

Bristol City Council

**Land at Broom Hill /  
Brislington Meadows,  
Broomhill Road,  
Brislington, Bristol**

Proof of Evidence of  
Gary Collins BA(Hons) DipTP MRTPI

APP/Z0116/W/22/3308537

Vers Final | 10 January 2023



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# 1 Summary

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1. I am Gary Collins, a member of the Royal Town Planning Institute (MRTPI). I hold a Bachelor of Arts (BA) Honours degree in Planning Studies and a Diploma in Town Planning (DipTP) both from Oxford Brookes University.
2. This proof of evidence is focussed on planning policy issues and the planning balance.
3. My evidence assesses the appeal scheme against the Development Plan (Core Strategy 2011 and the Site Allocations and Development Management Policies (SADM) 2014); relevant sections of the National Planning Policy Framework 2021; and other material considerations.
4. Having assessed the appeal scheme against the policy context and the evidence provided in support of this appeal, whilst elements of the scheme do comply in principle with parts of the Development Plan, the appeal proposals fail to comply with the Development Plan as a whole and material considerations do not suggest that planning permission should be granted. This assessment is supported by the stated reasons for refusal as follows.

## **Significant harm to biodiversity**

5. The proposed development would cause significant harm to biodiversity, largely through the loss of trees and 74% of the existing hedgerows at the site. Given that this greenfield site is allocated for development the principle of some loss of green assets has to be accepted. However, the extent of the losses, given the significance of those assets that has

been identified, goes beyond what should be permitted. This is contrary to Development Plan policies.

6. The mitigation hierarchy, which requires avoidance of impacts as the first course of action, as set out in NPPF 180a has not been followed, therefore the development would not be in accordance with this part of the NPPF.
7. Whilst the headline commitment by the appellants to deliver 10% BNG is noted, the deliverability of this on the land identified has not been demonstrated.

### **Failure to retain important hedgerows and trees**

8. The identified loss of trees and 74% of the existing hedgerows at the site is considered to be significant and not justifiable in developing this allocated site. Given that this greenfield site is allocated for development the principle of some loss of green assets has to be accepted. However, the extent of the losses, given the significance of those assets that has been identified, goes beyond what should be permitted. This is contrary to Development Plan policies.

### **The loss and deterioration of Irreplaceable Habitat**

9. The Council's expert has identified the presence of thirteen veteran trees on the site, four of which will be lost and a further five would suffer deterioration due to major incursions into their buffer zones. This is contrary to Development Plan policy DM17 and also 180c of the NPPF.
10. The appellant was unaware of this extent of veteran trees at the site and so has not factored in their presence when designing the appeal proposals. No wholly exceptional

reasons have been put forward in order to seek to justify compliance with NPPF 180c.

**Failure to adhere to the landscape and urban design policy considerations by virtue of excessive damage to the existing features on the site**

11. There would be a significant loss of green infrastructure assets, including the 74% loss of existing hedgerows, as identified by the various Council experts at this appeal. This demonstrates that the appeal proposals would not respond to or incorporate existing land forms and green infrastructure assets, and would not integrate natural and historic features into the design of the proposed public realm. The proposals would therefore be contrary to Development Plan policies.

**Planning balance**

12. The appeal site is allocated for development in the Development Plan and therefore the development of the site is supported in principle. The provision of additional housing, 30% of which would be affordable, and other identified benefits are positive aspects of the proposals. The provision of housing is worthy of very significant weight given the lack of a five year land supply and the national need for housing.
13. As the Council cannot demonstrate a five year housing land supply NPPF paragraph 11d has to be considered (the tilted balance). The Council's position is that (i) of 11d applies because the NPPF policies that protect assets of particular importance (in this case, irreplaceable habitats in the form of veteran trees) provide a clear reason for refusing the proposed development. The Council does not consider that

there are wholly exceptional reasons (as required by NPPF 180c) and so consider that the appeal should be dismissed.

14. Even if this position is not accepted, the Council considers that (ii) of 11d would apply, in that the adverse impacts of the proposed development would demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. The harms set out in this proof of evidence are sufficient to justify the refusal of permission, even if it is considered that the tilted balance should be applied.
15. In addition, there are no material considerations of sufficient weight to justify a departure from the Development Plan in this case, and various parts of the NPPF are material considerations that further weigh against the grant of permission.
16. Accordingly, the Inspector is respectfully invited to dismiss this appeal.

