

Bristol City Council

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

Planning Evidence Rebuttal by  
Gary Collins BA(Hons) DipTP MRTPI

APP/Z0116/W/22/3308537

Final 24 January 2023



## Introduction

1. This rebuttal deals with the main matters that have arisen following a review of the Appellants planning evidence. It does not address all matters with which the Council disagrees.
2. This rebuttal is intended to correct, clarify and narrow issues for the Inquiry to assist the Inspector. The points raised do not introduce new reasons for refusal.

## The Amended Plans

3. At 4.18 of his proof Mr Connelly refers to 3.5.1 of Mr Crawford's proof and his Appendix 1. This refers to what are described as "a number of minor discrepancies" with the Parameter Plans and the Regulating Plan in the Design Code. The amendments are submitted with an invitation to the Inspector to determine the appeal on the basis of the amended plans.
4. Notwithstanding the late submission of these amendments, as part of the appellants evidence to the Inquiry, I can confirm that I have no objection to the appeal being decided on the basis of the new plans.
5. I consider that the insertion of the words "up to" into the heights parameters makes no difference at all, given that a parameter is a "limit" anyway. The meaning of a parameter, once approved at the Outline stage, is that the applicant could apply for any range of building heights up to this limit at the Reserved Matters stage and would not expect to face any opposition from the Local Planning Authority on this issue.
6. Likewise, the insertion of the words "Minimum existing trees / hedgerows / wooded areas to be retained" makes no difference because this simply reinforces the previous position that the extent of trees and hedgerows to be retained is "at least" that indicated by the plans. In submitting Reserved Matters for Landscape, the appellant could propose the retention of more trees and hedgerows (subject to other parameters) but they could also submit landscape details that accords with the plan for minimum retention and not expect any opposition from the LPA on this issue.
7. The submitted "minor amendment to vegetation for retention on northern boundary (tree groups G30 and G32)" illustrates a greater loss of trees and hedgerows along the northern boundary than previously shown in the Landscape Parameter Plan, as demonstrated below:

Original Parameter Plan



New Parameter Plan



8. I agree that this updated information should be taken into account by the Inspector.
9. My position remains that, if Outline permission is granted and the Parameter Plans and Design Code (including the Regulating Plan) are approved, the LPA could not object at Reserved Matters stage to a development that was within the set parameters and was up to 260 units. At 4.19 Mr Connelly confirms that if consent is granted the parameters set out in the plans would be "fixed".

#### The Site Allocation Estimate of 300 Homes

10. In Mr Connelly's proof paras 9.7 he states (with my emphasis) "the Council determined the site to be appropriate for housing, and estimated the number of homes that may be deliverable on site, in **the full knowledge and understanding of the site conditions, constraints and considerations**".

11. This is incorrect. At the Local Plan allocation stage, in promoting numerous allocations across the city, the City Council took a "broad brush" approach to providing estimates of the number of homes each allocated site was likely to deliver. As I have set out in para 36 of my proof the relevant part of the Local Plan states: "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".
12. No ecology or tree surveys were undertaken by the Council before making the allocation, and this is why the Development Considerations set out as part of the allocation explicitly refer to the development of the site being informed by both an ecological survey and a tree survey. The Development Considerations are provided to shape the nature and extent of development, and to fully establish whether the estimate (300) is deliverable, rather than automatically mitigate and compensate the losses created by a 300 home development.
13. The Local Plan site allocations include estimates of housing capacity and as stated in the Site Allocation Annex the precise number delivered will be determined through planning applications. Some developments may exceed and others may fall below estimates depending on site circumstances. For example, the implemented permission (ref: 18/04620/F) at site allocation BSA1220 Former Petrol Filling, Bath Road, Arnos Vale development is expected to deliver 152 homes; the Local Plan allocation estimate there was for 40 homes. This will result in an additional 112 units when compared to the Local Plan allocation site estimate.
14. Allocation BSA1201, the subject of this appeal, is part of the capacity for housing development identified in the Local Plan but does not form part of the estimated 5 year supply set out in the Council's position statement (in the Housing Land Supply Statement of Common Ground). The current Local Plan consultation proposes a housing requirement of 1,925 homes per year until 2040. That proposed housing target/requirement is not considered to rely on delivery from BSA1201 which is intended to be removed from the emerging Local Plan.
15. The housing sites identified in the site allocations Local Plan were intended to assist in achieving the minimum (26,400) and aspiration (30,600) targets for housing delivery in the period 2006 to 2026 set out in Core Strategy Policy BCS5. To date 28,821 homes have been delivered so the minimum target has been exceeded. It seems likely that the aspiration target will also be exceeded given the 4 years remaining in the plan period – 445 homes per year will now be needed to exceed the Core Strategy target and there are over 13,000 homes with planning permission.
16. I consider that the Inspector who examined the 2014 local plan will have been satisfied that the allocation of sites was sufficient to enable the housing requirement in the Core Strategy to be met. Allocations would not in any case have been the sole source of housing capacity. Capacity to deliver also derives from projected delivery from existing planning permis-

