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

CLOSING SUBMISSIONS
ON BEHALF OF HOMES ENGLAND

I. INTRODUCTION[1]

1. In Opening, Homes England explained that the failures of the Council to determine its application and to grant outline planning permission were inexplicable. This remains the case. Indeed, after hearing the Council's evidence, the Council's position is even more puzzling.

2. There is a housing emergency in the City. The Council is in denial about the true extent of that problem and is not doing everything that it can to remedy this very serious situation. There is a football stadium's worth of real need for housing now, but the Council's evidence seeks to magic that away. Free from this denial, it is clear that the best way to deliver homes now to mitigate that emergency is to build out the allocated sites. That is precisely what Homes England proposes to do, fulfilling its role as the Government's housing accelerator. Homes England purchased the site from the Council in order to develop it in circumstances where the Council has previously tried and failed to deliver.

3. The Council's objections to the proposed development resolve, at heart, to a single point: the Council consider that the loss of trees and hedgerows is "*excessive*". However, this objection is fundamentally flawed: it is based on an erroneous and illegitimate approach to the development plan which seeks to covertly repudiate the allocation by applying the development considerations in a manner that is wholly

[1] These Closing Submissions use the same abbreviations as the Appellant's Statement of Case and Opening Statement unless stated.

inconsistent with the delivery of the estimated 300 homes. Indeed, in a manner that is wholly inconsistent with the delivery of Homes England's much smaller proposal of 260 homes.

4. The only inference that can be drawn from this approach – and from the unexplained failure to determine the application – is that the Council is seeking to make good on its political statements – first by the Mayor and then by full Council – to block any development of the appeal site, regardless of the allocation. It is fantastical to suggest that the planning committee had any other objective in mind when delegating the defence of this appeal to its officers: indeed the chair of that committee had already voted in favour of a motion to prevent any development of the appeal site many months earlier.

5. The extent of the Council's desperation to prevent the site being developed is apparent from its approach to the issue of veteran trees. Mr Forbes-Laird has, by his own admission, advanced a case that simply was not – and could not have been – in members' minds when approving the putative reasons for refusal. Mr Collins has strained to justify this approach, but it is clear that on a proper analysis, it is an argument that is outside of his delegated authority and should never have been advanced. The Council's case on veteran trees is an opportunistic argument raised at the last possible moment in a panicked attempt to find a showstopper objection. Reflecting the manner of its conception, it is a hopeless argument that must be rejected.

6. Once the fallacy of the Council's arguments on veteran trees is appreciated, there is no proper basis for objecting to the grant of planning permission: the proposed development accords with the development plan, such that planning permission should be granted without delay, and, even if there is conflict with the development plan, the tilted balance is overwhelmingly in favour of granting planning permission now.

II. APPROACH TO THE ALLOCATION

(1) The allocation as a prism for determination of this appeal

7. The issues in dispute in this appeal must be viewed through the prism of the allocation, BSA1201.[2] This was common ground between the planning witnesses: Mr Connelly

[2] CD 5.3 at PDF p 162.

approached the allocation as the "*paramount*" policy and Mr Collins considered that it was the "*key focus*".[3] This is undoubtedly the correct approach: the allocation is the site specific 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. Accordingly, these Closing Submissions consider first the approach to the allocation before then addressing each of the three disputed development considerations within the policy in turn.

8. In XX of Mr Connelly, the Council appeared to place some – lukewarm – reliance on the overarching words in policy SA1 that require development of the allocations in accordance with the development considerations and '*all other relevant development plan policies*'. It is, of course, correct that the other policies in the development plan must not be ignored, but that does not detract from the approach to the allocation as the prism for the determination of this appeal. The Council has not articulated any case that is independent of the allocation: each of the reasons for refusal start by citing conflict with BSA1201 before buttressing that with other policies. There is no basis for objection which is not tied to the allocation. Moreover Mr Collins accepted in XX that the other policies in the development plan did not form an independent basis for objection; similarly Mr Higgins confirmed in XX that if the relevant development considerations were satisfied then his objections would fall away; and the same analysis must apply to the evidence of Ms Whatmore and Mr Bhasin, both of whom have premised their evidence on the allocation, as the Council's Opening Statement makes clear.[4] In short, the dispute in this case is whether the proposed development accords with the allocation.

(2) The harm priced into the allocation

The allocation is not a no harm policy: harm is priced into the allocation

9. The allocation is not a "no harm" policy. This is common ground: all of the Council's witnesses accept that the development of the allocation will cause some harm.[5] It follows that the mere fact that the proposed development causes some harms is

[3] Connolley XiC, Collins XX.
[4] ID8 - paragraph 28 of the Council's Opening Statement: '*The concerns relating to design and landscape flow from what the Council considers to be 'excessive damage' to existing features of the site*'. i.e. from the Council's concern about the loss of trees and hedgerows – the fourth development consideration.
[5] 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].

unobjectionable: such harm is anticipated by the allocation and is not in conflict with the allocation. Instead, that harm will only be objectionable if it is excessive, i.e. if it goes beyond what is necessary to deliver the allocation. Again, this interpretation appears to be common ground: Mr Collins accepts it in terms in his POE and it is consistent with the Council's repeated allegations of "*excessive harm*" in its SOC.[6] However, even if it was not common ground, it is obviously the correct interpretation of the allocation for the following reasons.

10. First, it is the only interpretation that accords with logic and common sense: any residential development of the appeal site will, inevitably, result in some harm. Such inevitable harm cannot be a proper basis for undermining the allocation.

11. Secondly, this interpretation is consistent with the clear wording of the policy and its supporting text: for example, the third development consideration requires mitigation and compensation measures precisely because ecological harm is unavoidable; equally, the fourth development consideration focusses on '*important trees and hedgerows'* because not all trees and hedgerows can be retained, rather a more selective approach is required; and, in addition, the explanatory text to the allocation explains that the appeal site is not land that needs to be retained as part of the City's green infrastructure or open space provision – i.e. the loss of those qualities and characteristics has been accepted.

12. Thirdly, it is the only interpretation which is consistent with the sustainability appraisal underpinning the SADMP. On consideration of the sustainability appraisal, it is clear that the Council assessed that the development of the appeal site would cause some harm but, notwithstanding that harm, the Council concluded that the development of the appeal site was acceptable on balance. The clearest example of this is ecological harm: the Council appraised the ecological harm arising from development as a "*double negative*" in the sustainability appraisal but still proceeded to allocation.[7]

13. It follows that the Council can only demonstrate a departure from the development considerations if the proposed development gives rise to excessive harm, beyond that which is priced into the allocation.

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[6] CD 17.1 at [23]: "If Mr Connelly is making the point that some harm was anticipated I would accept that point". CD 10.1 at [1.4], [3.5.2], [3.6.2], [3.8.36 - 37], [3.8.39], [3.8.49 – 50], [3.8.69].
[7] CD 8.3 at PDF p. 189 – the publication matrix.

The allocation prices in the harm arising from about 300 dwellings

14. It follows that the critical task is to ascertain the degree of harm that is priced into the allocation, i.e. the degree of harm that is acceptable under the allocation. Only Homes England has answered this question: the harm necessary to develop the appeal site for about 300 homes is priced into the allocation. Homes England submits that this is the only conclusion when the allocation is read fairly and in the context of the sustainability appraisal prepared for the SADMP.

15. The conclusion is apparent from the clear words of the allocation: it is an allocation with an estimated capacity of 300 homes. That estimate is part of the policy, as Mr Collins accepted in XX: the estimate falls in the same box as the development considerations and is not within the supporting text. These words are important – they must mean something – and Homes England submits that their meaning is clear and obvious: 300 homes is the expected size of the development. The allocation is designed to achieve a development of 300 homes and, as part of that, it accepts and prices in the harm arising from 300 homes.

16. Homes England submits that this is the correct interpretation of the allocation for the following reasons.

17. First, this interpretation is consistent with, and supported by, the explanatory text to the allocation. The allocation was made because the site is in a sustainable location (first bullet point), it would contribute to meeting the minimum number of homes required by the Core Strategy (second bullet point) and the importance of that contribution means that the retention of the appeal site as open space or green infrastructure was outweighed by the benefits of the excepted development, namely about 300 homes (third bullet point).

18. Secondly, it is apparent from the sustainability appraisal. The sustainability appraisal recognised that the proposed development would cause adverse impacts, but it allocated the appeal site for the development of about 300 homes in any event. This is clear from the balancing exercise undertaken at the plan making stage.[8]

19. Importantly, the balancing exercise at the plan making stage was not a guess:

[8] CD 8.3 at PDF p. 189 – the publication matrix. And also the explanation for the allocation at p. 181.

(a) The Council reported on its plan-making to the Examining Inspector. Within that report, the Council documented how the sites '*were assessed in detail*' and that this included both site visits '*to determine the significant characteristics of the site*' and internal workshops with '*specialist advisors including ecologists […] [and] urban designers*'.[9] Further and in particular, the '*estimated housing capacities were introduced at the Preferred Approach Stage. They were based initially on the minimum indicative density contained in Policy BCS20 of the Core Strategy and further refined by a consideration of a variety of factors including the location and accessibility of the site, the mix of users proposed, physical constraints to the development of the site, access, historic character and local context*'.[10] This detailed consideration also included work with the Local Sites Partnership to identify those SNCIs which could be the subject of development.[11]

(b) Consistently with this description of the plan making stage, the evidence of Mr Connelly and Mr Roberts has charted the progress of the estimated capacity of the allocation. The allocation began as a much larger allocation for 936 homes at the Issues and Options stage.[12] This was then reduced in the 2009 SHLAA to 500.[13] Finally, this was reduced further to 300.[14] Very importantly, this final estimate was not the product of standard density assumptions being applied; rather they represented bespoke, site specific, estimates.[15]

(c) Although the Council did not undertake detailed site appraisals, this did not mean that the Council had an insufficient understanding of the qualities of the site. To the contrary, there was a range of information available to the Council, such as the 2010 SNCI scorecard which appraised the ecological importance of the site and which a competent ecologist was likely to consult during the site specific workshops (as Mr Higgins accepted in XX).

(d) At the end of the plan making process, the scrutiny of the site continued, as the Examining Inspector's report makes clear, with a range of issues being raised

[9] CD 8.12 at [2.1.7] on PDF p.3.
[10] CD 8.12 at [2.2.3] on PDF p. 5.
[11] CD 8.12 at [3.4.1] – [3.4.2] on PDF p. 7.
[12] CD 8.3 at [4.91.2.1] on p. 183.
[13] CD 8.22 at p. 14.
[14] CD 8.3 at [4.91.2.1] on p. 183.
[15] CD 16.2 at [2.2.10] on p. 43.

at Examination.[16] Despite all that, the Examining Inspector concluded that there was no overriding ecological reason not to allocate the site and he found the allocation sound on that basis.[17] Further and importantly, in reaching this conclusion the Inspector balanced the ecological harm against the fact that the site '*would make an important contribution to the housing needs of Bristol'*.[18] As Mr Collins accepted in XX, that '*important contribution'* was a contribution of 300 homes.

20. Read in light of these matters, the import of the balancing exercise in the sustainability appraisal is clear. The Council (and the Examining Inspector) appraised both sides of the balance. The benefit was quantified – about 300 homes. The harms were quantified – as shown in the matrix in the appraisal itself. And after this, the balance was struck, with the Council concluding that the benefits prevailed. The harm of delivering 300 homes was thus considered acceptable.

21. Thirdly, the fact that 300 homes is expressed to be the '*estimated number'* does not detract from Homes England's position. The estimate simply means that the number of houses to be delivered will be "*about*" 300, as Mr Collins accepted in XX. The number of houses may not be exactly 300, but it will be about that figure.

22. In this regard, the Council repeatedly sought to rely on the introductory words to the SADMP Annex which states that: '*The precise number of homes to be developed will be determined through the planning application process*.' These introductory words are, at best, explanatory and form no part of the allocation or the policies in the development plan. However, instead of undermining Home England's interpretation of the estimate, these words in fact support it: the determination of the '*precise*' number of homes is an exercise in fine tuning, not in wholesale revision. The Council's reliance on these words to suggest that the number of homes was entirely up for grabs is at odds with that approach: the Council's approach is not one of finding the precise number in the bandwidth of about 300 but instead calculating a number from scratch, without regard to the estimate at all. It is obviously inconsistent with the clear terms of the development plan.

[16] CD 8.23 at IR 121 – 122.
[17] CD 8.23 at IR 122..
[18] CD 8.23 at IR 122.

23. Fourthly, in contrast to the clarity of Homes England's position, the Council's position has been contradictory and confused. Mr Basin suggested in XX that the estimated capacity within the policy was a "*tiny*" consideration which was only included for the purposes of massaging the housing numbers to satisfy the Examining Inspector. By contrast Mr Collins rejected the characterisation of the estimated capacity as a "*tiny*" consideration. Even at the end of this inquiry, Mr Collins could not articulate what level of housing he thought should be delivered and thus could not articulate any alternative benchmark for the identification of "*excessive harm*".

24. It follows that the proposed development must be approached on the basis that the harm arising from 300 homes is priced into the allocation and such harm does not give rise to any reasonable objection.

In addition, the interpretation of the allocation cannot be used to defeat the principle of development

25. The further significance of the estimated size of the allocation is that the development considerations must be applied in a manner that is consistent with the achievement of a development of that scale. This includes applying those development considerations in a manner which accepts the harm arising from 300 homes and does not seek to prevent the delivery of 300 homes.