## 2 Qualifications and Experience

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17. I am Gary Collins, a member of the Royal Town Planning Institute (MRTPI). I hold a BA Honours degree in Planning Studies and a Diploma in Town Planning both from Oxford Brookes University.
18. I am the Head of Development Management at Bristol City Council, where I have worked since 2007. Prior to that, I worked at South Gloucestershire Council (various planning roles) from 1994 to 1999, and at Bath and North East Somerset from 1999 to 2007 as the Major Developments Manager.
19. I am familiar with the appeal site, the wider area and the relevant national and local planning policy.
20. My evidence is focussed on planning policy issues and the planning balance. I refer to and draw upon the evidence of my fellow City Council witnesses on specific issues.
21. The evidence that I have prepared in this Proof of Evidence for the Appeal is true. I can confirm that the opinions expressed represent my professional opinion. I have complied with the RTPI Ethics and Professional Standards (2017) when preparing my statement.

### 3 Introduction

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22. Bristol City Council (BCC) is the local planning authority (LPA) for the purposes of determining the planning application (reference: 22/01878/P) (the application). The application was submitted by Homes England (the Appellant) to BCC and validated on 27 April 2022 in relation to the proposed development at Land at Broom Hill / Brislington Meadows, Broomhill Road, Brislington, Bristol (the site). The statutory deadline for making a decision was 27<sup>th</sup> July 2022. On 7<sup>th</sup> September 2022 the appellant's agent notified the LPA of their intention to submit an appeal, serving the necessary notice.
23. A Statement of Common Ground (SoCG) is being prepared between BCC and the Appellant, clarifying the areas of agreement and areas of disagreement between the parties. The latest version is attached as Appendix A for information.
24. The application (application reference: 22/01878/P) had the following description of development:
- "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."*
25. As detailed in the Council's Statement of Case the application was considered at the Council's Development Control Committee B on the 7 December 2022. The Committee resolved that, if it had the power to determine



the application, it would have refused planning permission for five reasons.

26. The five purported reasons for refusal associated with the appeal case are as follows:

- 1) The proposed development is considered to result in significant harm to biodiversity, for which it provides neither adequate mitigation nor compensation (whether on or off site). The application is therefore considered contrary to the development considerations of allocation BSA1201 of the Site Allocations and Development Management (2014), policy BCS9 of Bristol Development Framework Core strategy (2011) policies SA1, DM17 and DM19 of the Site Allocations and Development Management (2014), and paragraphs 174, 179 and 180a of the NPPF (2021).*
- 2) The proposed development fails to retain important hedgerows and trees within the proposal site and is therefore considered contrary to the development considerations of allocation BSA1201 of the Site Allocations and Development Management (2014), policy BCS9 of Bristol Development Framework Core strategy (2011) policies SA1, DM15, DM17 and DM19 of the Site Allocations and Development Management (2014).*
- 3) The proposal would lead to the loss and deterioration of Irreplaceable Habitat without either a wholly exceptional reason or a suitable compensation strategy. It is therefore contrary to the development considerations of allocation BSA1201 of the Site Allocations and Development Management (2014),*

*policy BCS9 of Bristol Development Framework Core strategy (2011) policies SA1, DM15, DM17 and DM19 of the Site Allocations and Development Management (2014) and paragraph 180c of the NPPF.*

- 4) *The proposed development fails to adhere to the landscape and urban design policy considerations by virtue of excessive damage to the existing features on the site. The proposed plans and supporting documents present unsympathetic responses to the natural assets on the site and surrounding context and would prejudice the future design and delivery of an appropriate scheme. The proposal will fail to meet the requirements of the NPPF; policy BCS21 of the Core Strategy 2011; and policies SA1, DM26, DM27, DM28 and BSA1201 of the Site Allocations and Development Management Policies 2014.*
- 5) *In the absence of an appropriate agreement under s106 of the Town and Country Planning Act 1990, the proposed development fails to make provision for the following:*
- Affordable Housing,*
  - Ecological Mitigation (including BNG Biodiversity Off Setting),*
  - Financial Contributions towards Fire Hydrants, Public Transport Facilities,*
  - amending Traffic Regulation Orders, Tree Planting, Training and Employment Initiatives,*
  - Management and Maintenance of on-site Public Open Space,*
  - Travel Plan Audit Fee and contribution,*

- *Highway works including cycle and pedestrian works though Bonville Trading Estate.*

*These are required in order to mitigate the impacts of the development. The proposal is therefore contrary to policies BCS10, BCS11 and BCS17 of the Bristol Local Plan: Core Strategy (2011) policies DM15, DM16, DM17, DM19, DM23 of the Bristol Local Plan: Development Management Policies (2014) and the Planning Obligations SPD (Adopted 2012).*

27. The purpose of this Proof is to set out the approach to decision-taking, identifying the relevant Development Plan policies and other material considerations and undertaking a planning balance, taking account of all relevant factors.