sions, from windfalls, small sites delivery and the delivery of homes arising from permitted development rights. In the round, the Inspector would have found these sources sufficient to be able to conclude the site allocations Local Plan was sound. The Inspector will have also expected that the Core Strategy would be the subject of review after 5 years.

17. So in summary, I consider that it can be reasonably concluded that individual estimates of housing capacity would not have been crucial, on their own, in the Inspector finding the Local Plan sound.
18. Mr Connelly at 1.4 of his proof also downplays the weight to be given to other development plan policies. Policy SA1 states (with my emphasis) "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.**"
19. All the above demonstrates that the 300 home reference in the allocation is a broad estimate of what might be delivered at the site.

#### The Approach Taken by the Appellant

20. At 4.3.5 of his proof Mr Crawford admits that the appellants did not know how the Council arrived at the estimated capacity of 300 dwellings. He goes on to say that, based on his experience, such capacity calculations are generally undertaken by identifying an approximate area for development and applying an assumed density to it. As set out in 11 above this is indeed the broad brush approach that the Council took in arriving at the estimate of 300.
21. Mr Crawford goes on to assume that the Council also took into account the topography and hedgerows. This is not correct. The development considerations set out the requirement for a survey of trees and hedgerows in order to inform the retention or incorporation of important trees and hedgerows as part of the development. Similarly, Mr Connelly also incorrectly states at 9.5 that the appeal site is allocated for housing "in the full knowledge and understanding of the site conditions, natural assets and context." The assumption by the appellants that the matters that were identified by the Local Plan to be informed by further surveys (trees and ecology) had instead already been "priced in" as part of the 300 estimate is a fatal flaw in their approach to the development of the appeal site.
22. The estimating of capacities in the site allocations Local Plan would have been proportionate to the process of deciding whether a particular site allocation should be part of the Local Plan. Estimated housing capacities were first introduced into the Local Plan site allocation process at the 'preferred approach' stage of plan preparation in Spring 2012. They would have been based initially on the minimum indicative density contained in Policy BCS20 of the Core Strategy (50 dwellings per hectare) and for this site, at this high level stage, it would have been assumed that the power

lines at the site would have constrained delivery so this was factored in to the estimate.

23. At 9.8 of Mr Connelly's proof he refers to harm to the appeal site's natural assets being "priced in" to the development plan (for "circa 300 homes"). If Mr Connelly is making the point that some harm was anticipated I would accept that point, however if his point is that a definitive level of harm (ie. whatever 300 units would result in) then I would not agree with this position.
24. At 9.9 Mr Connelly appears to put forward the view that the Sustainability Appraisal that supported the site allocations Local Plan was a detailed assessment that arrived at the estimate of 300 units: "The Council was therefore evidently fully aware of the implications of development on the existing habitats when estimating the capacity of the site for housing". I do not accept this view. At paragraph 40 of my proof of evidence I highlight that the SA uses language such as "reduce the potential for negative effect" and "creating an implementation dependent effect on local ecology" which demonstrates that the assessment of harm and the resulting final site capacity was an incomplete exercise and was dependent on the planning application process.
25. Contrary to Mr Connelly's view at 9.10 of his proof, it was indeed the case that the Council could not absolutely commit at the Local Plan stage to 300 homes at the appeal site. Mr Connelly appears to accept this by referring to "subject to detailed testing and refinement". This acceptance that further work would be required to test the estimate of 300 has clearly been followed by the appellants in arriving at the appeal proposal of 260 units. My position is that this further testing and refinement, taking into account all natural assets found at the site including veteran trees, could legitimately lead to a different number of homes to be delivered at the site whilst meeting the Local Plan allocation development requirements.
26. At 9.13 Mr Connelly criticises what he sees as the Officer Report (CD10.2) "subordinating the capacity of the development to the development considerations". By submitting a proposal for less than the 300 estimate, at 260 units, the appellant appears to have done precisely this.

