION

- 7.1.1 The Council last published a Five Year Housing Land Supply Assessment for 1st of April 2020 - 31st March 2025 in June 2021. Thus, the assessment was already 18 months old when published. This is contrary to paragraph 74 of the NPPF which requires that:

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years worth of housing against their housing requirement set out in adopted strategic policies”

- 7.1.2 Despite the Housing Delivery Test Action Plan eluding to an updated assessment, this has yet to materialize, and will inevitably be at least a year out of date at the point of publication.
- 7.1.3 The assessment concluded that Bristol had a 3.7 year supply of housing land, and therefore is unable to demonstrate a five year supply. However, as referenced at paragraph 7.1.1, the assessment is out of date.
- 7.1.4 Furthermore, as set out in section 4, through the Silverthorne Lane inquiry (CD6.1), the Council accepted that their position on 5YHLS ranged from 2.59 to 2.96 years.

Table 5. Council's Claimed Housing Land Supply Position

Element of Supply/Requirement	Dwellings
Five Year LHN including 20% buffer	14,205
Five Year Supply 2020-2025	10,579
Number of Years Supply	3.7

Source: Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 (June 2021)

- 7.1.5 As set out in the NPPF, paragraph 11, a 5YHLS of less than 5 years engages the presumption in favour of sustainable development. The Council accept this is engaged.
- 7.1.6 The HDT Action Plan, from July 2022, states that a revised Five Year Housing Land Assessment for 2021 is in preparation.
- 7.1.7 The below table provides a checklist based upon the NPPF and PPG and compares Bristol City Council's approach to their five year housing land assessment with this methodology.
- 7.1.8 The checklist confirms that Bristol City Council have failed to adhere to national policy and guidance in several key areas. There has been a failure to update a supply of deliverable sites on an annual basis, contrary to Policy, information published by the Council at Appendix A of their Five Year Housing Land Supply Assessment 2020-2025 is out of date and contains out of date and inaccurate information. Finally, there is no evidence to suggest that schemes for student accommodation included within the supply, have been subject to calculations as set out by PPG.

Table 6. Compliance Checklist

Planning Policy & Guidance		Compliance
National Planning Policy Framework (NPPF) (2021)		
Paragraph 74	Requires LPAs to prepare and update a supply of deliverable sites sufficient to provide a minimum of five years worth of housing on an annual basis	Bristol City Council's most recent statement was published in June 2021. Consequentially, the position statement, appendices and evidence within is even more outdated now. The Housing Delivery Test Action Plan suggests that a five year housing land supply assessment for 2021 is currently in preparation, however this has yet to materialize and will be near enough 2 years old upon publication..
Annex 2 – 'Deliverable'	Annex 2 sets out the definition of a 'deliverable' site. NPPF specifies that to be 'deliverable', sites should be available now and have a realistic prospect of delivery within 5 years.	As part of the review of the Bristol 5YHLS position a sample of site visits were conducted on the larger schemes. Of the 30 sites visited, 2 sites had no evidence of any activity and had thus expired, and 2 sites were not realistically deliverable by 2025.
Planning Practice Guidance (PPG) (2021)		
ID: 68-034	The PPG advises that student accommodation can contribute to land supply, however, that inclusion is based upon the amount of general market accommodation that newly created student accommodation releases. On this basis the PPG advises that student accommodation needs to be subject to calculations which establish average numbers of students in student accommodation. To satisfy the requirements of the PPG, analysis to calculate the amount of homes that will be returned to the general (non-student) market must be undertaken.	There is no apparent evidence to suggest that any such process or calculation has taken place for schemes of student accommodation included in the 5YHLS. Of the 32 sites visited, 6 were for student accommodation, equating to 775 units.

- 7.1.9 A draft Housing Position Statement, for the purposes of this appeal was shared with our client, Homes England, the appellant, in the process of preparing the topic specific SoCG on 5YHLS. This paper from the Council suggests, their opinion that in a best case scenario the Council has an indicative 3.3 years land supply as at the 1st April 2022.
- 7.1.10 This summation is only indicative and is based on an optimistic best-case scenario as the Council themselves acknowledge.
- 7.1.11 As made clear in section 3 above the NPPF and PPG state that any sites included within a 5YHLS assessment, by an LPA, need to have had deliverability of sites assessed and demonstrate this with clear evidence, applicable at the base date of the assessment.

- 7.1.12 However, the paper from the Council is purely a calculation of housing land supply, for a 5 year period, based upon what had permission at the base date. It does not contain a schedule of sites with clear evidence demonstrating respective site deliverability.
- 7.1.13 Therefore, the City Council's assumption that they have a 3.3 year land supply as at 1st April 2022, falls drastically short of the NPPF and PPG requirements and should therefore not be even considered as a 'best case' assumption, it should be discounted from this appeal.
- 7.1.14 Therefore, the Council's position must be that as set out in the 2020-2025 5YHLS assessment (3.7), or that reached during the Silverthorne Lane appeal (2.59-2.96).

7.2 Summary

- 7.2.1 Bristol City Council's Five Year Housing Land Supply Assessment 2020 – 2025, published June 2021, is now almost 3 years old. Despite this, a revised and updated housing land supply assessment has yet to materialize.
- 7.2.2 Information pertaining to site deliverability and site assessment contained at Appendix A of the existing Bristol City Council Five Year Housing Land Supply Assessment is not only out of date but also contains inaccuracies as identified by section 8 of this report.
- 7.2.3 The inaccuracies found in a sample of sites reviewed by LSH calls into question the reliability of the remainder of the supply.
- 7.2.4 Regardless of the date of the report, Bristol City Council cannot demonstrate a 5 year housing land supply and the published position (3.7), or the position they claimed in the Silverthorne Lane appeal (2.59-2.96) is likely to be inaccurate.
- 7.2.5 There is evidence that in several instances, the Council have not adhered to National Policy through the production of annual updates on site deliverability or HDT Action Plans when necessary.
- 7.2.6 Furthermore, there is no evidence that student accommodation schemes included in the supply have been subject to calculations and guidance as set out in the NPPF and PPG.
- 7.2.7 A new Local Plan is in production however allocated sites within the plan will likely have lead in times, particularly noting the reliance on brownfield sites as part of the development strategy, and will therefore will be unlikely to deliver straight away.
- 7.2.8 More recent calculations conducted by Bristol City Council regarding their 5YHLS are indicative, based on a best-case scenario that assumes all sites with permission will be built out and is not based upon any evidence. Furthermore, this is acknowledged by the Council themselves.

8.0 LSH ASSESSMENT OF LAND SUPPLY POSITION

- 8.1.1 This section provides an overview of the disputed sites contained within Bristol City Council's Five Year Land Supply Assessment 2020-2025 (June 2021) and will compare the assessment of Bristol City Council to that undertaken in December 2022 by Lambert Smith Hampton for the sites in dispute. The sites were considered in the context of providing a supply of new homes in Bristol for the period 2020 to 2025, and not a revised 5 year period from the 1st April 2022.
- 8.1.2 For each of the disputed sites, there will be details of the relevant permission as well as decision and expiry dates, before a comparison of the Council's assessment and a proposed revised LSH trajectory, and finally a justification for the proposed revision.
- 8.1.3 A sample of sites included at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 (June 2021) were visited to establish a planning development status and carry out an assessment of progress on site. In addition to checking the planning status on sites, we also clarified whether the proposal was for student accommodation, or general market housing.
- 8.1.4 A total of the 30 largest sites were visited on the 13th and 14th of December. The sites that were visited ranged from 382 dwellings to 92 dwellings and were distributed throughout the Bristol LPA.
- 8.1.5 For sites visited that were still in development and under construction, a build out rate of 40dpa was applied. The justification for the rate applied is at Appendix 1.
- 8.1.6 The sites in dispute are as follows:

xiv) Land Of Former Post Office Depot, Cattle Market Road

- 8.1.7 The relevant planning history for the site is as follows:
- 19/02952/M – this site has reserved matters permission for;
“approval of reserved matters for 953 bed student accommodation (Sui Generis) scheme, ground floor active uses (A1, A3, A4, A5, D1, D2 uses) and associated works pursuant to conditions 1 and 3 of outline permission 17/06459/P being details of layout, scale, appearance and landscape”. Approved 06.12.2019
 - Expiration date 06.12.2021**
- 8.1.8 Table 7 below summarises the positions and difference between the Council's and LSH's assessment.

Table 7. Land of Former Post Office Depot Assessment

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	382	-382
Lambert Smith Hampton	0	

- 8.1.9 The reserved matters application referenced above had a condition imposed whereby the development permitted must be commenced no later than 2 years from the date of approval.
- 8.1.10 The subsequent expiry date for implementation for the scheme is therefore 06.12.2021
- 8.1.11 Upon visiting the site on 13.12.2022 there was no evidence of any activity or implementation.
- 8.1.12 Furthermore, there is no evidence on the Council's planning portal that any of the pre-commencement conditions have been submitted or discharged.
- 8.1.13 It is proposed that the entire scheme be removed from the 5YHLS as there was no evidence of any implementation a year on from the expiration date of the reserved matters application. In any case, the permission was for 100% student accommodation and therefore should not be counted in the supply.

xv) Former School Site Hawkfield Road

- 8.1.14 The relevant planning history for the site is as follows:
- 19/02242/M – this site has reserved matters permission for;
“approval of reserved matters following outline approval 18/02055/P - Reserved matters (appearance, landscaping, layout and scale) for 350 residential dwellings, along with associated open space and landscaping, including information pursuant to outline planning permission (ref. 18/02044/P)”. Approved 04.10.19
- 8.1.15 The table below summarises the positions and difference between the Council's and LSH's assessment. For the purpose of each site visit, site layouts from the Reserved Matters applications were used to establish which plots had been completed, started or yet to start.

Table 8. Former School Site Hawkfield Road Assessment

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	350	-48
Lambert Smith Hampton	302	

- 8.1.16 Upon visiting the site on 13.12.2022 it was apparent that the site was progressing with c.212 completions on site and c.138 dwellings remaining.
- 8.1.17 The site does not comprise of any purpose-built high-rise accommodation.
- 8.1.18 On this basis an annual completion rate of 40 dwellings per annum¹, or just over 3 dwellings per month² has been applied to the remainder of the site.

¹ Please refer to Appendix 1 for explanation and application of this rate.

² 3.3333 recurring per month

8.1.19 With 27 months remaining until the end of the 5YHLS period of 2020 – 2025 (31.03.25), it is projected that a further 90 dwellings could be completed on site by this time.

8.1.20 With c.138 dwellings left to complete on site it is proposed that 90 dwellings can be completed within the 2020-2025 period, however, that the remaining 48 dwellings be removed from the 5YHLS, as it is unlikely that these dwellings are complete before 31.03.2025.

xvi) Romney House, Romney Avenue

8.1.21 The relevant planning history for the site is as follows:

- 20/05477/M - this site has reserved matters permission for;
“demolition of existing buildings/structures and comprehensive redevelopment comprising up to 268 dwellings (Use Class C3) including affordable homes, vehicular, pedestrian and cycle access from Romney Avenue and Hogarth Avenue, car parking, public open space, landscaping and other associated works.” **Approved 09.02.2022**

8.1.22 The table below summarises the positions and difference between the Council’s and LSH’s assessment.

Table 9. Romney House, Romney Avenue Assessment

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	262	-172
Lambert Smith Hampton	90	

8.1.23 Upon visiting the site on 14.12.2022 it was apparent that the development was in the very early stages of development, with initial groundworks having commenced.

8.1.24 The site does not comprise any purpose built high rise accommodation.

8.1.25 On this basis an annual completion rate of 40 dwellings per annum, or just over 3 dwellings per month³ has been applied to the remainder of the site.

8.1.26 With 27 months remaining until the end of the five year housing land supply period of 2020 – 2025 (31.03.25) it is projected that 90 dwellings could be completed on site by in this time.

8.1.27 With all 262 dwellings remaining to be built on site, it is proposed that 90 dwellings remain in the land supply period of 2020-2025, however, that the remaining 172 dwellings be removed as it is unlikely that these are completed by 31.03.2025.

xvii) Graphic Packaging Ltd Filwood Road

³ 3.3333 recurring per month

8.1.28 The relevant planning history for the site is as follows:

- 12/03123/M - this site has reserved matters permission for;
“Erection of 208 no. two, three and four bedroom dwellings with vehicular accesses from Goodneston Road and Enfield Road, landscaping and associated works.” **Approved 24.10.12**

8.1.29 The table below summarises the positions and difference between the Council’s and LSH’ assessment

Table 10. Graphic Packaging Ltd. Filwood Road.

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	100	
Lambert Smith Hampton	0	-100

8.1.30 Upon visiting the site on 14.12.2022 there was no evidence of any activity or implementation.

8.1.31 Furthermore, the site was evidently still in industrial use and further research reveals that Graphic Packaging Ltd have premises and operate at the site.

8.1.32 It is proposed that the entire scheme be removed from the 5YHLS as there was no evidence of any implementation and clear evidence the site was still in industrial use and occupied by Graphic Packaging Ltd.

8.1.33 In conclusion, it is proposed that a total of 702 general market⁴ homes are subsequently removed from the housing land supply schedule at Appendix A of Bristol City Council’s Five Year Housing Land Assessment 2020-2025.

xviii) Student Accommodation

8.1.34 As per above in paragraphs 3.1.19 - 3.1.22 student accommodation can contribute to the land supply once subjected to calculations to determine the amount of general market housing new student accommodation would generate using census data on numbers living in student accommodation.

8.1.35 Of the sample of sites visited from Bristol City Council Five Year Housing Land Supply Assessment (2020-2025) (June 2021) six schemes were for student accommodation at Appendix A.

8.1.36 A total of five of the aforementioned schemes had been completed where one remained under construction at the time of the December 2022 site visits.

⁴ Only general market housing not including student accommodation

8.1.37 Each table below relates to a scheme of student accommodation visited in December 2022 and included in Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025. It summarises the positions and difference between the Council's and LSH's assessment.

Table 11. 21 St Thomas Street (17/03034/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	164	-164
Lambert Smith Hampton	0	

Table 12. 7-29 Wilder Street, 1-3 Backfields and Land at corner of Backfields and Upper York Street (18/02548/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	163	-163
Lambert Smith Hampton	0	

Table 13. St Mary's Hospital, Upper Byron Place (17/07088/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	122	-122
Lambert Smith Hampton	0	

Table 14. Land on West side of 95 Jacob Street Bristol (15/06483/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	118 ⁵	-118
Lambert Smith Hampton	0	

Table 15. 13-19 Dean St., St Paul's (17/06070/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	116	

⁵ As per the case officers report, the application is proposed for 202 student bedspaces, and 48 residential dwellings

Lambert Smith Hampton	0	-116
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Table 16. 13-21 Baldwin Street (16/06999/F)

	Dwellings in the Supply 2020-2025	Difference
Bristol City Council	92	-92
Lambert Smith Hampton	0	

8.1.38 As there is no evidence to suggest that the requirements set out in the PPG on student accommodation and inclusion in the land supply have been followed in these cases and that the appropriate assessments and calculations have not been made, all the schemes should be removed from the housing land supply.

8.1.39 In conclusion, it is proposed that a total of 775 units of student accommodation, as per the above tables and included at Appendix A of Bristol City Council's Five Year Housing Land Supply Assessment 2020-2025 are subsequently removed from the housing land supply.

xix) Additional Residential Sites

8.1.40 In addition to the site visits, a desktop survey of a sample of additional sites, including major⁶ and minor development⁷ within Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 was undertaken.

8.1.41 The desktop survey reviewed over 100 schemes ranging from schemes for single dwellings to schemes for over 70 dwellings, reviewing information including decision and expiry dates, whether any pre-commencement conditions had been discharged, whether a developer/housebuilder was assigned and whether any Section 106 Agreement was in place and agreed between parties.

8.1.42 The minor development schemes reviewed equated to a total of 181 dwellings, all of which were considered deliverable within 2020-2025 as per Appendix A of Bristol City Council's Five Year Housing Land Supply Assessment 2020-2025.

8.1.43 However, desktop analysis revealed that of the schemes surveyed a total of 91 had expired, with only 9 schemes still with the benefit of an extant permission.

8.1.44 Of those schemes that had expired, 10 schemes had expiry dates that pre-dated the land supply position as at 31/03/2020⁸, equating to 19 dwellings.

⁶ Major developments include provision of 10 or more dwellings

⁷ Minor developments include provision of 1-9 dwellings

⁸ Bristol City Council Five Year Housing Land Supply Assessment 2020-2025

- 8.1.45 Whether completed or expired, these 19 dwellings should not have been included by the Council in the Council Five Year Housing Land Supply Assessment or schedule of sites contained at Appendix A of their report.
- 8.1.46 A sample of major residential schemes included at Appendix A of the Council Five Year Housing Land Supply Assessment 2020-2025 were also surveyed in the same manner.
- 8.1.47 The major residential development schemes equated to 376 dwellings all of which were considered deliverable within 2020-2025 as per Appendix A of Bristol City Council's Five Year Housing Land Supply Assessment 2020-2025.
- 8.1.48 Desktop analysis reveals that all 11 of the schemes surveyed had expired, with 1 of the schemes expiry date pre-dating the land supply position as at 31/03/2020, equating to 22 dwellings.
- 8.1.49 Whether completed or expired, these 22 dwellings should not be included by the Council in the Council Five Year Housing Land Supply Assessment or schedule of sites contained at Appendix A of their report.
- 8.1.50 A table at Appendix 2 includes details on all the schemes surveyed as part of the desktop survey.
- 8.1.51 The review, sites sampled, visited and subject to the desktop review reveal incorrect assessments and inaccuracies in information.
- 8.1.52 The review carried out by LSH therefore calls into question the reliability of the remainder of the supply and assessment as at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025.
- 8.1.53 Several of the schemes included in the supply had not been implemented and subsequently expired, sites that had been implemented are not likely to be completed by the end of March 2025 and several more minor sites included at Appendix A will likely have expired.
- 8.1.54 The questionable reliability of the assessment and supply in this case, which is now very outdated, emphasises the importance of annual assessment of housing land supply in accordance with paragraph 74 of the National Planning Policy Framework.

8.2 Summary

- 8.2.1 The Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 was 18 months old at the point of publication.
- 8.2.2 Site visits as well as a desktop survey of a sample of sites at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment has revealed that several sites in their entirety should be removed from the supply where in other cases large proportions of sites will not be completed by the end of March 2025.
- 8.2.3 National guidance set out in the NPPF and PPG has not been followed where in this case the housing land supply assessment, published June 2021, is now very outdated, where no annual update has taken place. Furthermore, there is no evidence to suggest that schemes for student accommodation included in the supply have been subject to calculations and methodology for inclusion as set out in PPG.

- 8.2.4 Subsequently, review work on the assessment has called into question the reliability of the evidence and information therein due to inaccuracies and the age of the information.
- 8.2.5 Ultimately, the review of the supply undertaken by Lambert Smith Hampton proposes the following:
- 702 general market⁹ homes are removed from the housing land supply due to lack of implementation, expiry and deliverability prior to the end of March 2025.
 - 775 student accommodation units are removed from the housing land supply due to lack of evidence that NPPF and PPG have been followed in relation to their inclusion in the supply.
- 8.2.6 Therefore, it is proposed that a total of 1,477 dwellings are removed from the land supply as evidenced above and outlined below.
- 8.2.7 The Bristol City Council Five Year Housing Land Supply Assessment suggests that a total of 10,579 dwellings were deliverable in the period 2020-2025. If 1,477 dwellings are removed from this supply, 9,102 dwellings remain in the supply. LSH suggest that this is more realistic.
- 8.2.8 Furthermore, the review of additional sites reveals that the majority of the sites sampled had expired and in the case of several sites, before the base date of the assessment period.
- 8.2.9 Consequentially, the reliability of the remainder of the supply at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 is questionable.
- 8.2.10 The age of the assessment and the inaccuracies found in the review of a sample of sites reinforces the need for annual assessment in accordance with the NPPF.
- 8.2.11 The following section will provide a review of the 5YHLS position as suggested by the Council against a more realistic position, and the position that should be used in this appeal, provided by Lambert Smith Hampton.

⁹ Only general market housing not including student accommodation

9.0 THE CORRECT 5YHLS POSITION TO BE USED IN THIS INQUIRY

9.1.1 Following the review undertaken by LSH the 5YHLS has been recalculated and represents a realistic position.

9.1.2 The result of the calculation was as follows:

Table 18. LSH Five Year Housing Land Supply Calculation 2020 – 2025

LSH 5YHLS Calculation 2020-2025	
Calculation	Number
Five Year Local Housing Need (including 20% buffer)	20,335 ¹⁰
Five Year Supply 2020-2025	9,102 ¹¹
Number of Years Supply	2.24 years

9.1.3 As a result of removing 1,477 dwellings from the supply, the 5YHLS reduces to 9,102 dwellings and 2.24 years.

9.1.4 Bristol City Council's Five Year Housing Land Supply Assessment 2020-2025 published June 2021 sets out the Council's claimed housing land supply position.

9.1.5 The result of the calculation was as follows:

Table 17. Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 Calculation

BCC 5YHLS Assessment 2020-2025	
Calculation	Number
Five Year Local Housing Need (including 20% buffer)	20,335
Five Year Supply 2020-2025	10,579
Number of Years Supply	2.60 years

9.1.6 It should be noted that the LHN figure is correctly calculated with a base date of January 2023, therefore uses households from 2023-2033, as clearly set out in guidance and agreed at appeals referenced above. And that the supply figure (9,102) is based to 01.04.2020 and uses information at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025, and deducts sites from this supply, as no more up to date information has been published by the Council. It would not be reasonable or proportionate for the appellant to update the entirety of the Council's land supply to 1st April 2022.

9.1.7 Therefore, the 2.24 years proposed by LSH, is the only correct 5YHLS position to be used in this appeal. Furthermore, it should be treated by an absolute maximum due to a lack of evidence on supply since April 2020. We draw into question the reliability of the sites which remain in the supply.

¹⁰ LHN calculation uses 10 year period from 2023.

¹¹ Remaining supply after LSH review.

9.2 Summary

- 9.2.1 In the Council Position Statement (2022) for this appeal, the Council acknowledge that the housing land supply calculation is “...*assuming a best case scenario*” and that the “...*indicative position, is that Bristol has, at best, a 3.3 year housing land supply.*”
- 9.2.2 Furthermore, the position statement acknowledges:
- “The figures above do not represent a definitive five-year housing supply position, as they are not supported by an up-to-date developer survey concerning the deliverability of sites with permission. The outcome of such a survey could undoubtedly reveal that the supply position from permissions is less than the indicative information set out above.”*
- 9.2.3 Ultimately, given the review undertaken by Lambert Smith Hampton and recognition that the Council statement is not supported by conclusive evidence and assumes a best case scenario, it is likely that the actual 5YHLS position is substantially below what has been outlined by the Council.
- 9.2.4 The 5YHLS position is likely to be more parallel to the review and subsequent calculations as put forward in this report by Lambert Smith Hampton.
- 9.2.5 Furthermore, in the case put forward by the appellant at the Silverthorne Lane appeal (APP/Z0116/V/20/3264641) (CD6.1) of April 2022, a Council witness agreed that the land supply position was more likely to be within a scale ranging from 2.59 years to 2.96 years, as suggested by the appellants witness.
- 9.2.6 In the case above, establishing the exact extent of the shortfall was not necessary as any shortfall carried material weight in favour of proposals where significant weight was given to the benefits associated with the provision of housing.
- 9.2.7 Therefore, in line with the inspector’s ruling in the above case, and following on from the Lambert Smith Hampton review, it is more likely that the 5YHLS position of Bristol City Council is 2.24 as an absolute maximum.
- 9.2.8 Further inaccuracies in the additional sites sampled, may reduce this position even further as the remainder of the supply is called into question.

10.0 Affordable Housing Need and Past Delivery

10.1 Affordable Housing Need

- 10.1.1 Policy BCS17 of the Bristol City Council Core Strategy requires that for developments of 15 or more dwellings that affordable housing will be required. The supporting text for this policy considers that the need for affordable housing in Bristol is high. It notes that lowest level house prices were more than eight times that of lower earnings. To address this, the then up to date SHMA, identified that there was a need of approximately 1,500 new affordable homes over the next 12 years (2011 to 2023).
- 10.1.2 Paragraph 4.17.5 of the Core Strategy states that the level of affordable housing is very high, but that the target (1,500 per year, for 12 years) is adjusted to take into consideration a range of constraints to delivery. Therefore, this figure should be seen as an under-estimation of affordable need.
- 10.1.3 At the 1st April 2021 there were 4,126 applicants in Bristol South alone and that the average wait time for a household to be allocated a property was 477 days. The Council's Enabling Manager considers that this is a high demand for social housing.
- 10.1.4 As the site is within the south of Bristol 30% affordable housing is required.
- 10.1.5 Following the adoption of the Core Strategy, the assessment of affordable housing was updated through the Wider Bristol Strategic Housing Market Assessment (SHMA) Volumes 1 & 2 and covers the unitary authorities of South Gloucestershire, North Somerset and Bristol City.
- 10.1.6 Volume 1 (June 2015) reported on the full objectively assessed need (OAN) and volume 2 (November 2015) set out the need for all the different types of housing. Volumes 1 and 2 were updated March 2018 and March 2019 respectively.
- 10.1.7 Upon the withdrawal of the Joint Strategic Plan, covering the HMA authorities, Volume 1 of the SHMA was withdrawn. Volume 2 however remains. Whilst it does not calculate the level of affordable housing need (this was set out in Volume 1), it identified that the need for affordable housing across the HMA was at least 26,900 dwellings. Therefore, the need for affordable housing has not lessened since the adoption of the Core Strategy.
- 10.1.8 The updated volume 2 (2019) identifies the need for different types of affordable housing in the wider Bristol housing market area, we were unable to identify any segmentation of the HMA. Therefore, the most up to date assessment of affordable housing need which includes Bristol, also covers the rest of the HMA.
- 10.1.9 The housing need for affordable housing can be broken down as follows:
 - 14,200 flats
 - 12,700 houses
- 10.1.10 Volume 2 of the SHMA also provides insightful context into the affordability of homes in Bristol and the rest of the HMA. In summary, Bristol had the highest levels of unaffordable rent for 1, 2, 3 and 4 bedroom properties out of all 3 HMA authorities (page 44 SHMA Volume 2). This means that residents in Bristol

struggle the most within the HMA to be able to afford to rent properties, it is therefore necessary for these households to use affordable housing products. Figure 33, on page 45 identifies that in 2016 there were 11,770 households that would be unable to afford the rental target within Bristol. Figure 34 (page 47) and 35 (page 48) show that Bristol has the highest rents in the HMA and the highest income levels need to be able to afford lower and median quartile rents within the HMA, by a considerable margin.

- 10.1.11 This brief summary of the Council's own evidence, demonstrates that the situation for affordable housing in Bristol has not improved since the adoption of the Core Strategy and that Bristol is by far the most expensive area in the HMA to rent property, which will undoubtedly require more households to need affordable housing.

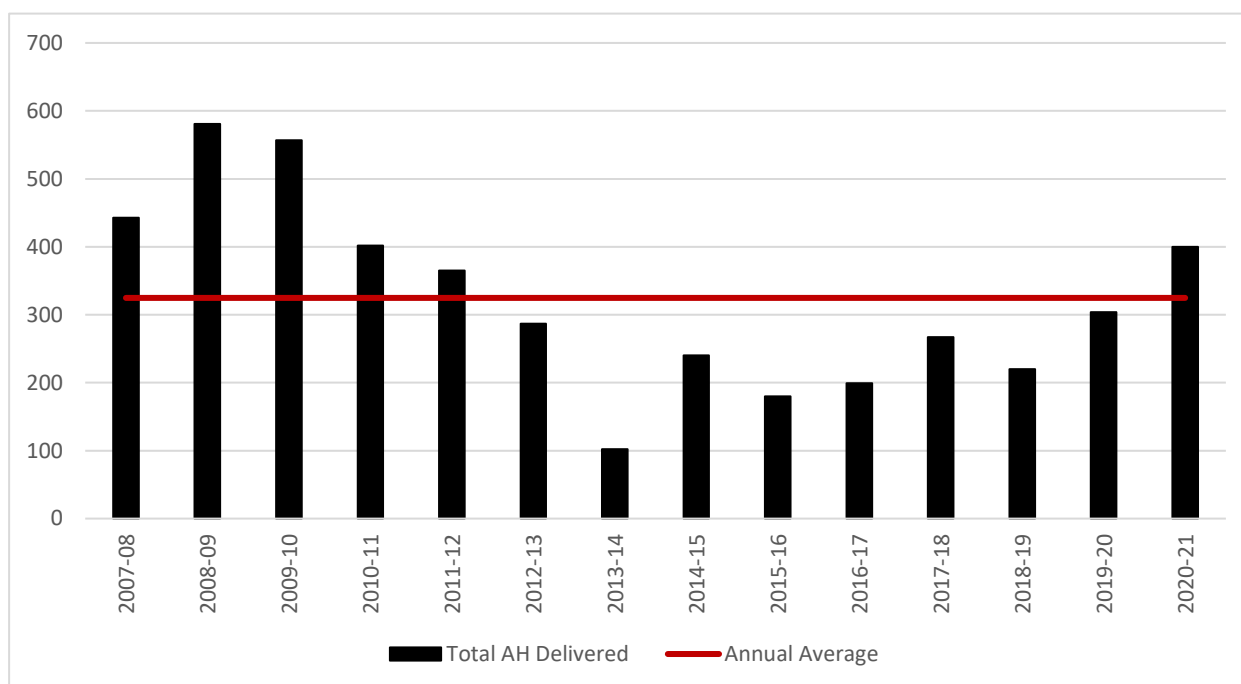
10.2 Affordable Housing Delivery

- 10.2.1 Affordable Housing Needs in Bristol must be addressed through the delivery of affordable housing. The latest Development Monitoring Report contains data regarding the delivery of affordable housing across Bristol since the inception of the Core Strategy. The data in the 2021 Development Report does not include data for 2006-07.
- 10.2.2 The chart below illustrates past delivery rates of affordable housing per annum during the period since the Core Strategy's inception, set against the annual average for affordable dwelling delivery.
- 10.2.3 Whilst there is no data for 2006-07, the data in the Development Monitoring Report suggests that a total of just over 4,500 affordable dwellings have been delivered since the Core Strategy's inception.
- 10.2.4 The annual average is just under 325 affordable dwellings per annum and cumulatively, affordable housing accounts for approximately 17% of total housing delivery from 2006-07 to 2020-21.

10.3 Summary

- 10.3.1 The delivery of affordable housing in Bristol has fallen drastically short of the 1,500 affordable dwellings per annum identified in the Core Strategy. The Council's own evidence identifies that the need since then has become more acute and that Bristol is the least affordable area within the HMA.
- 10.3.2 The need for Affordable Housing in Bristol is chronic and the delivery of new affordable housing has fallen drastically short year after year for at least the last 16 years.
- 10.3.3 The proposal meets that policy requirement of 30% affordable housing, which will delivery approximately 78 new affordable homes.

Chart 2: Affordable Housing Delivery in Bristol 2007-08 to 2020-21



Source: Bristol City Council Development Monitoring Report 2021

11.0 HOUSING MIX

11.1 The Proposed Scheme

- 11.1.1 The application is for the delivery of up to 260¹² residential dwellings comprising a mix of dwellings to provide for the whole of the local housing market.
- 11.1.2 The appellant is committed to the delivery of affordable housing and as such 30% of the dwellings will be affordable, in line with Policy BCS17 of the Core Strategy.
- 11.1.3 Detail on the precise mix of the affordable housing is not available at this outline stage, however, correspondence available online¹³, relating to the application from the Enabling Manager at Bristol City Council, requires that the affordable mix be similar to that of the market mix. Thus, providing smaller units and also offering larger family sized homes.
- 11.1.4 The proposed site is allocated for residential use in Bristol City Council's Adopted Local Plan 'Site Allocations and Development Management Policies, 2014' and is in the Bristol South zone housing market area of Bristol.
- 11.1.5 An indicative housing mix for the scheme is set out in the table below.

Table 19. Brislington Meadows Indicative Housing Mix

Dwelling Type	Number	%
1 Bed Flat	51	20%
2 Bed Flat	32	12%
2 Bed House	108	42%
3 Bed House	57	22%
4 Bed House	9	4%
Total	257	100%

11.2 Policy Context in Bristol City Council

- i) *The Wider Bristol Housing Market Area Strategic Housing Market Assessment Volume 2 (January 2019)*

- 11.2.1 The table below is an extract (Figure 6) from the updated SHMA Volume 2 and identifies the need for market housing and affordable housing by type and size for the period 2016-2036. It shows overall need based upon ages and different household types projected to be living in the wider Bristol HMA, as well as the net change as per trend based projections and the OAN uplift.

¹² Indicative masterplan indicates 257 dwellings.

¹³ Affordable Housing Correspondence - https://pa.bristol.gov.uk/online-applications/files/43CC6A554BDB42B10D82A8580F6A9D39/pdf/22_01878_P-AFFORDABLE_HOUSING-3232077.pdf

Table 20. Market and affordable housing mix for Wider Bristol 2016-36 (Note: Figures may not sum due to rounding)

		Housing Need		Net Change 2016- 2036	Impact of OAN Uplift	Total Change 2016-2036	% of Total Housing
		2016	2036				
Market Housing							
Flat	1 Bed	25,290	29,560	+4,270	+720	+4,990	5.7%
	2+ Bed	34,390	40,590	+6200	+760	+6,950	8.0%
House	2 Bed	42,690	49,470	+6,780	+820	+7,600	8.7%
	3 Bed	165,260	194,400	+29,140	+3,090	+32,220	37.0%
	4 Bed	54,220	61,030	+6,810	+730	+7,540	8.7%
	5+ Bed	8,220	8,930	+710	+90	+800	0.9%
Total Market Housing		330,100	384,000	+53,900	+6,200	+60,100	69.1%
Affordable Housing							
Flat	1 Bed	19,030	28,050	+9,020	+610	+9,630	11.1%
	2+ Bed	18,850	23,110	+4,260	+290	+4,550	5.2%
House	2 Bed	13,620	18,070	+4,450	+300	+4,750	5.5%
	3 Bed	26,870	32,290	+5,420	+370	+5,780	6.6%
	4+ Bed	2,790	4,790	+2,000	+140	+2,130	2.4%
Total Affordable Housing		81,200	106,300	+25,100	+1,700	+26,900	30.9%
Total		411,200	490,300	+79,100	+7,900	+87,000	

Source: Wider Bristol HMA Strategic Housing Market Assessment (Volume 2) (January 2019) (Figure 6)

- 11.2.2 As illustrated by the above table, the largest projected need amongst market housing is for 3 bed homes (32,220) for the period 2016-2036. This is nearly 25,000 more than the next highest need and represents over half of the total market housing need and 37% of total need.
- 11.2.3 The largest projected need for affordable housing is in 1 bed flats (9,360). This is followed by 3 bed houses (5,780) and subsequently by 2 bed houses (4,750).
- 11.2.4 This part of the SHMA has not been updated since 2019 and no information is available from the Council regarding housing mix and their recent calculation of LHN in November 2022. Therefore, the SHMA Volume 2 has been used.

11.2.5 This shows that there is an approximate need for developments to bring forward 30%, in total market and affordable, flatted properties.

11.2.6 The Bristol City Council Core Strategy contains policy on the provision of a mix of housing.

11.2.7 Policy BCS18 states that:

“All new residential development should maintain, provide or contribute to a mix of housing tenures, types and sizes to help support the creation of mixed, balanced and inclusive communities.”

11.2.8 The policy also states that:

“To achieve an appropriate tenure, type and size mix the development should aim to:

- *Address affordable housing need and housing demand;*
- *Contribute to the diversity of housing in the local area and help to redress any housing imbalance that exists;*
- *Respond to the requirements of a changing population;*
- *Employ imaginative design solutions.*

Residential developments should provide sufficient space for everyday activities and to enable flexibility and adaptability by meeting appropriate space standards.”

11.2.9 Furthermore, Policy BCS17 of the Bristol City Council Core Strategy requires that for developments of 15 or more dwellings that affordable housing will be required.

11.3 Delivering a Mix of Housing in Bristol

11.3.1 The Bristol City Council Development Monitoring Report 2021 covers the period 1st April 2020 – 31st March 2021 and contains information on housing delivery.

11.3.2 Tables H9 and H10 of the report include cumulative information on the delivery of different sizes of dwellings from 2006-07 to 2020-21.

11.3.3 Table H9 of the report includes cumulative net information on dwelling completions by type and area from 2006-07 to 2020-21.

11.3.4 The table below is an extract from the report.

Table 21. Net housing completions by dwelling type and area 2006-07 to 2020-21

Area	Private				Affordable				Total			
	Flats	Houses	Other	Total	Flats	Houses	Other	Total	Flats	Houses	Other	Total
City Centre	4,927	74	3,373	8,374	688	17	0	705	5,615	91	3,373	9,079
Inner East	1,237	184	29	1,450	266	169	0	435	1,503	353	29	1,885
Northern Arc	1,102	915	-6	2,011	398	308	-42	664	1,500	1,223	-48	2,675
Rest of Bristol	3,702	1,403	236	5,341	307	242	-1	548	4,009	1,645	235	5,889
South Bristol	3,959	1,293	15	5,267	839	649	-25	1,463	4,798	1,942	-10	6,730
Total	14,927	3,869	3,647	22,443	2,498	1,385	-68	3,815	17,425	5,254	3,579	26,258
%	66.5	17.2	16.3	100	65.5	36.3	-1.8	100	66.4	20.0	13.6	100

Source: Bristol City Council Development Monitoring Plan 2021 (Table H9)

- 11.3.5 As the appeal scheme is located in the South Bristol area, analysis of demand and delivery will focus on this area.
- 11.3.6 Bristol South has a comparatively high level of completions according to table H9 in the latest Development Monitoring Report. Furthermore, it has the highest level of affordable completions amongst both flats and houses, thus indicating a demand and popularity amongst developers in this area.
- 11.3.7 Affordable housing completions in Bristol South represent 38% of total affordable housing completions in Bristol and 6% of total completions.
- 11.3.8 However, the Bristol South area does not have a comparably high level of completions amongst the private market dwellings and is over 3,000 completions below that of the City Centre.
- 11.3.9 Private market completions in Bristol South represent 24% of total private market completions in Bristol and 20% of total completions in Bristol.
- 11.3.10 This indicates that the Bristol South Zone has a high popularity for affordable housing development which may stem from the high demand for social housing as confirmed by the correspondence referenced above at footnote ¹³.
- 11.3.11 Whilst the correspondence references the figure from the housing waiting list as of April 2021, it confirms that demand is reasonably high in the Bristol South area especially for one and two bedroomed properties.
- 11.3.12 This is caveated by the fact that applicants on the waiting list have to confirm their current address as opposed to their desired location, however, nonetheless, it indicates that there is demand from those within this area.
- 11.3.13 The table above also indicates that there is further potential for development in the private market in the Bristol South area, given the high delivery rates of smaller properties in the City Centre.

11.3.14 Table H10 of the report includes cumulative gross information on dwelling completions by type and size from 2006-07 to 2020-21.

Table 22. Gross housing completions in Bristol by tenure and bedrooms 2006-07 to 2020-21.

Citywide		Flats/Maisonettes		Houses/Bungalows		Total	
		Number	%	Number	%	Number	%
Private	1 Bed	7,734	40.7	188	3.1	7,922	31.6
	2 Bed	7,359	38.7	1,139	18.9	8,498	33.9
	3 Bed	632	3.3	1,895	31.4	2,527	10.1
	4 Bed +	92	0.5	837	13.9	929	3.7
	Missing	415	2.2	11	0.2	426	1.7
	Total	16,232	85.4	4,070	67.5	20,302	81.1
Affordable	1 Bed	1,174	6.2	34	0.6	1,208	4.8
	2 Bed	1,536	8.1	937	15.5	2,473	9.9
	3 Bed	64	0.3	800	13.3	864	3.5
	4 Bed +	3	0	177	2.9	180	0.7
	Missing	5	0	9	0.1	14	0.1
	Total	2,782	14.6	1,957	32.5	4,739	18.9
Total	1 Bed	8,908	46.8	222	3.7	9,130	36.5
	2 Bed	8,895	46.8	2,076	34.4	10,971	43.8
	3 Bed	696	3.7	2,695	44.7	3,391	13.5
	4 Bed +	95	0.5	1,014	16.8	1,109	4.4
	Missing	420	2.2	20	0.3	440	1.8
	Total	19,014	100	6,027	100	25,041	100

Source: Bristol City Council Development Monitoring Plan 2021 (Table H10)

11.3.15 It should be noted that the figures above relate to gross rather than net completions and therefore do not account for potential losses. The figures also relate to the city as a whole rather than respective zones, however the information on the sizes of dwellings completed, provides for useful analysis.

11.3.16 The table above indicates that of the dwellings completed within Bristol, 1 and 2 bed properties account for the largest proportions in both the private and affordable markets, which is reflected in the total completions. Of the remaining completions, 3 bed properties are next highest, followed by 4+ bed properties.

11.3.17 Due to the urban nature of Bristol, it is likely that the large number of completions in 1 and 2 bed properties in the city centre is largely accounted for by flats.

11.3.18 When considering the past delivery of housing in Bristol, against what is set out within Volume 2 of the SHMA, there are some clear discrepancies between delivery and the Council's identified housing mix.

11.3.19 The SHMA at figure 6 suggests that the highest need amongst private market housing is for 3 bed houses, however, 3 bed homes delivered across Bristol from 2006-07 to 2020-21 only represent 10.1% of total completions and 12.4% of private market completions.

11.3.20 Table 22 indicates that Bristol delivers a high volume of 1 and 2 bed properties.

11.3.21 The majority of the proposed appeal scheme is for 2 bed houses (42%) which will help address the high demand for these properties as demonstrated by past completions and the identified need in the SHMA.

11.3.22 Together, 1 and 2 bed flats and houses account for 74% of the indicative housing mix and will therefore contribute to the demand and need for these properties.

11.3.23 In addition, 22% of the proposed properties are proposed as 3 bed houses which will undoubtedly contribute to the high demand for 3 bed homes in the private market as identified by the SHMA as well as contribute to increasing the delivery of 3 bed houses, which is currently relatively low in the private market.

11.3.24 The scheme proposes that the remainder of the indicative housing mix, 9%, is 4 bed houses which are identified as needed in the SHMA, but have seen low levels of delivery in Bristol.

11.4 Future Housing Supply

11.4.1 Table H11 of the Development Monitoring Report illustrates the supply of future property type based upon sites with planning permission as of 31st March 2021.

Table 23. Housing sites with planning permission at 31st March 2021 (net) by dwelling type and tenure (incl. s106)

Area	Private					Affordable					Total				
	Flats	Houses	Unsp.	Other	Total	Flats	Houses	Unsp.	Other	Total	Flats	Houses	Unsp.	Other	Total
City Centre	2,704	43	177	1,581	4,505	542	-7	66	0	601	3,246	36	243	1,581	5,106
Inner East	238	200	0	47	485	69	20	0	0	89	307	220	0	47	574
Northern Arc	258	359	182	-3	796	287	356	80	-17	706	545	715	262	-20	1,502
Rest of Bristol	680	510	0	29	1,219	177	30	0	0	207	857	540	0	29	1,426
South Bristol	1,978	568	1,466	42	4,054	392	65	389	0	846	2,370	633	1,855	42	4,900
Total	5,838	1,680	1,825	1,696	11,059	1,467	464	535	-17	2,449	7,325	2,144	2,360	1,679	13,508

Source: Bristol City Council Development Monitoring Plan 2021 (Table H11)

- 11.4.2 The above table indicates that 13,508 dwellings had planning permission as of 31st March 2021. It indicates that in the private market the majority of properties with permission are flats. In the affordable market flats also have the largest proportion of properties with permission.
- 11.4.3 Of the affordable market, nearly 60% of properties with permission are flats and nearly 19% are houses. Other property or unspecified types account for over 21% of affordable properties with permission.
- 11.4.4 Overall flats with permission represent 54% of all properties with permission and houses, 16%. The remaining 30% is unspecified or other types.
- 11.4.5 Whilst this table does not break down the future supply down into mix, as the completion table does, it is reasonable to assume that flats will be majority 1 and 2 bed properties and houses will be 3+ bed properties. However, as is the case in both the private and affordable market, for a large proportion of properties with permission, detail is not specified as to the type. Of the 13,508 properties with permission, 17.5% have unspecified details.
- 11.4.6 Furthermore, the table was produced as of March 2021, which has no corresponding 5YHLS assessment and therefore there may be a proportion of the schemes which will not be delivered.

11.5 Summary

- 11.5.1 The appeal scheme can deliver much needed private market and affordable homes including a proposed housing mix to suit demand and identified need.
- 11.5.2 The scheme directly addresses demand and need for respective house types, whether that be by supporting the high demand and need for 1 and 2 bedroom properties or bolstering the supply of 3 bedroom homes. 3 bed + homes in particular have seen a relatively low delivery in Bristol, but a relatively high identified need in the SHMA. Whereas there has been a high level of delivery of 1 and 2 bed flats in Bristol, particularly in the city centre and not elsewhere.
- 11.5.3 Council correspondence in relation to the application indicates that there is a reasonably high demand for social rented housing amongst the residents in the Bristol South area of the SHMA.
- 11.5.4 The most recently published evidence on housing mix for Bristol's HMA, suggests that 30% of developments should come forward as 1 or 2 bedroom flats. So far the proportion is well in excess of this in Bristol, with over 80% of properties being delivered 1 or 2 bed flats.
- 11.5.5 Considering this proportionately high delivery of flatted and smaller development in Bristol, the scheme seeks to bring forward c.30% apartments. Which accords with the latest evidence in the SHMA and also market testing carried out by LSH with the development industry. This considered the location of the site and site conditions, surrounding development, recent residential delivery in the area and the prospective buyers in the housing market.
- 11.5.6 As we set out in Section 8 of this report, the reliability of the future supply of housing should be called into question, and is unreliable. It is likely that schemes included within the supply will have expired since its publication, or simply will not be deliverable. Equally as demonstrated by section 8 of this report, the

existing schedule of sites and their deliverability is now 3 years old and contains inaccuracies. Therefore, the future supply of 3+ bed properties in Bristol as a whole and also within the South Bristol Zone is low and likely to be less than expected by the Council. This is a house type which is identified as in high demand within the SHMA which has failed to be delivered in sufficient numbers in recent years within Bristol.

12.0 SUMMARY AND CONCLUSIONS

12.1 Overview, National Policy, Appeals and Judgments

- 12.1.1 Lambert Smith Hampton (LSH) were instructed by Homes England to undertake a review of Bristol City Council's position on Housing Need, Affordable Housing and their Five Year Housing Land Supply (5YHLS) position in support of the forthcoming public inquiry and in light of the City Council's non-determination at Brislington Meadows (22/01878/P).
- 12.1.2 Chapter 3 of the report sets out the applicable National Planning Policy Framework and Planning Practice Guidance paragraphs relating to Five Year Housing Land Supply, housing need and housing mix. Importantly it sets out how housing need should be calculated for this inquiry and how sites should be assessed for their deliverability purposes. The proposed changes to the NPPF by Government, re-enforce their commitment to deliver 300,000 new homes per annum by the mid 2020s, the application of the urban centres uplift is a key component to achieve this target.
- 12.1.3 There have been many appeal decisions and court judgments which have considered the various components to housing land supply. Chapter 4 makes reference to numerous appeals and judgements across England, which are of relevance to this appeal, as listed below and discusses different aspects of housing land supply.
- 12.1.4 In summary, in assessing whether a Local Planning Authority can demonstrate a five-year supply of housing land, the key principles are:
- For the purposes of calculating a five-year land supply, the housing requirement is either that contained within a development plan which is less than five years old since adoption, or where there is no up to date plan the housing requirement is that defined by paragraph 74 of the Framework, i.e local housing need.
 - Local Housing Need (LHN) should be calculated using the standard method according to the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG).
 - Local authorities need to identify and update annually five years' worth of supply of specific deliverable sites for housing against their housing requirements, with an additional buffer of 5%, 10% or 20% as determined by the HDT (Paragraph 74 of the Framework).
 - There is a requirement to undertake an assessment once a year, however there are no restrictions on undertaking more than one assessment each year. It is important to maintain the base date of the assessment and that components of this should not be updated independently on an ad-hoc basis.
 - Sites that can go in the supply are split between category A and B. With regards to Category B, the Framework requires Category B sites, should be suitable, available and achievable and

that there is a realistic prospect completions will begin in five years to be included in the five-year land supply.

- Clear evidence is required to support sites which are within category B, whilst there is no minimum criteria for clear evidence, Inspectors and the PPG are clear as to what could constitute this and also what has not been acceptable.
- Sites should not be added to the supply post the base date, however evidence could be used post base date to support sites included at the base date cut off point
- The magnitude of the shortfall is likely to be material for the reasons given in Hallam Land Management Ltd and SoS CLG and Eastleigh Borough Council and the planning authority should understand why a shortfall exists and identify how the shortfall will be reduced.
- Student accommodation can contribute to the five year housing land supply, however the extent to which it contributes should be considered and measured as per PPG and excluded from supply where the subsequent benefit of student accommodation to the general market cannot be demonstrated.

12.2 The Development Plan

- 12.2.1 The Bristol Core Strategy was adopted over 10 years ago and the Local Plan 'Site Allocations and Development Management Policies Local Plan' over 8 years ago and as such the NPPF requires that the five-year housing land supply be calculated based upon the standard method.
- 12.2.2 As a result of prolonged under delivery of housing, Bristol City Council, has been subject to all three consequences of the HDT in 2019,2020, and 2021. It appears that only one action plan was produced in this time, contrary to National Policy, and it is unlikely that this will address the problem of under-delivery.
- 12.2.3 A review of the Local Plan is underway and includes proposals for the delivery of 33,500 homes by 2036. However, according to the Local Development Scheme as per paragraph 5.2.4 Plan Adoption isn't anticipated until Autumn 2024, where in addition, there will inevitably be some lead in times on development sites.

12.3 The Housing Crisis

- 12.3.1 The national housing crisis has been well documented and evidenced in a vast array of documents, including the causes, its implications and the necessary response as briefly described below.
- 12.3.2 The housing crisis has arisen largely as a result of the discrepancy between the number of homes built and the need. As far back as the Barker Review in 2004, it was identified that there was a need to build circa 250,000 homes per annum nationally to prevent spiraling house prices and a shortage of affordable homes.
- 12.3.3 This demonstrates that housing delivery nationally has not come close to meeting Government objectives over the previous 15 years in any single year. Indeed, since 2004 there have been a total of 3,188,961

completions as compared to a need for 4,250,000 based on just the need for 250,000 identified in the Barker Review. This is a shortfall of over a million homes in 17 years.

- 12.3.4 As housing need has significantly exceeded the supply, the greater competition for those houses that do exist has had an uplifting effect on the average market value of properties with adverse implications on the accessibility of the housing market to households.
- 12.3.5 Evidence demonstrates that the situation is no better, or worse in Bristol as it is for the rest of the country. Within this report it is identified that housing needs have not been met, affordable housing need has not been met, the sufficient number of properties with an appropriate number of bedrooms have not been delivered. The future supply of housing in Bristol looks bleak, with a substantially low supply of housing now and little prospect of this being addressed in the short term.
- 12.3.6 The Council have taken little action to address this issue over the years. Review of plans have not materialized, plans have been withdrawn from examination and a proactive approach to understanding housing delivery in the city is absent.

12.4 Local Housing Need Figure to be used in this inquiry

- 12.4.1 The housing requirement for Bristol City, over the next 5 years is 20,335 dwellings, or 4,067 per annum. This is calculated by using the Standard Methodology set out in the PPG. Guidance is clear, in that housing need is calculated independently of supply and that the most up to date information should be used to calculate housing need, irrespective of when the most recent annual position on housing supply may have been published.
- 12.4.2 In Bristol City Council's circumstance, even though their 5YHLS position statement is from the period 1st April 2020, with a supply estimation from that same date, the calculation of Local Housing Need must use the most up to date information for when this appeal is determined. Which will be 4,067 dwellings per annum.
- 12.4.3 The Local Housing Need, as calculate by the Standard Methodology, is the only calculation of housing need that should be used in this appeal. No other figure should be considered.
- 12.4.4 The alternative proposed by the City Council should not be used, as clearly stated above. Further to this, the approach has not been tested at a local plan examination, it is therefore not robust or capable of justifying an alternative approach. Specifically the approach uses a projection the Government has advised against using and ignores the Government's urban centres uplift which is currently and is set to remain a key element of achieving the Government's housing delivery ambitions.

12.5 A Review of Bristol City Council's Position on 5YHLS

- 12.5.1 Bristol City Council's Five Year Housing Land Supply Assessment 2020 – 2025, published June 2021, is now almost 3 years old. Despite this, a revised and updated housing land supply assessment has yet to materialize.

- 12.5.2 Information pertaining to site deliverability and site assessment contained at Appendix A of the existing Bristol City Council Five Year Housing Land Supply Assessment is not only out of date but also contains inaccuracies as identified by section 5 and 8 of this report.
- 12.5.3 The inaccuracies found in a sample of sites reviewed by LSH calls into question the reliability of the remainder of the supply.
- 12.5.4 Regardless of the date of the report, Bristol City Council cannot demonstrate a 5 year housing land supply and the published position (3.7), or the position they claimed in the Silverthorne Lane appeal (2.59-2.96) is likely to be inaccurate.
- 12.5.5 More recent calculations conducted by Bristol City Council regarding their 5YHLS are indicative, based on a best-case scenario that assumes all sites with permission will be built out and is not based upon any evidence.
- 12.5.6 Site visits as well as a desktop survey of a sample of sites at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment has revealed that several sites in their entirety should be removed from the supply where in other cases large proportions of sites will not be completed by the end of March 2025.
- 12.5.7 National guidance set out in the NPPF and PPG has not been followed where in this case the housing land supply assessment, published June 2021, is now very outdated, where no annual update has taken place. Furthermore, there is no evidence to suggest that schemes for student accommodation included in the supply have been subject to calculations and methodology for inclusion as set out in PPG.
- 12.5.8 Subsequently, review work on the assessment has called into question the reliability of the evidence and information therein due to inaccuracies and the age of the information.
- 12.5.9 Ultimately, the review of the supply undertaken by Lambert Smith Hampton proposes the following:
- 702 general market¹⁴ homes are removed from the housing land supply due to lack of implementation, expiry and deliverability prior to the end of March 2025.
 - 775 student accommodation units are removed from the housing land supply due to lack of evidence that NPPF and PPG have been followed in relation to their inclusion in the supply.
- 12.5.10 Therefore, it is proposed that a total of 1,477 dwellings are removed from the land supply as evidenced.
- 12.6 The Appellant's Position**
- 12.6.1 The Bristol City Council Five Year Housing Land Supply Assessment suggests that a total of 10,579 dwellings were deliverable in the period 2020-2025. If 1,477 dwellings are removed from this supply, 9,102 dwellings remain in the supply. LSH consider that this is more realistic.
- 12.6.2 Furthermore, the review of additional sites reveals that the majority of the sites sampled had expired and in the case of several sites, before the base date of the assessment period.

¹⁴ Only general market housing not including student accommodation

- 12.6.3 Consequentially, the reliability of the remainder of the supply at Appendix A of the Bristol City Council Five Year Housing Land Supply Assessment 2020-2025 is questionable.
- 12.6.4 The age of the assessment and the inaccuracies found in the review of a sample of sites reinforces the need for annual assessment in accordance with the NPPF.
- 12.6.5 Following the review undertaken by LSH the 5YHLS has been recalculated and represents a realistic position.
- 12.6.6 The result of the calculation was as follows:

Table X. LSH Five Year Housing Land Supply Calculation 2020 – 2025

LSH 5YHLS Calculation 2020-2025	
Calculation	Number
Five Year Local Housing Need (including 20% buffer)	20,335 ¹⁵
Five Year Supply 2020-2025	9,102 ¹⁶
Number of Years Supply	2.24 years

- 12.6.7 As a result of removing 1,477 dwellings from the supply, the 5YHLS reduces to 9,102 dwellings and 2.24 years. This is a staggering shortfall of 11,233 homes in the Council's supply.
- 12.6.8 Therefore, the 2.24 years proposed by LSH, is the only correct 5YHLS position to be used in this appeal. Furthermore, should be treated by an absolute maximum due to a lack of evidence on supply since April 2020 and that we draw into question the reliability of the sites which remain in the supply.

12.7 Affordable Housing

- 12.7.1 The delivery of affordable housing in Bristol has fallen drastically short of the 1,500 affordable dwellings per annum identified in the Core Strategy. The Council's own evidence identifies that the need since then has become more acute and that Bristol is the least affordable area within the HMA.
- 12.7.2 The need for Affordable Housing in Bristol is chronic and the delivery of new affordable housing has fallen drastically short year after year for at least the last 16 years. At the 1st April 2021 there were 4,126 applicants in Bristol South alone the Council's Enabling Manager considers that this is a high demand for social housing.
- 12.7.3 The proposal meets that policy requirement of 30% affordable housing, which will delivery approximately 78 new affordable homes.

12.8 Housing Mix

- 12.8.1 The scheme can deliver a mix of much needed private market and affordable homes that suit demand and identified need.
- 12.8.2 The scheme directly addresses demand and need for respective house types, whether that be by supporting the high demand and need for 1 and 2 bedroom properties or bolstering the supply of 3 bedroom homes. 3 bed + homes in particular have seen a relatively low delivery in Bristol, but a relatively high identified need

¹⁵ LHN calculation uses 10 year period from 2023.

¹⁶ Remaining supply after LSH review.

in the SHMA. Whereas there has been a high level of delivery of 1 and 2 bed flats in Bristol, particularly in the city centre and not elsewhere.

- 12.8.3 Considering this proportionately high delivery of flatted and smaller development in Bristol, the scheme seeks to bring forward c.30% apartments. Which accords with the latest evidence in the SHMA and also market testing carried out by LSH with the development industry.

12.9 Conclusions

- 12.9.1 There is a Housing Crisis in England and Bristol is no different. Evidence set out in this report demonstrates that there has been a chronic under delivery of market and affordable housing in Bristol for a number of years. The effect of this has been to worsen affordability ratios in the city, but also make it the least affordable area within the wider housing market, pushing up the need for affordable housing even greater than existing when the extant plan was adopted.
- 12.9.2 The Government is clear on it's ambitions to deliver more house to address the housing crisis in England. The role of cities like Bristol is important to achieving the delivery of 300,000 new homes a year, and will be re-enforced through the proposed changes to the NPPF.
- 12.9.3 Local Planning Authorities should monitor the delivery of new homes and forecast through a 5YHLS assessment, the potential of deliverable sites within their area. The Council has failed to undertake this necessary requirement for a number of years, and has only recently publish an action plan to address the staggering shortfall in housing supply in the city.
- 12.9.4 The Council's position that they have a 3.3 years supply of housing, is not tenable, it should be disregarded entirely and certainly not treated as a best case scenario. The only accurate assessment of land supply in Bristol, is contained within this report. This shows that the Council have a land supply of only 2.24 years, this is a shortfall of 11,233 new homes within the supply. This very substantial shortfall in supply will inevitably mean housing delivery will drastically suffer in Bristol for years to come.
- 12.9.5 The proposed scheme would not only bring forward a supply of much needed new homes in Bristol, but in addition it would also provide affordable housing.
- 12.9.6 The proposal can provide a mix of housing, by size, meeting identified needs, which have not been adequately met in recent years.

APPENDIX 1

APPENDIX 1 - REVIEW OF BUILD OUT RATES

- 12.9.1 This section reviews the local and national evidence on delivery rates residential development. National delivery rates and lead in times provide useful context when looking at local information and can help form assumptions when there is no locally available data. Lead in times and build out rates are important to understand how Category A and B sites will be delivered within the 5 year period.
- 12.9.2 The Council have no evidence on local delivery rates, and therefore the delivery rates of national housebuilders are considered.

12.10 Completions per outlet from National House Builders

- 12.10.1 Many of the national housebuilders prepare and publish annual performance reports. These have been summarised below:
- Berkley Group: 3,760 completions in 2022 across London and the South East (annual Report 2022).
 - Vistry Group: 8,639 legal completions in 2021 (Annual Report 2021). Number of outlets not provided.
 - Redrow: 5,715 legal completions in 2022 with 111 average active outlets. This equates to 51 completions per outlet (Annual Report 2022).
 - Bellway: 11,198 completions in 2022 with 235 active outlets. This equates to 48 completions per outlet (Annual Report 2022).
 - Miller Homes: 3,849 completions in 2021 (Annual Report 2021). Number of outlets not provided.
 - Persimmon: 14,551 new homes completed in 2021 with about 290 active outlets. This equates to approximately 50 completions per outlet (Annual Report 2021).
 - Barratt/David Wilson: 17,243 dwellings completed in 2021 with an average of 343 outlets. This equates to 50 completions per outlet (Annual Report 2021).
 - Taylor Wimpey: 10,009 dwellings completed in 2021 with an average of 225 outlets. This equates to an average of 45 completions per outlet (Annual Report 2021).
 - Crest Nicholson: 2,407 dwellings completed in 2021 with an average of 41 completions per outlet across the financial year (Annual report 2021).
 - Countryside Properties: 5,385 completions in 2021 with average sales outlets at 60. This equates to 90 completions per outlet per year (Annual Report 2021).

- 12.10.2 The analysis of the most recent housebuilder performance reports shows an average build out rates per outlet are between 41 and 51 dwellings each year, with Countryside Properties delivering slightly more on average, with 60 dwellings per outlet each year.
- 12.10.3 Given that the Council have not provided any local evidence on build out rates, and that they have not provided a housing trajectory for their sites. It is appropriate to use a figure at the lower end of this range. There is no evidence that housing is delivered at a faster rate in Bristol.

APPENDIX 2

APPENDIX 2 - Desktop Review of Sites included at Appendix A of Bristol City Council Five Year Housing Land Supply 2020-2025.

Planning reference	Decision Date	Expiry Date	Dwellings 2020-25	Dwellings 2025-	Dwellings total
17/03059/COU	14/01/2019	14/01/2022	71	0	71
19/00730/COU	13/06/2019	13/06/2022	57	0	57
17/04263/F	21/09/2018	21/09/2021	44	0	44
17/03731/F	28/03/2019	28/03/2022	39	0	39
16/06890/F	28/06/2017	28/06/2020	34	0	34
17/06885/F	01/11/2018	01/11/2021	31	0	31
19/00974/COU	17/05/2019	17/05/2022	29	0	29
06/05456/F	21/03/2007	21/03/2010	22	0	22
15/06617/F	30/04/2018	30/04/2021	20	0	20
17/05130/F	24/01/2019	24/01/2022	16	0	16
17/00834/F	13/08/2019	13/08/2022	13	0	13
16/06984/F	18/05/2017	18/05/2020	9	0	9
19/04395/F	02/03/2020	02/03/2023	9	0	9
17/06833/F	02/03/2018	02/03/2021	8	0	8
18/03832/F	21/06/2019	21/06/2022	8	0	8
17/06260/F	14/05/2018	14/05/2021	7	0	7
16/01311/F	03/08/2016	03/08/2019	6	0	6
18/03977/F	15/02/2019	15/02/2022	6	0	6
19/00743/COU	01/04/2019	01/04/2022	6	0	6
18/00667/COU	06/04/2018	06/04/2021	5	0	5
18/05572/F	27/12/2018	27/12/2021	4	0	4
17/06402/COU	18/01/2018	18/01/2021	4	0	4
19/01342/F	16/10/2019	16/10/2022	4	0	4
18/05425/F	07/12/2018	07/12/2021	3	0	3
14/02556/F	17/03/2015	17/03/2018	3	0	3
19/03823/F	17/10/2019	17/10/2022	3	0	3
19/02586/F	16/09/2019	16/09/2022	3	0	3
17/04319/F	24/01/2018	24/01/2021	2	0	2
12/04826/F	04/06/2013	04/06/2016	2	0	2
15/06058/F	21/01/2016	21/01/2019	2	0	2
17/03447/F	01/09/2017	01/09/2020	2	0	2
17/06437/F	09/03/2018	09/03/2021	2	0	2
18/01549/F	15/11/2018	15/11/2021	2	0	2
17/04387/F	20/02/2018	20/02/2021	2	0	2
17/03724/F	21/05/2018	21/05/2021	2	0	2
19/04079/F	25/11/2019	25/11/2022	2	0	2
13/04870/F	12/12/2013	12/12/2016	1	0	1
14/04088/F	09/04/2015	09/04/2018	1	0	1
17/02490/F	28/06/2017	28/06/2020	1	0	1
17/07079/F	19/04/2018	19/04/2021	1	0	1
18/02138/F	24/09/2018	24/09/2021	1	0	1
18/03431/F	21/12/2018	21/12/2021	1	0	1
18/06405/F	08/04/2019	08/04/2022	1	0	1
19/01611/F	05/07/2019	05/07/2022	1	0	1
19/03848/F	10/10/2019	10/10/2022	1	0	1
19/04552/F	12/03/2020	12/03/2023	1	0	1
20/00315/F	27/03/2020	27/03/2023	1	0	1
07/01575/F	06/06/2007	06/06/2010	1	0	1
17/03725/F	26/09/2017	26/09/2020	1	0	1
18/02587/F	06/09/2018	06/09/2021	1	0	1
19/00011/F	30/04/2019	30/04/2022	1	0	1
15/02875/F	27/05/2016	27/05/2019	1	0	1
19/05238/F	12/12/2019	12/12/2022	1	0	1

Planning reference	Decision Date	Expiry Date	Dwellings 2020-25	Dwellings 2025-	Dwellings total
16/05555/F	09/01/2017	09/01/2020	1	0	1
16/06416/F	13/04/2017	13/04/2020	1	0	1
17/01123/F	19/05/2017	19/05/2020	1	0	1
17/03043/F	26/07/2017	26/07/2020	1	0	1
17/02704/F	11/09/2017	11/09/2020	1	0	1
17/02967/F	15/11/2017	15/11/2020	1	0	1
17/04958/F	11/12/2017	11/12/2020	1	0	1
17/06557/F	02/02/2018	02/02/2021	1	0	1
17/06090/F	05/03/2018	05/03/2021	1	0	1
18/00164/F	30/10/2018	30/10/2021	1	0	1
18/02176/F	26/07/2018	26/07/2021	1	0	1
18/01170/F	05/09/2018	05/09/2021	1	0	1
18/04398/F	01/11/2018	01/11/2021	1	0	1
18/04046/F	22/11/2018	22/11/2021	1	0	1
18/01050/F	14/05/2018	14/05/2021	1	0	1
18/03613/F	17/01/2019	17/01/2022	1	0	1
18/04579/F	06/02/2019	06/02/2022	1	0	1
18/03172/F	29/01/2019	29/01/2022	1	0	1
18/03011/F	14/03/2019	14/03/2022	1	0	1
19/02444/F	02/08/2019	02/08/2022	1	0	1
19/01633/F	30/05/2019	30/05/2022	1	0	1
19/03144/F	04/10/2019	04/10/2022	1	0	1
18/04649/F	02/09/2019	02/09/2022	1	0	1
19/01279/F	07/05/2019	07/05/2022	1	0	1
18/03956/F	17/06/2019	17/06/2022	1	0	1
19/04100/F	17/12/2019	17/12/2022	1	0	1
19/05032/F	16/01/2020	16/01/2023	1	0	1
18/05051/F	09/04/2019	09/04/2022	1	0	1
18/06394/F	03/04/2019	03/04/2022	1	0	1
19/01099/F	29/10/2019	29/10/2022	1	0	1
19/04530/COU	14/11/2019	14/11/2022	1	0	1
18/06126/F	29/01/2019	29/01/2022	1	0	1
19/00903/F	15/07/2019	15/07/2022	1	0	1
19/02512/COU	12/07/2019	12/07/2022	1	0	1
19/02594/F	23/07/2019	23/07/2022	1	0	1
19/02820/P	03/10/2019	03/10/2022	1	0	1
19/01791/F	07/06/2019	07/06/2022	1	0	1
19/03595/F	13/09/2019	13/09/2022	1	0	1
18/06732/F	09/04/2019	09/04/2022	1	0	1
19/04827/COU	27/11/2019	27/11/2022	1	0	1
18/05464/F	17/05/2019	17/05/2022	1	0	1
19/01555/F	28/11/2019	28/11/2022	1	0	1
19/04832/COU	27/11/2019	27/11/2022	1	0	1
19/02424/F	19/08/2019	19/08/2022	1	0	1
19/04148/F	07/11/2019	07/11/2022	1	0	1
18/06565/F	19/07/2019	19/07/2022	1	0	1
19/01938/F	02/08/2019	02/08/2022	1	0	1
18/06204/F	19/09/2019	19/09/2022	1	0	1
19/01339/F	03/05/2019	03/05/2022	1	0	1
18/05934/F	03/04/2019	03/04/2022	1	0	1
19/01770/F	05/06/2019	05/06/2022	1	0	1
19/03339/F	20/03/2020	20/03/2023	1	0	1
19/00542/F	25/02/2020	25/02/2023	1	0	1
19/04416/F	11/02/2020	11/02/2023	1	0	1
19/03845/F	19/02/2020	19/02/2023	1	0	1
19/03552/F	20/02/2020	20/02/2023	1	0	1
19/02162/F	05/09/2019	05/09/2019	1	0	1
19/01988/F	01/10/2019	01/10/2022	1	0	1

APPENDIX 3

**Entech House, London Road, Woolmer Green SG3 6JE – ref:
APP/C1950/W/17/3190821**



Appeal Decision

Inquiry Held on 18 September 2018

Site visit made on 24 September 2018

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2018

Appeal Ref: APP/C1950/W/17/3190821

Entech House, London Road, Woolmer Green SG3 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Taylor Wimpey North Thames against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2017/0848/MAJ, dated 21 April 2017, was refused by notice dated 14 September 2017.
 - The development proposed is the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure.
-

Preliminary Matters

1. Following receipt of closing statements, an agreed list of planning conditions and a S106 Unilateral Undertaking (UU), the inquiry was closed in writing on 2 October 2018. The UU contains obligations regarding: affordable housing, fire hydrants; play facilities; a Framework Travel Plan and financial contributions relating to bins, ecology, education, community facilities and monitoring.
2. The decision notice contains 4 reasons for refusal (RfR). Following the receipt of further information and the UU, RfRs 3 and 4 relating to flood risk and infrastructure were not pursued by the lpa.