## 4 Background

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### **Appeal Site and Surroundings**

28. A description of the appeal site and the surrounding area is set out within Section 2 of the appellant's Statement of Case.

### **The Proposal**

29. The appeal proposal is described in full in Section 3 of the appellant's Statement of Case.

### **Relevant Planning History**

30. A description of the relevant planning history of the appeal site is set out within Section 4 of the draft SoCG.
31. Aside from the application before the Inquiry, another separate application has been made by the appellants regarding the part of the appeal site being proposed for vehicular access to and from Broomhill Road. The description of development is: *"Outline application for preliminary works to deliver a 'Green Link' between Brislington Meadows and Broomhill Road, including the laying of a pedestrian footpath, ecological enhancements and provision of a temporary construction access and compound within the site to facilitate the preliminary works."* This application is still pending consideration.

## 5 The Development Plan

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### The Development Plan

32. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70 of the Town and Country Planning Act 1990, planning applications and appeals should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is therefore the starting point for planning decisions.
33. The Development Plan for BCC comprises of:
- Bristol Core Strategy (2011); and
  - Site Allocations and Development Management Policies Development Plan Document (2014) (SADM).
34. The majority of the application site is allocated for development through Policy SA1 of the SADM. SA1 states:
- “The sites listed below and shown on the Policies Map will be developed for the uses identified and in accordance with the accompanying development considerations set out in the Annex ‘Site allocations information’ and with all other relevant development plan policies”.
35. The allocation reference is BSA1201. The allocation sets out a number of development considerations including:
- Development should:*
- *be informed by an ecological survey of the site and make provision for mitigation and compensation measures, including enhancement to the grazing land adjacent to Victory Park and compensation for the loss of semi-improved neutral grassland and damp grassland (the site currently has city-wide importance*

*for nature conservation due to the presence and condition of particular species, habitats and / or features);*

- *retain or incorporate important trees and hedgerows within the development which will be identified by a tree survey;*

36. At the end of the development considerations, the allocation says that the estimated number of homes for the site is 300. It should be noted though, that the Annex to the SADM (Site Allocations Information) includes the following text on page i:

*For each site an explanation for the allocation is provided. For those sites with a housing allocation, an estimated number of homes which could be developed on the site is provided. The precise number of homes to be developed will be determined through the planning application process.*

37. It is the Council's position that the current planning application process, now at the appeal stage, is therefore the legitimate opportunity to establish the appropriate balance between the extent of development at the site and the level of harm caused to matters such as trees, hedgerows and landscape. This process will further refine the true capacity of the site, as this will inevitably go into more detail than the Local Plan allocation process, which was very broad brush, as more information will be available (through surveys etc) and a more detailed design process will have been undertaken.

38. The plain intention of the development plan was that the 300 home estimate provided at the Local Plan stage would be tested at the application stage, and it is noted that the appellant has done exactly this and accepts that a lower number of residential units can be delivered at the site (the 260 being applied for) by applying the development requirements set out in the allocation. The Council's position is though, that this exercise undertaken by the appellant has not gone far enough in order to avoid overriding harm, including the failure to identify a number of veteran trees

(either at the time of making the application or this appeal) that would need to be satisfactorily accommodated as part of the development.

39. The Council does not accept that the important matters referred to in the Development Considerations have already been “priced into” the allocation of an estimated 300 homes (ref. 5.18 of the appellant’s Statement of Case). The appellant refers to the assessment carried out at the Local Plan stage through the Sustainability Appraisal (CD 8.3). This was at a high level and was not the “pricing in” of a development of 300 homes, due to the reference to it being an estimate (para 36 of this proof) and also the list of extensive Development Requirements to inform the development of the site.

40. The Sustainability Appraisal referred to clearly sets out that, whilst changes to the proposed site allocation have helped to mitigate some of the anticipated negative impacts, there is still more detailed consideration to take place (with my emphasis):

*4.91.4.1 Site BSA1201 has been reduced in size, which will now retain a much larger proportion of the existing SNCI, this is considered to **reduce** the extent of negative effect on local ecology. The development considerations for the site, introduced as part of the Preferred Approach, now also effectively require compensation and mitigation to reprovide, offsite and nearby, the type of habitat which **might** be lost to development. This is considered to **reduce the potential** for negative effect from harm or net loss of SNCI land in the city, **creating an implementation dependent effect on local ecology.***

*4.91.4.2 However, the role of the Wildlife Network through the SNCI and linked Wildlife Corridors is still not acknowledged **and potential exists for this wildlife corridor and section of the network to loss (sic) connectivity and integrity. This is still***