26. This is not an approach that the Council has followed. The Council has applied the development considerations in a manner which would make it impossible to develop the site to achieve even 260 homes, let alone 300. Indeed, this is at the very heart of the Council's case because rather than explaining how a development of 260 homes could be brought forward with less harm, instead the Council have simply contended that the proposed development should be smaller so that the harms would be reduced. This is an approach that does not read the development considerations in a consistent manner with estimate of 300 homes.

27. The effect of the Council's approach is to covertly repudiate the allocation. The Council profess to accept the principle of development, but that is entirely at odds with its interpretation and application of the development considerations. If the Council actually accepted the principle of the development, as set down in the allocation, then it would have approached the development considerations in a manner consistent

with a development of 300 homes, rather than arguing that a smaller development was necessary.

28. The Council's mask slipped during XX of Mr Collins when he accepted that a development of about 240 homes – a figure that is still too high for the Council – was not "*about 300*" and thus not in accordance with the estimate in the allocation.[19] This could not have put the point any more clearly: the Council's case at this inquiry is entirely inconsistent with the allocation. Unfortunately, this flaw has permeated all of the Council's evidence as each witness in turn has sought to make the case that the harms of the proposed development are "*excessive*" by reference to an idealised form of development that is below 240 homes and entirely inconsistent with the allocation.

29. The XX of Mr Connelly on this issue also revealed the confusion in the Council's approach. Mr Connelly rightly accepted that a development of 240 homes (under the Crawford Fallback) was not about 300. However, he also explained that this did not mean that such a development was not in accordance with the allocation. This was correct. There is nothing stopping a developer from applying for planning permission for a development that is smaller than the estimate. There are many reasons to do this, for example to be conservative, as Homes England was when it applied for the proposed development of 260 homes. However, absent an allegation that the number of proposed homes is too low, such that it is an inefficient use of land, the mere fact of a lower number does not mean that there is non-accordance with the allocation because that smaller development is within the boundaries set by the estimate.

30. The Council's flaw in XX of Mr Connelly was that it sought to compare the proper interpretation of the allocation – which must be adopted by the local planning authority – with the approach that an applicant can adopt when formulating an application – i.e. one with more flexibility, but subject to the risk of refusal for making an inefficient use of land. The two matters are entirely different: the proper interpretation of the allocation is not the same as an applicant's development strategy.

31. The critical point is that the Council cannot *force* a development of a scale less than the lower extremity of the "*bandwidth*" of the allocation – namely about 300 homes (which Mr Collins accepted that 240 is below) - consistently with the allocation. The

[19] Notably, Mr Collins could not recall any occasion when an allocated site in the City had come forward for less than 80% of its estimated capacity. This underscores the unique and erroneous approach that the Council has adopted in this case.

development considerations inform where within that bandwidth the ultimate development should lie. They do not enable the Council to force the development below that bandwidth. Yet that is precisely what the Council's case at this inquiry seeks to do.

32. Mr Collins very fairly and properly accepted in XX that if the propositions in the first three sentences of the above paragraph are right – which, as a matter of law (given that policy interpretation is a question of law) must be the case – the appeal must be allowed, on the basis that (i) the appeal scheme would then be in accordance with the allocation and thus in accordance with the development plan as a whole, and (ii) the Council accepts that if the appeal scheme is in accordance with the development plan then material considerations do not indicate otherwise than duly allowing the appeal.[20]

In any event, the design process supports a scheme of 260 dwellings

33. Even if Homes England's approach to the allocation is incorrect, such that there is no harm priced into the allocation and the 300 dwelling estimate is to be disregarded, this does not mean that the proposed development is unacceptable. On that approach, it would be necessary to work through an iterative approach, balancing differing considerations to optimise the size and nature of the development. LDA undertook that approach, as Mr Crawford explained through the Design Evolution Document ("**the DED**"). This was an iterative master planning approach which considered the constraints and opportunities in an exemplary manner, balancing harms against benefits in order to optimise, rather than maximise, the proposed development. This was not a number led approach, rather it was a landscape led approach, grounded in LDA's market leading expertise of such exercises.

34. This is not mere appellant's puff. As Mr Connelly explained in XiC, Homes England has a commitment to creating places to live, and not just the construction of houses. This is embedded in Homes England's model: first in the requirements that it imposes on housebuilders and secondly in the control that it retains through building leases to ensure that housebuilders deliver on the placemaking objective. Further, in this case the quality of LDA's work has been independently verified by Design West – who

[20] See SOCG at para. 8.19.

'*support[ed] and admire[d] the landscape-led approach*'[21] – and by the Building with Nature award.[22]

(3) The allocation in context – the housing emergency in Bristol

There is a housing emergency in Bristol

35. Homes England submits that on any sensible and fair view there is a housing emergency in Bristol.

36. The evidence of the housing emergency is not disputed and was all essentially confirmed by Mr Colins in XX.

37. First, the housing delivery test results are dire. The Council has never achieved 100%, even against the targets that were reduced because of the pandemic.[23] Not only that, but the test results have declined, rather than improved, over time.[24] This is not surprising because despite the Council being required to publish an action plan on three separate occasions, only one action plan has been published.[25] The purpose of the action plan is remedial, but the Council has simply not taken those necessary remedial steps. Moreover, the most recent action plan has been published so recently that it has simply had no effect; but nor is it likely to have any meaningful effect over time given, as Mr Roberts explained, it is replete with entirely unrealistic measures. The suggestion that 1000 affordable homes will be delivered per year from next year is the prime example of this fanciful approach: it would require delivery to more than double. These measures will simply not have the effect that the Council claims.

38. Secondly, the Council's housing land supply position is woeful. At best, the Council is able to demonstrate a supply of 2.45 years, being less than half that required by the NPPF. This position is likely to be unduly optimistic: the Council has stopped even monitoring its housing land supply in detail and thus, as Mr Roberts explained, the true position is likely to be worse. Moreover, the trend in the Council's supply is not encouraging: it has fallen sharply from 3.7 years in June 2021 and there is no indication

[21] CD 7.2 at PDF p. 3, final paragraph.
[22] The Building with Nature award was withdrawn, but only because of third party allegations that the site was still a SNCI. This is incorrect, as we explain below.
[23] CD 12.2 at p. 47, table 1
[24] Ibid.
[25] CD 8.13, as confirmed by Mr Collins in XX.

that this trend will be reversed.[26] The Council is in a truly horrifying position when supply is converted into actual need: the shortfall is greater than 10,000 homes. You could literally fill a stadium with the actual need. Mr Collins could not point to any other local planning authority in a worse position and nor could Mr Roberts, with his extensive experience of different local planning authorities. The Council is in a truly exceptional position, without apparent equal.

39. Thirdly, the affordability of houses in Bristol is catastrophic. Houses prices in Bristol are increasing more quickly than the rest of the country.[27] Houses are getting less, not more, affordable in the City and at a worse rate than in the country as a whole.[28] At a local level there are 4,126 applicants on the housing register in Bristol South alone as at 1 April 2021.[29] And across the City as a whole Bristol has the highest levels of unaffordable rent for 1, 2, 3 and 4 bedroom properties out of all 3 HMA authorities.[30] But worst of all is the level of affordable housing delivery. The only available figure for affordable housing need is 1,500 dpa in the Core Strategy. But the Council has only delivered 5,257 since 2006: about 20%of the need over that period.[31] Further, even on the basis of the delivery target in the Core Strategy – which is less than a third of actual need – the Council has only delivered 79% of the affordable homes required. On any measure, homes in Bristol are already seriously unaffordable and this is getting worse.

40. In short, given the Council's woeful housing supply, the increasing unaffordability of houses in Bristol and the City's chronic under delivery of homes, there can be only one conclusion: there is a housing emergency in Bristol. The provision of adequate and affordable housing is in a dangerous situation: it is an emergency.

41. Remarkably, Mr Collins could not bring himself to accept that this was an emergency. Mr Collins could offer no coherent reason against describing the situation as an emergency; rather it was simply a word that he dared not speak. Mr Collins' answers typify the Council's denial.

42. This inquiry does not need to apportion blame for the housing emergency in the City, but it is important to note that even when one focuses on the actions of the Council –

[26] CD 8.2 at p. 5
[27] CD 12.2 p. 51 at [6.1.11]
[28] CD 12.2 p. 52, Chart 1
[29] CD 12.2 at [10.1.3.] on p. 71.
[30] CD 12.2 at [10.1.10] on p. 71.
[31] Collins RPOE 17.1 at [40] on p. 9

what the Council can control – it is clear that it is not doing everything that it could to make the situation better: the Council has stopped measuring housing land supply, the Council has failed to publish housing action plans and the Council has failed to review the Core Strategy. These are all basic requirements of national policy yet the Council has simply ignored them. It is not difficult to understand why: if you do not measure a problem then it is easier to ignore. Yet further evidence of the Council's denial.

Delivery of allocations is the best way to cure the housing emergency

43. Homes England submits that the delivery of the housing allocations in the SADMP, including the appeal site, is the best way to cure the housing emergency in Bristol. The only way to cure the housing emergency is to deliver more homes and the delivery of the allocations represents a planned, co-ordinated and pragmatic response to do so. The alternative is ad hoc development of unallocated sites in less sustainable locations, outside the Council's spatial strategy and unsupported by a planned approach to infrastructure.

44. It appeared from XX of Mr Connelly and Mr Roberts that the Council sought to downplay the importance of the allocation on two grounds. Both grounds were ill-founded.

45. The first ground was the number of extant planning permissions for housing development within the City.[32] This argument was based on a fundamental misunderstanding: the Council may have a supply of planning permissions, but it does not have a deliverable supply of planning permissions. Thus, however many planning permissions the Council may be able to point to is entirely beside the point: those permissions are not deliverable and will make no difference, for at least five years, to the housing emergency. In any event, contrary to the impression that the Council sought to give, the level of planning permissions is in no way exceptional; rather, as Mr Roberts explained, it is entirely consistent with the size of the City and the very high levels of need for new housing.

[32] See CD 17.2 at PDF p. 5 and XX of Mr Roberts.

46. The second ground was the extent of housing delivery when measured against the requirements in the Core Strategy. Again, these arguments were riddled with fundamental errors.

(a) First, the housing requirements in the Core Strategy are now twelve years old and have never been reviewed, as Mr Collins accepted. This failure is not only a departure from the NPPF which requires review every five years and reg. 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 which impose the same requirement, but it is also a flagrant departure from the terms of the Core Strategy itself: policy BCS5 required a review '*within 5 years of the adoption of the Core Strategy*' and the Examining Inspector explained that such a review was '*essential*' – indeed, it was only because of the review mechanism that the Core Strategy was found sound.[33] It is thus apparent that these requirement figures simply cannot be relied on today.

(b) Secondly, even in the absence of a formal review, it is clear that the housing requirements in the Core Strategy are no longer fit for purpose. Even keeping broadly in line with the delivery envisaged by the Core Strategy has not improved the housing situation in the City: to the contrary, the housing emergency has got worse, not better, over the period of the Core Strategy. Further, the Core Strategy requires an average annual delivery of 1,530 dpa. Even on the erroneous approach in the Council's emerging local plan, that is clearly insufficient with the Council now accepting that at least 1,925 dpa are required.[34]

(c) Thirdly, on the Council's approach it is only necessary for it to deliver 445 dpa until 2040 in order to comply with the Core Strategy. However, such an approach will very obviously make matters worse, not better, for the housing emergency in the City.

[33] CD 11.8(b) at IR 57 on PDF p. 17.
[34] CD 5.12 at PDF p. 12 (policy H1). For the avoidance of doubt, Homes England does not accept that this number is accurate. The emerging local plan departs from national policy (especially NPPF paras. 35 and 61) without good reason. Further, the Council's approach fails to take into account the need to improve affordability within the City – no adjustment is made.

47. It follows that there is no basis for downplaying the importance of further housing delivery in the City and in particular the need to deliver allocations, including the appeal site. Indeed, the delivery of the appeal site is clearly essential in the context of the housing emergency. This is the important real world context in which the allocation sits.

III. DEVELOPMENT CONSIDERATION 3 – ECOLOGICAL MITIGATION & COMPENSATION

(1) The ecological surveys

48. There is no dispute that the ecological surveys undertaken by Homes England were sufficient and in accordance with the third development consideration. Mr Higgins confirmed this in XX and it is clear from his POE in any event.[35]

(2) Mitigation and enhancement measures

Agreement on BNG measures

49. The Council confirmed in its Opening Statement that it no longer disputed Homes England's position on Biodiversity Net Gain ("**BNG**").[36] It is common ground with the Council, as Mr Higgins confirmed in XX, that Homes England's calculation of BNG is correct and that Homes England has demonstrated that it is able to deliver at least 10% BNG in due course.[37] This is all secured by condition.

No objection beyond hedgerows

50. Further, despite raising a number of essentially minor quibbles in his POE, Mr Higgins confirmed in XX that he did not dispute Homes England's approach to mitigation and enhancement measures in respect of grassland or any other habitat, save for the hedgerows. This concession was sensible and obviously correct. In particular:

    (a) The grassland on the appeal site is not a habitat of principal importance, as Mr Higgins confirmed in XX. The appeal site has been the subject of two separate botanical surveys following the National Vegetation Classification methodology in June 2020 and the May and July 2021 respectively and on

[35] POE at [2.2.1] on p. 3.
[36] The common ground position is at Annex B of FH's RPOE (CD16.8 – see pdf page 71, Table 1).
[37] See FH RPOE in particular at paragraphs 2.63 to 2.67 (CD16.8 – see page 18-20 – pdf pages 20-22).

neither occasion did the survey conclude that the grassland was a HPI.[38] No other party has undertaken an alternative assessment.