### The Extent of Tree and Hedgerow Retention

27. At 9.64 Mr Connelly refers to Mr Hesketh's point at 3.46 that the appellant considers that the extent of hedgerow loss will be a maximum 45% compared to the Council's assessment that it will be 74%. The Council's witness Mr Higgins has rebutted this position and I emphasise that the Council's assessment of 74% loss refers to the baseline total of important hedgerows and remains the appropriate measure against which the impacts of the appeal scheme should be assessed.

### The Approach Taken by the Local Plan

28. At 4.3.7 of his proof Mr Crawford states "A development of much smaller scale, say 100 or 200 dwellings, would clearly be inconsistent with the estimated capacity stated in the allocation and would not represent efficient use of the allocated site". Whilst the Council wants to see allocated sites developed as efficiently as possible, but in accordance with the specific development considerations, it is not accepted that the level of deviation from the estimate can be capped without detailed assessment. I do accept Mr Crawford's description of the 300 estimate as the "broad capacity" of the site and contends that the precise number will be arrived at by properly applying the development considerations without there being a pre-determined "cap" to this number.
29. At 3.2 and 5.7 of his proof Mr Connelly refers to the contribution of the appeal site to the Core Strategy (CD 5.5) aims for south Bristol. Core Strategy Policy BCS1 (South Bristol) promotes development of around 8,000 homes. Policy BCS5 envisages the delivery of 30,600 homes in the city during the plan period and Mr Connelly refers to this in 9.25 to 9.31 of his proof. As set out above in 14 above my position is that the delivery of less than the estimated 300 units at the appeal site would not prejudice the overall housing strategy of the development plan.
30. The reality of the situation with the appeal site is that important hedgerows and veteran trees are present and must be properly taken account of. It is clear to me though that this does not result in a development of 260 units. At 4.3.5 Mr Crawford puts forward the assumption the Council took one of three approaches in allocating the site: assume all hedgerows and trees were to be removed; assume all hedgerows were to be retained (with a root protection buffer); or a middle course allowing for the retention of some hedgerows and the removal of others. Mr Crawford contends that the appeal scheme achieves the latter, although proposing 260 units. Mr Crawford either misses out completely the option that less than 300 units could be delivered once the development considerations have been properly applied, or is not explicit that the final option that he sets out could result in less than 300 (which is of course what the appeal proposals arrive at).

### The Appellant's Design Approach

31. It is clear from the appellants' evidence that they have proceeded on the basis that a specified level of ecological harm and hedgerow removal has already been "priced in". The Council's position is that such an approach ignores the important process of properly applying the development considerations in arriving at the actual number that can be delivered. The appellants have also not considered veteran trees at the site, because they did not know that they were even present.
32. Mr Connelly at 4.8 of his proof refers to "detailed due diligence work and the conclusion of an initial pre-application process with the Council" before acquiring the Council's interest in the appeal site. At 4.22 he refers to the pre-application process and acknowledges that the Council responded by letter (CD 7.1). The Council's pre-application response letter includes the following text: "The existing site layout as proposed has not adequately considered the site history, current green infrastructure, the ancient hedgerow network or the ancient and veteran trees on site". This correspondence, dated 21<sup>st</sup> January 2020, makes clear that if veteran trees are present at the site they must be incorporated into the site layout. I can only conclude that this early advice has either been missed or ignored.