**considered to create potential for significant negative effects on local ecology on this site.**

41. This commentary highlights that, whilst the evolution of the site allocation made progress in potentially mitigating harm, the impact on matters such as ecology remained an important issue that would need to be dealt with at the policy implementation stage ie. at the planning application stage. The Council's position is that this intent is demonstrated by the relevant parts of the site allocation policy, with references to the 300 unit site capacity being an estimate, and the specific Development Requirements based on more detailed surveys.
42. The Council does not accept the appellant's position at 5.40 of their Statement of Case that "the development will not result in harm beyond that envisaged or considered by the Council in allocating the appeal site for development". At the allocation stage, by providing an estimate of capacity and a series of Development Considerations, the Council clearly had not accepted a specific level of harm and had instead identified the need for an acceptable balance of harm and benefits to be achieved, informed by comprehensive surveys.

**Other Relevant Material Considerations**

*National Planning Policy Framework (NPPF)*

43. The policies in the NPPF are material considerations in the determination of planning applications. The NPPF should be read as a whole but the following sections are particularly relevant to this appeal.
- Paragraph 11 – Presumption in favour of sustainable development.
  - Paragraph 12 – Conflict with an up-to-date development plan.



- Paragraph 130c – Sympathetic design to local character and history
- Paragraph 131 – Incorporation of trees
- Paragraph 134 – Well designed development
- Paragraph 174 – Conserving and enhancing the natural environment.
- Paragraphs 179 and 180 – Habitats and biodiversity

#### *Other Material Considerations*

44. Whilst the site is still technically designated as a Site of Nature Conservation Importance (SNCI) the allocation of the site for development means that for s38(6) purposes the Development Plan does not identify the site as an SNCI. The retained legacy status of the site as an SNCI should be given very little weight in these circumstances.
45. Bristol City Council has declared both a Climate Emergency and an Ecological Emergency, with the relevant action plans being CD 8.14 and CD 8.15. The Council's position is that both declarations and action plans are supported by the policies of the NPPF and should therefore be given some weight in the consideration of this appeal.
46. The Council is in the process of preparing a new Local Plan. The most recent consultation (CD 5.12) includes a proposal not to allocate the appeal site for development. The new plan is still at the Regulation 18 stage and the most recent consultation runs until 20<sup>th</sup> January 2023. For this reason, the draft Local Plan and the intention to not allocate the site in future, should be given limited weight. Nevertheless it does demonstrate a possible future in which the development of the site for housing is not required.

47. The Council's Green Spaces Motion (CD 8.1) of September 2021 sets part of the context for the new Local Plan and therefore is a material consideration, although limited weight should be given to this due to the relatively early stage of plan preparation that the Council has reached.

## 6 Analysis of the Issues in Dispute

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### The Nature of the Submitted Application

48. In deciding this appeal it is very important to carefully consider what is being applied for at this stage. The application is technically an Outline application with only the matter of “access” formally determined at this stage and all other matters reserved.
49. However, parameter plans are submitted for approval at this stage regarding the following issues:
- Access and movement
  - Land use
  - Landscape
  - Heights
50. The application is also accompanied by a Design Code document which the appellant seeks to have approved as part of the outline permission. The Code includes a Regulating Plan that brings the various parameters and the elements of the Design Code together into one plan.
51. Parameter plans are often submitted with Outline applications in order to “bridge the gap” between the high level of detail formally determined at that stage and the Reserved Matters stage. Parameter plans mean that sufficient certainty about the nature of a development can be committed at the Outline stage, without an applicant having to go to the full level of detail that would constitute a Full planning application. Future Reserved Matters submissions have to conform to the parameters agreed at Outline stage. This is recognised through the Appellants’ proposed condition 3 (see SoCG) which lists the Parameter plans and Design Code as approved plans and states that “the development hereby permitted shall be carried out in accordance with the

following approved plans..." Condition 5 in the SoCG also states:  
*"Detailed plans and particulars of the reserved matters above shall be in compliance with the approved Design Code (April 2022) and each reserved matters submission(s) must demonstrate compliance with the design requirements set out in the Design Code."*

52. It is the Council's position that any approval of the Parameter plans and the Design Code would mean that, despite being technically an Outline application, the form of development would be largely fixed. The assessment of harms likely to be caused by the form of development that has been undertaken by the Council's officers and witnesses is considered to be valid and should not be downplayed by the Appellant due to the Outline status of the application.

