



Ministry of Housing,  
Communities &  
Local Government

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

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

24 July 2019

Dear Sirs

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

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

**Inspector's recommendation and summary of the decision**

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

**Environmental Statement**

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

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comments at IR1.9-1.11; IR7.1-7.6; IR14.4-14.5 and IR14.100-14.102 the Secretary of State is satisfied that the Environmental Statement and other additional information provided during the Inquiry complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal

### **Procedural matters**

6. Following the refusal of the application by the Council, a revised Development Framework Plan (DFP) and revised Indicative Layout Plan (ILP) were submitted to the Council (IR1.5-1.8 and IR5.1-5.12). The Inspector recommends that the appeal should be determined on the basis for the revised proposal for up to 800 dwellings (IR14.2-14.6). The Secretary of State sees no reason to disagree and does not consider that the revised DFP and ILP raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
7. Applications for partial awards of costs have been made by a) Birmingham City Council against Bloor Homes (Western) and by b) Bloor Homes (Western) against Birmingham City Council (IR1.1) These applications are the subject of separate decision letters, also being issued today.

### **Matters arising since the close of the inquiry**

8. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
  - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.
  - The publication, on 19 February 2019, of the 2018 Housing Delivery Test measurement by local planning authority and a technical note on the process used in its calculation.
  - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.
  - The revised National Planning Policy Framework, published on 19 February 2019.
  - Updated guidance for councils on how to assess their housing needs.
9. These representations were circulated to the main parties on 11 March 2019.
10. The Secretary of State also notes that the latest 'House price to workplace-earnings ratio' was published on 28 March 2019. The Secretary of State does not consider that the publication of this document raises any matter that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
11. The Secretary of State received representations from Bloor Homes (Western) and J Bloor on 10 May 2019. The Secretary of State is satisfied that the issues raised do not affect his decision as the representations were expressing frustration at the delay to a decision and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties

12. A list of all representations received is at Annex A. Copies of these letters may be obtained on written request to the address on the first page of this letter.

### **Policy and statutory considerations**

13. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

14. In this case the development plan consists of the Birmingham Development Plan (BDP), adopted in January 2017, and the Birmingham Unitary Development Plan 2005 Saved Policies January 2017 (UDP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR3.2-3.15.

15. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

### **Main issues**

16. The Secretary of State agrees with the Appeal Inspector (the Inspector) on the main considerations in the appeal (IR14.7).

#### *Meaning of windfall sites*

17. For the reasons given at IR14.8-14.18, the Secretary of State agrees with the Inspector that there is nothing in the Framework definition to support the Council's assertion that a site of 35ha should not be treated as a windfall site in Birmingham (IR14.15).

#### *BDP Examining Inspector's Report (EIR)*

18. For the reasons given at IR14.19-14.27, the Secretary of State agrees with the Inspector that the Examining Inspector (EI) found the site met the tests of availability and suitability (IR14.26) and that neither paragraph 61 nor paragraphs 222 & 223 of the EIR provide any meaningful support for the Council's assertion that the EI rejected the site in principle (IR14.27).

#### *BDP Policies*

19. For the reasons given at IR14.28-14.34 the Secretary of State does not accept that a grant of planning permission for the proposal would undermine public confidence in the planning system and plan-led approach (IR14.30). Furthermore, for the reasons at IR14.31 the Secretary of State considers that the proposal does not conflict with Policy PG1 or with its underlying objective of delivering 51,100 new homes in the City. The Secretary of State agrees with the Inspector that the key policies for the assessment of an application for housing development on such a site are BDP Policies TP27, TP28 and TP30 (IR14.32).

### *The meaning of “deliverable”*

20. The Secretary of State has carefully considered the Inspector’s conclusions on the meaning of the definition of deliverability in the Framework. For the reasons given at IR14.35-14.43 he agrees with the Inspector’s view that ‘realistic prospect’ remains the central test against which the deliverability of all sites must be measured (IR14.41).

### *The Council’s 5 year housing land supply*

21. The Secretary of State has considered the Inspector’s analysis at IR14.44-14.53 and assessment of disputed sites in Appendix B to the report. For the reasons given the Secretary of State agrees that 847 dwellings should be removed from supply (IR14.52) and the effect of these reductions is to reduce the total number of dwellings in the Council’s revised assessment of the identified supply from 19,023 to 18,206 (IR14.53).

### *Windfalls*

22. For the reasons given at IR14.54-14.56 the Secretary of State sees no reason to adjust the allowance as the appellant suggests.

### *Lapse Rates*

23. For the reasons given at IR14.57-14.59, the Secretary of State agrees with the Inspector that even the application of a 10% lapse rate, as suggested by the appellant, would not reduce the adjusted supply below the 5-year threshold (IR14.59).

### *Market Evidence*

24. The Secretary of State has considered the Inspector’s analysis at IR14.60-14.71 and agrees with his conclusion at IR14.72-14.73 that even if both the lapse rate and market attrition rate are applied, the resulting figure of 17,470 would still result in a supply of 5.82 years. The Secretary of State also concludes, like the Inspector, that the Council is able to demonstrate a 5-year housing land supply (5YHLS) (IR14.73).

### *Other matters*

25. The Secretary of State agrees with the Inspector’s reasoning in respect of Public Consultation (IR14.74-14.76); Traffic and highways (IR14.77-14.85); Local Wildlife and Nature Conservation (IR14.86-14.88); Trees and TPOs (IR14.89-14.94) and Landscape and Visual Impact (IR14.95-14.99). For the reasons given the Secretary of State agrees with the Inspector that there is no conflict with BDP Policies TP8 (IR14.88) and PG3 (IR14.98).