(b) Mr Higgins focussed on a small area of rush pasture within the appeal site. This has been surveyed and taken into account by Homes England: at present there is 0.068 ha of moderate quality rush pasture, but following the development this will be improved to provide 0.437 ha.[39] Thus, far from being a harm of the proposed development, this is in fact a benefit, as Mr Higgins accepted in XX.

(c) Aside from the rush pasture, Homes England's proposals more generally will deliver an acceptable programme of improvements to the grazing land adjacent to Victory Park, including compensation (there and elsewhere) for the lost grassland. This directly responds to and complies with the third development consideration which recognises the need for offsite compensation given the inevitable harm to onsite grassland.

(d) In respect of the small heath butterfly, Mr Higgins had not paid sufficiently close attention to Homes England's proposals when formulating the criticisms in his POE. Contrary to what Mr Higgins alleged, precisely the sort of phased removal and replacement of vegetation that he wished to see had been proposed by the ECIA and will be secured by condition.[40] Thus, this was not a proper ground for objection.

(e) Ultimately, Mr Higgins' complaint here was one that delivery of the rush pasture as proposed might be difficult, but he did not contend that it was impossible. At the outline stage, such a complaint is insufficient justification to refuse planning permission because the proposed development is capable of coming forward in an acceptable manner.

<u>Hedgerows – no general ecological reason to refuse planning permission</u>

51. As to Mr Higgins' evidence on hedgerows, it is clear from his POE and from XX that his position essentially reflected the Council's general position, namely that he

[38] CD 1.21(d) at [4.4] – [4.5] on PDF p. 13.
[39] CD 1.21 at Table 5 and 6 on PDF pp. 39 - 40. See g3c8 in that table.
[40] See condition 18 and CD 1.21 at [6.56] on PDF p. 59.

considered the hedgerow removal to be too extensive.[41] We return to this wider issue below, but it is important to record here that none of Mr Higgins' particular complaints gave rise to a freestanding ecological basis for objection.

52. Mr Higgins made a few general ecological points about hedgerows. None of them justify the refusal of planning permission.

53. First, Mr Higgins' allegation that the hedgerows had only been assessed under the Hedgerow Regulations was obviously wrong. For example, the hedgerows were the subject of a specific habitat condition assessment which included consideration of Natural England's biodiversity metric criteria.[42]

54. Secondly and similarly, although Mr Higgins raised minor quibbles in his POE about the survey work undertaken by Homes England (including through his own rather informal survey), ultimately Mr Higgins accepted in XX that any differences in results were not material and the factual content of the reports prepared by Homes England were acceptable.

55. Thirdly, Mr Higgins made the general allegation, in keeping with the rest of the Council's evidence that impacts on the hedgerows had not been avoided. Mr Higgins alleged a failure to comply with the mitigation hierarchy as a result. This evidence was all based on a fundamental misunderstanding of the mitigation hierarchy. The first stage of the mitigation hierarchy is to avoid impacts. Homes England has done this, so far as possible, as Mr Hesketh and Mr Crawford explained. The fact that a smaller development might be capable of retaining more hedgerows does not show any failure in respect of this development because the mitigation hierarchy must be applied to the development under consideration, not some other development. This was explained clearly in the Yatton appeal decision and, ultimately, accepted by Mr Higgins and Mr Collins in XX.[43] The Council may complain about the loss of hedgerow, but they have not been able to point to a single instance where a greater proportion of hedgerow could have been retained whilst delivering the proposed development. Therefore, it follows that the first step of the mitigation hierarchy has been complied with by Homes England. As to the subsequent steps of the mitigation hierarchy, they too have been complied with: Homes England has proposed mitigation

[41] CD 13.3 at [3.5.5] on PDF p. 12.
[42] CD 1.21(e) at PDF p. 15 ff.
[43] CD 12.2 at DL 84 on PDF p. 136.

measures and the Council has not identified any mitigation measures that Homes England has overlooked or failed to include; and so too with compensation measures – Homes England has included such measures where required and they are agreed by the Council. Thus, taken together, there has been no failure to comply with the mitigation hierarchy.

Hedgerows – no species-specific ecological reason to refuse planning permission

56. Beyond these general points, Mr Higgins' evidence resolved down to a series of isolated concerns about particular species. Again, none of them justify the refusal of planning permission.

57. First, contrary to the allegations in Mr Higgins' POE, there is no robust basis for considering that Homes England has mischaracterised the significance of the bird population within the appeal site. A breeding bird survey was undertaken by Homes England.[44] There is no dispute about the methodology of that (or any other) ecological survey. On the accepted methodology deployed in that survey, a site is of local significance if between 25 and 49 species are recorded.[45] However, in this case, only 21 species were recorded, leading, inevitably, to the conclusion that the site is of less than local significance for birds. This was confirmed by the other evaluation factors considered in that survey.[46]

58. Secondly, Mr Higgins then focussed in on the willow warbler. These concerns need to be put in context: it is an amber list species, thus its conservation status is of moderate concern only; it is not a species of principal importance under s. 41 of the Natural Environment and Rural Communities Act 2006; it is not a species identified within the Bristol BAP species action plan; and the most recent data from BRERC records that it is '*common*'.[47] Further, as Mr Hesketh explained in his evidence, the 2022 desktop updates to the ECIA identified further records for willow warbler within a 2km search area of the site.[48]

[44] CD 1.21(g).
[45] CD 1.21(g) at [4.4] and Table 4 on PDF p. 10, applying the research from Fuller.
[46] CD 1.21(g) at Table 5 on PDF pp. 10 – 11.
[47] CD 1.21(a) at Annex E, PDF p. 98, sixth row. Mr Higgins disputed this evidence in XX but there is no basis to go behind – and he did not provide any basis to go behind – the BRERC records.
[48] CD 12.5, Appendix B at PDF p. 39. Red stars denote all species records within 2km (not just willow warbler) – the detailed datasheets behind the graphic have some records of willow warbler)

59. In this context, the survey results of the appeal site give no robust basis for objection. The surveys recorded willow warblers in a number of locations, with only 2 (out of 5) of the recorded sightings placing the willow warbler in a hedge that would be removed (H4).[49] On the remaining occasions, the willow warbler was recorded in hedgerows that were to be retained (either H1 or boundary hedges).[50] These results do not give cause for concern, particularly in circumstances where, as Mr Higgins agreed in XX and Mr Hesketh explained in his oral evidence, the willow warbler is known to move 130 – 230 metres between breeding sites in different years. Thus, even if the willow warbler is breeding within the appeal site, with the phased vegetation removal and replacement that is planned (and secured by condition), there is no robust reason to think that the mitigation measures are insufficient or will necessarily cause the loss of this species from the SNCI.

60. Further and in any event, insofar as this species may ultimately be lost from the appeal site, that is more likely to be a result of climate change than the actions of Homes England, as Mr Hesketh explained in his evidence.[51]

61. Thirdly, as to invertebrates, this issue must be viewed in context. The invertebrate surveys only recorded one of the 73 indicator species for ancient and species-rich hedgerows listed by Buglife.[52] As Mr Hesketh explained, this result does not indicate hedgerows of particular importance for invertebrate. Further, as to Mr Higgins' specific concerns about the Small Heath butterfly and Lesne's Earwig, their loss is not inevitable, given the mitigation measures proposed as Mr Hesketh explained. However, even if that loss was inevitable, it is not unacceptable. This is because those species rely on grassland and scrub habitats respectively and those are precisely the habitats which the third development consideration accepts will be lost (and compensated for off-site). Thus, this is a clear example of the priced in harm: the development consideration accepts the loss of grassland and scrub so any ecological harm arising from that is not a reason for refusing planning permission at the outline stage.

[49] CD 1.21(g) at PDF p. 16 – 17.
[50] Ibid.
[51] CD 16.8 para 2.16 to 2.21 p 6-8 or PDF p 8-10
[52] CD 12.3 at [6.87] on PDF p. 55.

(3) Conclusion on this development consideration

62. Taking these matters together, Homes England submits that the proposed development complies with this development consideration. As a result, and as Mr Higgins confirmed in XX, once there is compliance with this development consideration there is also compliance with the other policies relied on by the Council in respect of ecology: BCS9, DM15, DM17 and DM19. Further and importantly, given Mr Higgins' acceptance that the proposed development complies with the Council's ecological emergency action plan, there are no other ecological considerations which indicate that planning permission should be refused.

IV. DEVELOPMENT CONSIDERATION 4 – TREES

(1) Approach to this consideration – identification of important trees

63. The starting point is to recognise that the fourth development consideration does not concern all trees within the appeal site, only those which are '*important*', as '*identified by a tree survey*'.

64. In XX Mr Forbes Laird explained that his position – and that of the Council – was that a tree was important if (1) it was a veteran tree, applying the definition in the NPPF, or (2) it was a tree protected by a Tree Preservation Order ("**TPO**"). Homes England does not dispute the first of these criteria. However, the second criterion is in error for two reasons.

(a) First, the TPO is not '*a tree survey*' on the ordinary meaning of that phrase; rather it is an order that seeks to protect trees for their amenity value.[53] Thus, insofar as trees are assessed before the making of a TPO they are only assessed for their amenity, reflecting the statutory test.[54] An assessment of amenity value focuses on only one aspect of a tree's potential importance, without taking full account of its size, condition, quality or value. This is particularly the case as the amenity in question is very often visual amenity.

(b) Secondly, a TPO tree may be removed in order to implement a planning permission.[55] Thus, as a matter of principle, a TPO is not a determiner of which

[53] See s. 198(1) of the Town and Country Planning Act 1990.
[54] Again, see s. 198(1) of the Town and Country Planning Act 1990.
[55] ID4 – see reg. 14(1)(a)(vii) of the Town and Country (Tree Preservation) (England) Regulations 2012.

trees should be retained when a site is developed. It is thus a poor mechanism for the identification of trees to be retained by development.

65. Homes England submits that the better approach is to utilise Homes England's arboricultural impact assessment ("**the AIA**"), being a tree survey carried out by Homes England pursuant to BS 5837. This approach is to be preferred because the AIA is a multifactorial assessment, based on best practice and which is specifically tailored to the present context, namely the interface of development proposals and trees.

(2) Identification of the alleged veteran trees in this case

66. Homes England submits that this appeal should be determined on the basis that there is only a single veteran tree within the appeal site, namely T6. On this issue, the evidence of Mr Popplewell should be preferred to the evidence of Mr Forbes-Laird for the following reasons.

Reason 1 – delegation of professional judgment to Mr Bennett

67. The first reason to prefer Mr Popplewell's evidence is that before writing his POE he had actually seen all of the trees in question and spent a considerable period of time measuring and studying them: Mr Popplewell estimated that he had been on site for 2 days, spending more than an hour with each tree.

68. By comparison, Mr Forbes-Laird had only seen the two oaks and two of the hawthorns (VH1 and VH2) before writing his POE and, even when Mr Forbes-Laird carried out a belated site visit at 4pm the day before giving his evidence, he was there for only 90 minutes, as he confirmed in XX, and thus spending about 10 minutes with each tree. Accordingly, in preparing his evidence, Mr Forbes-Laird was entirely dependent on the site inspections of Mr Bennet.

69. It was inappropriate for Mr Forbes-Laird to delegate his professional judgment to Mr Bennett for multiple reasons.

70. First, Mr Bennett was simply not an expert in veteran trees, as Mr Forbes-Laird accepted in XX. Mr Forbes-Laird sought to fall back on Mr Bennett's "*diligence*" but that is no answer here because diligence alone is insufficient: the assessor must be expert in veteran trees so that they can properly identify any veteran characteristics,

an essential component in the analysis. In any event, it is clear that whatever Mr Bennet's diligence he was not competent at the identification of veteran trees. For example, in his pre-application response Mr Bennett purported to identify veteran and ancient ash. However, this was incorrect: the AIA did not identify these trees as veteran or ancient and Mr Forbes-Laird confirmed in XX that he did not consider them to be veteran or ancient trees either. Further, Mr Forbes-Laird now claims that VH3, one of the trees on which Mr Bennett imposed the TPO is a veteran tree. Thus, on the Council's case, Mr Bennett visited the site, inspected the tree, yet despite that failed to identify that there was a veteran tree or to make any objection on that basis. This position lacks any credibility. In short, whatever Mr Bennett's diligence, he was not competent in the assessment of veteran trees.

71. Secondly, the deficiencies in Mr Bennett's competence cannot be remedied by Mr Forbes-Laird because important matters cannot be assessed on a computer screen by viewing a photograph: for example, Mr Forbes Laird described the use of a nylon mallet to sound the extent of decay; similarly, Mr Popplewell described the probing of decay to understand its extent. These are kinetic judgments that cannot be replicated at distance through a computer screen. Further, even though Mr Forbes-Laird purported to have received numerous photographs from Mr Bennett, none were available for testing in the inquiry and in any event, it was clear that those photographs did not cover critical matters, such as where Mr Bennett actually measured. Beyond the annotation '*base*' in Mr Bennett's brief assessment, Mr Forbes-Laird confirmed in XX that he was unable to identify the actual measuring point used by Mr Bennett.

72. Thirdly, not only was Mr Bennett not competent for the task of identifying veteran trees, but it was also clear that Mr Forbes-Laird was acting at the edge of his own experience because he considered VH2 to be "*probably the best*" example of a veteran hawthorn that he had ever seen. An expert operating at the edge of their experience cannot competently and reliably delegate their professional judgment and fail to undertake the necessary assessment themselves. By comparison, Mr Popplewell explained that he had seen many larger and better specimens, including through his work at Hulton Park, and a proprietary database of more than 1,000 hawthorn trees on potential development sites that he has developed since 2019.