## Reasons for Refusal

53. The Reasons for Refusal associated with the appeal case are set out in full in paragraph 26 of this Proof.

### Reason 1: Significant harm to biodiversity

54. The issue of biodiversity is covered by the Development Plan through policy BCS9 of the Core Strategy and policies DM17 and DM19 of the SADM. In addition, the site allocation includes specific development considerations relating to biodiversity that have to be met as part of delivering development at the site.
55. The detailed evidence relating to this specific reason for refusal is contained in the proof of evidence of Mr Higgins and I have considered his expert opinion. I consider that the harm to biodiversity demonstrably outweighs the benefits of the proposals when assessed against the policies of the Development Plan and the policies in the NPPF taken as a whole.

56. Policy BCS9 states:

*Individual green assets should be retained wherever possible and integrated into new development. Loss of green infrastructure will only be acceptable where it is allowed for as part of an adopted Development Plan Document or is necessary, on balance, to achieve the policy aims of the Core Strategy. Appropriate mitigation of the lost green infrastructure assets will be required.*

The identified loss of trees and hedgerows (74%) is considered to be significant and not justifiable to achieve the policy aims of the Plan, which in this case is the development of the site in accordance with the development requirements. Given the greenfield nature of the allocated site, the principle of some loss of green assets has to be accepted, but the extent of the losses, given the significance of those assets that has been identified, goes beyond what should be permitted.

57. Policy DM19 states:

*Development which would be likely to have any impact upon habitat, species or features, which contribute to nature conservation in Bristol will be expected to:*

- i. Be informed by an appropriate survey and assessment of impacts; and*
- ii. Be designed and sited, in so far as practicably and viably possible, to avoid any harm to identified habitats, species and features of importance; and*
- iii. Take opportunities to connect any identified on-site habitats, species or features to nearby corridors in the Wildlife Network.*

Taking Mr Higgins' assessment of the appeal proposals, it appears that the development would not meet ii as it has not been designed to sufficiently avoid harm to habitats, species and features of importance.

58. In addition to this, the proposed siting of residential units along the access corridor linking with Broomhill Road means that an opportunity has been missed to link the main site to the nearby Eastwood Farm Site of Nature Conservation Interest (SNCI), which is therefore contrary to iii of DM19. The negative aspects of the proposals when assessed against this Development Plan policy outweigh the positive elements of the development.

59. Turning to the NPPF, para 180a states:

*if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*

Mr Higgins' assessment is that significant harm to biodiversity would be caused by the appeal proposals, and that the mitigation hierarchy (avoidance of impacts being the first course of action) set out in NPPF 180a has not been followed. Therefore the development would not be in accordance with this part of the NPPF.

60. The headline commitment by the appellants to deliver 10% BNG is noted. However, Mr Higgins' assessment is that the deliverability of this on the land identified, to the extent that at this stage the principal that BNG can be provided, has not been demonstrated. Therefore, whilst giving significant weight to the benefits of the appeal proposals, when considering the issue of biodiversity the adverse impacts of granting permission would significantly and demonstrably outweigh those benefits.

## Reason 2: Failure to retain important hedgerows and trees

61. The issue of the retention of important hedgerows and trees on development sites is covered by the Development Plan through policy BCS9 of the Core Strategy and policies DM15, DM17 and DM19 of the SADM. In addition, the site allocation includes a

specific development consideration relating to existing trees and hedgerows that has to be met as part of delivering development at the site.

62. The detailed evidence relating to this specific reason for refusal is contained in the proof of evidence of Mr Forbes-Laird and I agree with his conclusions. I consider that the harm to existing trees and hedgerows demonstrably outweighs the benefits of the proposals when assessed against the policies of the Development Plan and the policies in the NPPF taken as a whole.

63. Policy BCS9 states:

*Individual green assets should be retained wherever possible and integrated into new development. Loss of green infrastructure will only be acceptable where it is allowed for as part of an adopted Development Plan Document or is necessary, on balance, to achieve the policy aims of the Core Strategy. Appropriate mitigation of the lost green infrastructure assets will be required.*

The identified loss of trees and hedgerows (74%) is considered to be significant and not justifiable to achieve the policy aims of the Plan, which in this case is the development of the site in accordance with the development requirements. Given the greenfield nature of the allocated site, the principle of some loss of green assets has to be accepted, but the extent of the losses, given the significance of those assets that has been identified, goes beyond what should be permitted.

64. Policy DM15 seeks new trees and / or improved management of existing trees as part of the landscape treatment of new development, therefore requiring their satisfactory retention.

65. Policy DM17 states the following:

*All new development should integrate important existing trees. Development which would result in the loss of Ancient Woodland, Aged trees or Veteran trees will not be permitted. 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 tree compensation standard*

I concur with Mr Forbes-Laird's assessment that the appeal proposals do not comply with this policy.