#### Housing Land Supply

33. Section 8 of Mr Connelly's proof, which refers to his Appendix 6, addresses issues relating to housing supply and delivery, and takes a view on the Council's position regarding five year housing land supply (5YHLS). I attach Appendix A in response to these points, which is a statement provided by my colleague Mr Wilberforce. It will be noted that, based on information currently available and for the purposes of this appeal only, the Council accepts that it has a housing land supply of 2.45 years.
34. In paragraph 86 of my proof of evidence I set out that I give very significant weight to the lack of a 5YHLS. I give the same amount of weight to the shortfall, now that this has been identified as 2.45 years, as opposed to the Council's original position of 3.3 years.
35. At 4.3 Mr Connelly describes the housing delivery situation in Bristol as an "emergency". Even if this description is accepted, I am of the view that emergencies that have been previously declared by the Council (Climate and Ecological) need to be considered alongside the housing emergency. The climate and ecological emergencies are positions that are reflected in national policy, and in the case of veteran trees as defined irreplaceable habitats there is a clear reason for rejecting the appeal proposals despite the benefits of delivering housing.

#### Affordable Housing

36. In paragraphs 8.14 to 8.21 Mr Connelly provides a commentary on affordable housing delivery in the city. I have considered these comments as follows.



37. The affordable housing target is not 1,500 homes per annum, but 6,650 homes (333 homes per annum) up to 2026 set out in the 'Targets/Indicators' section under policy Core Strategy policy BCS17. Mr Connelly has misinterpreted the introductory text to the policy to mean that the application of constraints has resulted in a figure of 1,500 homes, thus concluding that this is an under-estimate of need. What the text actually states is that the level of affordable housing need is very high (i.e. the net annual requirement of 1,500 homes per annum) but the planning target (i.e. the 6,650 homes) has to be based on a range of considerations which will include constraints such as supply and viability.
38. Notwithstanding the apparent misinterpretation of the introductory text to the policy, it is considered inappropriate to judge the Council's performance on the delivery of affordable housing against the 1,500 homes per annum figure (paras 8.20 and 8.21). This 1,500 figure was derived from a housing need model to provide an estimate of total affordable housing need in Bristol. The figure is set out in the West of England SHMA 2009. This was separately calculated from the total housing requirement figure of 30,600 homes (1,530 homes per annum) set out in policy BCS5 of the Bristol Local Plan Core Strategy. The SHMA acknowledged the policy limitations of delivering the total affordable housing need figure.
39. Given viability constraints (policy BCS17 identifies a 30% /40% requirement for affordable housing) it would not have been possible to deliver the total need requirement without increasing the supply of market housing to a level significantly in excess of the housing demand estimated at that time or, increasing the level of affordable housing required to a percentage that was not viable. It is therefore more reasonable to consider the Council's performance against the target level of affordable housing set out at in the 'Targets/Indicators' section under policy BCS17, identified as 6,650 homes up to 2026 (333 homes per annum).
40. To date the Council has delivered 5,257 affordable homes (over the period 2006 to 2022) some 79% of this affordable housing target figure.
41. Although the appellant's commentary is disputed, I still acknowledge at para 87 of my proof that affordable housing should be afforded significant weight in the planning balance.

#### The Building with Nature Award

42. In an e-mail dated 12<sup>th</sup> January 2023 (attached as Appendix B) the Building with Nature (BWN) organisation advised that the award had been suspended and that the assessment and accreditation documents should not constitute evidence of compliance against the BWN standards during the course of the Inquiry.
43. The initial award is referred to in Mr Connelly's proof at 4.33, 9.95, 9.153.4 and 9.224. Given the receipt of the e-mail referred to above, reference to the award should now be disregarded and no weight given to it.