Decision

3. The appeal is allowed and planning permission is granted for the erection of 72 new dwellings, retail and commercial units, with associated landscaping, parking and infrastructure at Entech House, London Road, Woolmer Green SG3 6JE in accordance with the terms of the application, Ref. 6/2017/0848/MAJ, dated 21 April 2017, subject to the conditions set out in the Schedule to this decision.

Background to Main Issues

4. The local planning authority (lpa) accepts that the proposal does not conflict with the development plan¹ when read as a whole. The outstanding RfRs assert conflict with the emerging Welwyn Hatfield Borough Local Plan (eLP) submitted for examination in May 2017. The lpa acknowledges that whilst the 2018 Framework² indicates that policies contained in the 2012 Framework will apply for the purposes of examining plans submitted on or before 24 January

¹ Welwyn Hatfield District Plan 2005.

² Annex 1: Implementation.

28. In setting the context for the supply side of the equation, the lpa refers to the 2012 Framework and Footnote 11. This said that to be considered deliverable sites should: be available now; be a suitable location for development now; be achievable with a reasonable prospect that housing will be delivered within 5 years and that the development of the site is viable. In that context, disputes over the 5-year HLS generally revolved around the distinction between what is deliverable and what will be delivered. This distinction was settled by the Court of Appeal with the St Modwen Developments judgement⁹ which, amongst other things, said, "*The assessment of housing land supply does not require certainty that housing sites will actually be developed within that period. The planning process cannot deal in such certainties.*" Thus, for a site to be deliverable it should be capable of being delivered not that it will be delivered. To conclude that a site was not deliverable it was the objector who had to provide clear evidence that there was a no realistic prospect that the site would come forward within 5 years.
29. The lpa submits that, as the Framework retains, largely intact, the definition of deliverable set out in Footnote 11 to the 2012 Framework as the essential test, the decision of the Court of Appeal remains the authoritative definition of deliverable. The appellant submits that the requirement now as set out by the Framework is that the emphasis is now on delivery and that it is for the lpa to provide clear evidence that completions will begin on site in 5 years.
30. Annex 2 of the Framework and updated PPG provides specific guidance on which sites should be included within the 5-year supply. This guidance goes significantly further than the 2012 Framework. Whilst the Framework definition largely repeats the wording of Footnote 11, this now appears to be an overarching reference to be read in the context of the paragraph as a whole. The paragraph goes on to identify 2, closed lists of sites that constitute the 5-year supply. The second closed list refers to sites: with outline planning permission; with permission in principle; allocated in the development plan or identified on a brownfield register. Whilst such sites can be included within the 5-year HLS, there is no presumption of deliverability and it is for the lpa to justify their inclusion with clear evidence that housing completions will begin on-site within 5 years. The PPG provides a non-exhaustive list of examples of the type of evidence that can be used to justify the inclusion of such sites within the 5-year supply.
31. The bulk of the lpa's 5-year supply consists of: (1) sites with outline permission (871 units); (2) sites allocated in the eLP (269 units); (3) sites in the Green Belt allocated in the eLP (1,671 units) and (4) sites awaiting planning permission (440). The addition the Category 4 sites is only part of the equation and for a land supply position to be considered robust it should include losses through demolitions and lapsed permissions. I am not clear that a full exercise has been carried out and I consider this figure should be treated with caution. Thus, for the purposes of determining whether the lpa can demonstrate a 5-year HLS, I have concentrated on Categories 1, 2 and 3 as cumulatively they constitute the bulk of the asserted HLS (2,811 units).
32. The Category 1 sites, feature in the second of the closed lists and are capable of being included in the HLS, subject to being supported by clear evidence from the lpa. The lpa had the opportunity in its evidence and during a round

⁹ St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (20 East Riding of Yorkshire Council and Save our Ferriby Action Group [2016] EWHC 968 (Admin)).

table session on the disputed sites to provide the clear evidence required to justify their inclusion in the HLS. Indeed following the presentation of the lpa's evidence and the round table session, I permitted the lpa to provide a note seeking to explain delivery during the 5-years on one site, Broadwater Road West. Moreover, I had the opportunity to examine the lpa's data sheets for the disputed sites on which it drew its evidence. Taken together, whether the approach to these sites adopts the lpa's "capable of being delivered test" or the appellant's "will be delivered" test, I consider the information from these sources falls well short of the clear evidence required by the Framework to justify inclusion of these sites within the HLS.

33. Sites within emerging local plans (Category 2 and 3 sites) are specifically excluded from the second of the closed lists. This is on the basis that it is for the local plan examination to assess these allocations in the round. In that forum, unlike a S78 inquiry, the EI has contributions from all of the relevant stakeholders. This is particularly so for Green Belt releases given the scale of the releases envisaged and the importance that the Framework attaches to the ongoing protection of the Green Belt. Given the Framework as it now stands, I consider that as a matter of principle the Category 2 and 3 sites do not fall within the definition of available and offer a suitable location for development now. Moreover, given that this eLP is not at an advanced stage and the significance of the work the lpa is required to undertake to attempt to meet its objectively assessed need it cannot be said, that there would be a realistic prospect that housing will be delivered on these sites within 5-years.
34. I conclude that the lpa cannot show a 5-year supply of deliverable housing sites and that the scale of its supply falls considerably well short of 5 years.

S106 Unilateral Undertaking

35. In response to requests from the lpa and the County Council (CC), the UU contains obligations to cover: the provision and retention of Affordable Housing; the provision, laying-out and arrangements for the management of the play space; the provision of fire hydrants and the submission of a Framework Travel Plan. The UU also provides for financial contributions of £7,004 for refuse and recycling bins; £9,500 for ecology works; £186,240 for secondary education provision; £12,672 for library provision and £35,528 for youth services.
36. These obligations are derived from a Planning Obligations Supplementary Planning Document February 2012 produced by the lpa, the CC's Planning Obligations Guidance – Toolkit for Hertfordshire 2008 and Hertfordshire's Travel Plan Guidance for Business and Residential Development. The lpa and the CC confirmed that none of the obligations would conflict with the provisions of CIL Regulation 123 regarding pooled contributions for infrastructure. The above obligations comply with Framework and CIL Regulations and I have taken them into account in coming to my decision.
37. The UU includes obligations to pay a monitoring fee of £5,000 to the lpa and to pay a Travel Plan Evaluation and Support Contribution of £6,000 to the CC. There is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggests that an authority could or should claim monitoring fees as part of a planning obligation. Monitoring and administration are one of the

**APPENDIX 4 - Station Approach, Lower Sydenham, London – ref:
APP/G5180/W/16/3144248**

Appeal Decision

Inquiry held on 24 – 27 May & 2 June 2016

Site visit made on 27 May 2016

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 August 2016

Appeal Ref: APP/G5180/W/16/3144248

Land to the rear of former Dylan International Premises, Station Approach, Lower Sydenham, London SE26 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Iain Hutchinson against the Council of the London Borough of Bromley.
 - The application Ref: DC/15/04759/FUL1 is dated 30 October 2015.
 - The development proposed is demolition of existing buildings and redevelopment of the site by the erection of a part eight, part nine storey development comprising 253 residential units (128 one bedroom, 115 two bedroom and 10 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.
-

Decision

1. The appeal is dismissed.

Main Issues

2. Since the appeal was lodged, the Council has indicated that, had jurisdiction not passed to the Secretary of State, it would have refused the appeal on a number of grounds. Taking these into account, I consider that the main issues in this case are as follows:

The effect of the proposed development on

- (i) the area of Metropolitan Open Land (MOL) in which it would be located, in particular whether it constitutes inappropriate development and, if so, whether there are any material considerations that outweigh the harm caused by inappropriate development in the MOL, and any other harm, sufficient to justify the proposal on the grounds of very special circumstances.
 - (ii) the character and appearance of the surroundings, with particular reference to the quality of its design, especially in relation to its scale, form, density and the measures taken to mitigate the risk of flooding;
- and
- (iii) the amenities of the future occupiers of the dwellings with particular reference to natural ventilation and solar gain and noise.

16. A site at Tweedy Road is being released by the Council for development with design guidance indicating that 24 units are likely to be acceptable. The appellants consider that it is a sensitive site that is not suitable for the scale of development originally envisaged, i.e. 40 units, and should be removed in its entirety. The site is now being actively marketed by the Council and, given the design studies carried out, I see no reason why the number of units included in the SoCGH calculations should not be deliverable within the 5 year time scale.
17. The final site is the former Town Hall and car park that was granted planning permission for 53 units in November 2015, after the base date of 1 April 2016. The appellants submit that the appropriate estimate is the 20 units envisaged at the base date, whereas the Council considers that the latest position should be the one on which the figures are based.
18. Whilst there is more up-to-date information now available, it seems to me that if additional units granted planning permission after the base date are to be taken into account, so should any units that have been completed after the base date and consequently removed from the future supply availability, in order to present the most accurate overall picture. This exercise had not been completed for the Inquiry and I therefore conclude that for the purposes of this appeal, the position as agreed in the SoCGH should be adhered to.
19. In conclusion therefore, on this topic, I consider that 47 units¹ should be taken out of the total of allocated sites and other known sites that the Council consider to be deliverable in the table attached to the SoCGH.
20. Turning to the number of windfall sites that should be included, the Council rely on the figures which were informed by the Strategic Housing Land Availability Assessment (SHLAA) carried out in 2013 and based on the years 2004 - 2012. However, the appellants point out that this was a measure of capacity and does not necessarily reflect the actual rate of delivery of sites.
21. At the Examination in Public (EiP) into the FALP the Inspector found that it was likely that it would not deliver sufficient homes to meet London's OAN but non-adoption would result in the retention of the existing housing targets, which were even lower than those in the FALP. In those circumstances, he concluded that the FALP should be adopted but subject to an immediate review, with the clear intention of increasing the supply across all forms of delivery.
22. The Council considers that any review of the likely level of windfall sites should wait until the next SHLAA is carried out, but, given the situation set out in the EiP Report into the FALP, I disagree. There is now more recent data available which demonstrates that the availability of such sites has reduced in the 3 years since the SHLAA was published and given the FALP Inspector's conclusions on the need to increase delivery, even though capacity might be sufficient, I consider that the windfall allowance suggested by the Council is unrealistic and should be reduced.
23. At present, the Council has included a total of 1100 units (220 dpa) in its small sites allowance for windfalls for the relevant 5 year period which equates to about 1/3 of its housing requirement. The total from all small sites is set at 352 dpa in the Council's calculations, but this figure has not been achieved in the Borough since 2007/8, with the overall trend for such completions moving steadily downwards.

¹ 14 from the Sundridge Park Manor site and 33 from the former Town Hall site

**APPENDIX 5 - Green Road, Woolpit, Suffolk Appeal – ref:
APP/W3520/W/18/3194926**



Appeal Decision

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

Site visit made on 2 August 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018

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

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

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

Decision

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

Procedural Matters

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

¹ APP8

² INQ5

³ APP7

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

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

¹¹ Paragraph 1.1 of the Annual Monitoring Report

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

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

¹⁴ LPA4

APPENDIX 6 - Hanging Lane, Birmingham – ref: APP/P4605/W/18/3192918



Ministry of Housing,
Communities &
Local Government

Harris Lamb Property Consultancy
75-76 Francis Road
Edgbaston
Birmingham
B16 8SP

Our ref: APP/P4605/W/18/3192918
Your ref:

24 July 2019

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BLOOR HOMES (WESTERN)
LAND AT SITE OF FORMER NORTH WORCESTERSHIRE GOLF CLUB LTD, HANGING
LANE, BIRMINGHAM B31 5LP
APPLICATION REF: 2017/02724/PA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Singleton BSc (Hons) MA MRTPI, who held a public local inquiry starting on 2 October 2018 into your client's appeal against the decision of Birmingham City Council (the Council) to refuse your client's application for outline planning permission, with all matters reserved except access, for the demolition of the club house and development of up to 950 dwelling, public open space, primary school, multi-use community hub, new access points and associated infrastructure. developments in accordance with application reference 2017/02724/PA dated 24 March 2017.
2. On 31 January 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be determined on the basis of the revised proposal for up to 800 dwellings and should be allowed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's

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14.42 The distinction between “deliverability” and “actual delivery” as identified in the St Modwen judgment holds good when assessing sites to be included in a 5YHLS. On my reading there is nothing in Inspector Stephens’ Woolpit decision that suggests that he considered the realistic prospect test to have been replaced by some higher burden of proof. He did not feel the need to depart from that judgment in reaching his decision on that appeal. [9.27]

14.43 The PPG has been updated to give more detailed advice as to what types of information might be used as the clear evidence needed to justify the inclusion or removal of sites from the 5YHLS. This does not however change the NPPF definition of ‘deliverable’. [9.17] [9.28-9.30]

The Council’s 5 year housing land supply

14.44 I agree that a key effect of the revised definition is that the responsibility for demonstrating whether sites in the 5YHLS are or are not deliverable is now apportioned between the parties. The appellant bears the burden of proof to show that there is no realistic prospect that housing will be delivered within 5 years on sites that are not major development and with detailed planning permission. For sites with outline permission, permission in principle, allocated in the development plan or identified on a brownfield register the Council bears the burden of proof to show that there is a realistic prospect that housing completions will begin within 5 years. The NPPF is silent in respect of ‘permitted development’ sites and there is no agreement as to where the burden of proof lies in relation to this category. [9.27]

14.45 The appellant’s submissions on this matter are not without merit [para 79 of Appendix B] but it seems to me that these sites are more akin to those with detailed planning permission than to the other categories listed in the definition. In my view, sites with detailed permission have been placed in the first group because there is a reasonable expectation that the permission will be implemented within 3 years and, hence, that the housing on them will be delivered within 5 years. Sites with Prior Approval have an even shorter period for implementation since the standard conditions require that the works are completed within 3 years. [para 81 of Appendix B]

14.46 There may be less work involved in securing a Prior Approval compared to a full planning permission [para 77 of Appendix B] but it does involve time and costs. Having regard to the St Modwen judgment, that the property owner has gone to the trouble of securing that approval demonstrates that the housing is capable of being delivered within 5 years and that there is a realistic prospect that it will be.

14.47 The ‘Other Opportunity Sites’ category falls outside of the NPPF definition of deliverable. All of the sites would comprise proposals for major development (10 or more houses) that did not have planning permission at the base date. For that reason they do not, in my view, benefit from the presumption that the housing completions will be delivered within the 5 year period and are more akin to development plan allocations in this respect. The burden of proof to demonstrate that housing completions will be secured within 5 years should, accordingly, rest with the Council.

14.48 The parties agree that the base date for the 5YHLS is 1 April 2018 and that the supply should be assessed at that base date. [6.5] As noted by Inspector

Stephens in the Woolpit decision, (paragraph 67) this requires a clear cut-off date as including sites beyond that date skews the data by overinflating the supply without a corresponding adjustment of need. A site granted permission after 31 March should not, therefore, be included in the sites with permission categories within the 5YHLS. However, this does not mean that all information gathered after the cut-off date is irrelevant where, for example, this serves to confirm that assumptions made when deciding what should be in the supply were well founded.

- 14.49 PPG provides guidance on the preparation of 5YHLS reports and the evidence required to support them. I agree that the examples in paragraph 36 do not comprise an exhaustive list of the information that might be used to provide the clear evidence needed but it does provide an indication of the kind of information that might be required. [9.29] Paragraph 47 states the need for the annual assessment of the 5YHLS to be based on up-to-date and sound evidence. [9.30] It suggests, rather than requires, the use of benchmarks and assumptions about non-implementation rates, lead-in times and build rates to test delivery where there is no information from the site owner/developer to inform the assessment. Where such assumptions are used they should be based on clear evidence and be consulted upon with stakeholders including developers.
- 14.50 In my assessment of the disputed sites I have had regard to the revised definition of deliverable and updated PPG guidance and to the evidence submitted by the parties. My conclusions as to which sites/ dwellings should be removed and which should be retained in the 5YHLS are set out in Appendix B.
- 14.51 These include sites within in the Outline Permissions and Allocations categories where the Council's evidence falls significantly short of the clear evidence required to demonstrate a realistic prospect of housing completions within the 5 year period. In many cases the Council has simply relied upon the existence of outline permission or the site's inclusion in the BMHT programme with little or no additional information to support its inclusion within the 5YHLS. This is an area where the Council's decision not to seek detailed information from site owners and developers has made the 5YHLS less robust. [9.33]
- 14.52 I agree that the Council's process of updating the 5YHLS could be made more transparent and would be more robust if there was more extensive engagement with the development sector when carrying out that update. [9.33] However, based on the evidence relating to the assumptions made when preparing the 2018 5YHLS I find that there is justification to remove only some of the disputed sites and dwellings from the categories as set out in the table below:

Site Category	Number Removed from Supply
Outline Permissions	-145
Allocations	-355
Other Opportunities	-347
Total	-847

**APPENDIX 7 - Longdene House, Hedgehog Lane, Haslemere Appeal – ref.
APP/W/16/3165974**



Appeal Decision

Inquiry Held on 9-12 October and 19 November 2018

Site visit made on 19 November 2018

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 10th January 2019

Appeal Ref: APP/R3650/W/16/3165974

Longdene House, Hedgehog Lane, Haslemere GU27 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
 - The appeal is made by Monkhill Ltd against the decision of Waverley Borough Council.
 - The application Ref. WA/2016/1226, dated 6 May 2016, was refused by notice dated 20 September 2016.
 - The application is for "...redevelopment to provide up to 29 dwellings (net increase of 27 dwellings); demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; landscaping and highway works including alterations and extension to the existing access to Hedgehog Lane. Within this hybrid planning application: Outline planning permission (with Layout, Scale and Appearance reserved and Access and Landscaping for approval) is sought for the erection of up to 28 new dwellings (Class C3), including extension and alterations to existing access from Hedgehog Lane, demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; and associated landscaping; and Full planning permission is sought for the change of use and refurbishment of Longdene House from office (Class B1a) to residential (Class C3) to provide a new dwelling."
 - This decision supersedes that issued on 4 September 2017. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. All the appeal documentation from the quashed decision was submitted as part of the documentation for my Inquiry. I have taken into account the submissions and judgments about the relevance of the previous Inspector's decision. The appellant's view is that it should be the starting point for the assessment of any supplementary evidence. However, there is case law that the quashed decision should be treated as if it has not been made and is incapable of ever having had any legal effect. I have, therefore, considered the matter afresh and determined the appeal on its merits, having regard to the evidence submitted to my Inquiry. Nevertheless, where the unchallenged reasoned conclusions of the previous Inspector's decision are capable of being material considerations, by reason of the way the witnesses at my Inquiry were questioned about these matters, or otherwise, and I have come to a different view from the previous Inspector on those points, I have set out my reasoning for doing so.

36. It seems to me that the many constraints on the local network, which were apparent at my accompanied and unaccompanied site visits, serve to keep vehicle speeds low, and encourage drivers to adopt a cautious approach. I see no reason why this should be any different with residential development of the appeal site. Taking into account all the evidence adduced at the Inquiry, and from my site visits, I do not consider that the proposal would be likely to result in an unacceptable adverse effect on highway safety. Available routes to the town centre and railway station are not so dangerous that they would render the location unsuitable for further residential development.
37. Local apprehension about risks to vulnerable road users is understandable, but I do not consider that any resultant harm to highway safety should weigh significantly against the proposal. I find no conflict with LPP1 Policy ST1. Residual cumulative impacts on the road network would not be severe, and any increased risk to highway safety would fall far short of an unacceptable impact that would, in accordance with the *Framework*, justify preventing the development on highway grounds.

Housing supply

38. WBC updated its 5 year supply using a 1 April 2018 base date to demonstrate a 5.8 years' supply, with a 5% buffer as was applied by the Local Plan Inspector. The appellant disputes this and considers that with a 5% buffer there is only 3.37 years' supply.⁹ I note that Inspectors in other appeals have recently found a 5 years' supply, largely on the basis of maintaining the Local Plan Inspector's conclusions. However, the provisions of the revised *Framework* make it more difficult to place such reliance on the Local Plan Inspector's finding that WBC could demonstrate a 5 year supply of deliverable housing sites.
39. I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.
40. Urban and Rural LAA sites could potentially contribute to supply provided that there was clear evidence that completions will begin on site within 5 years. However, I consider that WBC's submissions about the deliverability of these sites falls short of the clear evidence now required. Many of the Rural LAA sites are located in the Countryside beyond the Green Belt, or in the Green Belt, the AGLV or the AONB. There is no clear evidence about the deliverability of these sites, particularly where progress on eLLP2 has been deferred.
41. Footnote 39 of the *Framework* provides that from November 2018 significant under delivery would be measured against the Housing Delivery Test (HDT).

⁹ ID15 Table 2 indicates that this is based on deleting from WBC's total supply of 5,287 units the following: 1,159 units from outline permissions, 487 units from Urban LAA sites and 574 units from Rural LAA sites.

**APPENDIX 8 - Land at Home Farm, Church Hill, Pinhoe, Exeter Appeal – ref:
APP/Y1110/A/14/2215771**

Appeal Decision

Inquiry held on 9,10 & 11 September 2014

Site visit made on 11 September 2014

by Lesley Coffey BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 October 2014

Appeal Ref: APP/Y1110/A/14/2215771

Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Waddeton Park Ltd & The R B Nelder Trust against the decision of Exeter City Council.
- The application Ref 13/4802/01, dated 6 November 2013, was refused by notice dated 24 January 2014.
- The development proposed is outline planning permission for about 120 residential dwellings (C3) along with associated infrastructure and openspace (means of access only to be determined).

Decision

1. The appeal is allowed and planning permission is granted for 120 residential dwellings (C3) along with associated infrastructure and openspace at Land at Home Farm, Church Hill, Pinhoe, Exeter, Devon EX4 0AY in accordance with the terms of the application, Ref 13/4802/01, dated 6 November 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Waddeton Park Ltd & The R B Nelder Trust against Exeter City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal is an outline application for 120 dwellings with all matters except the access reserved for subsequent approval. The Appellant submitted a plan showing how the development might be accommodated, but the plan is for illustrative purposes only and there could be alternative layouts for the site. It nevertheless provides a useful guide when considering the proposal before me.
4. The Appellant submitted an agreement under s106 of the Act which covenants to provide 35% of the proposed dwellings as affordable housing in accordance with policy CP7 of the Core Strategy. The Council is satisfied that this would overcome its second reason for refusal. I have no reason to take a different view and I have taken this obligation into account in reaching my decision.
5. The Appellant also submitted a Unilateral Undertaking which covenants to provide mitigation works as agreed with the Highway Authority. These works

Undertaking. No persuasive evidence has been submitted to convince me that this would not be the case.

32. Notwithstanding this, local residents raised a number of concerns in relation to traffic and highway safety. In places Church Hill is very narrow (about 3.3 metres wide), meaning that there is insufficient room for cars to pass each other, and that cars pass very close to pedestrians. Due to the hedges on either side of the road there are few places where pedestrians can safely wait for cars to pass. Church Hill is subject to a constant flow of traffic throughout the day. Local residents suggest that it is used by about 330 cars a day during morning peak hour and are concerned that the appeal proposal could exacerbate the existing situation.
33. The appeal proposal would be likely to give rise to some increase in the number of vehicles using Church Hill. However, when considered in the context of the existing traffic flows the increase would not be significant. Due to the proposed pedestrian links with the other areas of Pinhoe, and the information provided as part of the travel plan, it could be that the number of vehicle movements emanating from the appeal site would be lower than anticipated within the Transport Assessment.
34. The appeal proposal would provide a formalised priority system. This would involve narrowing part of Church Hill to a single lane, and widening part of it to allow vehicles to wait for those with priority to pass. There was concern that there was insufficient visibility along the length of the priority scheme, but it was confirmed at the site visit that this was not the case. These changes would also provide some benefits for pedestrians in terms of footpaths close to the appeal site, and adjacent to the area where the road would be narrowed. The priority scheme, together with the proposed traffic calming measures close to the site, and those that comprise scheme C, would be likely to reduce traffic speeds on this part of Church Hill. Overall, when considered together with the pedestrian links which form part of the appeal proposal, the scheme would be beneficial for pedestrians.
35. Some residents living towards the southern end of Church Lane advise that cars use their private access to wait for other vehicles to pass. There is no evidence to suggest that the appeal proposal would exacerbate this situation and the proposed priority scheme may help to alleviate this problem.
36. I therefore conclude that subject to the implementation of the measures within the Unilateral Undertaking and the provision of a priority scheme, the proposal would not have an adverse effect on highway safety or traffic.

Housing Land Supply and Sustainability

37. The parties differ as to the level of previous housing completions and the extent of the housing land supply within Exeter. The essential difference between the parties is their approach to the inclusion of student housing. The number of students within Exeter has increased from about 13,369 in 2006/2007 to about 19,325 in 2013/2014 and students currently comprise about 16.5% of the population.
38. Core Strategy policy CP1 requires the delivery of at least 12,000 dwellings over the plan period 2006 - 2026. This figure was derived from the evidence base of the Draft Regional Spatial Strategy for the South West (2006) (RSS).

Although the RSS did not progress to adoption, following an Examination in Public (EIP) the panel proposed a figure of 12,000 dwellings for Exeter City. The parties agree that the housing requirement within the Core Strategy did not include provision for the accommodation needs arising from the growing number of university students within Exeter.

39. At the time of the RSS there were about 1,184 homes within Exeter City entirely occupied by students. The Council explained that although the housing requirement did not include specific provision for student housing, it projected the future housing needs of those students within market housing based on the household formation rate for their age demographic. Due to the majority of students falling within the 18-22 age group there would be a relatively high household formation rate throughout the plan period. As such, the adopted housing requirement includes an element of growth in relation to those students resident within general market housing in 2006.

Student Accommodation

40. The NPPF sets out the national planning policy context in relation to housing. Amongst other matters it seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Paragraph 47 is clear that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. The intention is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
41. Paragraph 50 of the NPPF requires local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. In particular, they should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Thus there is a qualitative as well as a quantitative requirement for housing.
42. The Council submits that the figures within the Draft 2014 SHLAA provide the most accurate assessment of housing supply and delivery in that they are based on the most recent and up-to-date information available. The principle difference between the 2014 SHLAA and previous SHLAAs is that it includes all student accommodation schemes within the housing delivery and housing land supply figures. It therefore shows 914 additional historic completions over the period 2009/2010 and 2013/2014. As a consequence it demonstrates an oversupply of 169 dwellings for the period up to 2013/2014, whereas the 2013 SHLAA showed a shortfall of 749 dwellings over the same period. These additional dwellings primarily comprise student schemes previously excluded from the housing supply. The Council's decision to include these dwellings (and to adjust the housing supply retrospectively) was prompted by the publication of the Planning Practice Guidance (PPG) in March 2014. It considers that the approach within the 2014 SHLAA is consistent with the advice within the PPG and that within the Core Strategy Inspector's Report.
43. Paragraph 3/38 of the PPG advises that all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market.

44. The Council submit that the provision of student accommodation releases housing that would otherwise be occupied by students and thereby indirectly releases accommodation within the housing market. For this reason it believes that all student accommodation should be included within the housing delivery and housing land supply figures. This view is not consistent with the PPG because it is not based on any assessment of the extent to which the provision of student accommodation has released general market housing.
45. The number of fulltime students within Exeter has increased substantially in recent years. Based on the figures within *SPD Houses in Multiple Occupation* (amended January 2014) the number of general market dwellings identified as exempt from Council Tax (predominantly student housing) increased by about 1527 in the period between 2006 and May 2013. The SPD explains that this figure includes about 750 private student cluster flats and studios. The Council state that the more recent evidence indicates that purpose-built student accommodation only comprises about 637 of these dwellings. By May 2014 the number of Council Tax exempt dwellings had increased to 2984, and the Council suggest that 1096 of these comprise purpose-built student accommodation.
46. Whilst it would seem that there has been a reduction in the number of general market dwellings occupied by students between May 2013 and May 2014, the growth in the number of students in recent years has significantly exceeded the provision of student accommodation. As a consequence there are at least 700 additional general market dwellings occupied by students by comparison with the commencement of the plan period.
47. Where the student population is relatively stable, and the number of general market dwellings occupied by students declines as a consequence of the provision of student accommodation, I consider the inclusion of such accommodation as part of the housing supply would be consistent with the guidance within the PPG. However, within Exeter, due to the considerable increase in the number of students relative to the provision of purpose-built student accommodation, there has not been a reduction in the number of general market dwellings occupied by students. On the contrary, there has been a significant increase. I acknowledge that this situation may change in the future should the delivery of student accommodation significantly exceed the increase in the size of the student population. However, that is not the case at present and there is no evidence to show that the provision of student accommodation has released general market housing within Exeter. Therefore the inclusion of purpose-built student accommodation as part of the housing supply is not consistent with the advice at paragraph 3/38 of the PPG.
48. The Council refer to paragraph 21 of the Core Strategy Inspector's Report. This states that it was debateable whether or not the new privately developed student units should be counted towards the City's housing land supply. The Inspector concluded that clusters of self-contained student accommodation should be counted towards housing supply, whereas communal accommodation should not. It is however, apparent that the Inspector understood that the University intended to meet most of its future student housing needs on University owned land on and off campus. She also anticipated that the Council's approach to student accommodation would be refined within the emerging Development Management DPD.

49. On the basis of the submitted evidence the reason for the Core Strategy inspector's view in relation to the inclusion of student housing is unclear. Based on the Council's approach 4969 dwellings have been delivered to date and of these 1510 comprise student accommodation. The Council submitted no evidence to show how this high proportion of student accommodation would reflect local demand for housing in accordance with paragraph 50 of the NPPF. Furthermore, the Inspector's Report pre-dates the publication of the NPPF and the PPG. The NPPF represents up-to-date Government planning policy and must be taken into account where it is relevant to a planning application or appeal. Paragraph 47 of the NPPF requires local plans to meet the full, objectively assessed needs for market and affordable housing in the housing market area. Since student accommodation requirements did not form part of the objectively assessed need, the provision of such accommodation would not contribute towards meeting the identified housing requirement. Therefore to rely upon student accommodation as a component of housing supply would not be consistent with paragraph 47 of the NPPF.
50. I therefore conclude that student accommodation should not be included as part of the housing land supply.

Housing Land Supply

51. The 2013 SHLAA identified 4051 completions for the period up to 2013/14 against a target of 4800. This includes about 596 purpose-built student dwellings. The higher figure within the 2014 SHLAA in relation to completions is due to the inclusion of additional student accommodation. If student completions are removed from the 2013 SHLAA the number of dwellings delivered falls to 3455 and there is a residual requirement for 8545 dwellings for the remainder of the plan period.
52. The Council's housing land supply comprises sites where construction has commenced; sites with planning permission where construction has not yet commenced and sites subject to a resolution to grant planning permission; sites without planning permission identified within the 2014 SHLAA, and an allowance for windfall sites.
53. Based on the figures within the 2013 SHLAA, sites with planning permission, or a resolution to grant planning permission, would deliver 2281 dwellings (excluding student accommodation) within the next five years. The more recent evidence within the 2014 SHLAA provides a figure of 2436. The Appellant considers that not all of these sites are likely to be viable and that no allowance has been made for non-implementation of these permissions, or for resolutions that may not be converted into planning permissions. He therefore suggests that a lapse rate of 10% should be applied to such sites.
54. In arriving at the figures within the 2014 SHLAA the Council contacted the applicants/agents in relation to each of the sites for 5 or more dwellings to obtain information on the first and final dwelling completions. On smaller sites about 50% of applicants/owners were contacted. On the basis of this information a number of sites with planning permission were excluded from the five year housing land supply.
55. Although there is no certainty that all of the sites identified by the Council will be delivered, I consider that its approach to the assessment of these sites to be reasonably robust. Footnote 11 to paragraph 47 of the NPPF states that sites

**APPENDIX 9 - Land off Darnhall, School Lane, Winsford SoS Decision on
Appeal – ref: APP/A0665/W/14/2212671**



Ministry of Housing,
Communities &
Local Government

Our ref: APP/A0665/W/14/2212671

Mr Jon Suckley
HOW Planning
40 Peter Street
Manchester M2 5GP

4 November 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DARNHALL ESTATE
LAND OFF DARNHALL SCHOOL LANE, WINSFORD, CHESHIRE
APPLICATION REF: 13/03127/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Melvyn Middleton BA (Econ), DipTP, Dip Mgmt, MRTPI, who held a public local inquiry on 27-30 November 2018 into your client's appeal against the decision of Cheshire West and Chester Council to refuse your client's application for planning permission for a high quality residential development with associated open space, access and infrastructure, in accordance with application ref: 13/03127/OUT, dated 12 July 2013.
2. On 25 February 2014, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 7 July 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 10 August 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 2016 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted.
5. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

Tel: 0303 444 2853
Email: PCC@communities.gov.uk

Matters arising since the close of the inquiry

6. On 4 July 2019 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the publication of the Cheshire West and Chester Local Plan Part 2 (CW&CLP P2) Inspector's Report and Schedule of Main Modifications. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 19 and 29 July 2019. The Secretary of State's conclusions on these representations are set out in this Decision Letter below.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the adopted development plan for the area comprises the Cheshire West and Chester Local Plan P1 (CW&CLP P1) Strategic Policies to 2030 (adopted 29 January 2015); the Cheshire West and Chester Local Plan P2 (the P2 plan) (adopted 18 July 2019); and the made Winsford Neighbourhood Plan (November 2014). The Secretary of State considers that relevant development plan policies include those set out at IR28-33 and P2 plan Policies W1, GBC 2 and DM19.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as supplementary planning guidance on affordable housing, developer contributions and landscape character. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

Development plan

10. The Secretary of State has had regard to the Inspector's conclusions on the VRBLP at IR378-382. At the time of the inquiry, the Inspector undertook a planning balance based on a finding that saved policy GS5 of the VRBLP in terms of its settlement limits was out of date such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework ("tilted balance").
11. Matters regarding the VRBLP have now moved on as the P2 Plan has been adopted which includes allocations, boundaries and detailed policies replacing those parts of the VRBLP that were saved. The Secretary of State considers that the most important policies for the purposes of this appeal are STRAT 1, STRAT 2, STRAT 6, STRAT 9, Policies H1 and H2 of the WNP, and P2 plan Policies W1 and GBC 2.
12. The appellant does not argue that Policies STRAT 1 or STRAT 2 are out of date (IR48). The Secretary of State considers that STRAT 1's aim of enabling development that improve and meets the economic, social and environmental objectives of the Borough in line with the presumption in favour of sustainable development is consistent with the Framework, and thus concludes that the policy is not out of date. He further considers that Policy STRAT 2's objective of setting minimum housing and employment

development targets and requiring development to be brought forward in line with the settlement hierarchy is consistent with the Framework, and thus concludes that the policy is not out of date. For the reasons given at IR384 he agrees that while STRAT 9 is not fully consistent with the wording of the Framework, it is not out of date and is capable of attracting weight for the reasons set out below.

13. The Secretary of State considers that the P2 Plan policies W1 and GBC 2 have been found compliant with the Framework by the Plan Inspector, and for that reason the Secretary of State concludes they are not out of date. He further notes that there is no contention that the WNP is out-of-date. As such he concludes that these policies when taken as a whole are not out of date, and that thus the development plan is not out-of-date.

Five year housing land supply

14. For the reasons given at IR325-6, the Secretary of State agrees with the Inspector that there is no evidence for disagreeing with the housing land supply details set out in the Housing Statement of Common Ground. He has had regard to the report of the Inspector into LLP Part 2, and the representations of the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019 as to whether the report on the plan confirms that the Council can demonstrate a 5 year housing land supply. However, he considers that the focus of the local plan examination was not to reach a judgment on housing land supply, that the plan Inspector did not have access to the Housing Land Monitor Review and was not considering the definition of deliverable as set out in 2019 Framework. As such has based their conclusions on the recommendation of the appeal Inspector, who heard the evidence, including more recent changes, cross examined at Inquiry at greater length than the plan Inspector, and subsequent representations from the parties.
15. The Secretary of State has gone on to consider the issue of supply. In doing so he has had regard to his guidance on deliverability issued 22 July 2019. For the reasons given at IR341-344 the Secretary of State agrees with the Inspector's conclusions on preliminary points. The Secretary of State has had regard to representations on behalf of the appellant dated 26 July 2019, with regards to evidence of deliverability.
16. For the reasons set out at IR345, the Secretary of State agrees that 167 dwellings should be deducted from the five year supply figure to account for potential future demolitions. He has gone on to deduct a further 430 dwellings, namely student accommodation, for the reasons set out at IR346-350.
17. For the reasons given at IR360-364 the considers that there is clear evidence to conclude that the disputed sites as set out in paragraph 3.9 of the Statement of Common Ground are deliverable.
18. He has gone on to consider the deliverability of six non allocated sites without planning permission that are disputed. The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.
19. The Secretary of State has gone on to consider the Inspector's analysis of build-out rates and lead in time at IR368-70. For the reasons given he agrees that supply should be

site. Repeating those at the appeal site would not be a new departure [IR 151 & 260].

388. By virtue of being outside of the settlement envelope the proposal is contrary to STRAT 9. However, the Council has not advanced an argument that the proposal would be harmful to the character and appearance of the countryside itself, only that by being within the Policy STRAT 9 considerations, it must in principle be contrary to that policy. Indeed, the Council's officers, when recommending members to approve the application that is now the subject of this appeal, back in 2013, said that

"the site is contained on two sides with residential development to the north and a main road along the eastern boundary, with the impact on landscape character not considered to be significant. The site is relatively well contained visually within the local landscape, with the topography and woodland vegetation to the south and west restricting long-distance views" (CD 2/2 para. 7.32).

389. These observations are as relevant today as they were six years ago. There is also extensive residential development across the main road referred to and some further residential development in the form of individual dwellings and out-buildings on either side of the eastern end of the lane that abuts the southern boundary (SV). The proposed development would undoubtedly result in the loss of open countryside but its impact on the wider countryside and its landscape would be minimal. I therefore give the infringements against Policy SRAT 9 only minor weight [CD 2.2].

390. Policy STRAT 1 requires development to support eight sustainable development principles, following which it will be approved without delay, unless material considerations indicate otherwise. The sixth criterion requires proposals to minimise the loss of greenfield land. The Council quite rightly refers to the proposal's conflict with this but not to any of the others. Inspector Dakeyne found that *"a degree of conflict was involved"*. There is clearly conflict but with regard to the other seven criteria, the proposal is either neutral or contributes towards their requirements [IR 29, 133, 134, 155b, 262].

391. In particular the "Local Approach", which could be secured by conditions or a legal agreement, would help to support regeneration in one of the most deprived areas of the Borough and the parties agree that the new housing would have good accessibility to local shops, community facilities and a primary school. In the context of Winsford it has good connections to public transport. It is agreed that there would be improvements to biodiversity, particularly as a result of the measures proposed to improve the habitat and breeding ponds used by GCNs, a protected species. The proposal would not encourage the use and redevelopment of Pdl but then many of the sites proposed for housing development in the LP or granted planning permission by the Council would not. In the overall circumstances I can only give limited weight to the harm to Policy STRAT 1 [IR 158-170, 184-207 & 284-297].

392. Policy STRAT 2 sets a minimum target of 22,000d for the borough. Policy STRAT 6 Winsford requires provision to be made for at least 3,500 of these new dwellings at Winsford by 2030. The WNP makes provision for 3,362 and I was told that no further sites around Winsford have been identified in the CW&CLP P2. However, I agree with Inspector Dakeyne that the development of Pdl and other

windfalls over the next 11 years would be likely to more than make up for this shortfall of identified numbers. The Appellant refers to issues that are alleged to be undermining the delivery of land within the Station Quarter and suggests that this could lead to an overall under-provision at Winsford. However, the Station Quarter is only meant to deliver 775d during the plan period (about 22%). I have not been referred to any development phasing plan at Winsford and given that more than half the plan period has yet to come, I consider it premature to be suggesting that the requirement from the Station Quarter cannot be delivered over the next eleven years [IR 29, 30, 128, 139, 142, 147, 148, 263, 264 & 308].

393. In my judgement the Policy STRAT 6 requirement is likely to be achieved without the development of the appeal site. Whilst the policy does not offer any support for the appeal proposal, given that it sets a minimum requirement and there is no evidence to suggest that that number is already likely to be unsustainably exceeded, the proposal does not conflict with it either [IR 238 & 264].
394. Policy SOC 1 Delivering affordable housing seeks to maximise the provision of such accommodation on all larger schemes. A target of 30% is set. The proposal would achieve at least 40%, with a further 10% being set aside for self or custom-build housing in the first instance. The scheme clearly accords with this policy, even the Council considering that the benefit deserves substantial weight [IR 32, 175 & 280].

WNP

395. The Appellant points out that only about 2h of the appeal site (30%) falls within the remit of the WNP and that in any event 70% of the proposal cannot be considered to be in conflict with that plan. However, the development as a whole would be a clear extension to the town of Winsford, even though a part would be within another parish. Indeed, the Appellant put the site forward as a potential allocation for the WNP. The proposal would clearly be meeting the needs of Winsford, rather than the small village of Darnhall, in whose parish some of the site is located. Darnhall village is some distance from the appeal site. In addition, the high proportion of affordable housing and the "Local Approach" benefits are clearly there in a Winsford context and do not relate to Darnhall. I therefore consider the proposal as a whole would respect the objectives and policies of the WNP. [IR 135, 136 & 265].
396. The Council and some of the third parties suggests that the plan has a clear strategy for locating housing development, close to the town centre and the railway station as well as creating positive new "gateways" at key arrival points. However, whilst some of these may be contributing to the underlying themes of the plan, there are a number of sites proposed for development that clearly do not meet these descriptions. The appeal site could be considered to be a gateway, albeit only to a minor extent but nevertheless to a greater extent than some of the sites that are expected to deliver Winsford's contribution to the overall housing requirement [IR 147, 266 & 268].
397. The Council suggests that the proposal conflicts with the themes of the plan. There are seven of these. I agree with the Appellant (Para.s 143 & 144) that it is difficult to see how the proposal actually offends any of them. However, at the same time many other sites proposed for development in Winsford would

**Appendix 7: Kingswear Road Committee
Report (LPA Ref. 21/00824/FB)**

Extension: Revised expiry date	11 March 2022
'Hold Date'	

Bristol City Council Development Management

Delegated Report and Decision

Application No: 21/00824/FB **Registered:** 16 February 2021

Type of Application: Full Planning (Regulation 3)

Case Officer: Patrick Boxwell **Expiry Date:** 18 May 2021

Site Address:

Open Space
Kingswear Road
Bristol
BS3 5JF

Description of Development:

Redevelopment of site to provide 34no residential dwellings (Use Class C3) with associated landscaping, parking, and refuse and recycling storage.

Ward: Filwood

Site Visit Date:

Date Photos Taken:

Consultation Expiry Dates:

Advert 31 Mar 2021
and/or Site 31 Mar 2021
Notice:

Neighbour: 26 Mar 2021

BACKGROUND

The site is a 1.3ha parcel of allocated land in Lower Knowle located between Kingswear Road to the north and houses fronting onto Glyn Vale to the south. The site is situated on a north facing slope which descends increasingly steeply to Sidford Road. The site has historically been developed with older housing units now demolished. A hybrid application for approximately 40 dwellings on site was granted in 2013. To date the land to the north around Sidford Road has been redeveloped under the former consent and subsequent details secured by condition, however a new application is required in order to progress redevelopment of the Kingswear Road site.

HISTORY

13/04196/F Hybrid planning application. Full planning permission for laying out public open space, demolition of five existing residential buildings at Torpoint Road and construction of 71 residential units. Outline planning permission, with all matters reserved, for construction of approximately 40 residential units on land uphill of Kingswear Road and for construction of approximately 20 residential units on land adjacent to Haldon Close. (Major Application)

GRANTED 22 April 2014

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Open Space Kingswear Road Bristol BS3 5JF

APPLICATION

Planning permission is sought for the redevelopment of the site to provide 34no residential dwellings (Use Class C3) with associated landscaping, parking, and refuse and recycling storage.

RESPONSE TO CONSULTATION

447 neighbouring properties were directly consulted and site and press notices were posted. Overall consultation expired on 31st March 2021. 14 objections were received from local residents. A summary of key concerns is set out below:

- Loss of open/green space
- Loss of biodiversity
- Adequate social housing provision
- Additional traffic congestion
- Scale, massing and layout of houses
- Security and quality of green space to the rear of houses
- Security of the proposed houses

A representation was received from the Northern Slopes Initiative in objection to the scheme:

'Our vision is for all of the Slopes to be a nature reserve for the health and well-being of people and wildlife.

Having reviewed documentation provided by the City Council we wish to object to the planning application above. Our objection is based on the following:

o There is no consideration within the Planning Application of the impact that construction works will have on The Northern Slopes both during the construction phase of this project and in the long term once work is completed and contractors have left the site.

This point was made clearly in our response to the 2nd Consultation submitted on 31 January 2021. It has not been referred to within the Community Involvement Statement submitted with this Application.

To reiterate, given the size and location of the development it is in our view inevitable that construction work adversely affect the Northern Slopes and also cause significant disruption to the local community. We would refer you to our letter of 31 January which sets out our concerns in more detail.'

WARD MEMBER

No response from the Ward Member consultation period expired.

HIGHWAYS

TDM were consulted and raised concern in relation to slope investigation however removed initial objection subject to conditions being applied to any approval.

CITY DESIGN GROUP

No objection raised subject to conditions.

POLLUTION CONTROL

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No objection subject to condition.

CONTAMINATED LAND
 No objection subject to conditions.

FLOODRISK MANAGER
 No objection.

NATURE CONSERVATION
 No objection subject to conditions.

ARBORICULTURAL TEAM
 An arboricultural officer was consulted and raised no objection in principle subject to conditions however upheld objection to the lack of a detailed arboricultural impact assessment. See key issue for further details.

SUSTAINABLE CITIES
 No objection subject to conditions.

PUBLIC RIGHT OF WAY TEAM
 No objection subject to condition

CRIME PREVENTION UNIT
 No objection - advice provided

ENVIRONMENT AGENCY
 No comment

RELEVANT POLICIES

National Planning Policy Framework – July 2021
 Bristol Local Plan comprising Core Strategy (Adopted June 2011), Site Allocations and Development Management Policies (Adopted July 2014) and (as appropriate) the Bristol Central Area Plan (Adopted March 2015) and (as appropriate) the Old Market Quarter Neighbourhood Development Plan 2016 and Lawrence Weston Neighbourhood Development Plan 2017 and the Hengrove and Whitchurch Park Neighbourhood Development Plan 2019.

In determining this application, the Local Planning Authority has had regard to all relevant policies of the Bristol Local Plan and relevant guidance.

KEY ISSUES

NOTE: The entire site is allocated for residential development - see site allocation BSA1124 Kingswear Road, Torpoint Road and Haldon Close under policy SA1 of the Site Allocations and Development Management Policies (2014) document. Furthermore the site has historically been partially occupied by residential development along Kingswear Road and is set within an overwhelmingly residential area. No other site designations are in place on the subject property although it does border on the Novers Common SNCI, which is also designated as Important Open Space. Subject to the proposal successfully overcoming all proceeding key issues the scheme is therefore acceptable in pure land use terms and there are no principle concerns which would warrant

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refusal of the scheme.

1. DESIGN AND CHARACTER

- o Policy BCS21 (Quality Urban Design) of the Core Strategy advocates that new development should deliver high quality urban design that contributes positively to an area's character and identity, whilst safeguarding the amenity of existing development.
- o Policy DM26 (Local Character & Distinctiveness) and Policy DM27 (Layout & Form) of the SADMP outlines that all development is expected to contribute positively to an area's character and identity. It is outlined that this should be achieved by responding to the existing built environment. In particular, development should respect the local pattern and grain of existing buildings and respond to the local scale and character created by height, massing, shape and form, proportion, building lines, set-backs from the street, skylines and roofscapes.
- o Policy DM29 (Design of New Buildings) of the SADMP states that new buildings should present high quality design, responding appropriately to their importance and reflecting their function and role within the public realm. In particular, clear organisation and hierarchy in relation to function is encouraged, as are active street frontages with main entrances fronting the public realm and good levels of natural surveillance. Consideration should also be given for orientation in relation to climatic conditions. Exteriors should generate visual interest, be well proportioned and appear well ordered. Materials should be high quality, durable and sustainable, utilising colours and patterns which contribute positively to the character of the area. DM29 also notes that new residential development should provide dual aspect where possible, particularly where one of the aspects is north facing.

The Local Authority's City Design Group was formerly consulted and returned the following comments:

Summary:

The application represents a well-considered design response to a highly constrained site. The development approach is supported, as is the approach to height, scale, massing, and appearance. The application also benefits from a comprehensive landscape strategy which will help integrate the development form into the ridgeline.

Context:

This site has been subject to extensive pre-application advice, both on the current scheme and previous submissions in 2017.

The site forms 1 of 3 grouped allocated sites in the Knowle area and is the final site to come forward for development. The site is located at the top of the northern slopes and enjoys panoramic views back across the city. This location also means the site is visually prominent and constrained by significant topographic conditions.

The application proposes the redevelopment of the site to provide 34 new homes, served from the existing Kingswear Road.

Design Approach:

The application submission is of an excellent quality, demonstrating a clear and rational design process and presenting a thorough consideration of various development options based on a good understand of the site.

- o The approach to only develop on the frontage of Kingswear Road is supported.

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- o The use of shallow footprints to minimise cut and fill is also supported.
- o The building typologies are configured to address the topographic constraints of the site, whilst also utilising the orientation and aspect of the site.
- o The dual aspect and provision of private amenity space is well handled and demonstrates a positive response to the Urban Living SPD.
- o Building thresholds and street design is well considered and supported by a comprehensive landscape strategy which will help soften views to the development and integrate the scheme into the ridge side.
- o It is unfortunate the retained open space and public right of way through the site will not benefit from any direct overlooking, but the constraints of the site are noted.
- o It is noted that lighting is proposed to increase the sense of safety. Sight lines and vegetation placement should be carefully designed to avoid blind-spots and increase a sense of passive surveillance for the rear of surrounding houses.
- o Management of this space will be critical to its success.
- o The application material describes a high quality approach to material and detailing, which is considered appropriate to the site and its context- as it will be seen in the context of the more contemporary development of the Torpoint site, rather than the 1930s residential.

Conclusions:

Subject to retaining the features and design intent presented, the proposal has the potential to be an exemplary residential scheme on a very constrained site. CDG remain supportive of the scheme.

Should the applications be recommended for approval CDG would request materials and details conditions (covering soffits, window reveals, cills, material junctions, eaves etc.), together with a condition that covers the landscape and public realm treatment, to ensure a high quality finish is secured in this prominent location.

In addition to the comments made by City Design Group a level of concern raised by residents is noted, particularly in relation to the impact of the development in terms of its scale and layout on the character of the area as a result of the site's elevated and prominent location. The predominance of buildings of a three storey scale within the development was raised as an area of concern. The majority of houses in the area feature a two-storey scale typical of most medium density residential areas, however the impact of the larger flats and dwellings proposed is mitigated to some degree by their siting and design. They would be set-back from the slope before the road and feature steep pitches to the roof line of the houses. Regular gaps in development at the first and second storey levels along the line of development assist to break up the impact of scale and massing to prevent the units appearing over-dominant or overbearing in relation to surrounding buildings. While it is acknowledged that a three storey scale is slightly greater than that to much of the surrounding development, as a result of their siting and design it is not considered this would have an unacceptable impact in design terms on the surrounding built environment, nor would it appear incongruous within this context.

Regarding layout the proposal reinstates and extends the historical pattern of development to the southern side of the road. The site is allocated for residential development within the Local Plan and the proposal would continue the line of developed land by approximately 90m to include the broad curve in the road. While this would result in the loss of some previously undeveloped open space, the majority of the space would be retained, improved and managed.

Overall it is concluded that while the development occupies a prominent location, it incorporates a distinctive, high quality design approach that would complement surrounding development and would not harm the appearance of the area.

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2. RESIDENTIAL AMENITY

- o Policy BCS21 (Quality Urban Design) of the Core Strategy advocates that new development should deliver high quality urban design that Safeguard the amenity of existing development and create a high-quality environment for future occupiers.
- o Policy DM29 (Design of New Buildings) of the SADMP states that Proposals for new buildings should ensure that existing and proposed development achieves appropriate levels of privacy, outlook and daylight.
- o Any proposed dwelling must ensure satisfactory levels of privacy, outlook and daylight for neighbouring properties. These factors are dependent on proposed scale, position massing and overall design and appearance. Positioning of windows within elevations as well as any private outdoor amenity area such as terraces or balconies should be designed to avoid overbearing, overshadowing, or overlooking between both existing neighbouring and proposed premises.

The housing proposed would be set away from surrounding development, benefitting from sloping open land between houses along Glyn Vale and Lurgan Walk to the south, and a more significant slope between Kingswear Road and Sidford Road to the north.

The eastern and western sides of the site to be developed would be in relatively closer proximity to nearby housing, notably between Nos. 29-37 Lurgan Walk in the west, and Nos. 90-92 Glyn Vale in the east, at the junction of Kingswear Road with Glyn Vale. In both instances the applicant has responded by siting smaller scale, 2 storey housing units in locations directly adjacent to these houses. Some three storey units would be in relatively close proximity to Nos. 35 and 37 Lurgan Walk in the west, however the topography of the land as demonstrated in submitted section drawings, as well as minimum separation distances of 26-30m between elevations would successfully mitigate against harmful overbearing, overshadowing, loss of light or loss of outlook to existing properties or their external amenity areas. While it is possible views out across the slopes from upper floor windows to these properties may be altered to some extent by the development, this is not a material planning consideration in this instance as so long as harm is not identified in terms of direct impact on the living conditions of surrounding residents, this would not form a reason for refusal of the scheme.

A crime prevention officer was consulted and raised concern in relation to the effective management of shared spaces on the site such as external gallery space and a communal garden. A management plan would be secured by condition prior to first occupation of these spaces.

Overall and upon assessing the scheme with regard to light, outlook, overbearing impact, overshadowing impact, privacy and overlooking and the potential for noise nuisance it is concluded that the proposals would not incur harm to the living conditions of surrounding residents and the scheme is supported in this regard.

3. LIVING STANDARDS

- o Section 17 of the NPPF outlines 12 'core planning principles' which should underpin both plan-making and decision-taking. One of these principles is that decision making should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- o Policy BCS18 (Housing Type) of the Core Strategy outlines that residential developments should provide sufficient space for everyday activities and to enable flexibility and adaptability by meeting appropriate space standards.
- o The relevant space standards are the Department for Communities and Local Government (DCLG) Nationally Described Space Standards for new housing published in March

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2015. These outline technical standards for application to all tenures of housing across England. The standards set minimum internal areas which accommodation should provide relative to the number of future occupants. The standards also set minimum levels for built in storage within new house, bedroom sizes and minimum floor to ceiling heights. Double bedrooms should have a floor area of 11.5m² and a minimum width of 2.75m. The dwelling should ensure 2.3m floor to ceiling height for at least 75% of the internal area. Any area with headroom of less than 1.5m is not counted within the Gross Internal Area unless used solely for storage. A three storey 3 bedroom, 3 bed-space dwelling for instance should provide at least 108 sqm of gross internal floor area with an additional 2.5sqm of storage space.

The proposal incorporates 3 housing typologies; a three storey block of flats comprising 10 units, two short terraces (8 units) of 2 storey dwellings to the eastern and western ends of the site, and four short terraces (16 units) of 3 storey dwellings along the central section.

The two storey houses to the eastern and western ends of the site are 2 bedroom (4 bed space) units. Owing to the slope of land behind the site the ground floor level would be set flush with a cut in the slope and would accommodate a bedroom, toilet and entrance area. A kitchen/living area, second bedroom and bathroom as well as a rear patio would be set to the floor above. The ground floor to each unit would not be dual aspect, however the upper floor would allow for a reasonable dual aspect outlook. Despite the constraints it is noted that all bedrooms and primary living spaces would have reasonable access to light and outlook, the units would be well ventilated, and gross internal areas to all units exceed minimum nationally described standards.

The three storey houses to the middle of the site are 3 bedroom, (6 bed space) units. Again the ground floor level would be set into a cut in the slope and would accommodate a bedroom, toilet/shower and store. The first floor would accommodate kitchen and living space with terrace garden to the rear, and two more bedrooms and associated bathroom facilities would be set at second floor level. The upper floors would deliver dual aspect outlook and overall it is considered that there would be acceptable levels of light and ventilation through each unit. Gross internal areas, ceiling heights, bedroom sizes and built in storage would all exceed minimum nationally described space standards.

The three storey apartment block would accommodate 6no. 1 bedroom (2 bed space) units and 4no. 2 bedroom (4 bed space) units. As with the other types of housing the ground floor would be set into a cut in the slope. The central part of the building would house a communal cycle store, plant room, communal waste store and entrance lobby, flanked on either side by 2no. single bedroom units. These units would not enjoy a high quality dual aspect of outlook, which is not ideal, however there would be a reasonable quality of outlook for primary habitable rooms to the front. Given the shallow depth of the building it is considered there would be adequate light penetration and acceptable outlook on balance. The remaining 8 units would enjoy a high quality of dual aspect outlook.

All units would exceed minimum nationally described space standards in terms of bedroom size, ceiling heights and gross internal area. Furthermore all of the upper 8 flats would benefit from private balconies as a means of providing external amenity space to the front, with communal gallery access to the rear. There would be further communal outdoor space to the rear of the building at first floor level.

An overheating study submitted in support of the application concludes that the units would be adequately ventilated by means of natural ventilation. While the northerly aspect may reduce overall light levels, the dual aspect of almost all units would assist to maximise sunlight penetration for rear facing windows, while windows to front elevation would allow a reasonable amount of ambient daylight to enter the properties.

Owing to their layout in a broadly linear pattern there would be no harmful mutual overlooking to properties within the development, nor would specific units be prejudiced by others as a result of

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overbearing or overshadowing.

Concern was raised by residents in terms of potential overlooking by users of the retained parkland to the rear into the private amenity spaces and lower windows of houses. Section drawings show an increasingly steep slope down towards boundary screening along the rear gardens to the private properties. Owing to the stepped down setting of the gardens and garden terraces themselves, it is considered that some areas may be partially visible however significant portions would not be. Rear elevations would typically be set back 10m from the boundaries with the parkland, and landscaping plans show that planting would be set along much of the boundary to break up views into private spaces.

Overall the proposal is concluded to deliver a diverse and high quality standard of dwelling units that would offer adequate light, ventilation and space for every-day activities to future occupiers. The scheme is therefore supported in this regard.

4. TRANSPORT AND HIGHWAYS SAFETY

o Section 4 of the NPPF outlines that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.

o Policy DM23 (Transport Development Management) of the SADMP outlines that new development should not give rise to unacceptable traffic conditions and will be expected to provide safe access to the highway network. The policy also outlines that new development should be accessible by sustainable transport methods such as walking, cycling and public transport. Furthermore, the policy sets standards for parking provision.

o Policy DM32 (Recycling & Refuse Provision in New Development) of the SADMP outlines that all new development should provide bin and recycling storage facilities fit for the nature of development, with adequate capacity for the proposed development, in a location which is safe and accessible for all users and does not harm the visual amenity of the area or neighbouring amenity.

Transport Development Management were formally consulted and initially objected to the scheme owing to concerns that up to date information in relation to slope stability had not been provided as supporting information alongside the application. The applicant argued however that this information can be secured by condition prior to the commencement of works, and so long as the required information in relation to highways considerations is provided before works start this shouldn't form a reason for refusal of the scheme on planning grounds. TDM considered this argument and in revised comments noted that the access road cannot be adopted if the highway authority's adoption criteria, engineering standard details and other requirements cannot be later met. TDM added that whilst they agree that this information can be secured by condition, it should be noted that TDM and the Highways Authority cannot be held responsible if it is subsequently found that planning permission cannot be implemented either in full or in part, or mitigation is required which subsequently affects the viability of the project.

The submitted transport statement was reviewed and found to be acceptable, as was the travel plan statement. The proposed bicycle storage for all units was also found to be acceptable. In terms of refuse storage additional amendment was sought, however this has been provided and is shown on amended drawings.

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In terms of contributions TDM require £39,400 of contributions for the upgrade of two bus stops, a TRO for the implementation of waiting restrictions and a public path order, which has been secured via a memorandum of understanding.

Full revised comments including recommended conditions can be found within the application documents.

Overall and following the receipt of revised information the proposal is found to be acceptable on transport grounds subject to conditions.

5. ARBORICULTURE

- o Section 11 of the NPPF (Conserving and enhancing the natural environment) states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible.
- o Policy DM17 (Development Involving Existing Green Infrastructure) of the SADMP outlines that development should integrate important existing trees. It is suggested that where tree loss or damage is essential to allow for appropriate development, replacement trees of an appropriate species should be provided in accordance with the standard set out within Policy DM17.
- o Development which would result in the loss of Ancient Woodland, Aged trees or Veteran trees will not be permitted.

An arboricultural officer was consulted and raised no objection in terms of the findings of the arboricultural impact assessment which concludes Trees and tree groups will be removed as a part of the application, however the supporting arboricultural impact assessment notes that 'tree removals will be mitigated with a high-quality scheme of new tree planting and associated landscaping works. The total number of trees to be planted on Site shall exceed the Bristol City Council Tree Replacement Standard amount calculated (no.82 trees) and therefore this represents a positive opportunity to enhance the quality, benefits and resilience of the tree population on Site.' Following review of all the relevant information supplied within the application in this regard the officer raised no objection in principle to the proposals for removal or adequate compensation of trees on site, however concern was raised with regard to a lack of detailed arboricultural method statement in support of the scheme. The applicant was asked to provide this information prior to determination as is typically encouraged under local and national legislation, however the applicant argued that a preliminary method statement had been provided and so long as the required information is secured by pre-commencement condition, a more detailed statement can still be assessed before any works commence on site. The arboricultural officer upheld an objection to this approach regarding the provision of this information, however recommended conditions were provided should approval be forthcoming.

Overall and while it is not considered to be ideal practice to secure an arboricultural method statement by condition, it is not concluded in this instance that securing these further details by condition is unacceptable on balance, so the scheme is supported in this regard, subject to appropriate pre-commencement and safeguarding conditions.

6. LAND CONTAMINATION

- o Policy DM34 of the SADMP states that New development should demonstrate that:
 - i. Any existing contamination of the land will be addressed by appropriate mitigation measures to ensure that the site is suitable for the proposed use and that there is no unacceptable risk of pollution

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within the site or in the surrounding area; and

ii. The proposed development will not cause the land to become contaminated, to the detriment of future use or restoration of the site or so that it would cause pollution in the surrounding area.

A contaminated land officer was consulted and raised no concern in relation to land contamination based on the conclusions contained within the accompanying phase 1 and phase 2 investigation reports. The officer did note however that should significant excavation or intrusive regrading of the parkland to the rear be proposed then further investigation would be needed for this area.

Overall there is no objection to proposals in this regard and they are acceptable subject to safeguarding condition regarding reporting of unexpected contamination.

7. SUSTAINABILITY & FLOOD RISK

o Since the adoption of the Bristol Development Framework Core Strategy (2011) and with it Policies BCS13-16 applications are required to demonstrate how the proposed development would secure a saving in CO2 emissions from energy use through efficiency measures and incorporate of renewable forms of energy as well as protecting and ensuring against flooding.

o These policies must be addressed and the guidance within the Council's Climate Change and Sustainability Practice Note (link below) followed. New dwellings are expected to minimise energy requirements. This will be achieved by high standards of energy efficiency including optimal levels of thermal insulation, passive ventilation and cooling, passive solar design, and the efficient use of natural resources in new buildings. The Council supports Passivhaus principles and encourages these principles within new development. New dwellings are also expected to incorporate an element of renewable energy to reduce carbon emissions by a further 20%. This should be demonstrated through submission of a sustainability and sustainable energy statement as a requirement for validation of a planning application.

- Sustainability

A sustainability officer was consulted and commented as follows:

BCS13

The overheating risk report assesses 2 ventilation scenarios. One with openable windows, and one with restricted openings.

For the openable windows scenario: there is no overheating risk in 2020 or 2050, but there is a risk in 2080. The applicant has not set out proposed mitigation measures for the risk identified in 2080.

For the restricted openings scenario: there is an overheating risk in 2020, 2050 and 2080. The applicant has suggested measures to mitigate the risk in 2020. The applicant has suggested measures to reduce the risk in 2050, but it will not be completely mitigated. No mitigation measures for the 2080 scenario have been suggested.

The report recommends that further design development should be carried out, if there is a possibility for the openings to be substantially restricted or unavailable for ventilation cooling purposes.

Action for applicant: The applicant should confirm, prior to a decision whether the openings will require restriction/ be unavailable for ventilation cooling purposes in line with the assumptions made in the report about opening angles/times. If this is the case the mitigation measures need to be included within the proposals. The risk in 2020 and 2050 should be completely mitigated from the outset, and for the 2080 scenario it is acceptable to demonstrate that the design is capable of accommodating the

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measures required to mitigate the risk in the future. (eg sufficient space/structural support for external shading)

If windows will not be restricted then the applicant needs to demonstrate that the risk identified in 2080 can be mitigated through future measures and that the design can accommodate these.

BCS14

Energy efficiency - the energy efficiency measures proposed result in compliance with, but no exceedance of building regulations minimum CO2 reduction requirements. In line with the energy hierarchy I would encourage the specification of further energy efficiency measures to reduce energy demand further in line with the BCS14 energy hierarchy.

Heat Hierarchy - Ground source heat pumps using shared borehole arrays are proposed in accordance with the heat hierarchy.

Renewable energy - The Ground source heat pumps provide a 26% reduction in CO2 emissions beyond residual emissions in accordance with the policy requirement (20%).

BCS15

A sustainability statement has been submitted demonstrating how the requirements of policy BCS15 have been met, including waste & recycling, water efficiency, materials, flexibility and adaptability, biodiversity, and broadband connectivity.

Subject to the receipt of satisfactory information relating to the overheating risk, the following standard conditions should be applied

- o Energy and Sustainability in accordance with the submitted details
- o Broadband
- o Renewable Energy - further details of the GSHP

The applicant responded to the query on overheating by noting:

'Since the overheating report was prepared, the design of the dwellings was developed and modified to mitigate the overheating risks that were identified only in the bedrooms for the 2080 scenario. The design modifications that were already captured in the drawings submitted for planning are as follows:

a. For the top floor two-bed apartments, on the south facing elevation the area of glazing has been reduced, and now has a single, openable window. This would reduce solar gains, but also the window area is larger than that modelled in the overheating assessment, so both changes would reduce overheating.

b. For the top floor two-bed apartments on the north elevation there are now two openable windows rather than one, which has significantly increased the amount of ventilation that could be achieved with windows, so this would reduce any overheating. The openable window area for the living / dining area has now increased with the move to two wider windows rather than three narrower windows, which would also provide a mitigating effect.

c. For the bedroom in the top floor one-bed apartment, the openable window area for the living / dining area has now increased with the move to two wider windows rather than three narrower windows, which will also provide a mitigating effect.

In addition, the overheating assessment has not considered any planting around buildings (e.g.

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existing and proposed trees), that would also contribute to climate change adaptation and minimise overheating.'

Following review of this additional clarification the officer found this justification to be satisfactory however for the avoidance of doubt requested that additional information in the form of the modelling carried out to inform the above response be provided. This will be secured by condition. Further information to be secured by condition will be details regarding broadband connection and the ground source heat pumps.

- Flood risk

A flood risk technician was consulted and commented 'We are satisfied that the proposed drainage arrangements are sufficient to mitigate the risk of surface water/sewer and groundwater flooding to the site and evidence that it will not cause flooding to surrounding sites'

On this basis compliance with the recommendations and conclusions of the flood risk assessment and surface and foul water drainage strategy would be secured by condition.

8. POLLUTION CONTROL

o Policy DM23 of the SADMP states that development should be sited and designed in a way as to avoid adversely impacting upon:

- Environmental amenity or biodiversity of the surrounding area by reason of fumes dust, noise, vibration, smell, light or other forms of air, land, water pollution, or creating exposure to contaminated land.

- The quality of underground or surface water bodies.

In locating and designing development, account should also be taken of:

- The impact of existing sources of noise or other pollution on the new development; and
- The impact of the new development on the viability of existing uses by reason of its sensitivity to noise or other pollution.

A pollution control officer was consulted and raised no objection to the scheme subject to the addition of a condition for a construction management plan in the interests of preserving residential amenity.

There are no further concerns in this regard.

9. NATURE CONSERVATION

This site is allocated for development in the Local Plan's Site Allocations Annex Adopted July 2014. The Local Plan's Site Allocations Annex Adopted July 2014 states for this site that 'development should:

- be informed by an ecological survey of the site and make provision for compensation and mitigation measures, including compensation for the loss of neutral grassland and scrub habitats. The site currently has city-wide importance for nature conservation due to the presence and condition of particular species, habitats and / or features;

- maintain or strengthen the integrity and connectivity of the Wildlife Network adjacent to Glyn Vale using sensitive design and on-going site management arrangements.'

The application has been accompanied by supporting preliminary ecological appraisal, reptile survey

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report and botanical survey report. An ecology officer was consulted and raised no objection to the scheme subject to conditions including an ecological enhancement and management plan, slow worm mitigation, a schedule for invasive species, a precautionary method statement and a method statement for living roofs.

The officer requested a biodiversity net gain assessment be provided and upon review of the submitted assessment it was noted that the report concludes a loss in biodiversity of approximately 19% would be incurred as a result of works. An officer was verbally consulted and noted that while this figure is not ideal, there is no such legally binding legislation in place currently to refuse the scheme on this basis. Nevertheless it is the opinion of the officer that loss can be further mitigated on site and in this regard it was recommended that a pre-commencement condition be added to any consent seeking further details of loss mitigation and how this will be achieved.

There are no remaining concerns in this regard.

10. AFFORDABILITY AND OBLIGATIONS

- o Policy BCS17 requires affordable housing to be provided in residential developments of 15 dwellings or more at a percentage target of 30% in South Bristol. Policy BCS17 is applicable.