66. The negative impacts of the failure of the appeal proposals to satisfactorily retain important hedgerows and trees within the site overlap with the concerns relating to the impact on biodiversity and irreplaceable habitats.
67. Whilst giving significant weight to the benefits of the appeal proposals, especially the delivery of housing including policy compliant 30% affordable housing, when considering the issue of the impact on existing trees and hedgerows the adverse impacts of granting permission would significantly and demonstrably outweigh those benefits.

### Reason 3: The loss and deterioration of Irreplaceable Habitat

68. The issue of irreplaceable habitats is covered by the Development Plan through policy BCS9 of the Core Strategy and policies DM15, DM17 and DM19 of the SADM. In addition, the site allocation includes specific development considerations relating to habitats that have to be met as part of delivering development at the site.
69. The NPPF at 180c also deals with irreplaceable habitats such as veteran trees.
70. The detailed evidence relating to this specific reason for refusal is contained in the proofs of evidence of Mr Higgins and Mr Forbes-Laird. Mr Forbes-Laird has identified that a total of thirteen



veteran trees are present at the site, where four would be lost as a result of the appeal proposals and that a further five would deteriorate due to major incursions into their buffer zones. The appellants had only identified the presence of one veteran tree in total when the application was made and had not revised this position when lodging this appeal.

71. I have considered the expert opinions of Mr Higgins and Mr Forbes-Laird. I consider that it can be demonstrated that the appeal proposals will result in the loss and deterioration of irreplaceable habitats, and therefore that the application should be refused in accordance with 180c of the NPPF. This has implications for the application of para 11d of the NPPF as covered later in this proof.

72. Policy BCS9 states:

*Individual green assets should be retained wherever possible and integrated into new development. Loss of green infrastructure will only be acceptable where it is allowed for as part of an adopted Development Plan Document or is necessary, on balance, to achieve the policy aims of the Core Strategy. Appropriate mitigation of the lost green infrastructure assets will be required.*

73. Policy DM17 states:

*Development which would result in the loss of Ancient Woodland, Aged trees or Veteran trees will not be permitted*

As referred to above Mr Forbes-Laird has identified the presence of thirteen veteran trees on the site, four of which will be lost and a further five that would suffer major incursions into their buffer zones.. This is clearly contrary to policy DM17.

74. Policy DM19 states:

*Development which would be likely to have any impact upon habitat, species or features, which contribute to nature conservation in Bristol will be expected to:*

- i. Be informed by an appropriate survey and assessment of impacts; and*
- ii. Be designed and sited, in so far as practicably and viably possible, to avoid any harm to identified habitats, species and features of importance; and*
- iii. Take opportunities to connect any identified on-site habitats, species or features to nearby corridors in the Wildlife Network.*

Both Mr Higgins and Mr Forbes-Laird have identified harm to habitats and species, therefore the appeal proposals fail to comply with this policy.

75. Turning to the NPPF, para 180c states:

*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*

Mr Forbes-Laird has identified the presence of thirteen veteran trees at the site, four of which would be lost and five would suffer major incursions into their buffer zones. The development is therefore contrary to this part of the NPPF. The implications of this for the application of the para 11 presumption in favour of sustainable development are dealt with later in this proof.

Reason 4: Failure to adhere to the landscape and urban design policy considerations by virtue of excessive damage to the existing features on the site

76. The issues of landscape and urban design are covered by the Development Plan through policy BCS21 of the Core Strategy and policies DM26, DM27 and DM28 of the SADM.
77. The detailed evidence relating to this specific reason for refusal is contained in the proofs of evidence of Ms Whatmore and Mr Bhasin. I have considered their expert opinions and I consider that the failure to adhere to landscape and urban design policy considerations, by virtue of excessive damage to the existing features on the site, demonstrably outweighs the benefits of the proposals when assessed against the policies of the Development Plan and the policies in the NPPF taken as a whole.
78. Policy BCS21 sets out the high level principles of high quality urban design for new developments. The detailed issues that follow, and that are assessed by Ms Whatmore and Mr Bhasin in their proofs, demonstrate that the appeal proposals do not meet these principles.
79. Policy DM26 states:

*The design of development proposals will be expected to contribute towards local character and distinctiveness by:*

- i. Responding appropriately to and incorporating existing land forms, green infrastructure assets and historic assets and features;*

The significant loss of green infrastructure assets, including the 74% loss of existing hedgerows, identified by the various Council experts at this appeal, demonstrates that the appeal proposals would not contribute towards local character and distinctiveness and would therefore be contrary to this policy.