Reason 2 – use of the wrong measuring point

73. The second reason to prefer Mr Popplewell's measurements is that Mr Bennett (and thus Mr Forbes Laird) used the wrong measuring point.

74. All of the relevant guidance is clear and was not disputed by any party: arboriculturists should measure diameter at breast height.[56] This is not what Mr Bennett did. Instead, he measured at the '*base*'.[57] The inquiry does not know precisely where, but in the absence of that evidence, this description must be taken at face value – Mr Bennett measured the base of the tree and certainly did not measure the diameter at breast height.

75. The only permissible exception in the guidance to measuring at breast at height is where that is necessary to avoid abnormalities in the tree.[58] However, Mr Bennett and Mr Forbes-Laird did not rely on any abnormalities to justify the departure from a measurement at breast height; instead, they justified their departure on the basis of their quest for the oldest wood. Not only is this not a reason given in any of the guidance documents for departing from the measurement at breast height, but it is not a good reason, as we explain below.

76. It follows that the measurements on which Mr Forbes-Laird relied were undertaken in the wrong place. The very significant consequence of this error is that it inflates all of the measurements because of the flaring towards the base of the trees, and in many cases, swelling at the union between multiple stems. This is material in this case because it undermined all of Mr Forbes-Laird's assessment. If Mr Popplewell's measurements are used instead of Mr Forbes-Laird's erroneous measurements, then all of the disputed trees are too small, even when assessed against Mr Forbes-Laird's claimed standards.[59]

77. By comparison, Mr Popplewell did measure the diameter of the trees at breast height, in accordance with best practice guidance, and his evidence should be preferred as a result. The questions in XX on this point only served to underline Mr Popplewell's

[56] See CD 8.8 (White) at [7] on p.2; CD 8.9 (BS 5837) at [4.4.25] on p.7 read with Annex C at p. 39; and CD 8.25 (NE SSM) at [4.1] on p. 7.
[57] See CD13.2 JFL 5
[58] See for example CD 8.8 at [7] on p.2: '*provided there are not branches, swellings, buttresses or abnormal lumps, girth should be measured with a tape at breast height*'.
[59] See CD 16.4 at [3.53] on PDF p. 32.

competence: he explained how in respect of all the trees put to him it was possible to measure in the correct place. Further, much was made of the fact that Mr Popplewell's measurements were not all precisely at 1.3m. This is unsurprising, as professional judgment must be applied to each unique tree, but Mr Popplewell confirmed in RX that the magnitude of any departure from 1.3m was small and only ever by moving down the tree (i.e. adjusting conservatively).[60] The criticism of Mr Popplewell for not recording his measuring heights was also in error: the guidance only requires the recording of measured height when there is a significant departure – the example given is a drop of 50 cm to 0.8 metres.[61] Mr Popplewell did not make this magnitude of departure and thus no record was required.

78. It follows that on the crucial first step of tree measurement, Mr Popplewell's evidence is to be preferred and this factor alone is sufficient to undermine in full the Council's claim that the trees in dispute are veteran trees.

Reason 3 – erroneous focus on age without consideration of size

79. The third reason to prefer Mr Popplewell's evidence is that Mr Forbes-Laird's analysis (and the work carried out for him by Mr Bennett) focussed exclusively on age, without having proper consideration for size.

80. Mr Forbes-Laird explained in XiC that he was "*trying to find the same piece of information*" for each tree, namely "*the dimension that gives me the best information on its age*". He described this as his "*search target*". This was repeated in XX. This approach is flawed.

81. The first version of the NPPF in 2012 contained a different definition to that which is in the current version of the NPPF. In 2012 a veteran tree was defined as: '*A tree which, because of its great age, size or condition is of exceptional value for wildlife, in the landscape, or culturally*' (emphasis added).[62] By comparison, the current version of the NPPF defines a veteran tree as: '*A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value*' (emphasis added). The material difference between these two definitions is that the current definition operates cumulatively,

[60] It was also a line of questions that ignored that some guidance documents, e.g the British Standard, define breast height as being 1.5 m not 1.3m. See CD 8.9 at PDF p. 45. Thus a small degree of tolerance is obviously acceptable. This is very distinct to a basal measurement.
[61] CD 8.25 at [4.2] on p. 8.
[62] ID10.

requiring exceptionality as a product of the three listed factors – age, size and condition – but the earlier definition operates disjunctively, such that exceptionality could arise from any one the three listed factors – age, size or condition. This change was obviously deliberate and represented a tightening of the definition.

82. In this context, Mr Forbes-Laird's approach (and the approach of *Lonsdale*, published in 2013, on which he relied in XX) is stuck in the past and at odds with the current definition of the NPPF.[63]

83. This is not a semantic point, but one which is material in three ways.

84. First, this focus on age has led Mr Forbes-Laird (and Mr Bennett to whom he explained his search criteria) astray because it has caused him to seek the measurements of the oldest part of the tree, in conflict with the relevant guidance.

85. Secondly, it has infected Mr Forbes-Laird's consideration of the size criteria by inducing him to make unjustified corrections. Unlike with the calculation of age, when some adjustment might be appropriate for management, there is no basis for adjusting for management when calculating size because to do so is to fail to measure accurately. Size is the measurement of what is present. This is important because a veteran tree must have the necessary biomass (i.e. volume) to support the exceptional biodiversity value: if the tree is too small, it cannot support exceptional biodiversity value. It follows that if the size measurement is adjusted on account of management, as Mr Forbes-Laird did, then the measurement is not an accurate capturing of the size of the habitat which is actually present and on which exceptional biodiversity depends; instead, it is a measurement of the biomass (and thus the value) that the tree might have had but for management. This is the incorrect approach because a veteran tree must have sufficient size now to support exceptional biodiversity value.

86. Thirdly, this has directly affected Mr Forbes-Laird's assessment because even applying Mr Forbes-Laird's size thresholds, there are four trees which are too small to be veteran trees on his own measurements before an "allowance" for management is added.[64] It is only by making this erroneous allowance that Mr Forbes-Laird has been able to assess the trees as veterans.

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[63] This might be explicable in respect of *Lonsdale*, which is principally concerned with veteran tree management, not the NPPF. There is no excuse for Mr Forbes Laird.
[64] CD 16.4 at [3.53] on PDF p. 32. Those four trees are T5, VH5, VH8 and VH9.

87. It follows that for this reason as well Mr Forbes-Laird's evidence must be rejected and Mr Popplewell's cumulative approach preferred instead.

Reason 4 – erroneous benchmarks

88. The fourth reason that Mr Forbes-Lairds' evidence must be rejected is the erroneous benchmark sizes used in his evidence.

89. First, Mr Forbes-Laird accepted that he applied the wrong threshold for oaks. Contrary to his POE, the girth threshold for an oak is 4.8m not 3.7m, meaning that the correct diameter threshold is 1,530mm.[65]

90. Secondly, in respect of hawthorns, Mr Forbes-Laird used a girth threshold of 2.3 metres giving a diameter threshold of 570 millimetres. This threshold was in error and is explicitly contradicted by *Lonsdale* which identifies a girth threshold of 2.5 metres, giving a diameter threshold of 620 millimetres.[66] Mr Forbes-Laird's response in XX was to suggest that these thresholds should be applied flexibly. That is not a good response because it again overlooks the importance of ensuring that the tree is sufficiently large to qualify as a veteran. Mr Forbes-Laird's response was another example of his erroneous focus on age at all costs.

91. Further, both of these errors are material:

(a) On the correct thresholds for oaks, neither T5 nor T6 are sufficiently large to be veteran trees, whichever parties' measurements are used.[67]

(b) On the correct thresholds for hawthorns, none of the hawthorns are sufficiently large to be veteran trees on Mr Popplewell's measurements (which should be preferred for the reasons already given). Further, even on Mr Forbes-Laird's measurements only seven of the hawthorns are sufficiently large to be veteran trees against the correct threshold.[68]

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[65] Compare JFL's POE at p.33, table 1 with Lonsdale at p. 27.
[66] See CD 16.4 at [3.42] – [3.50] on PDF pp. 27 – 31, explaining these errors.
See CD 16.4 at [3.42] – [3.50] on PDF pp. 27 – 31, explaining these errors.
JFL adopts Homes England's measurement of 1450 mm and does not do his own measurement. Homes England have treated T6 as a veteran tree on a precautionary basis, despite it not being sufficiently large.
[68] Being VH1, VH2, VH3, VH4, VH6, VH7 and VH10.

Reason 5 – RAVEN allows unexceptional trees to become veteran trees

92. The fifth and most significant reason is that Mr Forbes-Laird's own RAVEN methodology does not ensure that only trees that accord with the current NPPF definition can be categorised as veteran trees.

93. It is important to return to the definition of veteran tree in the NPPF: '*A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value*' (emphasis added). Mr Forbes-Laird advanced his case by reference to the exceptional biodiversity gateway only. As to that gateway, the tree must be of exceptional biodiversity value because of the product of its age (being old relative to others of the same species), its size (being large relative to others of the same species) and its condition (being a condition that is properly characterised as of exceptional biodiversity value). Given the cumulative nature of this definition (note the word '*and*') all three of these factors must be present, irrespective of whether one describes the process as "deeming" or not.

94. The essential flaw in the RAVEN methodology is that a tree can be assessed as being a veteran tree on the basis of exceptional biodiversity value without any of these three required factors being present.

95. As to the first two factors – age and size – Mr Forbes-Laird accepted in XX that a tree which was not exceptional – i.e. not large or old for its species – could pass through the first stage of RAVEN.

96. As to the third factor, condition, the second and third steps in RAVEN do not impose the appropriate minimum standard to ensure exceptionality. This flaw is not made good by the application of any further exceptionality threshold or check, given Mr Forbes-Laird expressly disavowed such an additional step on the basis of his "deeming" approach to the NPPF definition.

97. This flaw in RAVEN can be demonstrated by reference to the Natural England guidance.[69] Natural England's guidance requires four out of five of the specified veteran characteristics to be present in order for the tree's condition to support a positive classification of veteran status. By comparison, the RAVEN methodology

[69] CD 11.6(f) at PDF p. 22 – see the box for a line of trees in a hedge.

only requires a single primary feature.[70] This contrast is stark and its effect is clear: the RAVEN methodology is setting the bar for exceptional condition considerably lower than it should be, as advised by Natural England.

98. This discrepancy is likely to be a result of the fact that the RAVEN methodology pre-dates the Natural England guidance and has not been updated in light of that later guidance. Whatever the reason, there is a clear inconsistency which Mr Forbes-Laird was unable to justify in XX. Instead, his position was that Natural England's guidance was wrong and that it should be departed from in this appeal in favour of the RAVEN methodology. Mr Forbes-Laird confirmed that this departure was necessary for his analysis to succeed.

99. The established approach is that the advice of Natural England, as the statutory nature conservation body for England, should be followed, absent cogent reasons to depart from it: see ***R. (Wyatt) v Fareham Borough Council*** [2022] EWCA Civ 983 per the Senior President of Tribunals at [9(4]]. Put quite simply, Mr Forbes-Laird had no reasons, let alone cogent reasons, to depart from Natural England in this case. Mr Forbes-Laird advanced three possible reasons, none are good reasons.

100. First, Mr Forbes-Laird sought to rely on some of the accompanying explanatory text from Natural England which states that: '*Impacts on protected sites (e.g. SSSIs) and irreplaceable habitats are not adequately measured by this metric. They will require separate consideration which must comply with existing national and local policy and legislation.*'[71] This text provides absolutely no assistance to Mr Forbes-Laird because it is concerned with impacts on irreplaceable habitats. This text is not concerned with the identification of irreplaceable habitats. Thus, it provides no good reason to depart from Natural England's guidance.

101. Secondly, Mr Forbes-Laird sought to rely on *Lonsdale*. This must be treated with caution: Lonsdale pre-dates both the current NPPF definition and Natural England's guidance. It is a document principally directed at the management of veteran trees, not their identification. In any event, the passage relied on by Mr Forbes-Laird is simply a list of veteran characteristics.[72] Importantly, nowhere does *Lonsdale* identify how many attributes are required for a tree to be a veteran tree (on any definition, let

[70] CD 13.2 at PDF p. 29.
[71] CD 11.6(g) at PDF p. 17 – look at the second bullet point under 'Principle 4'.
[72] CD 8.20 at PDF p. 28 under the heading 'Other key attributes'.

alone the definition in the NPPF). In particular, *Lonsdale* does not say that a single characteristic is sufficient. Thus, as Mr Forbes-Laird ultimately agreed in XX, there is nothing in *Lonsdale* that supports the casting of the net wider than in Natural England's guidance.

102. Thirdly, Mr Forbes-Laird sought to rely on previous appeal decisions. Neither support a different approach to that in Natural England's guidance.

(a) The first appeal decision, concerning land at Oakhurst Rise, pre-dates Natural England's guidance.[73] Importantly, the Inspector was not asked to express a preference between RAVEN and Natural England's guidance or any other methodology. Instead, the Inspector was dealing with a freestanding attack on the RAVEN methodology, but, even then, his conclusion was only that RAVEN was an appropriate methodology, not that it was the most appropriate or the only appropriate methodology. Accordingly, the terms of the debate in that appeal decision were very different to the present and the issue with which this inquiry was concerned did not arise. This appeal decision does not provide any basis to depart from Natural England's guidance.