The proposal will be entirely affordable. A supporting affordable housing statement notes that an element of shared ownership housing would be incorporated where necessary in order to ensure the scheme is viable, but this would be capped at 23%, in line with guidance contained in the Affordable Housing Practice Note. The statement further notes that any shared ownership units would be for 40% equity sale and social rent units will be index linked. Additionally the document states that service/estate charges would not exceed £250 per annum for a house and £650 per annum for an affordable flat.

The proposal therefore meets all relevant guidance in this regard and there are no concerns.

OFFICER NOTE: As the council will retain ownership it will not be possible to have a legal agreement to secure a policy compliant percentage of affordable housing however as the council is acting in its role as housing provider the tenure will be safeguarded. The affordable housing statement will be included in the approved documentation.

11. BCC Public Rights of Way Team

- o Policy DM23 (Transport Development Management) of the SADMP states that development will be expected to protect and enhance the function and amenity of public rights of way. Diversions of public rights of way will only be appropriate where an alternative route of equal or improved character, amenity, safety, directness and convenience is provided.

The Public Rights of Way team were consulted and commented as follows:

'The pre-app for this development (PREAPP 19_06081) proposed a significant diversion of BCC/449/10 through a reconfigured landscaped area, but it is noted that this change has not been included in the full application. Instead, the current general alignment of the PROW will be retained with one minor realignment to curve around the edge of the garden of the end house in the development just above the flight of steps (Transport Statement 2.2.3) and the replacement of the existing steps with a new flight (Travel Plan Statement 3.3.2). A public path order to formally realign

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the PROW will probably therefore not be required, though this minor realignment will need to be reflected on the Definitive Map working copy (I will need to check the legal position on this).

It is noted that BCC/449/10 is already adopted highway (Lurgan Walk Footpath) and the slight change in alignment would also need to be reflected in the adopted highway.

It is noted that BCC/449/10 is to be tarmac surfaced as now. The details of the surface treatment, width and any other construction on the PROW, as well as the new flight of steps and the proposed entrance square where the PROW meets Kingswear Road, will need to be agreed with the PROW Team.

It is presumed that BCC/449 will need to be temporarily closed and diverted for the duration of the construction work on the grounds of safety to the public and a Temporary Traffic Regulation Order (TTRO) will be required for this.'

Provision of additional details required as noted in the above comment will be secured by condition and the proposal is acceptable in this regard.

12. AIR QUALITY

o Development that has the potential for significant emissions to the detriment of air quality, particularly in designated Air Quality Management Areas, should include an appropriate scheme of mitigation which may take the form of on-site measures or, where appropriate, a financial contribution to off-site measures.

o Development in designated Air Quality Management Areas should take account of existing air pollution and include measures to mitigate its impact on future occupiers where possible and consistent with other policies of the development plan such as those on climate change and urban design.

'The site is in a location where air quality is generally good, hence it is unlikely that new exposure will be introduced. Similarly although parking is provided, the additional traffic generated should not threaten air quality objectives or create an unacceptable impact.'

On the basis of the above comment there are no significant concerns in this regard.

13. CRIME REDUCTION UNIT

A Designing Out of Crime Officer commented on the scheme and raised concern in relation to the security of units from the rear owing to topography and boundary treatments, management of shared spaces.

A vegetation buffer would be provided to the rear of housing in the public parkland and a management plan for shared amenity spaces can be secured by condition. The applicant is advised to consider further advice provided in relation to security systems, lighting details and surfacing of public footpaths.

The proposal is found to be acceptable in this regard.

CONCLUSION

Following receipt of minor revisions and additional supporting information the proposal is concluded to

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be acceptable and it is recommended that permission be granted, subject to conditions.

CIL

The proposal is CIL liable and the liability has been calculated to be £229,643.21

EQUALITIES ASSESSMENT

During the determination of this application due regard has been given to the impact of this scheme in relation to the Equalities Act 2010 in terms of its impact upon key equalities protected characteristics. These characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. There is no indication or evidence (including from consultation with relevant groups) that different groups have or would have different needs, experiences, issues and priorities in relation this particular proposed development. Overall, it is considered that this application would not have any significant adverse impact upon different groups or implications for the Equality Act 2010.

RECOMMENDED GRANTED subject to condition(s)

Time limit for commencement of development

1. Full Planning Permission

The development hereby permitted shall begin before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Pre commencement condition(s)

2. Construction Management Plan

No development shall take place, including any demolition works, until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall provide for:

- o 24 hour emergency contact number;
- o Hours of operation;
- o Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- o Routes for construction traffic (to be signed during construction);
- o Locations for loading/unloading and storage of plant, waste and construction materials;
- o Method of preventing mud being carried onto the highway;
- o Measures to protect vulnerable road users (cyclists and pedestrians)
- o Any necessary temporary traffic management measures;
- o Arrangements for turning vehicles;

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- o Arrangements to receive abnormal loads or unusually large vehicles;
- o Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: In the interests of safe operation of the adopted highway in the lead into development both during the demolition and construction phase of the development.

3. 1. Construction Management Plan

No development shall take place until a site specific Construction Management Plan has been submitted to and approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting.

The Construction Environmental Management Plan should also include but is not limited to reference to the following:

- o All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 08 00 Hours and 18 00 Hours on Mondays to Fridays and 08 00 and 13 00 Hours on Saturdays and at no time on Sundays and Bank Holidays.
- o Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- o Procedures for emergency deviation of the agreed working hours.
- o Control measures for dust and other air-borne pollutants .
- o Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Reason: In the interests of preserving neighbouring amenity.

4. Approval of road works necessary

No development shall take place until general arrangement plan(s) to a scale of 1:200 showing the following works to the adopted highway has been submitted to and approved in writing by the Local Planning Authority.

- Reconstruct existing priority junction between Kingswear Road and Glyn Vale as a vehicle crossover;
- Public Right Of Way BCC/449/10 to be cleared of vegetation, reconstructed/resurfaced to 2m wide, lighting is provided/upgraded and wayfinding signage is provided at both ends;
- Wayfinding signage is provided at both ends of Public Right Of Way BCC/448/10.

Where applicable indicating proposals for:

- Existing levels of the finished highway tying into building threshold levels
- Alterations to waiting restrictions or other Traffic Regulation Orders to enable the works
- Signing, street furniture, street trees and pits
- Structures on or adjacent to the highway
- Extent of any stopping up, diversion or dedication of new highway (including all public rights of way shown on the definitive map and statement)

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No development shall take place over the route of any public right of way prior to the confirmation of a Town & Country Planning Act 1990 path diversion/stopping up order.

Prior to occupation these works shall be completed to the satisfaction of the Highway Authority and approved in writing by the Local Planning Authority.

Reason: In the interests of public safety and to ensure that all road works associated with the proposed development are: planned; approved in good time (including any statutory processes); undertaken to a standard approved by the Local Planning Authority and are completed before occupation.

5. Highway to be Adopted

No development shall take place until plans to a scale of 1:200 showing the following information has been submitted to and approved in writing by the Local Planning Authority.

- o Long sections
- o General arrangement
- o Threshold levels to buildings
- o Drainage
- o Structures
- o Swept path for two directional movement of a 11.4m long refuse vehicle passing a 4.98m long large saloon car

Prior to occupation detailed technical plans to a scale of 1:200 setting out how the internal access road(s) will be constructed to the Highway Authority's adoptable standard shall be submitted and approved in writing by the Local Planning Authority.

These works shall then be completed to the satisfaction of the Highway Authority and approved in writing by the Local Planning Authority.

Reason: To ensure the internal roads are planned and approved in good time to a satisfactory standard for use by the public and are completed prior to occupation.

6. Sustainable Drainage System (SuDS)

No development shall take place until a Sustainable Drainage Strategy and associated detailed design, management and maintenance plan of surface water drainage for the site using SuDS methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved Sustainable Drainage Strategy prior to the use of the building commencing and maintained thereafter for the lifetime of the development.

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal is incorporated into the design and the build and that the principles of sustainable drainage are incorporated into this proposal and maintained for the lifetime of the proposal.

7. Structure Adjacent To/Within 6m of the Highway

No development shall take place until an Approval In Principle (AiP) Structural Report setting out how any structures within 6 metres of the edge of the adopted highway (and outside of this limit where the failure of any structures would affect the safety of road users) will be assessed,

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excavated, constructed, strengthened or demolished has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the works safeguard the structural integrity of the adopted highway during the demolition and construction phase of the development.

8. No development shall take place, including any demolition works, until all information required to undertake a full geotechnical assessment/Approval in Principle of the embankment, steps and the 2.1m wide oversized pipe has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the works safeguard the structural integrity of the adopted highway

9. Highway Condition Survey

No development shall take place (including investigation work, demolition, siting of site compound/welfare facilities) until a survey of the condition of the adopted highway has been submitted to and approved in writing by the Local Planning Authority. The extent of the area to be surveyed must be agreed by the Highways Authority prior to the survey being undertaken. The survey must consist of:

- o A plan to a scale of 1:1000 showing the location of all defects identified;
- o A written and photographic record of all defects with corresponding location references accompanied by a description of the extent of the assessed area and a record of the date, time and weather conditions at the time of the survey.

No building or use hereby permitted shall be occupied or the use commenced until any damage to the adopted highway has been made good to the satisfaction of the Highway Authority.

Reason: To ensure that any damage to the adopted highway sustained throughout the development process can be identified and subsequently remedied at the expense of the developer.

10. Biodiversity Loss Mitigation

Prior to the commencement of development, full details shall be submitted, and approved in writing by the Local Planning Authority of measures to mitigate the calculated 19% loss of biodiversity on the application site. The details shall include the following:

Identification of the land where biodiversity gain is proposed with evidence that the works have the owners consent;
 Ecological survey of the land in question;
 Proposed biodiversity improvement works and resulting BNG calculation
 Timescale for the works
 Proposals for the long term management/maintenance of the works once completed

The works shall be undertaken in accordance with the details approved, within the timescale approved and managed as approved.

Reason: To mitigate the loss of biodiversity on site

11. Precautionary Working Method Statement

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Prior to the commencement of development hereby approved, including all site clearance and vegetation removal, a method statement for a Precautionary Method of Working (PMW) with respect to vegetation and site clearance and the potential presence of nesting birds, legally protected reptiles, hedgehogs, badgers and common toads and any other legally protected and priority species shall be prepared by a suitably qualified ecological consultant and submitted to and approved in writing by the Local Planning Authority. This shall also include measures to ensure construction lighting does not affect potential bat roosts, foraging and commuting habitat. The PMWS shall include measures to protect badgers during construction to prevent them from becoming trapped in excavations or open pipework. The development shall be carried out in full accordance with the approved method statement.

Reason: To ensure the protection of legally protected and priority (Section 41) species which are a material planning consideration.

12. Invasive Plant Species

Prior to commencement of development, the removal of all Schedule 9 invasive species will be undertaken in accordance with Invasive Non-Native Species Site Assessment and Management Plan, Kingswear Road, produced by AECOM dated January 2021.

Guidance: Under section 14(2) of the Wildlife and Countryside Act (1981) it is illegal to "plant or otherwise cause to grow in the wild" (i.e. spread) Schedule 9 species.

Reason: To comply with section 14(2) of the Wildlife and Countryside Act (1981).

13. Slow Worm Mitigation

No clearance of the site and/or commencement of Enabling Works shall take place until the protection measures identified within the Reptile Survey Report, Kingswear Road, produced by AECOM dated January 2021 have been implemented (or any such amendment approved in writing by the Local Planning Authority)

Reason: To protect legally protected slow-worms and their habitats.

14. Living roof

Condition: Prior to commencement of development, a method statement provided by a qualified ecological consultant shall be submitted to and approved in writing by the Local Planning Authority for the creation of living roofs on site which include calcareous wildflowers and do not employ a significant area of Sedum (Stonecrop). This shall include details of the layout and area, construction, design (to include the provision of features for invertebrates shown on a site plan including stone and log piles, piles of pure sand 20 to 30 cm deep, coils of rope and areas of bare ground, varying depths of substrate varying from 10 to at least 20 cm in height with troughs and mounds shown in profile on a plan, details of the seed mix and planting) and maintenance of the living roof. The use of egg-sized pebbles shall be avoided because gulls and crows may pick the pebbles up and drop them. The development shall be carried out in accordance with the statement or any amendment approved in writing by the Local Planning Authority.

Reason: To conform with Policy DM29 in the Local Plan which states that 'proposals for new buildings will be expected to incorporate opportunities for green infrastructure such as green roofs, green walls and green decks.'

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15. Ecological Enhancement and Management Plan

Prior to commencement of development, an ecological enhancement and management plan (EEMP) for 5 years, will be provided by a qualified ecological consultant shall be submitted to and approved in writing by the Local Planning Authority for the site. This will include a sensitive planting scheme for wildlife using native species or those that provide value for wildlife. The EEMP will include enhancement for wildlife including reptiles, birds, bats, hedgehogs and invertebrates.

The EEMP will include the following:

- o Bat and Bird Boxes: The EEMP should show provide the specification, orientation, height and location for bird nesting and bat roosting opportunities shown on a site plan with compass directions marked on it. This shall include six bird and six bat boxes with a mixture of tree and building mounted boxes, the preference with building wildlife boxes is to have them integrated into the fabric of the buildings. Tree bird boxes shall be installed to face between north and east to avoid direct sunlight and heavy rain. Bird boxes shall be erected out of the reach of predators and at least 3.5 metres high on publicly accessible sites. For small hole-nesting species bird boxes shall be erected between two and four metres high. Building bat boxes shall face south, between south-east and south-west. Bat boxes shall be erected at a height of at least four metres on appropriate building, close to hedges, shrubs or tree-lines and avoid well-lit locations.
- o Reptile hibernacula: The inclusion of three reptile hibernacula within suitable habitat for reptiles. The reptile hibernacula should also include bee banks.
- o Hedgehogs: Inclusion of hedgehog highways (i.e. gaps in gravel boards) within all close boarded timber fencing. Allowing hedgehogs to access back gardens and the wider landscape. The inclusion of two hedgehog boxes situated in an appropriate location.
- o A sensitive lighting scheme should be implemented to limit disturbance to nocturnal wildlife such as bats and hedgehogs during both construction and operation. This should follow guidance within the Bat Conservation Trust & Institution of Lighting Professionals (2018) Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series.

Botanical interest. The site contains areas of botanical interest as per the Botanical survey report dated November 2019 produced by AECOM. The proposed scheme involves the loss of an area of semi-improved calcareous grassland which (Habitat of Principal Importance) listed on Section 41 of the Natural Environment and Rural communities Act (2006). Awaiting additional information.

The development shall be carried out in accordance with the statement, or any amendment approved in writing by the Local Planning Authority.

Reason: to conform with national planning policy to minimise impacts on biodiversity and provide net gain.

16. Further details: Detailed drawings

Detailed drawings including plans, sections and elevations at a relevant scale between 1:5 and 1:20 of the following elements of built fabric shall be submitted to and be approved in writing by the Local Planning Authority before the relevant part of work is begun.

- a) Typical brickwork including recessed banding, brick panels and junctions
- b) Typical window and external door reveals

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- c) Typical parapet capping
- d) Typical entrance canopy
- e) Typical balcony and railings
- f) Typical street boundary wall and railings
- g) Typical eaves, fascia and soffits
- h) Typical first floor window box
- i) Typical bin and recycling store

The relevant parts of the buildings shall then be constructed in full compliance with the details approved prior to first residential occupation of the development, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that the external appearance of the building(s) is/are satisfactory, in accordance with quality expectations set out within the approved plans, and appropriate to the local context.

17. Further details: Materials

Prior to the commencement of building operations (excluding site clearance, demolition, formation of access roads and the laying of utilities infrastructure) further details of external building materials including manufacturer, specification, product information and samples (if necessary), demonstrating appearance, colour and texture of the following elements, shall be submitted to and approved in writing by the Local Planning Authority.

- a) All brickwork including boundary and retaining walls
- b) Windows
- c) External doors
- d) Parapet capping
- e) Balcony railings
- f) Metal cladding
- g) Metal hoppers and downpipes
- h) All external hard surfaces
- i) Timber fencing

The development shall then be completed in full accordance with the approved materials unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure the finished appearance of the building is of a high quality and responds appropriately to the character and appearance of the local area in accordance with Policies BCS21, DM26, DM28 and DM29.

18. Prior to commencement of the relevant element details of the surface treatment, width and any other construction on the PROW (BCC/449/10), including detailed drawings to a 1:10 scale of the new flight of steps and the proposed entrance square where the PROW meets Kingswear Road must be submitted to and approved in writing by the Local Authority.

Reason: In the interests of ensuring there are no detrimental impacts to the quality and viability of the public right of way.

19. Protection of Retained Trees during the Construction Period

No work of any kind shall take place on the site until the protective fences have been erected around the retained trees in the position and to the specification shown on the AECOM Tree

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Protection Plan sheet 01 & Sheet 02 Drawing No: 60601669-ACM-26-XX-DR-AB-00001 & 60601669-ACM-26-XX-DR-AB-00002. Once installed photos should be electronically sent to the Local Authority Case Officer, shall be submitted to and approved in writing by the LPA in order that the council may verify that the approved tree protection measures are in place when the work may commence. The approved fence(s) shall be in place before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Within the fenced area(s) there shall be no scaffolding, no stockpiling of any materials or soil, no machinery or other equipment parked or operated, no traffic over the root system, no changes to the soil level, no excavation of trenches, no site huts, no fires lit, no dumping of toxic chemicals and no retained trees shall be used for winching purposes. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the council.

Under no circumstances should the tree protection be moved during the period of the development and until all works are completed and all materials and machinery are removed. Landscaping works within protected areas is to be agreed with the Local Planning Authority and carried out when all other construction and landscaping works are complete.

Reason: To protect the retained trees from damage during construction, including all ground works and works that may be required by other conditions, and in recognition of the contribution which the retained tree(s) give(s) and will continue to give to the amenity of the area in line with Policy DM17.

20. Arboricultural method statement & Tree protection plan
 Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of retained trees, in accordance with BS5837:2012, including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority.

Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.
- b) Methods of demolition within the root protection area (RPA as defined in BS5837: 2012) of the retained trees.
- c) Details of construction within the RPA or that may impact on the retained trees.
- d) A full specification for the installation of boundary treatment works.
- e) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the road, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant cross sections through them.
- f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of a no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- h) A specification for scaffolding and ground protection within tree protection zones.
- i) Tree protection during construction on a TPP and construction activities clearly identified as a prohibited in this area.
- j) Details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well as concrete mixing and use of fires.

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- k) Ordering and phasing of operations
- l) Boundary treatments within the RPA.
- m) Methodology and detailed assessment of root pruning.
- n) Arboricultural supervision and inspection schedule by a suitably qualified tree specialist.
- o) Reporting of inspection and supervision.
- p) Methods to improve the rooting environment for retained and proposed trees and landscaping.
- q) Veteran and ancient tree protection and management.

The development thereafter shall be implemented in strict accordance with approved details.

Reason: Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality, in accordance with BCS9, DM17 and pursuant to section 197 of the Town and country planning Act 1990.

21. Landscape (Soft and Hard)

Prior to commencement of the development hereby approved, whichever is the sooner; details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:

- 1) a scaled plan showing all existing vegetation and landscape features to be retained and trees and plants to be planted;
- 2) Tree species to demonstrate future sustainability and species composition.
- 3) location, type and materials to be used for hard landscaping including Stockholm specifications for:
 - a. permeable paving
 - b. underground modular systems
 - c. Soil aeration vents
 - d. Soil type, biochar content and soil volumes available for each tree
 - e. Sustainable urban drainage integration, utilizing rainwater runoff to supplement tree planting pits.
 - f. use within tree Root Protection Areas (RPAs);
- 4) A table illustrating the following details:
 - a. The soil volume available for each tree.
 - b. The soil volume required for each tree, when fully grown / mature.
- 5) a schedule detailing sizes and numbers/densities of all proposed trees/plants;
- 6) specifications for operations associated with plant establishment and maintenance that are compliant with best practise; and
- 7) types and dimensions of all boundary treatments

There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority. Unless required by a separate landscape management condition, all soft landscaping shall have a written five year maintenance programme following planting. Any tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years shall be replaced. Unless further specific permission has been given by the

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Local Planning Authority, replacement planting shall be in accordance with the approved details.

Reason: Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and bio-diversity benefits and to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality in accordance with DM15 and DM17.

22. No development shall take place until relevant modelling in support of the submitted Building Overheating Analysis (February 2021) and adapted to include design alterations as described in a response from Aecom Energy dated 21st May 2021 has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to ensure the resilience of the development to climate change and to ensure compliance with Policy BCS13 of the Bristol Core Strategy (Adopted June 2011), the overheating risk assessment and required mitigation measures must be submitted to the satisfaction of the Local Planning authority before the development commences.

23. Further details: Broadband strategy

Prior to the commencement of building operations (excluding site clearance and demolition) further details of a proposed fibre optic broadband strategy including details of BNET duct provision and fibre to the premises (FTTP) connections for every proposed dwelling and commercial unit must be submitted to and approved in writing by the Local Planning Authority.

The infrastructure and utility connections shall then be installed in full accordance with the approved details and fully operational prior to first residential occupation of the dwellings and thereafter retained as such unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is ready to accommodate high quality internet connections at the point of occupation and therefore delivers economic, social and environmental benefits associated with high quality and reliable connectivity as required by Policy BCS15 and the Broadband Connectivity Practice Note (2018).

24. Further details: Ground source heat pump system

Prior to the commencement of building operations (excluding site clearance, demolition, formation of access roads) further details of the ground source heat pump system hereby approved, including the exact location, dimensions, design/ technical specification, together with an updated calculation of predicted energy generation and associated CO2 emissions (to achieve 26% reduction on residual emissions from renewable energy in line with the approved energy statement) must be submitted to and approved in writing by the Local Planning Authority.

The ground source heat pump system shall then be installed in full accordance with the approved details and fully operational prior to first residential occupation of the dwellings and thereafter retained as such unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development contributes to mitigating and adapting to climate change and to meeting targets to reduce carbon dioxide emissions.

Pre occupation condition(s)

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25. Implementation/Installation of Refuse Storage and Recycling Facilities – Shown on Approved Plans

No building or use hereby permitted shall be occupied or use commenced until the refuse store and area/facilities allocated for storing of recyclable materials, as shown on the approved plans have been completed in accordance with the approved plans.

Thereafter, all refuse and recyclable materials associated with the development shall either be stored within this dedicated store/area, as shown on the approved plans, or internally within the building(s) that form part of the application site. No refuse or recycling material shall be stored or placed for collection on the adopted highway (including the footway), except on the day of collection.

Reason: To safeguard the amenity of the occupiers of adjoining premises; protect the general environment; prevent any obstruction to pedestrian movement and to ensure that there are adequate facilities for the storage and recycling of recoverable materials.

26. Completion of Vehicular Access - Shown on Approved Plans

No building or use hereby permitted shall be occupied or use commenced until the means of vehicular access has been constructed and completed in accordance with the approved plans and the said means of vehicular access shall thereafter be retained for access purposes only for the lifetime of the development. Any access point opening onto the adopted highway shall include suitable drainage provision within the curtilage of the site, to prevent the discharge of any surface water onto the adopted highway.

Reason: To ensure that the vehicular access point is safe and includes adequate drainage.

27. Completion of Pedestrians/Cyclists Access - Shown on approved plans

No building or use hereby permitted shall be occupied or the use commenced until the means of access for pedestrians and/or cyclists have been constructed in accordance with the approved plans and shall thereafter be retained for access purposes only.

Reason: In the interests of highway safety.

28. Completion and Maintenance of Car/Vehicle Parking - Shown on Approved Plans

No building or use hereby permitted shall be occupied or use commenced until the car/vehicle parking area (and turning space) shown on the approved plans has been completed and thereafter the area shall be kept free of obstruction and available for the parking of vehicles associated with the development. Driveways/vehicle parking areas accessed from the adopted highway must be properly consolidated and surfaced, (not loose stone, gravel or grasscrete) and subsequently maintained in good working order at all times thereafter for the lifetime of the development.

Reason: To ensure that there are adequate parking facilities to serve the development constructed to an acceptable standard.

29. Completion and Maintenance of Cycle Provision - Shown on approved plans

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No building or use hereby permitted shall be occupied or the use commenced until the cycle parking provision shown on the approved plans has been completed, and thereafter, be kept free of obstruction and available for the parking of cycles only.

Reason: To ensure the provision and availability of adequate cycle parking.

30. Provision of Pedestrian Visibility Splays

No building or use hereby permitted shall be occupied or use commenced until pedestrian visibility splays of 2 metres x 2 metres to the rear of the footway, shall be provided at the proposed access (or drive). Nothing shall be erected, retained, planted and/or allowed to grow at or above a height of 0.6 metres to the rear of the footway which would obstruct the visibility splay. The visibility splays shall be maintained free of obstruction at all times thereafter for the lifetime of the development.

Reason: To ensure motorists have clear and unrestricted views of approaching pedestrians when pulling out onto the adopted highway, in the interest of highway safety.

31. Provision of Vehicular Visibility Splays

No building or use hereby permitted shall be occupied or use commenced until visibility splays 2.4 metres back from the centre line of the access and extending (FILL IN) metres on the nearside carriageway edge shall be provided at all accesses/junctions, as shown on the approved plans. Nothing shall be erected, retained, planted and/or allowed to grow at or above a height of 0.6 metres above the nearside carriageway level which would obstruct the visibility splay. The visibility splays shall be maintained free of obstruction at all times thereafter for the lifetime of the development.

Reason: To ensure motorists have clear and unrestricted views of approaching cyclists/vehicles in the interest of highway safety.

32. The development shall be carried out in complete accordance with the submitted Flood Risk Assessment (60601669-ACM-KW-RP-CE-0203, Aecom, February 2021) and Surface and Foul Water Drainage Strategy (60601669-ACM-KW-CE-RP-0202, Aecom, February 2021).

All measures recommended by both reports shall be fully implemented prior to occupation and shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants

32. Electric Vehicle Charging Points

No building or use hereby permitted shall be commenced until details of Electrical Vehicle Charging infrastructure, management plan and phasing for implementation has been submitted to and approved in writing by the Local Planning Authority. This shall include details of the following:

- Final Layout
- Number and location of EV parking spaces
- Number and location of EV charging points
- Type of EV charging points (fast, rapid)
- Indicative locations for feeder pillars and protective infrastructure
- Evidence of power supply from WPD (to ensure substation capacity is adequate)

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- Indicative location of substation (where required)
- Indicative cable routing
- Management plan outlining proposed management of spaces, charging network and infrastructure
- Electrical Layout and Schematic Design
- Feeder Pillar Design/Electrical Layout/Schematic Layout Designs

The Electric Vehicle Charging Points and management strategy as approved shall be implemented prior to occupation / as per the agreed phasing plan and retained in that form thereafter for the lifetime of the development.

Reason: To promote sustainable travel, aid in the reduction of air pollution levels and help mitigate climate change

33. Broadband

Prior to commencement of development, evidence of the provision of 'next generation broadband' shall be submitted and approved in writing by the Local Planning Authority providing evidence that the development has been registered with BT on the BT Openreach website, with Virgin Media on the Virgin Media website, or an alternative provider. Registration should show the speed rating/specification of the connection.

Prior to occupation, the development shall be connected to the broadband infrastructure to achieve the speeds stated.

Reason: To show that residents and businesses will have access to ultrafast broadband from occupation

34. Renewable energy - Ground Source Heat Pump

Prior to commencement of development, details of the renewable energy technology (including the exact location, dimensions, design/ technical specification) together with calculation of energy generation and associated CO2 emissions to achieve 52% reduction on residual emissions from renewable energy in line with the approved energy statement should be submitted to the Local Planning Authority and approved in writing. The renewable energy technology shall be installed prior to occupation of the dwellings and thereafter retained.

Reason: To ensure that the development contributes to mitigating and adapting to climate change and to meeting targets to reduce carbon dioxide emissions

35. Energy and Sustainability in accordance with statement

The development hereby approved shall incorporate the energy efficiency measures, renewable energy, sustainable design principles and climate change adaptation measures into the design and construction of the development in full accordance with the energy statement (Project number: 60601669, Aecom energy, 15 February 2021) and sustainability statement (Project number: 60601669, Aecom energy, 08 February 2021) prior to occupation. A total 50% reduction in carbon dioxide emissions beyond Part L 2013 Building Regulations in line with the energy hierarchy shall be achieved, and a 26% reduction in carbon dioxide emissions below residual emissions through renewable technologies shall be achieved

Reason: To ensure the development incorporates measures to minimise the effects of, and can adapt to a changing climate in accordance with policies BCS13 (Climate Change), BC14

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(sustainable energy), BCS15 (Sustainable design and construction), DM29 (Design of new buildings).

36. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development, it must be reported immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and BS 10175:2011 + A2:2017: Investigation of Potentially Contaminated Sites - Code of Practice. Where remediation is necessary a remediation scheme must be prepared which ensures the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

37. Prior to first occupation of the development a detailed management plan for the upkeep of external communal shared spaces within the development (gallery access to the apartment block and communal garden for the apartment block) shall be submitted to and approved in writing by the local authority. Approved management and upkeep practices shall be maintained thereafter in perpetuity.

Reason: In the interests of preserving the amenities of future occupiers.

38. The development shall be carried out in complete accordance with the submitted Arboricultural Impact Assessment Report (60601669, Aecom, February 2021) and Tree Planting Schedule (536-CTF-XX-XX-SH-L-0002, Churchman Thornhill Finch, 8 February 2021).

All measures recommended by both reports shall be fully implemented prior to first use of the development and shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To ensure trees and vegetation to be retained on site are adequately protected and that appropriate compensation for trees lost is provided in line with the Bristol Tree Replacement Standard.

Post occupation management

39. Travel Plan Statement - Submitted

The Travel Plan Statement hereby approved shall be implemented in accordance with the measures set out therein.

Within three months of occupation, evidence of the implementation of the measures set out in Travel Plan Statement shall be prepared, submitted to and agreed in writing with the Local Planning Authority unless alternative timescales are agreed in writing.

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Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling.

List of approved plans

40. List of approved plans and drawings

The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision.

Highways Memorandum of Understanding, received 10 March 2022
 Hydrant Memorandum of Understanding, received 10 March 2022
 19008_(00)_P001 Site location plan, received 16 February 2021
 19008_(00)_P002 Existing site plan, received 16 February 2021
 (00)_P200 Proposed street elevations 1 and 2, received 16 February 2021
 (00)_P201 Proposed street elevations 3 and 4, received 16 February 2021
 19008_(00)_P100 Proposed site plan ground floor, received 16 February 2021
 19008_(00)_P101 Proposed site plan first floor plan, received 16 February 2021
 19008_(00)_P102 Proposed site roof plan, received 16 February 2021
 19008_(00)_P103 Operation and management plan, received 16 February 2021
 19008_(00)_P150 Proposed 2B4P Terraced house type, received 16 February 2021
 19008_(00)_P151 P02 Proposed 3B6P Terraced house type, received 11 March 2022
 19008_(00)_P152 P02 Proposed apartment building type sheet 1 of 3, received 11 March 2022
 19008_(00)_P153 Proposed apartment building type sheet 2 of 3, received 16 February 2021
 19008_(00)_P154 Proposed apartment building type sheet 3 of 3, received 16 February 2021
 19008_(00)_P301 Existing site sections, received 16 February 2021
 19008_(00)_P302 Proposed site sections, received 16 February 2021
 19008_(00)_P400 Proposed 2B4P terraced house bay study, received 16 February 2021
 19008_(00)_P401 Proposed 3B6P terraced house bay study, received 16 February 2021
 19008_(00)_P402 Proposed apartment building bay study, received 16 February 2021
 536-CTF-XX-GF-DR-L-1000 Landscape GA, received 16 February 2021
 536-CTF-XX-XX-DR-L-2000 Typical landscape section, received 16 February 2021
 536-CTF-XX-XX-DR-L-5002 Softworks plan 1, received 16 February 2021
 536-CTF-XX-XX-DR-L-5002 Softworks plan 2, received 16 February 2021
 536-CTF-XX-XX-SH-L-0002 Tree Schedule, received 16 February 2021
 Affordable Housing Statement, received 16 February 2021
 Arboricultural Impact Assessment, received 16 February 2021
 Botanical Survey Report, received 16 February 2021
 Drainage Strategy, received 16 February 2021
 Energy Statement, received 16 February 2021
 Flood Risk Assessment, received 16 February 2021
 Operational Waste Strategy, received 11 March 2022
 Overheating Report, received 16 February 2021

Planning Ecological Appraisal, received 16 February 2021

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Site Assessment and Management plan, received 16 February 2021
 Sustainability Statement, received 16 February 2021
 Transport Statement, received 16 February 2021
 Travel Plan Statement, received 16 February 2021
 Utilities Report incl Broadband Connectivity, received 16 February 2021

Reason: For the avoidance of doubt.

Advices

1 Living Roof

The living roofs should be covered with local low-nutrient status aggregates (not topsoil) and no nutrients added. Ideally aggregates should be dominated by gravels with 10 - 20% of sands. On top of this there should be varying depths of sterilised sandy loam between 0 - 3 cm deep. An overall substrate depth of at least 10 cm of crushed demolition aggregate or pure crushed brick is desirable. The roofs should include areas of bare ground and not be entirely seeded (to allow wild plants to colonise) and not employ Sedum (stonecrop) because this has limited benefits for wildlife. To benefit certain invertebrates the roofs should include local substrates, stones, shingle and gravel with troughs and mounds, piles of pure sand 20 - 30 cm deep for solitary bees and wasps to nest in, small logs, coils of rope and log piles of dry dead wood to provide invertebrate niches (the use of egg-sized pebbles should be avoided because gulls and crows may pick the pebbles up and drop them). Deeper areas of substrate which are at least 20 cm deep are valuable to provide refuges for animals during dry spells. An area of wildflower meadow can also be seeded on the roof for pollinating insects.

Please see www.thegreenroofcentre.co.uk and <http://livingroofs.org/> for further information and the following reference: English Nature (2006). Living roofs. ISBN 1 85716 934.4

2 Works on the Public Highway

The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the council, which would specify the works and the terms and conditions under which they are to be carried out.

Contact the Highway Authority's Transport Development Management Team at transportDM@bristol.gov.uk allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the council's costs in undertaking the following actions:

- I. Drafting the Agreement
- II. A Monitoring Fee equivalent to 15% of the planning application fee
- III. Approving the highway details
- IV. Inspecting the highway works

NB: Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

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3 Traffic Regulation Order (TRO)

You are advised that a Traffic Regulation Order (TRO) is required. You must submit a plan to a scale of 1:1000 of an indicative scheme for a TRO, along with timescales for commencement and completion of the development. Please be aware that the statutory TRO process is not straightforward; involving the public advertisement of the proposal(s) and the resolution of any objections.

You should expect a minimum of six months to elapse between the Highway Authority's TRO Team confirming that it has all the information necessary to enable it to proceed and the TRO being advertised. You will not be permitted to implement the TRO measures until the TRO has been sealed, and we cannot always guarantee the outcome of the process.

We cannot begin the TRO process until the appropriate fee has been received. To arrange for a TRO to be processed contact the Highway Authority's Transport Development Management Team at transportdm@bristol.gov.uk

N.B. The cost of implementing any lining, signing or resurfacing required by the TRO is separate to the TRO fees, which solely cover the administration required to prepare, consult, amend and seal the TRO.

4 Highway to be Adopted

The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's Engineering Standard Details and terms for the phasing of the development. You are advised that you must enter into a highway agreement under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980.

Contact the Highway Authority's Transport Development Management Team at DMengineering@bristol.gov.uk You will be required to pay fees to cover the council's costs in undertaking the following actions:

- I. Drafting the Agreement
- II. Set up costs
- III. Approving the highway details
- IV. Inspecting the highway works

To discuss the requirement for sewers contact the Highway Authority's Flood Risk Management Team at flood.data@bristol.gov.uk You should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority.

N.B. The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

5 Public Right of Way

The property boundary of the development hereby approved abuts a Public Right of Way

DEVELOPMENT CONTROL () DELEGATED
Open Space Kingswear Road Bristol BS3 5JF

PROW (No.) (SPECIFY). You are advised that before undertaking any work you must contact the Highway Authority's Public Rights Of Way Team at rightsofway@bristol.gov.uk Whilst it may be unlikely that the Public Right Of Way will be affected by the proposed development (PROW) (No.) (SPECIFY):

- o Should remain open, unobstructed and safe for public use at all times;
- o No materials are to be stored or spilled on the surface of the PROW;
- o There must be no encroachment onto the width of the PROW;
- o No vehicles are to use the PROW without lawful authority of the landowner(s), unless a private right of way is shown on property deeds. It is the applicant's responsibility to ensure that the appropriate private right exists or has been acquired from the landowner.
- o Any scaffolding and/or skips placed over or adjacent to the PROW must not obstruct public access or inconvenience the public in their use of the way and must be properly licensed. Licences are available at www.bristol.gov.uk/highwaylicences
- o Any interference of the PROW either whilst demolition/construction is in progress or on completion, may well constitute a criminal offence.

If construction works are likely to temporarily affect the right of way, a Temporary Traffic Regulation Order (TTRO) may be required to close or divert the PROW for the duration of the works on the grounds of safety of the public. To discuss and/or apply for a TTRO contact the Highway Authority's Network Management Team at traffic@bristol.gov.uk

N.B. Any damage caused to the surface of the PROW during development works must be made good to the satisfaction of the Local Highway Authority.

6 Impact on the highway network during construction

The development hereby approved and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). You are advised to contact the Highway Authorities Network Management Team at traffic@bristol.gov.uk before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.

7 Highway Condition Survey

The development hereby approved includes the carrying out of a Highway Condition Survey. To agree the extent of the area to be surveyed contact the Highway Authority's Transport Development Management Team at transportDM@bristol.gov.uk

8 Highway Condition Survey

The development hereby approved includes the carrying out of a Highway Condition Survey. To agree the extent of the area to be surveyed contact the Highway Authority's Transport Development Management Team at transportDM@bristol.gov.uk

9 Excavation Works on the Adopted Highway

The development hereby approved includes the carrying out of excavation works on the adopted highway. You are advised that before undertaking any work on the adopted highway you will require a Section 171 (Excavation) Licence from the Highway Authority which is

DEVELOPMENT CONTROL () DELEGATED
Open Space Kingswear Road Bristol BS3 5JF

available at www.bristol.gov.uk/highwaylicences

10 Street Name and Numbering

You are advised that to ensure that all new properties and streets are registered with the emergency services, Land Registry, National Street Gazetteer and National Land and Property Gazetteer to enable them to be serviced and allow the occupants access to amenities including but not limited to; listing on the Electoral Register, delivery services, and a registered address on utility companies databases, details of the name and numbering of any new house(s) and/or flats/flat conversion(s) on existing and/or newly constructed streets must be submitted to the Highway Authority.

Any new street(s) and property naming/numbering must be agreed in accordance with the Councils Street Naming and Property Numbering Policy and all address allocations can only be issued under the Town Improvement Clauses Act 1847 (Section 64 & 65) and the Public Health Act 1925 (Section 17, 18 & 19). Please see www.bristol.gov.uk/registeraddress

11 Stopping or Diverting a Public Right Of Way

You are advised that to facilitate the development an order must be obtained to stop up or divert the Public Right of Way, as shown on the definitive map and statement, under Section 257 of the Town and Country Planning Act 1990. To discuss and/or apply for an order contact the Local Planning Authority at development.management@bristol.gov.uk

12 Structures

The development hereby approved includes the construction of a number of structures. You are advised that before undertaking any work you must secure Technical Approval, for which you will need to pay technical approval fees (as determined by the proposed category of structure to be assessed). For further information please see www.bristol.gov.uk/technicalapproval

Case Officer: Patrick Boxwell

Authorisation: Angelo Calabrese

commdelgranted
V1.0211

**Appendix 8: Proof of Evidence of Mr David
Tingay (Key Transport Consultants) on
Transport Matters (January 2023)**



**PINS Ref:
APP/Z0116/W/22/3308537**

**ERECTION OF UP TO 260 no.
DWELLINGS ON LAND AT
BRISLINGTON MEADOWS,
BROOMHILL ROAD, BRISTOL**

PROOF OF EVIDENCE

OF

**DAVID TINGAY
BEng MCIHT**

ON TRANSPORT MATTERS

January 2023

Key Transport Consultants Ltd
26 Berkeley Square, Bristol, BS8 1HP

T: 0117 920 9430

www.key-transport.com

SUMMARY PROOF

There is no transport or highway reason for refusal included in the reasons provided by Bristol City Council, except a reason for refusal because of the absence of an appropriate S106 that would include transport matters.

Highway access

A number of accesses to the site are proposed, to serve pedestrians, cycles and motor vehicles. The access proposals were agreed with BCC highways officer as delivering suitable pedestrian, cycle, emergency and vehicular access.

RULE 6 Party Statement of Case matters

The site access proposals which have considered the needs of all users, have been designed to an appropriate standard, agreed with the Council's transport officers and are in accordance with the access proposals approved by Cabinet on the 1st November.

The Rule 6 SoC notes that traffic surveys were undertaken during or in the aftermath of Covid Lockdowns. Junction surveys were undertaken when there were no restrictions requiring employees to work from home.

The methodology used for traffic analysis is common in transport assessments and as shown in the SoCG the methodology was agreed with BCC.

Third and interested party responses

A range of representations in connection with the application and appeal have been submitted and refer to various transport issues.

Concerns About the Level of Parking

Parking provision will be set out at the reserved matters stage. It will be in line with BCC standards.

Concerns that 2011 Census Data is outdated

Data from the 2011 Census is the most recent census data available and is typically used within Transport Assessments.

Public Transport Provision

The site is considered sustainable as set out under the site allocation and SOCG.

Reliance on a single point of access for motor vehicles

Avon Fire and Rescue Service has raised no objection to the scheme and that BCC Transport Development Management (TDM) supported the access arrangements.

Impact at the A4 Bath Road/Emery Road Junction

The impact would not be severe at this location.

Concerns about Road Safety

I do not consider therefore that the development will lead to an unacceptable impact on highway safety.

Congestion is bad and the development will lead to further congestion

Traffic impact was assessed within the Transport assessment which demonstrated that there would not be severe impact and this is agreed with BCC officers in the SoCG.

Bonville Road is unsuitable for use by construction vehicles which will also be affected by overspill site parking

Bonville Road is a distributor road within the Bonville Trading Estate, it is to a suitable standard for use by HGV's and currently accommodates HGV traffic. A Construction Traffic Management Plan would be conditioned.

Conclusions

There is agreement between Bristol City Council and the Appellant that the proposed development would not result in unacceptable highway safety or severe residual cumulative impacts on the highway network subject to appropriate conditions and S106 obligations.

The site is within easy and safe walking distance of a number of facilities including a nursery, primary school, secondary school, college, local centre, employment opportunities and bus stops serving frequent bus services.

In my professional opinion the highway and transport objections are all appropriately dealt with by the appeal scheme, and in light of the above, I consider that there are no reasonable highway or transport grounds not to allow the Appeal.

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APPENDICES (BOUND SEPARATELY)

DRT A	Campbell Reith drawing 13492-CRH-XX-00-SK-C-0002-P3
DRT B	Government Covid Advice at Time of Traffic Surveys
DRT C	National Travel Survey
DRT D	Judgement in High Court Case between Hawkhurst Parish Council and Tunbridge Wells Borough Council

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1. INTRODUCTION

- 1.1 I am David Tingay, a civil and highway engineer and director of Bristol based Key Transport Consultants Limited. I hold a Bachelor of Engineering degree in civil and structural engineering from Sheffield University. I am a Member of the Chartered Institution of Highways and Transportation (CIHT) and Graduate Member of the Institution of Civil Engineers (ICE). I have over 20 years of professional experience in highways and transport.
- 1.2 I was previously a Transport Engineer at Capita in their Bristol office. I was a founding Director of Key of Transport Consultants Ltd (KTC) in 2005. I have broad experience on projects of a wide range of scale and have directed many through planning and design.
- 1.3 Of relevance to this inquiry, I live just over 2km from the site, so am aware of local traffic conditions, and have cycled on the roads around the site many times. I have been advising Homes England on the appeal site since 2020.
- 1.4 The evidence that I have prepared and provide for this appeal, reference APP/Z0116/W/22/3308537, in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institutions. I confirm that the opinions expressed are my true and professional opinions.

Format of Proof of Evidence

- 1.5 There is no transport or highway reason for refusal included in the reasons provided by Bristol City Council should the application have been determined. There is a reason for refusal because of the absence of an appropriate S106 that would include transport matters.

Transport matters to be included within the S106 are agreed in principle by Bristol City Council and the Appellant.

- 1.6 In this proof of evidence, I outline highway access proposals and respond to transport matters raised in the Rule 6 statement and third-party objections.

2. HIGHWAY ACCESS

- 2.1 A number of accesses to the site are proposed, to serve pedestrians, cycles and motor vehicles. It is proposed that the development will create a number of pedestrian and cycle routes through the site to deliver a development that is permeable by these modes and improve routes in the area for both new residents and existing residents around the site.
- 2.2 Vehicular access is proposed via a new priority junction on Broomhill Road shown on KTC drawing no 1066-007D (Core Doc CD1.6). The access has been agreed with Bristol City Council transport officers as being acceptable and no objection to the proposed access arrangement has been made by the Council. As outlined in the TA (Core Document CD1.15) the access conforms to appropriate highway standards and has sufficient capacity to accommodate traffic that would be generated by the development.
- 2.3 Vehicular access was considered from School Road, north of the allotments, but was discounted for a number of reasons, as summarised below.
- i. Safety concerns regarding the gradient of School Road where a new access would be introduced, had been expressed by Bristol City Council transport officers as outlined in a pre-application response dated 21st January 2020 (Core Document CD7.1)
 - ii. Major earthworks or retaining walls would be required within the site to provide a road and footways/cycleways of suitable gradient. A cutting of around 5.5m deep and about 40m wide would be required to achieve a gradient of 5% if retaining walls are not used. This is shown on Campbell Reith drawing 13492-CRH-XX-00SK-C-0001-P1 provided as **Appendix DRT A**. This would have had an impact on trees, urban design, and land take.

- 2.4 The allocation states that the development should provide suitable access which may include access off School Road through the existing allotments and ensure that any allotments affected are reprovided on the site or on nearby land.
- 2.5 However an access through the allotments would have resulted in unnecessary and undesirable impact on the allotments which do not form part of the allocation. Safety concerns raised by transport officers of creating an access onto School Road would also have remained with an access through the allotments.
- 2.6 An emergency vehicular access is proposed via Bonville Road should an emergency occur and the access from Broomhill Road be blocked. This is shown on KTC drawing number 1066-014 (Core Doc CD1.7) The emergency access utilises a proposed footpath/cyclepath between Bonville Road and School Road. Vehicular access would be prevented at other times via removable bollards.
- 2.7 As the Broomhill Road access has ample capacity a full vehicular access from Bonville Road was not considered necessary. Such an access would mix residential traffic with trading estate traffic without any obvious benefit as the residential traffic would still need to route through the same major junctions.
- 2.8 Other access points include an improved footpath/cycle link to School Road between existing allotment sites east of School Road. The access is shown on KTC drawing no 1066-016 (Core Doc CD1.8). A zebra crossing is proposed on School Road, which would link to a quiet route to Sandy Park Road and towards the City Centre.
- 2.9 A new shared footpath/cyclepath is proposed between the development and Allison Road/Fermaine Avenue adjacent to the

entrance to Broomhill Junior School, to link to the school, nursery, local centre and bus stops. This is shown on KTC drawing no. 1066-003H (Core Doc CD1.9).

- 2.10 The existing footpath from Belroyal Avenue would be retained and improved.
- 2.11 The pedestrian route into Victory Park would be retained and improved, but would remain an unsurfaced "leisure route".
- 2.12 The development would therefore provide pedestrian and cycle routes between Broomhill Road, School Road, Allison Road/Fermaine Avenue and Bonville Road, improving accessibility to Broomhill Junior School, Mama Bear's Day Nursery and pre-school, St Brendan's Sixth Form College, the Broomhill local centre, Bonville Trading Estate and Sandy Park Road via The Rock and Manworthy Road.
- 2.13 The access proposals were agreed with the highways officer as delivering suitable pedestrian, cycle, emergency and vehicular access. The access proposals also accord fully with the access proposals approved by Bristol City Council at a Cabinet meeting held on the 1st November 2016. As can be seen from the report to committee (Core Doc CD8.11), the Transport Development Manager had provided consultation and scrutiny input to the recommendation for a primary vehicular access from Broomhill Road and emergency vehicular access from Bonville Road.

3. THE COUNCIL'S POSITION ON TRANSPORT MATTERS

- 3.1 The Statement of Common Ground SoCG is still being discussed at time of writing. While not concluded it is anticipated that all transport issues will have been agreed, subject to signing of a S106 and final planning conditions.
- 3.2 A Technical Objection was raised by BCC at Development Control Committee as the S106 and conditions were not fully resolved.
- 3.3 Once the S106 and conditions are agreed the objection will be resolved.

4. RULE 6 PARTY STATEMENT OF CASE (RULE 6 SOC)

- 4.1 The Rule 6 Party raises a number of transport matters regarding compliance with Allocation BSA 1201 criteria 2 "*Provide Suitable Access*" which I address below.
- 4.2 In Section 2 I have outlined the site access proposals which have considered the needs of all users, have been designed to an appropriate standard, agreed with the Council's transport officers and are in accordance with the access proposals approved by Cabinet on the 1st November 2016 (Core Document CD8.11)
- 4.3 The Rule 6 SoC suggests that car ownership in the Brislington East ward as a whole is low, and appears to suggest that given there is only one vehicular access that those without use of a car are unlikely to have suitable access to the site.
- 4.4 I disagree that access is unsuitable. Pedestrian and cycle access is proposed to Broomhill Road, School Road, Bonville Road and Alison Road/Fermaine Avenue improving accessibility to schools, shops, employment opportunities and public transport. Indeed, the permeability of the site means that many local destinations will be quicker to reach on foot or cycle than by car, for those that are able.
- 4.5 It is stated in the Rule 6 SoC that Brislington East, West and surrounding areas are some of the most poorly served wards when it comes to public transport. That is a very large area where neighbourhoods will have different access to public transport. Within the TA (Core Document CD1.15) we assessed the site's accessibility to public transport. The TA identified that the No 1 bus service between Brislington and Cribbs Causeway runs a 15 minute frequency during the day and 30 minutes during the evening Monday to Saturday and a 20 minute service on Sundays. This is a very good

frequency and the terminus is on Whitmore Avenue some 25m from the vehicular site access.

- 4.6 Bus Service 96 which since October 2022 has been run by Abus, provides a 2 hourly service along Broomhill Road between Brislington and Hengrove Monday to Saturday.
- 4.7 Bus services 513 and 514, which route along Broomhill Road, combined, provide an hourly service to Knowle on weekday mornings.
- 4.8 At the time the planning application was submitted bus service 36 between Brislington and the city centre operated from School Road providing a 30 minute service during the day and hourly service during the evening Monday to Saturday. The frequency was broadly hourly on a Sunday. The bus stops are located adjacent to the proposed pedestrian and cycle access onto School Road where a zebra crossing is proposed.
- 4.9 The service 36 route was shortened on the 9th October 2022 and now terminates in St Anne's and no longer serves Brislington.
- 4.10 As noted in the Rule 6 SoC, bus operators within the greater Bristol area are struggling with driver shortages. This is a national problem not an issue specific to the location of the site. In November First Bus announced the temporary suspension of some services including on the Number 1 service. The suspension will be until at least the 2nd April 2023 but it is to be hoped that driver issues will be resolved by

the time the development is delivered. These suspensions are listed below.

Service Number (Bristol)	Timetable	Direction of Travel	Cancelled Journeys
1	Mon-Fri	Leaving Broomhill	0640, 0740, 0931, 1051, 1251, 1411, 1636, 1742, 1950, 2050, 2320
1	Sat	Leaving Broomhill	0825, 1145, 1505, 1825, 2115, 2345
1	Sun	Leaving Broomhill	1021, 1721, 2004, 2251
1	Mon-Fri	Leaving Cribbs Causeway	0630, 0800, 0915, 1115, 1235, 1445, 1600, 1817, 1917, 2207
1	Sat	Leaving Cribbs Causeway	0700, 1000, 1320, 1640, 2000, 2230
1	Sun	Leaving Cribbs Causeway	0907, 1529, 1843, 2126

4.11 Despite the suspension of these services, the frequency of service 1 remains very good.

4.12 Additional passenger demand from the proposed development may assist with having the previous route of service 36 reinstated.

4.13 I note the reference to the 'reasonable bus service' on the A4 Bath Road approximately a 15 minute walk from the site in the Rule 6 SoC. Services on the A4 complement the regular services adjacent to the site listed above and pedestrian improvements are proposed through the Bonville Trading Estate.

4.14 The Rule 6 SoC refers to a submission by BCC and WECA to government for funds (Core Document CD11.9(a)) which refers to census data for the Brislington East ward. This indicates that 37% of residents travel to work by walking, cycling or public transport with 62% driving. The reference document also states that *there appears*

to be a significant opportunity for increasing public transport usage across the area, if appropriate and efficient options are implemented.

- 4.15 Clearly a significant proportion of residents do travel to work by non-car modes. The proximity to bus services and provision of pedestrian and cycle accesses to all sides of the development will encourage such travel. The Appellant has agreed to a contribution of £143,208 for improvement of local public transport facilities.
- 4.16 The Rule 6 SoC notes that traffic surveys were undertaken during or in the aftermath of Covid Lockdowns so cannot be considered reflective of the true state of transport use in the area.
- 4.17 Junction surveys were undertaken on 30th November 2021. At the time there were no restrictions requiring employees to work from home. Government guidance at the time was to stay home if feeling unwell. **Appendix DRT B** includes the guidance published on 9th November 2021 and still current when the surveys were undertaken.
- 4.18 The methodology used for traffic analysis is common in transport assessments and as shown in the SoCG the methodology was agreed with BCC.
- 4.19 While there was no lockdown in place when the surveys were undertaken, working practices had not returned to pre-pandemic practices, and perhaps never will. With the investment by companies in technology and change in working practices during COVID-19 restrictions, working from home for some employees has become more common, with less employees travelling to their workplace 5-

days a week. Shopping habits are also changing with more online shopping resulting in less travel associated with shopping.

4.20 Data from the most recent National Travel Survey, provided as **Appendix DRT C** shows:

- Increase of working from home once or more a week has almost doubled from 11% in 2019 to 21% in 2021.
- Working from home 3 or more times a week has increased from 3% in 2019 to 11% in 2021.

4.21 With working from home becoming easier and proved viable for many during the COVID-19 restrictions, the need to travel to work for some types of employment is reducing.

5. THIRD AND INTERESTED PARTY RESPONSES

- 5.1 A range of representations in connection with the application and appeal have been submitted and refer to various transport issues. These have been grouped together under appropriate headings and responded to below.

Concerns About the Level of Parking

- 5.2 The planning application is in outline only with all matters reserved except access. Parking provision will be set out at the reserved matters stage. It will be in line with BCC standards, which are currently set out in Sites Allocations and Development Management Policies – Core Document CD5.2
- 5.3 Parking will be controlled by Condition 11 (at the time of drafting) of the draft list of conditions.

Traffic Counts were undertaken during COVID-19 Lockdown

- 5.4 This is covered in Section 4 of my proof.

Concerns that 2011 Census Data is outdated

- 5.5 Data from the 2011 Census is the most recent census data available and is typically used within Transport Assessments. Completion of the Census is mandatory and every adult is required to provide details of their work location and method of travel. No other travel survey could achieve the response rate and level of detail available in the Census.
- 5.6 Method of travel to work data provided in the Census data, will, to a significant extent, be influenced by the juxtaposition of the Census Output Area for which the site is located and major employment opportunities in the Greater Bristol area which is unlikely to have changed significantly since 2011.

- 5.7 I consider that the methodology used for analysis, which was agreed with BCC officers (SoCG confirm the agreement), likely overestimates vehicle trip generation and has resulted in a robust assessment.
- 5.8 Two broad assessment methods are typically used in Transport Assessments, both utilising Census data and the TRICS database.
- 5.9 TRICS is the industry standard database of travel surveys undertaken at existing sites which is used for estimating development flows.
- 5.10 The first method uses TRICS to estimate vehicle trip generation directly which is then assigned to the local highway network based on work locations obtained from 2011 Census journey to work data.
- 5.11 With this method, in using TRICS, it is necessary to select sites which are considered to be similar in nature to the development site. Sites will be selected from across the country and inevitably they will not exactly mirror the development site.
- 5.12 The second method, and the method we have used for Brislington Meadows, is to obtain person trips from TRICS and then apply local 2011 Census journey to work mode share data. Person trips would be less sensitive to differences in accessibility between sites selected in TRICS and the development site. However not all trips in the peak periods are journey to work trips, for example a significant number of trips in the morning peak hour would be associated with local school trips. For this reason it is considered that this second method likely overestimates the number of vehicle trips.
- 5.13 A comparison of methods 1 and 2 at Brislington Meadows is provided in the TA (Core Doc CD 1.15) in paragraph 6.13 of that document.
- 5.14 This indicates that the methodology used (method 2) estimates 29% more vehicle trips in the morning peak hour and 19% more trips in

the afternoon peak hour than Method 1.

- 5.15 While the 2011 Census data is now over 10 years old, it is commonly used for Transport Assessments and may continue to be used for some time. 2021 Census data is due for publication in 2023 but the census was undertaken on the 21st March 2021 when Government guidance for most was to work from home and therefore journey to work data is likely to be of limited use.
- 5.16 As outlined in Section 4 of my proof, the Covid pandemic is likely to have resulted in a shift to increased working from home and online shopping such that future levels of car travel are likely to reduce from those seen in 2011 such that use of 2011 census data for future development is likely to be robust.
- 5.17 General national trends in car driver use since 2011 can be determined from the National Travel Survey. The average number of journeys each person drives per year has fallen as can be seen from National Travel Survey Table NTS0601a, extract provided below.

	A	B	C	D	E	F	G	H	I	J	K	L
1	Department for Transport statistics											
2	National Travel Survey											
3												
4	Table NTS0601a											
5	Average number of trips (trip rates) by age, sex and main mode: England, from 2002											
6												
7												
8												
9	Select sex	All										
10	Select mode:	Car / van driver										
11												
12		Trips per person per year									Unweighted sample size (all ages/modes)	
13		All ages	0-16	17-20	21-29	30-39	40-49	50-59	60-69	70+	individuals	trips ('000s)
14	2002	438	0	225	448	698	772	683	487	248	14,369	279
15	2003	427	0	181	437	689	743	652	490	249	16,685	318
16	2004	421	-	214	407	675	728	629	516	261	16,487	314
17	2005	434	0	228	434	659	740	672	520	291	16,956	324
18	2006	432	-	224	436	659	739	657	524	283	16,648	317
19	2007	409	-	251	406	639	698	598	491	276	16,858	303
20	2008	410	-	209	379	614	712	639	496	282	16,360	295
21	2009	393	-	226	398	568	659	614	489	282	17,299	312
22	2010	402	-	185	371	593	697	631	508	290	16,553	292
23	2011	392	0	174	387	571	666	586	511	308	15,730	273
24	2012	396	0	181	342	567	691	603	535	318	16,670	291
25	2013	380	-	151	358	543	632	587	513	309	16,192	274
26	2014	384	-	164	350	542	660	575	517	325	16,491	280
27	2015	381	-	176	337	532	638	586	511	341	15,525	259
28	2016	389	-	168	352	532	643	613	544	335	15,840	276
29	2017	390	0	155	384	520	640	617	526	350	14,541	256
30	2018	395	-	201	356	554	648	593	541	369	14,150	256
31	2019	380	-	172	320	533	634	584	524	360	14,356	250
32	2020	295	-	124	259	423	473	461	412	273	6,239	86
33	2021	300	0	81	268	420	492	452	414	303	9,971	130
34												

5.18 It can be seen that the average number of trips driven has fallen from 392/person/per year in 2011 to 380 in 2019, a reduction of 3%. The number of trips driven in 2020 and 2021 are significantly lower due to Covid but as mentioned above, this will likely result in a permanent shift to an, as yet, unknown degree.

5.19 In summary, it is my view that the traffic analysis undertaken in the TA (Core Doc CD1.15) is robust.

Public Transport Provision

5.20 Concerns have been raised about the level of bus services in the vicinity of the site particularly in light of recent announcement of temporary reductions in bus services due to staff shortages.

5.21 This issue is addressed in Section 4.

5.22 The site is considered sustainable as set out under the site allocation and SOCG and the Appellant has agreed to provide a contribution of £143,208 for improvements to local public transport facilities.

Reliance on a single point of access for motor vehicles

- 5.23 This issue is largely covered in Section 2 of my proof. I would add that Avon Fire and Rescue Service has raised no objection to the scheme and that BCC Transport Development Management (TDM) supported the access arrangements as evidenced by TDM comments dated 12th July 2022 and included as Core Document CD3.8. The comments are reproduced below.

We support the principle of 1 primary access, 2 pedestrian/ cycle access, 1 the emergency/ pedestrian/cycle access and the 3 pedestrian access subject to the details set out below.

It is assumed that these could be secured by condition with the right safeguards about design.

The sole access would be a priority junction on to Broomhill Road. This allows for a refuse truck to enter whilst another vehicles waits to turn right out. 85th percentile speeds are 29.7mph NB and 30.8mph SB and the junction has been designed to these. Although this would be the sole vehicular access an emergency access would also be secured as well as a number of pedestrian and cycle links. For this reason we are comfortable with the proposal to service up to 260 dwellings from one access providing it is built to a high standard and the alternative ped/cycle/emergency accesses are secured.

Impact at the A4 Bath Road/Emery Road Junction

- 5.24 Based on data within the Transport Assessment (Core Doc CD1.15), 14% of existing residents of the area travel to work via a left turn at the A4/Emery Road junction. Also as outlined within the TA, the site would generate 94 outbound trips in the morning peak hour and 41

in the evening, again based on 2011 Census data and traffic surveys from TRICS.

5.25 Therefore, the additional traffic turning left from Emery Road to Bath Road is 13 vehicles in the morning peak hour and just six vehicles in the evening. This averages at one vehicle every five minutes in the morning and one vehicle every 10 minutes in the evening. This increase would be barely perceptible and would not result in severe impact.

5.26 TDM Comments dated 12th July 2022 (Core Doc CD3.8) stated:

We consider that Bath Road is sufficiently remote from the site that it would not justify mitigation from this site particularly in view of the fact that it will be the focus of BCC's A4 corridor works.

Concerns about Road Safety

5.27 In reference to general concerns raised about highway safety, NPPF paragraph 111 states that *Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.....*

5.28 Existing highway safety and collision history was examined within the Transport Assessment (Core Doc CD1.15) and it was concluded that there were no collision clusters and therefore no particular problem with the road layout.

5.29 In the SoCG, BCC agreed that there were no highway safety issues.

5.30 TDM Comments dated 12th July 2022 (Core Doc CD3.8), stated:

Our assessment is also that collisions are spread around all the roads surrounding the site (School Road, Broomhill Road and Bath Road) with no one cluster. We would therefore support a package of

measures focussing particularly on School Road, Broomhill Road, Bonville Road and Emery Rd.

5.31 The Transport Assessment (Core Doc CD1.15) proposed a range of measures for traffic calming that could be undertaken on Broomhill Road shown on Drawing 1066-015.

5.32 TDM Comments dated 12th July 2022 (Core Doc CD3.8), stated:

The TA also provides for a range of measures along Broomhill Rd as mitigation for the development to ensure that a better pedestrian and cycle environment is provided as these routes will see significantly more use.

Whilst Broomhill Rd is only one of the areas needing mitigation (see below) it does provide a menu of works that could be secured as mitigation.

The proposed Broomhill Works are shown in principle on Drawing 1066-015 Rev (Proposed Traffic Calming Broomhall Road) and show a range of measures that would be delivered along Broomhill Road between Condoever Road and Guernsey Avenue.

The principle of these traffic calming works are supported. Their delivery prior to first occupation should therefore be secured with details to be agreed at the RM stage.

5.33 The proposed offsite highway improvements include the following.

- Traffic calming to control speeds and pedestrian improvements on Broomhill Road.
- Provision of zebra crossing on School Road
- Pedestrian improvements through the Bonville Trading Estate.

5.34 As with all such highway design proposals, a Road Safety Audit would be undertaken by an independent assessor.

5.35 In summary, the assessment of collision data did not identify any highway safety issues that would be affected by the proposed development and improvements are proposed that will improve the safety characteristics of local roads. I do not consider therefore that the development will lead to an unacceptable impact on highway safety.

Congestion is bad and the development will lead to further congestion

5.36 I would like to raise a number of points relating to the assessment of traffic impact. First, NPPF paragraph 111 states Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.37 It is the impact of the proposed development that would need to be considered severe for development to be refused. Even if existing congestion on a road network were considered severe this would not be grounds to refuse an application if impact from the development itself is not severe. This was clarified in the High Court Case between Hawkhurst Parish Council and Tunbridge Wells Borough Council. The Judgement dated November 2020 is provided as **Appendix DRT D** and a relevant paragraph from the judgement is provided below (note the relevant NPPF paragraph subsequently changed to 111 in the latest version).

138. It is recognition of this sort of point that no doubt led KCC to recognise that objection in principle to any further development affecting the Junction is not consistent with paragraph 109 of the Framework. Such blanket objection would not recognise the

potential for minor impacts to be addressed by mitigation measures such as public transport measures. And such blanket objection would not be based on a case-by-case assessment of whether the particular impact caused by the particular development could be treated as "severe". In my judgment, paragraph 109 of the NPPF necessarily requires consideration of whether the residual cumulative impact of the proposed development is severe, not simply whether existing or projected congestion without that development would be severe.

5.38 Secondly the relative impact of the development will reduce as background traffic increases. This point again is raised in the High Court judgement referenced above. In para 134 of the judgement which states

1.34 If the Transport Statement had in fact incorporated increased traffic flows on the road network from committed development which had not yet been constructed, rather than simply looking at existing flows, the baseline numbers would have increased; but this would have meant that the percentage increases caused by the development would actually have decreased, not increased. The development would have involved the same very small number of trips being generated in the peaks, but the effect of these would have been further diluted in percentage terms if added into higher projected baseline flows.

5.39 Traffic impact was assessed within the Transport assessment which demonstrated that there would not be severe impact and this is agreed with BCC officers in the SoCG.

5.40 I consider it worth noting that traffic surveys undertaken on Emery Road, just north of the A4 Bath Road, between 2013 and 2019, which

are available from the Department for Transport website, indicate that there has been no significant increase in daily flow as can be seen from the website screengrab extract below. I have seen no evidence that traffic conditions are materially different to conditions when the site was allocated for development in 2014.

[Traffic statistics](#) > [Manual count points](#) > 946763

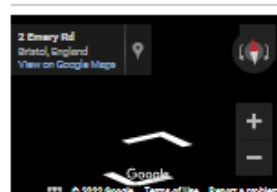
Manual count points

Site number: 946763

Site details

Region	South West
Local authority	Bristol, City of
Road name	C
Road classification	'C' and Unclassified roads
Managed by	Local authority
Road type	Minor
Start junction	
End junction	
Link length	km (miles)
Easting, northing	362674, 170240
Latitude, longitude	51.42992600, -2.53829240

Location



Annual Average daily flow

Year	Count method	Pedal cycles	Two wheeled motor vehicles	Cars and taxis	Buses and coaches	Light goods vehicles	Heavy goods vehicles	All motor vehicles
2019	Manual count	337	254	9913	19	1961	291	12439
2018	Manual count	227	185	9362	30	2202	262	12042
2017	Manual count	214	182	9299	42	2144	232	11900
2016	Manual count	258	231	9524	156	2238	316	12466
2015	Manual count	269	210	9628	31	1993	314	12176
2014	Manual count	206	196	9419	40	2206	301	12161
2013	Manual count	154	153	9754	22	2310	293	12532
Manual								

Bonville Road is unsuitable for use by construction vehicles which will also be affected by overspill site parking.

- 5.42 Bonville Road is a distributor road within the Bonville Trading Estate, it is to a suitable standard for use by HGV's and currently accommodates HGV traffic. It has been suggested that parking can interfere with traffic flow, but any inappropriate parking that prevents reasonable access along Bonville Road could, if necessary, be addressed by temporary parking restrictions.
- 5.43 Proposed Condition 32 in the SoCG (at the time of drafting) would require approval of a Construction Traffic Management Plan which will require approval of appropriate routes and timing restrictions. It is envisaged that construction traffic will need to avoid school start and finish times.

6. CONCLUSIONS

- 6.1 I do not consider that the proposed development would have an unacceptable impact on highway safety. Proposed improvements would improve the safety characteristics of the local highway network.
- 6.2 Suitable access is proposed which has been agreed with BCC transport officers and which accords with access that was approved by Cabinet in 2016.
- 6.3 A robust assessment of traffic impact has been undertaken which shows that the residual cumulative impact of adding development traffic from the appeal site on the local highway network is not severe.
- 6.4 The highway and traffic issues have been agreed with BCC in the SOCG.
- 6.5 The site is within easy and safe walking distance of a number of facilities including a nursery, primary school, secondary school, college, local centre, employment opportunities and bus stops serving frequent bus services.
- 6.6 Shopping and working habits are changing reducing the need to travel. More households are shopping online for food and other goods, and working from home, either full or part-time, is becoming more common.
- 6.7 It is my experience and opinion that the site offers access to a good range of everyday services and facilities within sustainable travel distances. Permeability of non-car modes through the site would enable non-car modes of travel to be maximised.
- 6.8 In my professional opinion the highway and transport objections are all appropriately dealt with by the appeal scheme.

