APPEAL REFERENCE: APP/Z0116/W/22/3308537

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

LAND AT BRISLINGTON MEADOWS, BROOM HILL, BRISTOL

OPENING STATEMENT ON BEHALF OF HOMES ENGLAND

I. INTRODUCTION[1]

1. Homes England is the Government's housing accelerator, tasked with delivering homes where they are needed, in particular in circumstances where other approaches to housing delivery have failed. This is such a case.

2. The Appeal Site has been allocated for the development of 300 homes since July 2014 – almost 9 years ago. Bristol City Council ("**the Council**") tried to develop the Appeal Site in that time through its earlier failed joint venture for exactly that number of homes. Indeed, in 2016 the Council's Cabinet approved the creation of a primary vehicular access to the Appeal Site over land that it owned '*for the purposes of enabling 300 new homes to be built*'.[2] When the Cabinet gave that approval, it was told that '*300 homes [would] not [be] built*' if it took a different decision.[3] Not only that, but the Cabinet were advised that another access would cause the development of 300 homes to be reduced by 20 dwellings.[4] The Council's officers concluded that such a reduction was unacceptable – a '*high*' risk in their own words.[5] The Cabinet followed that advice.

3. The failure of the joint venture did not dissuade the Council from seeking the development of this allocated site. The Council sold its interests in the Appeal Site to Homes England specifically in order to facilitate its delivery for housing. The Council

[1] This Opening Statement uses the same abbreviations as the Appellant's Statement of Case unless stated.
[2] CD 8.11 PDF p. 1
[3] CD 8.11 PDF p. 4, line 1 in the table.
[4] Ibid, line 2 in the table.
[5] Ibid.

turned to Homes England because it recognised that the opportunity to develop the Appeal Site was important but risked never being realised. The Council also agreed with Homes England to work with it to deliver any necessary off-site mitigation. Homes England has sought to bring the Appeal Site forward for residential development exactly as the Council hoped and encouraged.

4. In this context, the failure of the Council to grant planning permission – or even to determine Homes England's application for over 5 months – is inexplicable on any objective basis.

5. The truth is that the Council has deliberately dragged its heels in relation to the application, and following the appeal against non-determination has sought to take a host of opportunistic points, whilst professing not to contest the principle of development, because, having sold its interests in the Appeal Site to Homes England and securing a significant capital receipt, the Council – or rather its political leadership – has gone on to perform a remarkable volte-face on the allocation and is now in the early stages of promoting its deallocation through the emerging Local Plan. The protestation that the Council's objection at this inquiry is one of detail, not principle, has to be seen in that light. It is obvious that the Council now has no intention ever to allow development of the Appeal Site to proceed and that its strategy at this appeal is to adopt stalling tactics to enable the proposed deallocation (which the Appellant has objected to in the strongest terms) to run its course.

6. The failure to determine Homes England's application and the need for this appeal is all the more inexplicable when one considers the circumstances in the Council's area.

7. The Council can demonstrate, at best, a deliverable housing land supply of 2.45 years.[6] That is less than half of the minimum required by national policy. On the Council's own figures, the housing supply shortfall is in excess of 10,000 dwellings – a truly astonishing failure.[7] You could literally fill an arena with people whose identified need for a home in Bristol is not being met. Indeed, Bristol City's Ashton Gate Stadium is probably too small for that number of people. The true picture is likely to be worse, as Homes England's evidence shows.[8] The Council's housing land supply position is so bleak that the Council has given up even trying to measure it accurately on an

[6] See SOCG at [8.24] – this is the Council's own figure.
[7] CD 17.2 at Table 5 on PDF p. 4 – 20,335 – 9,946 = 10,389
[8] CD 12.2 at PDF p. 69.

annual basis as national policy requires.[9] The Council also appears to have failed to produce the necessary housing action plans to remedy this dire position.[10] Again, a failure that is in flagrant and unjustified defiance of national policy.[11]

8. The failure is not just in relation to 5YHLS. The Council's performance in relation to the HDT in the last two years has also been below 75% - against a benchmark which was substantially reduced by Government on account of the pandemic.