### The Approach Taken to Biodiversity Net Gain

44. Mr Connelly's proof at paras 9.50 to 9.55 refers to the sale agreement and the role that this plays regarding the delivery of the offered BNG. My position remains that the appellants have failed to demonstrate that 10% BNG can be delivered in principle. Mr Higgins' proof of evidence at paras 7.1 to 7.11 sets out the shortcomings in the appellants' approach and concludes that it would be reasonable to expect that BNG, as well as other mitigation requirements, is achievable should be demonstrated before the granting of outline planning permission. In addition, I consider that the sale agreement is of no relevance to the issue of whether planning permission should be granted or not.

### The Principle of Housing at the Appeal Site

45. At 4.26 Mr Connelly puts forward that the Council has made a U-turn in respect of its attitude towards delivering housing on the appeal site. To support this view at 4.26.1 he describes the Council as adopting "an incorrect approach to the assessment of impacts". I reject this view and contend that the Council has consistently and correctly assessed the impacts of the development as anticipated by the development requirements, such as the assessment of the impacts on identified veteran trees.
46. At 9.33 Mr Connelly states: "...the reasons for refusal and actions of the Council suggest that the Council has actually rejected the principle of development." The Council contends that the wording of the officer report and the specific nature of the reasons for refusal provide no basis for this view.
47. The Council as local planning authority has been consistent in its approach to the appeal site. Regrettably, the appellants have approached the development plan policies on a misunderstanding of what is required to successfully develop the site. This is surprising given the clear wording and advice received at the pre-application stage. The appeal proposals are unfortunately a wasted opportunity to deliver sustainable development at the site. The appeal proposals are not in accordance with the allocation, in terms of compliance with the development requirements. The Council has been consistent in supporting the principle of development and I do not agree with Mr Connelly's view at 3.7.1 that the principle of the allocation is a disputed matter.
48. I strongly reject Mr Connelly's statement at 4.37 of his proof. The Council's position as LPA has not changed, and there is no evidence to demonstrate that it has. The Council is therefore not in an irreconcilable position as its support for the principle of housing on the site has not changed for the purposes of deciding this appeal.
49. At 4.38 Mr Connelly portrays the Council's resolution that it would have refused permission, in response to the appeal against non-determination, as "a very evident determination to frustrate and prevent development of the site for housing". In the position of responding to the appeal against

non-determination, the Council has properly assessed the application and taken into account harm to assets such as veteran trees, and resolved that it would have refused permission for the stated reasons. At 4.38.2 Mr Connelly repeats the misunderstanding that no matters of detail are to be addressed at the outline stage, despite submitting parameter plans and a Design Code with a request that they are approved.

50. At 4.38.3 Mr Connelly refers to the current Regulation 18 Local Plan consultation where the deallocation of the site is proposed. My position is that the Council is entitled to propose a changed approach for the new Local Plan, where this will be subject to consultation and ultimately a test of soundness at Examination. In my proof at paragraph 46 I put forward that the draft Local Plan should be given limited weight in the determination of this appeal.
51. I reject the characterisation put forward by Mr Connelly at 4.40 of his proof. The Council as Local Plan Authority did not dis-engage and did not cease to collaborate on the submitted application. Instead, the Council received notice of the intention to appeal against non-determination, without any request to extend the time period to determine the application. Once the appeal had been made the Council no longer had jurisdiction to decide the application and had to form a view based on the merits of the application.

#### Tree Loss

52. At 1.9 of his proof Mr Connelly states that the tree and hedgerow loss is avoided as far as possible given the allocation for an estimated 300 homes and is compliant with the key Local Plan policies. The appeal scheme is for 260 homes. I have not seen any evidence that demonstrates that the reduction in numbers should be limited to 40, and why this shouldn't go further in order to properly meet the policies. My Connelly says that he has not seen any evidence that would bring him to a different conclusion. It may be the case that his position on the 260 being the correct number has changed once the evidence of veteran trees at the site has been taken into account.
53. At 2.11 of his proof Mr Connelly describes the process that the appellants carried out before acquiring the appeal site. This included "due diligence work including...ecological survey". Unfortunately this due diligence work does not appear to have identified the veteran trees present at the site and the appeal proposals cannot have taken them into account.
54. At 9.166 Mr Connelly refers to 4.4 of Mr Crawford's proof and states that relatively few design matters are fixed at this outline stage. At 9.169 Mr Connelly goes on to say that the outline submission would not prejudice the delivery of an appropriate detailed scheme at reserved matters stage. My position is that it is important to note that the submitted parameters and their approval at this stage would commit the extent of development across the site, which could not then be reasonably re-visited at the reserved matters stage. I consider that enough is known about the extent of

tree and hedgerow loss proposed by the appeal scheme, due to the development parameters being put forward now for approval, in order to form a clear view on the harm which could not then be undone at reserved matters stage if the appeal were to be allowed.