6.9 In light of the above, I consider that there are no reasonable highway or transport grounds not to allow the Appeal.



**PINS Ref:
APP/Z0116/W/22/3308537**

**ERECTION OF UP TO 260 no.
DWELLINGS ON LAND AT
BRISLINGTON MEADOWS,
BROOMHILL ROAD, BRISTOL**

**PROOF OF EVIDENCE
APPENDICES**

OF

**DAVID TINGAY
BEng MCIHT**

ON TRANSPORT MATTERS

January 2023

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APPENDIX DRT A

Campbell Reith Drawing 13492-CRH-XX-00-SK-C-0002-P3

APPENDIX B

Government Covid Advice at Time of Traffic Surveys

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Guidance

COVID-19 Response: Autumn and Winter Plan 2021

Updated 9 November 2021

Applies to England

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Introduction

Steadily, over the course of this year, the whole United Kingdom (UK) has seen life return closer to normal. Between March and July this year, the Government's roadmap for England reopened the economy and lifted restrictions in four steps. Scotland, Wales and Northern Ireland have also emerged from lockdown on similar timetables. The country is learning to live with COVID-19, and the main line of defence is now vaccination rather than lockdown. The Test, Trace and Isolate system is reducing the number of positive cases mixing in the community. Rules and regulations have mostly been replaced with advice and guidance on the practical steps people can take to help manage the risks to themselves and others.

The spread of the more transmissible Delta variant in the spring drove rapid growth in COVID-19 cases in England, leading to a peak of 43,910 cases (7 day average) on 16 July.^{[[footnote 1](#)]} Though incidence subsequently declined sharply to a low of 23,002 cases (7 day average) by the end of July, cases have since been gently rising, and are significantly higher than at this point last year.^{[[footnote 2](#)]} The return of students to schools and universities and workers to workplaces after the summer holidays is likely to put further upward pressure on case numbers. The latest data from Scotland suggests that, in addition to increased infections following the lifting of most restrictions, there has also been an impact from the return to schools and workplaces.^{[[footnote 3](#)]}

Data continues to show that the link between cases, hospitalisations, and deaths has weakened significantly since the start of the pandemic.^{[[footnote 4](#)]} In England, the number of deaths and hospital admissions due to COVID-19 has remained relatively stable over the last month, and although hospital admissions and deaths sadly increased at the beginning of the summer, they have remained far below the levels in either of the previous waves.^{[[footnote 5](#)]}

This has been thanks to the success of the UK's vaccine programme. As of 9 September, more than 92 million doses of the vaccine have been given across the UK.^{[[footnote 6](#)]} The vaccines are highly effective against the Delta variant, providing around 95% protection against severe disease.^{[[footnote 7](#)]} Latest Public Health England (PHE) estimates suggest that 143,600 hospitalisations (up to 22 August), 112,300 deaths and 24,702,000 infections had been prevented as a result of the vaccination programme, up to 27 August 2021.^{[[footnote 8](#)]}

The public's continued willingness to get vaccinated, to test and self-isolate if they have symptoms, and to follow behaviours and actions that mitigate all methods of transmission has played a key role in lifting restrictions. Although rules vary slightly in England, Scotland, Wales and Northern Ireland, the UK is now managing COVID-19 without most of the restrictions on lives and livelihoods that have had heavy economic, social, and health impacts. The reopening of closed settings, and the removal of social distancing and all gathering limits, has helped people to reconnect with their friends and family, while supporting jobs and the country's economic recovery. In the second quarter of 2021, Gross Domestic Product (GDP) grew by 4.8%,^{[[footnote 9](#)]} leaving the level of GDP in June nearly 4 percentage

points higher than the Office for Budget Responsibility had forecast in March.
[\[footnote 10\]](#)

Over autumn and winter, the Government will aim to sustain the progress made and prepare the country for future challenges, while ensuring the National Health Service (NHS) does not come under unsustainable pressure.

The Government plans to achieve this by:

- a. Building our defences through pharmaceutical interventions: vaccines, antivirals and disease modifying therapeutics.
- b. Identifying and isolating positive cases to limit transmission: Test, Trace and Isolate.
- c. Supporting the NHS and social care: managing pressures and recovering services.
- d. Advising people on how to protect themselves and others: clear guidance and communications.
- e. Pursuing an international approach: helping to vaccinate the world and managing risks at the border.

This is the Government's Plan A – a comprehensive approach designed to steer the country through autumn and winter 2021-22. However, the last 18 months have shown the pandemic can change course rapidly and unexpectedly and it remains hard to predict with certainty what will happen. There are a number of variables including: levels of vaccination; the extent to which immunity wanes over time; how quickly, and how widely social contact returns to pre-pandemic levels as schools return and offices reopen; and whether a new variant emerges which fundamentally changes the Government's assessment of the risks.

In addition, winter is always a challenging time for the NHS. This winter could be particularly difficult due to the impacts of COVID-19 on top of the usual increase in emergency demand and seasonal respiratory diseases such as influenza (flu). It is a realistic possibility that the impact of flu (and other seasonal viruses) may be greater this winter than in a normal winter due to very low levels of flu over winter 2020-21. [\[footnote 11\]](#) There is considerable uncertainty over how these pressures will interact with the impact of COVID-19.

The Government will remain vigilant and monitor the data closely, taking action to support and protect the NHS when necessary. In preparation, the Government has taken the responsible step of undertaking contingency planning in case Plan A is not sufficient to keep the virus at manageable levels. So that the public and businesses know what to expect, this document outlines a Plan B in England which would only be enacted if the data suggests further measures are necessary to protect the NHS. The Government remains committed to doing whatever it takes to prevent the NHS from being overwhelmed.

Building our defences through pharmaceutical interventions

Vaccines

The high level of vaccine protection has allowed the country to live with COVID-19 without stringent restrictions on society, the economy, and people's day-to-day lives. Going further on vaccination will help ensure this remains the case. The Government has secured sufficient supplies to support further vaccination across the whole UK. It will provide the Devolved Administrations with vaccine supplies to deploy to the people of Scotland, Wales, and Northern Ireland. The Government has three priorities for the COVID-19 vaccination programme in England for the autumn and winter:

- a. Maximising uptake of the vaccine among those that are eligible but have not yet taken up the offer.
- b. Offering booster doses to individuals who received vaccination in Phase 1 of the COVID-19 vaccination programme (priority groups 1-9).
- c. Offering a first dose of vaccine to 12-15 year olds.

First, the Government will continue to make vaccines easily available to everybody to maximise uptake among those that are eligible but have not yet taken up the offer. In England, 11.3% people aged 16 and older – over 5.5 million – remain unvaccinated and this heightens the risk of rising hospitalisations, particularly when prevalence is high. [\[footnote 12\]](#) Take up so far varies by ethnicity, age, and deprivation, with some groups recording lower rates of vaccine uptake. The Government and clinical advisors recommend that everybody accepts the offer of vaccination as a way of maximising protection for themselves, the people around them, and society as a whole.

In addition to the protection they provide, there are other benefits of being fully vaccinated:

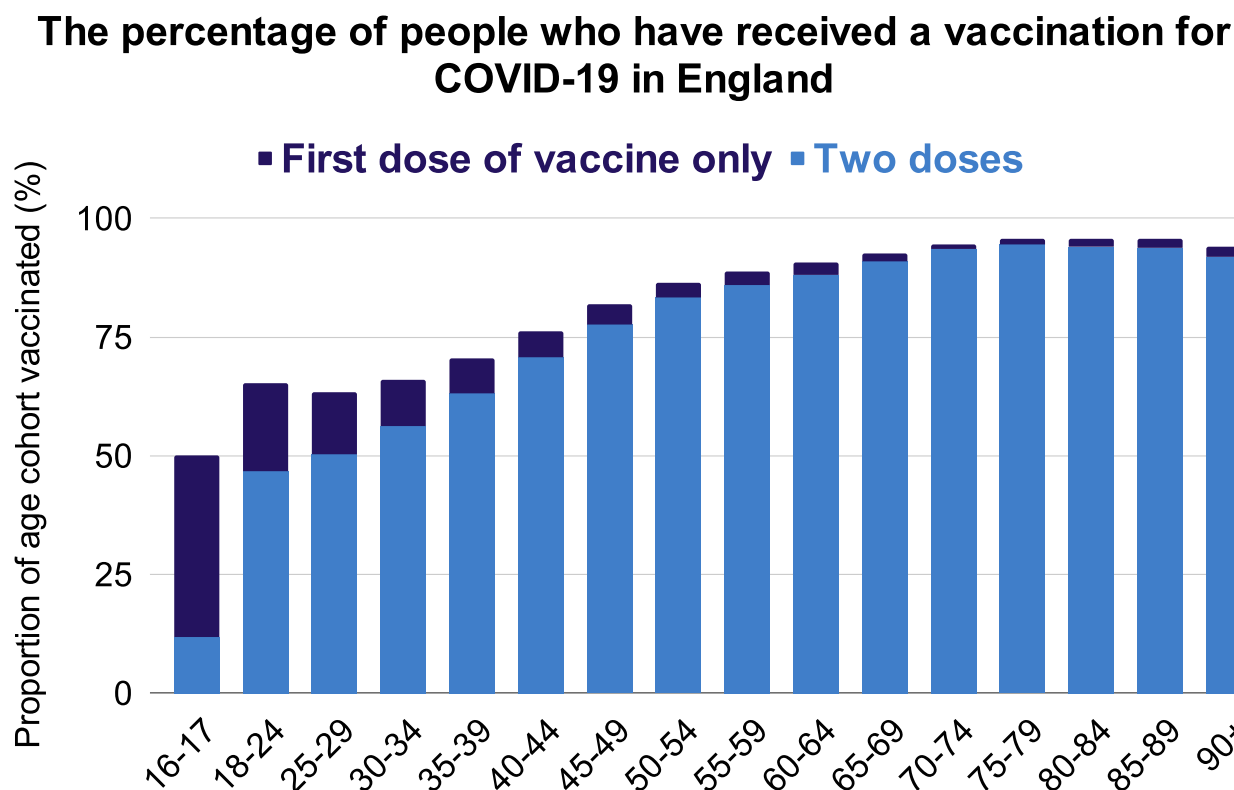
- a. On 16 August, the Government amended the rules that were in place to ensure that people who are fully vaccinated do not need to self-isolate after being in contact with somebody who tests positive for COVID-19.
- b. Since 19 July, those fully vaccinated through the UK vaccine programme, or participating in a UK vaccine clinical trial, have not needed to quarantine on returning to the UK from any country not on the red list.
- c. Over 60 countries around the world now recognise the NHS COVID Pass covering vaccines administered in the UK. That number is growing, allowing vaccinated UK citizens to benefit from any vaccine-enabled freedoms in these countries.

The Government will continue to support those communities with lower rates of COVID-19 vaccine uptake. An additional £23.3 million for a network of 'Community Vaccine Champions' will be provided to local authorities and voluntary and community sector organisations to ensure that access to the vaccine is as easy as possible.

Building on lessons learned through Phases 1 and 2 of the vaccine rollout, the Government is also working closely with the NHS to make it as easy as possible to

get a vaccine, including through 'grab a jab' pop-up vaccine sites across the country with an easy to use walk-in site finder on the NHS website. The Government has also been partnering with transport providers such as Uber and FREENOW to ensure access to vaccine sites is easier than ever before.

Figure 1: The percentage of people who have received a vaccination for COVID-19 in England by age cohort [\[footnote 13\]](#)



This chart shows the percentage of people who have received a vaccination for COVID-19 in England for different age categories, split between first doses and second doses. Over 75% of people over the age of 45 have had two doses. For ages 18-44, between 65% and 76% have had their first dose, and between 46% and 71% have had their second. 50% of 16-17 year olds have had their first dose and 11.9% have had their second.

Second, the NHS will offer booster doses to individuals who received vaccination in Phase 1 of the COVID-19 vaccination programme (Joint Committee on Vaccination and Immunisation (JCVI) priority groups 1-9). [\[footnote 14\]](#)

As is common with many other vaccines, there is early evidence that the levels of protection offered by COVID-19 vaccines reduce over time, particularly in older individuals who are at greater risk from the virus. The JCVI has consequently advised that those in priority groups 1-9 should be offered a COVID-19 booster, no earlier than 6 months after completion of their primary course. A booster shot of a COVID-19 vaccine will ensure protection is maintained at a high level throughout the winter months in adults who are more vulnerable to severe COVID-19 and

strengthen the vaccine wall of defence. The NHS is preparing to start offering booster doses next week, the week commencing 20 September.

Separately to the booster programme, the NHS is already offering a third vaccine dose to people aged 12 and over with severely weakened immune systems as part of their primary schedule, as recommended by the JCVI. [\[footnote 15\]](#) They will be contacted either by their hospital consultant or GP if eligible.

Third, following advice from the JCVI and UK Chief Medical Officers, the NHS will offer those 12-15 year olds not covered by previous advice a first dose of the Pfizer vaccine. The NHS, working with school immunisation teams, will offer a first dose of vaccine to 12-15 year olds from next week, the week commencing 20 September. The Government will consult the Royal Colleges and other professional groups on how best to present the risk-benefit decisions about vaccination in a way that is accessible to children and young people as well as their parents.

The Government is also taking steps to ensure that the UK has the best protection available from vaccines beyond this autumn and winter. It is possible that further doses of the COVID-19 vaccine may be offered in the future to reinforce protection. Subject to advice, this may include annual vaccination programmes – as is the case with the flu vaccination – for those who need additional protection. Reformulated vaccines to target new variants of the virus and new ways of administering vaccines could play a role in future vaccination programmes. The UK Vaccine Taskforce has already procured vaccines to run further booster programmes in autumn 2022 if necessary, and will continue to look to future deployment needs.

Antivirals and therapeutics

Advances in antivirals and therapeutics will continue to provide additional tools to manage COVID-19. Several treatments are already available through the NHS for patients with COVID-19, including dexamethasone and tocilizumab which reduce morbidity and mortality.

The Medicines and Healthcare products Regulatory Agency (MHRA) has recently approved casirivimab and imdevimab as the first monoclonal antibody combination product indicated for use in the prevention and treatment of acute COVID-19 infection for the UK in some individuals. [\[footnote 16\]](#) The Government is now working with the NHS and expert clinicians to ensure this treatment can be rolled out to NHS patients as soon as possible.

In April, the Prime Minister launched the Antivirals Taskforce. The aim of the Taskforce is to identify treatments for UK patients who have been exposed to COVID-19 to stop the infection spreading and speed up recovery time. The Taskforce is leading the search for new antivirals, which disrupt how the virus replicates in the body and can reduce the number of patients who are hospitalised, and potentially help to break chains of transmission when administered responsibly.

The Government will continue to work with the life sciences sector to ensure that effective therapeutics, including antivirals, complement the vaccination programme to enable the long-term management of COVID-19 and its clinical impacts. The Government and NHS will set out more details on the availability and administration of further treatments in due course.

Identifying and isolating positive cases to limit transmission

The Test, Trace, and Isolate system remains critical to the Government's plan for managing the virus over the autumn and winter. It helps to find positive cases and make sure they and their unvaccinated contacts self-isolate, breaking chains of transmission. This helps reduce pressure on the NHS, as well as enabling individuals to manage their own risk and the risk to others. Testing is also crucial to enable genomic sequencing that can identify potentially dangerous variants.

The Government will continue to expect everyone with COVID-19 symptoms to self-isolate and take a polymerase chain reaction (PCR) test. The legal requirement to self-isolate for 10 days if an individual tests positive for COVID-19 will remain in place in order to prevent those who are infected from mixing in the community and passing on the virus.

Over autumn and winter PCR testing for those with COVID-19 symptoms will continue to be available free of charge. The Government has developed one of the largest per capita testing capabilities in the world. The recent opening of the Rosalind Franklin Megalab brings total capacity to over 700,000 PCR tests daily across the four nations. [\[footnote 17\]](#) The Government plans to scale sequencing capacity from 39,000 tests per week currently to over 150,000 by March 2022 to establish greater levels of surveillance for disease monitoring and variant tracking. This is critical to inform effective prevention measures for breaking chains of transmission.

Since the asymptomatic testing programme began, it has found over 700,000 cases and, today, lateral flow devices (LFD) identify around a quarter of all cases reported daily. [\[footnote 18\]](#) Delivering this programme has included providing Scotland with 150 million LFDs, Wales with 75 million and Northern Ireland 50 million. Regular asymptomatic testing will continue to help find cases and break the chains of transmission. It will be particularly focused on those who are not fully vaccinated, those in education, and those in higher-risk settings such as the NHS, social care, and prisons. Community testing will continue to support local authorities to focus on disproportionately-impacted and other high-risk groups.

Testing in education settings has played an important role in identifying positive cases since the start of this year, helping reduce the spread by removing infected individuals from the classroom or lecture hall. In secondary schools, further education and higher education, the Government expects that testing for students will continue for the rest of this term. This will be a valuable tool in minimising the

overall disruption to education, and is particularly helpful for this cohort, given its current lower level of vaccine-based protection.

Rapid asymptomatic testing is an important tool to help reduce the spread of the virus, while supporting people to manage their own risk and the risks to others. The Government will therefore continue to provide the public with access to free lateral flow tests in the coming months. People may wish to use regular rapid testing to help manage periods of risk such as after close contact with others in a higher risk environment, or before spending prolonged time with a more vulnerable person. At a later stage, as the Government's response to the virus changes, universal free provision of LFDs will end, and individuals and businesses using the tests will bear the cost. The Government will engage widely on the form of this model as it is developed, recognising that rapid testing could continue to have an important, ongoing role to play in future.

Contact tracing will continue through the autumn and winter. This means NHS Test and Trace will continue to check with all positive cases whether they need support to self-isolate, find out who they may have passed the virus onto and alert those contacts, and ask all contacts to take a PCR test as soon as possible to help identify positive cases. Since 16 August, in England, under 18s and those who are fully vaccinated no longer need to self-isolate if they are identified as a contact. With over 80% of over 16s having received two vaccine doses, [\[footnote 19\]](#) the majority of adults and all children are no longer required to self-isolate. If they are identified as a contact, they are advised to take a PCR test and only need to self-isolate if positive. Where contacts are over 18 and not fully vaccinated, they will, as now, be legally required to self-isolate unless they are taking part in an approved daily contact testing scheme.

In addition, the Government will continue to encourage the use of the NHS COVID-19 app. The app is a key health protection tool, preventing as many as 2,000 cases a day in July. [\[footnote 20\]](#) It helps users by informing them if they have been exposed to COVID-19, either through direct contact with a positive case or following a check-in to a venue where there has been an outbreak, and advising on actions they can take to protect others. Since 16 August, the App has advised potential contacts who are vaccinated to take a PCR test rather than isolate.

As well as maintaining the current legal requirements for positive cases and unvaccinated contacts to self-isolate, the Government will continue to offer practical and financial support to those who are eligible and require assistance to self-isolate. The Government will review the future of these regulations as well as this support by the end of March 2022.

Supporting the NHS and social care

Throughout the pandemic the Government has provided health and care services with the additional funding they need to respond to the unique challenges they have faced, making £63 billion available in 2020-21. The Government will continue to support the NHS to meet the challenges it faces in the coming months and

years. This includes committing funding to help the NHS to reduce the elective backlog.

The Government announced on 6 September that there will be an additional £5.4 billion cash injection to the NHS in England to support the COVID-19 response over the next 6 months. This includes £1 billion to help tackle backlogs in elective procedures caused by COVID-19 and the delivery of routine surgery and treatments for patients. The additional funding brings the Government's total investment in health services for COVID-19 for 2021-22 to over £34 billion so far, with £2 billion in total for the NHS to tackle the elective backlog.

The UK Health Security Agency is continuously reviewing COVID-19 specific Infection Prevention and Control (IPC) and related social distancing measures which could safely be eased to support the ability of the NHS to manage activity levels. Higher levels of vaccination among staff in the NHS help protect staff and patients and reduce the need for additional specific IPC measures which have been introduced as a result of the pandemic. The Government has also launched a consultation on protecting vulnerable patients by making COVID-19 and flu vaccinations a condition of deployment for frontline health and wider social care staff in England. [\[footnote 21\]](#)

Long COVID

Long COVID is described by The National Institute for Clinical Excellence (NICE) as "signs or symptoms that develop during or after an infection consistent with COVID-19 that continue for more than 12 weeks and are not explained by an alternative diagnosis. It includes both ongoing symptomatic COVID-19 and post-COVID-19 syndrome". [\[footnote 22\]](#) The Government is investing £50 million specifically in long COVID research to better understand the causes and potential treatments.

To support those with long COVID, the NHS continues to expand its long COVID services including assessment clinics, paediatric hubs and an enhanced service for general practice. [\[footnote 23\]](#)

Clinically Extremely Vulnerable guidance and shielding advice

At the start of the pandemic, on the advice of clinicians, the Government made the difficult decision to advise millions of people, who were then identified as Clinically Extremely Vulnerable (CEV), to shield in order to protect themselves from the virus.

This helped keep the most vulnerable safe whilst more was learned about the risks of COVID-19, and COVID-19 vaccines were developed and deployed. Clinicians continued to assess the clinical risks of patients and add to this group, as well as to provide advice.

Since then, the understanding of the risks to this group has changed as more has been learnt about the virus, and as the most vulnerable have been prioritised for

vaccination. Due to falling prevalence of COVID-19, shielding advice was paused on 1 April 2021 and, since 19 July 2021, people who were previously identified as CEV have been advised to follow the same guidance and behaviours as the rest of the adult population. The proven effectiveness of the vaccine rollout across the entire population has reduced the risk of serious illness from COVID-19. This also applies to CEV individuals, the majority of whom will be well-protected by the vaccine. Third doses have been offered to those with severely weakened immune systems and to maintain protection, the former CEV group will be prioritised for a booster (see Vaccines section above for more information).

The Government will continue to assess the situation and the risks posed by COVID-19 and, based on clinical advice, will respond accordingly to keep the most vulnerable safe. Individuals should consider advice from their health professional on whether additional precautions are right for them.

Adult Social Care

Care home staff provide a critical role in supporting the health and wellbeing of some of the most clinically vulnerable to the effects of COVID-19 in society, and have maintained their dedication and professionalism through highly challenging conditions.

The Government continues to provide guidance to care homes on enhanced IPC measures, outbreak management, and testing regimes for COVID-19. Essential care givers are able to visit care homes to attend to their loved ones' essential care needs and for companionship in most circumstances, including if the care home is experiencing an outbreak. There are now no caps in place on the number of visitors an individual can receive.

The Government's focus has been ensuring that the social care sector has the resources it needs to respond to the pandemic. On 27 June 2021, the Government announced a further £251 million of adult social care COVID-19 support through an extension of the Infection Control and Testing Fund.^[footnote 24] This means that throughout the pandemic, the Government has made available over £2 billion in specific funding for adult social care.^[footnote 25]

Since the start of the pandemic, the Government has committed over £6 billion to local authorities through non-ring fenced grants to tackle the impact of COVID-19 on their services, including adult social care.^[footnote 26]

To further protect individuals susceptible to COVID-19, from 11 November it will be a condition of deployment for anyone working or volunteering in Care Quality Commission-regulated care homes providing accommodation for persons who require nursing and personal care to be fully vaccinated.

Getting a vaccine for influenza (flu)

The Government recommends as many people as possible receive a vaccination against flu this autumn and winter. This could help to reduce overall pressure on

the NHS and is especially important this year given the possibility of a substantial resurgence in flu. The NHS has begun to roll out the annual campaign for the flu vaccination from August 2021. A free flu vaccination will still be available for all previously eligible groups:

- a. Primary school children.
- b. 65 year olds and over.
- c. Vulnerable groups.
- d. Pregnant women.

The Government has also extended eligibility for a free flu vaccination this year to include:

- a. Secondary school children.
- b. 50-64 year olds.

As with the COVID-19 vaccine, flu vaccines are available from a range of different providers, including GPs, community pharmacies, and health centres. This ensures that access is as easy as possible for all, including vulnerable groups. The NHS has learned a number of lessons from the successful COVID-19 vaccination programme on reaching out to previously vaccine hesitant groups. The NHS is implementing these lessons in the flu vaccine programme this year in order to drive uptake higher than ever before.

For those not eligible for a free flu vaccine, some employers offer these vaccinations through workplaces, and vaccinations are available for a small fee from pharmacies. Many of the behaviours that help reduce the chance of catching COVID-19 will also reduce the risk of catching flu, such as washing your hands regularly and trying to stay at home if you are feeling unwell.

Advising people on how to protect themselves and others

On 19 July, rules on social contact were replaced with advice to the public on the ways in which they could protect themselves and others. Since the risks from COVID-19 have not disappeared, the Government will continue to provide guidance on the behaviours and actions that reduce transmission and manage the risks. The guidance will be based on the latest scientific and epidemiological evidence.

Safer behaviours and actions that reduce the spread of COVID-19

It remains important for everyone, including those who are fully vaccinated, to follow behaviours and actions that reduce transmission and help to keep people safe. Following the recommended actions will also help limit the spread of seasonal illnesses, including flu.

The evidence suggests COVID-19 is spread in the following ways: airborne transmission, close contact via droplets, and via surfaces. [\[footnote 27\]](#) Developing evidence indicates that airborne transmission is a very significant way that the virus circulates. [\[footnote 28\]](#) The behaviours and actions recommended by the Government in guidance aim to mitigate all methods of transmission.

The risk of catching or passing on COVID-19 can be higher in certain places and when doing certain activities. In general, the risk of catching or passing on COVID-19 is higher in crowded spaces (where there are more people who might be infectious) and in enclosed indoor spaces (where there is limited fresh air). Some activities, such as singing, dancing, and exercising can also increase the risk of transmission of COVID-19 as people are doing activities which generate more particles as they breathe. The risk is greatest where these factors overlap. [\[footnote 29\]](#) Although the Government does not want to legally restrict any of these activities, it can inform people of the risks and offer advice on how to mitigate them.

The best way to protect yourself and others from COVID-19 is to get fully vaccinated. People that are fully vaccinated should continue to follow behaviours and actions set out in the guidance on how to help limit the spread of COVID-19.

The behaviours encouraged to prevent the spread include:

- a. Let fresh air in if you meet indoors. Meeting outdoors is safer. Meeting outdoors vastly reduces the risk of airborne transmission, however, it is not always possible, particularly through the winter. If you are indoors, being in a room with fresh air (and, for example, opening your windows regularly for 10 minutes or a small amount continuously) can still reduce the airborne risk from COVID-19 substantially compared to spaces with no fresh air. [\[footnote 30\]](#) Some evidence suggests that under specific conditions high levels of ventilation could reduce airborne transmission risk by up to 70%. [\[footnote 31\]](#)
- b. Wear a face covering in crowded and enclosed settings where you come into contact with people you do not normally meet.
- c. Get tested, and self-isolate if required. Anyone with symptoms of COVID-19 should self-isolate and take a free PCR test as soon as possible. Anyone who tests positive must self-isolate. Anyone who is notified they are a close contact of someone who has tested positive should also take a free PCR test as soon as possible and self-isolate if required. The data on symptoms associated with COVID-19 is continuously being gathered and kept under review.
- d. Try to stay at home if you are feeling unwell.
- f. Wash your hands with soap and water or use hand sanitiser regularly throughout the day.
- e. Download and use the NHS COVID-19 app to know if you've been exposed to the virus.

Figure 2: Safer Behaviours and Actions



Infographic showing safer behaviours and actions.

In order, these are: get vaccinated; let fresh air in if you meet indoors, meeting outdoors is safer; wear a face covering in crowded and enclosed settings where you come into contact with people you do not normally meet; get tested, and self-isolate if required; try to stay at home if you are feeling unwell; wash your hands; and download and use the NHS COVID-19 app.

Businesses

To support businesses through the autumn and winter period, the Government will continue to provide up-to-date Working Safely guidance on how employers can reduce the risks in their workplace. Businesses should consider this guidance in preparing their health and safety risk assessments, and put in place suitable mitigations.

In line with government guidance at step 4, an increasing number of workers have gradually returned, or are preparing to return, to offices and workplaces. As workers return to the workplace, employers should follow the Working Safely guidance.

By law, businesses must not ask or allow employees to come to work if they are required to self-isolate.

In addition, businesses are encouraged to:

- a. Ask employees to stay at home if they are feeling unwell.

- b. Ensure there is an adequate supply of fresh air to indoor spaces. Businesses should identify any poorly ventilated spaces, for example by using a CO₂ monitor, and take steps to improve fresh air flow in these areas.
- c. Provide hand sanitiser to enable staff and customers to clean their hands more frequently, and clean surfaces which people touch regularly.
- d. Display an NHS QR code poster for customers to check in using the NHS COVID-19 app, so they are alerted if there's an outbreak and can take action to protect others.
- e. Consider using the NHS COVID Pass.

Using the NHS COVID Pass

The Government has been working with organisations to encourage the voluntary use of certification and the NHS COVID Pass.

Over 200 events and venues have already used certification and the NHS COVID Pass as a condition of entry, including matches in the Premier League, festivals such as the Reading and Leeds Festivals and All Points East, some nightclubs, and the BBC Proms.

ONS data shows that 11% of people have already been asked to show proof of vaccination or a recent negative test to enter an event or venue.^{[\[footnote 32\]](#)} At present, the NHS COVID Pass certifies individuals based on vaccination, testing or natural immunity status.^{[\[footnote 33\]](#)} Settings using voluntary certification can also ask individuals, including those 11 and over, to demonstrate their testing status through messages or emails from Test and Trace. Organisations can easily and securely check someone's NHS COVID Pass using the NHS Verifier App, which can be downloaded from the Apple App Store or Google Play, or carry out visual checks using the shimmering effect on the NHS COVID Pass screen which demonstrates that it is an active app and not a screenshot.

Ventilation

Due to the importance of fresh air in limiting the spread of COVID-19, the Government will set out in guidance the practical steps everyone can take to maximise fresh air in order to reduce the risk of airborne transmission, taking into account the colder months when more activities take place indoors.

The Government will support improved ventilation in key settings by:

- a. Providing further advice and support to businesses to help them check their ventilation levels and introduce Carbon Dioxide (CO₂) monitoring where appropriate.
- b. Conducting further scientific research to assess ventilation levels in a range of business settings.
- c. Investing £25 million in c.300,000 CO₂ monitors for schools.

- d. Improving the management of ventilation across the public sector estate alongside bespoke guidance to maximise the effectiveness of existing mechanical and natural ventilation. This has included deploying CO₂ monitors in courts as well as targeted rollouts and trials of these monitors in other settings.
- e. Continuing to support and promote pilots of how to limit transmission through ventilation or air purification, such as the trials of high-efficiency particulate absorbing filters and ultraviolet-C air cleaners in 30 Bradford schools, as well as working with stakeholders such as the Rail Delivery Group and Rail Safety and Standards Board to trial the use of upgraded air filtration devices on passenger rail stock.

Pursuing an international approach: helping vaccinate the world and managing risks at the border

Managing risks at the border

Since the start of the pandemic, the Government has put in place measures at the border to address the risk of importing the virus. The strength of these measures has varied according to the latest assessment of the risks of importation. Since May this year, the framework established under the second Global Travel Taskforce has set the path for a progressive and sustained return to international travel. The number of daily international and domestic flights has increased by 59% since step 4 compared to step 3 levels. However, this still only represents 53% of 2019 average levels. [\[footnote 34\]](#)

The Traffic Light System has sought to balance a greater degree of travel with limiting the risk to the UK from Variants of Concern. More recently the rules have been relaxed for many fully vaccinated travellers, reflecting the progress of vaccination campaigns at home and abroad.

The Government continues to work with the travel industry and private testing providers to further reduce testing costs and improve the speed and quality of testing performance, while ensuring travel is as safe as possible. More than 80 companies have had misleading prices corrected on the Government's website and, in addition, over 50 firms have been removed. From 21 September private providers will be liable for criminal offences and penalties if they do not meet standards set out in legislation. This action will help ensure consumers can trust the testing providers listed on GOV. UK and only the most reliable companies are available.

The Government will shortly set out a revised framework for international travel, in advance of the next formal checkpoint review, with a deadline of 1 October.

Helping vaccinate the world

Alongside G7 partners, the UK remains committed to accelerating equitable access to COVID-19 vaccinations, therapeutics, and diagnostics to save lives across the world. Increased access to vaccines globally will also help to protect the UK by reducing the risk of Variants of Concern emerging. The UK remains one of the biggest donors to the Access to COVID-19 Tools Accelerator (ACT-A) and to date the UK has donated \$1.135 billion.^[footnote 35] ACT-A's COVID-19 Vaccines Global Access (COVAX) facility has so far shipped over 243 million doses to 139 participants.^[footnote 36] In addition the UK has so far donated 10.3 million vaccination doses, either bilaterally or through COVAX, and aims to share a total of 30 million by the end of this year, and 100 million by June 2022. The Government is also supporting efforts to develop more resilient global supply chains for vaccines, including by supporting the continued efforts of the COVAX Supply Chain & Manufacturing Task Force to tackle supply challenges and promote not-for-profit global production.

The UK continues to engage bilaterally with key international partners and to take a leading role in multilateral discussions on the global response to the pandemic. The UK has led the G7 Presidency during a challenging year, engaging with key international partners across a wide range of COVID-19 international issues. The UK will continue to lead, through and beyond 2021, on delivering on the commitments and ambitions set out by G7 leaders at the Summit in Carbis Bay in June for supporting global recovery, including by reopening international travel.^[footnote 37]

The UK will continue to push for greater scientific leadership and innovation, working closely with others including the World Health Organization, to develop the Global Pandemic Radar and increase international pathogen genomic sequencing capability through the new Centre for Pandemic Preparedness. These are global public goods which will keep citizens everywhere safe.

Contingency planning

The Government's objective is to avoid a rise in COVID-19 hospitalisations that would put unsustainable pressure on the NHS. The Government will monitor all the relevant data on a regular basis to ensure it can act if there is a substantial likelihood of this happening.

It is possible that Plan A is not sufficient to prevent unsustainable pressure on the NHS and that further measures are required. This is not the Government's preferred outcome but it is a plausible outcome and one that must be prepared for. The high levels of protection in the population against COVID-19 should mean that very stringent restrictions are not needed over autumn and winter to reduce the rate of transmission of COVID-19, reduce growth in hospitalisations and prevent unsustainable pressure on the NHS. However, there remains significant uncertainty.

The Government has taken the best scientific advice from the Scientific Advisory Group for Emergencies (SAGE). The Scientific Pandemic Influenza group on Modelling (SPI-M) has reflected on their modelling of step 4 of the roadmap.

Despite unexpected falls in cases in mid-July 2021, these scenarios can still be used to consider the future autumn and winter trajectory, likely with a delay in timing of peaks until later in the year, and possibly with broader, longer peaks than those originally estimated. [\[footnote 38\]](#) As made clear in the Government's roadmap, further hospitalisations and deaths are expected because neither coverage nor effectiveness of the vaccine can ever be 100%.

SAGE and SPI-M modellers now deem the most pessimistic scenarios in the step 4 modelling to be unlikely, except in the case of a new dangerous Variant of Concern or significant waning immunity. However, there remains considerable uncertainty and scenarios which place the NHS under extreme and unsustainable pressure remain plausible. As a result, the Government must continue to monitor the data and prepare contingencies.

The Government monitors and considers a wide range of COVID-19 health data including cases, immunity, the ratio of cases to hospitalisations, the proportion of admissions due to infections, the rate of growth in cases and hospital admissions in over 65s, vaccine efficacy, and the global distribution and characteristics of Variants of Concern. In assessing the risk to the NHS, the key metrics include hospital occupancy for COVID-19 and non-COVID-19 patients, intensive care unit capacity, admissions in vaccinated individuals, and the rate of growth of admissions. The Government also tracks the economic and societal impacts of the virus, to ensure that any response takes into account those wider effects.

Plan B

If the data suggests the NHS is likely to come under unsustainable pressure, the Government has prepared a Plan B for England. The Government hopes not to have to implement Plan B, but given the uncertainty, it is setting out details now so that the public and businesses know what to expect if further measures become necessary.

Given the high levels of protection in the adult population against COVID-19 by vaccination, relatively small changes in policy and behaviour could have a big impact on reducing (or increasing) transmission, bending the epidemic curve and relieving pressure on the NHS. Thanks to the success of the vaccination programme, it should be possible to handle a further resurgence with less damaging measures than the lockdowns and economic and social restrictions deployed in the past. The Government would provide prior notice as far as possible to the public and Parliament ahead of implementing any necessary changes in a Plan B scenario.

The Government's Plan B prioritises measures which can help control transmission of the virus while seeking to minimise economic and social impacts. This includes:

- a. Communicating clearly and urgently to the public that the level of risk has increased, and with it the need to behave more cautiously.
- b. Introducing mandatory vaccine-only COVID-status certification in certain settings.

- c. Legally mandating face coverings in certain settings.

The Government would also consider asking people once again to work from home if they can, for a limited period. The Government recognises this causes more disruption and has greater immediate costs to the economy and some businesses than the other Plan B interventions, so a final decision would be made based on the data at the time.

Communications

Communications have been effective at highlighting key messages and supporting the public to follow safer behaviours. In a Plan B scenario, the Government would issue clear guidance and communications to the public and businesses, setting out the steps that they should take to manage the increased risks of the virus.

Communications – supporting evidence

At step 4, the Government shifted its approach from one of legal requirements and restrictions towards one focused around personal responsibility and voluntarily following safer behaviours. Though there has been a slight decline in the observance of key protective behaviours post step 4, the majority still continue to adhere to the guidance. Of those surveyed, 89% still self-report wearing face coverings outside the house, and 84% claim to engage in regular handwashing. [\[footnote 39\]](#) Adult, mean daily contacts have not increased rapidly since step 4, and remain much lower than pre-pandemic levels (3.0 in late August 2021 vs 10.8 pre-pandemic). [\[footnote 40\]](#) [\[footnote 41\]](#) Children's social contact decreased over the summer holidays [\[footnote 42\]](#) but is likely to increase rapidly in September. The public's continued engagement with these protective measures has helped reduce transmission.

Mandatory Vaccine-only COVID-status Certification

On 19 July, the Prime Minister served notice that, by the end of September, the Government was planning to make full vaccination a condition of entry to nightclubs and other venues where large crowds gather.

The gap between the announcement and intended implementation has given people sufficient time to receive two doses of a vaccination. Since 19 July, over 1 million first doses, and over 6.1 million second doses, have been administered. This means that over 7.2 million doses have been administered to adults aged 18 and older in England, [\[footnote 43\]](#) considerably bolstering the level of immunity in the population. Of the 1 million new doses administered, over 600,000 were aged between 18 and 29. [\[footnote 44\]](#) At the same time, more than 200 events and venues have made voluntary use of certification and the NHS COVID Pass as a condition of entry. The impact of the use of the NHS COVID Pass is being further assessed through the findings of Phase II and Phase III of the Events Research Programme.

Taking into account the latest data on the state of the epidemic, mandatory vaccine-only certification will not be implemented from the end of September. It would, however, be part of the Government's Plan B if the data suggests action is required to prevent unsustainable pressure on the NHS. Mandating vaccine-only certification would be preferable to closing venues entirely or reimposing social distancing.

At present, the Government continues to encourage the voluntary use of the NHS COVID Pass, particularly in the types of settings listed below, as a tool to help manage risk and to help to prepare for mandatory introduction, if it is required. For now, the NHS COVID Pass will continue to certify individuals based on vaccination, testing or natural immunity status. If Plan B is implemented, at that point the NHS COVID Pass will change to display full vaccination only. Exemptions will continue to apply for those who cannot be vaccinated for medical reasons, for those on COVID vaccine clinical trials, and for under 18s.

Under Plan B, the Government expects to introduce mandatory vaccine certification in a limited number of settings, with specific characteristics. The Government hopes that it would not be necessary to mandate vaccine certification more widely than these settings, though this cannot be entirely ruled out.

If Plan B is implemented, it could be at short notice in response to concerning data. Therefore, in order to help businesses prepare their own contingency plans, the Government will shortly publish more detail about the proposed certification regime that would be introduced as part of Plan B. The Government would seek to give businesses at least one week's notice before mandatory vaccine certification came into force.

Mandatory Vaccine-only COVID-status Certification Settings

Under Plan B, the Government expects that mandatory vaccine-only certification would be introduced for visitors to the following venues:

- All nightclubs;
- Indoor, crowded settings with 500 or more attendees where those attendees are likely to be in close proximity to people from other households, such as music venues or large receptions;
- Outdoor, crowded settings with 4,000 or more attendees where those attendees are likely to be in close proximity to people from other households, such as outdoor festivals; and
- Any settings with 10,000 or more attendees, such as large sports and music stadia.

There are some settings that will be exempt from requirements to use the NHS COVID Pass, including communal worship, wedding ceremonies, funerals and other commemorative events, protests and mass participation sporting events.

Supporting evidence

The COVID-Status Certification Review concluded that there would be a public health benefit from certification. Certification of immunity for certain uses has the potential to enable access to a wide range of activities in ways that could reduce transmission of the virus.

There is good evidence to suggest certification will have a beneficial impact on infection rates. Vaccines reduce the likelihood of someone becoming infected, and, therefore, vaccine certification reduces the risk of onward transmission if an infected person does enter a venue. Vaccination also reduces the chances of someone who is infected being hospitalised or dying.

PHE analysis of the Events Research Programme found that, while proof of full vaccination or a negative LFD test would not completely eliminate the possibility of an infectious individual attending an event, it should reduce the likelihood of someone transmitting highly infectious amounts of virus to a large number of individuals attending the event. The study concluded that promoting attendance by fully-vaccinated individuals at events will be important to mitigate risks. [\[footnote 45\]](#)

For venues, certification could allow settings that have experienced long periods of closure to remain open, compared to more stringent measures which may severely reduce capacity or cause them to close entirely.

Legally mandating face coverings in additional settings

Though there is no current legal requirement, the Government recommends that people continue to wear face coverings in crowded and enclosed spaces where you come into contact with people you don't normally meet, for example on public transport. This recommendation is in line with the findings from the Social Distancing report and has a low economic cost. [\[footnote 46\]](#) If Plan B is implemented, the Government will bring back the legal requirement to wear face coverings in some settings. The precise settings will be decided at the time.

Face coverings – supporting evidence

Face coverings have low economic costs and can be effective in reducing transmission in public and community settings, by reducing the emission of virus-carrying particles when worn by an infected person, and may also provide a small amount of protection to an uninfected wearer. [\[footnote 47\]](#) Currently 91% of public transport users report having worn a face covering the last time they used public transport. [\[footnote 48\]](#) Use remains high but has gradually fallen since the start of step 4. [\[footnote 49\]](#)

SAGE estimates that widespread application of face coverings is likely to have a small but significant impact on transmission, as face coverings mitigate most transmission routes. [\[footnote 50\]](#) SAGE evidence also states that face coverings (if worn correctly and of suitable quality) are likely to be most effective (at least in the short to medium term) [\[footnote 51\]](#) in reducing transmission indoors where other measures, such as social distancing and ventilation, are not feasible or are inadequate.

Advice to work from home

SPI-M and SAGE have advised that high levels of homeworking have played a very important role in preventing sustained epidemic growth in recent months. [\[footnote 52\]](#) If the Government were to re-introduce this measure it would be seeking to reduce the transmission risk inside and outside of the workplace, including by reducing the number of people taking public transport and the number of face to face meetings and social activities, and thereby reducing community and household transmission.

Working from home – supporting evidence

SAGE has advised that working from home is one of the most effective measures available at reducing contacts, including associated transport and social interactions, which has a strong impact on transmission and R. The REACT survey [\[footnote 53\]](#) from Imperial College London showed that working from home reduced the chance of catching COVID-19. Those who were working from home were less likely to test positive for COVID-19 than those who left their homes to work in February. Analyses of risk by occupation consistently show a lower risk for those occupations with higher levels of working from home. [\[footnote 54\]](#)

However, the overall socio-economic effects of the Government's working from home guidance are complex and unevenly distributed. For example, working from home has reduced the frequency of commuting for many workers resulting in reduced consumption in direct office-related spending, indirect social consumption (such as in retail and hospitality) and transport use in city centres. However, some of this reduced consumption is displaced to surrounding areas where homeworkers live and therefore partly replaced by increased consumption of other goods and services closer to home. [\[footnote 55\]](#)

Overall impacts on productivity are uncertain and vary by sectors and workers. While there are positive impacts for some individuals, in terms of spending less time and money commuting, others will suffer owing to inadequate working conditions at home, particularly younger workers, and those living alone or with poorer mental health due to reduced interactions with colleagues. Some businesses have reported that productivity has either remained the same or increased, owing to benefits such as a happier workforce and reduced overheads (for example, in spending on office space). However, other businesses report that prescriptive working from home guidance poses challenges, such as hampering the exchange of ideas, stifling creativity and hindering collaboration. Working from home could make it harder for some businesses to carry out client engagement, and to train and onboard new and existing staff. These businesses argue that over time a reduction in these activities will likely pose challenges to the productivity of their workforces.

While the Government expects that, with strong engagement from the public and businesses, these contingency measures should be sufficient to reverse a resurgence in autumn or winter, the nature of the virus means it is not possible to give guarantees. The Government remains committed to taking whatever action is

necessary to protect the NHS from being overwhelmed but more harmful economic and social restrictions would only be considered as a last resort.

Variants of Concern

New variants of the virus will continue to emerge both at home and abroad in the coming months and years. As was clear with the spread of the Alpha variant, and this summer with Delta, a variant has the potential to radically change the course of the epidemic. Over time, there may be variants which evade immune responses and weaken the protection given by vaccines, have increased transmissibility (as with Alpha and Delta), or alter the severity or the symptom profile of the virus.

To confront this risk, the Government has developed a range of tools to reduce the risk of variants emerging, stop and slow importation of the most dangerous variants, identify new variants and outbreaks, and ensure the Government is ready to respond if outbreaks occur.

Domestic sequencing capacity has been enhanced in 2021 and will continue to increase over the coming months, enabling a higher number of PCR positive cases to undergo whole genome sequencing, improving the detection of variants. In addition, wastewater testing and the use of new technology, such as genotype assay testing, have been expanded as an additional surveillance function to detect variants and outbreaks.

The Government's work to support and develop international surveillance capabilities and support for the rollout of vaccines globally will also protect the UK by helping to identify and reduce the risk of Variants of Concern.

Local management of the virus

Local authorities have always played a critical role in public health protection, emergency response and infectious disease control. COVID-19 has been no different, with local authorities leading the response in their communities. The Government will continue to support and work with local authorities and local areas directly to reduce the spread and minimise the impact of COVID-19.

This includes support for areas with enduring transmission. These are those parts of the country where the case rate has remained above the national or regional average for a prolonged period. Support includes targeted testing and programme support for public health activities such as vaccination.

The Government will also continue to provide access to:

- a. The COVID-19 Contain Framework which clarifies the national support and infrastructure available to local authorities.
- b. National support for an enhanced response in areas with particularly challenging disease situations. This support includes targeted surge testing, vaccination logistical support, logistics support, and national funding to enhance local communications efforts.

- c. The Education Contingency Framework, which provides guidance on the principles for managing local outbreaks of COVID-19 in all education and childcare settings. This framework sets clear thresholds for managing COVID-19 cases, when settings should consider seeking public health advice, and provides advice on all types of measures that settings should prepare for in the event they are needed.

The COVID-19 Contain Framework will be updated at the beginning of October. This will provide an overview of the support local authorities can expect from regional and national teams, and will continue to refer to the responsibilities of Directors of Public Health, regional health protection teams, and the Government's Local Action Committee command structure.

Legislation and reviews

At step 4 of the roadmap, the vast majority of COVID-19 regulations were removed.

The Government has reviewed the remaining regulations and decided, subject to agreement from Parliament, that it is necessary to extend the following regulations until 24 March 2022, at which point they will be reviewed:

- a. The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, which impose legal requirements to self-isolate on positive cases and unvaccinated close contacts. Self-isolation will remain crucial in breaking chains of transmission throughout autumn and winter.
- b. The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, which enable local authorities to respond to serious and imminent public health threats.

The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, which impose testing and quarantine requirements on arrivals in England, will remain.

The Government formally reviews the Coronavirus Act 2020 every six months to ensure that Parliament has an opportunity to expire any temporary non-devolved provisions that are no longer necessary to manage COVID-19. As part of the third six-month review of the Act due in September 2021, the Government is committed to removing those legal provisions that are no longer necessary or proportionate. The Government intends to recommend to Parliament that the following temporary non-devolved provisions are expired:

- a. Section 23 (UK wide), which enables changes to the timings of urgent warrants under the Investigatory Powers Act 2016.
- b. Section 37 (Schedule 16) (for England), which gives Ministers the power to direct the temporary closure of educational institutions and providers.
- c. Section 51 (Schedule 21) (for England), which allows restrictions to be imposed upon potentially infectious persons including detention, and screening for COVID-19.

- d. Section 52 (Schedule 22) (for England), which enables Ministers to restrict or prohibit gatherings or events and to close and restrict access to premises during a public health response period.
- e. Section 56 (Schedule 26) (England and Wales), which provides that appeals imposed under powers set out in Schedule 21 of the Coronavirus Act can be heard by telephone or video in civil proceedings in the Magistrates Court.
- f. Section 77 (UK wide), which increases the rate of the basic element of Working Tax Credit.
- g. Section 78 (for England), which is a power for local authorities to change how they meet in meetings held before 7 May 2021.

The Government also intends to expire parts of Section 38/Schedule 17 of the Act. Schedule 17 allows the Secretary of State to disapply or modify existing requirements in education and childcare legislation. Expiring parts of schedule 17 includes removing the ability to modify the duty on local authorities to secure the special educational needs provision in a child or young person's Education and Health Care plan.

The Government will consult with the Devolved Administrations in the normal way ahead of publishing the ninth edition of the Coronavirus Act report and subsequent parliamentary debate.

The Coronavirus Act is a critical part of the Government's response to the pandemic, as it continues to support the NHS in retaining emergency staff, enables Statutory Sick Pay to support self-isolation, as well as enabling remote participation in court proceedings among other necessary provisions.

The remaining temporary powers in the Coronavirus Act are due to expire at midnight on 24 March 2022. In the spring, the Government will review this legislation and the other remaining regulations and measures and decide whether any need to remain in place.

The Public Health (Control of Disease) Act 1984 gives emergency powers to be used in pandemics if they present significant harm to human health. This was used as the legal basis for national restrictions in England. No changes to the Public Health Act are planned.

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APPENDIX C

National Travel Survey

Table NTSQ09026

Frequency of working from home (aged 17+): England, 2019, 2020 and 2021

2019

Working from home frequency	
3 or more times a week	3%
Once or twice a week	8%
Less than once a week, more than twice a month	2%
Once or twice a month	5%
Less than once a month, more than twice a year	3%
Once or twice a year	2%
Less than once a year or never	77%

2020

Working from home frequency	
3 or more times a week	11%
Once or twice a week	10%
Less than once a week, more than twice a month	2%
Once or twice a month	4%
Less than once a month, more than twice a year	2%
Once or twice a year	1%
Less than once a year or never	70%

2021

Working from home frequency	
3 or more times a week	11%
Once or twice a week	10%
Less than once a week, more than twice a month	2%
Once or twice a month	3%
Less than once a month, more than twice a year	1%
Once or twice a year	2%
Less than once a year or never	71%

The figures in this table are National Statistics.

The results presented in this table are weighted. The base (unweighted sample size) is shown in the table for information.

The survey results are subject to sampling error.

2020 and 2021 Disclaimer: Due to changes in the methodology of data collection, changes in travel behaviour and a reduction of data collected during 2020 and 2021, as a result of the coronavirus (COVID-19) pandemic, care should be taken when interpreting this data and comparing to other years, due to the small sample sizes. Please see the background documentation for further details of these changes.

Email: national.travelsurvey@dft.gov.uk

[Notes & definitions](#)

Source: National Travel Survey
Last updated: 31 August 2022

APPENDIX D

Judgement in High Court Case between Hawkhurst Parish Council and Tunbridge Wells Borough Council



Neutral Citation Number: [2020] EWHC 3019 (Admin)

Case No: CO/431/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2020

Before:

JAMES STRACHAN QC
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Between:

THE QUEEN
-on the application of-
HAWKHURST PARISH COUNCIL

Claimant

- and -
TUNBRIDGE WELLS BOROUGH COUNCIL

Defendant

-and-
(1) PROGRESSIVE DEVELOPERS LAND
LIMITED
(2) McCARTHY AND STONE RETIREMENT
LIFESTYLES LIMITED

Interested
Parties

Mr Alistair Mills (instructed by **Richard Max Solicitors**) for the **Claimant**
Ms Megan Thomas (instructed by **Sharpe Pritchard**) for the **Defendant**
Mr Giles Cannock QC (instructed by **Shoosmiths**) for the **Second Interested Party**

Hearing dates: 28-29 July 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 11 November 2020.

MR JAMES STRACHAN QC (Sitting as a Deputy Judge of the High Court):

Introduction

1. By this claim for judicial review the Claimant, Hawkhurst Parish Council, challenges the lawfulness of a decision of the Defendant, Tunbridge Wells Borough Council, given by notice dated 23 December 2019 to grant planning permission (reference number 19/01271FUL) to the Second Interested Party, McCarthy & Stone Retirement Lifestyles Ltd, at The White House in Hawkhurst (“the Site”) for:

“Demolition of existing dwelling and erection of 43 retirement living apartments with associated communal facilities, access, parking and landscaping...”
2. In broad terms, the Claimant contends that the Defendant was materially misled by the Officers’ Report recommending the grant of planning permission because:
 - i) it failed to deal with the issue of the highways impact of the proposed scheme cumulatively with other committed development (Ground 1);
 - ii) it failed to address a particular heritage development plan policy, Policy EN4, concerning demolition and conservation areas (Ground 2); and
 - iii) it misinterpreted national policy on the protection to be given to the Area of Outstanding Natural Beauty (“AONB”), and the finding that there were exceptional circumstances for development in the AONB was not reasonably open to the Council (Ground 3).
3. The Claimant was granted permission to bring the claim by Thornton J by an Order dated 11 March 2020. The Claimant was subsequently granted permission to amend its ground of claim by Order of Neil Cameron QC (sitting as a Deputy High Court Judge). The Deputy Judge also granted the Claimant’s application to admit the second witness statement and exhibits of David Warman, but with permission for the Defendant to submit further evidence in response if so advised. The Defendant did so in the form of a second witness statement from Ms Vicki Hubert dated 26 June 2020.
4. The substantive hearing took place by video conferencing with the co-operation of the parties. The Claimant was represented by Mr Mills. The Defendant was represented by Ms Thomas. The Second Interested Party was represented by Mr Cannock QC. I am very grateful to them all for the clarity and helpfulness of their written and oral submissions. The First Interested Party did not appear and was not represented.
5. In its skeleton argument, the Claimant identified that it was not pursuing that part of Ground 2 of its Amended Statement of Facts and Grounds alleging there had been a misinterpretation of heritage policy in the National Planning Policy Framework (“the NPPF”). Mr Mills confirmed this at the hearing. During the course the hearing itself, Mr Mills also announced that the Claimant was withdrawing that part of Ground 1 alleging that there had been a misinterpretation of 109 of the NPPF and that the Council had only considered highway safety, rather than the impact on the highway more broadly. He therefore withdrew paragraphs 94-97 of his skeleton argument.

Given that those parts of the grounds of challenge have been formally withdrawn, I do not address them further in this judgment.

The Facts

The Site

6. The Site is located in Hawkhurst, a village located in the High Weald AONB. It is about 0.6 hectares in size. It currently contains a detached dwelling named The White House. The Site fronts on to the A229. This road runs through the village in a north-south direction. Just to the north of the Site, the A229 meets the A268 which runs through the village in an east-west direction. The two roads intersect at a signalised crossroads which the parties have conveniently referred to as the Junction.

The Junction

7. The Junction is the subject of traffic congestion. This has been, and continues to be, a significant source of concern not just to the Claimant, but also to Kent County Council (“KCC”), the local highway authority for this area.
8. On 4 September 2017, Ms Hubert - the Principal Transport and Development Planner in the Highways and Transportation Division of KCC - sent an email to councillors and officers of KCC and the Defendant attaching a document entitled “KCC Highways Position Statement: Development in Hawkhurst – Summary”. In the email, she stated that the statement set out that KCC Highways would be objecting to any further development within Hawkhurst village boundary “owing to the impact on the already congested junction being **severe**”. She considered this to be in line with the advice in paragraph 32 of the NPPF (in the version of the NPPF extant at that time), which uses the word “severe” as a test. Ms Hubert stated she was attempting to prove this through extensive traffic surveys undertaken in the last few months. She expected any applications refused owing to the statement to go to appeal where her interpretation of “severe” would be tested.
9. The attached Position Statement document stated (amongst other things):

“Hawkhurst village has grown around a junction where two major A roads cross. This junction is recognised by KCC as being at capacity with significant delays experienced, particularly during peak hours. Following KCC’s investigation into several possible improvement schemes during the last few years, no solution has been found that can both be delivered and achieve the required additional capacity.”

The conclusion section stated:

“... It is therefore KCC’s position that, in line with NPPF paragraph 32, no development will be recommended for approval within the village boundary that generates any additional trips through the junction, unless the developer can demonstrate a scheme that mitigates their specific impact.”

10. Ms Hubert received an email from Mr Barrington King at KCC asking about other similar situations in the borough. Ms Hubert replied that Hawkhurst was currently in a unique position in that she believed that KCC had explored all possible options to improve the junction to no avail (in contrast to other locations). She also received an email on 7 September 2017 from Mr Baughen, a senior planning officer of the Defendant. He asked a number of questions to which she responded on 15 September 2017. The questions (which I have italicised) and her answers included the following:

“1. Does KCC have a set a criteria for “development that generates any additional trips through the junction?

-eg for residential development, is this as low as a single additional dwelling? If so, is it the case that the cumulative impact will be judged served as outlined in the NPPF?

This has been a testing part of the statement to commit to, but in essence we are saying the cumulative impact of several/many individual units will add to the severity of congestion experienced at the junction. As we have judged that the existing situation is ‘severe’, it should apply that any additional units/trips would compound the effect.

...

4. Have KCC had any discussions with applicants/highway consultants about how impacts can be mitigated? If so, can a summary of these please be relayed to us?

The only realistic proposal that mitigates this problem is the Golf Club owner’s proposal to construct a relief road to the north-west of the junction. I have also spoken to PBA ...[for another site] about mitigation, stating we will be open to any suggestions that have a realistic positive impact. PBA tentatively suggested public transport improvements but I am dubious about the benefits tinkering with timetables would have. They will be considering the options and coming back to me. I’ll keep you updated.”

...

5. How do the objections fit with existing allocations, both the longstanding ones.. and the newer ones in the allocations document?

Owing to windfall sites and sites not in the Core Strategy that have been allowed at appeal, the number of dwellings KCC stated we would not object to within the parish has been exceeded. Even with some allocated sites not yet applied for planning application, the line has to be drawn. With our evidence showing the junction is now suffering from severe congestion at peak times, and the original allocation number of

240 dwellings having been exceeded, we propose to object to any applications from this point forwards – whether they are allocated or not.”

11. Mr Mills draws attention to this correspondence as setting out an approach which the Claimant supports. He submits it is not “blanket approach”, as it left open the possibility of a developer coming forward with a scheme to mitigate the impact of development. He also seeks to place reliance on Ms Hubert’s comments about public transport improvements as effectively discounting the realism of them as a solution. However, Mr Mills acknowledges that the Position Statement Summary, and the approach it advocated, did *not* become KCC policy. To the contrary, the approach Ms Hubert had outlined was in fact withdrawn as the subsequent correspondence reveals. Moreover, I do not accept Mr Mills’ characterisation of the comments made about the potential for public transport to provide mitigation. While Ms Hubert expressed some scepticism about “the benefits tinkering with timetables would have”, her response to Mr Baughen makes it clear that she was awaiting further information about this and intended to keep Mr Baughen updated.
12. On 4 October 2017 Ms Hubert sent an update to the original recipients. She referred to “very constructive and challenging conversations” that had taken place with the Defendant’s officers, developers and KCC’s legal team about the fundamental question of whether the impact of any development would be “severe”, whether any proposed boundary over development as expressed in the position statement would be arbitrary and whether a planning inspector would conclude that KCC had a good case for recommending refusal if applications were to go to appeal. Some detail about the discussion on those issues was provided. Ms Hubert also noted the absence of evidence as to the origins of traffic through the Junction and a desire to establish this through further survey work. She also referred to the Council’s inability to demonstrate a five-year supply of housing land and the consequential approach of planning inspectors towards traffic impacts. At the end of her email she stated:

“... To clarify, this statement will not become policy until all these issues are satisfactorily addressed.

In the meantime, please be assured we will continue to assess each application on its own merit.”
13. Ms Hubert provided a further email update on 21 December 2017, further to this email of 4 October 2017. She confirmed that an approach of automatic objection to further development in Hawkhurst would *not* be taken. She referred to legal advice that KCC would be at risk of costs at an inquiry in taking such a stance. She stated that a clearer thought process was now emerging from appeal decisions where the term “severe” was tending to be suggesting a seriously adverse impact on safety and efficiency. She stated that whilst a certain level of development (yet to be ascertained) might trigger that stance, at the current time it was not suitable to refer to the previously discussed position statement for every development application in Hawkhurst. She also noted again the issue of the Council’s lack of five-year supply of housing land affecting the approach. She stated that any future application would be judged on its own merit against paragraph 32 of the NPPF. She went to explain:

“With no mitigation scheme identified to improve the flow of traffic through the junction, KCC Highways will be looking for well-considered sustainable development which facilitates and encourages walking, cycling and travelling by public transport in order to reduce car-borne trips. The village has good facilities within its boundary, including education, retail and healthcare. Access to these key destinations by sustainable modes should be a primary consideration.”

14. She also identified that KCC had now established that 87% of traffic going through the junction did not stop in the village. She referred to working with ‘satnav’ companies to deter freight from using the route, but noting that as an obvious north/south corridor, it would continue to hold appeal. She continued:

“Whilst KCC will not be automatically objecting to developments in Hawkhurst, little can currently be done to mitigate the situation. The advice we have taken from colleagues in the Legal department and other councils is that we do not have a strong enough case to justify automatically objecting, and therefore development proposals with a robust Transport Assessment that minimises car-borne traffic through the junction will be scrutinised by KCC highways.

One way in which developers can improve sustainable transport options in the village is to support and enhance the bus service. To this extent, KCC officers have drawn up a business case to share with developers, showing how this can be achieved. I have attached this document for information.”

15. Ms Hubert therefore made it clear that: (1) KCC Highways would not be putting forward automatic objection in respect of development proposals which minimised car-borne traffic through the Junction; and (2) one way in which developers might improve sustainable transport options was through providing support and enhancement to the bus service.
16. The attached document was entitled “Business case for the retention and/or enhancement of bus services in Hawkhurst”. It set out details of KCC’s approach to such bus services based on estimated costs. It reiterated the point that in the absence of a mitigation scheme to improve the flow of traffic through the Junction, KCC highways would be looking for investment from developers into well-considered sustainable measures. It stated:

“With this in mind, KCC proposes that as a starting point any future developer in the town (subject to the proposal/site and compliance with relevant regulations and the NPPF/G) contributes £1,000 per dwelling (contribution for other land uses to be calculated separately) towards public transport services, and improves (including providing new) bus infrastructure (i.e. bus boarders and shelters) adjacent to their site to an appropriate level, determined at the time for each development ...”

17. It is evident that Ms Hubert’s initial scepticism about the benefits of “tinkering to bus timetables” to provide mitigation had been replaced with a more positive view of the benefits of physical improvements to bus infrastructure close to a development site, but to be judged on a case-by-case basis.

The Original Planning Application from the Second Interested Party

18. In 2018 the Second Interested Party submitted a planning application for redevelopment of the Site (reference number 18/02767/FULL). The development proposed was in similar form to that which was subsequently approved under the planning permission now challenged in seeking permission for demolition of the existing building and the provision of 43 retirement living apartments.
19. The original application was supported by a Transport Statement. It was also accompanied by a document entitled “Sequential Test (August 2018)” from the Planning Bureau Ltd. This document sought to assess whether there were alternative sites for the provision of the Second Interested Party’s form of development. The authors concluded that the Site passed the sequential test as being the most appropriate on which to meet what it considered to be the established need for specialist retirement housing in the part of the Tunbridge Wells they had addressed.
20. The original application was refused by the Defendant by notice dated 1 March 2019 for four reasons. The first of these was that:

“1) The proposal does not demonstrate that safe and suitable access to the site can be achieved for all users. It has also failed to demonstrate that significant impacts from the development on the transport network (in terms of capacity and congestion) can be mitigated to an acceptable degree through public transport enhancements. It is thereby in conflict with Part 9 of the National Planning Policy Framework 2018, and saved policy TP 4 of the Tunbridge Wells Local Plan.
21. The other three reasons concerned a lack of affordable housing and the absence of developer contributions.

The Resubmitted Planning Application from the Second Interested Party

22. Following that refusal, the Second Interested Party submitted a further planning application for a similar form of development, but with changes seeking to address the reasons for refusal for the original application. The main differences were: inclusion of changes to the position and the alignment of the proposed access, with a consequential removal of one of the street trees outside the Site; revisions to the parking area and the inclusion of three additional spaces so as to provide 33 parking spaces in total; some minor alterations to the footprint of the proposed building close to the western boundary and the layout of internal pathways; and some minor alterations to the internal layout. The Second Interested Party also agreed to pay a figure towards the provision of off-site affordable housing.
23. The resubmitted planning application was accompanied by a Transport Statement dated April 2019 by Odyssey on behalf of the Second Interested Party. Paragraphs 1.4

and 1.5 of that document referred to there being two aspects to the first reason for refusal for the original application: (1) the question of a safe and suitable access to the Site for all users and (2) the impact of the development on the transport network in terms of capacity and congestion and mitigation. Paragraph 1.8 stated:

“1.8 With respect to the second part of RfR1, this was not considered a concern to KCC Highways, as the local highway authority. It is, however, understood that this was a concern of the Parish Council and, therefore, further justification in this regard is contained in this report.”

24. Section 3 of the Transport Statement dealt with the Site’s locational accessibility, reviewing existing conditions near the Site, walking, cycling and public transport routes and accessibility to facilities and services. Amongst other things, it dealt with the existence of several bus stops within a 200m walk of the Site and addressed the services available, their destinations and frequencies. Section 4 of the Transport Assessment dealt with access to the Site by all modes and parking. Section 5 of the Transport Statement dealt with trip generation and traffic impact.
25. It is agreed that section 5 included an assessment of vehicle trip generation from the proposed development. Table 5.1 sets out predicted vehicle trip generation from the proposed development in the AM Peak (08:00-09:00) and PM Peak (17:00-18:00) respectively, using the Second Interested Party’s research data as to trip generation from its own schemes of the type proposed. In short, it predicted three two-way movements in each such peak hour.
26. The research data was based on the Second Interested Party’s schemes where the average entry age of residents is in fact over 78 years old (as set out in paragraph 4.34 of the Transport Assessment). In these proceedings, the Claimant criticises this approach because Condition 22 of the permission granted for this development sets the lower age limit of 55 years of age for one of the occupants of each unit of accommodation.
27. For my part, I do not see anything inherently inconsistent with using such research data in these circumstances. Condition 22 self-evidently will permit younger residents to be present within the scheme, but that would not necessarily mean the average age actually experienced by the Second Interested Party in its schemes is in fact lower than the 78 years of age identified as the average in the Transport Assessment. As the Second Interested Party points out, the equivalent of Condition 22 is commonplace for all its schemes, but that does not affect that actual average age experienced. In any event, neither the Defendant nor KCC in its capacity as highways authority considered that use of such data was inappropriate; nor did the Claimant identify any criticism of it when commenting on the planning application, including the Transport Statement.
28. Section 5 of the Transport Statement also contained what was described as a “sensitivity assessment” which looked at expected trip generation from private flats, using data contained within the TRICS database (a database that records vehicle trip generation from different types of existing development). At paragraph 5.3 the authors expressed the view that this “sensitivity assessment” represented a robust analysis given that the development proposals were for age restricted living and

therefore vehicle movements would be lower than for unrestricted (age) private dwellings. Again, there does not appear to have been any adverse comment on this view expressed by the Defendant, KCC or the Claimant.

29. The results of this “sensitivity assessment” were shown in Table 5.2, predicting 11 two-way vehicle movements in the AM Peak, and 12 two-way movements in the PM Peak. At paragraph 5.5 of the Transport Statement the authors stated: “... These levels of vehicle movements would not be material with respect to their impact on the local highway network. This is further demonstrated below.”
30. What then follows is an analysis of the effect of the predicted vehicle movements generated on the A229 during the AM and PM peaks, based on automatic traffic counts of existing flows on that road. Those counts showed 617 existing two way vehicle movements in the AM peak and 730 such movements in the PM peak. The vehicle trips generated by the development are then added onto the flows, based on assumptions as to whether they would travel north or south from the Site. Table 5.3 uses the trip generation based on the Second Interested Party’s research data (ie 2 two-way vehicle movements in both the AM and PM Peaks). Table 5.4 uses the data from the “sensitivity assessment” of trip generation based on flats from the TRICS database (ie 6 two way vehicle movements in the AM peak and 7 two way vehicle moments in the PM peak).
31. The parties agree that these Tables show that the increase in two-way traffic at the Junction (which is to the north of the Site access) is assessed to represent an increase of 0.2% in the AM and PM peaks assuming trip generation based on the Second Interested Party’s own research data (i.e. 617 existing two way movements + 2 from the development in the AM peak; and 730 existing two way movements +2 from the development in the PM Peak). It represents a 1.0% increase in the AM Peak and 0.9% in the PM Peak respectively assuming the trip generation that would arise from private flats based on TRICS data.
32. It is relevant to observe that as far as I am aware, at no point in the planning application process was the information in this part of the Transport Statement subject to material challenge by any party. It is evident that KCC Highways considered the Transport Statement both for the original application and the resubmitted application. Whilst they had concerns over the application (for example in relation to the access and parking provision), they did not express any concerns over this part of the assessment. To like effect, the Defendant’s officers did not express any concerns. Nor, as far I can see from the material that has been presented in support of this claim did the Claimant or any other party in commenting on the planning application.
33. This section of the Transport Statement concluded as follows:

“5.10 Further to this analysis, discussion with KCC Highways regarding development growth and the A229/A268 traffic signalised junction in the centre of Hawkhurst was had in advance of the planning application. KCC Highways stance in this regard is set out in Appendix K.