9. It is therefore the case the Council are a NPPF para. 11(d) authority on two separate accounts: past underperformance in housing delivery and woeful inadequacy of future supply.

10. These are not just box ticking failures. Rather, they have already had – and will undoubtedly continue to have – real life consequences. Quite simply, the Council has failed, and continues to fail, to deliver anything like the number of houses – especially affordable houses – that the people of Bristol need.[12] There is a national housing crisis, but the position in Bristol is much worse: the Council is not close to the minimum delivery of houses needed to even start tackling the crisis. On any tenable view, there is a housing emergency in Bristol.

11. The Council cannot shy away from this emergency. Yet that is exactly what it is seeking to do. Indeed, Mr Collins, the Council's Head of Development Management and a principal actor in meeting the housing needs of the City, cannot even accept that the situation in Bristol is an emergency.[13]

12. The Council has recently undertaken a second round of preliminary (reg. 18) consultation on its emerging Local Plan Review ("**LPR**"). The approach in the LPR inspires no confidence that the Council either understands the problems in its area or is serious about addressing them. Quite the opposite. Instead of seeking to meet its local housing need – as national policy clearly expects and as the circumstances on the ground require – the Council has proposed to meet a significantly lower figure – 1,925

[9] CD 12.2 at [7.1.1] on PDF p. 58.
[10] CD 12.2 at [5.4.5] on. PDF p. 47. The only HDT Action Plan that the Appellant has been able to find is from 2022, despite the requirement to produce such a plan in previous years. This was not controverted in the Council's rebuttal – see CD 17.2
[11] NPPF para. 76.
[12] See CD 12.2 at [5.3] ff on PDF p. 46.
[13] RPOE at [35] on PDF p. 8.

dpa instead of 3,376 dpa, a shortfall of 26,118 dwellings over the plan period.[14] The magnitude of this failure is striking: 26,118 dwellings. Thus, not only has the Council not delivered the houses that have been needed, but it does not even appear to recognise the problem and it certainly does not have a credible plan for tackling the emergency.

13. This inquiry cannot tackle the Council's failure wholesale, but it can help. The best way to tackle the housing emergency is to deliver the allocations in the adopted development plan. This must be beyond credible dispute. Accordingly, in this appeal Homes England seeks outline planning permission to confirm the principle of the allocation for the Appeal Site so that it can be unlocked: exactly as the Council intended and as the people of Bristol need.

II. FUNDAMENTAL MATTERS OF APPROACH

14. It is important at this juncture to deal with three fundamental matters of approach.

(1) Matter 1: what is being fixed at the outline stage?

15. Homes England seeks outline planning permission with all matters reserved except for access. The Council could have requested a detailed application but it did not do so.[15] The outline approach of the application is therefore not only common practice of a development of this nature and size but also one which must be taken to be acceptable in this case. Further, there is little, if anything, in dispute about the access (and certainly it forms no part of the putative reasons for refusal). It follows that the dispute in this appeal can be narrowed to the outline matters. Indeed, the dispute (at least between the main parties) can be narrowed further because the principle of residential development is not in dispute.[16] Thus, on analysis, the reasons for refusal are a series of allegations that the <u>form</u> of the development which will come forward through reserved matters will, inevitably, be unacceptable.

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[14] CD 5.12 at [4.4] on PDF p. 10 and [4.9] on PDF p. 11. 3, 376 dpa – 1, 925 dpa = 1,451 dpa. Multiplied over the 18 year plan period results in a shortfall of 26,118 dwellings.

[15] Pursuant to art. 5(2) fo the Town and Country Planning (Development Management Procedure) (England) Order 2015.