(b) Similarly, the second appeal decision, also concerning land at Oakhurst Rise, did not consider Natural England's guidance.[74] And again, the parameters of the debate were different: the Inspector was not asked to express a preference between RAVEN and Natural England's guidance or any other methodology. Equally, the Inspector did not conclude that RAVEN was the most or only appropriate methodology. Free of Mr Forbes-Laird misleading quotation, the high point of the Inspector's reasoning was a finding of '*general*' accordance with the NPPF, but without considering the issue in dispute in this case.[75] This appeal decision does not provide any basis to depart from Natural England's guidance.

103. Ultimately, the position is clear: the RAVEN methodology is flawed and cannot be safely deployed to identify veteran trees under the present definition in the NPPF. Mr Popplewell's approach – which is consistent with both the NPPF and Natural England's guidance – should be preferred.

[73] CD 6.6 – see DL 55 ff especially.
[74] CD 6.17.
[75] See DL 66.

104. This flaw in the RAVEN methodology is particularly material because none of the alleged veteran trees would qualify on the basis of Natural England's guidance. Thus a departure from Natural England is a necessary, but flawed, step in Mr Forbes-Laird's reasoning.

Conclusion on the identification of veteran trees

105. For these reasons, Homes England submits that Mr Popplewell's evidence should be preferred to that of Mr Forbes-Laird and this appeal should be determined on the basis that there is a single veteran tree on the appeal site, namely T6.

(3) The tree surveys

106. Neither Mr Forbes-Laird nor any other party has undertaken an alternative tree survey that complies with BS 5837. Accordingly, the only tree survey before the inquiry is the AIA. Homes England submits that the AIA is robust, and the appeal should be determined on the basis of its conclusions.

107. The Council attacked the AIA on two grounds. The first ground was that it had failed to identify veteran trees. This ground is in error, for the reasons already explained. The second ground was that even if the AIA had identified all of the veteran trees on the appeal site, nevertheless it was deficient for failing to identify the alleged veteran trees as "*notable*" species, in essence as "*pre-veterans*". This ground is also in error for the following reasons.

108. The Council advanced this argument by relying on Mr Popplewell's use of the word "*notable*" in his POE. However, as he explained in his XiC and XX, this approach is unfair. Mr Popplewell was using the term "*notable*" in the generic sense to describe trees that might be approaching veteran status in terms of their size (i.e. Locally Notable), but not in the specific sense of trees passing some, but not all, of the veteran tree assessment criteria (i.e. Veteran/Notable)[76]. Mr Popplewell was not using the term "notable" in the context of a survey under BS5837 which has its own particular methodology.

[76] See CD 8.20 Figure 1.3 for relationship between 'Locally Notable' and 'Veteran/Notable'

109. As Mr Hesketh explained in his XiC, a tree survey pursuant to BS 5837 has a specific purpose, namely to inform the scheme design.[77] Accordingly, its requirements and methodology should be applied to the relevant stage of the design process. In this case, the outline planning permission stage. In this case the majority of hedgerow trees on the site were assessed as group trees so as to ensure an understanding of the canopy cover, to reflect the cohesive arboricultural function of the constituent trees in forming linear habitats, and thus to inform the necessary protection (i.e. offset distances) for the parameters plans. The purpose at the outline stage is not to scrutinise each and every tree: that simply is not necessary.

110. This approach is entirely in accordance with BS 5837 which states:

> *'Trees growing as groups or woodland should be identified and assessed as such where the arboriculturist determines that this is appropriate. However, an assessment of individuals within any group should still be undertaken if there is a need to differentiate between them, e.g. in order to highlight significant variation in attributes (including physiological or structural condition).'*[78]

111. In this case the arboriculturist determined that there was no need to further differentiate between the trees in the groups. Such differentiation would serve no purpose at the outline stage as it would not change the fundamental characteristics, namely the group canopy coverage and thus extent of protection.

112. It follows that the Council's various criticisms under the banner of "*survey diligence*" are misplaced. The AIA accorded with BS 5837 and was adequate at this outline stage. This is an unsurprising conclusion, given the absence of any criticism of the AIA by Mr Bennet in his consultation responses. These criticisms are yet more new arguments alighted on by Mr Forbes Laird in the cause of trying to win this appeal for the Council. Like his other arguments, these criticism are in error.

113. The R6 Party noted some tree numbering errors and an apparent TPO referencing error in the AIA datasheets. These have been corrected.[79] It is important to note that the numbering errors are of no material consequence because the Tree Constraints and Impact Plans are correct, and there are no additional trees in conflict with the

[77] CD 8.9 at [1] on PDF p. 9.
[78] CD 8.9 at [4.4.2.3] on PDF p. 12.
[79] ID 19. Mr Hesketh also took the opportunity to amend the grade of Group G24 (south) to Category B, to be consistent with the grading of Group G10, as he explained in evidence. Again, this is not material to the dispute.

masterplan than was already reported in the planning application. The apparent TPO reference error is in fact an error with the TPO, not with TEP's survey.

(4) Impacts on veteran trees

Assessment on the basis of Mr Popplewell's evidence

114. On the basis of Mr Popplewell's evidence, there is a single veteran tree within the appeal site, namely T6. As Mr Crawford and Mr Hesketh explained, appropriate buffer zones for this tree have been designed into the parameters plan, such that the proposed development will not cause this tree to be lost or damaged. This is not disputed by the Council. It follows that there are no unacceptable impacts on veteran trees from the proposed development.

Assessment on the basis of Mr Forbes-Lairds' evidence

115. Even if some or all of the alleged veteran trees are found to be veteran trees, this does not mean that there is any conflict with NPPF para. 180(c). There are two reasons for this conclusion. First, the trees can be protected by a condition, as shown in Mr Crawford's rebuttal evidence ("**the Crawford Fallback**"), such that they are not lost or suffer deterioration. Secondly, even if the trees are lost or do suffer deterioration, wholly exceptional reasons and a suitable compensation strategy exist.

The procedural aspects of the Crawford Fallback

116. The Council have objected to the Crawford Fallback on the basis that it would amount to an impermissible amendment to the proposed development. This is incorrect for the following reasons.

117. The starting point is to understand the mechanism proposed:

(a) Planning permission will be granted subject to a condition that requires the retention of any veteran trees such that they are not lost or the subject of any deterioration. This will ensure that the veteran trees are protected in a manner compatible with NPPF para. 180(c). Homes England's proposed condition is at Appendix A to these Closing Submissions, reflecting Mr Connelly's rebuttal evidence.

(b) The effect of that planning permission is to cut down the development. The condition is overlaid on the parameters plans and thus permission is granted for the proposed development, in accordance with the parameters plans but subject to the protective condition. The use of conditions for this purpose is well established: see ***Kent County Council v Kingsway Investments (Kent) Ltd***. [1971] A.C. 72. Although not necessary (because planning permissions should be read as a whole, including the conditions), a minor tweak can be made to the condition concerning the parameters plans so that the interrelationship between conditions is clear. That minor tweak is also at Appendix A to these Closing Submissions.

(c) It is not necessary to amend the parameters plans or the design code. This is because both documents will be approved, subject to the condition securing the Crawford Fallback. However, even if that approach is not accepted, a condition can require the amendment of either or both documents so that they reflect the Crawford Fallback. Again, a condition capable of securing that amendment is at Appendix A to these Closing Submissions. As we explain below, such conditions are unobjectionable, applying the principles relevant to the amendment of planning permissions and/or the amendment of design codes.

118. Homes England's primary position is that the Crawford Fallback does not represent an amendment to the proposed development and does not require an amendment to the description of development. The reason for this is that the only possible effect of the Crawford Fallback will be a reduction in the number of houses delivered (on the worst case, a reduction of 20 homes). This does not lead to any conflict with the current description of development: a description of '*up to 260 homes*' encapsulates the situation where only 240 homes are delivered. Further and in particular, Mr Collins was in error to consider that the Council would be "*forced*" to accept a development of up to 260 homes at the reserved matters stage if the description of development was not changed. The Council would <u>only</u> be "*forced*" to accept a development of 260 homes at the reserved matters stage <u>if</u> that development protected the veteran trees in accordance with the proposed condition. If the development did <u>not</u> protect the veteran trees in that way then the Council could simply refuse to grant reserved matters approval on the basis that the proposed condition has not been complied with by the applicant. The description of development would be of no assistance to the applicant in the face of such a refusal because the description cannot be taken in

isolation; rather it must be read together with the conditions on the outline planning permission.

119. If, contrary to the foregoing, it is considered that the Crawford Fallback is an amendment to the proposed development and/or it is necessary to amend the description of development, then it is important to bear in mind the correct principles. Those principles are well established and were authoritatively stated in ***R. (Holborn Studios Ltd) v Hackney London Borough Council*** [2017] EWHC 2823 (Admin), [2018] PTSR 997. In summary:

(a) There are two constraints on the amendment of an application for planning permission (whether by the local planning authority or the Secretary of State on appeal). The first constraint is substantive and the second constraint is procedural. See ***Holborn Studios*** at [63].

(b) First, as to the substantive constraint, the question is whether the result is the grant of permission for a development that is in substance something different from that for which the application was initially made: see ***Holborn Studios*** at [64]. In the context of planning permissions where the development is cut down by condition, this substantive constraint has been phrased as whether the development would be substantially or significantly different in its context from that which the application envisaged: ibid at [66], following inter alia ***Kingsway***.

(c) Secondly, as to the procedural constraint, the question is whether the amendment would have the effect of sidestepping the rights of third parties, such as to prejudice them: see ***Holborn Studios*** at [70]. More practically, this consideration can often be approached by asking whether it is unfair not to reconsult: see ***Holborn Studios*** at [78].

120. Applying the above principles, insofar as the Crawford Fallback is an amendment to the proposed development or requires an amendment to the description of development, Homes England submits that it is entirely permissible for the following reasons.

121. First, as to the substantive limitation, Mr Collins accepted in XX that an amendment to the description of the development would not breach this limitation. On this basis, the

only conclusion is that the Crawford Fallback itself would not breach this limitation. This concession was rightly made. The Crawford Fallback does not change the substance of what is applied for. The appeal site remains the same and so too does the proposed use of the appeal site. Only three of the design fixes within the Crawford Fallback have the potential to reduce the developable area, i.e. to reduce the number of homes that can be delivered. All of the other design fixes have no impact on the developable area. This was all agreed by Mr Collins XX. Further, as Mr Collins also accepted, those reductions are properly characterised as minor. This applies both on an individual basis to each fix and on a cumulative basis – for example, the reduction in units is, at worst, only 8%.

122. Secondly, as to the procedural limitation, the Crawford Fallback would not sidestep the rights of any party and it would not be unfair to proceed without reconsultation. More particularly:

(a) There can be no conceivable prejudice to the Council or the Rule 6 Party. Both parties have been provided with the Crawford Fallback and have had full opportunity to comment on it during the inquiry. The extent to which either party has chosen to do so is a matter for them (as is the extent of internal consultation within their organisations).

(b) There is nothing arising from the Crawford Fallback that third parties have not already had the opportunity to comment on or, equally, would not have the opportunity to comment on at the reserved matters stage. The only possible consequences of the Crawford Fallback identified by the Council are (1) a change in mix; and (2) an amendment to the design of informal open space. It is notable that Mr Collins had not identified any relevant representations on either matter to date. However, critically, neither of these consequences concern matters that are fixed at the outline stage; rather, both matters are to be determined at the reserved matters stage. In short, they are not matters on which any representations from third parties would be relevant now and they are all matters on which third parties will be able to comment in due course.

(c) The nature of the proposed changes goes with, rather than against, the grain of the consultation responses. No party has identified a consultation response that wanted to see less retention of trees; to the contrary, there were several responses that wanted to see more retention of trees. Thus, there is no reason

to think – notwithstanding the matters above – that the interests of any third party would be prejudice by the absence of further consultation on the Crawford Fallback.

123. Finally, even if, contrary to the foregoing, it was concluded that the Crawford Fallback would breach the procedural constraint, there is an easy remedy: a focussed period of consultation, hosted on the Council's website and with the ability for any third parties to make representations in writing. The main parties could then respond to those representations (if any) by way of written submissions. This would have the effect of extending the length of the inquiry, which could not close until after those final submissions, but such an approach is one that is lawful and causes no prejudice. Insofar as there may be costs consequences, that would be for separate consideration. Moreover, this is a course that would be particularly justified in this case by the unusual manner in which the Council has presented its case. As Mr Forbes-Laird candidly accepted, the case that he now advances is not one that was in the minds of members. Further, it was not articulated in the Council's SOC and Homes England was ambushed by the full extent of Mr Forbes-Laird's arguments a matter of days before the exchange of evidence. Putting it mildly and diplomatically (for present purposes, albeit more will be said in relation to costs), this is beyond exceptional.

124. In short, this is not a matter that Homes England could have addressed any earlier and thus, any delay following the scheduled sitting days is as a result of the Council's failures, not any failure of Homes England.

125. For all these reasons, the Crawford Fallback is procedurally permissible and in light of the ***Holborn Studios*** principles it would indeed be unlawful not to admit it.

<u>The merits of the Crawford Fallback</u>

126. There does not appear to be any meaningful dispute as to the merits of the Crawford Fallback. The Council have only raised two weak arguments.

127. The first argument was a concern that the Crawford Fallback would not prevent the loss or deterioration of the trees. This is incorrect and based on a fundamental misunderstanding of how the proposed condition would operate. As already explained, the condition will require a level of protection that is equivalent to NPPF para. 180(c); that is to say, the condition will require a design that protects the trees

from loss or deterioration.[80] The Council has not advanced any reason to consider that it is impossible to achieve such a design and thus there is no reason not to grant outline planning permission. The Council's finer design concerns are for consideration at the reserved matters stage.