80. Policy DM28 states:

*Development should create or contribute to a safe, attractive, high quality, inclusive and legible public realm that contributes*

*positively to local character and identity and encourages appropriate levels of activity and social interaction.*

*Development will be expected to:*

*vii. Where they are proposed or required by other policies, integrate sustainable drainage systems, natural and historic features and any planting into the design of the public realm...*

The significant loss of green infrastructure assets, including the 74% loss of existing hedgerows, identified by the various Council experts at this appeal, demonstrates that the appeal proposals would not satisfactorily integrate natural and historic features into the design of the public realm and would therefore be contrary to this policy.

81. Whilst giving significant weight to the benefits of the appeal proposals, especially the delivery of housing including policy compliant 30% affordable housing, when considering the issue of the excessive damage to the existing features on the site and the resulting failure to adhere to landscape and urban design considerations the adverse impacts of granting permission would significantly and demonstrably outweigh those benefits.

Reason 5: In the absence of a s106 agreement, failure to make provision for a variety of mitigations

82. The appeal proposals have impacts on material planning considerations which needs to be mitigated and the affordable housing offered needs to be captured formally in a s106 agreement. In the absence of such a s106 agreement the proposals would be unacceptable on these grounds. Without prejudice to the Council's position at this appeal, a s106 agreement is being drafted for presentation at the Inquiry. The

Council will also produce a CIL Compliance Statement for the Inquiry.

83. In the light of this anticipated agreed position, my proof does not put forward any further evidence in relation to this reason for refusal.

## Planning Balance and Conclusions

84. The starting point for determining this appeal is, as ever, the Development Plan. Determinations must be made in accordance with the Development Plan unless material considerations indicate otherwise.

### Principle

85. In assessing the scheme against the Development Plan, the appeal scheme proposes the development of an allocated site in line with Policy SA1.
86. The principle is therefore supported within the Development Plan. The Council accepts that it cannot demonstrate a five year housing land supply (5YHLS). A separate SoCG is being drafted by the parties on this subject and the latest draft is attached as Appendix B. The current difference in position between the parties is not significant. The appeal scheme would provide additional housing which is a benefit that should be afforded very significant weight in the planning balance. In the event of the appellant's position on the extent of 5YHLS shortfall being accepted, the Council considers that the same level of weight (very significant) should be applied to this issue in the planning balance.

### Benefits of the Appeal Proposals

87. The appeal scheme also proposes 30% affordable housing which also should be afforded significant weight in the planning balance.

88. The redevelopment of the Appeal Site for residential dwellings, introducing new residents to the area and expanding the local community, with convenient and direct walking and cycling connections helping to access and sustain local services and business, is recognised as a benefit of the proposals which should be given significant weight.
89. The proximity of new homes to jobs, shops, community infrastructure, extensive areas of green space, public transport and active travel networks, delivering the benefits of sustainable development in the spirit of the '20 minute neighbourhood', is recognised as a benefit of the proposals which should be given significant weight
90. The provision of a range of dwelling sizes and types to meet the needs of different occupiers and assisting in creating a strong and balanced community is recognised as a benefit of the proposals which should be given significant weight
91. The provision of a significant amount and variety of landscaped open space and enhanced links to the existing public open space to the south of the Appeal Site, comprising Victory Park is recognised as a benefit of the proposals which should be given significant weight. The proposed landscape link to the north, towards Eastwood Farm is not considered to be satisfactory, for the reasons given in para 58 of this proof, and therefore should not be afforded any more than limited weight.
- .
92. The provision of a number of soft landscaped areas within the Appeal Site, delivering a significant amount and variety of formal and informal public open space is recognised as a benefit of the proposals which should be given significant weight.
93. The appellants state that the proposals have been developed with sustainable design and construction in mind, with all homes designed to comply with the Future Homes Standard and homes will be provided with cycle parking and electric vehicle charging points. This intention is recognised of a benefit of the proposals which should be given significant weight.
94. The appellants' assertion that the Appeal Scheme will contribute to economic growth both during construction and over the life of the development, supporting jobs directly as well as indirect support to additional jobs in the supply chain, is recognised as a benefit of the proposals which should be given significant weight.
95. New residents of the development generating funds through additional Council Tax is not considered to be a planning benefit

that should given weight in the decision on this appeal. Council Tax is the mandatory form of local taxation to help fund services provided by the Council and is, at best, cost neutral and so would not generate any benefits.