5.11 Based on the information in Appendix K, KCC Highways raised no objection with respect to traffic impact with the previous planning application submission.

5.12 Based on the information set out in this section, it is considered that the proposed development will have no material, and certainly no severe, impact on the local highway network; therefore no further traffic impact justification is required.”

34. Appendix K contained the email from Ms Hubert dated 21 December 2017 to which I have referred above, along with “Business case” document attached to that email in relation to contributions towards bus service improvements.
35. One of the Claimant’s criticisms is that the Transport Statement does not carry out an assessment of the impact of the proposed development on the Junction cumulatively with other committed development. This is a matter that was raised in front of the Planning Committee. I will return to this issue when considering Ground 1.
36. The resubmitted planning application was also accompanied by the document entitled “Sequential Test (August 2018)” from the Planning Bureau Ltd. This was the same document which had accompanied the original planning application.
37. Comments were provided on the resubmitted planning application by KCC in its capacity as the relevant highway authority by letters dated 28 June 2019 and 16 August 2019 [HB/37/495/496]. In both instances, the comments were provided by Margaret Parker, Senior Development Planner. The consultation responses are summarised in the subsequent officer report regarding the application to which I will refer in more detail below.

Legal Advice obtained by KCC

38. In summer 2019, therefore at around the same time that KCC were considering the resubmitted White House application, KCC revisited the question of its approach to the Junction in light of continuing concerns about the effects of development.
39. On 13 June 2019, Mr David Joyner of KCC responded to an email from Mr Marchant, KCC’s Head of Strategic Planning Policy raising the possibility of obtaining Leading Counsel’s advice on a different issue, namely what could be done in circumstances where a local planning authority ignored advice from KCC as a local highway authority. Mr Joyner raised the possibility of using such an opportunity to get a bit more advice about what he described as the “Hawkhurst conundrum”, and the question of “lots of small development proposals coming forward adding relatively small amounts of extra traffic to already severe levels of congestion at a crossroads where there is nothing that can be done to mitigate it”.
40. Mr Marchant replied asking Mr Joyner (amongst other things) whether the sites in question were allocated sites, and whether KCC Highways was objecting to such proposals at the planning application stage on grounds of severity if the schemes could not mitigate their impact on the local highway network. Mr Joyner answered that the sites in question were not allocated, and stated that the “sites are all small

(under 50 houses a piece) and add just a few extra trips through the A229 central junction – like a dripping tap in an overflowing bath”. He stated that whilst the Junction can be said to be severely congested, KCC Highways could not argue that the impact of each individual development was severe in itself and that, in any case, if it went to appeal the Inspector would dismiss KCC Highways’ argument as the Defendant was below its housing target.

41. On 2 July 2019, Mr Marchant emailed Ms Hubert with wording for Instructions to Leading Counsel in the following form:

“Further to your recent Advice, my colleagues in Highways & Transportation have cited a situation in Hawkhurst, Tunbridge Wells. The local planning authority is receiving numerous planning applications for residential development (schemes generally less than 50 dwellings) and each scheme adds a relatively small amount of traffic to an existing crossroads experiencing severe levels of congestion where there are no options for mitigation. To date, the County Council, as Local Highway Authority, has not objected to these schemes. There is also a view held that given the absence of a five year housing land supply, the grant of planning permission by the local planning authority (or a Planning Inspector) is inevitable.

In my view, the test required under the National Planning Policy Framework at paragraph 109 is clear; it is the cumulative impact that is critical, and this should be assessed when a proposal is considered together with other committed developments. Therefore, in this Tunbridge Wells scenario, there are very valid reasons for the County Council, as Local Highway Authority, to object to these proposals. The absence of a five year housing land supply is a matter for the local planning authority to address in its decision-taking exercise but even where the presumption at paragraph 11 of the NPPF is engaged, part d) ii. does offer latitude to the local planning authority (or a Planning Inspector) to not grant planning permission.”

42. Ms Hubert replied to this email on the same day, stating “Perfect, thanks Tom”. Advice was subsequently received from Christopher Lockhart-Mummery QC, dated 4 July 2019. Mr Lockhart-Mummery set out the context of his Advice at paragraph 2:

“The local planning authority is receiving numerous applications (generally for less than 50 dwellings) and each scheme adds a relatively small amount of traffic to an existing crossroads experiencing severe levels of congestion, where there are no options for mitigation. To date, KCC has not objected to these schemes. Given the absence of a 5 year housing supply, the “tilted balance” in paragraph 11d of the NPPF applies, so there is considerable pressure for these applications to be granted.”

43. The Advice stated at paragraphs 4-5:

“4. The view of the Head of Strategic Planning and Policy is that “...it is the cumulative impact that is critical and this should be assessed when a proposal is considered together with other committed developments. Therefore, in this Tunbridge Wells scenario, there are very valid reasons for the County Council, as local highway authority, to object to these proposals...”

5. That advice is entirely correct...”

44. Mr Marchant sent Ms Hubert a copy of the Advice by email on 4 July 2019. Later that day, Ms Hubert sent an email to the Defendant’s officers regarding the Junction’s capacity. She stated that having had the opportunity to discuss the Junction again with colleagues, KCC Highways had decided to stick with its current position, that is, until there was a fundamental change (such as a significant size application or a change to the Junction), KCC Highways would not object to small scale developments on the impact they have on the Junction. The email then went on to consider modelling work that KCC Highways had received in respect of the large application for residential development at Hawkhurst Golf Course. She explained in that respect:

“... although the applicant only needs to achieve nil detriment at the junction to satisfy us, any subsequent additional trips through a junction that is over capacity from day one are likely to result in an objection from KCC Highways.”

45. One of the Claimant’s contentions is that there is an inconsistency between the advice sought and obtained from Leading Counsel as to the need to consider the cumulative impact of a proposal and the legitimacy of objection based on that cumulative impact, and the approach adopted by Ms Hubert to small-scale applications such as the White House application. I will return to this criticism in the context of Ground 1.

The Officer Report for the White House application

46. The resubmitted application for the White House was the subject of a report to the Defendant’s Planning Committee on 11 September 2019 (“the Officer Report”). The Defendant’s officers recommended that planning permission should be granted subject to the completion of a section 106 agreement and subject to the imposition of 25 conditions. The Officer Report provided a summary of reasons for that recommendation on the first page. It also included a section on relevant planning history in respect of the Site in reverse chronological form. Consequently, the first item identified in that section was the refusal of the previous planning application (18/02767/FUL). It set out in full the four reasons for refusal, including the first reason that I have set out above.

47. The main body of the Officer Report set out a description of the Site in section 1. It then considered the proposal in section 2. This included identification of the differences with the scheme that had been refused. Paragraph 2.10 began as follows:

“The previous application 18/02767/FULL was not refused on principle or landscape/AONB grounds, but due to details relating to the access arrangements and lack of a satisfactory affordable housing provision.”

48. The Claimant notes that this is, in fact, an incorrect summary of the first reason for refusal of the previous application because it was not limited to a concern about access, but also a concern about impact on the transport network, as can be seen from the reason for refusal itself and the way in which the Second Interested Party addressed it in the accompanying Planning Statement at paragraph 6.22. In my judgment, although this summary in paragraph 2.10 is incomplete, I do not consider that any of the members would have been materially misled by it (in the sense relevant under the well-established authorities addressed further below) when one reads the report as a whole. Any reader of the report reading paragraph 2.10 would have already read the section on the planning history which sets out all four of the reasons for refusal for the original application in full, including the first reason for refusal.
49. Section 3 of the report provided a summary of information as to the differences between the existing site and what was proposed. Section 4 set out planning constraints. The first constraint identified was the AONB. The fifth constraint identified concerned the proximity of the Site to conservation areas as follows:

“Highgate C[onservation] A[rea] boundary is 100m to the north; the Moor CA is 600m to the south (statutory duty to preserve or enhance the significance of heritage assets under the Planning (Listed Buildings and Conservation Areas) Act 1990)”

50. Section 5 set out policy and other considerations. In relation to policies of the Tunbridge Wells Borough Local Plan 2006, Policy EN5 is identified but not Policy EN4. This is the subject of Ground 2. Section 6 summarised local representations that had been made about the application. The summary included identification of a concern about the “Impact on congestion at crossroads and surrounding road network”.
51. Section 7 dealt with other consultation responses, including those of the Claimant. It began with identifying the opposition the Claimant had expressed to the first application and noting that the resubmission did not address the Claimant’s concerns. The concerns (taken from the Claimant’s letter of objection) were then set out including points about access, parking and the AONB. They also included the Claimant’s position that:

“...

- The Transport Statement still refers to the village centre being in comfortable walking distance but this is actually up a very steep hill, with pavements that are not easily negotiable, especially if one were reliant on an electric buggy.

...

- There is no disputing the Hawkhurst crossroads junction is already over capacity. Any additional traffic will impact negatively on this junction – the proposed development will have a material impact on the junction.

...”

52. Pausing at this point, it is evident that the Claimant had considered the April 2019 Transport Statement submitted with the planning application. The Claimant makes express reference to it, to the point of disagreeing with the views expressed about walking distances given the topography. By contrast, there is no disagreement expressed with that part of the Transport Statement that dealt with the actual levels of trips likely to be generated and the percentage increase on the traffic flows predicted. The Claimant’s point of objection can be seen to have been one of principle, namely that any additional traffic would impact negatively on the Junction which was already over capacity and have a “material impact”. As a matter of fact, the objection did not articulate a view that such impact would be “severe”. In the letter of objection itself (which the Officer Report was summarising), the Claimant had stated:

“There is no disputing the Hawkhurst crossroads junction is already overcapacity. The fact that KCC Highways are not prepared to use this as grounds for refusal does not actually change the reality of the situation faced by Hawkhurst residents every day. Any additional traffic will impact negatively on this junction, so it is quite simply incorrect to state that the proposed development will not have a material impact on the junction.”

53. Paragraphs 7.29-7.37 dealt with the consultation responses received from KCC Highways, in reverse chronological order, as follows (with the numbering as used in the report retained, but noting that the numbering goes awry):

“7.29 (16/08/19) - Further to my earlier comments it has now been confirmed that the access for mobile scooters will not be taken along the vehicular access and removal of the tree has been agreed with KCC Arboricultural Team. Throughout this and the previous application, the highway authority has recommended improved parking levels but no extension to the car parking area has been forthcoming.

7.30 Despite further discussions regarding possible allocation of spaces between residents and visitors, the proposals now allocate 27 spaces for residents with six for visitors. The highway authority continues to recommend that a minimum of nine spaces be made available to visitors which would be in keeping with the requirement for general purpose housing.

7.31 Furthermore, if this balance is not adjusted, the highway authority would recommend that funds are secured through the S106 to cover the costs for extension to a TRO which would allow the highway and parking authorities to manage any

overspill parking on the highway. I have discussed this option with your parking team who have recommended that £2500 should be secured towards these costs, to be used should overspill parking occur. This would be in addition to the previously agreed contribution to sustainable transport measures of £1000 per unit. Conditions and informatives also recommended.

7.32 (18/06/19) - Further to initial consultation response, regarding the highway tree, have now consulted with KCC Arboricultural Manager who has advised that mitigation costs to the full value of the assets will be required. However whilst in this instance the full value would be £40,000, this has been capped at a value of £25,000. Anticipate that this would be secured through the S.106 agreement.

7.30 (28/06/19) - This revised application follows discussions with the highway authority and now includes revised access arrangements.

7.31 Additional details include levels and long section, which are in keeping with those discussed with the highway authority and are considered adequate for vehicular access but are too steep to provide disabled access.

7.32 The revised access arrangements will require removal of a highway tree and the applicant was requested to discuss alternative provision with the KCC Arboricultural Team.

7.33 With regard to parking provision, 33 spaces are now proposed. As previously set out, IGN3 would expect of the order of 1 space per unit plus 0.2 visitor spaces per unit (9 visitor spaces) giving a minimum of 52 spaces for general purpose housing.

7.34 The TS presents a variety of statistics regarding typical car ownership levels amongst residents with an estimate of 30 resident's cars. If these figures are employed, the highway authority would still conclude that there is currently under provision, particularly for staff and visitors, as these spaces will also accommodate any visiting carers etc.

7.35 Therefore once again the highway authority would recommend that overall levels be improved, possibly with further extension to the car park to the west.

7.36 Furthermore, reference has been made within the TS to limit the number of spaces available to residents to 27, but this would leave only 6 for staff and visitors. Further consideration should also be given to the balance of spaces and the highway authority would recommend that resident spaces are further

limited, as car ownership levels can be controlled at the point of sale, to ensure that the requirement for minimum visitor spaces (9) can be provided.

7.37 As you are aware, with no mitigation scheme identified to improve the flow of traffic through the A229/A268 junction, the highway and planning authorities are seeking investment from developers into well-considered sustainable measures which facilitate and encourage walking, cycling and travelling by public transport in order to reduce car-borne trips. With this in mind, future residential development is requested to contribute £1,000 per dwelling towards public transport services, and improved bus infrastructure adjacent to the site. The applicant has previously agreed to this contribution.”

54. Section 8 summarised supporting comments made by the applicant, summarised the Planning Statement that had been submitted. Section 9 identified ‘BACKGROUND PAPERS AND PLAN’. The documents then listed included: (1) the Planning Statement April 2019; (2) the Transport Statement with attached drawings; and (3) the Sequential Test August 2018 document.

55. Section 10 set out the officers’ appraisal of the proposal. Paragraph 10.01 began by identifying the main issues as follows:

“10.01 The site is partly outside the L[imits to] B[uilt]D[eveloment] and within the AONB countryside. The main issues are therefore considered to be the principle of the development at this site, including the sustainability of the proposal and the impact on the AONB/landscape, design issues, residential amenity, highways/parking, the impact on protected trees, ecology, impact on heritage assets, drainage and other relevant matters.”

56. Paragraph 10.02 considered the principle of development, dealing with the effect of being outside the LBD, with development plan policies directed residential development to the most sustainable locations as indicated by the LBD, but noting the absence of a 5 year housing land supply as “highly relevant”.

57. Paragraphs 10.03-10.12 dealt in more detail with the housing land supply situation, and the absence of a 5 year housing land supply in the context of paragraph 11 (d) of the NPPF. Paragraph 10.07 explained the “tilted balance” that applies where paragraph 11(d) is engaged in favour of the grant of permission, unless policies within the Framework listed in footnote 6 that protect areas or assets of particular importance provided a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 10.08 identified that the policies in footnote 6 included those relating to AONBs and heritage assets. In respect of the former, paragraph 10.08 identified:

“Para 172 of the NPPF advises that ‘great weight’ should be given to conserving landscape and scenic beauty in AONBs, as

they have the highest status of protection in relation to landscape and scenic beauty. This does not create a blanket presumption against new housing in the AONB, but does require detailed consideration of the impacts of new development in such locations. Para 172 also restricts major development within AONBs - this is relevant to this proposal and is addressed in detail later on in this report.”

58. Paragraphs 10.13-10.16 considered the Defendant’s emerging Local Plan. It identified the existence of an emerging allocation for the Site for residential development for approximately 15 residential units, or alternatively a higher number of apartments for the elderly, subject to criteria including confirmation from the highway authority that there was no objection to the impact of the development on the Junction. Paragraph 10.16 advised, however, that given the very early stage of the new Local Plan, it could not be given any weight as it had not been through the formal consultation process of examination.
59. Paragraphs 10.17 -10.19 dealt with policies in the Hawkhurst Neighbourhood Plan, including Policy HD1(B). Paragraphs 10.20-10.24 dealt with locational sustainability. The Site’s location partly outside the LBD was identified, but a recent grant of planning permission on an adjacent site at Herschel Place was noted. Good footpath links to the settlement centre and proximity to public transport services, with the bus routes and frequency, were set out. Officers express the view that the bus route was accessible with bus stops within reasonable walking distance and it was moderately likely that the bus service would be readily accessible to future occupiers. It was noted in addition that KCC Highways were seeking £43,000 for public transport enhancements which could be secured by a section 106 agreement. Officers considered a further factor was that, in addition to be in close proximity to the LBD, it was also in close proximity to a ‘Tier two’ settlement in the Defendant’s Core Strategy, and Hawkhurst was therefore a location where the Core Strategy sought to concentrate some development to support sustainable development, albeit less than “Tier one” settlements like Tunbridge Wells and Southborough. Paragraph 10.24 concluded:
- “It is therefore considered that, although partly reliance on private vehicle use ... the fact that some journeys need to be made by private car is an adverse impact, but this is more balanced by the relative position of the application site to the tier two settlement of Hawkhurst and in particular the shops, school and other services within Hawkhurst. The location and accessibility of the site is considered to be moderately sustainable in relation to its proximity to services and the nature of the route to them.”
60. Paragraph 10.25 considered the extent to which the Site contained previously developed land. Officers the Site’s attributes in this respect was a benefit to which limited weight could be attached.
61. Paragraphs 10.26 – 10.38 set out the officers’ analysis of the effect of the proposal on heritage assets in light of the relevant policies in the NPPF, including the consequences of demolishing the White House. This was identified as a non-

designated heritage asset. In light of the Claimant's withdrawal of its challenge to that assessment in terms of the NPPF policies (formerly the principal focus of Ground 2), it is not necessary for me to rehearse the detail of the report on these issues. In light of what is now the residual ground of challenge in under Ground 2 in relation to Local Plan Policy EN4 – to which it is agreed there is no reference in the report - I simply note that in paragraph 10.29 it was stated:

“10.29 Impact on the CA also falls to be considered under LP policy EN5; then more broadly under EN1 and CS Policy 4, which seeks to conserve and enhance the Borough's urban environments (including CAs) at criteria (1) and (5).”

62. The effect of the proposal on the Hawkhurst Conservation Areas and the emerging Local Plan policy for the Site was dealt with in paragraphs 10.36-10.38. Paragraph 10.39 dealt with archaeology. Paragraph 10.40-10.50 dealt with trees. Paragraphs 10.51-10.62 dealt with housing and economic considerations, including the contributions that the applicant had agreed to make, including that towards public transport improvements.
63. Paragraphs 10.63-10.91 dealt with the impact of the development on the AONB, along with an assessment of landscape impact, design, ecology and landscaping. Paragraph 10.63 began by summarising the officers' position on these topics as follows:

“10.63 This (especially AONB impact) is assessed in more detail below, but in summary it is considered that overall there is likely to be moderate localised harm to the AONB but this can be diminished through a sensitive approach, detailed design and securing long term management. The AONB and landscape harm will most clearly arise from the introduction of an intensive residential use into an otherwise open site. The proposal offers opportunities to improve some aspects of the site condition and management. Many of the harmful impacts would be moderate within the site itself but the impact localised. This is explored in greater detail within the specific AONB section below.”

64. The report then set out the officers' analysis of the relevant AONB policy framework and the development proposal in light of that framework. This included identification of the advice in paragraph 172 of the NPPF in paragraphs 10.64-65 of the Officer Report as follows:

“Development Plan and NPPF AONB and landscape policy

10.64 ... The NPPF within paragraph 172 states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. Paragraph 172 also relates to major development in the AONB and states that “Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated

that the development is in the public interest.” Footnote 55 states that ‘whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.’. In this case, given that the proposal a significant amount of new built development within the AONB, it is considered that this should be considered as a major development. This is consistent with the approach to the previous application.

10.65 The NPPF then states that such applications should assess considerations contained in three bullet points and these are set out in the headings below. Many of the matters to be taken into account as set out in Para 172 form material considerations in their own right. The assessment against these matters will take place on the basis of the impact being, slight, moderate, large or neutral.”

65. The Officer Report then sets out under sub-headings a consideration of the development proposal against each of the three considerations identified in the sub-paragraphs contained within paragraph 172 of the NPPF, namely: (a) the need for the development, including the impact of permitting it or refusing it upon the local economy; (b) the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need in some other way; and (c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which it could be moderated.
66. As to paragraph 172(a) of the NPPF, the Officer Report provided an analysis in paragraphs 10.66-10.71. The officers first dealt with the identified need for residential development and the lack of a five year housing land supply addressed earlier in the report. They noted that the development would provide additional housing for Hawkhurst which, although modest in relation to the overall need, was considered significant in terms its local and cumulative contribution, but gave it less weight in the absence of affordable housing. They then considered the impacts of permitting the development and those of refusing it, concluding that the former were moderately positive and the latter slightly negative, with wider economic impacts arising from the proposal.
67. As to paragraph 172(b) of the NPPF, including the scope for developing outside the AONB, this was dealt with in paragraphs 10.72-75. As these paragraphs form part of the focus under Ground 3, it is convenient to set them out in full:

“Para 172: Cost of and scope for developing elsewhere outside the designated area, or meeting need in some other way

10.72 The whole of Hawkhurst and the surrounding area lies within the AONB. Hawkhurst is identified as a Tier 2 settlement in the 2010 Core Strategy settlement hierarchy. The level of housing need for the Borough is high and it is highly likely that additional housing sites within the AONB

will be required. Hawkhurst PC object on the basis of conflict with HD1(b) of the NDP, which relates to this point.

10.73 The site has been chosen by the developer due to its position close to the LBD and the nature of the existing character and built development on the site. Other sites beyond Hawkhurst and outside of the AONB designation are possible for such residential development. However, the settlement of Hawkhurst is wholly within and surrounded by the AONB, and therefore any housing proposed in or on the edge of the settlement would be within that designated area. The proposal would provide a significant addition to the settlement's housing provision.

10.74 Other sites in Hawkhurst have been submitted through the 'Call for sites' process a part of the new Local Plan. Without prejudice to any future decisions made with regards allocating those sites which have come forward through the Local Plan, some of those which are outside are well outside the Hawkhurst LBD and further from the services of the village. It would be premature and outside the scope of this report to try to actively evaluate the merits or otherwise of sites submitted through Call for Sites. That is subject to an entirely different future procedure and it may be that some of those submitted sites are not allocated for residential use.

10.75 Having regard to the above, it is concluded that there is no scope for developing sustainably located housing for Hawkhurst outside the AONB."

68. As to paragraph 172(c) of the NPPF, this was addressed in paragraphs 10.76-10.111 under a series of sub-headings that considered the effects of the development on a number of different aspects of the environment, including: "Visual and Landscape Character Impact", "Landscape character/landscape features", "Design and layout", "Materials", "Wider AONB/Landscape impact" and "ecology: At paragraphs 10.97-10.99 officers set out conclusions in relation to the design, landscape and AONB impact considerations, expressing the view despite identified shortcomings, the proposal merited approval within the AONB landscape and was considered to meet the requirements of Policy HD1(b) of the NDP which allowed for developments of more than 10 dwellings in exceptional circumstances.
69. The officers set out their overall conclusion in respect of the impact relating to the AONB at paragraphs 10.106-10.111 as follows:

"Conclusion in respect of the impact relating to the AONB

10.106 The proposal is considered (subject to the conditions recommended below) to accord with other relevant adopted Development Plan and national policy in respect of landscape impact, ecology and design.

10.107 The following table weighs the different elements against one another when assessing the overall impact on the environment in terms of para 172 of the NPPF:

Component of overall “environment impact”	Considered impact (neutral, slight, moderate, major)
Landscape Character/Appearance (and AONB)	slight negative
Ecology	Neutral
Drainage	Neutral
Residential amenity	Neutral
Conclusion	Slight negative

10.108 It is therefore considered that the proposed development would have a slight negative impact on the environment as a matter to be considered under para 172 of the NPPF.

10.109 Of the three elements within para 172 of the NPPF considered above it has been concluded that there would be a moderately positive economic impact balanced against a slightly negative impact on the environment with no realistic scope for developing housing for Hawkhurst outside the AONB, given the position of the current Local Plan preparation work and the fact that sites submitted through the Call for Sites exercise are still being evaluated.

10.110 The overall conclusion when assessed against the requirements of para 172 of the NPPF, and having particular regard to the emphasis in the NPPF and NPPG on supporting sustainable development and contributing to the 5 year housing land supply, is that the proposal will have a moderate positive impact overall.

10.111 As such, it is considered that principally due to the housing delivery benefits outweighing the identified harm to the landscape and environment, there are exceptional

circumstances where the development is in the public interest in this instance to depart from the NPPF presumption against major development in the AONB. In addition, the Council's Landscape and Biodiversity Officer has no objections to the application."

70. The Officer Report then set out officers' views as to whether the development comprised sustainable development at paragraphs 10.112-10.116 having regard to its negative and positive aspects. The negative aspects were identified as: (a) slight localised harm to the AONB; (b) less than substantial harm to the setting of the adjacent Conservation Area and grade II listed building to the north of the site and the loss of the non-designated heritage asset, the White House. The positive aspects were identified as: (a) the provision of 43 smaller dwellings as a positive addition to address the Borough's housing shortfall, particularly given a lack of five year housing supply, to which significant weight could be attached; (b) a financial contribution towards affordable housing; (c) moderate positive benefits to the economic and social vitality of the area; (d) the Site's location partly within the LBD and not in an "isolated" rural location; (e) the financial contributions towards Cranbrook Hub, the NHS and KCC sustainable transport measures which they considered to attract significant weight as wider public benefits; (f) additional landscaping.
71. Paragraph 10.115 stated that the summary took into consideration the requirement in paragraph 11 of the NPPF that development should be restricted where AONB and heritage policies indicated so, but given what were considered to be the significant social and economic benefits of the proposal, it did comprise sustainable development. Paragraph 10.116 set out officers' views that these benefits were considered to outweigh the less than substantial harm to the heritage assets and the slight, but localised, harm to the AONB, so that a presumption in favour of granting planning permission applied unless other material considerations indicate otherwise. It stated that: "The following sections of the report therefore assess whether the proposal accords with other elements of policy in the NPPF (and Development Plan)."
72. The Officer Report then turned to deal with highways and parking in paragraphs 10.117-10.125. The opening paragraph referred to paragraph 103 of the NPPF to the effect that the planning system should actively manage patterns of growth, and that significant development should be focused on locations which are, or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It then set out in terms the particular test in paragraph 109 of the NPPF that:
- "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."
73. The report then continued as follows:
- "10.118A full Transport Assessment has been submitted as part of this application. KCC Highways raised significant concerns to the previous proposal based on;

- Insufficient parking, partly due to the parking assessment being based on C2 housing, not C3 (the basis on which the application was made);
- Unacceptable access arrangements (as the proposed access road did not meet back of highway at 90 degrees and the combined effect of this alignment and gradient at the back of highway and the implications for highway safety);
- The design included connections through the site to the car park which require use of a staircase to give access to the main entrance. This was considered likely to result in vehicles standing on Highgate Hill which is not acceptable. The design was recommended to include a drop off facility providing convenient and level access to the main entrance. In the absence of such provision the highway authority needed to be satisfied that the arrangements within the car park provide adequate access for all and are largely self-enforcing so it is the most convenient place for drop off etc. This was not the case in the previous layout.

10.119 A proposal for seven dwellings was also refused here in September 2017 however that application featured an access point further down the hill. In addition, at the time that application was refused KCC Highways had not developed a scheme relating to alleviating pressure on the crossroads towards which financial contributions would be sought.

10.120 Even if one occupant per dwelling either did not use a car or depended on a scooter or mobility, this does not necessarily mean that there would be less demand for the level of car-spaces required by KCC guidance. This is on the basis that there would be a reasonable likelihood that some of the occupants would still be dependent on cars for their day to day needs, particularly couples where one person does not have mobility difficulties necessitating the use of an electric scooter. Whilst sustainably located, the application site is not in such close and easy proximity to retail facilities and other services to

justify insufficient parking for able-bodied elderly people.

- 10.121 Furthermore, even if all future occupants were reliant on mobility scooters and did not own a car, their higher dependency would result in a much greater frequency of visitors travelling to the site via cars, such as family members, friends, retail deliveries and professionals providing healthcare and assisted living support. There would be insufficient off-road parking space to accommodate these vehicles, which would as a consequence increase the demand on the already limited stretch of on-road parking available outside the site, which is on a busy A-class road. The development would not provide sufficient, safe and convenient parking for future occupiers, which would as a consequence give rise to highway safety issues as described by KCC Highways. Ultimately, the proposals now allocate 27 spaces for residents with six for visitors. The highway authority continues to recommend that a minimum of nine spaces be made available to visitors which would be in keeping with the requirement for general purpose housing.
- 10.122 If the absence of securing these three additional spaces, KCC Highways recommends that funds are secured through the S106 to cover the costs for extension to a Traffic Regulation Order (TRO) which would allow the highway and parking authorities to manage any overspill parking on the highway. The TWBC parking team, following consultation with KCC Highways, have recommended that £2500 should be secured towards these costs, to be used should overspill parking occur.
- 10.123 At this point it is considered necessary to highlight the difference between the inconvenience of parking pressure to local residents and parking-related highway safety matters. Inspectors have, at appeal, traditionally only given weight to highway safety issues arising from parking. It would be difficult to attribute a significant parking-related safety issue directly to this development, given the number of other dwellings that already use the road, the slow speed that vehicles are likely to travel at in

the area around the access point and the fact that there is parking availability in nearby streets. Therefore, in this instance, it is not considered that the proposal would cause harm to highway safety if the recommended conditions and financial contributions are secured.

10.124 As above, Inspectors have traditionally only given weight to concerns regarding highway safety and any impact on convenience of residents is not considered to be a matter that would warrant refusal of this application. In general terms (and unless there is a concern regarding highway safety), the provision, amendment or exclusion of certain properties from residents' parking schemes fall outside of the planning system. Whilst it is not the role of the LPA to manage on-street parking, the recommended £2500 contribution towards the extension of a TRO is considered reasonable, necessary and related to the development.

10.125 KCC Highways have sought a minimum of nine spaces to be identified within the car park for visitors and to be kept available for visitor parking at all times in connection with the development; and that parking by residents to be controlled through a permit system. However management of the parking area is for the landowner and the way in which the facility is used is likely to be self-policing.”

74. Paragraph 10.126-10.127 of the Officer Report then dealt with other matters in the form of refuse storage and amenity space. Section 11 then set out a recommendation to grant planning permission, subject to the imposition of 25 conditions, and the completion of a legal agreement securing contributions, including £43,000.00 towards the cost of improving public transport services in Hawkhurst, and £2,500 to cover the costs for an extension to a Traffic Regulation Order which would allow the highway and parking authorities to manage any overspill parking on the highway.
75. Pausing there, it is fair to note that whilst the Officer Report refers to the existence of the Transport Statement at a number of points, it does not itself set out the contents of Section 5 quantifying the trip generation and consequential impacts. By the same token, it is also fair to note that the information in section 5 was not, of itself, controversial. Whilst KCC Highways had questioned other highway matters (such as the access and number of parking spaces), it had not expressed concerns about the calculations of trip generation and impact on the road network, including the Junction, caused by the development. Odyssey had set out their view in the Transport Statement that the results of the assessment in section 5 demonstrated that the development would have no material impact, and certainly no severe impact, on the highway network such that “no further traffic impact justification is required”. KCC Highways

self-evidently agreed with this analysis. The Defendant's officers did not express any disagreement with it either.

The Planning Committee

76. By email dated 10 September 2019, a resident of Hawkhurst and planning solicitor, Mr Warman, wrote to the Defendant's planning officer requesting that the planning application be withdrawn from the Planning Committee's agenda. He said this was necessary because there had been a failure to take into account the cumulative impact of the application together with other committed and predicted developments on the congestion at the Junction.
77. He noted that neither Section 5 of the Transport Statement from the applicant, nor KCC's consultation response, contained such an assessment and the Officer Report to committee did not address the issue. He said that the Officer Report did not contain any consideration of the impacts on congestion. He referred to paragraphs of the report dealing with the highways impacts of the scheme, but stated that nowhere in these paragraphs was there any analysis of the impact of the proposal on congestion at the Junction either individually or cumulatively, and stated that the cumulative impact of the development with other schemes on the village crossroads was a material consideration the determination of the White House application. He then referred to how KCC had dealt with another planning application for development in the village when it had acknowledged cumulative impact was a material consideration, and they had raised concerns about capacity, but appeared to be saying that the issue was "too difficult" for them to consider and suggested this was legally perverse.
78. Mr Warman also contended that KCC and the Defendant did now have information available to assess the predicted future cumulative impact in the form of the Transport Assessment and Transport chapter of the Environmental Statement that had been submitted by another applicant for a large housing application at Hawkhurst Golf Course (reference number 19/02025). He considered this to show a severe residual cumulative impact at the Junction in the "Do Nothing" scenario (ie without the Golf Course development proposal) by 2033, with over a doubling of existing delays in the AM and PM peak periods, and a worsening in the Practical Reserve Capacity of the Junctions. He also noted that whereas Odyssey had identified traffic flows of 617 and 730 two movements in the AM and PM peak respectively, the Transport Assessment for the Golf Course had identified 824 and 893 two movements in the assumed baseline.
79. Following receipt of Mr Warman's email, the Defendant's Principal Planning Officer wrote to KCC Highways asking them for a "short e-mail confirming that the development would not cause severe congestion to the crossroads either in isolation or in combination with other development, so long as the mitigation payments towards public transport services, and improved bus infrastructure adjacent to the site are sought". Ms Hubert, Principal Transport and Development Planner at KCC sent an email in reply stating: "I agree with your statement".

The Committee Meeting

80. Ms Antonia James of the Council was the Presenting Officer for the Defendant at the Planning Committee meeting on 11 September 2019. She has provided a witness

statement dated 15 April 2020 providing an account of her presentation. At paragraph 6 she states that she was provided with a typed copy of an update to the Officer Report for the presentation. She read this almost verbatim to the Planning Committee. A copy of the update sheet has been exhibited. It includes the following:

“Officers have received a further representation from a member of the public alleging that the cumulative impact of the proposal along with other permitted developments and allocated sites on congestion at village crossroads has not been considered.

Officers would draw Members’ attention to Committee Report Para 7.37 (KCC Highways comments of 28/06/19) which advises that with no mitigation scheme identified to improve the flow of traffic through the A229/A268 junction, the highway and planning authorities are seeking investment from developers into sustainable measures which facilitate and encourage walking, cycling and travelling by public transport in order to reduce car-borne trips. Thus a contribution of £1,000 per dwelling towards public transport services, and improved bus infrastructure adjacent to the site is sought. This figure has previously been sought by KCC for these reasons and was accepted by Members at the 10 April Planning Committee meeting for application 18/02165/FULL (28 dwellings at Land East Hartenoak Road Hawkhurst Cranbrook Kent)

Para 117 of the report quotes NPPF Para 109 (“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”) The report further notes at Para 119 that a proposal for seven dwellings was refused here in September 2017 partly because KCC Highways had not developed a scheme relating to alleviating pressure on the crossroads towards which financial contributions would be sought. This is not now the case, as evidenced by the requested contribution and its inclusion within the recommendation at 11.0 (A).

KCC Highways have confirmed that in their view the development would not cause severe congestion to the crossroads either in isolation or in combination with other development, so long as the mitigation payments towards public transport services, and improved bus infrastructure adjacent to the site are sought.”

81. Ms James has also exhibited a copy of the Minutes of the Committee meeting. She states these provide an accurate summary of the information she relayed verbally to members. The Minutes of the presentation generally reflect what is set out in the update sheet. The Minutes also record that Mr Warman spoke, along with another objector, at the Planning Committee meeting against the proposal. Ms James identifies in paragraph 13 of her witness statement that Mr Warman raised concerns

that the Officer Report did not make a full assessment of the cumulative impact of the development taking into consideration other committee or predicted developments on the Junction; and Mr Warman pointed out to members that this was a material consideration in the determination of the application. He also raised concerns regarding KCC's stance to development in Hawkhurst. The Planning Committee also heard from Parish Councillor Escombe who mentioned traffic congestion in Hawkhurst and raised concerns regarding the demolition of the White House as a non-designated heritage asset.

82. Ms James states that following these presentations, officers were given an opportunity to comment on the matters raised. She took the opportunity to draw members' attention to the fact that KCC had been consulted further since the publication of the agenda and that they had confirmed that the development would not cause severe congestion to the Junction, either in isolation or in combination with other development, so long as the mitigation payments towards public transport services and improved bus infrastructure adjacent to the Site were sought. She also states that she referred members to the Report addressing the Conservation Officer's concerns regarding the demolition of the White House and why, on balance, it was considered acceptable in light of the benefits of the proposal. She states that members of the Planning Committee raised concerns about the capacity of the Junction and questioned how the sustainable transport contribution would be spent. She states that she reiterated the points that she had set out in her update. Ms James states that it was clear from the Planning Committee meeting that members were aware of the issues regarding congestion, capacity and the cumulative impacts on the Junction. She also states that members are familiar with the fact that a section 106 contribution has to be judged to be necessary in order to make a scheme acceptable.
83. Ms James then refers to subsequent debate that ensued. The Minutes summarise it as follows:

"Members of the Committee took account of the presentations made and raised a number of questions and issues within their discussions. These included the level of priority given to local residents in respect of affordable housing, potential upgrading of local public transport, time limits on S106 funding, and the particular need for action relating to flooding and foul drainage. Notwithstanding the proposed demographic of the new development, members of the Committee also considered there would be an adverse impact on traffic on Highgate Hill and in particular at the crossroads in the centre of Hawkhurst, which KCC had previously confirmed was already at capacity. Mr Hockney reminded members, however, that without objections from KCC there was insufficient reason to justify a refusal in planning terms. Regret was also expressed over the loss of the White House within the street scene and the failure of the replacement development to respect the local context of the area."

84. Ms James states at paragraph 18 of her statement:

“... I can confirm that residual cumulative impact on the junction was considered by the Planning Committee through Mr Warman’ address to the Committee, the updates provided and through discussion at the Committee meeting.”

85. The Planning Committee resolved, by a majority, to grant planning permission for the development in accordance with the recommendation made by officers.
86. Following the Committee meeting, Mr Warman emailed Ms Hubert of KCC in relation to the predicted future position at the Junction, referring again to the Transport Assessment that had been submitted in support of the planning application for Hawkhurst Golf Course. Mr Warman explained what he considered to be the relevance of the Transport Assessment to the White House application (for which permission had not been granted at that stage). The Claimant submits it is clear from this correspondence that Ms Hubert had not considered the evidence from the Golf Course application in the context of the White House application. However, the Claimant submits it is also clear that KCC consider that the Golf Club application material has provided a good indication of the severity of impacts of future development on the Junction.

The Golf Club Application

87. As already noted, the Golf Club application to which Ms Hubert made reference was the subject of a Transport Assessment which did include an assessment of in-combination impacts. Section 5.7 of that document looks at the effects of committed development. Paragraph 5.7.1 identifies that the assessment of individual trip generation, distribution and assignment assessment was carried out for specified committed and proposed developments, in agreement with KCC.
88. Table 7-1 of that Transport Assessment identifies that the Junction already experiences delays of over three minutes per passenger car unit in the morning peak, and approaching four minutes per passenger car unit in the afternoon peak. As already noted, it assessed a “Do nothing” scenario (i.e. if there is no development at the Golf Club), showing how the performance of the Junction will deteriorate over time. It stated at paragraph 7.2.6:

“It is noted that the junction is currently operating above its design capacity during both the AM and PM peak hours. Its operation is shown to deteriorate further following the addition of committed development trips and wider background traffic growth, with delays of approximately 9 minutes per vehicle forecast in the 2033 future year scenario.”

The Emerging Local Plan

89. KCC has also provided a consultation response to the Council’s draft Local Plan. This was submitted on 14 November 2019. In that response, KCC indicated that, in order to be acceptable, the Golf Club proposal would have to achieve:

“nil detriment or decrease the level of traffic/congestion/journey time through the junction – thereby

not causing a severe impact for the number of dwellings proposed on the Golf Club site.”

90. KCC also submitted an objection to the principle of all allocations of further development at Hawkhurst in the draft Local Plan stating:

“Until the Golf Club application [which proposes a new road] is assessed, the cumulative impact of all allocations at Hawkhurst would be likely to cause a severe impact on the junction with no mitigation proposed. KCC as Local Highway Authority therefore objects to the allocation of these sites and any subsequent planning applications.”

91. The Claimant notes that, consequentially, KCC has objected to the emerging allocation for the White House for fifteen dwellings in Policy AL/HA 2 on the basis of highways impact. The Claimant also notes that since the Defendant’s decision on the White House application, KCC has objected to proposed development for 62 dwellings at Ockley Road and Heartenoak Road. KCC stated in that respect:

“The Highway Authority would like to submit a holding objection to this application owing to the cumulative impact of this and other developments on the junction. Since the application was first considered in early 2019 the HA has advised that we would be in a better position to consider the cumulative impact as the Local Plan progresses. In November 2019 the HA objected to the allocation of 7 residential developments in the draft Local Plan totalling 731 dwellings because of the likely impact on the junction. TWBC have been planning to commission a model to test the cumulative impact on the junction, but as this is not yet available KCC, will undertake to build and operate a model of the junction to contribute to the evidence for the Local Plan. In addition, the last year has seen an influx of data relating to the junction as part of pre-applications and planning applications, and this has resulted in disparate conclusions which has underlined the need for a centralised data set. This would allow consistent assessment. The TA submitted with this application may have overestimated the available capacity at the junction, and this centralised approach will allow the HA, TWBC and the PC to agree on one base model as a starting point for capacity assessments.”

92. The Claimant points out that the applicant for the Ockley Road site appealed against the Council’s non-determination of its application for permission. The Claimant notes that the Defendant’s putative reasons for refusal include the fact that it has not been demonstrated that the proposal would not result in an unacceptable cumulative highways impact on the Junction.
93. KCC are undertaking a model of the Junction. The Claimant refers to Ms Hubert’s second witness statement in these proceedings in which Ms Hubert stated at paragraph 9 that there is (already) a “mass of evidence from which to make a judgement” for

the purposes of paragraph 109 of the NPPF, and that the model “will principally be used to contribute to the evidence for the emerging Local Plan”. The Claimant considers that this position is difficult to reconcile with Ms Hubert’s comments in an email to the Defendant and the Claimant, dated 12 March 2020, referring to the model being “for both the LP evidence base and to inform our recommendations to TWBC on planning apps”. The Claimant also finds it difficult to reconcile with KCC’s holding objection in relation to the Ockley Road application. The Claimant also notes that Ms Hubert has stated that it would be beneficial “if we ask any developers of future schemes to pay KCC for the use of the model rather than commission their own”.

Legal Principles

94. The correct approach to a judicial review challenge of this kind is not in dispute. Relevant principles were authoritatively summarised in *Mansell v. Tonbridge & Malling BC* [2017] EWCA Civ 1314; [2018] JPL 176, in which Lindblom LJ stated at [41]-[42]:

“41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. ...

42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:

(1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at

paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016 EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.”

95. In addition, the Claimant referred to the following:

a. The correct interpretation of planning policy is a matter of law for the court; the application of policy to the facts is a matter of judgment for the decision-maker: see *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983; *Leading Planning Cases* p.303.

b. A question will be one of interpretation, rather than application, when it can be answered objectively without reference to the facts of any particular case: *R (Wiltshire*

Council) v *SSHCLG* [2020] EWHC 954 (Admin), per Lieven J at para. 26.

c. When considering whether development is in accordance with the development plan, the correct focus is on the plan's policies. Supporting text is relevant to the interpretation of a policy to which it relates, but it is not itself a policy, and it does not have the force of policy and cannot trump policy: *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567, para. 16.

d. It is not appropriate to consider the specific reasons why individual committee members may have voted in a particular way, since a Planning Committee reaches a collective decision by means of resolution. Where a resolution is taken to endorse an officer's recommendation, members of a Planning Committee can be taken to adopt the reasoning of the Officer Report see *R (Historic England) v Milton Keynes Council* [2019] JPL 28, paras 50-52.

e. In *CPRE Kent v Dover DC* [2018] 1 WLR 108, the Supreme Court considered what inquiries needed to be undertaken before a lawful decision as to whether to grant planning permission was made. Lord Carnwath JSC said at para. 62:

“The Model Council Planning Code and Protocol...contains...the following advice:

“Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.”

This passage not only offers sound practical advice. It also reflects the important legal principle that a decision-maker must not only ask himself the right question, but “take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly”: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1065B. That obligation, which applies to a planning committee as much as to the Secretary of State, includes the need to allow the time reasonably necessary, not only to obtain the relevant information, but also to understand and take it properly into account.”

96. The Claimant places particular reliance on the decision *Hale Bank Parish Council v Halton Borough Council* [2019] EWHC 2677 (Admin). That case concerned a development plan policy (WM1) requiring developers to develop sites allocated in the Waste Local Plan in the first instance, and only to consider alternatives to allocated

sites if the allocated sites had already been developed out, or were not available for the waste use proposed by the industry, or could be demonstrated as not being suitable for the proposed waste management operation. The claimant argued that the local planning authority members had to be provided with sufficient information to be satisfied as to whether the policy was met. Whilst they could receive advice, they had to have sufficient information to determine for themselves whether the policy and this was not satisfied by an assertion in the report that the application had provided sufficient information, and that the relevant external advisor had made insufficient inquiries. Lieven J stated:

“52. ... [T]his is not a case about excessive legalism, or whether members were materially misled, it is a case about whether members had sufficient information to make a lawful decision. It is important to bear closely in mind that under the statutory scheme (and here the relevant standing orders) it is members who make the decision not officers. Those members have to have sufficient information to be able to make a lawful decision, see R(Morge) v Hampshire CC [2011] UKSC 2 and CPRE v Dover [2018] 1 WLR 108 at [62] ...

53. Equally, there will be some issues in a planning context where members may be in a good position to make their own judgement even if the OR has little or no analysis of the relevant issue. An obvious example is visual impact where the members when shown plans and photographs may well be able to reach their own judgements. However, there will be other issues, and in my view this is one, where without fuller (or any) information members cannot “understand the issues and make up their minds” (*Morge* [36]) without further information. As Lord Steyn so famously said, context is all.

54. In my view the vice (and legal error) in this case is twofold. Firstly, the OR told members nothing about why, or on what basis, WM1 was met. It simply said that the Council’s advisor (Ms Atkinson) had confirmed that the applicant had supplied sufficient information to demonstrate compliance. The members were therefore not in a position to make up their own minds, but equally were not in a position to reach a view as to the conclusion reached by Ms Atkinson. Secondly, when the background material is examined it is clear that Ms Atkinson had simply accepted Veolia’s [the holder of the planning permission’s] assertion that the site was chosen because of proximity to Veolia’s depot, and “therefore allocated sites were not considered suitable”. There was no investigation or even consideration of the suitability or availability of alternative sites. The officers accepted Ms Atkinson’s advice and themselves asked no further questions.

55. Ms Atkinson’s approach could either be characterised as a failure to apply WM1 lawfully, or a failure to carry out proper inquiries pursuant to the principle in *Tameside BC*, and set out

so clearly by Lord Carnwath at [62] of *CPRE v Dover*. The core point is that the sequential test in WM1 cannot be satisfied by a simple acceptance of a developer's assertion that no other site is suitable, without some material to support that assertion, and a proper consideration of whether the assertion was justified. If the developer's assertion alone was sufficient then WM1 and the sequential test would be a wholly meaningless exercise devoid of purpose, because any developer could, and probably would, just say that they wanted their site because it met their requirements and therefore allocated sites were not suitable. In these circumstances the site selection hierarchy so carefully set out in the Waste Management policies in the WLP would have no effect. This error was then compounded by the fact that members were only told that the advisor had accepted the Development Plan had been complied with, without any of the requisite information. They were therefore not in a position to reach any view as to whether sufficient investigation had been undertaken."

97. In relation to Ground 3, the Claimant also relies upon what Hickinbottom J (as he then was) stated at para. 52 of *R (Mevagissey Parish Council) v Cornwall Council* [2013] EWHC 3684 (Admin) in relation to a case concerning development in an AONB:

"Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape."

Ground 1 – Cumulative Highways Assessment

98. Under Ground 1, Mr Mills submits that the first question that arises is whether the Planning Committee had sufficient information on cumulative highways assessment in order to reach a lawful decision. He submits they did not and that the Council acted unlawfully in any one or more of the following ways:
- (a) A failure to take into account a material consideration, i.e. the evidence in the Golf Club Transport Assessment;
 - (b) A failure to take into account material evidence;
 - (c) Making a decision without sufficient information, contrary to the principles in *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014;
 - (d) An error as to whether there was relevant evidence on a particular point (*E v Secretary of State for the Home Department* [2004] QB 1044; *Leading Planning Cases* p.220);
 - (e) An unreasonable decision, in the sense of a decision made without reasonable foundation.
99. He submits the Planning Committee had no information on which to make its own decision, only advice from officers that KCC's view was that, with the financial

contribution, the impact would not be severe. He submits this is just a consultee's conclusion and not enough to enable the Planning Committee to exercise its own judgment. He also contends that Mr Hockney's advice to the Planning Committee (as recorded in the Minutes) had the further effect of indicating that KCC's advice could not be departed from.

100. Mr Mills contends this is not the sort of topic, like visual impact, to which Lieven J referred in *Hale Bank Parish Council* where a Planning Committee could reach its own view by looking at photographs, but rather something which needed to be based on calculations and modelling which were absent as to the cumulative impact. He therefore submits the Planning Committee did not have material to allow it to decide whether to agree or disagree with KCC's conclusion.
101. He also submits that it is not appropriate to consider what may have been said in debate during the Planning Committee meeting, nor to take account of what Ms Hubert's further reasoning in her witness evidence submitted in response to this claim. He points out that such reasoning was not before the Council's Planning Committee, nor in the public domain, and such reasoning cannot assist with the legality of the Committee's decision. He argues that there had to be sufficient explanation of KCC's views to allow the Committee to decide what weight to attach them, or whether they should be followed. In any event, he submits, there is no reasoning as to the weight that the Planning Committee gave to KCC's views on cumulative impact. Mr Mills also argues that even if KCC's views (or more specifically Ms Hubert's views) are ascribed to the Planning Committee, those views were not founded on an adequate evidential basis and there was a failure to carry out adequate enquiries regarding the cumulative impact.
102. By reference to a detailed analysis of what Ms Hubert stated she took into account in her first witness statement, Mr Mills submits that it reveals that: (1) she failed to acknowledge that the Junction is already over capacity; (2) she failed to take into account all committed developments; (3) Ms Hubert's approach is not consistent with KCC's approach to other development (such as the Golf Course, the Ockley Road application and the approach to the emerging Local Plan) which he described as KCC's current approach. He contends that KCC's approach in relation to the Golf Club is that any negative impact upon the Junction will be unacceptable, but there is no explanation as to why a different approach is taken to smaller sites. In reliance on the witness evidence provided by Mr Warman, he submits that Ms Hubert, in referring to only two committed developments has ignored a number of other relevant planning permissions which were not taken into account. He notes that committed developments were agreed by KCC for the Transport Assessment for the Golf Course. He also notes that in relation to the Ockley Road application, KCC has referred to an influx of data leading to "disparate conclusions which has underlined the need for a centralised data set", and he submits that same must apply to the White House application and there was insufficient evidence to reach a conclusion about cumulative impact. He makes a similar point in relation to what was said in preparing instructions to Leading Counsel as to the difficulties of addressing the cumulative impact of several small scale developments and he relies upon KCC's response to the emerging Local Plan which emphasises the lack of evidence in terms of cumulative impact. He also does not accept that KCC's change of approach from what was stated in the Position Statement is justified and disputes Ms Hubert's contention that there

are options for mitigating transport impacts on the Junction and submits this is difficult to understand and would have made Leading Counsel's advice unnecessary.

103. He also contends that Ms Hubert has made an error in her first witness statement in assuming that the increase in traffic during both peaks would be 0.1% (using the Second Interested Party's data), as it was predicted to be 0.2%, and this indicates that Ms Hubert has not understood the impact of the proposals.
104. By reference to an analysis of her second witness statement, he submits that Ms Hubert now only refers in what he submits are "vague terms" to having taken into account all committed development. He also criticises what he submits is an attempt to distance herself from previous comments that the Junction is over capacity and subject to severe congestion. He notes that Ms Hubert has emphasised her view was a matter of planning judgment, but points out that the relevant judgment is that of the decision-maker, the Planning Committee.
105. Mr Mills also developed a submission at the hearing and in a written note that there is no evidence that members of the Planning Committee read the Transport Statement, or that they were told that it was required reading. In that respect, he relies upon the decision of the Court of Appeal in *R(Hunt) v North Somerset Council* [2013] EWCA Civ 1320, per Rimer LJ at [12] and [83]-[84] to the effect that if members are not told either expressly or impliedly to read documents which may been available to them (in that case Equality Impacts Assessments), but were not provided with the report itself, then one cannot infer that such documents were read by the members. The Court of Appeal considered that this was not altered by the fact that the EIAs in that case were summarised in an Appendix to the report tended to suggest that reading them in full was not essential, otherwise it would not have been necessary to summarise them. Mr Mills submits that the decision of the Court of Appeal in *R(Lensbury Ltd) v Richmond-upon-Thames London Borough Council* [2017] JPL 96 that officer reports are written for an informed audience who may be taken to have a reasonable understanding of, or the means of checking on, the local context and the legislative and policy framework, in which the decision is to be taken does not cast doubt on the principles in *Hunt*.
106. Both Ms Thomas and Mr Cannock argue that there was no error on the part of the Defendant in relation to Ground 1. Amongst other things, they submit that the question of whether there was any severe residual cumulative impact was a matter of judgment for the Defendant which was addressed. They submit that the Defendant was entitled to take into account the views of KCC that there was no such material impact, let alone a severe one, and that was based on a judgment taken about this particular development proposal, its location and the public transport contribution which was considered to be an effective means of mitigation in this particular case. Ms Thomas submitted that the Defendant was required to place considerable weight on the views of the local highway authority in this sort of case.
107. They also both submitted that the Transport Statement did not need to contain modelling of the cumulative impact of all committed development on the Junction, and they draw a distinction between a Transport Statement and Transport Assessment for these purposes. They emphasise that the extent of investigation of the issue was a matter of judgment. They also rely upon the content of section 5 of the Transport Statement. They point out that the assessment in that document was accepted by

KCC Highways and was not challenged. They also submitted that the content of the Transport Statement demonstrates that there would be no material impact on the Junction, given the levels of traffic that would be generated. There was some difference in the way they interpreted the test under paragraph 109 of the NPPF in looking at whether the residual cumulative impact of a development is severe, but both submitted that the evidence in this case demonstrated it would not be and the Defendant was entitled to agree with KCC Highways in that respect. Ms Thomas distinguished the application of *Hunt* case on the facts of this case, and submitted that the principles *Lensbury* were engaged where the Planning Committee members had the ability to check the contents of the Transport Statement if they wished. They both submitted that there was no inconsistency in KCC's submissions on this planning application, as compared with its approach to larger development, the Golf Course application and the principle of the emerging Local Plan application.

Analysis

108. In my judgment, the appropriate starting point for considering the Claimant's criticisms under Ground 1 is the relevant policy framework against which the Defendant was assessing the development proposed. Against that framework, one can then turn properly consider the first question that the Claimant raises as to whether the Defendant had sufficient information available to it in principle to make that assessment and, then the second question that emerged more latterly in Mr Mills' submissions that the Planning Committee in this case cannot be taken to have read the Transport Statement in making their assessment, even if it had provided them with sufficient information (which he did not consider it did).
109. The relevant policy framework in respect of the complaint under Ground 1 was that set out in the NPPF at paragraphs 108-111. The Claimant's criticisms relate to the question of capacity and congestion (rather than matters of highway safety). Under the heading "Considering development proposals", paragraph 108 of the NPPF identifies that in assessing specific applications for development, it should be ensured that (amongst other things) "any significant impacts from the development on the transport network (in terms of capacity and congestion) ... can be cost effectively mitigated to an acceptable degree" – see paragraph 108c) of the NPPF. In this respect, paragraph 109 explains that development should only be prevented or refused on highways grounds if "the residual cumulative impacts on the road network would be severe."
110. Read together, the natural and ordinary meaning of paragraphs 108 and 109 of the NPPF are clear. In assessing an application for development, the decision-maker needs to ensure that significant impacts of development on the capacity and congestion of the highway network can be cost effectively mitigated to an acceptable degree, but there should only be a refusal on that basis if the residual cumulative impacts (which includes taking account of any mitigation that is proposed by the developer) on the road network would be severe.
111. There is no definition in the NPPF of what will constitute "severe" residual cumulative impacts for these purposes. Inevitably a qualitative term of this kind used in the NPPF necessarily calls for the exercise of judgment on the part of the decision-maker. As with all such judgments, they will be subject to the normal constraints that the principles of administrative law impose. As is well-established, those include the

need to take into account relevant considerations, to have sufficient information to be able to make a lawful assessment and for the judgment to be rational in a *Wednesbury* sense. But ultimately the judgment itself is one of judgment for the decision-maker. It may well be a matter on which reasonable people can disagree, but that is not a basis for impugning the decision reached.

112. I agree with the general thrust of Mr Mills’ submission that a judgment of this kind – namely whether there are severe residual cumulative impacts on the traffic network from a development - will often be one which will require some technical information for the assessment to be made. In this respect, it is relevant to consider paragraphs 108 and 109 of the NPPF alongside paragraph 111 of the NPPF:

“All development that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.”

113. The corollary of what is stated in the first part of that paragraph is that development which will not generate “significant” amounts of movement is not necessarily expected to be supported by a transport statement or transport assessment. Here, once again, the NPPF requires a judgment from the decision-maker as to what will constitute “significant” amounts of movement. It is inherent in what is stated that if the decision-maker takes the view that the development is not one which will generate “significant” amounts of movement, then it may not require a transport statement or transport assessment to be provided in support of the planning application itself. This further illustrates the role of judgment in the exercise required in this part of the NPPF.
114. It is also relevant to note (as both Ms Thomas and (in more detail) Mr Cannock pointed out) that paragraph 111 of the NPPF is referring to two different types of transport document for these purposes: a transport statement and a transport assessment. Further guidance is provided in the Government’s national online Planning Practice Guidance about the differences between these two documents. Paragraph 004 (Reference ID: 42-004-20140306) states:

“... Transport Assessments are thorough assessments of the transport implications of development, and Transport Statements are a ‘lighter-touch’ evaluation to be used where this would be more proportionate to the potential impact of the development (ie in the case of developments with anticipated limited transport impacts).

Where the transport impacts of development are not significant, it may be that no Transport Assessment or Statement or Travel Plan is required. Local planning authorities, developers, relevant transport authorities, and neighbourhood planning organisations should agree what evaluation is needed in each instance.”

115. Accordingly, whilst both a Transport Assessment and a Transport Statement will be directed at assessing the likely impacts of development where significant movements are anticipated and, ultimately, whether there will be severe residual cumulative impacts (after mitigation is taken into account), a Transport Statement is intended to be a 'lighter touch' evaluation of the likely impacts. Again, this is an area where the exercise of judgment will be in play as to what type of document is required in any particular case.
116. In this instance, it is clear that the Interested Party's highway consultants, KCC in its capacity as highway authority, and the Defendant as the local planning authority were satisfied that a Transport Statement (i.e. a lighter-touch evaluation) was sufficient and proportionate given the nature of the development proposed in this case. No one criticised the provision of the Transport Statement. The Claimant itself has not sought to impugn that approach in principle, either in these proceedings or in the planning application process itself.
117. By contrast, it can be seen the Hawkurst Golf Course planning application to which much reference has been made has been supported by a Transport Assessment. This is not surprising given the much greater scale of what is proposed by that application, along with the fact that it is subject to an Environmental Statement, for which there is a Transport chapter.
118. The difference of approach to what form of supporting material is required in any particular case reflects the important role of judgment in this area. What is required for a particular application will depend a judgment as to what is proportionate based upon matters such as the scale of the proposal and consequential likely impacts, consistent with the approach articulated in paragraph 111 of the NPPF and the guidance in the NPPG.
119. It follows that the detail of what may be required in a Transport Statement, as compared with a Transport Assessment, may well differ. The fact a Transport Assessment for a larger form of development in the same area includes specific modelled calculations of the effects of all committed development on a junction in that area does not necessarily mean that a Transport Statement for a smaller form of development in the same area must also include such calculations. In both cases, the same test under paragraph 109 of the NPPF will be engaged - namely whether the residual cumulative impacts of the development in question are severe. But the extent of the information required by way of modelling and calculations to reach a judgment on that issue may well differ in each case.
120. This is clear in the recognition in the guidance that a 'lighter touch' evaluation may be proportionate for development with more limited transport impacts. Decisions about the proportionality of what is required in any particular case are very likely to be matters of judgment in themselves on which reasonable people may disagree, but which will not necessarily be unlawful because there is disagreement.
121. There is a further point that logically arises from the recognition that assessment of traffic impacts will ordinarily require some technical information for that assessment to be made, albeit with judgment to be made as to the extent of such information and its form will vary from case to case in light of what I have set out above. Where technical information is required, a decision-maker will often take account of advice

from persons or consultees with technical expertise or experience in that area. And in some cases, the local planning authority will in fact be obliged to consult those with such expertise or experience.

122. In the case of impacts on the highway network, the local highway authority is a consultee. But it is also particularly well placed to assist a local planning authority in making the sort of judgment required under paragraph 109 of the NPPF. As Mr Mills correctly points out, the judgment still remains that of the local planning authority, rather than the local highway authority as a consultee. A local planning authority can ultimately disagree with a consultee (subject to the normal principles of administrative law to which I have already referred). It may then have to defend that disagreement at appeal. But equally, it is entitled to agree with a consultee of this kind. It is axiomatic the weight it chooses to attach to such views is a matter for its own judgment.
123. Ms Thomas and Mr Cannock rely on cases which address the potential requirement of a local planning authority to attach considerable, or great, weight to the views of Natural England, when it acts as the “appropriate nature conservation body” statutory consultee in respect of certain ecological matters: see *Prideaux v Buckinghamshire County Council* [2013] EWHC 1054 (Admin) at 116; *R. (Akester) v Department for the Environment, Food and Rural Affairs* [2010] Env. L.R. 33, at 112, *R (Morge) v Hampshire County Council* [2011] UKSC 2 at 45.
124. I do not consider it necessary for me to decide how far that principle can be extended beyond that particular situation so as to require considerable weight to be attached to the views of a local highway authority in relation to highway impacts. It is sufficient in the context of this challenge to apply conventional principles, namely that the Defendant is entitled (if not obliged) to take into account the views of KCC on such impacts as material to its decision, but thereafter it is a matter for the Defendant’s judgment as to what weight it applies to those views as material considerations.
125. It is also relevant to recognise that KCC’s views in this case were not limited to its judgment that the residual cumulative impacts were not material, let alone severe, with the proposed public transport mitigation, but also its satisfaction with the extent of the information provided by the applicant the Transport Statement for such an assessment.
126. It is against that policy framework, and those principles, that the first question the Claimant has posed falls to be answered: did the Defendant have sufficient information available to it in principle to be able to reach a lawful judgment on whether or not the residual cumulative impacts would be severe in this case?
127. It is helpful to consider what information the Defendant did have available to it to make such an assessment before considering the question of sufficiency. The Claimant’s case in a nutshell is that there was no information available on the cumulative effect of all committed development on the Junction in question because neither the Transport Statement, nor any other document that formed part of this application, modelled such an effect.
128. In my judgment the Claimant’s analysis in this regard is flawed. It confuses the question of what information was available with the question of whether that

information enabled the decision-maker to make a judgment as to whether the residual cumulative impact of the proposal would be severe. The mere fact that one could model the cumulative effects of all committed development on the Junction (as has self-evidently been done for the Golf Course application) does not necessarily mean that such information was necessarily required for an assessment of this particular application's effects under paragraph 109 of the NPPF. To import a well-known aphorism into this area, context is everything.

129. The Second Interested Party's planning application for 43 retired living apartments on this particular Site was supported by the Transport Statement dated April 2019. This document set out an assessment of (amongst other things): (1) the site's locational attributes in terms of its proximity to services and relationship to public transport in the form of buses; (2) the predicted vehicle trip generation for a development of this kind; and (3) the impact of that trip generation on the road network in terms of percentage increases in traffic flows on the road that joins the Junction. Although the Claimant has, for the first time in these proceedings, sought to advance some criticism of the assessment itself in its use of the Second Interested Party's data, I have already explained why I do not consider those criticisms to be well-founded. Moreover, it was not a criticism made at the time in response to the application. I am unable to detect any unlawfulness in KCC, as the local highway authority, and the Defendant as the local planning authority, accepting the use of that data in the Transport Statement.
130. The Transport Statement therefore provided technical information available to the Defendant when making a judgment as to whether the residual cumulative impact on the road network would be severe.
131. It is true that the Transport Statement does not include technical information as to the amount of traffic that will be present on the road network with all committed development in place. It only presents the impact of the predicted trip generation as a percentage increase over the automated traffic count flows of the road leading to the Junction in its current state, without including all committed development. It therefore does not contain or model the Junction in the way that is done in the Hawkhurst Golf Course Transport Assessment, such as looking at the traffic flows through the Junction which will exist in the year 2033 (or any other future year) based on committed development and natural growth in traffic on the road network. The Claimant is therefore correct in stating that this information was not before the Defendant. But the real question is whether the Defendant was required, in law, to have such information in order to be able to make a lawful judgment on whether the residual cumulative impact on the road network of this development would be severe. I do not consider it was for a number of reasons.
132. First, the policy framework of the NPPF itself does not purport to specify what technical information will need to be obtained in order to reach a conclusion under paragraph 109 of the NPPF as to whether the residual cumulative impacts are severe. To the contrary, it contemplates that the amount of information that may be required in any particular case will be fact-specific, with a Transport Statement involving a lighter-touch evaluation than a Transport Assessment. This is an area where judgments about how much information is required in a particular case are ones which involve questions of proportionality. Here the Applicant's highway consultants, KCC as local highway authority and the Defendant as local planning authority self-evidently were content that the Transport Statement provided a proportionate amount

of information. I cannot discern any error of law in reaching that judgment. The Transport Statement identifies very small numbers of vehicle movements at critical times of the day. It contained information about the Site's relatively good location in terms of its proximity to services and facilities and public transport. It was provided in a context where additional mitigation in the form of a public transport contribution to improve the physical infrastructure for the bus services was being proposed.

133. Second, it is inevitable that a judgment on whether further information might be needed to apply the test under paragraph 109 of the NPPF is likely to be fact-sensitive, and affected by what information has already been provided in the application. Here the Transport Statement was predicting three two-way movements from the development in each of the AM and PM peaks. In terms of consequential impact on the road network, and more particularly increase in traffic at the Junction, this equated to an increase over the existing levels of traffic of 0.2%. The Transport Statement also provided equivalent data for the "sensitivity assessment". These are very low numbers as the Claimant does not actually dispute. In my judgment, both KCC Highways and the Defendant were entitled not to require further technical information in order to reach a judgment as to whether the residual cumulative impact of the development on the Junction would be severe. Whilst they did not have the technical data to know exactly what the increase in traffic flows would be from committed development, they were able to make such a judgment without such additional data. It was well within the ambit of a rational conclusion that a 0.2% increase over existing levels of traffic would not create a "severe" residual cumulative impact and that judgment would not change with higher levels of traffic from committed development. This is simply a question of judgment, based on the facts before them as to very low increases with which they were concerned. Neither KCC Highways, nor the Defendant in accepting their advice, disagreed with the Transport Statement assessment that the levels that would be generated were not material, let alone severe.
134. Third, the preceding point is reinforced by considering the logic of what further modelling would show in any event. If the Transport Statement had in fact incorporated increased traffic flows on the road network from committed development which had not yet been constructed, rather than simply looking at existing flows, the baseline numbers would have increased; but this would have meant that the percentage increases caused by the development would actually have decreased, not increased. The development would have involved the same very small number of trips being generated in the peaks, but the effect of these would have been further diluted in percentage terms if added into higher projected baseline flows. In circumstances where the figures from the development were already so low, it is difficult to see how the sort of further technical calculations would have added materially (or at least in a way which would have assisted the Claimant) to the overall assessment that was to be made by the Defendant. Given the very low levels of traffic from the development that had been identified, it seems to me that there is no basis for suggesting that KCC or the Defendant did not have information to make the assessment required under paragraph 109 of the NPPF, or that they acted unlawfully in not requiring such additional modelling, in circumstances where the levels of traffic generated were so low.

135. Fourth, the Claimant's challenge focuses on the concept of "cumulative" impact and the role of committed development, but this does not take proper account of the test also requiring one to consider the "residual" impact of what is proposed in terms of severity. The overall assessment under paragraph 109 of the NPPF allows one to consider the expected impact in light of all relevant considerations, including the location of the Site itself in terms of accessibility to services within the village which can potentially reduce reliance on the car, coupled with the requirement that was being imposed to make contributions towards enhancing the attractiveness of using the bus. All of this requires a judgment based on all the available information, but without necessarily requiring further modelling work. In my judgment, KCC and the Defendant would have been able to make a lawful judgment about "residual cumulative impact" in this particular case based on the predicted very low trip generation, the Site's particular location, along with the potential mitigating effects of the contribution that was being proposed, without the need for further modelling or technical information as to the precise effects of committed development.
136. Fifth, the reality is that Claimant's real concern is that of "death by a thousand cuts". In reality, this concern is not something which would be addressed by further technical evaluation or modelling for this particular development with its very low trip generation. The Claimant's real concern is that permitting incremental small-scale development, with minor increases in traffic, is not acceptable for a Junction that is already congested and is bound to become increasingly so with committed development and normal traffic growth. But that concern is a general point which is well-known to KCC and the Defendant already. It was one raised by Mr Warman and the Parish Council in front of the Planning Committee which they considered. But it is not one which necessarily means that further technical information was required on this particular application to make a judgment under paragraph 109 of the NPPF.
137. Other colloquial expressions were used by the Claimant to articulate this point, such as "the straw that breaks the camel's back", or "a dripping tap into an already overflowing bath". I recognise the nature and force of the Claimant's concern. In reality, it is one that is shared by KCC. None of the analogies is entirely accurate to express it. But howsoever it is expressed, it is not one which means that every small scale development requires the sort of cumulative impact modelling the Claimant seeks for a lawful judgment under paragraph 109 to be made. Indeed, it is difficult to see how such cumulative modelling would add materially to the judgment to be made. By way of example, the cumulative modelling presented in support of the Hawkhurst Golf Course application demonstrates that in 2033, with committed development and natural traffic growth, delays at the junction will continue to get worse and an authority might choose to describe them as severe. But this will not establish, let alone materially assist, in showing that very small levels of additional traffic assumed from a development of this kind will create a "residual cumulative impact" which is of itself severe. Mr Mills suggests that the point is similar to that considered by Jay J in *Wealden District Council v SSCLG* [2017] Env LR 31 to the effect that a number of impacts, individually small, can exceed a threshold if added together. Here there is no threshold that Mr Mills is arguing will be breached, let alone breached by the addition of the very small number of movements proposed in this particular case.
138. It is recognition of this sort of point that no doubt led KCC to recognise that objection in principle to any further development affecting the Junction is not consistent with

paragraph 109 of the Framework. Such blanket objection would not recognise the potential for minor impacts to be addressed by mitigation measures such as public transport measures. And such blanket objection would not be based on a case-by-case assessment of whether the particular impact caused by the particular development could be treated as “severe”. In my judgment, paragraph 109 of the NPPF necessarily requires consideration of whether the residual cumulative impact of the proposed development is severe, not simply whether existing or projected congestion without that development would be severe.