#### Weight Given to Material Considerations

55. At 1.6 Mr Connelly refers to the Climate Emergency and Ecological Emergency declared by the Council. He says that his “preferred view” is that these emergencies and their associated strategies and action plans should be afforded no weight at all in determining the appeal. In my proof at para 45, I set out my view that they should be given some weight due to the existence of supportive policies in the NPPF.
56. Similarly, Mr Connelly sets out in 6.9 – 6.10 of his proof that the One City Climate Strategy (CD 5.5) should also be afforded no weight in determining this appeal. Again, due to the existence of supportive policies in the NPPF, I consider that the strategy should be given moderate weight.
57. Mr Connelly sets out in 6.12 – 6.13 of his proof that the One City Ecological Emergency Strategy should also be afforded no weight in determining this appeal. Again, due to the existence of supportive policies in the NPPF, I consider that the strategy should be given moderate weight.
58. I disagree with Mr Connelly’s view at 9.18 of his proof that the Local Plan Review should be given no weight in determining this appeal. I accept that the plan is at an early stage of consultation but I consider that the plan should still be given some – little – weight. At para 11.15 of the Local Plan Further Consultation (CD 5.12) the following is stated (with my emphasis):

*The local plan consultation in 2019 proposed that development site allocations from the existing local plan which had not yet been developed should be retained in the new local plan. It is proposed that this should remain the approach, with the exception of two locations where a change is considered necessary to reflect the greater priority for biodiversity required in response to declaration of the ecological emergency.*

59. 11.20 goes on to state the following with regard to the appeal site (with my emphasis):

*This site has city wide importance for nature conservation. In 2014 a part of the meadows area was allocated for housing development subject to providing compensation and mitigation for the loss of habitat which would arise from development. Since that allocation was made in the adopted local plan, an ecological emergency has been declared by Bristol City Council and it is considered that it would now be more appropriate for the existing site allocation to be discontinued and for the site to be retained as open space with nature conservation interest.*

60. At 9.18 of his proof Mr Connelly erroneously refers to existing allocations being “substituted” by new allocations in the Green Belt. This gives the

impression that new sites are being proposed to be allocated in the Green Belt through the latest consultation in place of the allocated sites proposed to be removed. In fact the two remaining proposed Green Belt allocations were previously part of earlier Local Plan Review consultations. One of these sites (Land at Silbury Road) has since received a resolution to grant planning permission. A previously proposed Green Belt allocation (Yew Tree Farm) has also been withdrawn by the latest consultation.

61. At 9.99 of his proof Mr Connelly states that "nothing has materially changed in planning terms since the allocation, except the housing crisis has become even more of an emergency". I contend that both the Climate Emergency and the Ecological Emergency, as declared by the Council, are material events that have occurred since the appeal site was allocated.
62. At 9.148 Mr Connelly refers to Mr Crawford's reference to an appeal regarding the Eastgate Shopping Centre in Basildon. From looking at the details of the application on Basildon Council's website, in this case the LPA had resolved to grant Outline PP but there had been a change of political control at the subsequent elections and the Council appears to have changed its position about town centre developments. The applicants appealed against non-determination and the Committee resolved that it would have refused permission on a number of grounds, despite the previous resolution.
63. The appeal decision refers to the opportunity to control detailed considerations at reserved matters stage, examples given are: Juliet balconies, access to private terraces, gardens or a wintergarden, plus how the massing of new buildings would be broken up and how ground level frontages would be treated, including elements of horizontality. I consider these to be design details rather than the extent of the development issues that impact upon trees and hedgerows at the appeal site.
64. The appeal decision included a condition that required compliance with the Design Code (which was listed as an approved plan in the relevant plans condition no.4) as follows:

*20) Each application for reserved matters approval shall include a detailed statement which demonstrates compliance with the Basildon Eastgate Quarter Design Code v7 dated 31 March 2021 (incorporating site wide principles, building design and landscape design) and the principles of the Basildon Eastgate Quarter Design and Access Statement dated 17 February 2021.*
65. Condition no. 4 states: The development hereby permitted shall be carried out in accordance with the following approved plans and documents: (lists parameter plans).
66. Mr Crawford at 4.4.14 refers to another appeal decision in Basildon (Town Square North). The application was a hybrid one, with phase 2 submitted in outline. He quotes from the decision (para 44) as follows:"

*the parameter plans, along with the other principles set out in the DAS, provide an appropriate basis to inform the development of a design code..." and that the "high level design principles... set down in the DAS... could be conditioned..."*

67. Para 43 of the appeal decision states (with my emphasis):

*43. It is understood that the scale parameters in the Design and Access Statement (DAS) are legal requirements and are not a design code. However, a planning condition could ensure that design development of the outline scheme adhered to those requirements. That could fix the location, height and massing of the outline scheme. Together with the other design principles set out in the DAS, which could also be subject of a planning condition, they could provide appropriate assurance of the design principles of a detailed scheme. At the end of the day, the Council would have control over the detailed design of the outline scheme through determination of reserved matters applications.*

68. I consider that this demonstrates that the submitted parameters were a fix (within tolerances) and that the detailed design of the development was then to be guided by a detailed Design Code to be submitted in accordance with condition 18 of the permission.
69. Mr Crawford at 4.4.15 says there are 2 options available to the Inspector based on these appeals: Firstly, he says that if the Code is approved, flexibility remains to depart from it when addressing matters in detail at Reserved matters stage. My position is that detailed design matters would remain flexible but the extent of development, and thus its impact on landscape assets, would have been fixed. Secondly he suggests that the Code submitted for approval could be excluded from the Outline consent, as per the Town Square decision and impose a condition requiring one. I consider that this isn't a direct comparison because at the Town Square appeal the Inspector did not have a submitted Code before them, and so did not "exclude" one.

#### The Approach to Conditions

70. On the subject of the Inspector having the option to impose a condition requiring an alternative Design Code, I do not consider that this would be a valid approach in deciding this appeal. The appellants' evidence sets out at length that the appeal proposal of 260 units has been justified by the Design Code and seeks approval for it now. If the appeal were to be allowed, this would still be for up to 260 units and a revised Design Code will not do anything to reduce the impact of such a level of development on the landscape assets at the site.
71. Mr Connelly's proof of evidence at 1.15 suggests that "In the event that the Inspector finds there are additional assets of particular importance, their protection can be controlled by planning condition." I also consider such an approach to be not valid, as the appeal cannot be allowed for a development of 260 units with a condition that would be seeking to reduce the impacts of such a development. The appeal proposal is for 260

units and the extent of development, and resulting harm, is clearly set out in the submitted development parameters and Design Code. If a development of 260 units is considered to be acceptable on the site, despite the harm identified, a condition could not reduce the harm as a development of at least 260 units would have been accepted.

72. The appellants also appear to be downplaying the impact of the proposed development. Mr Hesketh's proof at 6.100 refers to a "worst-case scenario" and comments that "detailed design stages might allow retention of more sections of hedgerow than envisaged". At 6.116 he refers to Mr Crawford's evidence that "losses or partial losses of other hedgerow which are important under the Hedgerow Regulations....are inevitable given the need for good place-making, creation of adequate plot sizes and depths, and creation of accessible walkways". It appears to me that the appellants' witnesses are collectively running two arguments: that the impacts are inevitable and "priced in" by the allocation; or the impacts are not as bad they might appear due to the opportunity to minimise them at the reserved matters stage, despite the scenario that outline permission for 260 dwellings will exist with approved parameters. I reject both of these arguments and consider that the impacts can be and must be assessed at this stage, and that the impacts will not be able to be materially mitigated by conditions.