128. The second argument was a concern about the extent of connectivity between the veteran trees and the surrounding hedgerows. This argument was simply a species of the first argument: insofar as it is a relevant consideration, then it is for consideration at the reserved matters stage when the precise extent of hedgerow retention linking the veteran trees can be determined. In any event, as both Mr Hesketh and Mr Crawford explained in their XiC, the Crawford Fallback was designed to take into account this consideration and all of the proposed options have ensured that there remains a link between the veteran tree and a hedgerow.[81]

129. It follows that the Crawford Fallback is acceptable on its merits.

Wholly exceptional reasons and a suitable compensation strategy

130. In the alternative, even if it is concluded that the proposed development will cause loss or deterioration of veteran trees and the Crawford Fallback is rejected, nevertheless Homes England submits that the proposed development complies with NPPF para. 180(c) because there are wholly exceptional reasons and a suitable compensation strategy exists.

131. A suitable compensation strategy has been identified and has not been criticised in any meaningful way by any party.[82] Instead, the Council's focus has been on whether or not wholly exceptional reasons have been established.

132. The starting point is to understand the test. There is no doubt that the test of wholly exceptional reasons is a high test. However, Mr Collins' approach was fundamentally flawed. Mr Collins appeared to rely on fn. 63 to suggest that wholly exceptional reasons could not be demonstrated in the Town and Country Planning context. This

[80] Importantly, the Crawford Fallback does deal with buffer zones appropriately. As CC explained, the buffer zones were calculated on the more conservative basis of canopy extent + 5m rather than as a multiplier of stem diameter. The arguments about stem diameter are thus not material. The only exception was two trees where JFL's approach led to a slightly larger buffer zone (1 – 2 m) which could be adequately incorporated in any event, given this very minor difference.
[81] CD 16.6 at PDF p. 37, both bullet points in column 1.
[82] CD 16.4 paragraphs 8.30 to 8.52 PDF p. 78-80.

is incorrect: the schemes in fn. 63 are simply examples. There is nothing that prevents the establishment of wholly exceptional reasons in this appeal as a matter of principle.

133. Further, fn. 63 gives a clear steer as to how wholly exceptional reasons should be demonstrated: the development must be shown to be of importance (such as the infrastructure projects given as examples) and it must be concluded that the public benefit would clearly outweigh the loss or deterioration of the habitat. This is precisely the case here.

134. As has already been explained, the housing emergency in Bristol is exceptional – it is without parallel. More than that, there is no realistic solution, certainly not in the short term: the Council has failed to deliver the necessary housing action plans, those action plans that it has delivered have had no effect (and are unlikely to have the necessary effect, even over time) and, most fundamentally, the emerging local plan is flawed. In these circumstances, the delivery of the proposed development is of exceptional importance because, as an allocation, it is the best way of addressing the housing emergency and it will make a significant contribution in terms of both market and affordable housing. Further, as we will explain shortly, there can be no doubt that the public benefits of the proposed development would clearly outweigh any loss or deterioration.

135. It follows that even absent the Crawford Fallback, there is compliance with NPPF para. 180(c).

(5) Impacts on other trees

136. Turning to consider the impacts on other trees, Mr Hesketh explained by reference to the AIA that all Category A trees – i.e. the important trees that are not veterans – would be retained by the proposed development.[83] This was not challenged by any party. Accordingly, assessed on this, the correct basis, there is total accordance with the development consideration.

137. Further, even if this development consideration is considered by reference to the TPO, there remains accordance because only three TPO trees would be removed, all of which are of moderate (category B) quality only.[84] Loss of one TPO tree is unavoidable

[83] CD 12.3 at [6.6] on PDF p. 42.
[84] CD 12.3 at [6.11] – [6.17] on PDF pp. 42 – 43.

due to the need for primary access, as the Council accept. Loss of the other two is required for placemaking and good design and, in part, for circulation. Again, none of this evidence has been effectively challenged by any party. Accordingly, even on this alternative, incorrect, basis of assessment, there is total accordance with the development consideration.

(5) Conclusion on this part of the development consideration

138. For the reasons that have been explained, Homes England submits that the proposed development complies with the first part of the fourth development consideration relating to important trees.

V. DEVELOPMENT CONSIDERATION 4 – HEDGEROWS

(1) Approach to this consideration – identification of important hedgerows

139. As with the trees on the appeal site, the fourth development consideration only seeks to protect the important hedgerows. However, unlike with the trees (where a tree survey is required) the development consideration gives no indication of how the important hedgerows should be identified.

The Council's approach to identification of important hedgerows

140. The Council's position is that all of the internal hedgerows within the Site are important on the basis that they are all classified as important under the Hedgerow Regulations.[85] This approach is simplistic and in error for the following reasons.

141. First, , this approach is in error because it does not assess the relative importance of the hedgerows on the appeal site. This is a fundamental deficiency in the Council's analysis because it is accepted by all of the Council's witnesses (and is obvious in any event) that there will be some loss of internal hedgerow when the appeal site is developed. Given this is accepted, simply categorising all of the internal hedgerows as important is of no utility because it does not allow the designer or the decision maker to assess where retention is required and where the inevitable loss may be acceptable.

[85] Mr Higgins also referred to the fact that the hedgerows were all habitats of principal importance. This does not appear to have informed the Council's case as to what was an important hedgerow, but even if it did, it is in error because all of the internal hedgerows within the appeal site are HPI. Thus it is also a binary metric of no assistance because it does not allow the decision maker to understand the relative value of the hedgerows.

This finer grained and more instructive analysis can only be achieved by assessing the relative importance of the hedgerows. None of the Council's witnesses have undertaken such an assessment.

142. Secondly, the Council's reliance on the Hedgerow Regulations is simplistic and uninformative when taken in isolation, as the Council has done throughout its evidence. In particular:

(a) The purpose of the Hedgerow Regulations is '*to protect important hedgerows in the countryside*'.[86] It does not consider all hedgerows, for example it excludes domestic hedgerows and only considers hedgerows on common land, protected land or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys.[87] It is not a comprehensive tool for assessing all hedgerows.

(b) The Hedgerow Regulations is a binary metric: a hedge is either important or it is not. Beyond that simple threshold (which a very large number of hedgerows across England and Wales meet, as Mr Hesketh explained), there is no gradation or differentiation of importance. It is thus a very blunt tool for understanding the relative value of hedgerows.

(c) The distinction between an important and an unimportant hedgerow in the Hedgerow Regulations is a policy distinction, as Mr Higgins accepted. It is not an ecological distinction or a distinction based on other considerations of value, such as landscape character. Moreover, the context of that policy distinction is important: the Hedgerow Regulations do not protect important hedgerows from removal where that is required to facilitate development for which planning permission is granted by planning permission.[88] Thus it is not a mechanism that is designed for application in a development control context when some removal will be permissible under a planning permission.

143. Thirdly, contrary to the apparent suggestion in the Council's XX of Mr Crawford, the Council's simplistic approach of using the Hedgerow Regulations gains no support from Homes England's application documents. Mr Crawford was taken to one part of

[86] CD 11.6(d) on p.3, first paragraph.
[87] See reg. 3 of the Hedgerow Regulations.
[88] See reg. 6(1)(e) of the Hedgerow Regulations.

Homes England's landscape rebuttal comments at the application stage which refers to 74% loss of internal hedgerows.[89] However, very importantly, that comment did not say that 74% of the important hedgerows would be lost – there was no reference at all to importance. Instead, that comment was in response to the Council's response on '*the existing landscape structure*'. It follows that this comment gives no support to the Council's position. This is especially the case if one reads that rebuttal document fairly because at an earlier stage the fourth development consideration and the issue of important hedges is addressed. Where this consideration is addressed, Homes England's approach is made clear: '*Identification of tree and hedgerow retention and loss was informed by extensive ecological, arboricultural and heritage surveys*'.[90] This could not be clearer: Homes England has taken a multi-faceted approach to the identification of the important hedgerows, not a simplistic one based on the Hedgerow Regulations alone.

Homes England's approach to the identification of important hedgerows

144. In contrast to the Council's simplistic approach, Homes England has deployed a sophisticated and detailed approach which has assessed the relative importance of the hedgerows on the basis of a range of different considerations. The output of that analysis is encapsulated in paragraph 6.95 of Mr Hesketh's POE where he adopts a tiered approach, showing the relative importance of the hedgerows.[91] This is the only relative analysis before the inquiry.

145. Further, Mr Higgins confirmed in XX that the Council only disputes one part of Mr Hesketh's relative analysis, namely the placement of H4 in the second tier of hedgerows. However, there is no robust basis for placing H4 in the first tier, especially on the basis of ecology, because: (1) unlike the hedges in the first tier, H4 is not connected to the SNCI directly, instead relying on indirect connection via other hedgerows; and (2) H4 is assessed as being in poor condition under the Natural England metric, unlike H1 (good condition) and H5 (moderate condition) in the first tier. Mr Higgins accepted the first of these factors in XX. However, in respect of the second factor he attempted to argue that H4 should have been assessed to be in moderate condition. This was an argument without any supporting explanation in his

[89] CD 2.7, second box on PDF p. 9.
[90] CD 2.7 at PDF p. 2, second box.
[91] CD 12.3 at PDF p. 56. See also the detailed analysis in the POE preceding the conclusion at [6.95].

POE and unfortunately it became clear from his answers that it was a position that he was making up as he went along. At the end of the exchange in XX, you asked Mr Higgins what weight could be given to his evidence on this point. Mr Higgins rightly accepted that no weight could be attached to this evidence. Thus, Mr Higgins' answers must be rejected and Mr Hesketh's analysis, which is clear and detailed in his POE, must be preferred.

146. It follows that the extent of loss of the hedgerows must be assessed on a relative basis, deploying Mr Hesketh's tiered approach.

(2) Approach to this consideration – meaning of incorporate

147. The Council's case on hedgerows is founded on the extent to which they will be lost, i.e. the extent of retention. Not only is this analysis in error on its own terms, but it also fails to consider the second part of this development consideration, namely the incorporation of new hedgerow into the proposed development. It appears that the Council has ignored such incorporation because it considers that the development consideration only relates to existing hedgerow. This approach is incorrect for the following reasons.

148. First, the Council's approach equates incorporation with retention. This is inconsistent with the clear language of the development consideration. If incorporation was the same as retention then they would not be alternatives; yet they are alternatives, as the disjunctive '*or*' indicates: '*retain or incorporate*'. Moreover the Council's approach simply renders the words '*or incorporates*' entirely superfluous – they have no individual meaning if they are equivalent to retention.

149. Secondly, Ms Whatmore's suggestion that '*incorporate*' meant something more than retain – a sort of "*retain positively*" – is without merit. If this distinction is to be drawn then retention must be the simple act of leaving untouched, away from development, whereas incorporate (or "*retain positively*") must be something more, i.e. retention within the development. However, this is obviously not what the development consideration intended on this site because a development of about 300 homes (or even about 240 homes) could not be achieved whilst retaining hedgerow away from development; rather, any hedgerows that are retained will inevitably be incorporated into the new development. It follows that there is no basis for distinguishing incorporation from retention as Ms Whatmore suggested.

150. Thirdly, the Council's approach is inconsistent with the development plan as a whole. The allocation is made in order to deliver the housing required by the Core Strategy and to give effect to the objectives of the Core Strategy at the site specific level. In this respect, the fourth development consideration directly responds to the general objective in policy BCS9: '*This policy aims to protect, provide, enhance and expand the green infrastructure assets […] within and around Bristol*' (emphasis added).[92] To meet this objective, policy BCS9 requires that: '*Development should incorporate new and/or enhanced green infrastructure of an appropriate type, standard and size*'.[93] The delivery expectations of this policy are clear: '*Development management will also secure the retention of green assets in development proposals and the incorporation of new green infrastructure assets*'.[94] Reading the development plan as a whole, the imperative to incorporate in the fourth development consideration of the allocation will only give effect to the overarching general objective in BCS9 if it includes the incorporation of new green infrastructure assets.

151. Fourthly, the XX of Mr Connelly on this issue relied on the words '*integrated into new development*' within policy BCS9. This XX was in error. As a matter of ordinary language integration is not the same as incorporation. This is made clear in this specific context by policy BCS9 itself: the Council's XX relied on the second paragraph of the policy (dealing with integration) but failed to read onto the next paragraph of the policy (dealing with incorporation). It is that later paragraph – and the concept of incorporation – that is specifically picked up in the fourth development consideration. The fourth development consideration does not refer to integration.

152. Fifthly, the Council's approach is inconsistent with the sustainability appraisal. The sustainability appraisal matrix anticipates that there are positive, implementation dependent, effects arising from the allocation.[95] The explanatory text give an example of how this might be achieved by re-providing allotments.[96] The proposed development will not affect the allotments, but the sort of envisaged effect is clear, namely the provision of new green infrastructure. On this basis, only the interpretation of '*incorporate*' as including new or enhanced hedgerows would give effect to the envisaged effect in the sustainability appraisal.

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[92] CD 5.5 at [4.9.1] on PDF p. 73.
[93] CD 5.5 at PDF p. 74, second paragraph of the policy.
[94] CD 5.5 at PDF p. 75, second paragraph, second sentence under 'Policy Delivery'.
[95] CD 8.3 at PDF p. 189.
[96] CD 8.3 at [4.94.5.1] on PDF p. 187.