[16] At least that is the Council's professed position. The extent to which the Rule 6 Party disputes the principle of the residential development can be addressed in due course, but if it is a position that is adopted, it is one in flagrant defiance of the development plan, which ignores the scheme of the Planning Acts and which is unjustified.

16. The approach to this type of objection is well established. At this outline stage, refusal is only justified in respect of an outline element if the Council can demonstrate that an acceptable form of development is incapable of coming forward at the reserved matters stage. Put another way, to refuse outline planning permission, you must be satisfied that it is impossible for an acceptable form of development to come forward at the reserved matters stage.

17. In this regard, it is crucial to understand what matters are proposed to be fixed now. Mr Crawford explains these matters comprehensively.[17] They can be shortly summarised: (1) access to the Appeal Site; (2) the broad areas of land use; (3) the maximum heights of buildings; (4) the minimum landscape parameters; and (5) the design code (subject to what is said below about that). The access elements are largely uncontroversial. The areas of land use, maximum building heights and landscape parameters are shown clearly on the supplied plans in an orthodox manner: the inquiry will return to them in due course but they do not need further explanation now. The provision of a design code is also a common approach, but one which bears some introductory remarks now.

18. The design code is in two parts:

    (a) The first part is chapters 1 – 3. Chapter 1 is purely introductory. Chapter 2 establishes four masterplan principles that are '*guidelines that set out key components that should structure the overall development layout*'. These are high level principles that do not definitively fix any aspects of design: they are guidelines to be followed, but not tramlines. Chapter 3 sets out overarching principles for the design in high level terms. These are fixed via the parameter plans.

    (b) The second part is chapters 4 – 10. These chapters set out high level design requirements which reflect good design practice. However, those requirements are limited in number and are interspersed with a great deal of guidance.

19. Ultimately, the design code will guide the form of the development at reserved matters stage, alongside other tools such as planning conditions and the planning obligation.

[17] See especially his POE at [4.4] ff on PDF p. 27.

But, as other Inspectors have recognised in similar appeals, the approval of a design code here does not impose a straitjacket on the decision at the reserved matters stage: there will remain ample scope for design innovation by the applicant and ample discretion for the local planning authority.[18]

20. Further, it is important not to overstate the legal significance of the design code. The approval of the design code is not a legal precondition to the grant of planning permission. Homes England very strongly considers that the design code should be approved, but agreement on this point is not essential; rather, if necessary, it can be excluded from the approved documents and a condition imposed requiring a revised version (in whole or in part) prior to submission of any reserved matters application. Again, this is an established approach.[19]

(2) Matter 2: what is priced into the allocation?

21. Before proceeding any further, it is necessary to address a fundamental deficiency in the approach of the Council's witnesses.

22. There is no apparent dispute that: (1) the allocation establishes that the Appeal Site is an appropriate location for residential development; and (2) it is inevitable – and thus acceptable – that the residential development of the Appeal Site will cause some ecological harm. Indeed, each of the Council's witnesses professes in generalised terms that some ecological harm is necessary.[20] It follows that there is no absolutist argument (at least by the Council) against the proposed development.

23. Instead, the Council's case is that the degree of ecological harm (including alleged arboricultural and landscape harms, all of which are a species of the same argument), is unacceptable. Mr Collins puts it starkly: in the Council's view the ecological harm '*goes beyond what should be permitted*'. However, at no point – whether in the officer's report ("**the OR**"), the Council's Statement of Case ("**SOC**") or the Council's proofs of evidence ("**the POE**") – does the Council identify what level of harm '*should be permitted*'. On this critical question, there is deafening silence.

[18] CD 6.3 at [53].
[19] CD 6.4 by way of example.
[20] For example CD13.1 (JFL) at [2.4.3]; CD 1.3 (RH) at [5.1]; CD 13.4 (AW) at [7.8]; CD 13.13 (NB) at [6.17]; and CD 13.10 (GC) at [56].