#### Overall Balance of Planning Considerations

73. In section 11 of his proof Mr Connelly sets out what he considers to be the benefits of the appeal scheme and the planning balance. He summarises this, alongside the harms, in Table 11.1. In the table below I compare his assessment of these matters with mine:

<b>Positive Benefit</b>	<b>Weight Afforded by Appellant</b>	<b>Agreed by the Council?</b>	<b>Alternative Weight Afforded by Council (if applicable)</b>
Development in a highly sustainable location	Significant	Yes	N/A
Development integrated with the existing neighbourhood	Moderate	Yes	N/A
Provision of walking and cycling access for residents to local services and facilities	Significant	Yes	N/A
Provision of market housing, housing mix that reflects housing need and affordable housing	Very Significant	Yes	N/A

Provision of 10% net gain in biodiversity	Moderate	No	Significant – if the principle of this being delivered can be demonstrated
Provision of a long-term ecological management plan	Moderate	No	Significant – if the principle of this being delivered can be demonstrated
Provision of surface water management with off-site flood risk benefits	Limited	Yes	N/A
Provision of highway safety improvements	Limited	Yes	N/A
Economic benefits	Significant	Yes	N/A

<b>Alleged Harms</b>	<b>Weight afforded</b>	<b>Agreed by the Council?</b>	<b>Alternative Weight Afforded by Council (if applicable)</b>
Harm to biodiversity (including harm to SNCI)	Very limited (mitigated, compensated and accounted for in site allocation)	No	Significant (site allocation requires this be properly assessed and mitigated)
Loss of trees	Very limited (mitigated, compensated and accounted for in site allocation)	No	Significant (site allocation requires this be properly assessed and mitigated)
Loss of hedgerows	Very limited (mitigated, compensated and accounted for in site allocation)	No	Significant (site allocation requires this be properly assessed and mitigated)
Archaeology	Very limited (mitigated, compensated and accounted for in site allocation)	Yes	N/A
Harm to designated heritage assets	Limited (mitigated, compensated and accounted for in site allocation)	Yes	N/A
Harm to veteran trees	Nil	No	Very significant (by virtue of NPPF 11d(i) and 180c.



## Statement of Common Ground

74. Having now received the appellants suggested changes to the draft SoCG, it is clear that there are matters that are unlikely to be agreed and I refer to these key areas here.
75. The appellants have expressed concerns that the Council has introduced evidence regarding the presence of veteran trees at the site at a relatively late stage. In response to this, The Council considers that the appellant was made aware through both the putative reason for refusal and the statement of case that the identification of and harm to veteran trees on site was a key issue for the Inquiry. The appellant's submitted material at the application and appeal stages failed to identify individually any of the additional veteran trees despite pre-application advice highlighting the need to consider such matters. The Council also considers the suggestion by the Appellant that the Council has failed to give details to the appellant to be grossly unreasonable.
76. It is abundantly clear from the reasons for refusal and statement of case that the Council contend that veteran trees would be subject to loss and deterioration contrary to 180c of the NPPF. This was also indicated to be the case – with specific reference to veteran trees - at the CMC on 14<sup>th</sup> December 2022 without any dispute from the appellant. The further discovery of additional veteran trees by the expert instructed on behalf of the Council (all of which have been relayed to the appellant) has made it necessary to present such evidence at the Inquiry. The Council also relayed to the appellant in correspondence at the end of 2022 that it considered its actions to constitute unreasonable conduct (see Appendices C and D).
77. The Parameter plans and the Design Code have been submitted with this Outline applications in order to "bridge the gap" between the high level of detail formally determined at that stage and the Reserved Matters stage. The Parameter plans and Design Code mean that sufficient certainty about the nature of a development can be committed at the Outline stage, without the 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..."

## **Appendices**

- Appendix A: E-mail from Building with Nature
- Appendix B: Statement on housing land supply and delivery
- Appendix C: Letter from WBD to BCC
- Appendix D: Response from BCC to WBD