153. Sixthly, there is no difficulty with the incorporation of important hedgerows. Such hedgerows can be incorporated where the new hedgerow is planted with a diversity of native species, is well managed and capable of achieving a good condition. Of course, this will require growth over a number of years, but that is neither surprising nor a difficulty: this is a development with a lifetime of several decades at the very least and conditions requiring mitigation over a 30 year period.

154. It follows that an assessment of this development consideration must include consideration of how far new hedgerows are provided. The Council's case is deficient by ignoring this consideration.

(3) Impacts on hedgerows

Retention of important hedgerows on Homes England's approach

155. On the relative approach to importance set out by Mr Hesketh, the proposed development will retain 84% of FH's first tier of hedgerows, i.e. the most important hedgerows.[97] Even on the basis of Mr Forbes-Laird entirely unfounded suggestion that 75% of hedgerows needed to be retained (and which was seemingly adopted by the Council's other witnesses) then this level of retention is clearly in accordance with the development consideration. More importantly, of the 16% of the first tier of hedgerows that will be lost, there is no possibility of retaining more whilst delivering the proposed development – all of that 16% loss is inevitable. Indeed, the Council has not contended otherwise, instead arguing for a smaller development. Accordingly, there is compliance with the development consideration.

Retention of important hedgerows on the Council's approach

156. Further or alternatively, even if the Council's approach is preferred and all of the internal hedgerows are considered to be important hedgerows, this does not lead to the conclusion that the proposed development fails to accord with this development consideration for the following reasons.

157. First, the development consideration is not absolute – it does not require the retention of all important hedgerows. This was common ground with all of the Council's

[97] Mr Higgins agreed this calculation in XX. HH2 99m + HH7 420m + H1 135m + H5 95m = 749m, of which 120m lost – amounting to 84% retention (see also FH Figure 2).

witnesses and is apparent from the allocation in any event, in particular the explanatory text which records that the site does not need to be retained as part of the City's green infrastructure network.

158. Secondly, once it is recognised that the development consideration is not absolute, there is nothing in principle objectionable about 74% loss of internal hedgerows, provided that this loss is an inevitable consequence of the proposed development.

159. Thirdly, all of the evidence indicated that the 74% loss is inevitable. Indeed, the Council has not contended otherwise: there has been absolutely no evidence from the Council (or any other party) to support the contention that the proposed development (i.e. a development of 260 homes with an appropriate mix) could be delivered with a lower level of hedgerow loss.

160. Fourthly, instead of showing that 74% loss of hedgerows could be avoided, the Council's case has been predicated on a reduction in the size of the development. For the reasons already explained, this approach is in error: it is based on a misinterpretation of the allocation, it is an attempt to covertly repudiate the allocation and it ignores the harm that is priced into the allocation.

161. Finally, this 74% loss must be contextualised. As Mr Hesketh explained (without challenge) if a holistic view is taken of all the hedgerows, as a minimum some 55% are retained, amounting to a substantial 856 m retention throughout the appeal site.[98] Thus, stepping back and looking at matters in the round, this is a significant level of retention in the context of the site's size and topography.

Incorporation of important hedgerows

162. Based on the illustrative masterplan, the proposed development will incorporate 540 m of good condition new species-rich hedgerow and 515 metres of moderate condition species-rich new hedgerow within open spaces of the appeal site, as well as improving 60 metres of H3 so that it becomes moderate condition.[99] Overall, the length of the internal hedges within the open spaces of the appeal site will increase from 710 metres

[98] CD 12.5 at PDF p. 8. Mr Hesketh was asked about his lowest-tier of hedgerows (H6, HH1, HH8 and HH9) which the Council may well say that he conceded were of little or no importance in terms of the allocation policy. This is of course correct, given the need to establish relative importance. Even if these are taken out of the figures, the minimum level of retention of all other hedgerows is 58% (704m of a total length of 1214m)

[99] CD 1.21 at Table 7 on PDF p. 44.

to 1,240 meters (an increase of 75%) and all of at least moderate condition.[100] Homes England submits that this extent of new hedgerow is a significant benefit of the proposed development and it is entirely in accordance with the development consideration.

163. The Council's only challenge to this conclusion was the allegation by Ms Whatmore and Mr Bhasin that this new hedgerow would include ornamental planting in front gardens. As Mr Crawford explained in XiC, this allegation is incorrect: none of the proposed planting relied upon by Homes England in respect of this development consideration will be in front gardens; rather it will all be native species hedgerow in the public realm. Unfortunately, this is yet another example of the Council's landscape and design witnesses misunderstanding the proposed development and drawing an incorrect conclusion as a result.

164. Accordingly, the only available conclusion is that the proposed development will incorporate important hedgerows in accordance with this development consideration. Moreover, given the scale, species-composition and condition of these new hedgerows, this is a significant benefit of the proposed development.

(4) Conclusion on this part of the development consideration

165. It follows that the proposed development complies with this part of the fourth development consideration concerning hedgerows.

VI. DEVELOPMENT CONSIDERATION 5 – GREEN INFRASTRUCTURE LINK

(1) Approach to this consideration

166. The fifth development consideration requires the provision of a green infrastructure link with Eastwood Farm Open Space. There are two important matters of approach to this consideration.

167. First, the development consideration requires a green infrastructure link. The consideration does not require an ecological link. As Mr Hesketh explained, these two things are not the same. A green infrastructure link will have ecological benefits, but it is not solely concerned with ecology. This distinction is significant because Mr

[100] CD 1.21 at Table 7 on PDF p. 44.

Higgins' evidence presented a purely ecological appraisal of the proposed link, as if it should have been designed as an ecological link. This is not what the policy requires and deliberately so, given that the link must traverse part of the appeal site that will also accommodate the principal access. It follows that Mr Higgins' evidence (which was the only evidence called by the Council on this development consideration) was based on a misdirection as to what the allocation actually required.

168. Secondly, this development consideration must be placed in its proper context. The northern part of the link land is not SNCI and there is, at present, essentially no green infrastructure here, reflecting the former presence of the police station and its associated hardstanding.[101] At best, there is a narrow strip of poor condition bramble scrub.[102] This is plainly neither robust nor valuable green infrastructure and it has very low ecological value, being recorded in the SNCI score card as a '*weak*' link.[103]

(2) The green link provided by the proposed development

169. The proposed development includes an acceptable green infrastructure link. The link is shown on both the land-use parameters plan and the landscape parameter plan as a design fix. That fixed link is at least 12 metres wide throughout, in excess of the 10 metre minimum width agreed by the Council.[104] There are no buildings within the link and it forms a coherent and unbroken green infrastructure link along the eastern edge of the appeal site, to the SNCI in the south (exceeding the requirement of the development consideration). Further, the quality of the link is addressed through Design Code, for example: the Design Code specifically requires species rich hedgerow in the link;[105] recognises the minimum width required;[106] and recognises the need to connect this link with the other green infrastructure on the appeal site, such as the wetland meadow.[107]

170. Leaving aside Mr Higgins' misunderstanding as to what the development consideration required, none of his criticisms were robust. Mr Higgins' POE had used the wrong plan, showing the loss plan, not the parameters plans for what was

[101] CD 1.21 at PDF p. 75 – recording developed land/sealed surface and artificial unvegetated unsealed land, buildings and some bramble scrub.
[102] Ibid.
[103] CD 11.5.
[104] CD1.21(a) PDF Page 40 - Annex A – see minutes of meeting dated 18/11/2020 at item 6.
[105] CD 1.14 at [5.7] on PDF p. 41.
[106] CD 1.14 at PDF p. 26
[107] CD 1.14 at PDF p. 37.

proposed. In addition, Mr Higgins erroneously alleged that there would be buildings within the link. This error was probably a result of him using the wrong plans. Ultimately, Mr Higgins' concern was simply as to the nature of the lighting that would be installed. However, this is controlled by condition (a well as being a requirement in the Design Code)[108] and there is no allegation that such a condition is not capable of adequately controlling the nature of the lighting so that it is ecologically appropriate, as Mr Hesketh explained in his XiC. In short, there is no reason for objecting to the proposed green infrastructure link at this outline stage and yet again the Council's objection was directed at matters of detail that are not for determination now.

171. It follows that the proposed development complies with the fifth design consideration.

VII. OTHER MATTERS RAISED BY THE COUNCIL

(1) Ms Whatmore's landscape objections

172. Ms Whatmore raised two landscape objections. The first was the allegation that the appeal site amounted to a valued landscape for the purposes of NPPF para. 174(a). The second was a very narrow criticism of the TVIA. Neither objection withstood scrutiny in XX.

Objection 1 – the allegation that the appeal site was a valued landscape

173. This objection only emerged in Ms Whatmore's RPOE. Ms Whatmore attempted to rely on passing references to landscape value in earlier documents, but they were obviously not directed at this new point. In particular, no objection was taken in the final consultation response or the SOC on the basis that the appeal site was a valued landscape.

174. Not only was this argument advanced unreasonably, but it was also entirely without merit. The appeal site is not a valued landscape on any realistic or credible basis.

175. NPPF para. 174(a) requires that valued landscapes are protected in a manner commensurate with their statutory status or identified quality in the development plan. As Ms Whatmore accepted in XX, the appeal site has no statutory status in landscape terms and is not identified in the development plan as a landscape requiring

[108] CD 1.14 at PDF p. 77, final bullet points of the requirements.

protection. This is particularly important because the development plan does identify some valued landscapes, but the appeal site is not within that cohort.[109]

176. It is, of course, possible for a landscape to be a valued landscape without any designation in the development plan, but this is not one of those cases for two reasons.

177. First, far from protecting the appeal site as a valued landscape, the development plan has actually allocated it for development. This allocation was made on the express basis that its retention as green infrastructure or open space was not necessary.[110] This is a clear contra-indication: a decision against retention is entirely inconsistent with this being a landscape that needs to be protected and enhanced pursuant to NPPF para. 174(a). Notably, Ms Whatmore could not point to any other example of an allocated valued landscape – and for good reason: such a concept is an oxymoron which simply cannot exist. It is impossible for a site allocated for residential development to be protected and enhanced in accordance with NPPF para. 174(a).

178. Secondly and in any event, Ms Whatmore's belated analysis by reference to the TGN provided no robust basis for concluding that the appeal site was a valued landscape. As Mr Crawford explained in his evidence, it is only in respect of two criteria that the appeal site attains a local value. Ms Whatmore's analysis only achieved a higher level by double counting the historic and ecological qualities of the hedgerows under multiple headings. This is erroneous and must be rejected.

179. Ultimately, the lack of merit in Ms Whatmore's allegation of a valued landscape was confirmed by the Council's own case because Mr Collins made absolutely no reference to NPPF para. 174(a) in his planning evidence. It was a point that was so unmeritorious that it did not even occur to Mr Collins to include it within his planning balance.

Objection 2 – criticisms of the TVIA

180. As with her first objection, Ms Whatmore's criticisms of the TVIA were entirely novel points that did not feature in her earlier consultation responses, the OR or the reasons for refusal. In XX Ms Whatmore abandoned the first criticism concerning the landscape effect of the SUDS. However, Ms Whatmore persisted with her criticism of

[109] CD 5.2 PDF p. 37 at [2.17.4].
[110] See the explanatory text to the allocation.

how the TVIA had dealt with the view from Victory Park. Even on this very narrow basis, her objection lacked any merit.

181. As presented in her written evidence, Ms Whatmore only objected with a single aspect of the analysis of the Victory Park viewpoint, namely the valence. Ms Whatmore alleged an adverse, rather than neutral effect. This is assessment was wrong for the reasons Mr Crawford explained: the view must be considered in context, namely the surrounding urban development, such that the change is consistent with the surrounding context and thus neutral rather than adverse. However, even if Ms Whatmore is correct, it is a point that goes nowhere because – as she accepted in XX by reference to GLVIA 3 – it is only major and major/moderate effects that are likely to be material to the decision to grant planning permission. The effect on this viewpoint is neither major nor major/moderate and thus the dispute is immaterial.

182. Tellingly, Ms Whatmore's response was to change her evidence and to allege, for the first time in XX, that the magnitude of effect should be different. As she said herself, she was making this evidence up on the hoof. It must be rejected accordingly.

(2) The Council's other landscape and design criticisms

183. The remainder of the Council's landscape and design evidence was premised on its wider arguments concerning the loss of trees and hedgerows. Those arguments were in error for the reasons already explained. Insofar as the Council's evidence on these issues advanced additional arguments, they were essentially makeweights, suffering from three fundamental flaws.

184. First, this evidence was all premised on the idea that the proposed development should be smaller in size. For the reasons already explained, this is an incorrect approach to the allocation.

185. Secondly, both Ms Whatmore and Mr Bhasin failed to understand the proper approach to an application for outline planning permission. Both witnesses repeatedly based their evidence on a need for "*assurance*" as to how the proposed development would ultimately be designed. This is fundamentally flawed because it is an approach that seeks certainty of design now, rather than considering whether an appropriate design is capable of coming forward.

186. Thirdly, these additional matters were, essentially, relatively minor quibbles with the Design Code. There is no legal or policy requirement that required the submission of a Design Code or which requires its approval as a precondition of the grant of planning permission.[111] Accordingly, insofar as these are of any concern, then they can all be remedied by a condition that requires the submission and approval of a revised design code, based on the acceptable principles in the current version or alternatively in the DAS, before submission of reserved matters. Such an approach is well established and could be readily applied here.[112] Homes England's proposed condition is at Appendix B to these Closing Submissions.

187. It follows that none of the additional landscape and design matters raised by the Council justify the refusal of planning permission.