24. The Council's position lacks any logical or intellectual integrity. In circumstances where fewer dwellings than that estimated in the allocation are proposed, it is simply not possible to rationally assert that the proposed development causes '*excessive*' harm or '*goes beyond what should be permitted*' unless you have first determined what the acceptable level is. The Council seeks to make a comparison – '*excessive*' harm – without working out what the comparators are for that judgment.

25. In addition, the Council's position is one that does violence to the clear wording of the development plan and which is inconsistent with the plan led system.

26. There can be no dispute that at the plan-making stage the Council reached a balanced judgment on the acceptability of the development of the Appeal Site. This is apparent from the sustainability appraisal ("**the SA**") which considered three options for the Appeal Site, including "do nothing", appraised the pros and cons of each option, and then chose an option.[21] That was a judgment confirmed by the Examining Inspector who said:

> *'The proposed allocation for housing purposes of land at Broom Hill, Brislington has attracted a significant number of representations. Concerns cover a wide range of matters. These include ecology and trees; historic environment and archaeology; flood risk; traffic, congestion and highways infrastructure; pollution and air quality; amenity and loss of open space; local facilities; and allotments.*
>
> *In my judgment, this large site (9.1 ha) would make an important contribution to the housing needs of Bristol. It is a site of no overriding environmental quality. Matters of significance could be addressed through normal processes of development management. There is no evidence before me to indicate that the allocation should not be confirmed.'*[22]

27. The fact of this balance is also confirmed in the allocation itself. The explanatory text explains that the Appeal Site '*does not need to be retained as part of the city's green infrastructure / open space provision*'.

28. It was only possible for the Council and the Examining Inspector to undertake this balancing exercise because they assessed the potential of the Appeal Site to deliver housing (along with the consequential benefits) on the one hand and the potential adverse effects of that development on the other hand. That comparative exercise was

[21] CD 8.3 at PDF pp. 168 – 185.
[22] CD 8.23 at [121] – [122] on PDF p. 24.

undertaken on the basis that the Appeal Site would deliver 300 dwellings. This is apparent in both the SA and is expressly stated in the allocation itself: '*The estimate number of homes for this site is 300*'.[23] Again, this was a necessary part of the exercise: the balance could not be drawn without establishing the nature and extent of effects on both sides of the scales.

29. The fact that the development plan expresses the 300 dwelling as an '*estimate*' does not change this analysis. The estimate must mean something and obviously did mean something given how it was used by the Council and the Examining Inspector. This is all the more the case when the Council told the Examining Inspector that the allocations '*were assessed in detail*'.[24] Indeed, the Site Allocations and Development Management Policies ("**SADMP**") describes that number as '*indicative*'.[25] This indicative number cannot be ignored: it reflects the development plan's expectation from the allocation, subject to the precise number being determined at the development management stage. Of course, that '*precise number*' must be a number in the same order of magnitude: if it were otherwise the balance that was struck at the plan-making stage would be impermissibly unpicked.

30. Equally, this position is not changed by the development considerations within the allocation. Those development considerations are not absolute red lines: the Council's apparent acceptance of a loss of a TPO tree in order to provide an acceptable access is an obvious example of this. More than that, they are development considerations which must be applied in a manner that: (1) recognises that the Appeal Site '*does not need to be retained as part of the city's green infrastructure/open space provision*'; and (2) is consistent with the delivery of the estimated or indicative number of 300 homes. It is only by applying these considerations (which are not requirements) in that manner that the allocation can be given effect in accordance with its clear terms and with the balance that was struck at the plan-making stage. In short, this appeal must be determined on the basis that the disbenefits arising from the delivery of approximately 300 homes at the Appeal Site are priced into the allocation: they are harms that were anticipated, balanced against the benefits of housing delivery and were found acceptable.

[23] See CD 8.3 at [4.91.2.1]
[24] CD 8.12 at [2.1.7] on PDF p. 3.
[25] CD 5.2 at [1.7] on PDF p. 3.