96. The development's contribution to Community Infrastructure Levy is a financial consideration under the Localism Act that should be given moderate weight. However, it should be understood that CIL contributes to city-wide and local infrastructure rather than being spent on Council services.
97. Finally, whilst the appeal scheme would make contributions through the s106 agreement, this is to provide mitigation that is necessary otherwise planning permission would be refused. Therefore, the anticipated s106 contributions are not seen as a benefit and instead are required to deal with the specific impacts of the appeal proposals.

### **Assessment against detailed Development Plan policies**

98. The commentary above regarding the reasons for refusal demonstrates the Council's position that the appeal proposals fail to comply with numerous and in my view key Development Plan policies. These are not repeated here but are factored into the overall planning balance when considering the development subject to this appeal.

### **Housing Delivery**

99. It is understood from the Appellant's Statement of Case and the Inspector's post-CMC note that the Council's housing delivery position and whether NPPF paragraph 11 is engaged is a matter for the Inquiry.
100. The Council is not able to demonstrate a five year housing land supply, and a paper is being prepared in order for the parties to agree the extent of the shortfall. The weight given to this issue is set out in paragraph 86 of this proof. As such NPPF Paragraph 11(d) has to be considered.

101. There are two aspects to understanding whether planning permission as prescribed by Paragraph 11(d) should be granted and whether policies which are most important to determining the application are out of date, firstly:

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed [7]; or*

102. Footnote 7 states (with my emphasis):

*The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; **irreplaceable habitats**; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.*

103. The NPPF Glossary sets out the following definition of irreplaceable habitats (again with my emphasis):

*Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and **veteran trees**, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.*

104. The Council's evidence is that veteran trees are present at the site and will be impacted upon negatively by the appeal proposals. The Council's position therefore is that whilst 11d) is to be considered, (i) applies due to there being a clear reason for refusing the development under 180c, so (ii) and the tilted balance is not engaged.



105. The NPPF policy in question is at paragraph 180c:

*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons (63) and a suitable compensation strategy exists;*

106. Footnote 63 states the following with regard to wholly exceptional reasons:

*For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.*

Whilst this list of reasons is not a definitive one, the examples provided are developments of strategic importance that are considered outside of the conventional planning application process. The appellants appear to have proceeded on the basis that there is only one veteran tree on the site, which isn't affected, and so have not designed the proposals with the additional veteran trees identified by the Council in mind. The onus is on the appellants to correctly identify any veteran trees on their site and factor this into their design. They have not done so, nor have they provided in evidence any basis to justify the impacts on such trees. The onus is on them to do so. The Council's position therefore is that "wholly exceptional reasons" do not apply in this case, the appellant has not put any forward, and that 180c should lead to the refusal of the application.

107. In the event that the Council's position is not accepted I would like to return to NPPF 11d which goes on to state:

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

108. It is considered that the adverse impacts arising from: the significant harm to biodiversity, the failure to follow the mitigation hierarchy, and the failure to demonstrate the principal

that BNG can be provided (as set out within paragraph 60 of this section and detailed in the Proof of Mr Higgins); the failure to retain important hedgerows and trees (as outlined within paragraphs 61 – 67 of this section and detailed within the Proof of Mr Forbes-Laird); the loss or deterioration of Irreplaceable Habitat (as outlined within paragraphs 68 – 75 of this section and detailed in the proofs of Mr Higgins and Mr Forbes-Laird); and the failure to adhere to the landscape and urban design policy considerations by virtue of excessive damage to the existing features on the site (as outlined within paragraphs 76 – 81 of this section and detailed in the proofs of Ms Whatmore and Mr Bhasin) significantly and demonstrably outweigh the benefits of the scheme.

109. In my view, this is sufficient to justify the refusal of permission, even if it is considered that the tilted balance should be applied.

## **Conclusion**

110. Elements of the scheme do comply in principle with Development Plan policy, such as the principle of developing the site for residential development and the provision of 30% affordable housing. However, there is clear conflict with a number of key policies as outlined above, such as BCS9, BCS21, SA1, DM15, DM17, DM19, DM21, DM26, DM27 and DM28. Notwithstanding some elements of policy compliance, I consider that the appeal scheme conflicts with the Development Plan, when read as a whole. The starting point is therefore that permission should be refused in accordance with the statutory presumption in favour of the Development Plan.

111. In addition, there are no material considerations of sufficient weight to justify a departure from the Development Plan in this case, and the NPPF is a material consideration that further weighs against the grant of permission. In my view, 11d (ii) is not

engaged due to the negative impact on irreplaceable habitats (veteran trees). Even if it considered that 11d (ii) is engaged, there is sufficient justification for the refusal of permission, even when the tilted balance is applied.

112. Accordingly, the Inspector is respectfully invited to dismiss this appeal.