VIII. OTHER MATTERS RAISED BY THE RULE 6 PARTY & THIRD PARTIES

(1) Biodiversity Net Gain

188. The R6 Party devoted most of its time at this inquiry to the argument that Homes England's BNG calculations were incorrect. In XX Mr Hesketh effectively rebutted all of the criticisms levelled at those calculations (which are agreed with the Council). However, it does not assist to repeat those matters here because there is a more fundamental deficiency in the R6 Party's case, namely: the precise BNG calculation is not material at this stage.

189. At the outline planning permission stage, the final BNG calculation cannot be determined; rather that is a matter that must follow detailed design. Instead, all that needs to be demonstrated in order to grant outline planning permission is that the proposed development is capable of delivering 10% BNG, which is of course a voluntary commitment by Homes England, going beyond current local and national policy requirements. Homes England has demonstrated that 10% BNG can be delivered, in terms of quantum, type of habitat and compliance with trading rules through its package of on-site and off-site works, whether using other land in the

[111] Mr Collins accepted this on a limited basis in XX. He contended that if a Design Code had not been provided then the Council would have exercised its powers under the GPDO to require a full application. This was pure fantasy: in all his years at the Council, Mr Collins can never recall an example of the Council taking such a step. It is unlikely in the extreme that the Council would have taken such a step here.

[112] See the appeal decisions at CD 6.3 at DL 47 on PDF p. 9 and CD 6.4 at DL 43 – 44 on PDF p. 8.

Council's ownership (as envisaged in the sale agreement) or, in the worst case, using commercial partners (whose willingness and appropriateness has been demonstrated through Mr Hesketh's RPOE without any challenge).

190. This flexibility also means that the R6 Party's arguments concerning the ability to use Victory Park and the grazing land adjacent to it for compensation measures are immaterial: even if those arguments are correct, they are of no consequence because appropriate compensation can be delivered entirely via commercial partners in that event. Nevertheless, for the avoidance of any doubt, Homes England does not accept that these arguments are correct. Tellingly they are not made by the Council who control the land in question. It is plain that the agricultural tenancies referred to by the R6 Party can be readily and easily terminated by the Council, thus permitting the compensation measures to be put into place, away from any of the sports pitches in Victory Park.

191. It follows that the proposed development will deliver 10% BNG, as secured by the agreed conditions. This is a significant public benefit.

(2) The allegation that site remains a Site of Nature Conservation Interest

192. The R6 Party has also sought to rely on the former designation of the appeal site as a SNCI. These arguments are in error for two reasons.

Reason 1: the appeal site is not shown as an SNCI on the policies map

193. The first reason, as is common ground with the Council, is that the appeal site is not designated as an SNCI by the development plan and is not shown as an SNCI on the policies map. Accordingly, irrespective of the appeal site's designations outside of the development plan, the simple fact is that the policy protection for SNCIs in the development plan does not apply to the appeal site. This is obvious both from the allocation itself – which expressly notes that the appeal site does not need to be retained as part of the City's green infrastructure – and from the relevant policies that seek to protect SNCIs - for example, the policy delivery text to policy BCS9 notes that the SADMP '*will designate local Sites of Nature Conservation Interest*'.[113]

[113] CD 5.5 at PDF p. 77 – first paragraph under both subheadings on that page.

Reason 2: the appeal site is not designated as an SNCI

194. The second, alternative, reason is that the appeal site is not designated as an SNCI, whether for the purposes of the development plan or at all.

195. The starting point is to recognise that SNCIs within the City are designated through the local plan process. This is explicitly stated in the policy delivery text to policy BCS9, which we have just recited. It is also consistent with the Council's previous conduct: see, in particular, policy NE5 of the previous, superseded, local plan.[114] In addition, it is consistent with previous national guidance: DEFRA's good practice guidance explains that local development frameworks should identify all local nature conservation areas on the proposals map; and the now withdrawn PPS 12 stated that the proposals map '*should […] identify areas of protection, such as national protected landscape and local nature conservation areas*'.

196. In this case, the plan-making process did not designate the appeal site as an SNCI. To the contrary, it expressly removed this designation: policy NE5 was revoked and the Council concluded, as indicated in the explanatory text to the allocation and shown on the policies map, that the appeal site was now only designated for development. This is confirmed by the Council's explanation of the plan-making process where the Council specifically note that the '*evaluation and selection of SNCIs was undertaken by the Local Sites Partnership*' and that '*in cases where development of such sites was considered to offer greater benefits, sites with ecological value may have been allocated for development and not designated as SNCIs*'.[115] This is precisely what happened in this case. Moreover, this explanatory text also makes clear that the Local Sites Partnerships were involved in the selection and designation process; thus, even if the R6 Party is correct that SNCI designations are within the exclusive purview of the Partnerships (which is not accepted), that poses no difficulty to Homes England's analysis in this case.

197. It follows that for either or both of these reasons the former designation of the appeal site as an SNCI does not afford any greater protection and is not a matter that justifies a refusal of outline planning permission.

[114] CD 5.9 at PDF p. 43.
[115] CD 8.12 at [3.4.1] – [3.4.2] on PDF p. 7.

(3) Historic Environment

198. The R6 Party has raised concerns regarding the historic environment, but, importantly, has not alleged any policy conflict on this issue.

199. The concerns that were raised were all explored at the round table session and Homes England submits that its evidence is to be preferred for the following reasons.

(a) Appropriate archaeological (and broader heritage) investigations have been undertaken.

(b) There are no designated heritage assets within the appeal site. In particular, there is no scheduled monument (see Historic England's rejection of the scheduling application). Equally, there are no remains of equivalent importance to a scheduled monument.

(c) Some archaeological remains from the Roman period have been identified through the archaeological investigations. Of what has been found to date, these remains have been of low significance. It is possible that the appeal site might reveal finds of regional significance at best, i.e. there is the potential for such remains. It is unlikely that there are more substantial remains such as a kiln on the appeal site, given the extensive investigations that have been undertaken.

(d) The balance of evidence does not support presence of either (1) Lynchet Risers or (2) Ridge and Furrow. Both have been investigated in detail and their presence excluded.

(e) Accordingly, the appropriate response is to impose a condition, in accordance with the Council's position.

200. Even if Homes England's position was not accepted, the worst-case scenario would the loss of a non-designated heritage asset of low significance. That harm would be assessed on the basis of a flat balance in accordance with NPPF para. 203 and it would be outweighed by the public benefits of the scheme.

(4) Transport

201. Third parties have raised concerns regarding the potential transport impacts of the proposed development. These have been thoroughly tested and scrutinised by the Council.[116] There is no basis for concluding that planning permission should be refused, applying NPPF para. 111.

202. As to the specific comments raised at the start of the inquiry, Homes England submits:

(a) The main construction access would be via Bonville Road, but in order to establish the site and build the construction access itself, the existing Broomhill Road access and hardstanding may be used. Drivers would be directed to approach and depart from/to the south. Homes England do not propose to change the existing 7.5t weight restriction. These arrangements would be controlled to an acceptable standard by the CEMP condition.

(b) The extent of congestion on the surrounding road network has been assessed by Homes England. Homes England has then assessed the impact of the proposed development on top of those existing levels of congestion. This assessment has demonstrated that this will not lead to a severe impact for the purposes of NPPF para. 111.[117]

(c) The zebra crossing at the Broomhill Road access to the site is existing, and is important for accessing the bus stops as well as leisure routes to Eastwood Farm. The use of this crossing will not be adversely affected by the proposed development.

(d) The access has been designed to accommodate a large refuse lorry entering the site at the same time as another vehicles is leaving, this being the reasonable worst case, with the refuse lorry accessing the site once a fortnight. Accordingly, acceptable access arrangements have been secured.[118]

[116] See in particular CD 1.15.
[117] CD12.2 – p179 at [5.36] – [5.40].
[118] CD12.2 p 176 at [5.23].

IX. PLANNING BALANCE

(1) Scenario 1: Compliance with the development plan read as a whole

203. In light of the compliance with the allocation, the starting point is that the proposed development accords with the development plan, read as a whole. This is also the end point because it is common ground, as recorded in the SOCG, that if the proposed development accords with the development plan then the other material considerations are insufficient to justify an alternative conclusion and planning permission should be granted.[119]

(2) Scenario 2: Non-compliance with the development plan read as a whole

204. In the event that the proposed development does not accord with the development plan read as a whole, then Homes England submits that planning permission should still be granted, unless the Council is able to demonstrate a clear reason for refusal under NPPF para. 11(d)(i) on the basis of the impact to veteran trees. This is because, absent a clear reason for refusal, the tilted balance in NPPF para. 11(d)(ii) is engaged and the adverse impacts of the proposed development do not significantly and demonstrably outweigh the benefits of granting planning permission now.

NPPF para. 11(d)(i)

205. For the reasons above, the Council is unable to demonstrate a clear reason for refusal under NPPF para. 11(d)(i) on the basis of veteran trees. It follows that, the tilted balance in NPPF para. 11(d)(ii) is engaged because there is no other basis that a clear reason for refusal might be established. In particular, any impacts on hedgerows do not engage any of the restrictive policies in NPPF fn. 7 and instead they must be considered under the tilted balance.

NPPF para. 11(d)(ii)

206. Homes England submits that the tilted balance is clearly in favour of the grant of planning permission. This is both an other material consideration in the ordinary way and has effect in the development plan by virtue of policy DM1 of the SADMP.

[119] At para. 8.19.

207. The benefits of granting planning permission are overwhelming. In his RPOE Mr Collins agreed that very significant weight should be afforded to the twin benefits of market and affordable housing; and that significant weight should be afforded to the site's sustainable location, the provision of walking and cycling access, the provision of at least 10% BNG, the provision of a long term ecological management plan and the economic benefits of the development. In addition, in his POE (at [88] ff.) Mr Collins acknowledges a host of other benefits, including the integration within the existing neighbourhood, provision of open space, the provision of surface water management and highway safety improvements. As he also accepted the question under NPPF 11(d)(ii) focuses not just on the benefits of the development but the benefits *of granting permission*, i.e. allowing it to proceed now. Given the truly overwhelming extent of unmet need, quite possibly the greatest in any LPA nationwide (a point put to Mr Collins who was unable to gainsay it), it is impossible to overstate the urgency of the need and thus the importance of allowing the development to proceed now without further delay and prevarication.

208. Set against this can only be the harm, if any, that is excessive, beyond that which is priced into the allocation. Unlike Mr Connelly, Mr Collins does not provide a balance which focusses only on excessive harm, beyond that priced into the allocation. However, Homes England submits that even if there is excessive harm, it is a best minor and does not clearly and demonstrably outweigh the benefits of the appeal scheme, especially in the context of the housing emergency in Bristol.

X. CONCLUSION

209. For these reasons Homes England submits that this appeal should be allowed.

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9th March 2023

APPENDIX A – PROPOSED CONDITIONS CONCERNING VETERAN TREES

210. Condition protecting veteran trees in line with the Crawford Fallback:

> *'Notwithstanding condition number [**X**],*[120] *the development hereby permitted must retain and protect the 13 no. veteran trees labelled [**XX**]*[121] *and their associated buffer zones identified on Drawing Number D7507.43.004.*[122]

211. If considered necessary, a condition requiring amendment of the parameters plans:

> *'Prior to approval of any reserved matters applications, the Parameter Plans hereby approved will be revised to show the veteran trees protected by condition [**XX**]*[123] *and their appropriate buffers and the revised plan shall be submitted to and approved in writing by the Local Planning Authority.'*

212. If considered necessary for clarity, minor amendment to the earlier condition listing plans:

> *'The development hereby permitted shall be carried out in accordance with the following approved plans* ***or any subsequent amendment to these plans which may be approved under condition [XX]***[124] *in writing by the Local Planning Authority.*
>
> - *Site Location Plan (LDA Design Drawing No. 7456_016)*
> - *Design Code*[125]
> - *Parameter Plans*
> - *Land Use (LDA Design Drawing No. 7456_103 PL2)*
> - *Heights (LDA Design Drawing No. 7456_104 PL2)*
> - *Access and Movement (LDA Design Drawing No. 7456_101 PL2)*
> - *Landscape (LDA Design Drawing No. 7456_102 PL2)*

[120] Insert number of the condition listing approved plans.
[121] Insert the identifying number of the trees that are considered to be veteran e.g. "VH1". This is not filled in so that, if necessary, a split decision can be made, with some alleged trees but not all considered to be veteran.
[122] This drawing is before the inquiry – see CD 16.5 at PDF p. 6.
[123] Insert the number of the condition protecting the veteran trees.
[124] Words in bold are the minor tweak. A cross reference to be included here to the number of the previous condition for clarity.
[125] This item to be deleted if a revised design code is required.

Access Layout Details:

- *Broomhill Road Preliminary Access Layout Plan (KTC No. 1066-007.D)*
- *Bonville Road Emergency Vehicle Access (KTC Drawing No. 1066-014)*
- *School Road Pedestrian and Cycle Link (KTC Drawing No. 1066-016)*
- *Allison Road Pedestrian and Cycle Link (KTC Drawing No. 1066-003.H)'*

APPENDIX B – PROPOSED CONDITIONS CONCERNING THE DESIGN CODE

213. Condition requiring amendment before submission of reserved matters applications:

'Prior to submission of any reserved matters applications an updated detailed Design Code shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall have regard to the key principles of the Brislington Meadows Design and Access Statement dated 8 April 2022.

Thereafter detailed plans and particulars of the reserved matters above shall be in compliance with the approved updated Design Code and each reserved matters submission(s) must demonstrate compliance with the design requirements set out in the updated Design Code.'