31. The Council's approach is to ignore this balance entirely. Mr Collins asserts that this appeal is '*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*'.[26] This is an approach which expressly ignores the balance at the plan making stage. The Council expressly seeks to recast the balance now. This is an approach that is entirely at odds with the plan-led system. Worse still, the Council does not actually undertake the balancing exercise that it professes to do: not a single one of the Council's witnesses tells this inquiry what '*the appropriate balance*' is or what '*the true capacity of the site*' should be.[27] Thus, even on the Council's approach, this inquiry is given no assistance.

32. The Council seek to rely on Homes England's decision to apply for planning permission for only 260 homes as evidence of '*acceptance*' of its approach. This is incorrect. Homes England quite legitimately could have applied for a development of 300 homes at the Appeal Site. Such a development, including the additional harms that would arise from the increased size of development, would be in accordance with the allocation. However, in an effort to ensure, beyond any doubt, that the level of development was acceptable, Homes England significantly reduced the number of dwellings in its application.

33. It follows that the Council's approach to the allocation – and thus the very basis on which it seeks to resist this appeal – is flawed and should not be followed.

(3) Matter 3: the use of conditions

34. Homes England does not accept any of the Council's criticisms of its design approach at this outline stage, as will be explained through Homes England's evidence. However, recognising the overriding need to ensure that the Appeal Site comes forward for residential development urgently, Homes England has proposed a series of conditions that can deal with the concerns entirely: the use of a condition to modify the design code has already been explained and through its rebuttal evidence, Homes England has indicated how the alleged veteran trees can be retained by conditions which would constrain the proposed development at the reserved matters stage. Mr Forbes-Laird strays outside of his expertise to suggest that such an approach would be

[26] POE at [37] on PDF p. 14.
[27] Ibid.

impermissible.[28] This is emphatically not the case. The effect of such conditions would be to cut down, not enlarge the development. Such conditions are entirely lawful, as the House of Lords has established.[29] Moreover, the effect of such conditions in this case is not to make the approved development substantially different to that which was applied for and would cause no prejudice to any party. Thus it would, if necessary, be an entirely appropriate approach.

III. THE CASE FOR HOMES ENGLAND

(1) The principle of the development is established

35. The starting point is the fact that the principle of the development is enshrined in the development plan by the allocation. More than that, the allocation anticipates a greater size of development and thus the proposed development fits comfortably within the permissible bounds. Indeed, the Council has not advanced any case that a development of 260 homes could cause any less harm; rather, the Council's case is predicated on permitting only fewer than 260 homes. Such an approach is incorrect as already explained.

36. The Rule 6 Party does appear to take issue with the principle of the development on the basis, it is said, that the Appeal Site is still designated as a Site of Nature Conservation Interest ("**SNCI**"). This is incorrect. In Bristol, SNCIs are designated through the plan-making process, as the Core Strategy explains.[30] The Appeal Site was formerly designated as an SNCI under policy NE5 of the 1997 Local Plan. That policy was expressly superseded by the SADMP.[31] Further, an assessment process was undertaken to determine which sites should be designated as SNCIs and the output of that process is depicted on the policies map. The Appeal Site is not shown as an SNCI on the policies map. Accordingly, the proper analysis is that the Appeal Site is not an SNCI at all. However, it is not necessary to go this far in order to allow the appeal; rather, it is sufficient to adopt the Council's position, namely to say that the Appeal Site is not an SNCI for the purposes of the relevant development plan policies, such that it does not form any basis for refusing to grant planning permission.

[28] CD 17.7 at [2.3.3] – [2.3.4] on PDF pp. 7 – 8 and CD 13.1 at [5.5.2] on PDF p. 48.
[29] ***Kent County Council v Kingsway Investments (Kent) Ltd***. [1971] A.C. 72
[30] See [2.19.5] and [2.19.16] on PDF pp. 41 – 42.
[31] See Appendix 3.