139. Sixth, the fact that the residual cumulative impacts of this particular development are not judged to be severe does not mean that “death by a thousand cuts”, or more accurately, an ever-increasing material worsening of the Junction from small scale development is inevitable. Each case will still need to be judged on its own merits, having regard to factors such as the Site’s specific location, the particular development proposed, its characteristics, the extent to which the public transport improvements to be secured by the contribution are relevant to that Site, and ultimately the trips it will generate on the road network. The extent to which there is a need for further technical information to assess whether something is severe, such as additional modelling of cumulative effects, will depend upon such fact-sensitive assessment. In this respect, KCC’s actions in objecting to the greater impacts of the Ockley application and to the emerging Local Plan allocations as a whole illustrate that KCC itself is continuing to scrutinise closely the effects of further development on the Junction. The fact that they consider that this particular application does not cause any material impact (given the very low level of traffic generated) does not mean that it will allow the Claimant’s concern of “death by a thousand cuts” to materialise. It demonstrates an approach of scrutinising the effect of each “cut”, or the size of any additional “drip” from the tap, coupled with the effects of any mitigation proposed, in each case.
140. Seventh, I do not accept the Claimant’s argument that this case is equivalent to the unlawfulness found in *Hale Bank Parish Council* on proper analysis. In that case, the Planning Committee simply relied upon the statement of the Council’s advisor that policy WM1 was met, but without any information available to them to make up their own minds, or reach a view on the advisor’s conclusion. Second, the background material demonstrated that there is in fact no information provided by the applicant to justify the advisor’s conclusion anyway. I address Mr Mills’ submission about whether the Planning Committee read the Transport Statement below, but subject to this, the same factual situation did not arise here. The Defendant’s Planning Committee undoubtedly took into account the views of their own officers, and in turn, the advice of KCC as the acceptability of the proposal in terms of traffic impacts, but the Planning Committee did have information available to them in the Transport Statement to enable them to make up their own minds if they disagreed. Moreover, neither KCC officers nor the Defendant’s officers were in fact simply accepting an assertion of the applicant as to the impacts of the development. There was an analysis provided in the Transport Statement. I have explained why I am satisfied that the information in that document is sufficient to enable a judgment to be reached under paragraph 109 of the Framework in this particular case.
141. Eighth and finally, it is also important not to misapply the principles in *Hale Bank*. In that case, there was no information necessary to make an assessment of the kind that

the policy required, namely investigation and consideration of the suitability or availability of alternative sites in conflict with the duty identified in *Tameside*. But nothing in that decision, given its facts, detracts from the principles articulated by the Court of Appeal in *R(Jayes) v Flintshire County Council v Jayes* [2018] EWCA Civ 1089, Hickinbottom LJ at [14]:

“Although any administrative decision-maker is under a duty to take all reasonable steps to acquaint himself with information relevant to the decision he is making in order to be able to make a properly informed decision (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1997] AC 1014), the scope and content of that duty is context specific; and it is for the decision-maker (and not the court) to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor (*R (Khatun) v London Borough of Newham* [2004] EWCA Civ55; [2005] QB at [35]). That applies to planning decision-making as much as any other (see, e.g., *R (Hayes) v Wychavon District Council*) [2014] EWHC 1987 (Admin) at [31] per Lang J, and *R (Plant) v Lambeth London Borough Council* [2016] EWHC 3324 (Admin); [2017] PTSR 453 at [69]-[70] per Holgate J). Therefore, a decision by a local planning authority as to the extent to which it considers it necessary to investigate relevant matters is challengeable only on conventional public law grounds.”

142. The Claimant’s challenge founders on the proper application of these principles to the facts of this particular case. This is not a situation where the Defendant had no information to enable it to come to a decision about the development for the purposes of paragraph 109 of the Framework. It did have such information. In reality, the Claimant considers it should have sought more. That is the sort of unjustified challenge to the exercise of judgment that conflicts with the principle in *Jayes*.
143. In light of this analysis, I consider that many of the alternative ways in which the Claimant has advanced its criticisms under Ground 1 fall away. The Claimant alleges that the Defendant failed to take into account a material consideration in the form of the evidence in the Golf Club Transport Assessment. For the reasons I have already given, I do not consider that the Defendant was obliged to treat information in the Golf Club Transport Assessment as material to its decision on this particular development. Moreover, I am still not clear how it would have materially assisted the Defendant in making the decision required of it under paragraph 109 of the NPPF. It had to consider whether the residual cumulative impact of the White House development would be severe and it had the information available to it to do this. I also reject the Claimant’s contention that the Defendant failed to take into account material evidence. To the contrary, the Defendant (through its own officers and in taking account the advice of KCC and with the Transport Statement available) took into account the relevant evidence it needed to make an assessment about this application on its own particular facts. I do not agree that it made its decision without sufficient information for the reasons I have already given. I do not consider it made

any error as to whether there was relevant evidence on the matter before it. I also reject the notion that it made an unreasonable decision in the *Wednesbury* sense.

144. In reality, the decision it was required to make under paragraph 109 of the NPPF was very much a judgment based on all the available material and the particular characteristics of the development proposed. Given the very low levels of traffic that were to be generated which were not disputed, the consequential percentage increase set out in the Transport Statement, the site's location and the mitigation proposed for buses, the decision was not actually surprising. But more relevantly, given the function of the court in conducting judicial review, I do not consider there to be any basis for describing that decision as irrational in the *Wednesbury* sense.
145. I am also unable to discern any inconsistency between the approach KCC and the Defendant has adopted to this particular application and the advice obtained from Leading Counsel. Leading Counsel endorsed the view that paragraph 109 of the NPPF requires one to look at the cumulative impacts of development, so taking account of committed developments. There is nothing in the foregoing analysis which is inconsistent with that. The reality is that KCC's view was and remains that the cumulative impacts of this development are not material.
146. The Claimant raised an issue about Mr Hockney's advice to the Planning Committee (as recorded in the Minutes) to the effect that without objections from KCC there was insufficient reason to justify a refusal in planning terms as suggesting that KCC's advice could not be departed from. I do not consider that to be a fair reading of the advice read in context. In my judgment, Mr Hockney was reminding members the difficulty that the Defendant would face in justifying a refusal in planning terms on highway grounds in the absence of any objection to what was proposed from KCC as the local highway authority. I do not consider that such advice would be treated as preventing the Defendant from departing from KCC's views. Indeed, in the determination of the first planning application, it is clear that the Defendant had in fact chosen to articulate a reason for refusal on highway grounds which went beyond KCC's objection. I do not consider Mr Hockney's advice materially misled members.
147. The conclusions I have reached largely deal with the Claimant's criticisms of Ms Hubert's conclusions on the part of KCC. Ms Hubert (like the Defendant) was entitled to reach a view on whether the residual cumulative impact of the development was severe by reference to the information provided in the Transport Statement. There was no legal error in KCC not requiring further information. That conclusion applies with particular force to Ms Hubert given her inevitable familiarity and experience in making judgment about what information is required to support an application and her inevitable knowledge of the traffic issues in Hawkhurst (given the undisputed factual background of her involvement to date). Ms Hubert, like the Defendant, was well aware of the general concern about "death by a thousand cuts" arising from incremental increases in congestion from small scale development when making the judgment she did about this particular development.
148. My conclusions also make it unnecessary to consider the additional reasoning Ms Hubert advanced in her witness statements. Mr Mills rightly pointed to the dangers of this court taking into account evidence that constitutes further reasoning beyond that which is expressed in the contemporaneous materials and, in any event, which was not before the Defendant when it made its own decisions. I would have been very

reluctant to place any material weight on those parts of Ms Hubert's statement seeking to expand upon the reasoning behind the consultation responses provided to the Defendant. It is the consultation responses on which the Defendant officers and Planning Committee acted. My conclusions do not depend upon Ms Hubert's further explanations. But one of the consequences of providing such reasoning is that it may in fact serve to disclose an error on the part of a consultee, which potentially vitiates the judgment the consultee has reached and, consequently, taints the advice provided to the decision-maker which has been taken into account in making the decision.

149. I therefore cannot simply discount Mr Mills' criticisms of Ms Hubert's evidence where they are criticisms of that kind. Having considered each of the criticisms made, I do not consider them to support the existence any material errors of that kind.
150. First, Mr Mills argues that Ms Hubert failed to acknowledge that the Junction is already over capacity and, in her second witness statement, she wrongly sought to distance herself from the description of the Junction as congested. I do not regard this as a realistic assessment of Ms Hubert's evidence read fairly as a whole. There is a degree of equivocation of the description of the Junction in Ms Hubert's second witness statement. Nonetheless, it is very clear from the history of events that Ms Hubert is well aware of the problems with the Junction. Indeed, she was responsible for initiating the subsequently withdrawn policy approach of objection to new development in 2017 in light of those concerns. It is unrealistic to contend that Ms Hubert was not fully aware of the problems with the Junction when reaching her judgment about this application, given her long experience of it and her own efforts to compile data about its use.
151. Second, Mr Mills contends Ms Hubert failed to take into account all committed developments when making her assessment. Ms Hubert refers to only two committed developments being taken into account at paragraphs 10-11 of her first witness statement, whereas there are others that Mr Warman has identified. Ms Hubert's second witness statement does assert that she has considered all the committed development. So the criticism may not be well-founded on the facts. More importantly, though, even if Ms Hubert had omitted some of the committed development from her deliberations, it is unrealistic to suggest such omissions are material to the current application. Ms Hubert did not consider the level of traffic to be generated, given the public transport mitigation, to be material. It is unrealistic to suppose that this view would be altered by there being more committed development. It also brings one back to the point as to the questionable utility of a precise quantification of the problems at the Junction from committed development, in making the sort of judgment required under paragraph 109 of the NPPF for this particular small scale development. Such judgment is concerned with the residual cumulative impact of this particular development and whether it could be described as severe. Variations in what one assumes to be the existing or future traffic flows from any omitted "committed development" are very unlikely to be capable of affecting that overall judgment.
152. Third, Mr Mills argues that Ms Hubert's approach to this application is not consistent with KCC's approach to other development, such as the Golf Course application or the Ockley Road application, or the approach it has adopted to the emerging Local Plan. He contends that for those forms of development, KCC has adopted an approach that any negative impact on the Junction will be unacceptable and the

subject of objection (absent a deliverable mitigation solution such), but Ms Hubert has adopted an inconsistent approach to the White House application. In my judgment, there is no force in this point as I have pointed out. KCC's approach of objection to the Golf Course application, the Ockley Road application (which is estimated to generate approximately 22 two-way movements in the AM and PM peaks) and the allocations in the emerging Local Plan, absent a specific scheme of mitigation, in fact serve to reinforce the point that KCC is adopting an approach of assessing proposals on a case-by-case basis as one would expect. It shows that for development that will have different impacts to those arising here, KCC may well object. Its objection to the emerging Local Plan allocations is an objection in principle to the volume of such allocations in the absence of effective mitigation.

153. Fourth, Mr Mills argued that Ms Hubert has made an error in her first witness statement in assuming that the increase in traffic during both peaks would be 0.1% (using the Second Interested Party's data), whereas it was predicted to be 0.2%, and this indicates that Ms Hubert has not understood the impact of the proposals. Again, I do not consider there to be any real force in this criticism. There is a possibility that Ms Hubert may have been referring to one way movements in that part of her statement, but even if not and she has made the mistake suggested, it is impossible to see how a difference of 0.1% is a material error that that affected her judgment.
154. During his submissions, Mr Mills sought to counter the significance of the public transport contribution by arguing that: (1) the KCC Business case states that £1,000 per dwelling should be provided in addition to improved infrastructure, whereas here the contribution offered is simply £1,000 per dwelling; and (2) there is no Travel Plan secured by conditions or by the section 106 obligation. Neither of these points, if they are being advanced as grounds of challenge, features in the Amended Statement of Facts and Grounds. There was no application for further amendment. I therefore do not consider them to form part of this challenge. In any event, they also do not appear to have real merit. It was a matter for KCC in terms of its advice and the Defendant in its discretion as to what contribution to seek. The contribution that has been secured reflects what was sought. To similar effect, it was a matter for the Defendant to decide what conditions to impose and what section 106 agreement to secure. The conditions imposed reflect those resolved by the Planning Committee and the section 106 agreement similarly reflects the content of what the Committee resolved should be included.
155. This just leaves the additional question raised by Mr Mills' further submission advanced at the hearing and in his Note as to whether the Defendant, acting through its Planning Committee, did in fact take into account the information available to it in the Transport Statement when making the necessary assessment under paragraph 109 of the NPPF as to impact on the junction. In light of the approach set out in *Hunt* (above), Mr Mills submits that there is no evidence that the members of the Planning Committee read the Transport Statement, and it is not sufficient that it may have been available to the members if they were not either impliedly or explicitly being told that they should consider that document. In my judgment, the concern raised by Mr Mills does not justify quashing the Defendant's decision to grant planning permission for any or all of the following reasons.
156. First, the Officer Report to members did draw members' attention to the Transport Statement as part of the material relevant to the application. It is identified as one of

the documents in the background papers in Section 9. It is referred to in the objections of the Parish Council. And it is referred to in Section 10 when dealing with highway matters. Whilst members were not told expressly that they should read it themselves, they could have been in no doubt as to its existence. They were able to check its content if they wished. This is different to the situation in *Hunt* where members in that case, performing a rather different duty, were given the impression that the report itself contained all that members needed to know, whereas they actually needed to read the EIAs in order to discharge their duty.

157. Second, although I consider it would certainly have been better if the Officer Report had summarised the content of Section 5 of the Transport Statement, that has to be seen in the context of what the Defendant's officers considered to be in dispute. As the documents reveal, KCC Highways had accepted the content of Section 5. There was no need for officers to discuss it for these purposes. Likewise, no objector had in fact disputed the trip generation figures from the proposed development in the Transport Statement when the matter was being reported to the Planning Committee. Although an issue was being raised as to the question of cumulative residual impact given the state of the Junction, this was an objection in principle to the idea of any further development based on the Claimant's point about "death by a thousand cuts" or the "dripping tap". It was not a specific challenge to the prediction that this development would generate the very low levels of traffic that had been identified in Section 5. It would have been better for the report to have identified specifically the levels of traffic that were to be generated, but those figures were not in dispute.
158. Third, and related to the preceding point, Mr Mills himself accepted that the required content for an Officer Report does need to be contextualised. In circumstances where a statutory consultee accepts the technical information provided (the example being the Environment Agency having no objection based on the content of a Flood Risk Assessment), there may be no need for the Officer Report to set out all of the detail of that technical information in the Officer Report. In my view, that example is close to the situation that arose here. KCC Highways had accepted that there was no material impact on the highway network from the development proposed, with the public transport contribution proposed. Whilst it remained a matter for the Defendant to reach its own conclusion on this and each and every issue, that does not mean that an Officer Report always needs to set out the detail of all accompanying materials in the Officer Report itself. Members will have access to all the relevant application material and will be able to access it to satisfy themselves in respect of any issue that arises; that does not mean that an Officer Report always has to report all technical information the report itself. As in *Lensbury*, the listing of relevant information in the report will make it easier for the local planning authority to show that such information has been properly taken into account, but it does not necessarily follow that a failure to list all such information means that it has not been taken into account.
159. Fourth, if I am wrong in any of these conclusions on the facts of this case, and the Planning Committee failed to take into account the information in the Transport Statement when reaching their judgment under paragraph 109 of the NPPF, it appears to me to be highly likely that the outcome would not have been substantially different if that error had not occurred; therefore I must refuse to grant relief under section 31(2A) of the Senior Courts Act 1981 in any event. Had the Officer Report set out the trip generation from the development in section 5 of the Transport Statement for

members, it would have simply confirmed the existence of the very low level of traffic to be generated which had caused KCC Highways to be satisfied that there was no material (let alone a severe) impact to the Junction, taken with the public transport contribution proposed. Although the judgment under paragraph 109 of the NPPF was a judgment for the Planning Committee, they were already aware that KCC Highways considered the cumulative impact not to be material. It is difficult to see how the quantitative figures underpinning KCC Highways judgment could do anything other than confirm why KCC Highways had taken that view. I am satisfied it is highly likely that the Planning Committee would have reached the same conclusion had that quantitative information been presented in the Officer Report. In this regard, I consider it is important that no one was challenging the accuracy of that quantitative assessment.

160. For all these reasons, I reject Ground 1.

Ground 2: Heritage

161. Under this ground (as now amended), Mr Mills submits that the Defendant erred in failing to have regard to Policy EN4 of the Local Plan. It stated as follows:

“POLICY EN4

Development involving proposals for the total or substantial demolition of unlisted buildings which contribute positively to the character or appearance of a conservation area will not be permitted unless an overriding case can be made against the following criteria:

1. The condition of the building, and the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use;
2. The adequacy of efforts made to retain the building in use, including efforts to find compatible alternative uses;
3. The merits of alternative proposals for the site, and whether there are acceptable and detailed plans for any redevelopment; and
4. Whether redevelopment will produce substantial planning benefits for the community, including economic regeneration or environmental enhancement.”

162. It is common ground that the Defendant did not have regard to it. The issue is whether it was relevant. Mr Mills submits it was. Ms Thomas and Mr Cannock submit it was not. They also point out that the Claimant did not raise this issue in response to the planning application or the officer’s report. The Site was not within a Conservation Area, but the Officer Report concluded that the proposed development would cause less than substantial harm to the nearby Conservation Area in consequence of the loss of the White House as a non-designated heritage asset. Both sides argue that Policy EN 4 of the Council’s development plan is “clear in its terms”, but argue for opposite results.

163. Mr Mills submits its scope is established in its first sentence of the policy, and that there is no requirement that demolition must actually be in the Conservation Area itself. He submits that the policy applies, according to its terms, to development involving proposals for the total or substantial demolition of unlisted buildings which contribute positively to the character or appearance of a conservation area. He notes that the heading “Demolition in Conservation Areas” is not contained within the policy itself, but rather in the supporting text, and one cannot use such text to trump the meaning of the actual wording of EN4, in accordance with the principles set out in *Cherkeley*.
164. He also claims the Defendant’s position is “incoherent” because it contends that Policy EN5 is applicable to development outside conservation areas, despite appearing underneath the heading in the supporting text: “Development in Conservation Areas”. He notes that the Supporting Text to Policy EN5, and indeed the wording of Policy EN5 itself, makes clear that it applies to proposals which affect the character of a conservation area, and this demonstrates that the headings in the Supporting Text do not control the meaning of these policies. Accordingly, he submits that Policy EN4 was a policy of the development plan material to the determination of this application which the Defendant failed to take into account.
165. Both Ms Thomas and Mr Cannock argue that Policy EN4 was not applicable and, properly interpreted, it only applies to demolition of a building in a conservation area. They submit this is consistent with the sub-heading in the supporting text, the paragraphs in the supporting text and the general framework applicable at the time that the policy was adopted in 2006.

Analysis

166. I am satisfied that the dispute is principally one of interpretation for the court, rather than consequential application for the decision-maker. Consequently, the task is to identify the correct meaning in accordance with the well-established principles that apply to this area.
167. Both Policy EN4 and Policy EN5 appear in a section of the Local Plan dealing with ‘CONSERVATION AREAS’. As the parties note, Policy EN4 is set out with supporting text in a section with a sub-heading: “Demolition in Conservation Areas”, and Policy EN5 is set out with supporting text in a section with a sub-heading: “Development in Conservation Areas”.
168. The supporting text for Policy EN4 provides as follows:

“Demolition in Conservation Areas

4.39 Conservation areas often contain buildings of architectural or historic importance which, when grouped with other buildings, walls, trees and other features create areas of distinct character worthy of conservation. Many such important features are identified within approved Conservation Area Appraisals. PPG15 establishes a general presumption in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area. The Local

Planning Authority will therefore seek the retention of all such buildings, walls and other features within the designated conservation areas. Apart from certain exceptions laid down in directions made by the Secretary of State for the Environment, Transport and the Regions, Conservation Area Consent is required for the total or substantial demolition of buildings and of many walls in conservation areas.

4.40 When demolition of a building that makes a positive contribution to the character or appearance of the conservation area is proposed, the Local Planning Authority will require clear and convincing evidence of the condition of the building, the repair costs, and all efforts that have been made to sustain existing uses or find viable new uses, and will require evidence that these efforts have failed. Consent for demolition will not be given unless there are acceptable and detailed plans for any redevelopment.

4.41 Where the building makes little or no contribution to the area, the Local Planning Authority will need to have full information about what is proposed for the site after demolition with detailed and acceptable plans for any redevelopment.”

169. Whilst Policy EN5 appears under a sub-heading that appears to limit its application to development within a conservation area, Policy EN5 itself demonstrates that it has wider application. It states:

“POLICY EN5

Proposals for development within, or affecting the character of, a conservation area will only be permitted if all of the following criteria are satisfied:

...”

170. I agree with Mr Mills that the supporting text, which includes in this case the sub-headings, are not part of the relevant policies themselves and cannot “trump” the meaning of the policy itself. However, the supporting text is relevant to the interpretation of the policy to which it relates. It is important in arriving at the correct meaning of the policy itself in a case of potential ambiguity such as this.
171. Mr Mills is correct that the wording of Policy EN4, read on its own, does not expressly limit its application to demolition of a building within a conservation area. It refers to demolition proposals of unlisted buildings which “contribute positively to the character or appearance of a conservation area”. It is possible in principle for a building to affect the character of a conservation area, even if it is not within the conservation area. Policy EN5 itself recognises this in referring to proposals for development “within or affecting the character” of a conservation area. The Defendant necessarily accept this in the application of Policy EN5 to the development proposal in this case. Logically, it is therefore possible in principle for a building outside a conservation area “to contribute positively” to its character; consequentially,

demolition of such a building is capable of falling within the scope of Policy EN4 if one were to read the words literally, and in isolation from the supporting text and the wider context of the policy.

172. In my judgment, such an interpretation would suffer from the vice of interpreting the meaning of the policy as if it were a statute, or contract, and without reading the policy in context as is required, in accordance with the principles derived in *Tesco Stores v Dundee* as summarised recently by Dove J in *Canterbury City Council v Secretary of State for Communities and Local Government* [2019] PTSR 81 at [23]: the context of a policy includes its subject matter and the planning objectives which it seeks to achieve and serve and the context is also comprised by the wider policy framework within which the policy sits and to which it relates.
173. I consider that the supporting text to Policy EN4, along with the terms of Policy EN5 and its supporting text, are particularly relevant to the interpretation of Policy EN4. This is not a question of such supporting text becoming part of Policy EN4, or trumping the meaning of Policy EN4, but rather part of the process of ascertaining whether it applies to demolition outside a conservation area or not, as the wording of Policy EN4 read in isolation might suggest.
174. Once one takes account of that context, it becomes clear that Policy EN4 does not bear the meaning for which Mr Mills contends (albeit that Mr Mills' interpretation is a reasonable one of the words read in isolation). There are a number of factors that lead to this conclusion:
 - i) First, there is sub-heading in the supporting text to Policy EN4. It is a clear indicator that Policy EN4 is directed at demolition in a conservation area, rather than demolition outside it, as that is what it states. I accept one must be cautious about attributing too much weight to this in the interpretative exercise for two main reasons: (1) the sub-heading is within the supporting text, not the policy itself; and (2) there is a similar sub-heading for Policy EN5, yet it is accepted that it does not prevent Policy EN5 applying to development outside a conservation area which affects it. Nonetheless, when one considers the overall context, neither of these points prevents the sub-heading from having important significance. One cannot ignore the sub-heading's straightforward meaning. The similarity of the sub-heading used in Policy EN5 undoubtedly creates some doubt over that straightforward meaning. Had the sub-heading in Policy EN5 read "Development in, or affecting the character of, a Conservation Area", the position would have been much clearer. Yet the important point to note is that when one reads that other sub-heading with Policy EN5 itself, it becomes clear that the sub-heading is expressly to be understood in that way, whereas the same is not true of the sub-heading in respect of Policy EN4. That is because Policy EN5 itself makes it clear that it is a policy which applies to proposals "within, or affecting the character of, a conservation area". By contrast there is no such equivalent express identification in Policy EN4.
 - ii) Second, and linked to the preceding point, the direct contrast between the wording used in Policy EN4 and that used in Policy EN5 is also important. Policy EN5 is unambiguous. It applies to development proposals "within, or affecting the character of, a conservation area". Policy EN4 contains no such

specific locational clarity. Where the Local Plan intends a policy to be applicable to development proposals outside the conservation area, as well as those within, it makes this explicit in the way it has in Policy EN5. The absence of such explicit wording in Policy EN4, when read with the presence of such explicit wording in Policy EN5, is another strong contextual factor for rejecting Mr Mills' interpretation.

- iii) Third, it is not simply the sub-heading to the supporting text for Policy EN4 which provides relevant interpretative context, but also the content of the paragraphs of the supporting text itself. Paragraphs 4.39-4.42 read as a whole are focused upon the issue of demolition of buildings in conservation areas. Paragraph 4.39 identifies the role of buildings within conservation areas in creating distinct character with the use of the words "often contain". It is concerned within buildings within the conservation areas, not outside them. It then goes on to note that many such important features are identified "within" approved Conservation Area Appraisals. This is identifying the practice prevalent in such appraisals of identifying buildings within the area which are considered to be positive, neutral or harmful to the character of the conservation area. Again, the focus is on buildings within conservation areas, rather than any buildings outside those areas.
- iv) Fourth, paragraph 4.39 also refers to former national policy when the Local Plan was adopted in PPG15. As Ms Thomas identified, PPG15 identified a general presumption in favour of retaining buildings within a conservation area that made a positive contribution to that character or appearance. PPG15 identified the need for conservation area consent (applicable at the time) for the total or substantial demolition of buildings "in" conservation areas. All of this is consistent with a focus on demolition of buildings in conservation areas. That part of PPG15 which is being referenced in the Local Plan came under a heading "Conservation area control over demolition" in PPG15. Paragraph 4.25 of PPG15 began by noting that conservation area designation introduced control over the demolition of most buildings within conservation areas, with reference to the terms of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in the form that then existed). Paragraph 4.26 of PPG15 referred to the duty on local planning authorities under section 72 of that Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the area in question, and noted that in the case of conservation area controls, account should clearly be taken of the part played in the architectural or historic interest of the area of the building for which demolition is proposed, and in particular of the wider effects of demolition on the building's surroundings and on the conservation as a whole. It is in this context that paragraph 4.27 of PPG15 stated:

"4.27 The general presumption should be in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area. The Secretary of State expects that proposals to demolish such buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (paragraphs 3.16-3.19 above). In less clear-cut cases - for

instance, where a building makes little or no such contribution - the local planning authority will need to have full information about what is proposed for the site after demolition. Consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment. It has been held that the decision-maker is entitled to consider the merits of any proposed development in determining whether consent should be given for the demolition of an unlisted building in a conservation area.”

- v) All of this is focused upon demolition of unlisted buildings in a conservation area. Whilst none of this text can be treated as forming part of the policy, it is relevant to its interpretation and provides a strong indicator that Policy EN4, properly interpreted in context, is concerned with demolition of buildings in a conservation area. Paragraphs 4.40 and 4.41 of the supporting text are also consistent with this interpretation, picking upon the need for acceptable and detailed plans for redevelopment where demolition is to be permitted which was a feature of PPG15 for demolition of buildings in conservation areas.
- vi) Sixth, there is also the wider legal context that was applicable when Policy EN4 was formulated and adopted by the Defendant in 2006. At my request, the parties provided written submissions as to control over demolition of buildings as at 1 March 2006. The parties were not able to reach full agreement on a note for the court, but there is no significant dispute as to the reality. Section 55(1A) of the 1990 Act at the time included “demolition of buildings” within the definition of “building operations” that would, in turn, fall within the definition of “development” requiring planning permission. Section 55(2)(g) excluded “demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular local planning authority”. Pursuant to the Town and Country Planning (Demolition – Description of Buildings) Direction 1995, certain buildings were so excluded, including listed buildings, buildings within a conservation area and (subject to some exceptions) any building other than a dwellinghouse, or a building adjoining a dwelling-house. That Direction was later found to be unlawful in certain respects in light of the obligations under the Environmental Impact Assessment Directive, but it is not necessary for me to consider that here. For present purposes, it is common ground that as at 1 March 2006, subject to some exceptions demolition of any building (save for a dwelling house or a building adjoining a dwelling house) did not require planning permission. All of this makes it less likely that Policy EN4 applies to demolition of a building outside a conservation area, given that there were only limited cases where planning control applied to such demolition at the time. It is fair to say that none of this would *necessarily* preclude a local planning authority having a restrictive policy with the sort of criteria in Policy EN4 for buildings outside a conservation area which might still affect the character of that conservation area. It is just that some uneven and strange consequences would flow. For the demolition of most buildings in that category, Policy EN4 and its restrictive criteria would not apply at all, simply because planning permission would not have been required for such

demolition (and no conservation area consent would have been necessary). Policy EN4 would therefore only have applied to buildings not specified in the direction, such as dwellings. Even in those circumstances, the Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 31 granted planning permission for such demolition, subject to a prior approval procedure. It is difficult to see the overall strategic purpose of having a restrictive policy like EN4 to demolition of buildings outside a conservation area in these circumstances. By contrast, interpreting Policy EN4 as applicable to demolition in conservation areas, which did remain subject to control by a local planning authority through the conservation area consent under section 74 of the P(LBCA) Act 1990, is far more consistent with that legislative context and an overall strategic purpose as at 1 March 2006, when that policy was adopted.

175. For these reasons, I have reached the firm view that Policy EN4 was not applicable to the development proposal, as it did not involve demolition of a building in a conservation area.
176. In light of this conclusion, it is unnecessary for me to consider Mr Cannock's further submission that even if there had been an error, relief should be refused under section 31(2A) of the Senior Courts Act 1981. I would have had difficulty accepting that submission. If the Defendant had been in error in failing to take into account Policy EN4, restrictive criteria to justify demolition of the White House would have applied. That would have required analysis of the criteria in Policy EN4 which are not evident on the face of the Officer Report, nor in the material supporting the application. That is hardly surprising because neither the Second Interested Party nor the Defendant considered them to be applicable.

Ground 3 - AONB

177. Under Ground 3, the Claimant argues that there two errors by the Council: (1) an error in relation to whether there were "exceptional circumstances" to justify the development in the AONB for the purposes of paragraph 172 of the NPPF and Policy HD1(B) of the Neighbourhood Plan; and (2) a failure to consider heritage matters in relation to the AONB, where paragraph 172 notes that the "conservation and enhancement of ... cultural heritage" is an important consideration in such areas.
178. Mr Mills submits that the reasoning in the Officer Report regarding the AONB and the existence of exceptional circumstances was to the effect that:
 - i) The Borough lacks a 5-year housing land supply;
 - ii) Hawkhurst is a Tier 2 settlement in the Core Strategy;
 - iii) Therefore there are exceptional circumstances for housing.
179. He submits that the jump from (2) to (3) is a *non sequitur* and that, in light of the reasoning in *Mevagissey*, alternative locations for housing had to be properly considered. He says there is no explanation as to why further development had to be in Hawkurst to meet the five year supply, or why there was a particular need for

housing in Hawkhurst which has accommodated more than was assigned to it in the Core Strategy.

180. Both Ms Thomas and Mr Cannock submit that this is not a fair reading of the Officer Report which undertook a comprehensive examination of the AONB, and the reasons why it was considered that exceptional circumstances did exist (as summarised in paragraph 10.111). It was based on a cumulative assessment of the positive and negative impacts of what was proposed.
181. I have no hesitation in rejecting the Claimant's contentions on this point. I agree with the submissions made by Ms Thomas and Mr Cannock as to the fair reading of the Officer Report as a whole. I do not accept Mr Mills' characterisation of the Officer Report as simply containing the three steps he suggests. This is not a fair reading of the report as a whole, including paragraphs 10.66-75 in particular. The absence of a five year housing land supply and Hawkhurst's role as a Tier 2 settlement in the Core Strategy were both factors that are identified in analysing the existence of exceptional circumstances, but they are certainly not the only factors identified. Nor is the reasoning expressed in the way that Mr Mills attempts to characterise it, so his allegation of a non sequitur is simply not applicable. There were a number of factors which cumulatively went into the conclusion overall that exceptional circumstances existed for the development proposed which are ignored by Mr Mills.
182. These included: (1) the whole of Hawkhurst and the surrounding area being within the AONB; (2) the high level of need for new housing; (3) the conclusion that it was "highly likely" that additional housing sites in the AONB would be required; (4) the Site's particular location close to the LBD; (4) whilst other sites beyond Hawkhurst and outside the AONB were possible for the development proposed, any housing proposed in or on the edge of that settlement would be within the AONB and the proposal would provide a significant addition to that settlement's housing provision; (5) in the call for sites for Hawkhurst's housing provision, some of which were well outside the LBD and further from services within the village; and (6) there was no scope for developing sustainably located housing for Hawkhurst outside the AONB.
183. The Claimant's analysis also ignores, or sidelines the significance attached to the need for new housing to serve Hawkhurst, given its Tier two status, within the context described. This was a matter for the judgment of officers and the Defendant. They were entitled to take this into account when considering the existence of exceptional circumstances for the development. Moreover, the Claimant's analysis ignores those parts of the report which addressed the impacts on the AONB in considerable detail which led to the judgment that principally due to the housing delivery benefits outweighing the harm to the landscape and environment, there were exceptional circumstances (see paragraph 10.111). In these circumstances, the Claimant's reliance on what is stated in *Mevagissey* does not assist. As it happens, the Officer Report did consider the question of alternatives. The officers concluded that there was no scope for developing sustainably located housing for Hawkhurst outside the AONB. The Claimant is essentially seeking to challenge the weight that the Defendant attached to the need for housing for Hawkhurst, but there are no proper grounds for doing so.
184. The second element of the challenge under Ground 3 is a complaint that the Officer Report contained no advice to the Planning Committee that the conservation of

cultural heritage was an important consideration in an AONB. The Claimant argues that whilst heritage harm was addressed, it is a matter which should be considered in the context of harm to the AONB. Mr Mills submits that the table at paragraph 10.107 demonstrates that the environmental aspects of the scheme considered in the context of paragraph 172 did not include the cultural elements of the scheme.

185. Both Ms Thomas and Mr Cannock submits that this is also an artificial reading of the report as a whole and that members were well aware of the advice in paragraph 172 and aware of the heritage effects of the scheme when considering paragraph 172 of the NPPF.
186. Again, I have no hesitation in rejecting this part of the ground of challenge when assessing the Officer Report as a whole, in accordance with the well-established principles summarised in *Mansell*. Paragraph 172 of the NPPF was a paragraph drawn to the member's attention and, in accordance with the relevant principles, it can be assumed that they would be familiar with its content. Paragraph 172 of the NPPF identifies that the conservation of cultural heritage is also important in an AONB (ie in addition to the great weight to be given to conserving and enhancing landscape and scenic beauty).
187. In this case, the Officer Report had already dealt in detail with the conservation of cultural heritage in paragraphs 10.26-10.38. There is then a detailed section on the AONB in the paragraphs to which I referred which looked at effects on the landscape and the environment. Mr Mills is correct in saying that the heritage impacts are not specifically included in that section, but the Officer Report then returns to the question of whether the development was sustainable development in a way which sought to draw all the threads together at paragraph 10.112-10.116. There all the identified negative aspects are identified, including the "less than substantial harm" to the heritage assets along with the slight localised harm to the AONB that had been identified in the earlier section on the AONB. In my judgment the effect on heritage assets was treated as important generally in the overall assessment. The Officer Report therefore did not set out expressly that the conservation of cultural heritage in an AONB is important, as it was being treated as important anyway.
188. Even if there had been any error in not repeating the conclusions about heritage impacts in the section dealing with effects on the AONB, I am satisfied that it is highly likely that the outcome would not have substantially different if that error had not occurred. I would therefore be obliged to refuse relief for such an error under section 31(2A) of the Senior Courts Act 1981. I therefore reject the Claimant's complaint under Ground 3.
189. For all these reasons, despite the thorough and attractively presented arguments presented by Mr Mills on the Claimant's behalf, I dismiss this claim for judicial review.

**Appendix 9: Drainage Technical Note
(January 2023) prepared by Campbell Reith**

Technical Note

Brislington Meadows: Drainage Response Note

Rev P2

05.01.2023

1.0 INTRODUCTION

- 1.1.1. This technical note has been prepared to provide a summary of the existing site and the agreed principles for the proposed site to manage surface water to ensure flooding is not increased on or off the site in areas. A careful study of the existing site was undertaken to ensure that all the factors that have an impact on flood risk are understood and to confirm the baseline site conditions as described below. Principles were then agreed with the Bristol City Council (BCC) officer as the Lead Local Flood Authority (LLFA) to ensure that flood risk is not increased on the site and downstream.

2.0 BASE LINE CONDITIONS

2.1. Existing Site

- 2.1.1. The application site is located at Brislington Meadows, off Bonville Road, Bristol, approximately 3.4 kilometres (km) east of Bristol City Centre. The site is centred approximately on National Grid Reference 362681, 171168 and the nearest postcode reference is BS4 4NZ.
- 2.1.2. The site is irregularly shaped and occupies approximately 9.61 hectares in area. Majority of the site comprises undeveloped greenfield land whilst a small section of land, north east of the site is occupied by buildings previously used as a police station.
- 2.1.3. A partly culverted unnamed tributary of Brislington Brook is located south of the site with parts of it running along the southern boundary. The tributary flows from east to west and feeds into Brislington Brook approximately 0.25km west of **the site**. **BCC's Flood Risk** Management Map indicates that the tributary is culverted approximately 0.3km downstream of the site and is a significant drainage network feature. The River Avon is located approximately 0.4km east of the site.
- 2.1.4. Asset Maps obtained from Wessex Water show a variety of public surface and foul water sewers within the adjacent roads and residential developments. Within School Road to the west of the site, there is a 225mm surface water sewer and a 150mm foul water sewer. In Bonville Road to the east, a surface water sewer comprising 300mm and 375mm lengths is present and this discharges into a 450mm culverted sewer at the junction with Dixon Road. At this point, it discharges into the unnamed stream that runs east to west south of the site. A 225mm foul water sewer is also indicated in Bonville Road and runs in a south west direction. The asset maps also indicate public foul and surface water sewers to be located within Belroyal Avenue and Broomhill Road to the north of the site.

2.2. Flood Risk

- 2.2.1. The Environment Agency (EA) Flood Maps indicate the site to be entirely within Flood Zone 1, therefore is at very low risk of flooding from rivers and seas. The EA flood maps also indicate

majority of the site to be at very low risk of flooding from surface water flooding. A very small slither of land in the south of the site is highlighted to be at low risk; however, this follows the exact same route as the unnamed stream/tributary of the Brislington Brook. The EA flood maps also show the site to be at very low risk of inundation following major reservoir failure.

2.2.2. Plans showing extracts from the EA online flood mapping service are included in the submitted Flood Risk Assessment and Drainage Strategy Report (FRA&DS), dated March 2022.

2.3. Rainfall Data and Existing Site Runoff

2.3.1. The existing site accounts for a total area of 9.61ha. The area being proposed for development however equates to 6.90ha. Due to the site topography, the existing site has been split into 4 drainage catchment areas.

2.3.2. The existing site greenfield runoff for the site has been calculated using the IH124 method with a greenfield site area of 6.90ha, SAAR of 850mm and soil value of 0.450. The resulting existing flows are indicated below in Table 1 below.

Site Catchment	Area	Discharge Rate (Qbar)	Discharge Rate (Q ₁)	Discharge Rate (Q ₃₀)	Discharge Rate (Q ₁₀₀)
A	0.120	0.7 l/s	0.5 l/s	1.3 l/s	1.6 l/s
B	3.220	17.8 l/s	13.8 l/s	33.8 l/s	43.0 l/s
C	3.144	17.3 l/s	13.5 l/s	33.0 l/s	41.9 l/s
D	0.420	2.3 l/s	1.8 l/s	4.4 l/s	5.6 l/s
Total	6.904ha	38.1 l/s	29.6 l/s	72.5 l/s	92.1 l/s

Table 1 - Greenfield runoff rates.

3.0 PROPOSALS TO MANAGE FLOOD RISK FROM THE PROPOSED DEVELOPMENT

3.1. Surface Water Strategy

3.1.1. A preliminary drainage plan is included within the FRA&DS report.

3.1.2. It is acknowledged that once the area is developed there is potential to increase flood risk downstream of the site. However, measures for managing surface water on site have been included within the submitted FRA&DS to ensure that there is no increase in flood risk downstream of the site. (Areas downstream of the site include Victory Park and the lower areas of School Road and Allison Road). These measures were developed and agreed in consultation with BCC and these are outlined below.

3.1.3. The drainage design is to be developed in line with current legislation and management drainage practices, listed below, to promote Sustainable Drainage Systems (SuDS);

- Building Regulations Part H;
- Building Regulations Part H Drainage and Waste Disposal 2010;
- CIRIA C753 the SuDS Manual;
- CIRIA C737 Structural and Geotechnical design of Modular Geocellular Drainage Tanks (2016); and,

- Design and Construction Guidance for foul and surface water sewers offered for adoption (2020) where there are gaps in Building Regulations Part H.

3.1.4. The surface water disposal methods for the site are indicated below:

- Catchment A will discharge its surface flows into the 225mm public surface water sewer in School Road.
- Catchment B will discharge into the unnamed stream south of the site that is Culverted through Victory Park. Two options are indicated on the preliminary drainage layout plan. Option 1 is to discharge directly into the tributary closer to the site boundary however discussions with BCC will need to be undertaken to determine the feasibility of discharging surface flows at that location. Option 2 is to discharge surface flows into the 525mm culverted section of the unnamed tributary further south of the site boundary. Both options will require the drainage route passing through third party land (Victory Park). Option 1 is the preferred method of surface water connection and will require an agreement with Bristol City Parks team to enable drainage connection to be constructed through the third party land, however if this is not possible, a sewer requisition application would be made to Wessex Water to enable connection onto the Wessex Water culverted sewer as per Option 2.
- Catchment C will discharge surface flows directly into the unnamed tributary south of the site via a headwall arrangement.
- Catchment D will discharge its surface water flows into the 225mm public surface water sewer in Broomhill Road.

3.1.5. The proposed drainage scheme will incorporate Sustainable Drainage Systems in order to reduce the risk of flooding onsite, and downstream of the proposed development. The SuDS will also be incorporated to improve surface water quality being discharged off site. Opportunities to enhance biodiversity and amenity value on the proposed development have also been explored.

3.1.6. Following discussions with the LLFA and our knowledge of the history of flooding downstream of the site (in places such as the lower areas of School Road and Allison Road), it has been proposed that the surface water discharge from the development is limited to the Qbar greenfield runoff rate for all events up to and including the 1 in 100 year rainfall event + 40% climate change. This should ensure that flooding is not increased downstream of the site.

3.1.7. BCC have also confirmed that a 4% allowance for urban creep is to be utilised in the design in line with the LASOO Industry Guidance and West of England Developer Design Guide. Table 2 below compares the proposed discharge rates against the existing discharge rates.

Site Catchment	Existing Discharge Rate (Qbar)	Existing Discharge Rate 1 in 100year	Proposed Discharge Rate 1 in 100year +40%
A	0.7 l/s	1.6 l/s	2.5 l/s
B	17.8 l/s	43.0 l/s	17.8 l/s
C	17.3 l/s	41.9 l/s	17.3 l/s
D	2.3 l/s	5.6 l/s	2.5 l/s

Table 2 – Existing vs Proposed Surface Water Discharge Rates

- 3.1.8. In line with CIRIA C753 (the SuDS Manual), a minimum flow control opening of 75mm is recommended based upon sewerage undertakers requirements in order to significantly reduce the risk of blockages occurring within the drainage system and lead to flooding. The only exception to this requirement, where flow control openings with a smaller than 75mm opening are acceptable, is when the flow control is located immediately downstream of permeable pavements or other filtration devices where the risk of blockage is considered to be very small. As such, a flow control device with a minimum opening size of 75mm will usually provide a discharge rate of 2.5l/s or greater and on this basis, the proposed discharge rates for Catchments A and D have been slightly increased to 2.5l/s, (refer to Table 2 above).
- 3.1.9. Concerns have been raised with regards to the loss of green space being available to absorb rainwater along with the increase in hard surfacing (paving & tarmac), which would significantly contribute to the risk of flooding. In addition, parties have suggested that the Culvert in Victory Park is already prone to flooding over School Rd and Down Jean Rd into Brislington Brook, which is identified Nationally **as " at Risk" of flooding so a mistake here could subject hundreds of home** in the valley to increased flood risk the 1968 Floods, which were caused by a summer storm and could potentially be made worse by climate change sin future.
- 3.1.10. However, by limiting the flows as outlined in Table 2 above, lower peak flows will be discharged downstream of the site when compared to the current site conditions. This will ensure that flood risk will not be increased downstream of the site including the lower areas of Allision Road and School Road. The reduction in peak flows is achieved by providing SuDS features within the proposed development in order to store the surface water generated and slowly release the water at rates stipulated in Table 2. The development masterplan clearly demonstrates that sufficient space has been allocated for the SuDS features to ensure surface water can be stored adequately and the required discharge rates achieved.
- 3.1.11. The drainage strategy is also considers the effects of climate change and factors of safety are incorporated into the calculations in accordance with the industry guidance.
- 3.2. Foul Water Strategy
- 3.2.1. The proposed foul water strategy will consist of a three below ground foul water drainage networks. The foul will be collected and directed from the development and discharged into the public foul sewer network located within the adjacent roads. Due to the site topography, pumping stations will be required to pump flows uphill to the respective discharge points. Consultation with regards to the suitable points of connection for the foul discharge, as well as respective flow rates and

available capacity in the system have been conducted with Wessex Water and incorporated into the FRA&DS report.

3.2.2. In summary, the foul drainage strategy for the site has been split into 3 catchment areas and the agreed discharge points are discussed below:

- Catchment A will discharge its foul flows into the existing 225mm public foul sewer located in The Rock road west of the site. Due to the site's steep topography, a pumping station and rising main will be required.
- Catchment B will discharge its foul flows into the existing 225mm public foul water sewer in Bonville Road.
- Catchment C will discharge its foul flows into the existing 225mm public foul water sewer in Broomhill Road.

**Appendix 10: 'Bristol Mayor Marvin Rees
says no homes will be build on green field
site due to ecological emergency' Bristol Live
Online Article (16 April 2021)**

Bristol Mayor Marvin Rees says no homes will be built on green field site due to ecological emergency

Homes England bought the site last year

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Mayor Marvin Rees has announced plans not to develop on the contested Brislington Meadows patch in Bristol (Image: James Beck/BristolLive)

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Marvin Rees said that, if Brislington Meadows was built upon, the damage to the environment and ecology would be greater than the benefits of building new homes.

The announcement was made as part of Mr Rees' re-election campaign as mayor, as Bristol goes to the polls in less than three weeks' time.

Mr Rees said he was announcing the decision to not build on Brislington Meadows, and cited the 'ecological emergency' declared by Bristol City Council in February 2020 as 'the key priority'.

Two months after that declaration, in late April 2020, [the land was bought by Homes England](#), the Government's housing agency.

That deal saw the parts of Brislington Meadows owned by Bristol City Council, and the parts owned by London investment firm Olympia & Hammersmith, both sold to Homes England, which would then work on plans for as many as 300 homes on the fields.

Mr Rees said he had now determined that the impact developing the land would have on the natural environment and wildlife is 'too great, as the ecological importance of the area became clear'.

He announced there would now be 'zero development on the site'. "We need to balance our response to the housing crisis with our response to the ecological crisis," he said.

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“Tackling them both at the same time isn’t mutually exclusive – and of course, we can only meet our climate targets if we continue to build eco-friendly homes and retrofit our houses so they’re more energy efficient,” he added.

“We were the first council to declare an ecological emergency. Brislington Meadows region is rich in biodiversity and supports a thriving ecosystem – we’re protecting our natural environment, while delivering on our housing goals.


“The meadows were included in a housing plan in 2014 before we fully understood the size of the ecological crisis. Working with Avon Wildlife trust and other city partners, we are reviewing the plan against the ecological need,” he added.

“We’ve tripled affordable housebuilding and built 9,000 homes since 2016, with thousands more in the pipeline. But in the case of Brislington Meadows the disadvantages of developing the site outweigh its advantages,” he added.

The news was welcomed by environmentalists in the city. Ian Barrett, Chief Executive of Avon wildlife Trust said: “Brislington Meadows is an important habitat for wildlife, which provides vital access to nature for local people.



LOADING

 (Image: Google Maps)

"As the city's ecological emergency declaration shows, there is an urgent need to make space for nature to halt and reverse wildlife declines that are undermining the life support systems on which we all depend.

"The Trust welcomes all commitments to protect habitats and green space for the benefit of people and wildlife," he added.

And the news was welcomed by Green Party mayoral candidate Sandy Hore-Ruthven, although he questioned the timing of the announcement.

"I'm pleased that after five years in office, the Labour Mayor has noticed there is an ecological emergency," he said.

"However, they sold the land only a year ago - well after the declaration of the ecological emergency.

"The question is, will Labour stick to this promise or is this really electioneering? We have heard promise after promise about the environment but very little real action. We are committed to protecting our green spaces for our communities and wildlife"

The saga of Brislington Meadows

The city council first earmarked Brislington Meadows as a site for development back in 2014, under George Ferguson's tenure as mayor, and ever since then there has been a local campaign against building on those fields, with people living around the large green field site pointing out it was a wildlife-rich oasis left undeveloped from farmland when post-war



Bristol City Council had been trying to buy the land from the London-based investment company to develop it itself for years, and when the deal with Homes England was announced in April 2020, the then-cabinet member for housing Paul Smith described it as a 'very sensitive site'.

"We owned the access where the roads would go in but the fields were owned by Olympia & Hammersmith," he said at the time.

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► Controversial plans for 300 homes on fields in Brislington could now go ahead

"We entered into negotiations for quite a long time but they were not that interested in selling the land.

"Then last year Homes England told us they could buy the land and that the affordable housing could be council housing.

"That seemed like a good deal for us because we do not have to fork out any money but we could still be guaranteed the social housing on the site and we would get a capital receipt for our two bits of land, the access points, to pay for the housing.

"Homes England found the negotiations with the investment company hard-going but they have announced that they've managed to purchase the site."

He said the development would have low-density housing because of environmental factors. "It is a very sensitive site because of the ecology and the open space that is available for people to use," the then Cllr Smith said last year.

"This reduces how many homes you can build because you need to be sensitive to the issues.

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"There was a lot of local opposition in 2014 when the council decided to build there, including from the late Labour Cllr Mike Langley who was very strongly opposed to building there, so we will have to do a lot of work with the local community to make sure we get something that is as acceptable as possible."

In January this year, [Bristol Live reported that Homes England were working up](#) its plans for 300 homes on the Brislington Meadows, and anticipated submitting a planning

Privacy August this year.



back until after the May elections, because of rules which apply during the pre-election period, previously known as *purdah*, which prevent major announcements being made.


"Public consultation has been pushed back to the end of May due to the [local elections](#) in early May and the necessary period of [purdah](#)," Bristol Live [reported](#).

Brislington Meadows are in the Brislington East council ward, which will send two councillors to City Hall in the May 6 elections.

At the moment, one is long-standing councillor Tony Carey, who has switched from Conservative to Liberal Democrat since the last election, and the other is Tim Rippington, who won a by-election in January 2020 for Labour by just over 200 votes.

He said he was delighted at the news of the Mayor's announcement.

LOADING

 **Mayor Marvin Rees has announced plans not to develop on the contested Brislington Meadows patch in Bristol** From left: Tim Rippington (cllr for Brislington East), Kerry McCarthy (MP for Bristol East), Mayor Marvin Rees and Katja Hornchen (candidate for Brislington East). (Image: James Beck/BristolLive)

"The area is a vital green space which is well used by local people as well as being a very important site for biodiversity," said Cllr Rippington.

"I appreciate the need for affordable housebuilding across the city, and agree this needs to be balanced with our environmental and ecological commitments.



in the future," he added.

Brislington Meadows is the land left over and undeveloped as Brislington expanded with Broomhill to the north, the industrial estates to the south east and the residential areas of School Road to the west.

The site is still earmarked for development in the Local Plan, until the Local Plan is rewritten - something that has to go through a legal council process.

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**Appendix 11: Appeal Decision (3286677) for
Land at Rectory Farm, Yatton**

Appeal Decision

Inquiry Held on 1-4 March, 8 and 9 March 2022

Site visit made on 13 April 2022

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 15th June 2022

Appeal Ref: APP/D0121/W/21/3286677

Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU

- 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 Mead Realisations Ltd against the decision of North Somerset Council.
 - The application Ref 21/P/0236/OUT, dated 22 January 2021, was refused by notice dated 12 May 2021.
 - The development proposed is outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval at Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU in accordance with the terms of the application, Ref 21/P/0236/OUT, dated 22 January 2021, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The following Statements of Common Ground (SoCG) were submitted to the Inquiry:
 - Five Year Housing Land Supply SoCG;
 - Highways and Transport SoCG;
 - General SoCG and
 - Biodiversity Net Gain SoCG
3. The application was supported by a number of plans, reports, and technical information. A full list of the drawings and supporting documents which accompanied the application is set out at paragraph 1.2 of the General SoCG. Further, it was agreed at the Inquiry that the plans on which the appeal is to be determined are as follows:
 - Site Location Plan - Reference number 1037-PL03A

- Topographical Survey Drawing Number 14730-TS01
- 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
- 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
- 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
- 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
- Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01

It was also agreed that Site Masterplan Drawing Number 1037-PL01/A was submitted for illustrative purposes.

4. I held a Case Management Conference (CMC) online on 13 January 2022. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry, conditions, planning obligations, core documents, plans, the timetable for submission of documents and other procedural matters. I prepared and distributed a summary note of the proceedings.
5. At the CMC I indicated that the fourth reason for refusal (RfR) relating to highways would be considered as a main issue. However, since then, a Highways and Transport SoCG was agreed between the main parties which indicates that there are no residual matters in dispute in relation to highways, transport and travel and therefore this matter is no longer being pursued by the Council subject to agreement on planning conditions and obligations.
6. At the Inquiry a Planning Obligation was submitted.¹ The Planning Obligation is made by an Agreement between the Appellant, North Somerset Council (NSC), the First and Second Owners of the land, and Lloyds Bank PLC under s106 of the TCPA 1990. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable. The s106 Agreement is signed and dated 22 March 2022 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement² was also submitted in support of the Planning Obligation.
7. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.³ As a result of additional recreational pressure on the Biddle Street SSI, the UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling. The UU is signed and dated 22 March 2022 and is a material consideration in this case. The contributions in the UU are justified in a separate document.⁴ I return to both the Planning Obligation and the UU later in this decision.
8. The appeal proposal was screened for Environmental Impact Assessment (EIA) by the Council, and it was determined that EIA was not required. I agree with the negative screening that was undertaken by the Council.

¹ APP5

² LPA2

³ APP6

⁴ APP7

Main Issues

9. In the light of the above I consider the main issues are:

- (i) Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall;*
- (ii) Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy;*
- (iii) The impact of the proposed development on Ecology and Biodiversity;*
- (iv) The effect of the proposed development on the character and appearance of the area;*

Reasons

Planning Policy context

10. The appeal site comprises some 4.15 hectares of land including a residential dwelling, a complex of agricultural buildings and areas of outdoor storage and hardstanding to the north and undeveloped land to the south. The site is located to the south-west of Yatton directly adjacent to the settlement boundary and to the east of the Strawberry Line. Existing residential development lies to the east with pasture and fields adjoining the remaining boundaries.
11. The appeal proposal seeks outline planning permission for residential development comprising up to 100 dwellings and associated infrastructure. All matters are reserved for future consideration except for access, details of which form part of the appeal proposal. The proposal includes a main vehicular access to the site off Chescombe Road to the northern and southern parcels. The Illustrative Site Masterplan demonstrates how internal access to individual plots could be achieved.
12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:
 - North Somerset Core Strategy (2017) (CS)
 - Sites and Policies Part 1: Development Management Policies (2016) (DMP)
 - Sites and Policies Plan Part 2: Site Allocations Plan (2018) (SAP)
 - Yatton Neighbourhood Plan (2019) (YNP).
13. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in the General SoCG.⁵ The most important policies for determining the appeal are set out in the Notice of Decision, save for Policy DM8, which is plainly relevant and important but appears to have been omitted from the latter category by mistake. The most important policies are: CS4, CS5, CS9, CS14, CS32, DM8, DM9, DM10, DM24 and DM25. Policy

⁵ Paragraph 3.2

CS13 is agreed not to be one of the most important policies in this appeal. There is no need for me to repeat these policies here.

14. The Council is preparing a new Local Plan, which will include strategic and non-strategic policies, for the period 2023-2038. A Regulation 18 'Preferred Options' document is expected to be agreed for consultation in 2022. The Local Development Scheme indicates that the Regulation 19 Pre-submission document will be approved in late 2022, followed by submission for examination in early 2023 and adoption by the end of 2023. Limited weight can be afforded to the policies and proposals of the draft plan at this time.
15. The Council refers to the YNP in the first RfR. The YNP was made in July 2019 and covers the period 2017-2026. The YNP sets out a number of business, environment, transport and housing objectives which I have taken into account in this case. In relation to housing objectives the Plan includes one small allocation on a brownfield site under policy HP1. The YNP does not contain policies and allocations to meet its identified housing requirement.
16. The Supplementary Planning Documents relevant to this appeal are agreed by the parties and are set out in the General SoCG.⁶ I have considered these documents and taken them into account in coming to my decision in this case.
17. Case law has determined that it is the basket of most important policies as a whole that is the relevant consideration. As to whether the basket of most important policies as a whole is out-of-date in the context of paragraph 11 d) of the NPPF and the weight that should be attached to each policy are matters that I shall return to later in this decision.

First Issue - Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall

18. Paragraph 74 of the NPPF sets the requirement for Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.
19. For the purpose of this appeal it is agreed that the period for consideration of the 5YHLS is from 1 April 2021 to 31 March 2026. According to Policy CS13 of the Core Strategy the current adopted housing requirement is 20,985 dwellings for the plan period 2006-2026. On the basis that more than 5 years have passed since adoption of the Core Strategy and in accordance with paragraph 74 of the NPPF, the 5YHLS position should be assessed against the local housing need figure, calculated using the standard method. The standard method housing requirement of 1,323 dwellings per annum applies.
20. Since the Council published their Five-Year Housing Land Supply Initial Findings Statement (April 2021),⁷ the fourth Housing Delivery Test results were published on the 14 January 2022. The Council reported that it delivered 2,563 dwellings against a requirement of 2,877 in the 3-year period 2018-21. This was 89% of the requirement which means that a 5% buffer should now be applied. Including a 5% buffer the annual requirement is 1,389 dwellings per annum (6,946 over 5 years).

⁶ Paragraph 3.4

⁷ CD51

21. At the outset of the Inquiry a Five Year Housing Land Supply SoCG was provided. The table attached at Appendix 3 of the SoCG provides the Council's and the Appellant's position in relation to the supply and identifies those sites which are disputed by the Appellant. The Council considers that the evidence listed at Section 2 of this SoCG provides clear evidence that the disputed sites are deliverable in accordance with the definition of 'deliverable' contained at Annex 2 of the NPPF. The table at paragraph 1 of the SoCG indicates the respective positions of the Council (5.6 years) and the Appellant (3.2 years) at the outset of the Inquiry.
22. The Council accepts that in recent years it has struggled to secure a 5YHLS. Reference is made to the difficulties stemming from reliance that is placed on large, predominantly brownfield sites within the Weston Urban Area and the Weston Villages, which account for 30% and 31% respectively of the land allocated to meet the requirements of Policy CS13.⁸ Whilst this may be so, it is clear from the Council's latest AMR (2020) and the Residential Land Survey Headline Findings April 2021 that in the period from 2006/07 to 2020/21 the Council only delivered 12,273 dwellings against the annualised Core Strategy requirement of 15,735 dwellings; a shortfall of 3,462 dwellings.⁹ Even up to the point of the Council's determination of the appeal proposal at application stage, the Council accepted that it did not have a 5YHLS.¹⁰
23. The Council's poor track record resulted in a series of appeal decisions all of which confirmed the absence of a 5YHLS,¹¹ and have required it to produce an action plan each year since 2019. The North Somerset Housing Delivery Test Action Plan July 2021 includes a table of past performance which establishes the failure to achieve the required delivery in any of the years back to 2010/11.¹² There are no specific targets or timescales set out in the Action Plan and Mr Jewson was clear that he was not aware of any evidence that it has resulted in an increase in the supply of housing over and above what would have occurred anyway.¹³
24. Moreover, since the Action Plan was first prepared in 2019, the preparation of a new local plan has been delayed.¹⁴ Though there was a re-examination of the Core Strategy during which Policies CS28, CS31 and CS32 were amended to provide flexibility to help boost the supply of housing by allowing development outside certain settlement boundaries, including the Service Villages, Mr Jewson confirmed that very few sites have been approved by the Council under these circumstances;¹⁵ he noted just two – one for 56 dwellings and one for 24 dwellings.¹⁶
25. Following the 5YHLS Roundtable Session on day one of this Inquiry, the parties' witnesses compiled a Scott Schedule¹⁷ and a Final 5YHLS Position Statement¹⁸ setting out their most up-to-date positions. The parties disagreed about the supply of deliverable sites.

⁸ LPA4 paragraph 13

⁹ Paragraph 4.8 and Table 1, 5YHLS PoE of Ian Jewson

¹⁰ Paragraph 4.9, 5YHLS PoE of Ian Jewson

¹¹ Paragraph 4.10, 5YHLS PoE of Ian Jewson

¹² Page 3, CD50

¹³ Paragraph 4.15, 5YHLS PoE of Ian Jewson. EIC and XX of Ian Jewson

¹⁴ Paragraph 4.14, 5YHLS PoE of Ian Jewson

¹⁵ Paragraph 4.16, 5YHLS PoE of Ian Jewson

¹⁶ In XX

¹⁷ APP10

¹⁸ APP9

26. The definition of 'deliverable' is set out within Annex 2 of the NPPF, which states:

"Deliverable: 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".*

27. The PPG guidance on 'Housing supply and delivery' provides guidance as to what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking and notes¹⁹ that *"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."* The PPG is clear on what is required. It provides examples of what clear evidence *"may include,"* namely:

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

28. The burden of including in the supply sites other than those which do not involve major development and have planning permission, or have detailed planning permission, is placed on the Council who must provide the clear evidence to meet the realistic prospect test. The Scott Schedule²⁰ and the Final 5YHLS Position Statement²¹ helpfully set out the main sites where the parties differ. I have assessed the respective positions in light of the

¹⁹ Paragraph 007 Reference ID: 68-007-20190722

²⁰ Ibid

²¹ Ibid

definition of 'deliverable' as set out within Annex 2 of the NPPF and the PPG guidance as to what constitutes a 'deliverable' housing site.

29. With regard to Land north of Youngwood Lane, Nailsea (Site Ref: 4/596), outline permission for the whole site was granted on appeal for 450 dwellings in 2019 and Reserved Matters for 168 dwellings was granted in 2021 but included under Site Ref: 4/596a. In relation to the remaining 282 dwellings the Council has provided no clear evidence of delivery in relation to the planning status, firm progress towards a detailed planning application/site assessment or site constraints which would justify inclusion in the 5YHLS. I accept that the detailed alignment of the link road has now been confirmed. However, there is no detailed permission for the 200 units in Phase 2 and the delivery rate of 100dpa is not based on any evidence. In my view 200 dwellings should be deducted from the Council's estimate.
30. With regard to Weston Villages, Locking Parklands (Site Ref: 4/558a-c), the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of all the dwellings included in the 5YHLS. A total of 559 dwellings (309+250) out of a total of 1,450 have detailed permission of which 467 have been completed leaving 92 left to complete. In addition, 124 dwellings are likely to be delivered from the Curo Homes Reserved Matters application. In total 216 dwellings can be included in 5YHLS. There is no clear evidence to support further delivery at this time so 424 dwellings should be deducted (640-216=424).
31. With regard to Weston Villages, Land south of Churchland Way (Site Ref: 4/558d) again the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify the Council's 5YHLS assumptions. Outline planning permission for 1,150 dwellings was granted in April 2015. This site is linked to Weston Villages, Parklands, Mead Fields, south of Wolverhill Road, (Site Ref: 4/558g) where an outline for up to 250 dwellings was granted in October 2017. A total of 674 (586+88) dwellings has detailed consent across both sites and 91 of those have been completed leaving 583 to be constructed. Up to date build rates are provided by Bellway Homes and Taylor Wimpey and are used in the Appellant's figures. Taylor Wimpey have detailed consent for 88 dwellings on Site Ref: 4/558g but these will be constructed in one phase with one outlet so are included in this supply source. The remaining dwellings in Site Ref: 4/558g do not have detailed consent and there is no clear evidence of delivery. As such 508 units (258+250) should be deducted from the Council's trajectory for the two sites when taken together.
32. With regard to Weston Villages – Winterstoke, Haywood Village (Site Ref: 4/568) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of the remaining dwellings within the 5YHLS. Outline planning permission for up to 900 dwellings was granted in August 2012 and 898 dwellings approved at Reserved Matters stage. A further outline consent was approved in January 2018 for 1,650 dwellings and 729 dwellings approved at Reserved Matters stage. Persimmon have provided an up-to-date trajectory including explanation of no dual branding and this has been used in the Appellant's figures. It follows that 371

dwellings are assumed in the 5YHLS as Persimmon figures are based on their year-end rather than April start date. The Council relies on a much higher build rate to justify its future assumptions. However, based on information provided by the developer the number of dwellings that will be delivered from this site should be reduced by 710 dwellings from the Council's trajectory.

33. With regard to Station Gateway, Weston-super-Mare (Site Ref: 4/645) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion in the 5YHLS. The site is allocated for 300 dwellings in the SAP. The proposal requires a flood risk and sequential test assessment. I accept that this is a key site which the Council wishes to bring forward and is in the process of acquiring. However, no details of constraints, planning application process or Network Rail consultation are provided. The Council refers to a Commissioning Plan for the procurement of a developer, but this can be a slow and complicated process. No developer has been identified and land acquisition has yet to be completed. In my view 200 dwellings should be deducted from the Council's estimate.
34. It is not necessary for me to go through all of the disputed sites in paragraph 3 of the Final 5YHLS Position Statement²² and the Scott Schedule.²³ I am satisfied that the Council's supply evidence is conspicuously weak and severely lacking in substance. There is no clear evidence before me that would suggest that the Council's assumptions would deliver the completions suggested in its trajectory in the next five years and meet the realistic prospect test. Much of the Council's evidence constitutes mere assertions and does not come anywhere close to what is envisaged by the PPG.
35. At paragraph 4 of the Final 5HLS Position there is an up-to-date table of the deliverable supply which replaces that at paragraph 5.1 of the Housing Land Supply SoCG. The difference between the main parties now comes down to the Council's position that it has a 5.5 year supply of deliverable housing sites and the Appellant's position that instead it is a 3.2 years' supply. The updated 5YHLS figures include four scenarios which include different reductions from the small sites source. However, in reality, these reductions make little difference to the final position calculations. Plainly, from all the evidence that is before me, the Appellant's position is preferred. Although the Council maintains there is a 5.5 years' land supply, in my view, there is only a housing land supply equivalent to **3.2 years**.
36. In the absence of being able to demonstrate a 5YHLS, the most important policies for determining the application are irrefutably deemed to be out of date under paragraph 11(d) of the NPPF and the tilted balance applies subject to any protective policies in the NPPF which provide a clear reason for refusal. The YNP does not alter this position, firstly, because there is no conflict with it (and no specific policy conflict is even alleged) and secondly, because it does not seek to meet an identified housing requirement through its sole allocation.
37. If no 5YHLS exists, case law suggests that it is important to gauge how large it is at least in broad terms. The Council agreed that extent of the shortfall is relevant to weight.²⁴ In *Hallam Land Management Ltd v Secretary of State* for

²² APP9

²³ APP10

²⁴ Neil Underhay in XX

Communities and Local Government [2018] EWCA Civ 1808,²⁵ the Court made plain that the extent of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. In a 5YHLS shortfall scenario two things are relevant; (i) the extent of the shortfall and (ii) retrievability i.e., how likely or quickly it will be made up. I return to these legal consequences in the planning balance later in this decision. I conclude on the first issue that the Council cannot demonstrate a five year housing land supply and that the extent of the shortfall is significant.

Second issue - Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy

38. This issue relates to RfR1 and the Council's assertion that the appeal proposal would deliver a scale of development that conflicts with the spatial strategy of the development plan. The Council states in RfR1 that the proposed development would be contrary to policies CS14 and CS32 of the Core Strategy and the made YNP.
39. However, at the Inquiry, the Council seemed to abandon the position taken in RfR1 that the development is not in accordance with the YNP. In cross examination Mr Underhay confirmed that there was in fact no conflict with any specific YNP policy. He argued that the scale and location of the proposal would be in conflict with the environmental objectives of the YNP. However, he accepted that the development plan is made up of its policies and the supporting text cannot impose criteria which are not contained in the policies themselves.²⁶ He also confirmed that the Inspector is not looking at a three-year threshold for housing land supply because there is no conflict with the YNP and therefore NPPF paragraph 14 is not engaged here. I agree that there is no conflict with the YNP.
40. Policies CS14 and CS32 are agreed to be most important policies for the purpose of determining this appeal.²⁷ Based on the minimum housing requirement set out in Policy CS13 of the Core Strategy, Policy CS14 provides for a broad distribution of housing based on an identified settlement hierarchy which includes nine Services Villages. 'Service' villages include a wider range of services and facilities than the smaller 'infill' villages, but significantly less than smaller towns. The appeal site is in Yatton, one of the nine 'Service' villages in North Somerset. There are no development plan limits for the number of new dwellings at individual service villages. Policy CS32 of the Core Strategy seeks to guide new development "within or adjoining the settlement boundaries of the Service Villages."
41. The appeal site adjoins the Yatton settlement boundary. It is not allocated for development in the SAP or YNP. Policy CS14 supports small-scale development within or abutting service village settlement boundaries. However, it does not place a complete bar on development beyond the settlement boundary of Yatton. Development outside the settlement boundaries will only be acceptable where a site is allocated in a Local Plan or where it comprises sustainable development which, in the case of Yatton,

²⁵ CD69

²⁶ R (Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ 567

²⁷ Paragraph 3.2, General SoCG

accords with Policy CS32. That policy confirms that “*sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans*”. Mr Underhay confirmed²⁸ that the policy objection which really founds RfR1 is that the proposed development would be outside the settlement boundary and above 25 dwellings thus not plan led.

42. Plainly, as most important policies, where there is no 5YHLS, neither Policy CS14 nor CS32 can be given full weight. Mr Underhay argued that at least significant weight is appropriate, noting the policy purpose to direct housing to more sustainable settlements according to the hierarchy which in his view remained a “*sound principle to uphold*.”²⁹ However, in my view, only limited weight can be afforded to these policies given that there is no 5YHLS and the extent of the shortfall is significant at 3.2 years.
43. Moreover, I note that there is nothing in Policy CS32 that would prevent, subject to appropriate compliance with the bullet points therein, four schemes of 25 units coming forward over time. There is “*no numerical target to aim for or be constrained by*” in Policy CS32 as to the number of 25 dwelling schemes which might be granted permission,³⁰ and the policy applies to individual applications such that there could be a series of applications coming forward.³¹ At the Inquiry Mr Underhay acknowledged³² that if there is a need for 100 units somewhere in Yatton, in principle one single scheme may cause less harm and deliver more cumulative benefits than four scattered ones. Although the correct approach would be to pursue these proposals through the Local Plan process, Mr Underhay agreed³³ that if there is no 5YHLS there may be more scope in terms of numbers to be permitted in a scheme pursuant to Policy CS32.
44. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. It:
 - includes an Illustrative Site Masterplan and Design and Access Statement which demonstrates how the form, design and scale of development respects and enhances the local character, contributes to place making and reinforces local distinctiveness. The Council did not raise concerns in relation to general design matters;
 - includes a range of dwellings to meet local needs. The Council did not raise concerns in relation to the size, type, tenure or overall range of housing;
 - would not cause significant adverse impacts on services and infrastructure and the local infrastructure is sufficient to accommodate the demands of the development. Where necessary planning obligations will be secured via a legal agreement to provide necessary contributions and infrastructure;
 - would result in a high-quality sustainable scheme which is appropriate to its context and would make a positive contribution to the local environment and landscape setting;

²⁸ In XX

²⁹ In EIC

³⁰ Neil Underhay in EIC

³¹ Neil Underhay in XX

³² In XX – depending on the cumulative effects and merits of the case

³³ In EIC

- would not result in significant adverse cumulative impacts (such as highway impacts) likely to arise from existing and proposed development within the wider area;
 - maximises opportunities to reduce the need to travel and encourages active travel modes and public transport;
 - and demonstrates safe and attractive pedestrian routes to facilities within the settlement within reasonable walking distance.³⁴
45. The Council also accepted that subject to agreement on conditions and obligations proximity to services was probably not an objection. Mr Hutcheson gave unchallenged evidence as how there is a good connectivity to and from the site by different modes of transport.³⁵ The Council also accepted that if there is only about 3.2 years' supply, then that would be regarded as a significant shortfall and probably the balance weighs in favour of the scheme.
46. Drawing these threads together it is clear to me that the appeal proposal of up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is therefore contrary to Policies CS14 and CS32 of the Core Strategy. There is no conflict with YNP policies. However, there is no 5YHLS in this case and indeed there is a significant shortfall and therefore Policies CS14 and CS32 cannot be given full weight - rather these policies can only be afforded limited weight. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. I need to assess the Council's concerns in terms of ecology and landscape in the third and fourth issues before assessing the overall planning balance. On the second issue I conclude that the scale and location of the development would be in conflict with the Council's Spatial Strategy.

Third Issue - The impact of the proposed development on Ecology and Biodiversity

47. RfR2 indicates that the proposed development would have a significant effect on the North Somerset and Mendip Bats SAC and result in operational impacts and increased recreational pressure on the Biddle Street SSSI. It also alleges that the proposed development fails to demonstrate that a biodiversity net gain (BNG) can be achieved on site and the proposal is contrary to Policies CS4 and DM8, the North Somerset and Mendip Bats SAC SPD and the NPPF.³⁶

The SSI and Reptiles

48. With regard to the impacts of the proposed development upon the Biddle Street SSSI it is clear that these have been considered by Mr Clarkson. Though the development has potential to contribute towards increased levels of pressure upon the Strawberry Line, positive and appropriate measures are proposed to both help manage the existing and increased levels of

³⁴ Paragraph 7.5 of PoE of Ian Jewson

³⁵ See revised TA at Appendix A to his PoE

³⁶ In RfR2 reference is made to paragraphs 175 and 177 of the NPPF. The current references for these paragraphs are 180 and 182 of the NPPF 2021

recreational impact such that adequate protection of the SSSI could be maintained during both the construction and operation of the development.³⁷

49. The Council agreed that the risks to the SSSI could probably be tackled by condition.³⁸ Additional measures, including the installation of bins and litter picking, have been proposed and would be secured via the Appellant's UU. The Council also confirmed that planning conditions could avoid any risk to protected species such as slow worms, grass snakes and badgers.³⁹ There is no mention in RfR2,⁴⁰ which deals with ecological concerns, of any alleged impact on these considerations.

Biodiversity Net Gain (BNG)

50. Since the experts provided their proofs on ecology matters, further common ground was reached as set out in the BNG SoCG. That makes clear that the fundamental difference of approach between the Council and Appellant is now how the habitats required to compensate for impacts on bats are used in contributing to a net gain calculation.⁴¹
51. The Appellant's view is that all BNG provided within the bat mitigation area can be used against the whole development to a point of no net loss with the urban habitats (and others not accessible to bats) providing net gain.⁴² Indeed, their BNG assessment demonstrates how the proposal would deliver a substantial gain (103% gain in area-based habitats and a 56% gain for linear habitats – considerably more than what is required by law or policy).⁴³
52. The Council disagrees and considers that biodiversity gain secured within the bat mitigation habitats should be discounted. Even if the Council is right, the Appellant argued that the appeal scheme remains consistent with paragraph 180c of the NPPF (which, unlike the Environment Act 2021, which does not apply to this appeal, does not require a particular percentage BNG).
53. As I perceive it, BNG can be dealt with either by conditions or within the s106 obligations. That is agreed between the parties, as confirmed in the Council's opening.⁴⁴ The difference between the parties is essentially one of methodology. If the Council is right, the Appellant could overcome the issue by providing BNG off site under the terms of a planning condition.⁴⁵ Accordingly, BNG no longer amounts to a reason to dismiss this appeal.

Habitats

54. Given the above position, the Council accepted in opening that its principal ecological issue is the impact of the development on bats.⁴⁶ It was the Council's position at the opening of the Inquiry that development on the scale

³⁷ Paragraphs 4 and 7, Summary PoE of Tom Clarkson.

³⁸ Paragraph 8, Council's Opening, LPA 1 and Dr Carpenter PoE paragraphs 4.2.17 and 4.2.18

³⁹ Paragraph 8, Council's Opening, LPA 1

⁴⁰ Accepted by Dr Carpenter in XX

⁴¹ See paragraph 11, BNG SoCG

⁴² See paragraph 12, BNG SoCG

⁴³ Paragraph 4.1.71, PoE of Tom Clarkson and Policy CS4 2 in CD1

⁴⁴ Paragraph 7, Council's Opening, LPA1

⁴⁵ Paragraph 7, Council's Opening, LPA1

⁴⁶ Paragraph 9, Council's Opening, LPA1

that is proposed would amount to a clear RfR in terms of such resultant impact.⁴⁷ However, matters moved on during the Inquiry.

55. The Appellant argued that there were no obstacles under the Habitat Regulations which prevented the grant of planning permission, rather, the proposals represented an "*exemplar*" of how ecological impact assessment could be used to identify, safeguard and enhance key ecological habitats.⁴⁸ The Council maintained that the proposed development, due to its close proximity to the North Somerset and Mendip Bats SAC, would have a significant effect on this habitat site, a European protected site. Moreover, it is argued that the survey evidence and consultation with Natural England (NE) suggest that SAC bats would be adversely affected by the development. It is also claimed that the proposed mitigation measures do not prioritise on-site mitigation and that the proposed off-site mitigation is unsuitable.

The Habitats Regulations

56. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires a competent authority – in this case the Inspector – before deciding to give planning permission for a project which is "*likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects)*" and "*is not directly connected with or necessary to the management of that site*" to make an appropriate assessment of the implications of the project for that site in view of that site's conservation objectives. Regulation 63(6) is clear that "*in considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given*".
57. Regulation 70 deals with the grant of planning permission and at (3) states that "*where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters*".
58. Accordingly, the real issue between the parties is whether or not, subject to conditions, adverse effects on the integrity of the North Somerset and Mendip Bats SAC can be ruled out.

The Imposition of a Grampian Condition

59. Before carrying out the Habitats Regulation Assessment (HRA) it is important to consider relevant case law cited in evidence by the Appellant which refers to the imposition of a Grampian Condition. The Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin)⁴⁹ is a helpful authority in assessing the extent to which detailed information is required at outline stage to comply

⁴⁷ Paragraph 9, Council's Opening, LPA1

⁴⁸ Paragraph 8.1.5, PoE of Tom Clarkson

⁴⁹ APP3

with Regulation 70(3).⁵⁰ The Court was clear that any suggestion that all details of matters which could affect site integrity has to be provided at outline stage is a misunderstanding of the Regulations. Paragraphs 152 and 159 of the Judgment, in particular, are noteworthy.⁵¹

60. The Council relied on paragraph 99 of Circular 06/05.⁵² However, it seems to me that this must be read through the lens of paragraph 98. Circular 06/05 is intended to provide guidance on how to comply with the legal obligations under Habitats Regulations, as opposed to providing additional hurdles that go above and beyond (or 'gold plate') the tests under the Regulations. The Council did not challenge this interpretation. Under the subheading 'Purpose of the Circular',⁵³ it sets out that "*this Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England*". It goes on to set out that law, as it stood at the date of the Circular, in the Introduction and Context section at paragraph 3.⁵⁴ Were it the intention of the Circular to supplement or add to the statutory position, it would be clearly stated as a purpose or in the introductory paragraphs.
61. This is critical because Dr Carpenter agreed that: (a) a condition such as Condition 18⁵⁵ could ensure that adverse effects on site integrity could be ruled out – because it would provide for only two options: no development commencing, or development commencing in accordance with a survey-informed mitigation plan which would avoid adverse effects on site integrity; (b) such a condition would therefore ensure that the Habitats Regulations test is met; and (c) there would be at least some prospect of it being discharged during the lifetime of the permission which would satisfy the PPG test for a Grampian Condition. Therefore there is no tenable basis for saying that

⁵⁰ See Ground 5 from paragraph 148 of the Judgment, APP3

⁵¹ "152. In my judgment, it was apparent from the way in which the Claimant presented its submissions that essentially its case was that all details of matters which could affect site integrity had to be provided at outline stage. I accept the Secretary of State's submission in response that the Claimant has misunderstood regulation 70(3) of the Habitats Regulations 2017 as it expressly provides that the role of conditions and limitations in contributing to the avoidance of adverse effects to integrity can be taken into account when considering applications for outline planning permission. The approach contended for by the Claimant, whereby all details of matters which may affect site integrity have to be assessed at the outline stage, would effectively require an application for a full planning permission. This would render the role of outline planning permissions in relation to development requiring appropriate assessment nugatory and would mean that the wording in regulation 70(3) is meaningless.

159. The Secretary of State's decision imposed a framework of planning conditions relating to GHBs (condition 6 (Masterplan and Design Code), condition 7 (ecological mitigation strategy), and condition 12 (lighting)) which set out clearly defined parameters for the approval of reserved matters, which enabled the Secretary of State to conclude, with sufficient certainty, that the proposed development would not adversely affect the integrity of the SAC. The GHB Mitigation Plan was tied to the Masterplan and Design Code and the ecological mitigation strategy, which would require approval prior to the submission of reserved matters and/or prior to any development taking place. Under condition 6, the Masterplan and Design Code was to be formulated broadly in accordance with the submitted Design and Access Statement and Illustrative Masterplan, and specific requirements were set out at (a) to (k). The careful way in which the conditions were drafted ensured that all developers at all phases would have to comply with the Masterplan and Design Code and the ecological mitigation strategy. Under condition 15, the Construction Environment Management Plan (CEMP) and Ecological Construction Method Statement protected GHB corridors and minimised light spill during the construction phases".

⁵² APP2

⁵³ See paragraph 1, page 4, APP2

⁵⁴ On page 5, APP2. Text states: *The UK is bound by the terms of the EC Birds and Habitats Directives⁵ and the Ramsar Convention⁶. The Regulations (Natural Habitats &c.) Regulations 19947 (the 'Habitats Regulations') provide for the protection of 'European sites'⁸, which are candidate Special Areas of Conservation (cSACs) and Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive, and Special Protection Areas (SPAs) classified under the Birds Directive. The Regulations apply specific provisions of the Habitats Directive to cSACs, SACs and SPAs which require special considerations to be taken in respect of such sites.*

⁵⁵ LPA3

Circular 06/05 would prohibit such a condition. The Circular adds nothing to the Habitats Regulations test, which would be met.

62. The wording of paragraph 99 is clear that: (a) it only relates to the extent to which protected species may be affected by the proposed development and not their habitats. There is no suggestion in this case of any direct harm being caused to any protected species; (b) even ignoring that, the first sentence requires two things to be established before planning permission is granted – whether there are protected species present on site (the answer to that is known to be yes here) and the extent to which they may be affected by the development (the answer to that is also known here even if Dr Carpenter’s view about the need for more survey is accepted: Condition 18 would have the effect of ensuring that no development may happen unless the survey-informed mitigation plan demonstrates that adverse effects on site integrity can be ruled out). Even if some details of *how* that will be achieved are left over for submission and approval under the condition, there is nothing unlawful about that: as the judgment in *Abbotskerswell*⁵⁶ makes clear having regard to Regulation 70(3) of the Habitats Regulations, what matters at the outline stage is certainty of outcome not certainty of details.

Habitats Regulations Assessment (HRA)

Assessment of Likely Significant Effects

63. There are no European Sites that lie within or adjacent to the appeal site. The North Somerset and Mendip Bats SAC is located within 1.87kms of the appeal site at its nearest point and has been identified by the Appellant as requiring consideration under this HRA.⁵⁷
64. The conservation objectives of the European sites identified by the Appellant are available on the Natural England (NE) website at the following link:

<http://publications.naturalengland.org.uk/publication/6252034999189504?category=5374002071601152>

I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.

65. The Appellant acknowledges that the appeal site is of ‘Regional’ level importance for *Greater Horseshoe Bats* and *Lesser Horseshoe Bats*. Its particular attraction to these Annex 1 species arises from its proximity to the King’s Wood and Urchin Wood SSSI, which forms a component part of the SAC. I note that the appeal site lies within the Consultation Zone B of the North Somerset and Mendip Bats SAC SPD reflecting the likely importance of the area to SAC bats. As such the development may result in adverse impacts on the SAC Annex 1 species through the loss of foraging habitat on the site, the fragmentation of commuting routes and cumulative impacts.
66. Bat surveys were undertaken by the Appellant on both fields and the farmyard which cover the wider site between April and October 2020. This included undertaking static detector surveys to meet the minimum survey standards

⁵⁶ APP3

⁵⁷ Tom Clarkson’s PoE, Appendix B: Shadow HRA Assessment page 62

set out in the North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development.⁵⁸

67. With regard to *Greater Horseshoe Bats* the static detector surveys recorded high levels of activity for this species which indicates portions of the appeal site are of significant value to foraging and commuting greater horseshoe bats particularly during the maternity season. Overall across all detectors and all months the survey recorded a total of 991 passes by greater horseshoe bats accounting for 2% of the total bat calls recorded from all detectors.⁵⁹ With regard to *Lesser Horseshoe Bats* the automated static bat detector surveys undertaken recorded a total of 1,834 passes by lesser horseshoe bats representing 3.7% of the overall calls recorded by the static detectors. High levels of activity from lesser horseshoe were recorded particularly along the southern hedgerows of the southern field which indicates portions of the site are of value to foraging and commuting lesser horseshoe bats particularly during the late summer and autumn months. The site appears to be of significant value to lesser horseshoe bats.⁶⁰
68. Generally, recorded horseshoe bat activity was the highest on the south-western boundary which bounds the Biddle Street SSSI and Strawberry Line (H4) and south-eastern hedgerow (H3) across all of the surveys completed to date. These hedgerows have the best structure and are likely to be sheltered from the prevailing winds. They are considered to be the most important hedgerows for horseshoe bats within the appeal site.⁶¹
69. The survey data suggests that H4 forms part of an important commuting route for both greater and lesser horseshoe bats, with static detector and bat activity data suggesting that the hedgerow is used consistently throughout the year. This consistent use suggests it forms a key commuting route for horseshoe bats moving from north to south in the local area. This hedgerow contributes to a corridor which links the King's Wood and Urchin Wood portion of the SAC and suitable foraging habitat to the north and east of Yatton and the Strawberry Line.
70. *Greater Horseshoe Bats* are likely to utilise the grazed pasture that sits in between the ditches associated with the Biddle Street SSSI for invertebrates including dung beetles. *Lesser Horseshoe Bats* are likely to utilise the ditches themselves to forage for emerging aquatic invertebrates. Both species also forage within the appeal site, with H3 and H4 appearing to support the most foraging activity. Generally, all of the hedgerows supported at least low levels of activity by greater and lesser horseshoe bats, and together, they are likely to significantly contribute to the connectivity of the local landscape for commuting bats.
71. The appeal proposal comprises up to 100 dwellings and associated infrastructure. The scheme would remove a large area of the improved grassland from both the northern and southern fields and result in the removal of all of the farmyard buildings of Rectory Farm, Yatton and the hardstanding areas associated with the farmyard to facilitate construction.

⁵⁸ See CD7, Tom Clarkson's PoE Appendix B Shadow HRA Assessment page 65 and CD22

⁵⁹ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 66

⁶⁰ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment pages 66-67

⁶¹ Ibid

Hedgerows and ditches would largely be retained and protected; although some impacts from lighting on these features are anticipated. The layout of the access road and buildings' orientations have been designed to reduce light spill onto retained mitigation habitats as far as is possible.

72. Short sections of hedgerows would require removal from H1, H5, H6 and H9 to create safe visibility surrounding the access road. The ditch to the north of H1 may require removal and recreation to allow the access road to be constructed. The Landscaping Masterplan shows the proposed wildlife mitigation, and a Phase 1 habitat plan shows the hedgerows affected.⁶² It is acknowledged that the scheme has the potential to result in likely significant effects which are summarised in the Shadow HRA Assessment.⁶³
73. The Appellant has proposed mitigation designed to fulfil the requirements of the North Somerset and Mendip Bat Habitat Evaluation Procedure (HEP), the details of which are provided within the Ecological Impact Assessment Report⁶⁴ to address the likely significant effects from the proposals. However, the *People Over Wind* judgment established that the assessment of likely significant effects on the European sites cannot take into account measures to avoid or reduce the effects of a proposed development. Therefore, it is necessary for the competent authority (the Inspector) to undertake an Appropriate Assessment (AA) under the Habitats Regulations.⁶⁵

Appropriate Assessment

74. The AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. In undertaking the AA, I must be certain that the proposed development would not result in adverse effects to the integrity of the relevant European site.
75. Several measures are included within the design of the scheme to ensure that impacts associated with *fragmentation and the loss of flight lines* for horseshoe bats would be avoided and mitigated as far as possible. These measures include: supplementary planting to bolster the structure of currently utilised flight lines and to create new suitable commuting routes; the implementation of protective measures during the construction phase to ensure that valuable habitats are not inadvertently damaged during site clearance/construction; and the design of a sensitive *lighting* scheme, which would seek to protect all boundary features and bat mitigation habitats from artificial light spill. In view of the above measures and the careful design of the site layout, I conclude that the development, when considered in isolation, would not have any residual adverse impacts upon flight lines or commuting bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.
76. The Shadow HRA Assessment indicates that the appeal proposal has been carefully designed to avoid the majority of potential impacts. With regard to the *reduction in foraging habitat area*, as can be seen from the HEP, at least 1.02ha of optimal greater horseshoe bat foraging habitat is required to ensure

⁶² Tom Clarkson's Shadow HRA Assessment page 58

⁶³ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 68

⁶⁴ CD22

⁶⁵ Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

the scheme remains compliant with the SPD. The appeal site also requires this mitigation to provide 0.72ha of optimal foraging habitat for lesser horseshoe bats to achieve foraging equivalence. The appeal scheme has incorporated the equivalent of at least 0.70ha of greater horseshoe bat habitat and 0.71ha of suitable lesser horseshoe bat habitat.

77. This is below what is required to be compliant with the guidance. For greater horseshoe bats the loss of habitat value within the appeal site is equivalent to 0.32ha or 31.38% loss of habitat value within the red line boundary. For lesser horseshoe bats this was a loss of 0.01ha or 1.39% of the foraging value within the red line boundary. Mr Clarkson stated that the mitigation habitat provided was as large in area and of as high a value as was practical to provide within the constraints presented by the appeal proposal. Habitat retention has prioritised the most valuable areas of habitat to horseshoe bats and has preserved the most valuable foraging and commuting features.
78. To offset the shortfall in habitat value (particularly for greater horseshoe bats) *off-site compensation habitat* has been secured. The development proposes to compensate the shortfall by enhancing suitable off-site land to increase its value to foraging horseshoe bats. A field has been identified within 500m of the red line boundary to the north-east which could be enhanced to fulfil this purpose.⁶⁶ This land also sits within Band B of the consultation zone making it suitable for use as off-site compensation being of broadly equivalent distance from the same known SAC sites. Full details of the off-site compensation land are set out in the Shadow HRA.⁶⁷ The area of compensation habitat proposed is 0.95ha in area and would be managed through low intensity grazing, cessation of the use of inorganic fertilisers and, if necessary, seeding to establish a botanically diverse wet neutral pasture. The diversification of the flora of the grassland would increase the diversity of invertebrates available to foraging bats and substantially increase its foraging value.
79. Connectivity between the habitats within the red line boundary and the off-site compensation land is excellent with the woody vegetation and ditches associated with the Strawberry Line directly connecting the two land parcels. Taking into account the existing value of the habitat (0.3 for greater horseshoe bats and 0.24 for lesser horseshoe bats) this would provide an additional 0.375ha of equivalent habitat for greater horseshoe bats and 0.21ha of equivalent habitat for lesser horseshoe bats. The quantum of habitat to be provided would thus represent a minor enhancement of the provision of foraging habitats for both lesser and greater horseshoe bats locally. The layout and habitat types of the proposed mitigation within the red line boundary are shown in Mr Clarkson's evidence.⁶⁸ I conclude that the development, when considered in isolation, would not have any residual adverse impact upon foraging bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.
80. An assessment of *in-combination effects* with other plans and projects is also provided within the Shadow HRA. When considering the loss of foraging habitat extent at both a local level (within 2km of the SAC components) and more of a landscape level (within 10km of the SAC components), the

⁶⁶ Tom Clarkson's PoE Appendix C Figure 2

⁶⁷ Tom Clarkson's PoE Appendix B pages 75-76

⁶⁸ Tom Clarkson's PoE Appendix C Figure 3

proposed development, in combination with other planning applications and allocated sites would result in the loss of under 1% of the total potential foraging habitat at both geographic scales. This cumulative loss is not significant in the context of the remaining available area of foraging habitat. Applying the precautionary principle, no likely significant effects are anticipated when this assessment is considered alongside other nearby developments. It can similarly be concluded, beyond reasonable scientific doubt, that there would be no adverse effect on the integrity of the SAC.

81. The proposed mitigation measures would minimise any residual adverse impacts and safeguard the favourable conservation status of the population of horseshoe bats recorded on the appeal site. This would be achieved by means of a Construction Environment Management Plan (CEMP); a Landscape and Ecological Management Plan (LEMP) and a Landscape Planting Plan.⁶⁹ Additionally, sufficient habitat is to be created in accordance with the HEP guidance to mitigate for proposed foraging habitat losses. The provision of replacement foraging habitat both within the appeal site and habitat in close proximity to the appeal site would maintain foraging capacity of the local area for horseshoe bats. Furthermore, with the implementation of the Planning Obligations and relevant planning conditions and their respective monitoring programmes, it can safely be concluded, applying the precautionary principle, that the risk of adverse effect upon the North Somerset and Mendip Bats SAC can be ruled out beyond reasonable scientific doubt.
82. Plainly, the effect of the wording of Condition 18 would ensure that details of the required mitigation (more bat surveys, final scheme for bat mitigation and habitat management plan for the off-site habitat) would avoid adverse effects from the development on the integrity of the SAC thereby securing compliance with the Habitats Regulations (and thus with Circular 06/05). Development either does not come forward if insufficient surveys are provided, or none at all, and does if the requirement is satisfactorily met.
83. Once it is appreciated that the requirements of the Habitats Regulations are met and in particular that the proposed development would not cause any harm to the SAC, then the mitigation hierarchy in paragraph 180(a) of the NPPF adds nothing for three reasons. Firstly, paragraph 180(a) does not provide that where adverse effects on SAC integrity are avoided through off-site mitigation, permission should still be refused if on-site mitigation could be provided (in either case, mitigation would be needed and once provided would avoid adverse effects on SAC integrity). The Council reads in a requirement which is simply not there. If it were there, the NPPF would be gold-plating the Habitats Regulations by imposing a significantly more onerous test.
84. Secondly, this is a scheme for 100 dwellings, and it is common ground that a scheme for 100 dwellings cannot provide 100% mitigation on-site. Thirdly, comparing it to a scheme for 75 dwellings is illegitimate in this context as a 75-unit scheme is a different scheme altogether. Paragraph 180(a) requires a judgment to be made about this particular development, not a comparison against some alternative materially different development.
85. Fourthly, a 100-unit scheme incorporating some off-site mitigation would have the following material advantages over a 75-unit scheme with 100% on site

⁶⁹ Tom Clarkson's PoE Appendix B pages 92-93

mitigation: (i) a materially higher amount of much needed market and affordable housing; (ii) as Mr Clarkson explained the provision of a combination of on-site and off-site mitigation would lead to advantages beyond what could be achieved from on-site only mitigation by providing a greater diversity of additional habitats; for example, by being able to include grazing, which is difficult to create on-site, particularly alongside residential development.⁷⁰ The evidence on this point was not challenged.

86. At the Inquiry there was discussion as to whether the imposition of a Grampian condition to deal with any remaining concerns was necessary. Plainly, survey work has already been completed consistent with the SPD guidance which has shown the use of the site by greater horseshoe bats and lesser horseshoe bats.⁷¹ The identified ecological impacts would be mitigated as far as possible within the site, with further appropriate compensatory habitat provision to fully address impacts to horseshoe bats.⁷² About two thirds of the required mitigation would be provided on-site.⁷³ That is as much as is possible to provide and therefore the mitigation hierarchy in the SPD has been followed. That does require the remainder to be provided off-site.
87. I accept that there is flexibility within the blue edged line of the additional land to provide further compensatory habitat if required. I also accept that in calculating the amount of compensatory habitat required, the Appellant has adopted a *worst-case scenario*.⁷⁴ This means that whether or not further surveys were to indicate that bats already use the proposed off-site mitigation land, the Appellant is already proposing a sufficient quantity of land to address this. If further surveys indicate that they do, the amount provided is enough, and if they were to find that no bats use it, the Appellant would be over providing which would be a benefit. The Appellant has calculated on the basis of bats foraging, and applied a multiplier which, if they are not, would not have needed to be applied reducing the amount of land required thus further demonstrating the robustness of the mitigation provision. I appreciate that there is an acknowledged risk associated with off-site habitat provision – things may not grow as expected – so a Grampian condition is required.
88. The Council questioned whether or not bats could actually get to the mitigation land and whether or not they might exhibit *territorial behaviour* preventing bats from accessing. It is agreed that the Strawberry Line is a key foraging commuting route for greater and lesser horseshoe bats. Horseshoe bats have been recorded in Mr Clarkson's survey results⁷⁵ and his evidence was that recording them is difficult due to directionality such that there is likely to be more present than is recorded. The off-site mitigation is proposed right next to this and is plainly close enough to the appeal site to be a candidate for replacement mitigation. I note that the issue of territoriality is already factored into the SPD multiplier. It is possible to increase habitat and thus increase headroom to combat territoriality. As to other concerns with

⁷⁰ EIC of Tom Clarkson. Note too paragraph 4.7 of the SPD at CD7

⁷¹ Paragraph 5, Summary PoE of Tom Clarkson.

⁷² Paragraph 8.1.5, PoE of Tom Clarkson.

⁷³ EIC of Tom Clarkson

⁷⁴ Terminology used in EIC

⁷⁵ See Appendix B to his PoE – Shadow HRA Assessment. In particular pages 66 to 69. See also the Bat Transect Map in the EIA at page 28, CD22.

regard to access, for example potential climate differences,⁷⁶ this has been considered in the design by incorporating a shelter belt.⁷⁷

89. I note the requirement to consult and have regard to NE's representations as the appropriate nature conservation body, where an AA is being carried out. On 28 April 2022 a consultation with NE was undertaken in accordance with the Conservation of Habitats and Species Regulations 2017. The response from NE dated 25 May 2022 confirmed their concerns about the proposal as previously set out in their letter of 10 March 2021.⁷⁸ NE, supported by the Council, do not consider that off-site mitigation is appropriate for this proposal due to the significant importance of the site to contributing to the favourable conservation status of the SAC bat populations, largely due to its location. Furthermore, NE do not consider that the off-site mitigation demonstrates any additionality in terms of foraging habitat enhancements and sufficient survey information has not been provided to ascertain if the site is appropriate for off-site habitat enhancements.
90. I have had regard to the representations from NE and taken into account the additional points made by the parties notably the Appellant's letter dated 6 June 2022.⁷⁹ I have given weight to NE's views as the statutory nature conservation body, but NE's views do not appear to be a formal objection to the proposal. Importantly, NE's evidence has not been tested by cross examination and therefore it cannot be given greater weight than Mr Clarkson's evidence which was tested at the Inquiry. Moreover, NE's representations must be considered in the context of the Shadow HRA and the detailed evidence provided by Mr Clarkson to the Inquiry which I found to be both cogent and compelling.⁸⁰
91. With regard to NE's views the following points are noteworthy. Firstly, the effect of the prevailing winds in the area would be to blow insects away from the site rather than towards the site. Secondly, the mitigation hierarchy has sought to maintain as much of the bat mitigation habitat on site as possible in the context of housing need. Thirdly, the basis of Mr Clarkson's calculations that the productivity of the off-site habitat would be enhanced to deliver a better foraging habitat to that currently present, accords with the Council's SPD methodology. Fourthly, the off-site compensation land is accessible to horseshoe bats and the need for more survey information on this land can be dealt with via a Grampian style condition. Finally, NE's response fails to grapple with the SPD guidance⁸¹ or the potential use of a Grampian condition.
92. Drawing all of these threads together, the evidence before me demonstrates that sufficient mitigation would be provided such that the development would not be likely to adversely affect the integrity of the SAC with a Grampian condition attached. The conservation objectives of the SAC would not be undermined. Accordingly I conclude on this issue that the proposed development would not have a significant effect on the North Somerset and Mendip Bats SAC, nor would it have unacceptable impacts on the Biddle Street SSSI. The appeal proposal would not conflict with Policies CS4 and DM8, the

⁷⁶ Though Tom Clarkson was XX on lighting preventing access, this did not form part of the Council's case prior to XX.

⁷⁷ In EIC

⁷⁸ CD43

⁷⁹ APP12

⁸⁰ See Appendix B to his PoE

⁸¹ CD7

North Somerset and Mendip Bats SAC SPD and the NPPF. Moreover, in this case, there would be no departure from the policy expectation in the first sentence of paragraph 99 of Circular 06/2005 and therefore no requirement for 'exceptional circumstances' to justify that departure in the manner referred to in the second sentence. Even if there were, the significant shortfall in the 5YHLS would be capable of amounting to exceptional circumstances.

Fourth Issue - The effect of the proposed development on the character and appearance of the area

93. This fourth issue relates to RfR3 which alleges that the proposed development, by reason of its protrusion in an area of high landscape sensitivity in close proximity to the Strawberry Line, does not accord with the linear form of the village and would appear as an incongruous projection into open countryside. Further, that it would cause unacceptable harm to the amenity value of the Strawberry Line. The Council's landscape policies include CS5 and CS9 of the Core Strategy,⁸² and Policy DM10 of the Sites and Policies Plan Part 1 – Development Management Policies.⁸³
94. Policy CS9 seeks to safeguard, improve and enhance the existing network of **green infrastructure** through *"further provision, linking into existing provision where appropriate, ensuring it is a multifunctional, accessible network which promotes healthy lifestyles, maintains and improves biodiversity and landscape character and contributes to climate change objectives."*
95. Policies CS5 and DM10 deal with landscape.⁸⁴ It is noteworthy that Policy CS5 looks to protect and enhance the character, distinctiveness, diversity and quality of North Somerset's landscape and townscape. However, its focus is on both the national character areas and those in the North Somerset Landscape Character Assessment (LCA). It does not look to protect and enhance every individual development site. Provided the landscape and townscape is protected and enhanced, there is policy compliance and that can be so even where there is landscape harm.
96. Policy DM10 links with Policy CS5 on Landscape. It is the policy that relates specifically to development proposals. In the first bullet point it refers to having an *"unacceptable adverse impact"* rather than no adverse impact at all. Neither Policy CS5 nor Policy DM10 are zero harm policies. The litmus test is therefore whether or not there is an unacceptable degree of harm.⁸⁵
97. A Landscape and Visual Appraisal (LVA) was submitted with the application. Figure L3 to Mr Evers' proof of evidence illustrates the published landscape character areas applicable to the site and surrounding area. It is common ground that the North Somerset LCA SPD 2018⁸⁶ is the most relevant for this appeal. The site is located in the National Character Area Somerset Levels and Moors character area (No142). At the local level, the appeal site falls within Landscape Type A: Moors and LCA A1: Kingston Seymour and Puxton Moors. The overall character of the LCA is considered to be 'strong' and in 'good

⁸² CD1

⁸³ CD2

⁸⁴ And the historic environment in respect of CS5.

⁸⁵ Confirmed by Kevin Carlton in XX

⁸⁶ CD5

condition.’ The landscape strategy for the LCA is to ‘conserve’ the existing landscape. The appeal site is on the edge of the LCA.⁸⁷

98. The positive significant features of the LCA are set out on page 31 of the SPD and are not restated here. I note that these relate to all of the Landscape Type: Moors and not just to LCA A1, the positive characteristics of which are set out elsewhere.⁸⁸ LCA A1 is distinguished from the other Moors LCAs.⁸⁹
99. In terms of landscape sensitivity, the Council relies heavily on the North Somerset Landscape Sensitivity Assessment 2018⁹⁰ (LSA). This document has not been consulted on externally⁹¹ and should be tempered on that basis. It is a high-level assessment and on a more granular analysis it was agreed that when looking at individual areas of land there would be variations.
100. Map 3 of the LSA⁹² shows that the southern part of the site falls within an extensive area around Yatton which is assessed as having high sensitivity, the top level of three levels of susceptibility to change and landscape value used. The LSA defines **High sensitivity** as:
“Land with a high susceptibility to change and/or which is of high value, e.g. land adjacent to or visually prominent from the AONB, land outside of the settlement pattern, land which has high visual prominence, land which contributes to heritage or ecological assets.”⁹³
101. Plainly the northern part of the site falls within an area which is assessed in the LSA as having low sensitivity. The LSA defines **Low sensitivity** as
“Land with a low susceptibility to change and/or which is of low value, e.g. land within the settlement pattern, land with low visual prominence, land which has no or very limited contribution to heritage or ecological assets.”⁹⁴
102. Mr Carlton contends that the appeal site is within the open countryside.⁹⁵ He sought to suggest⁹⁶ that the Appellant agrees with him, pointing to the LVA⁹⁷ and the SoCG. However, the LVA does not say that the site is in countryside plainly using the word ‘beyond’. Mr Carlton accepted, when challenged, that this is not the same as saying that the site is in open countryside. The SoCG is a general SoCG, not a landscape one, and the meaning of open countryside in policy terms is not necessarily the same as in landscape terms.
103. At my site visit I saw that the northern part of the appeal site is dominated by development, consisting of the various single storey and large agricultural buildings that comprise the farm complex and the housing off-site to the east, giving it an urban character,⁹⁸ whereas the southern field has a more open, rural character.⁹⁹ It was not a matter of dispute at the Inquiry that some

⁸⁷ CD5 pages 39-40

⁸⁸ See pages 36 to 37 of the document

⁸⁹ Nigel Evers PoE paragraph 3.9.6

⁹⁰ CD6

⁹¹ See paragraphs 3.9.8-3.9.9, PoE of Nigel Evers

⁹² CD6

⁹³ Paragraph 4.1.13, CD6

⁹⁴ Paragraph 4.1.13, CD6

⁹⁵ See his paragraph 2.1, PoE of Neil Underhay. Confirmed this was the basis for his assessment in XX

⁹⁶ In EIC

⁹⁷ In particular paragraph 3.1.2, CD30.

⁹⁸ Paragraphs 3.9.17 and 3.9.20 and Viewpoints 1 and 2 in Appendix B, PoE of Nigel Evers

⁹⁹ Paragraph 3.9.18 and Viewpoints 3 and 4 in Appendix B, PoE of Nigel Evers

development could take place on the northern part of the appeal site. The focus of the Council's evidence was development on the southern field.

104. Nonetheless, as I saw on my site visit, the southern field is not as sensitive as the Council suggests and, in my view, Mr Carlton's assessment of the baseline is plainly overstated. It is influenced by the poorly resolved edge of Yatton which, combined with the farm buildings, the Strawberry Line and the intermittent belt of trees along the southern boundary, separating it from the wider countryside, and giving it an enclosed, semi-rural character.¹⁰⁰ The embankment and the trees and hedgerows along the Strawberry Line provide a strong boundary, separating the site and its context to the north-west and south-east from the wider Levels landscape to the west.¹⁰¹
105. Turning to the landscape and visual effects of the proposed development both landscape witnesses agreed that impacts would be localised only, in the context of a non-designated, non-valued landscape which is part previously developed land. Although the development would change the character of the site from open, grassed fields to houses and gardens with open space areas, there are no particular features of particular value within the site. The effect on the wider landscape would not be significant. The scale of the development is such that it is unlikely to have a discernible effect on the extensive national character area. There would be no significant effects on LCA A1; Kingston Seymour and Puxton Moors LCA, with a negligible magnitude of effect.
106. I accept that there would be an adverse effect of moderate significance on the landscape character of the site. There would be change from open, grassed fields to houses and gardens with open space areas. Existing boundary hedges and trees would be supplemented with new planting and water features on the open spaces within the context of existing development along the eastern boundary and within the north-western part of the site. As a result, there would be a moderate and adverse effect over all time periods, but this would be on the site itself and not the wider landscape. For trees and hedges on the site, so few would be removed for construction that the effects during the construction period and on completion would not be significant with an overall magnitude of negligible. However, with the maturing of the landscape scheme and implementation of the management plan, there would be a moderate beneficial effect.
107. The Council refers to a change in landscape character along Chescombe Road/Biddle Street which it says is a valued link to open countryside. It points to the cutting back or reduction in the height of hedgerows at the new junctions (for visibility) and the installation of footways north and south which would require hedgerow and tree removal. The total figures estimated for widening of the accesses north and south, new paths and visibility splays are set out in document APP8. From the evidence submitted, the total length of hedge removed (49m) would be more than compensated by the net hedge increase (601m) and the total number of trees removed (13) needs to be viewed in the context of the overall net tree increase (61).
108. With regard to visual impacts, there are not many views from which the appeal site can be seen and those that exist are short-range, hence the localised nature of any impacts. Even in that context, though Mr Carlton

¹⁰⁰ Paragraph 3.9.20, PoE of Nigel Evers

¹⁰¹ Paragraph 3.9.19 and Viewpoint 3 in Appendix B, PoE of Nigel Evers

suggested that Viewpoints 3-5 of the Appellant's LVA¹⁰² were particularly relevant, he relied heavily¹⁰³ on Viewpoint 5. He focused on year one.¹⁰⁴ However, Summer of Year 15 is usually taken as representing the longer term 'average' residual effect, although in practice new planting will not be fully mature until sometime after Year 15.

109. From Viewpoint 3, the new houses and their gardens would be prominent in the view, with those to the west being set back further from Chescombe Road beyond an area of open space. The roadside hedgerow would be strengthened with new tree planting and hedgerow shrubs. Here the overall effects would be of major magnitude with an adverse effect of moderate significance on completion reducing to minor significance after 15 years.
110. As a result of the closeness to the site, Viewpoints 4 and 5, would be of major magnitude, with an adverse effect of major significance which would reduce to moderate significance after 15 years. However, I note that Viewpoint 5 is taken from the Strawberry Line, about 10m from the site boundary, looking north-east across the southern field. Views are filtered and though the new houses would be prominent in the view, they would be set back behind a narrow area of open space and filtered by new tree planting with the effects reduced at Year 15.¹⁰⁵
111. Mr Carlton accepted that by Year 15 someone walking the Strawberry Line would not have at the forefront of their mind that they had walked past the development. He also accepted that the proposed landscape mitigation measures were realistic and achievable. At my site visit I saw that there would be benefits that would flow from the development in respect of the northern field. That would include the replacement of farm buildings and clutter which I consider would be an improvement.
112. The Council argued that the proposed development would not accord with the *linear development* and form of the village. It claimed that one of the foundation stones of the case is that Yatton is a linear settlement; though Mr Carlton clarified that it is "*predominantly linear*,"¹⁰⁶ acknowledging that it widens to the north where the industrial units sit. But the Council's assertion that the development would not accord with the linear form of the village goes nowhere because the settlement is not in a linear form.
113. That assessment is plainly wrong when one looks at Plan L3 of the LVA¹⁰⁷ which makes clear that there is not a straight line to the development edge but rather it is jagged. To describe the form of Yatton as linear is an oversimplification of the way the settlement has developed and how it is at present.¹⁰⁸ It seems to me from Figure L2 in the LVA¹⁰⁹ the Conservation Area, representing the historic core of the village, is arranged along the B3133 towards the south-eastern edge of modern Yatton.¹¹⁰ When further development occurred, it has largely comprised housing estates, laid out

¹⁰² Appendix B, CD30

¹⁰³ In EIC

¹⁰⁴ Appendix B, CD30

¹⁰⁵ Paragraph 3.10.19, PoE Nigel Evers

¹⁰⁶ Clarified by Kevin Carlton in XX when taken to paragraphs 4.5 and 8.2 of his PoE

¹⁰⁷ CD30

¹⁰⁸ Paragraph 4.3.1, PoE of Nigel Evers

¹⁰⁹ CD30. See also Appendix 1, PoE of Nigel Evers

¹¹⁰ Even the Conservation Area extends to the south which, before the village grew beyond its historic core, could have been regarded as a projection into open countryside – see paragraph 4.3.2, PoE of Nigel Evers

unimaginatively and without attention to integration or mitigation such that the historic core was completely separated from its rural setting.¹¹¹ Plan L2 shows this further where one can see cul-de-sacs and circular drives.

114. Mr Carlton contended¹¹² that what you see on the linear edge is a consequence of the topography which has influenced how development has come forward. However, he agreed that much of modern Yatton, including on the appeal site side of the settlement, is within the 5-10m contour range when looking at Plan L1 of the LVA¹¹³ as is the appeal site.¹¹⁴
115. Importantly, it is not only current development that should be considered but also the land that has been allocated further north and east for housing and, north of the site, for a school shown by way of the purple-coloured plot on Plan L2. If those developments come forward this would only further undermine any suggestion of a linear edge. Plainly there is nothing special about the development pattern, and it is replicated all across the district and the country.¹¹⁵ It is the quality of a development that is important and how it presents itself such as if it is set back behind appropriate planting, not just if it is in a straight line. The Council said that the existing Titan Ladders development¹¹⁶ is an acceptable development edge. To my mind that is an undoubtedly prominent development which is entirely insensitive to its surroundings and very different to that proposed at the appeal site.
116. The Council claims that the proposed development would cause unacceptable harm to the amenity value of the *Strawberry Line* making it more suburbanised and less tranquil. I disagree. In my view, its sensitivity is overstated. In the LSA, its only sensitivity arises from its ecological designations; there is no mention of its setting as a concern or limit to development, nor does the Local Plan introduce such a concept.¹¹⁷ Whilst it is part of National Cycle Route 26, its sensitivity can only be reasonably described as medium adjacent to the appeal site given the value of the views in this part and the consistent presence of the edge of Yatton.¹¹⁸ The evidence of the Appellant in this regard was not challenged at the Inquiry.
117. The appeal proposal would result in development along part of the southern side of Chescombe Road with extensive open space proposed along the interface with the Strawberry Line and a broad verge either side of Chescombe Road with reinforced hedges and new tree planting. This means that the approach would change to a more developed character. Although there would be development partly on both sides, the overall impression would be of a wide, green lane with dwellings set back on either side.¹¹⁹ It is also a fact that when considering the impact on the Strawberry Line that it largely follows the route of a disused railway. Given its length, inevitably the experience of using the line is dependent upon the part one uses.
118. At my site visit I saw that in the vicinity of the appeal site, that the views to the west across the open, flat moors are a much more rewarding experience

¹¹¹ Paragraph 4.3.2, PoE of Nigel Evers

¹¹² See 4.5 of his PoE

¹¹³ Appendix B, CD30

¹¹⁴ He said 'largely' in XX

¹¹⁵ Paragraph 4.3.25 PoE of Nigel Evers

¹¹⁶ See Viewpoint 1, Appendix B, CD30

¹¹⁷ Paragraphs 3.9.16 and 4.4.24, PoE of Nigel Evers

¹¹⁸ Paragraph 3.10.5, PoE of Nigel Evers

¹¹⁹ Paragraph 4.4.2, PoE of Nigel Evers

than those across the fields and the relatively short distance to Yatton. As can be seen from the Strawberry Line Figures SL2 to SL7 submitted by the Appellant, much of the view from the route is blocked by lineside vegetation, and where there are views towards Yatton, the site is not always visible.¹²⁰ It is only when one travels further south, where lineside vegetation is sparser, that the views across the moors are more open.¹²¹

119. There are much better views to be seen further along the Strawberry Line from the appeal site; for example, where it runs across part of LCA A4 Locking and Banwell Moors.¹²² Mr Carlton accepted that perceiving development is a fundamental part of the Strawberry Line experience - the line passing a number of settlements. Figure L10 shows the route passing along nearly 2km of almost continuous development directly abutting it to the east, as it approaches and passes through Winscombe.¹²³
120. Mr Evers sets out the most striking experiences of the Strawberry Line in his evidence,¹²⁴ and Mr Carlton did not disagree with his view. Unsurprisingly, views of the appeal site do not make the cut. Given that part of the site is already developed (and land to the north is allocated for a school) and that existing development is visible a single field depth away, the importance of the site to the experience of the Strawberry Line is negligible.¹²⁵
121. The appeal proposal would extend the developed edge of Yatton nearer to the Strawberry Line, but the extensive open space and landscape treatment would integrate the development into its setting.¹²⁶ The Strawberry Line would still function as an important route through the Somerset countryside, with glimpsed and more open views either side, across its length and changes to the site would not significantly change the setting to the Strawberry Line.
122. On the fourth issue I consider that the proposed development would have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD. However, the proposal would be in compliance with other policies including Policies CS9, DM25 and paragraphs 130 (c) and 174 (b) of the NPPF. In my view there would be no conflict with the policies in the YNP. I conclude on the fourth issue that the proposed development would not cause unacceptable harm to the character and appearance of the area.

Planning Obligations

123. The NPPF indicates that planning obligations must only be sought where they meet all of the following tests: (a) necessary to make the development

¹²⁰ Paragraph 4.4.9, PoE of Nigel Evers

¹²¹ Paragraph 4.4.10, PoE of Nigel Evers

¹²² Paragraph 4.4.12, PoE of Nigel Evers

¹²³ See SL15, SL16 and SL18

¹²⁴ Paragraph 4.4.20, PoE of Nigel Evers

¹²⁵ Paragraph 4.4.22, PoE of Nigel Evers

¹²⁶ Paragraph 4.4.23, PoE of Nigel Evers

acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.¹²⁷

124. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable in planning terms. They include: Public Transport Contributions; a Secondary School Transport Contribution; a Sustainable Travel Contribution; Footpaths and Public Rights of Way Contributions; a Fire Hydrant Maintenance Contribution; 30% affordable housing units on site; provisions relating to Neighbourhood Open Space and Play Space. The CIL Compliance Statement¹²⁸ sets out the terms of the planning obligations (including the costs) and the planning policies underpinning them. It then assesses the requirements against the CIL tests for planning obligations set out in Regulation 122 of the CIL Regulations and provides a detailed justification for each obligation.
125. In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such I have taken them into account in the decision.
126. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.¹²⁹ In this Deed the owner covenants with the Council to pay the sum of £16,000 as the Waste Bin and Litter Collection Contribution.¹³⁰ This is required as a result of the additional recreational pressure on the Biddle Street SSI. The UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling.
127. In my view, the covenants within the UU are also necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such they are a consideration material to the determination of this appeal. I have taken them into account in the decision.

Other Matters

128. I have taken into account all other matters raised including the concerns raised on behalf of Yatton Parish Council, Yatton and Congresbury Wildlife Action Group (YACWAG) and the representations made by interested persons who provided written submissions. Many of the matters raised such as the scale of the proposed development, the impact on ecology, biodiversity and landscape are points which I have already dealt with under the main issues.
129. Yatton Parish Council (YPC) opposed the appeal proposals due to concerns relating to development in the countryside; the impact of the development on the Strawberry Line and the Biddle Street SSSI; the sustainability of development in Yatton and the increased traffic generation along Chescombe

¹²⁷ NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

¹²⁸ LPA2

¹²⁹ APP6

¹³⁰ The Waste Bin and Litter Collection Contribution means the sum of £16,000 being comprised of £1,000 for installation of 2 bins on the Strawberry Line in the vicinity of the development and £500 per year for 30 years for litter picking and bin emptying in the vicinity of the development.

Road and Mendip Road.¹³¹ I have already addressed matters relating to landscape and ecology in the main issues.

130. YPC and a number of representations suggest that Yatton is not a sustainable location and cannot support the level of development proposed. As a result, it is alleged that the proposal would place a strain on local services. As Mr Hutcheson's evidence explains, Yatton is a sustainable location. Furthermore, the potential effects on local services are to be mitigated through the provision of planning obligations set out in the s106 Agreement and through the Council's Community Infrastructure Levy.
131. With regard to concerns raised about increased traffic and highway safety, including construction traffic, this is no longer a matter in dispute.¹³² The Council has accepted that the further evidence presented as part of the appeal demonstrates that an appropriate and suitable access can be provided.¹³³ The proposal is acceptable in highway and transport terms. It complies with Policy DM24 and paragraph 110 and 111 of the NPPF.
132. YACWAG raise concerns about the detrimental impact of the proposal on the landscape, nature conservation and protected species. It is argued that the Ecological Impact Assessment and the off-site mitigation are inadequate.¹³⁴ I have already dealt with these matters in the main issues. Yatton Local History Society raised concerns regarding impacts of potential increase in footfall along the medieval Gang Wall. The Gang Wall was considered as part of the Historic Environment Assessment submitted with the proposal and it was considered of low significance. There is no evidence to suggest that the appeal proposal would adversely affect this local feature which is protected as a Local Green Space in the YNP. No objections were raised by the Council's Heritage Officer or Historic England. The Council accepts that the appeal proposal would not result in any heritage harm. I agree.
133. With regard to concerns about flood risk and drainage, I note that the proposals are supported by a flood risk assessment and drainage strategy which demonstrate that the appeal proposal is acceptable in relation to flood risk and drainage. Notably, there are no objections from the Environment Agency or other drainage consultees and the Council did not include these matters in its RfR.
134. With regard to the noise impact of the proposed development during the construction process, these effects would be temporary in nature and would be controlled via planning condition to ensure that local amenity is not unduly affected. No objections were raised by statutory consultees in relation to noise impact and the Council does not raise the matter in its RfR.
135. It has been suggested that the development would not be able to accommodate sufficient parking. These matters would be addressed at the reserved matters stage although I note that the illustrative layout does demonstrate that an appropriate layout can be achieved to accommodate the proposed level of development.

¹³¹ IP2 Statement by Chris Jackson

¹³² Paragraph 6.1, General SoCG

¹³³ Paragraph 5.1.2, PoE of Luke Hutcheson. See Highways SoCG particularly sections 2 and 3.

¹³⁴ IP1 Statement by Tony Moulin

136. A number of previous appeal decisions were submitted by the parties. I have taken these into account in coming to my decision in this case. None of the previous appeal decisions submitted were sufficiently closely related to this appeal case. With regard to the Moor Lane, Backwell decision¹³⁵ this was a proposal for 9 open market dwellings, separated from the settlement boundary, and assessed under Policy C33 rather than Policy C32 of the Core Strategy. Moreover, the housing land supply was assessed at 4.2 years.
137. With regard to the Former Weston Trade Centre, Knightcott Road, Banwell decision¹³⁶ this was a proposal for 47 dwellings situated some distance from the settlement boundary in the open countryside and therefore was assessed under Policy C33 of the Core Strategy unlike the appeal site which adjoins the Yatton settlement boundary. The Banwell decision would have caused unacceptable harm to the character and appearance of the area and was not sustainable development.
138. With regard to the Stowey Road, Yatton decision¹³⁷ this was a proposal for up to 60 dwellings which adjoins the settlement boundary. However, the site was recognised as playing an important role in the setting of Yatton and the transition from moorland to village which is perceived most clearly from Cadbury Hill. The appeal before me would have some localised landscape impacts but limited visibility from the wider landscape including Cadbury Hill.
139. Importantly in the current appeal there is a significant housing land supply shortfall equivalent to only 3.2 years. The appeal scheme of up to 100 dwellings would deliver significant social, economic and environmental benefits and would boost the supply of housing. The development would also be located in a sustainable location with regard to services and facilities. There are also material differences between the current appeal site and other appeal decisions in terms of my findings on ecology and the HRA.

Planning Balance

140. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal for up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is contrary to Policies CS14 and CS32 of the Core Strategy. However, there is no 5YHLS in this case and indeed there is a significant shortfall. Policies CS14 and CS32 are most important policies but they cannot be given full weight. These policies are out-of-date and can only be afforded limited weight.¹³⁸ From the evidence that is before me I cannot agree with the Council's suggestion that significant or moderate weight be given to these policies.
141. Taking the landscape and ecological impacts together, there is no evidence which indicates that any significant harm would arise from the appeal proposal. In truth, very little harm would arise from the appeal proposal.¹³⁹ There is no clear ecology reason to refuse the development as any adverse

¹³⁵ APP/D0121/W/21/3266596

¹³⁶ APP/D0121/W/18/3206914

¹³⁷ APP/D0121/W/17/3170103

¹³⁸ Paragraph 9.12, Planning PoE of Ian Jewson

¹³⁹ Paragraph 9.13, Planning PoE of Ian Jewson

impacts on site integrity can be ruled out with the ability to resolve the same via a Grampian condition.

142. The only alleged harm which can be said to remain on the Council's case is landscape harm. I have found that the proposed development would only have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD.
143. On the basis of the conflict with Policies CS14 and CS32 and the limited conflict with the landscape policies CS5 and DM10, I conclude that the proposals would be in overall conflict with the development plan. However, I have found that the Council cannot demonstrate a 5YHLS and that paragraph 11 d) of the NPPF is engaged. There is a housing land supply equivalent to 3.2 years. The implications of not having a 5YHLS are significant. Not only is there a shortfall of some 2,536 dwellings, but it also means the basket of policies which are the most important for determining the application are out-of-date and the tilted balance applies. Given that there are no policies in the NPPF which, if applied, would provide a "clear reason for refusing the development" under paragraph 11 d), it follows from the "out-of-date" nature of the most important policies that the tilted balance applies.¹⁴⁰
144. The Appellant argues that the appeal proposals constitute sustainable development and would deliver significant social, economic and environmental benefits and would boost the supply of housing. It is claimed that the significant social, economic and environmental benefits should collectively be weighed against any limited harm that may be identified. I consider these matters in turn.
145. With regard to the delivery of **market housing**, it is clear to me that the Council has a very poor record of housing delivery and has consistently failed to demonstrate a 5YHLS. The shortfall is significant and should be given **very significant** weight.¹⁴¹ As I perceive it, the Council is not taking any urgent or effective action to address this, and a review of the housing requirement and Local Plan as a whole is now overdue and is unlikely to be completed for the foreseeable future.¹⁴² From the evidence that is before me it is unlikely that the shortfall would be made up quickly.
146. These significant material considerations provide clear justification for reducing the weight to be applied to Policies CS14 and CS32. The appeal proposals would make a significant contribution to addressing that shortfall. It was Mr Jewson's evidence that the delivery of new market housing should be given **significant weight**.¹⁴³ Mr Underhay agreed that **very significant weight**¹⁴⁴ should apply where there is no 5YHLS. I have no doubt from the evidence of Mr Jewson that if permission is granted, the appeal scheme would be able to come forward promptly and contribute to the 5YHLS.

¹⁴⁰ APP9 Page 3

¹⁴¹ Paragraph 6.5, HLS PoE of Ian Jewson

¹⁴² Paragraph 9.5, Planning PoE of Ian Jewson

¹⁴³ Paragraph 9.7, Planning PoE of Ian Jewson.

¹⁴⁴ He responded "yes probably" in XX

147. Plainly, **affordable housing** should be properly considered its own standalone benefit separate to market housing provision.¹⁴⁵ The Council accepted that there is a "*significant demonstrable need for further affordable housing in North Somerset including Yatton.*"¹⁴⁶ That is the case whether or not there is a 5YHLS. Clearly the appeal proposals would greatly assist by delivering 30% affordable housing in accordance with Policy CS16 of the adopted North Somerset Core Strategy with a range of dwelling sizes, types and tenures. In cross examination Mr Underhay agreed that **very significant weight**¹⁴⁷ should apply to this consideration irrespective of a 5YHLS.
148. To the extent that the Council seek to maintain Mr Underhay's initial argument that the weight to be applied to market and affordable housing could be reduced due to the development being contrary to the Local Plan, that is plainly double counting. In [Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC \[2021\] EWCA Civ 104](#) the Court accepted that one can include conflict to policy when considering the tilted balance. Therefore, as harm flowing from policy conflict is already being considered on the harm side of the balance, to also use it to reduce the benefits before carrying out the balance would be putting the adverse effects of the scheme on both sides.
149. The proposed development would be situated in a sustainable location; the Council's suggestion that it is not is policy based only and they did not seek to challenge any of Mr Hutcheson's evidence as to the connectivity of the site in highways terms. Section 106 contributions are agreed, the agreed contributions would deliver a series of benefits with the scheme. The proposal would also deliver significant economic benefits both during construction and as a result of increased spending from new residents, which should be given **significant weight**.¹⁴⁸ This is supported by paragraph 81 of the NPPF which directs that "*significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.*"¹⁴⁹ I note that this is not qualified i.e., only applicable where a benefit is permanent.¹⁵⁰
150. It is also noteworthy that paragraph 81 of the NPPF does not direct that significant weight should be placed on a particular contribution towards economic growth or productivity no matter how large or small.¹⁵¹ This does not mean that it allows for less weight to be applied to different contributions. That would be a clear misreading of the paragraph. The NPPF is unequivocal in telling decision makers what weight to apply. The weight to be applied is prescribed and the same; but it is being applied to a bigger or smaller benefit. Just as when great weight is applied to heritage harm, the weight is the same but the level of harm to which it is applied may not be.
151. In any event, even if discretion were to be applied, there is no justification for reducing weight simply because some benefit may be temporary. Mr Underhay agreed¹⁵² that the construction industry plays an important role in

¹⁴⁵ Neil Underhay agreed with this approach in XX

¹⁴⁶ Paragraph 10.5, PoE of Neil Underhay

¹⁴⁷ He responded "yes probably" in XX

¹⁴⁸ Paragraph 9.9, Planning PoE of Ian Jewson.

¹⁴⁹ And which Neil Underhay acknowledged in XX

¹⁵⁰ Neil Underhay acknowledged this in XX

¹⁵¹ Put by Timothy Leader to Neil Underhay in re-examination

¹⁵² In XX

the UK economy, that it is continually reliant upon a pipeline of projects and that they are therefore all temporary.

152. With regard to the environmental benefits, the illustrative Masterplan has been prepared to demonstrate that known constraints have been taken into account. The proposal includes biodiversity enhancements which would make a positive, permanent contribution to local biodiversity including the provision of significant areas of green infrastructure and open space which incorporate specific bat mitigation areas which should all be given **significant weight**.¹⁵³
153. It is noteworthy that on Mr Clarkson's BNG assessment, there would be a 103% gain in area-based habitats and a 56% gain for linear habitats which is a significant enhancement in terms of biodiversity value achieving the NPPF standard of delivering measurable net gain and the Local Planning Authority's policy standard of requiring developments to avoid a net loss and deliver a net gain in biodiversity where possible.¹⁵⁴

Balance

154. Taking all of the above into consideration, applying the tilted balance pursuant to paragraph 11d of the NPPF, the adverse impacts of granting permission plainly would not significantly and demonstrably outweigh the benefits of doing so. The Council cannot demonstrate a 5YHLS and the overall benefits of the appeal proposals clearly outweigh the harm.

Planning Conditions

155. The Council submitted a list of conditions which I have considered in the light of the advice in paragraphs 55 and 56 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions. Conditions 1-3 are necessary as the proposal is submitted in outline and approval of reserved matters is required within time limits. Conditions 4 and 5 are necessary for the avoidance of doubt and in the interests of proper planning. Condition 6 is required to reduce environmental impacts and to safeguard the living conditions of nearby residents. Condition 7 is required in the interests of visual amenity. Conditions 8 and 9 are required to reduce the risk of flooding. Conditions 10 and 11 are required in the interests of highway and pedestrian safety. Condition 12 is required to ensure adequate car parking. Condition 13 is required to ensure that electric vehicle charging is provided. Conditions 14 and 15 are necessary to ensure the development is assimilated into its surroundings. Conditions 16 and 17 are necessary to safeguard the trees which are visually important on the site.
156. Condition 18 is necessary to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended), Policy CS4 of the North Somerset Core Strategy and Policy DM8 of the North Somerset Sites and Policies Plan (Part 1). Condition 19 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Condition 20 is necessary to ensure that the biodiversity value of the site is not adversely affected. Conditions 21 and 22 are required to safeguard heritage assets of archaeological interest. Conditions 23-25 are required to ensure that the land is suitable for the intended uses. Condition 26

¹⁵³ Paragraph 9.11, Planning PoE of Ian Jewson

¹⁵⁴ See paragraphs 4.1.70-4.1.72 and Appendix A, PoE of Tom Clarkson

is required to secure a high level of energy saving by reducing carbon emissions. Condition 27 is necessary in the interests of promoting good design and sustainable construction. Condition 28 is required to ensure that the dwellings provide acceptable standards of accommodation. Condition 29 is necessary to ensure that sufficient accessible housing is provided. Condition 30 is necessary in the interests of protecting the living conditions of neighbouring residents. Condition 31 is necessary to ensure that dwellings are sited outside Flood Zones 2 and 3 which currently affect some outer edges of the site. I have added Condition 32. This is necessary to enable the statutory nature conservation body (NE) to consider any further action.

Overall conclusion

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

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-32)

Outline Conditions

- 1) Approval of the details of the layout, scale, appearance of the building(s) and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority, in writing before any development is commenced.
- 2) Any application for the approval of reserved matters made pursuant to this planning permission shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Site Location Plan - Reference number 1037-PL03A
 - Topographical Survey Drawing Number 14730-TS01
 - 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
 - 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
 - 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
 - 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
 - Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01.
- 5) The development hereby permitted shall be carried out in broad accordance with the following plans and documents:
 - Design and Access Statement Date 23.12.2020
 - Transport Assessment 14730-HYD-XX-XX-RP-5001
 - Road Safety Audit and associated submissions
 - Flood Risk Assessment - 14730-HYD-PH1-XX-RP-FR-0001 Rev PO2
 - Drainage Strategy - 14730-HYD-XX-XX-RP-D-0002 Rev PO1
 - Landscape and Visual Appraisal – January 2021
 - Ecological Impact Assessment - December 2020
 - Tree Survey - 05476 TCP 04.08.20
 - Tree Constraints Plan - 05476 TCP 4.8.2020

- Arboricultural Impact Assessment Report 05476 RECTORY FARM AIA 02.02.21
- Tree Removal/Retention Plan (Sheet 1-4) Phase 1 Ground Conditions Study (Part 1 - 4) 14730-HYD-XX-XX-RP-GE-1000 S2 P1
- Affordable Housing Statement – January 2021
- Historic Environment Assessment - ACW1271/1/1
- Energy Statement December 2020
- Preliminary Lighting Assessment (Part 1 & 2) Preliminary adoptable and non-adoptable lighting 179-01-S38-201125-CD-LI-A
- Energy and Sustainability Statement December 2020
- Indicative Species List
- Desk Study Report 14730-HYD-XX-XX-RP-GE-1000 S2 P2 1037- PL01A
- Shadow HRA
- Illustrative Site Masterplan Drawing Number PL01/A

Construction Environmental Management Plan

- 6) No phase or component of development shall be commenced, including site preparation or site clearance works, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
- (a) the location where site operatives and visitor vehicle parking will take place on the site
 - (b) the location of the site compound for the loading, unloading and storage of plant and materials including waste materials, and temporary site offices
 - (c) the erection and maintenance of security hoarding
 - (d) the means to reduce mud and debris from the site being deposited on the road network, including details of road cleaning and/or wheel wash facilities
 - (e) measures to control the emission of dust and dirt during construction
 - (f) measures to control noise from works on the site
 - (g) managing complaints
 - (h) Any formal parking restrictions/and or traffic management to enable the works to be carried out
 - (i) details of measures to avoid harm to protected species and their habitats during construction. This shall include the following:
 - (i) Risk assessment of potentially damaging construction activities
 - (ii) Identification of “biodiversity protection zones”

- (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- (iv) The location and timing of sensitive works to avoid harm to biodiversity features
- (v) The times during construction when specialist ecologists need to be present on site to oversee works
- (vi) Responsible persons and lines of communication
- (vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- (viii) Use of protective fences, exclusion barriers and warning signs.

The development shall be carried out in accordance with the approved CEMP.

Finished Levels

- 7) Details to be submitted under Condition 1 shall include the finished ground levels, finished site slab levels, finished floor levels and the ridge height of the proposed dwellings in relation to existing ground levels within the site, fixed datum points outside the site and the ridge heights of at least two adjoining dwellings. The development shall be carried out in accordance with the approved details.

Flood Prevention/Drainage

- 8) No above groundwork shall take place until surface water drainage works have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, associated Planning Practice Guidance and the non-statutory technical standards for sustainable drainage systems, and the results of the assessment provided to the Local Planning Authority.

Where a sustainable drainage scheme is to be provided, the system shall be designed such that there is no surcharging for a 1 in 30-year event and no internal property flooding for a 1 in 100-year event + 40% allowance for climate change. The submitted details shall:

- (i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to greenfield run off rates and volumes, taking into account long-term storage, and urban creep and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - (ii) include a timetable for its implementation.
- 9) No above groundwork shall take place until details of the implementation, maintenance and management of the approved sustainable drainage scheme have been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall be implemented and thereafter managed and

maintained in accordance with the approved details. The details to be submitted shall include:

- (i) a timetable for its implementation and maintenance during construction and handover; and
- (ii) a management and maintenance plan for the lifetime of the development which shall include details of land ownership; maintenance responsibilities/arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime; together with a description of the system, the identification of individual assets, services and access requirements and details of routine and periodic maintenance activities.

Highway Works

- 10) The highway works shown in the approved drawings list at Condition 4 and as outlined in the Road Safety Audit and associated submissions shall be completed in accordance with the details therein before any dwelling hereby approved is occupied.

Visibility Splays

- 11) The approved visibility splays to the new vehicle accesses hereby granted shall be constructed in accordance with the approved details before any dwelling is occupied. Thereafter, no structure, erection or planting exceeding 600mm in height above ground level shall be placed within the visibility splays.

Access, Parking and Refuse Facilities

- 12) No dwelling shall be occupied until pedestrian and vehicle access to it, together with vehicle and cycle parking and refuse storage facilities serving that dwelling, have been constructed in accordance with details to be approved. Once provided the said elements shall be retained for their intended purpose thereafter.

Electric Vehicle Parking

- 13) No dwellings shall be occupied until one electric vehicle charging point per dwelling has been installed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. This shall include a plan showing the location of each charging point. Charging points shall be 'Office for Low Emission Vehicles' (OLEV) compliant with a minimum of 7kW / 32 amps power capacity. Once installed the approved charging points shall be retained and kept in working order is perpetuity.