(2) The proposed development complies with the development plan as a whole

37. Once the Council's erroneous approach to the allocation is discarded, Homes England submits that it is clear that the proposed development complies with the allocation. Homes England's witnesses have addressed each of the development considerations in the allocation and, as will be explained through the evidence at this inquiry, those considerations are all satisfied in a manner appropriate for this outline stage.

38. Having reached the conclusion that the proposed development accords with the allocation, it follows that the proposed development accords with the development plan read as a whole. The allocation is the site specific policy which is the prism through which the acceptability of the proposed development must be assessed: it is the policy which mediates all of the general policy objectives in the development plan for the purposes of the Appeal Site. Thus, satisfaction of the allocation must carry with it accordance with the development plan as a whole. Indeed, it appears that this may be common ground, given the first four reasons for refusal all cite conflict with the allocation and do not rely on other policies in isolation (consistently with the Council's evidence).

39. Further and in any event, there is no tension between the allocation and the other policies in the development plan. For example, policy DM17 of the SADMP recognises that it is appropriate to lose trees '*to allow for appropriate development*' and that some important trees can be lost, so long as there is appropriate mitigation;[32] policy DM19 of the SADMP seeks to conserve nature '*so far as practicably and viably possible*'; and policy BCS9 of the Core Strategy protects green infrastructure '*wherever possible*' but recognises that its loss can be '*allowed*' where a site is allocated, like in the present. Thus, the additional policies cited by the Council do not impose any more absolutist restrictions on harm than the allocation: their terms can be and will be satisfied by a development that accords with the balance struck in the allocation.

40. As the proposed development accords with the development plan read as a whole, it should be approved without delay: see NPPF para. 11(c).

[32] See explanatory text at [2.17.7] on p. 38 – '*mitigate for loss of other important trees*'

(3) There is no clear reason for refusing to grant planning permission

41. Mr Collins now alleges that the alleged impacts on arboriculture provide a clear reason for refusing to grant planning permission for the purposes of NPPF para. 11(d)(i). This is an entirely novel argument that did not feature in either the OR or in the Council's SOC. What makes this novelty so remarkable is that Mr Collins himself introduced the OR to the Council's planning committee and even told the committee that the OR had been "*reviewed*" by a KC. Yet despite that, the Council has now changed its position.

42. In the OR members were advised on the application of NPPF para. 11(d)(ii) only: no reference was made to para. 11(d)(i).[33] Moreover, when members were advised on the tilted balance, they were told only that '*these issues are considered to significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the NPPF as a whole*'.[34] This is the test in para. 11(d)(ii). So members were only advised to refuse planning permission of the basis of the second limb. In accordance with established principles, members can be taken to have refused planning permission for the reasons in the OR (and no contrary advice was given orally). So members refused to grant planning permission because of the application of para. 11(d)(ii). Members did not refuse to grant planning permission because they considered that there was a clear reason for refusing to grant planning permission under NPPF para. 11(d)(i).

43. The Council's SOC is consistent with the OR. Only NPPF para. 11(d)(ii) is applied.[35] There is no reference to NPPF para. 11(d)(i) and no allegation that there is a clear reason for refusing planning permission under NPPF para. 11(d)(i).

44. It follows that Mr Collins and – it appears the Council – is now centring its case upon an afterthought that does not reflect the decision of Members and which is not contained in its own SOC. This is patently unreasonable. The Council's regrettable gamesmanship on the SOCG is in the same vein and appears to be at least in part a product of the shifting nature of its case.

45. Ultimately, it appears that Mr Collins has found himself in this position because of the Council's unreasonable approach to the issue of veteran trees. The case now advanced

[33] CD 10.2 at PDF p. 29 where only limb (ii) is quoted. Limb (i) is very obviously omitted.
[34] CD 10.2 at PDF pp. 30 – 31.
[35] CD 10.1 at [4.8] and [4.16] on PDF pp. 33 and 36.

by the Council in respect of veteran trees is not one which was presented to members or is contained in its SOC. Mr Forbes-Laird now alleges that there are 13 veteran trees within the Appeal Site, that Homes England has failed to identify 12 of those trees and that those trees will be unacceptably lost or harmed. Yet despite, this in the OR:

(a) no concern is expressed about the identification of veteran trees in Homes England's arboricultural assessment (and in particular it is not said that 12 veteran trees were overlooked);

(b) no veteran trees other than the one possible tree identified by Homes England is identified;

(c) no concern is expressed about the loss or deterioration of any veteran trees; and

(d) the reasons for refusal in the OR make no reference to veteran trees or irreplaceable habitats.

46. The comments from the Council's tree officer on the application did not advance any of these concerns either.

47. It appears that at some point after the preparation of the OR, the Council belatedly alighted upon the idea of including a reason for refusal based on irreplaceable habitats. The update sheet for the planning committee then included the reasons for refusal in the form that they are now before this inquiry. However, those changes are lacking any contextual discussion. In particular, there is no advice to members on any of the matters highlighted above.

48. By the time of the Council's SOC matters had only advanced slightly further. The Council alleged loss and deterioration to '*important, ancient and other veteran trees*' but no allegation was made that Homes England had failed to identify all the ancient or veteran trees at the Appeal Site and no other additional veteran trees were identified.

49. Homes England sought to clarify this matter in correspondence. By a letter dated 23 December 2022 the Council told Homes England that there were four veteran trees in the Appeal Site. It was not until 6 January 2023 that Homes England was told (without any supporting information) that the Council now alleged that eleven veteran or ancient trees had been missed from its arboricultural assessment. It will be necessary to explore the circumstances in which these additional veteran trees were found, but

suffice it to note here that at two of the three site visits when the Council said it found veteran trees, no clearance works had been undertaken, and two of those site visits were undertaken by the Council's tree officer – the very same officer who provided final comments to the planning committee that were entirely silent on this subject.

50. Mr Forbes-Laird's rebuttal proof of evidence seeks to pray in aid the Council's pre-application response. This is no answer. Not only does it not address the treatment of this issue in the final arboricultural comments, the OR and the SOC, but it is inexplicable to say that if the Council had not been satisfied by the application it would have stayed silent throughout. Further and in any event, on close scrutiny it is apparent that the issues raised about veteran trees in the pre-application response are not the same issues now relied on in the Council's evidence.

51. Notwithstanding the Council's unreasonable conduct, Homes England's position is straight forward:

(a) the alleged veteran and ancient trees have been incorrectly identified by the Council and are not of that status for the purposes of the NPPF;

(b) in any event, they can be protected from loss and deterioration via a condition, in the manner explained in Homes England's rebuttal evidence; and

(c) in any event, exceptional circumstances exist to justify the proposed development notwithstanding any potential harm or loss to those trees.

52. In this latter regard, it is important to note that the test for exceptional circumstances is not complicated: the public benefits of the proposed development must clearly outweigh the loss and deterioration to the trees. Homes England will explain how this test is satisfied.

53. It follows that there is no clear reason for refusing to grant planning permission under NPPF para. 11(d)(i)

(4) The adverse impacts do not significantly and demonstrably outweigh the benefits of the proposed development

54. Turning to the tilted balance under NPPF para. 11(d)(ii), Homes England will explain how the adverse impacts of the proposed development do not significantly and

demonstrably outweigh the benefits of the proposed development. The proposed development delivers a range of very significant planning benefits in a sustainable location. The adverse impacts that do arise are not unexpected or unacceptable. They do not come close to significantly and demonstrably outweighing the benefits of this important development.

IV. CONCLUSION

55. For these reasons, as Homes England will explain through its evidence and submissions, this appeal should be allowed in due course.

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