Landscaping

- 14) Details to be submitted under Condition 1 shall include a hard and soft landscaping scheme. This shall include details of all public and private landscaping areas, details of the location, equipment and boundary fencing of any play area to be provided at the site, details of all trees, hedgerows, and other planting to be retained; the proposed finished ground levels; a planting specification to show numbers, size, species and positions of all new trees and shrubs to be planted, and details of all hard surfacing. New planting in relation

to the location of any retained or new below ground services such as pipes, cables, manholes and any associated easements shall also be shown. The hard and soft landscaping scheme shall be carried out in accordance with the approved details, specifications, and a programme of implementation.

- 15) All works comprised in the approved details of soft landscaping shall be carried out in accordance with the approved details during the months of October to March inclusive following occupation of the building or completion of the development, whichever is the sooner.
- 16) Trees, hedges, and plants shown in the landscaping scheme to be retained or planted which, during the development works or a period of ten years following full implementation of the landscaping scheme, are removed without prior written consent from the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Authority may reasonably specify.
- 17) No development, including site preparation or site clearance shall commence until a plan showing the location and design of tree and hedge protection fencing has been submitted to and agreed in writing by the Local Planning Authority and the agreed tree and hedge protection has been erected around existing trees and hedges to be retained.

Unless otherwise specified, the fencing shall be as shown in Figure 2 of BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations' and shall be erected to achieve root protection areas in accordance with BS5837:2012 root protection area calculations and the location of the fencing shall be informed by the recommendations of BS5837:2012.

This fencing shall remain in place during site works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree or hedge. No equipment, machinery or structure shall be attached to or supported by a retained tree or hedge. No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

The Local Planning Authority is to be advised prior to development commencing of the fact that the tree and hedge protection measures as required are in place and available for inspection.

Biodiversity

- 18) No development shall take place until bat surveys of the proposed off-site bat mitigation land, which is outlined in blue on the plan (Drawing number 6830 Figure 1), have been carried out, in accordance with the requirements set in the North Somerset and Mendip Bats SAC SPD. Following this, no development shall take place until a final scheme for bat mitigation including a timetable for its implementation which is informed by the results of the Bat Surveys, and an accompanying habitat management plan for the offsite

habitat, which avoids adverse effects from the development on the integrity of the North Somerset and Mendips Bats SAC, has been submitted to and approved in writing by the Local Planning Authority. The approved bat mitigation scheme and habitat management plan shall be carried out in accordance with the approved details.

External Lighting

- 19) No external lighting shall be installed within the site, including external lighting on the outside walls of dwellings or other domestic buildings, or other lighting elsewhere in the site, until a 'lighting design strategy for biodiversity' has been submitted to and approved in writing by the Local Planning Authority. The strategy shall identify:

- (i) the type, location, and height of the proposed lighting;
- (ii) existing lux levels affecting the site;
- (iii) the proposed lux levels as a result of the light; and
- (iv) lighting contour plans.

All external lighting shall be installed and operated in accordance with the approved details.

Landscape and Ecological Management Plan (LEMP)

- 20) No development, including site preparation or site clearance shall commence until a landscape and ecological management plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

- (a) Description and evaluation of features to be managed, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens;
- (b) Ecological trends and constraints on site that might influence management;
- (c) Aims and objectives of the management plan;
- (d) Appropriate management options for achieving aims and objectives;
- (e) Prescriptions for management actions;
- (f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- (g) Details of the body or organization responsible for implementation of the plan; and
- (h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed with the Local

Planning Authority, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Archaeology

- 21) No demolition or development below ground level shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
- (i) The programme and methodology of site investigation and recording
 - (ii) The programme for post investigation assessment
 - (iii) Provision to be made for analysis of the site investigation and recording
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - (v) Provision to be made for archive deposition of the analysis and site investigation
 - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition or development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition.

- 22) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under the previous condition, and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

Potential Ground Contamination

- 23) No phase or component of development below ground level shall take place until an assessment of the nature and extent of contamination on that site has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether, or not, it originates on the site. Moreover, it must include:
- (i) a survey of the extent, scale, and nature of contamination;
 - (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, and archaeological sites and ancient monuments.
- 24) Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no phase or element of development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been

submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development shall take place in accordance with the approved remediation scheme.

- 25) Within 3 months of the completion of measures identified in the approved remediation scheme as set out in Condition 24, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to the Local Planning Authority.

Renewable Energy

- 26) The dwellings hereby permitted shall not be occupied until measures to generate 15% of the energy required in the use of the development (measured in kilowatt hours) through micro renewable or low carbon technologies have been installed on site and are fully operational in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.

Code for Sustainable Homes

- 27) All residential units hereby approved shall be constructed to comply with, as a minimum, the equivalent of the requirements of Code Level 4 of the Code for Sustainable Homes. This equates to a 19% improvement on Part L of the Building Regulations. Unless otherwise first agreed in writing by the Local Planning Authority, and prior to the commencement of the development of any dwelling hereby approved, a copy of a Design Stage SAP Assessment for each dwelling, issued by a suitably qualified and accredited energy expert (SAP Assessor), shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, each dwelling shall be constructed in accordance with the approved Design Stage SAP Assessment unless a revised Assessment has first been submitted to and approved in writing by the Local Planning Authority.

Technical Housing Standards

- 28) All dwellings shall comply with the DCLG 'Technical housing standards 2015 (as amended) - nationally described space standards', unless otherwise authorised by the Local Planning Authority.

Accessible Homes

- 29) A minimum of 17% of the dwellings shall be constructed to comply with 'accessible and adaptable housing standards' contained in The Building Regulations 2010 Volume 1 M4(2) Category Two: Accessible and adaptable dwellings. The location of these dwellings shall be provided together with details of how they will comply with the said standards. The approved details shall be fully implemented before these dwellings are occupied.

Permitted Development

- 30) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking and re-enacting that Order, no electricity sub-station or gas governor shall be erected on any part of the development site hereby permitted, without the prior written permission of the Local Planning Authority.

Flood Prevention

- 31) The area of the site within which dwellings are to be developed, that is dwelling houses, private gardens, and residential outbuildings, shall fall wholly on land that is within Flood Zone 1 of the Council's Strategic Flood Risk Assessment.

Notification to SNCB

- 32) The development to which this planning permission relates shall not commence until 21 days after the date of the decision.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel

Instructed by Richard Kent, North Somerset Council

He called:

Natalie Richards

Principal Planning Policy Technical Officer

Kevin Carlton BA (Hons) Dip LA

S106 and Landscape Officer

Dan Carpenter BSc (Hons) Phd MEnvSc
CEnv

Associate Director of Ethos Environmental Planning

Neil Underhay MA

Principal Planning Officer

FOR THE APPELLANT:

Charles Banner QC
Leanne Buckley-Thomson of Counsel

Instructed by Walsingham Planning

They called

Ian Jewson BA (Hons) Dip TP MRTPI

Planning Consultant

Luke Hutcheson BSc (Hons) MSc CIHT

Principal Transport Consultant with
Hydrock Consultants Ltd

Nigel Evers Dip LA CMLI

Director of Viridian Landscape
Planning Ltd

Tom Clarkson BSc MSc MCIEEM

Managing Director of Clarkson and
Woods, Ecological Consultant

Interested Persons

Tony Moulin

Chair of Yatton and
Congresbury Wildlife Action Group

Chris Jackson

Vice Chair of Yatton Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority's Documents

LPA1 Opening Statement
LPA2 CIL Compliance Statement
LPA3 Draft Planning Conditions
LPA4 Closing Submissions

Appellant's Documents

- APP1 Opening Statement
- APP2 ODPM Circular 06/2005
- APP3 Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin) and SoS decision
- APP4 Email from Mr Jewson with copy of sign from the Strawberry Line
- APP5 Section 106 Agreement
- APP6 Section 106 Unilateral Undertaking
- APP7 Justification for Ecology Obligations
- APP8 Mr Evers' document 7/3/2022 'Effects of Road Layout on trees and hedges'
- APP9 Final HLS Position Statement
- APP10 HLS Scott Schedule
- APP11 Closing Submissions
- APP12 Review of Natural England response dated 25.05.22 by Clarkson & Woods

Interested Persons Documents

- IP1 Statement by Tony Moulin
- IP2 Statement by Chris Jackson

**Appendix 12: Appeal Decision (3291160) for
Land at Clappers Lane, Farnley**



Appeal Decision

Inquiry opened on 14 June 2022 and closed on 11 July 2022

Site visits made on 13 and 17 June 2022

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/L3815/W/22/3291160

Land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ

- 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 Seaward Properties Ltd and David Rusbridge against the decision of Chichester District Council.
 - The application Ref E/20/03125/OUT, dated 19 November 2020, was refused by notice dated 23 July 2021.
 - The development proposed is described on the application as: '*creation of approximately 100 dwellings, 30% affordable housing, public open space, landscaping and access.*'
-

Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 100 dwellings with associated access, landscaping and public open space on land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ in accordance with the terms of the application, Ref E/20/03125/OUT, subject to the conditions in the attached annex.

Preliminary and Procedural Matters

2. The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. The description given on the Decision Notice is: '*Outline Application for the erection of up to 100 dwellings with associated access, landscaping and public open space. All matters reserved other than access.*' This has been agreed as the description for the development proposed, as confirmed in the Statement of Common Ground. I have therefore based my decision on this description of the development proposed. The appellant has provided illustrative plans of the proposed layout and landscaping, which I have used to give an indication of the proposal in my determination of this appeal.
3. The Inquiry opened on 14 June and sat for 4 days at Bracklesham Barn, with an accompanied site visit on 17 June during an adjournment. The Inquiry was resumed virtually on 28 June when it sat for half a day and resumed virtually on 11 July when it closed.

Main Issues

4. Following the refusal of planning permission, the Council has provided evidence to demonstrate a 5 year housing land supply (HLS), which the appellant has contested. At the Inquiry, the Council accepted that the section 106

Agreement includes the necessary planning obligations to overcome its fourth reason for refusal on the grounds of infrastructure and confirmed that its first reason for refusal regarding the integrity of protected sites has been addressed by additional information provided following refusal. Therefore, the main issues are the effect of the proposal on the character and appearance of the area, including the settlement gap between Bracklesham and Earnley; its effect on pollution in the area, with particular regard to flooding due to foul sewage; and whether the Council can demonstrate a 5 year HLS. In addition, as the 'Competent Authority', I have undertaken an 'Appropriate Assessment' on the integrity of protected wildlife sites, in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Reasons

5. Chichester Local Plan 2014-2029 Key Policies (CLP) was adopted by the Council on 14 July 2015 and now forms part of the statutory development plan for the parts of the District outside of the South Downs National Park (SDNP). The appeal proposal would be contrary to policies 2 and 45 in that it would be outside the nearest settlement boundary. However, the Council has accepted that CLP Policy 4, which sets the overall housing requirement, is out of date. As the housing requirement has not been reviewed within the last 5 years, as required by the CLP, the Council has also accepted that policies 2 and 45 cannot be considered to be up-to-date, especially as Policy 2 is derived from settlement boundaries which are based on an out-of-date housing requirement. Therefore, I have given CLP policies 2, 4 and 45 limited weight.
6. The other most important policies in my determination of this appeal are CLP policies 33 and 48. CLP Policy 33 requires new development to be in keeping with the character of the surrounding area and its setting in the landscape. CLP Policy 48 seeks to ensure that new development does not have an adverse impact on the 'tranquil and rural character of the area' in criterion 1, and requires that the individual identity of settlements, actual or perceived, is maintained and the integrity of predominantly open and undeveloped land between settlements is not undermined, in criterion 5. I am satisfied that these policies are consistent with policies in the Framework and therefore I have given them significant weight.
7. The Council has brought forward an Interim Position Statement (IPS) for Housing Development, which it claims sets out proactive measures to build the supply of housing, and to encourage appropriate housing schemes, in response to it being unable to demonstrate a 5 year HLS. I have been informed that the draft IPS has been in use in assessing relevant planning applications since 3 June 2020 and has been subject to public consultation but not independent examination. The final IPS was approved on 3 November 2020 and is now in effect. The appellant has referred to a legal opinion that was used at the recent Earnley Concourse appeal¹ to demonstrate that the IPS carries very limited weight. In the absence of any legal opinion to show the contrary, I have given it limited weight in terms of any new policy that it introduces, as relevant regulations and procedures relating to new policy formulation were not followed.

¹ Appeal Ref APP/L3815/W/20/3255383, Earnley Concourse, dated 30 May 2022

Character and Appearance

8. The appeal site is mainly in use as an arable field which at the time of my site visit had a rape seed crop. It is not in an Area of Outstanding Natural Beauty (AONB) and is not subject to any particular landscape designation. Adjacent to the western edge of the site is a substantial hedgeline that separates it from the recent residential development at 'The Beeches', which the Council has acknowledged forms a new settlement boundary to Bracklesham. Clappers Lane runs to the north of the site and, near to the site, gives the appearance of a rural lane with no footways or street lighting along it.
9. To the east of the site is Earnley Rife and the relatively dense vegetation along that feature which separates the site from the Grade 2 listed Earnley Grange and the small settlement of Earnley to the northeast. There are existing public rights of way (PROWs) along the east site boundary and part-way along the south boundary, referred to as footpaths 2.2 and 2.1. These are screened from the site by dense vegetation that includes hedgerows and trees.
10. The West Sussex Landscape Character Assessment (2003) identifies the appeal site as being within 'Character Area' SC2: Manhood Peninsula. The appeal site meets some of the characteristics given in the description for this 'Character Area', in that it consists of a mainly flat open arable field with very few trees or hedgerow cover along its boundary with Clappers Lane. It lies between the traditional small settlement of Earnley and the larger suburban settlement of Bracklesham. There appears to me to be an area of unimproved vegetation along Earnley Rife to the east, together with land that is used for grazing, some of which forms a floodplain.
11. The Landscape Capacity Study Extension (2011) identifies the appeal site as lying to the far east of Sub-area 144: Bracklesham Coastal Plain, much of which has subsequently been developed, including Pebble Reach and The Beeches to the west of the site. A Landscape Capacity Study (March 2019) which has been prepared to inform the evidence base for the emerging Chichester Local Plan Review, identifies the appeal site as the last remaining piece of Sub-area 144. It concludes that Sub-area 144 continues to have a 'High' capacity due to its close relationship with and influence of East Wittering and Bracklesham and recognises the development at The Beeches. The Study accepts change within, and adjacent to, Earnley Conservation Area (CA) *'subject to the protection of existing heritage assets and the settlement pattern, along with avoiding the full coalescence of Bracklesham and Earnley'*.
12. The Council's Housing and Economic Land Availability Assessment (HELAA) 2021 supports the conclusions of the Landscape Capacity Study, listing the appeal site as Site HE002. Under a heading of achievability, it states that *'there are no known constraints that would make development unachievable in principle, however the current and future flood risk significantly constrains the developable area.'* The appeal site is annotated as 'Developable' on the assessments associated plan for East Wittering and Bracklesham.

Settlement Gap

13. One of the main reasons that the Council has given for refusal is that the appeal site comprises the last remaining undeveloped field / greenspace between the current eastern boundary of the settlement of Bracklesham and the western edge of the settlement of Earnley. The Council considers that it is

vital to retain the undeveloped nature of the site in order to maintain the separate identities of Bracklesham and Earnley, which have contrasting characters. In this regard, I accept that the proposal would reduce the gap between the historic development in Earnley and the more modern suburban development in Bracklesham and that there are no natural boundaries within the site to act as a development boundary.

14. The Landscape Gap Assessment for Chichester Local Plan Review 2035 explores areas which may be appropriate for local gaps in principle, as part of the evidence base for the emerging Chichester Local Plan Review. No evidence has been provided to show that the appeal site is currently, or proposed to be, designated as a local gap.
15. The entry or exit point for Bracklesham is at the northwest corner of the appeal site, and the point of entering / leaving Earnley is at the white timber fencing which has a sign on it marked 'Earnley' to the northeast of the site. I acknowledge that these points provide distinct 'gateways' along Clappers Lane to these individual settlements and that the appeal site plays an important role in providing a separation between them. However, the settlements of Bracklesham and Earnley are linked to the north of Clappers Lane by residential dwellings fronting the north of the lane near to Earnley, and Holdens Caravan Park that is set behind a small area of grassland. Also, Earnley Rife separates the appeal site from the settlement of Earnley. There is currently a separation distance of about 325m between the centre of the western boundary of the site and Earnley CA.
16. The appeal proposal on the illustrative plans shows built development confined to a semi-circular shaped area consisting of about a third of the site adjacent to the western boundary with The Beeches development. The remaining area of the site would be managed and maintained as amenity parkland. The appellant has measured a separation distance of some 120m between the edge of the proposed built development and the edge of Earnley.
17. The proposal would replace the development boundary up to the mature hedgeline to the eastern side of The Beeches with a new development boundary of 2 storey housing fronting out onto parkland. Whilst this would result in the loss of the openness of the current arable field between the two settlements, it would add additional hedgerows and tree planting along Clappers Lane and would retain a noticeable area of land between Bracklesham and Earnley that would not have built development on it. There is nothing to prevent the Earnley 'gateway' being retained as it currently is and a new gateway into Bracklesham being provided to the east of the proposed access into the site but still retaining a significant separation distance between gateways, with the set back of the houses from the lane behind a large area of planting adding to the existing planting along the Rife.
18. For the above reasons, I find that the proposal would continue to separate the settlements of Bracklesham and Earnley by an area of undeveloped land. Whilst there would be an increased level of public access to the parkland from that which is available to the arable field and this would alter the nature of the area, I cannot see any reason why it would not be able to make a contribution to the visual and perceived separation between built development in the two settlements.

19. I am therefore satisfied that the perception of a gap between settlements would remain when travelling along Clappers Lane. Views from the appeal site to the buildings at Earnley are limited, and would continue to be limited, due to the intervening vegetation. The eastern edge of Bracklesham would be brought forward in the view, heading west from Earnley, filtered by the proposed planting, with parkland in the foreground. After about 15 years, with the establishment of the hedgerow and tree planting along Clappers Lane, the perception of a separation between settlements would be increased.

Landscape Effect

20. I accept that the stretch of Clappers Lane forming the extent of the northern boundary of the site is characterised by its rural appearance, because of the appeal site being in agricultural use, the relatively narrow lane and there being no footways or street lighting. However, it is near to an area where there are footways along it to the west adjacent to The Beeches and I understand that a footway will be provided on the north side under the planning permission for the Earnley Concourse development. Furthermore, there are dwellings abutting the lane to the northeast near Earnley and a caravan park is visible from it to the north.
21. The appeal proposal would add a significant amount of built development to the western part of the site and would provide an access onto Clappers Lane which would have a footway link on the southern side of the lane to the west. Whilst the illustrative plan shows that the built development would be set back from the highway behind new hedgerows and tree planting, it would stand out in views looking south, especially along the access road. As such, the proposal would have a harmful impact on the rural character and appearance of Clappers Lane, particularly on the west side of the appeal site.
22. At the Inquiry, a local resident presented night time photographs of the area indicating that in views along Clappers Lane near to the appeal site, there is very little light pollution and that any light spillage from the surrounding development in Bracklesham is not apparent. I accept that the proposal would add to the level of light pollution in an area that currently has very little. However, the proposal would not introduce any streetlights along Clappers Lane, the new external lighting would be controlled by planning condition, and the built development would be set back from most of the road behind an area of planting. I am satisfied that these factors would ensure that there would continue to be very little light pollution along most of Clappers Lane with the development occupied, especially towards the east.
23. Earnley Parish Council has expressed concern that reflective bollards would be required along the side of Clappers Lane where there is a drainage ditch, similar to those installed along Clappers Lane near to The Beeches following a Stage 3 Road Safety Audit. The appeal proposal does not include any such bollards and no written evidence has been submitted by the local highway authority to indicate that any bollards would be required. Although the Parish Council has suggested that it could require about 60 bollards to be installed which I accept would detract from the rural character of the lane, I do not give this any great weight due to the limited supporting evidence to show that the circumstances of the appeal proposal would be the same as those at The Beeches that resulted in the need for these reflective bollards.

24. Moving east along Clappers Lane and nearer to Earnley, the built development would be located an increasing distance from the highway behind an area of parkland and would be at least 100m away from the eastern boundary of the site. The residential development would be at a density of about 25 dwellings per hectare but would only cover about a third of the appeal site, the remainder being used for parkland and planting. It would appear as a new urban fringe adjacent to the residential development at The Beeches. I consider that there would be sufficient land left without built development on it, and the proposed buildings would be far enough away from the built development in Earnley and Clappers Lane to the east, to ensure that a sizeable area of land between Earnley and Bracklesham would retain a rural character and appearance, especially after 15 years when the new planting would have matured.
25. The Council has agreed that the appeal site is not a 'valued landscape'. The appellant's Landscape and Visual Impact Assessment (LVIA) has assessed the landscape impacts of the appeal proposal. It does not identify any significant effects on the Manhood Peninsula Landscape Character Area. It concludes that, as with any greenfield site, there would be an adverse effect on landscape character, which it does not identify as significant but as a minor adverse effect due to the contribution of the agricultural field to the field pattern. It also suggests that there would be some beneficial outcomes. Whilst I accept that some beneficial effects on the landscape have been identified, such as the introduction of new hedgerow and tree planting, overall, I consider that the proposal would have a medium adverse effect on landscape character due to the extent of the built development that would harm the rural character and appearance of the area.

Visual Effect

26. The LVIA has identified important viewpoints when carrying out a visual impact assessment of the proposed development. The appellant has included Verified Visual Montages (VVMs) at other viewpoints that it considers give a realistic view of the proposal. Whilst the VVMs are not necessarily taken at the same points as the LVIA viewpoints and not at some of the views from where the development would have the greatest visual impact, I am satisfied that they do provide a reasonable indication of how the development would appear. I accept that the panoramic views could provide a distorted view, but I have also been provided with other views at similar locations and have observed these views on the site. The appellant has confirmed at the Inquiry that the montages take account of the level differences that have been identified in the Flood Risk Assessment (FRA).
27. The level of visual effect would be particularly evident to receptors walking, driving or riding along Clappers Lane. At my site visit I observed the appeal site from the identified viewpoints and looking at the VVMs. From LVIA Viewpoint 03, which is near to the house fronting Clappers Lane to the northwest of the site, the proposed buildings would clearly be visible, but this would be against the existing close views of rooftops in The Beeches.
28. VVM2, which is a panoramic view from a layby along Clappers Lane, provides a view along the access to the development. This view would be suburban, with tree and hedgerow planting either side of the access road. The proposal would dramatically change the appearance of that part of the site, which is to be

expected given that it is at the entrance to the development. However, there are currently distant views of the rooftops at The Beeches to the west and houses to the north at this location.

29. VVM3, which is a panoramic view from Clappers Lane about half way between Bracklesham and Earnley, shows that the proposed buildings would be less apparent than in VVM2 as they would be set back further from the highway behind hedgerows and parkland. Whilst the buildings would be closer than those that are visible at The Beeches, there would be a noticeable gap of undeveloped land between these buildings and Earnley.
30. Views from the edge of Earnley at its 'Gateway' include housing to the north of Clappers Lane and the rooftops of housing in Bracklesham above the vegetation on the horizon to the south and west. VVM4, which is at this location, shows the proposed buildings set forward from the existing built development but the existing planting and the proposed new planting would soften their appearance. I am satisfied that this would ensure that the verdant views at this location would not be significantly harmed by the proposal.
31. Views from within Earnley CA, which include VVM5, would not be significantly affected as the proposed development on the appeal site would mainly be hidden at this location. The views of the trees and vegetation as well as the surrounding buildings in the CA would be retained. There would be distant views of the proposed development from LVIA Viewpoint 7, near to Medmerry Royal Society for the Protection of Birds (RSPB) car park, but this would be set against what I observed to be views of the buildings at the edge of Bracklesham and on the north side of Clappers Lane.
32. The development would be mainly screened from views at locations on footpaths 2-1 and 2-2 where the boundary vegetation prevents any clear views into the appeal site. The proposal would enable gaps in the vegetation to be filled and the buildings would be far enough away to not have any significant visual effect on those using these PROWs.
33. Based on the above observations at my site visit and the montages of the proposed development, I find that most of the views from public vantage points around the site would not be significantly affected by the proposal. Any harmful effect to the views would be very local to the development and mainly confined to those areas nearest to Bracklesham and at the proposed access from Clappers Lane.

Effect on Earnley CA

34. The appeal site is not in a CA, the nearest CA being in Earnley. Earnley Parish Council has argued that the site's agricultural use contributes to the setting of Earnley CA. Although Earnley has historical connections with agriculture, including some of the buildings within the CA, this is not noted in the Character Appraisal and Management Proposals (CAMP) for Earnley CA as contributing to its significance. The CAMP refer to the Earnley Townscape Analysis Map which identifies an adopted view from within the CA from where I viewed the appeal site at my visit. I observed that this view is interrupted by mature hedgerows and immature tree growth along the northern field boundary which would significantly restrict views of the new development.

35. I have noted the concerns of Earnley Parish Council and local residents that the proposal would result in an increase in traffic travelling through the CA, which would harm its 'tranquil' nature. The traffic distribution used within the appellant's Transport Assessment (TA) has been agreed with West Sussex County Council (WSCC), as the local highway authority, and is consistent with the distribution used for other local development sites. Whilst the route via Earnley may be shorter in length, Googlemaps directs traffic via Bracklesham Lane, indicating that it has determined that that route is more attractive. Having driven along the alternative routes, I found the route via Earnley to be on narrower and more windy roads than the route directly onto Bracklesham Lane via Clappers Lane.
36. The results of the turning count survey relied upon by the appellant indicate that the route via Bookers Lane is not currently typically used by traffic travelling between Bracklesham and Chichester during peak periods when traffic on Bracklesham Lane is at its highest. This suggests that Bookers Lane is not used as a 'rat run'. Furthermore, the appellant's modelling of the Clappers Lane / Bracklesham Lane junction indicates that it operates well within capacity with minimal queuing and delay. Therefore, I am satisfied that most of the residents of the proposed development travelling by car would use the Clappers Lane junction with Bracklesham Lane, rather than Bookers Lane and Earnley CA.
37. Earnley Parish Council has referred to evidence provided by HCC Environmental Services, as part of their objection to the expansion of the Medmerry Park Holiday Village which refers to the impact of increased traffic on the CA. At my site visit, which was carried out at about 1700 hours, I noticed some traffic travelling through Earnley CA. Although the appellant's TA indicates that there would be very little traffic increase in Earnley as a result of the development, even using the higher traffic figures put forward by the Parish Council's expert, the proposal would result in about one additional vehicle every 2 minutes at peak times. As such, I find that there would be an insufficient increase in traffic through Earnley CA to result in any material harm to its significance as a heritage asset.
38. I have considered all the evidence presented by Earnley Parish Council regarding the effect of the proposal on the CA. However, it is not supported by any heritage expert evidence and the Council has not refused the proposal on these grounds. The appellant's heritage expert has submitted written evidence that largely supports the views of the Council's Conservation and Design Officer (CDO).
39. The CDO has suggested that a slight increase in traffic volume would not have an appreciable effect on the character and appearance of the CA; and that less than substantial harm would not be caused to a heritage asset by virtue of the distance the development would be from the CA, the preservation of a significant band of open space, the lack of open views on that side of the CA and the additional mitigation that would easily be achievable. I agree with the CDO and am satisfied that the proposal would preserve the character and appearance of Earnley CA and would not cause any material harm to its significance, in accordance with the Framework and CLP Policy 47.

Conclusions

40. For the reasons given above, I find that the proposal would preserve the character and appearance of Earnley CA and it would not result in the coalescence of Earnley with Bracklesham as it would retain an actual and perceived gap between development in these settlements. However, the proposal would have an adverse effect on the character and appearance of the area due to the extent of built development that would be visible from Clappers Lane, especially at the proposed access. It would therefore fail to accord with CLP policies 33 and 48, due to the harm that it would cause to the rural character of the area.

Pollution and Foul Drainage

41. The proposed area of built development is shown illustratively as being confined to the west and northwest parts of the site in Flood Zone 1. Parts of the site to the south and east are within flood zones 2 and 3 which are not shown to be subject to built development. A FRA has been carried out which, subject to measures being taken, has satisfied the Environment Agency (EA) that there would not be any unacceptable risk from flooding.
42. The Council's reason for refusal is regarding flooding due to problems with foul sewage drainage. This issue has been supported by letters of objection that have identified recent problems, especially due to the capacity of the pumping stations. The appeal proposal would drain to Sidlesham Wastewater Treatment Works (WwTW), and the Council confirmed at the Inquiry that it has no issue with the capacity of this WwTW.
43. The Council identified its issues as relating to the right for the proposed development to connect into the public sewer network under section 106 of the Water Industry Act, and the effect that this would have on the need for improvements to pumping stations and pipework to provide the required capacity. It has suggested that the network needs to be improved because of hydraulic overload and development growth on the Peninsula and has identified developments totalling 160 homes south of Clappers Lane in Bracklesham that were connected to the network without any improvement to it.
44. Southern Water (SW), as the statutory undertaker, has an obligation to provide the necessary network reinforcements and upgrades downstream of the practical point of connection to the foul sewer network imposed under section 94 of the Water Industry Act 1991. Should SW fail to meet its obligations under the Act, the industry regulator, OFWAT, is obliged to take appropriate action.
45. In its response to the planning application, SW refers to a likely period of at least 24 months from the grant of any planning permission to survey, design, and construct any necessary improvements. It has also indicated in its response in February 2022 that a connection in Clappers Lane would not have the capacity without improvements to the foul sewer network. However, the appellant has suggested 2 other connection points at Elcombe Close and Woodborough Close. A recent letter from SW, dated 13 May 2022, regarding a 'Level 1 Capacity Check' for the proposed connections to manholes at these locations, states that, following a reassessment, there is currently adequate capacity to accommodate foul flows of 0.73 l/s and 0.9 l/s at the respective manholes.

46. I have not been provided with any evidence to show that these connections would not be feasible, particularly as it is normal to have connections from development in the public highway and there have been no objections from the local highway authority. Therefore, in the absence of any substantive evidence to show otherwise, I have accepted that the connections would be capable of providing the necessary capacity for the foul sewage that would be generated by the proposed development.
47. I have taken account of the concerns expressed by local residents and owners / managers of caravan and camping sites regarding problems that have been encountered as a result of the capacity of the foul sewer network, and in particular the local pumping station at East Bracklesham Drive. In this respect, SW's Drainage and Wastewater Management Plan (DWMP) should ultimately address any issues. The latest DWMP is in draft form, and I have been informed at the Inquiry that consultation would be starting on Monday 20 June. SW is required to provide any necessary upgrades to ensure that the foul sewer network would cope otherwise it would be in breach of its statutory duties. This position is supported in paragraph 188 of the Framework, which states that planning decisions should assume that the pollution control regimes will operate effectively.
48. The Council has referred to a Supreme Court ruling² which states: '*...the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load*'. However, this involves a case in Wales where I understand there are different legal powers. I have determined this appeal based on the regime provided by the current legislation and the latest government guidance that is applicable to England.
49. I have considered the previous appeal decisions³ referred to by the Council in support of this reason for refusal. All three of these decisions pre-date the introduction of the Framework, and state that the statutory undertaker has objected to the proposal. The current appeal involves significantly different circumstances from these other appeals, and in particular there being no objection from the statutory undertaker, SW.
50. Based on the above, I find no valid reason to refuse planning permission for the proposed development due to pollution or foul sewage drainage issues. However, taking a precautionary approach based on existing reported problems with flooding and foul drainage, I have imposed a planning condition that would prevent occupation of the development until SW has confirmed in writing that there is sufficient capacity in its network. I am satisfied that such a 'Grampian' condition would meet the test of whether there is no prospect of the condition being discharged. Therefore, in conclusion on this main issue, the proposal would not result in any unacceptable pollution from flooding in the area due to the disposal of foul sewage and it would comply with paragraphs 174 e) and 185 of the Framework in this respect.

² Barratt Homes v Welsh Water [2009] PTSR 651 at [42]

³ Appeal Decisions Ref APP/V3120/A/08/2080488, Botley, dated 12 November 2008; APP/D3125/A/05/1190988, Stanton Harcourt, dated 11 January 2006; and APP/W1850/A/04/1142871, Ross-on-Wye, dated 12 October 2004

Housing Land Supply (HLS)

51. The Council's current 5 year HLS position statement covers the 5 year period 2021 to 2026 and forms the basis of the Council's position in respect of the 5 year HLS.

Housing Requirement

52. The Local Plan Inspector in 2015 agreed that for a period of 5 years from the date of the Plan being adopted the Council could rely on a suppressed housing delivery target of 435 dwellings per annum (dpa) because of acknowledged strategic constraints in relation to transport capacity issues on the A27 and foul drainage capacity issues. This 5 year period has now passed and therefore the Council has agreed that the housing requirement given in the CLP is no longer up-to-date.
53. As the housing requirement within the plan is out of date, in accordance with the Framework, the Standard Method for Calculating Housing Need, as set out in the Planning Practice Guidance (PPG) is the appropriate method for calculating the housing need within Chichester District. This results in a housing need of 763 dpa in the District, including the SDNP area, when a 5% buffer is applied. The appropriate buffer is set by the annual Housing Delivery Test (HDT). The most recent HDT (2021) showed that Chichester delivered 1,682 homes against a requirement of 1,238 over the previous 3 year period. This gives a HDT measurement of 136%, resulting in a 5% buffer being applied to the baseline requirement.
54. An adjustment should be applied to the housing need figure to account for the part of the Chichester District which is within the SDNP Planning Area. The Objectively Assessed Housing Need (OAN) in the SDNP as a whole is 447 dpa. Of this need, 28% arises in the Chichester District part of the SDNP equivalent to 125 dpa. The Council has adjusted its housing requirement by removing this figure from its overall requirement to avoid double counting. This results in a 5 year housing requirement of 3,350 dwellings, which is 670 dpa, after applying a 5% buffer. This approach has been applied in recent appeal decisions and the appellant has accepted it for the purposes of the current appeal. Based on the evidence provided for this appeal, I therefore accept this as the 5 year housing requirement.

Housing Supply

55. The Council and appellant disagree on the extent of windfall development that should contribute towards the HLS. The Council has made an allowance of 71 dpa in years 4 and 5 of the assessment period, for minor windfalls, by removing the highest and lowest completion years from the past 10 years. It has also allowed up to 140 dpa in years 4 to 5 of the assessment period for major windfalls. The appellant has argued that the 280 dwellings allowed for major windfall development should be removed entirely and the windfall allowance for minor development should also be reduced to 122 to reflect the likely effect of the recent changes to Natural England's water neutrality advice and nutrient neutrality advice.
56. Paragraph 71 of the Framework states that, where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply and that any

allowance should be realistic having regard to the Strategic Housing Land Availability Assessment (SHLAA), historic windfall delivery rates and expected future trends. I find that the Council has provided clear robust evidence to demonstrate that the number of minor windfall permissions has not waned in recent years. The Council has demonstrated that its approach taken in the assessment of windfalls has considered its recent SHLAA, historic windfall rates and possible future trends.

57. The evidence provided by the Council has shown that windfall rates in Chichester District have been consistently very high. In terms of the effect of this supply on the status of the 5 year HLS or Local Plan, table 12 in the Critical Friend paper's windfall assessment, shows that in the years following those when there was no 5 year HLS, or the Plan was still being prepared there is no marked uptake in windfall delivery. With regard to actual windfall delivery rates in Chichester, between 2011/12 and 2020/21 the average annual windfall completion rate was 335 dwellings and in only two years was the actual completion level similar to, or below, the windfall allowance. Also, I am satisfied that the Council's stepped approach to the consideration of expected trends is appropriate.
58. The Council has indicated that it has relied upon the windfall allowance to make up 13% of the supply and that it would be in years 4 and 5 of the 5 year HLS assessment period. Taking account of the evidence provided by the Council, I find that this is a realistic level of windfall, and that by only including it in years 4 and 5, there is some allowance for delays due to issues such as water or nutrient neutrality. I have therefore included the full amount of the Council's windfall allowance of 280 dwellings on major sites and 142 on minor sites.
59. The appellant considers that, applying an assumed lapse rate of 20% to minor development sites (9 dwellings or less), a minimum of 63 units should be removed from the supply. However, there is very little evidence base to support this and there is no need to make an adjustment, given that a buffer is applied to the housing requirement.
60. The appellant has also disputed the position on some of the major sites that have been included. The Framework defines a 'deliverable' site as being *'...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 terms of those sites with full planning permission, paragraph a) indicates that to be excluded it is necessary for there to be clear evidence that the housing would not be delivered in the 5-year period. In paragraph b) of the definition, it covers, amongst other things, sites with outline planning permission or that have been allocated in a development plan. It states that such sites *'...should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'*
61. The Council has accepted the removal of 178 dwellings on Tangmere SDL from its stated HLS at the time of the appeal. It has also accepted that full permission for 50 dwellings on land at Highgrove Farm expired in January 2022. Whilst it is an allocated site and I understand that a planning application for 300 dwellings has been submitted, there is no certainty that permission will be granted and that 50 dwellings would be delivered on the site within the 5 year period.

62. Of the 193 dwellings allowed for on land east of Manor Road, 119 have full permission and the 74 remaining dwellings have outstanding pre-commencement conditions. The Council has suggested that the site is owned by Persimmon Homes, one of the largest volume housebuilders in England, with capacity to complete the development in the next 5 years. The housebuilder is currently building the detailed element of the hybrid application and there are conditions discharged for the outline element. I therefore consider that the Council has provided clear evidence that the site would be deliverable for the full 193 dwellings in the 5 year period.
63. The 24 dwellings on land south of Loxwood Farm Place and 130 dwellings on land north of Cooks Lane both have outline permissions, placing them within paragraph b) of the Framework definition of deliverable sites. The Loxwood site is in an area affected by a water neutrality issue and the Cooks Lane site is in an area affected by nutrient neutrality issues, both of which are issues that Natural England has recently changed its advice on. The appellant has indicated that it has allowed for an adjustment to 80 dwellings on the latter site, due to the nutrient neutrality issue and the projected build-out rates being too optimistic, and has removed the 24 dwellings at the Loxwood site from the HLS.
64. Whilst the Council has identified an approach to previous sites that has been taken to address the nutrient neutrality issue, it appears to me to be at a relatively early stage in formulating an approach to the water neutrality issue. Therefore, based on this and the evidence that has been provided at the Inquiry, I am not satisfied that the Council has provided clear evidence that there would be a strategic solution to the water or nutrient neutrality issue within sufficient time to allow the number of housing completions that it has relied upon beginning on these sites with outline permission within five years. I therefore agree with the appellant's figures of no dwellings at the Loxwood site and 80 at the Cooks Lane site, even though the Council has indicated that the latter site involves Bloor Homes, which is a national housebuilder.
65. At the Inquiry the Council demonstrated a 5 year HLS of 3,356 dwellings, which is 5.01 years based on its housing requirement. The appellant has calculated that it would be 2,795 dwellings, which is a 4.17 year supply, based on the agreed 5 year requirement. Whilst I have not accepted all the appellant's reasons for reducing the 5 year supply, those that I have agreed reduce the figure to 3,232 dwellings, which is about a 4.8 year supply. The Council's calculated 5 year HLS supply is only 6 dwellings over the requirement so that even if I accept a small reduction in delivery due to delays as a result of the water and/or nutrient neutrality issues, which seems likely, there would not be a 5 year HLS.
66. I have considered the findings of the Inspectors in other recent appeal decisions⁴ that have been brought to my notice regarding the Council's 5 year HLS. The Raughmere Drive appeal Inspector arrived at a 5.039 year HLS, the Church Road appeal Inspector concluded that the identified supply for the period 2021-2016 would leave the supply at 3,049 dwellings or around 4.6 years, and the Westhampnett appeal Inspector calculated the supply of deliverable dwellings to be 2,774 dwellings or a 5 year HLS of some 4.17 years.

⁴ In particular Appeal Decisions APP/L3815/W/21/3284653, Raughmere Drive, dated 11 April 2022, APP/L3815/W/21/3286315, Church Road, dated 22 April 2022, and APP/L3815/W/21/3270721, Westhampnett, dated 27 May 2022

Whilst I have agreed with some of the reasons given for those calculated HLSs, I have based my findings on the most recent evidence that has been submitted to, and discussed at, the current Inquiry. However, I note that two of these other Inspectors have concluded that the Council cannot demonstrate a 5 year HLS.

Other Matters

67. I have considered all the relevant concerns expressed by those objecting to the proposed development both in writing and orally at the Inquiry. Many of these concerns are related to the main issues that I have dealt with above and in particular the effect on the separation gap and foul drainage. The other issues that have been raised, are mentioned below and / or have been addressed in the planning obligations or planning conditions that I have attached to the permission. In the case of the loss of productive agricultural land, I have given this weight as an adverse effect in the planning balance.

Integrity of Protected Wildlife Sites

68. The site lies within the zones of influence of Bracklesham Bay Site of Special Scientific Interest (SSSI), Chichester Harbour SSSI, Chichester and Langstone Harbours SPA, SSSI and RAMSAR site, Pagham Harbour Special Protection Area (SPA) and the Medmerry Solent SPA and Special Area of Conservation (SAC). These are all protected wildlife sites. Therefore, under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required as the 'Competent Authority' to undertake an 'Appropriate Assessment' of the proposal on the basis of its likely significant effects on Protected Sites.
69. The Council undertook an Appropriate Assessment as the Competent Authority, and consulted Natural England, when determining the planning application. At that time, it was the advice of Natural England that it is not possible to ascertain that the proposal would not result in adverse effects on the integrity of the sites in question. This was based on the site being in a highly sensitive location environmentally and there not being appropriate mitigation to guard against the potential negative impacts on protected species and in particular the feeding of over wintering birds in terms of recreational pressure from the residents of the proposed development both individually and cumulatively in combination with other residential developments. As such, the Council concluded that the proposal would be contrary to Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and CLP Policy 51.
70. Following the Council's Appropriate Assessment, the appellant has provided results of further winter bird surveys carried out in the winter of 2021/22. The Council has agreed with the appellant that these results confirm beyond reasonable scientific doubt that the site does not support qualifying species of Pagham Harbour SPA or Medmerry Compensatory Habitat. Based on this, I am satisfied that the surveys that have been carried out on wintering birds demonstrate that the site does not comprise functionally linked habitat and there would be no potential for a resulting significant effect on the integrity of any Habitats Site to occur.
71. I agree with the Council that any likely significant effects with regard to recreational disturbance during occupation individually and cumulatively in combination with other residential developments would be suitably mitigated

through established strategic approaches agreed with Natural England which avoid any adverse effect on the wildlife integrity of the protected sites.

72. Based on the new evidence submitted since the application, the Council has confirmed in the Statement of Common Ground that, if it was the Competent Authority for the purposes of the Habitat Regulations, it would conclude that there will be no adverse effect on the integrity of any European site subject to the development securing the required mitigation as detailed in the section 106 Agreement.
73. With regard to the effects as a result of wastewater discharge, the proposal would discharge to the Sidlesham WwTW, which has been removed from the Solent Maritime SAC catchment area. Therefore, there is no potential for likely significant effects from nutrient outputs from foul or surface water as the site lies outside the catchment for nutrient neutrality identified by Natural England, based on its guidance on the matter of nutrient neutrality, dated 20 April 2022.
74. Some objectors have expressed concern about spillages from the Sidlesham WwTW into Pagham Harbour, where a draft report for Natural England by JBA consulting indicates that seagrass beds are in an unfavourable condition due to elevated nutrient levels. However, Natural England has not changed the conservation status of the Pagham Harbour site from it being in a favourable condition or objected to the appeal proposal on this basis. Furthermore, this matter has not been raised by the Council as a reason for refusal.
75. After the Inquiry closed, the Council has provided details of the information that it has relied upon to reach its decision regarding the Appropriate Assessment. Following the submission of these documents to Natural England, I have received a response, dated 9 August, which indicates that Natural England has no objection subject to appropriate mitigation being secured. In terms of this mitigation, a Construction Environmental Management Plan (CEMP) would be secured by a planning condition; and financial contributions to the Solent recreation Mitigation Strategy (Chichester and Langstone Harbours) and for Strategic Access Management and Monitoring at Medmerry Compensatory Habitat would be secured through section 106 planning obligations.
76. On the basis of the above evidence, I conclude that, provided suitable financial contributions for recreational disturbance effects are appropriately secured, the proposed development would result in no significant adverse effect on the integrity of any of the protected Habitats sites. In this respect, it would accord with CLP policies 49, 50, 51 and 52 and Paragraph 180 of the Framework.

Traffic and highway safety

77. No collisions were recorded on Bookers Lane itself throughout the five year study period, which indicates that there are no existing road safety issues regarding the current layout and condition of Bookers Lane. I am aware that there are horse riding stables on Bookers Lane and the lane is used by cyclists, pedestrians and horses. However, even allowing for peak time flows forecast by Earning Parish Council's expert, the traffic increase on that lane due to the development would not be sufficient to cause any additional risks to these more vulnerable road users, given the highway safety record and that the traffic would be significantly less outside peak hours. As such, and taking the forecast increase in traffic through Earning CA, I am satisfied that any increase

in traffic associated with the development would not give rise to a potential road safety issue.

Facilities and Services

78. Some objectors have expressed concerns about the lack of facilities and services to support local residents and about the availability of jobs locally. In this respect, Bracklesham is identified in the CLP as a second Tier 'Hub' settlement. It is therefore recognised as being able to serve local residents both in the settlement and within the wider rural parts of the Manhood Peninsula. Furthermore, the Council has accepted that the site is sustainably located with good access to services and facilities. I have been given insufficient evidence to come to a different opinion.

Other Appeal Decisions

79. A significant number of appeal decisions have been referred to in relation to issues raised. I have addressed some of these decisions with regard to foul drainage and 5 year HLS under those topics. The Council has referred to recent appeals at Raughmere Drive⁵ and Earnley Concourse⁶. The Raughmere Drive appeal involves significantly different circumstances from those of the current appeal, which have been identified by the appellant. In particular, its relationship to the existing settlements and the SDNP, the capacity rating given in the Council's 2019 Landscape Capacity Study, its designation as a Local Gap in the adopted Neighbourhood Plan and the consideration of the site in the HELAA. The Earnley Concourse appeal was allowed but involves a significantly different policy context from the current appeal, being considered to be previously developed land. Whilst I have noted the points raised, no direct comparisons can be made with the current appeal.

Planning Obligations

80. Following the closure of the Inquiry, the appellant has submitted an engrossed section 106 Agreement between the appellant, WSCC and the Council, dated 12 July 2022, based on that discussed at the Inquiry. I have considered the information given in the Community Infrastructure Levy Regulations 2010 (CIL) compliance statement provided by the Council in support of the planning obligations.
81. An obligation to secure provision of 30% Affordable Housing on site, together with the tenure, is necessary to ensure compliance with CLP Policy 34 and the Council's Planning Obligations & Affordable Housing Supplementary Planning Document (SPD).
82. A contribution payable towards the cost of carrying out junction improvement works to the A27 Chichester Bypass Strategic Road Network, as requested by Highways England, is necessary to mitigate the impact of additional traffic on the highway network, given that the TA has shown that the proposal would be likely to generate additional traffic using the A27 Chichester Bypass junctions. I am satisfied that the level of contribution of £3,248 per dwelling is reasonable and proportionate as it derives from 'The A27 Chichester Bypass Developers Contribution Analysis for Strategic Development Options and Sustainable Transport Measures (2015)', which sets out a detailed methodology to calculate

⁵ Appeal Ref APP/L3815/W/21/3284653

⁶ Appeal Ref APP/L3815/W/20/3255383, 30 May 2022

contributions from each development location towards the A27 mitigation package. Such a contribution would ensure compliance with CLP Policy 8.

83. An obligation to include management and maintenance is necessary to be set up to maintain the public open space, which would be provided on the appeal site to enhance green infrastructure in the local area, to serve the future residents of the development and to retain a green gap between Bracklesham and Earnley. This obligation is based on the Open Space, Sport and Recreational Facilities Study 2012, which evidenced the Council's Planning Obligations & Affordable Housing SPD, adopted July 2016. This SPD sets out a proportionate approach to setting standards for new development based on the scale, typology and location of proposals.
84. Financial contributions to mitigate the impact of the proposed development on protected European sites in respect of recreational disturbance are necessary as the appeal site is within the 5.6 km of the 'zone of influence' of some of these sites. Without the contributions, the proposal would have an adverse impact on the integrity of the protected European Sites. The contributions accord with CLP Policy 50 and have been derived from the Solent Recreation Mitigation Strategy, which provides a framework that has been agreed with Natural England to mitigate the impact on the Solent SPAs of increased visitor pressure arising from housebuilding through a costed programme of mitigation measures.
85. A contribution to the Pagham Joint Scheme of Mitigation is necessary because the site is close to Medmerry Compensatory Habitat and the Council has suggested that it is treated in planning terms as if it is an SPA/SAC. The contribution is required to mitigate, through an additional payment to the RSPB as site manager for Medmerry, under the Pagham Joint Scheme of Mitigation. Without this additional contribution only the impact on Chichester Harbour would be addressed and not the impact on Medmerry.
86. The provision of, and funding for, a travel plan, including its preparation and implementation, the appointment of a co-ordinator and its monitoring for a period of 3 years is necessary to promote the use of sustainable modes of transport to mitigate the effect of the occupiers of the development on the need to travel in the area. It would ensure that the proposal would accord with CLP policies 7, 8, 13, and 39.
87. I have examined the evidence provided by the Council regarding the need for the above obligations and compliance with CIL Regulation 122. Based on this, and for the reasons given above, I am satisfied that the planning obligations in the Agreement would be necessary to mitigate the effects of the development and they meet the tests in CIL Regulation 122 and paragraph 56 of the Framework. I have therefore taken them into account in my determination of this appeal.

Planning Balance

88. As I have found that the Council cannot demonstrate a 5 year HLS in accordance with the Framework, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework will apply.
89. In terms of the benefits, the provision of market housing carries substantial weight. The proposal would assist in achieving the Government's objective

given in the Framework of significantly boosting the supply of homes. The weight that I have given this is not reliant upon the Council not demonstrating a 5 year HLS, given that this is not a ceiling and that there is a continuing need for new housing.

90. The proposal would provide 30% affordable housing, secured by the section 106 Agreement, which would meet the requirement of CLP Policy 34. The appellant has demonstrated that there is an acute and growing need for more affordable housing in the District. The latest evidence in the Council's Housing and Economic Development Needs Assessment (HEDNA) 2022 shows a net need for 278 new Social/Affordable Rented Homes per annum, of which the largest proportion of need (76 per annum) occurs on the Manhood Peninsula. Table 17 in the Council's latest Annual Monitoring report 2020-21 shows that affordable housing completions have never exceeded 167 per year. The Council has accepted that current affordable housing needs are not being met. I have therefore attached substantial weight to this provision even though it would not exceed the policy requirement.
91. The appellant has provided evidence to demonstrate that the proposal would result in a significant increase in habitat and a net gain for biodiversity. A Biodiversity Net Gain Assessment report by Lizard undertaken for the appellant has calculated using Natural England's Biodiversity Metric 3.0 that the proposal would be capable of a net gain of 44.23% for habitats, 23.83% for hedgerows and 19.04% for river units. There is no other substantive evidence to show otherwise.
92. The appellant has therefore demonstrated that the proposal would be capable of delivering a net gain for biodiversity of above 10%. Whilst a net gain would be expected from the replacement of an agricultural use by parkland, it would meet the requirements given in paragraphs 174(d) and 180(d) of the Framework which do not specify a minimum level. Planning conditions would ensure that the necessary measures would be implemented to achieve a biodiversity net gain but not ensure that it would be at least 10%. As such, I have attached moderate weight to this benefit.
93. The illustrative plans identify that the proposal would provide open space and provision for play and a community garden and orchard. I accept that this would go beyond the requirements of CLP policies 52 and 54 and that the facilities would be likely to be used by local residents and visitors to the area. However, the appellant has not demonstrated that there is a need for the additional play space, given that nearby land in Bracklesham provides a community centre and accompanying open space and play areas. I have therefore attached moderate positive weight to these provisions.
94. Whilst the appeal scheme is in outline, it is common ground with the Council that there is no reason the development cannot present the highest standards of design. However, this is expected in the Framework, in which paragraph 134 indicates that development that is not well designed should be refused. I have therefore attached little weight to this provision.
95. There would be economic benefits through construction employment, and through expenditure by future occupants in the area. Paragraph 81 of the Framework indicates that significant weight should be placed on the need to support economic growth and productivity. The appellant has given an indication of the significant input into the local economy that the development

would make. Therefore, even though the economic benefits associated with the construction would only be short term and most residential development would result in additional expenditure in the local area, I have given significant weight to the resulting support to economic growth and productivity from the development.

96. The adverse effects of the proposal would be as a result of the loss of an open rural landscape, which would be contrary to development plan policies. I have given this substantial weight. It would also result in the loss of an area of land currently used for agriculture. Based on the importance the Framework attaches to retaining 'the best and most versatile agricultural land' and the London & South East Region 1:250,000 Series Agricultural Land Classification maps indicating the site to be Grade 3 (good to moderate), I attach significant weight to the harm arising from this loss of agricultural land.
97. The proposal would also result in an increase in traffic due to additional car journeys that would be generated by the residents. However, the Council has accepted that the site is in a sustainable location, it would provide pedestrian and cycle links to Bracklesham and the use of the car would be reduced by measures to encourage the use of sustainable means of travel, including a travel plan. As such, this carries moderate weight as an adverse effect.
98. I have found non-compliance with some of the most important policies in the CLP in the determination of this appeal, namely policies 33 and 48. As such, I find that the proposal would not accord with the development plan as a whole, even though I have reduced the weight that I have given these policies due to the lack of a 5 year HLS.
99. Turning to paragraph 11(d)(ii) of the Framework, when the above considerations are taken together and weighed in the balance, I find that the adverse impacts would not significantly and demonstrably outweigh the benefits that I have identified, when assessed against the policies in the Framework taken as a whole. I conclude that a presumption in favour of sustainable development has been established for the proposed development. This is a material consideration in favour of the appeal proposal.

Planning Conditions

100. I have considered the suggested conditions should the appeal be allowed that formed the basis of discussions at the Inquiry. It is necessary to impose the conditions regarding the time scale for commencement of the development and the submission of reserved matters⁷ to ensure that development would be carried out expediently. A condition referring to the plans⁸ is necessary for reasons of clarity and to ensure that access would be completed in accordance with the approved development.
101. A condition to secure and implement a CEMP⁹, including the control of hours of working, is necessary to safeguard the environment, public amenity and highway safety during construction and to address some of the concerns of Natural England. A condition to control ground levels¹⁰ is necessary to protect

⁷ Conditions 1, 2 and 3

⁸ Condition 4

⁹ Condition 5

¹⁰ Condition 6

the appearance of the surrounding area. A condition regarding contamination¹¹ is in the interests of health and safety. A condition to secure a scheme of archaeological investigation¹² is necessary to protect the potential archaeological significance of the site, given the evidence from the Council's database and historical records.

102. Conditions regarding drainage¹³ and to ensure compliance with measures given in the flood risk assessment¹⁴ are necessary to prevent pollution and/or flooding and to protect the environment. Conditions to secure the installation of electric vehicle charging points¹⁵, and the implementation of a Sustainable Design and Construction statement¹⁶, including measures to control water consumption, are in the interests of promoting sustainable development. A condition to control external lighting¹⁷ is necessary to protect the environment, the appearance of the area, residential amenity and protected species, including bats.
103. Conditions regarding the construction of the access and protection of visibility splays¹⁸ and pedestrian access¹⁹ are necessary for highway safety reasons. A condition to secure car parking²⁰ is necessary to protect residential amenity and highway safety. A condition to secure cycle parking²¹ is in the interests of promoting sustainable transport. A condition to ensure the provision of landscaping²², in accordance with the areas shown on the submitted Parameter Plan, is necessary to protect the character and appearance of the area. A condition to ensure the implementation of a Landscape and Ecological Management Plan (LEMP)²³ is necessary in the interests of biodiversity.
104. A condition to secure mitigation regarding the effect on badgers²⁴ is in the interests of the protection of a wildlife species, given that they have been noted as being present on site. A condition to ensure that adequate foul drainage is provided before the dwellings are occupied²⁵ is necessary to protect the area from pollution due to flooding from foul sewage, given the concerns that have been expressed at the Inquiry. I am satisfied that the condition suggested by the appellant is appropriate as the evidence indicates that there is very little likelihood that the necessary foul drainage measures would not be carried out within a reasonable timescale.
105. Following the discussions at the Inquiry, I have amended and/or combined some of the suggested conditions. A condition regarding the provision of fire hydrants is unnecessary as it is covered by other legislation. A condition to secure the provision of a travel plan is unnecessary as this would be adequately dealt with under a section 106 planning obligation. A condition

¹¹ Condition 7

¹² Condition 8

¹³ Conditions 9 and 11

¹⁴ Condition 10

¹⁵ Condition 12

¹⁶ Condition 13

¹⁷ Condition 14

¹⁸ Condition 15

¹⁹ Condition 17

²⁰ Condition 16

²¹ Condition 18

²² Condition 19

²³ Condition 20

²⁴ Condition 21

²⁵ Condition 22

suggested by Earnley Parish Council to control the turning movements at the proposed access is not justified as being necessary based on the evidence provided at the Inquiry, including the response from WSCC as the local highway authority.

106. I am satisfied that all the conditions that I have included are reasonable and necessary, meet the tests given in the Framework and reflect the advice in the PPG.

Overall Conclusions

107. In applying section 38(6) of the Planning and Compulsory Purchase Act (2004), I have found that the proposal would not accord with the development plan as a whole. However, I find that the presumption in favour of sustainable development is a material consideration that indicates that the decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given and having regard to all relevant matters raised, I conclude that the appeal should succeed.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Parkinson, of Counsel	instructed by Chichester District Council
He called	
Tom Day	Video link for ecology round table session
Pieter Montyn MSc	County Councillor for the Witterings Electoral Division of West Sussex County Council for the foul drainage round table session
David Webster BSc MSc MA CMLI	Senior Landscape Architect, Huskisson Brown Associates
Jeremy Bushell BA(Hons) DipTp MRTPI	Principal Planning Officer, Development Management Service, Chichester District Council
Alex Roberts BSc(Hons) AMRTPI	Director, Lambert Smith Hampton, Planning, Development and Regeneration team, video link for housing land supply round table session

FOR THE APPELLANT:

Charles Banner QC	instructed by Tetra Tech Limited
He called	
Paul Cranley BA(Hons) CMILT	Divisional Director, Pell Frischmann
David West MENV SCI(Hons) CENV MCIEEM	Associate Ecologist, Tetra Tech Limited for ecology round table session
Daniel Allum-Rooney BSc(Hons) MSc GradCIWEM	Drainage and Flood Risk Technical Director, Pell Frischmann for the foul drainage round table session
Nicholas Billington BA(Hons) MSc MRTPI	Associate Director in Planning, Tetra Tech Limited
Andrew Smith BSc(Hons) MSc CMLI	fabrik limited

FOR THE RULE 6 PARTY (EARNLEY PARISH COUNCIL):

Robert Carey	Earnley Parish Councillor
He called	
Graham Bellamy BSc CEng MICE	Partner, Bellamy Roberts
Keith Martin	Chair, Earnley Parish Council
Robert Carey BA (Hons) MA	Earnley Parish Councillor

INTERESTED PERSONS:

Dr Linda Stanley	Resident of Clappers Lane
Julia Tyrrell	Resident of Clappers Lane
Melissa Smith	Clappers Lane Residents Group
Lance Stevens	Resident of Clappers Lane
Louise Pratt	Local Camping and caravan Sites, including Holden's Caravan Site
Rachel Dadds	Resident of Earnley Manor Close

Claire Smith
George Thomas
Julia Bowering
Brian Reeves

Dr Jill Sutcliffe CIEEM
Councillor Pieter Montyn
Sherrie Streetley

Resident of Earnley
Resident of Bracklesham
Resident of Earnley
Chair of East Wittering and Bracklesham Parish
Council
Manhood Wildlife and Heritage Group
West Sussex County Councillor
Bracklesham Caravan and Boat Club

DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY

- 1 Notification letter and list of those notified, submitted by the Council on 14 June
- 2 Draft section 106 Planning Agreement, submitted by the Council on 14 June
- 3 Appellant's opening statement, submitted by the appellant on 14 June
- 4 Opening comments on behalf of Chichester District Council, submitted by the Council on 14 June
- 5 Opening Statement- Earnley Parish Council, submitted by Councillor Carey on 14 June
- 6 Statement of Dr Linda Stanley, submitted by Dr Linda Stanley on 14 June
- 7 Statement and attachments of Julia Tyrrell, submitted by Julia Tyrrell on 14 June
- 8 Statement of Melissa Smith on behalf of Clappers Lane Residents Group, submitted by Melissa Smith on 14 June
- 9 Statement of Lance Stevens, submitted by Lance Stevens on 14 June
- 10 Statement of Rachel Dadds, submitted by Rachel Dadds on 14 June
- 11 Statement of Claire Smith, submitted by Claire Smith on 14 June
- 12 Statement of Julia Bowering and photographs, submitted by Julia Bowering on 14 June
- 13 Statement of George Thomas, submitted by George Thomas on 14 June
- 14 Statement of Manhood Wildlife and Heritage Group, submitted by Dr Jill Sutcliffe on 14 June
- 15 Statement and attachments of Councillor Pieter Montyn, submitted by Councillor Pieter Montyn on 14 June
- 16 Statement of East Wittering and Bracklesham Parish Council, submitted by Brian Reeves on 14 June
- 17 Map of photo viewpoints, submitted by Julia Bowering on 14 June
- 18 A3 Clappers Lane Local Area Street Plan, submitted by Councillor Carey for Earnley Parish Council on 14 June
- 19 Circular 11/95: Use of Conditions and letter dated 25 November 2002, submitted by the Council on 15 June
- 20 Map of sewerage in the area of Clappers Lane, submitted by the Council on 15 June
- 21 Map of the adopted highway, submitted by the Council on 15 June
- 22 Extract from JBA report on Pagham Harbour Condition Final Assessment: Conclusion, submitted by the appellant on 15 June
- 23 Extract from JBA report on Pagham Harbour Condition Final Assessment: Summary of Conservation Objectives, attributes and targets, submitted by the appellant on 15 June
- 24 Photograph of 3D model of development, submitted by the Council on 16 June
- 25 Extract from Historic England Advice Note 1 (Second Edition): Conservation Area Appraisal, Designation and Management, submitted by Keith Martin for Earnley Parish Council on 16 June
- 26 Further photographs by Julia Bowering, submitted by Julia Bowering on 17 June
- 27 Copy of Planning Appeal Ref 3286677, Yatton, submitted by the appellant on 17 June
- 28 Copy of updated draft of section 106 Planning Agreement, submitted by the appellant on 17 June
- 29 Amended Planning Condition 26, submitted by the appellant on 17 June
- 30 Comments by Mrs Victoria Arnott-Ridel, received on 17 June

- 31 Comments by Mrs Michelle Dunderdale, received on 17 June
- 32 Comments by Mr Mark Dunderdale, received on 17 June
- 33 Comments by Ms Janet Holding, received on 17 June
- 34 Comments by Mrs Tracey Ellis, received on 20 June
- 35 Earnley Parish Council Rule 6 Party Closing Statement, received on 8 July
- 36 Closings on behalf of the Council, submitted by the Council on 11 July
- 37 Appellant's Closing Statement, submitted by the appellant on 11 July
- 38 Engrossed section 106 Planning Agreement, received on 13 July
- 39 Letter, dated 13 July from the Council and attached documents regarding the Habitats Regulation Assessment, received on 13 July
- 40 Letter, dated 9 August 2022, from Natural England to the Planning Inspectorate regarding the Habitats Regulation Assessment, received on 10 August

ANNEX: SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before development commences, and the development shall be carried out as approved.
- 2) Application for approval of reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development approved 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 development hereby permitted shall be carried out in accordance with the following approved plans: 17002/S102 Rev A (Location Plan); 17002/C03; 103859-T001 Rev E (Access Plan); 103859-T-005 Rev B (Footway Connection Plan).
- 5) No development shall commence including any works of demolition, until a Construction and Environmental Management Plan (CEMP) comprising a schedule of works and accompanying plans for each construction phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period. The CEMP shall include details of the times of working, the phasing, public engagement, and the control of dust, dirt and noise.
- 6) No development shall commence until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the proposed completed height of the development and any retaining walls have been submitted to and approved in writing by the local planning authority. The development thereafter shall be carried out in accordance with the approved details.
- 7) In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified it shall be reported in writing immediately to the local planning authority. The development shall not be first occupied until:
 - i) An investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is first occupied; and
 - iii) a verification report for the remediation shall be submitted in writing to the local planning authority before the development is first occupied.
- 8) No development shall commence on the site until a written scheme of archaeological investigation of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall include proposals for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified; and a schedule for the investigation, and the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details.

- 9) No development shall commence until details of an overall site wide surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The details shall include the discharge of any flows to a watercourse and the scheme shall follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the Sustainable Drainage System (SUDS) Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.
- 10) No development shall commence until a flood alleviation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include the mitigation measures in the submitted flood risk assessment (ref The Civil Engineering Practice, March 2021), the provision of fluvial floodplain storage with details of land raising and lowering and timing/phasing arrangements. The mitigation measures shall detail:
 - Finished floor levels for all living accommodation set no lower than 4.86 metres above Ordnance Datum (AOD); and
 - Finished floor levels for sleeping accommodation set no lower than 5.16 metres AOD.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed in writing by the local planning authority.
- 11) No work shall commence on any Sustainable Drainage System (SUDS) until a site-specific maintenance manual setting out full details of the maintenance and management of the SUDS has been submitted to and approved in writing by the local planning authority. The manual shall include arrangements for the replacement of major components at the end of the manufacturer's recommended design life. The SUDS system, shall thereafter be maintained and managed strictly in accordance with the manual.
- 12) No development shall commence above ground level until there has been submitted to the local planning authority for approval in writing details of the provision of Electric Vehicle charging facilities to accord with the West Sussex County Council: Guidance on Parking at New Developments (September 2020 or any superseding document). The development shall be carried out in accordance with the approved details.
- 13) A detailed Sustainable Design and Construction Statement (SDCS) shall be submitted with the first application for reserved matters and any subsequent applications for reserved matters and shall demonstrate how the proposal complies with the approved details. The SDCS shall include details of CO2 emission saving measures and water consumption saving measures. The development thereafter shall be carried out in accordance with the approved details.
- 14) No dwelling hereby permitted shall be first occupied until details of any proposed external lighting of the site have been submitted to and approved in

writing by the local planning authority. The details shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details.

- 15) No part of the development hereby permitted shall be first occupied until such time as the vehicular access and associated works serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Site Access Arrangement and Footway Proposals' (by Pell Frischmann) with visibility splay and vehicle swept path analysis and numbered 103859-T-001 Rev E. Once provided the visibility splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metres above adjoining carriageway level.
- 16) No dwelling hereby permitted shall be first occupied until the car parking space(s) and any associated turning space serving that dwelling have been constructed, surfaced and drained in accordance with plans and details that shall have been submitted to and approved in writing by the local planning authority. The parking space(s) and any associated turning space shall thereafter be retained at all times for their designated purpose.
- 17) No dwelling hereby permitted shall be first occupied until such time as the pedestrian access serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Footway Connection' and numbered 103859-T-005 Rev B.
- 18) No dwelling hereby permitted shall be occupied until covered and secure cycle storage provision for that dwelling has been provided in accordance with details to be first submitted to and approved in writing by the local planning authority. Such provision shall thereafter be retained for the stated purpose.
- 19) Notwithstanding the illustrative landscaping details submitted, a detailed scheme of hard and soft landscaping for the whole site shall be submitted to the local planning authority for approval as part of reserved matters. The scheme shall demonstrate compliance with the areas of landscaping and built development detailed on the Parameter Plan (ref. 17002/C03) and shall include details of pedestrian permeability through the site, a planting plan and schedule of plants noting species, plant sizes and numbers/densities, and a programme/timetable for the provision of the hard and soft landscaping. All existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection during the course of development. The hard landscaping shall include the proposed finished levels or contours, pedestrian access and circulation areas, and details and samples of the hard surfacing materials. The works shall be carried out in accordance with the approved details and planting timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the local planning authority.
- 20) Notwithstanding any details submitted, no dwelling hereby permitted shall be constructed above damp proof course level until a Landscape and Ecological Management Plan (LEMP), setting out measures to ensure the delivery of

long-term management of open spaces and ecological mitigation, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The LEMP shall be prepared in accordance with the Ecological Impact Assessment by Lizard Landscape Design and Ecology (17 November 2020 ref: LLD1902). The LEMP shall include for:

- Any trees removed to be replaced at a ratio of 2:1.
- New linear features such as hedgerows and treelines to be created or existing features strengthened to improve connectivity between areas of suitable roosting and foraging habitat within the site and the wider area to increase opportunities for commuting bats.
- Filling in gaps in tree lines or hedgerow with native species.
- Wetland area for the benefit of water voles and great crested newts.
- High quality amphibian terrestrial habitat created within the open space.
- Long-term integrity of new and retained habitats through inclusion within a long-term managed strategy.
- Bat and bird boxes installed on site.
- Grassland areas managed to benefit reptiles.
- Log piles on-site.
- Wildflower meadow planting.
- Gaps included at the bottom of fences to allow movement of small mammals across the site.
- Hedgehog nesting boxes included on the site.

Thereafter the strategy shall be implemented fully in accordance with the approved details and implementation timetable.

- 21) No development shall commence until updated badger surveys have been undertaken to confirm the status of badgers on site and inform any need for avoidance, mitigation and licensing measures. The surveys and an avoidance, mitigation and licensing strategy shall be submitted to and approved in writing by the local planning authority in accordance with a timetable that shall have been agreed in writing by the local planning prior to the commencement of development. Thereafter the strategy shall be implemented fully in accordance with the approved details.
- 22) No dwelling hereby permitted shall be occupied until the off-site foul drainage infrastructure necessary to serve the development is operational and it is confirmed in writing by the sewerage undertaker that sufficient sewage capacity exists within the network to accommodate the development.

End of Schedule