### *Conclusions on development plan*

26. Like the Inspector, the Secretary of State considers that the proposal accords with the development plan (IR14.103-14.104).

### *Conclusions on harm*

27. For the reasons given at IR14.105 the Secretary of State agrees with the Inspector’s conclusion that the proposal would not cause harm to the objectives or spatial strategy that underpins the BDP. He has also not identified any other material harm.

### *Potential benefits*

28. For the reasons given at IR14.106-14.112 the Secretary of State agrees with the Inspector's conclusions on benefits.

### Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR13.1-13.7, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

### **Planning obligations**

30. Having had regard to the Inspector's analysis at IR12.10-12.18, the planning obligation dated 31 October 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State, agrees with the Inspector, for the reasons given at IR12.10-12.12, that there is no justification for the inclusion of the Additional Sports Improvement Fund and this obligation does not meet the relevant tests (IR12.13). For the reasons given in IR12.14-12.17 the Secretary of State also agrees with the Inspector that there is no justification for payment of the Secondary School Contribution and this proposed obligation does not meet the relevant tests (IR12.18). He concludes that it would not be appropriate to take these two obligations into account in the determination of the appeal.

31. Having had regard to the Inspector's analysis at IR12.1-12.8, The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.9 that the remaining obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

### **Planning balance and overall conclusion**

32. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with Policies PG1, TP8, TP27, TP28, TP30 and PG3 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing in favour the Secretary of State considers that the 800 family homes, including up to 280 affordable homes is a benefit of significant weight. He considers that only limited weight in favour should be given to the proposed community hub with moderate weight to the on-site open space and play provision and opening up of public access to an attractive area of open space. He also attaches limited weight to the longer term benefit that might result for the provision of a site for a primary school.

34. The Secretary of State attaches significant weight to the economic benefits. He attaches limited weight to the effective use of underutilised land in the urban area and to the argument that the appeal proposal might avoid the need for use of Green Belt land elsewhere. The Secretary of State considers that there would be a net increase in the habitat and biodiversity value of the site and attaches moderate weight to this benefit.
35. The Secretary of State has not identified any harms arising from the proposal of sufficient significance to outweigh the benefits which it would provide, and he concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

### **Formal decision**

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter, with all matters reserved except for access, for the demolition of the club house and development of up to 950 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure developments, in accordance with application reference 2017/02724/PA dated 24 March 2017 as amended (see paragraph 6 of this letter).
37. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
39. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
40. A copy of this letter has been sent to Birmingham City Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Jean Nowak  
Authorised by the Secretary of State to sign in that behalf

## **ANNEX A: SCHEDULE OF REPRESENTATIONS**

### **Representations received in response to the Secretary of State's letter of 21 February 2019**

<b>Party</b>	<b>Date</b>
Birmingham City Council	4 March 2019
Harris Lamb on behalf of Bloor Homes	7 March 2019

### **Circulation of responses sent by email of 11 March 2019**

#### **General representations**

<b>Party</b>	<b>Date</b>
Bloor Homes	10 May 2019
J Bloor	10 May 2019

## ANNEX B: CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The number of dwellings erected on the site shall not exceed 800.
- 5) The development hereby approved shall be implemented in accordance with the details shown on drawing numbers:
  - 6863-L-01 - Site Location Plan March 2016
  - 16094-06-3 Rev A - Proposed Site Access –Frankley Beeches Road (West)
  - 16094-06-2 Rev A – Proposed Site Access- Frankley Beeches Road (East)
  - 16094-04 Rev D – Proposed Site Access Western Roundabout Extra Arm
  - 16094-06-04 Rev A – Proposed Site Access – Tessall Lane
- 6) The development hereby approved shall be implemented in general accordance with the revised Development Framework Plan – Drawing Number 6863-L-04 Rev T dated 18 May 2018.
- 7) No development shall take place until a Phasing Plan has been submitted to and approved in writing by the local planning authority. The Phasing Plan shall identify the proposed residential development zones and the distribution of affordable housing within these zones, the areas of public open space and green infrastructure to be provided in each phase, and the means of vehicular and pedestrian and cycle access to serve each phase, and shall show how each of these elements of the development is to be phased.

The submitted details shall identify the order of delivery of each phase, the anticipated density in each phase of residential development, and the proposed access arrangements for construction traffic and location of contractors' compounds for each phase.

The development shall be implemented in accordance with the approved Phasing Plan.
- 8) The public open space to be provided within the development hereby approved shall have a minimum area of 12.45 ha and be provided in general accordance with the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The public open space shall be delivered in two phases with the first phase to be completed prior to the occupation of the 200th dwelling and the second phase to be completed prior to the occupation of the 600th dwelling.
- 9) No development shall take place until full details of the proposed play areas have been submitted to and approved in writing by the local planning authority. The play areas shall be in the general locations indicated in the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The submitted details shall include the layout of the play areas and full details of planting, hard and soft surfacing and play equipment specification including type, height and colour and a programme for the completion of the works in accordance with the approved Phasing Plan. The development shall be



implemented in accordance with the approved layout/details and programme and the play areas and equipment shall, thereafter, be retained and maintained for their intended use.

- 10) No development shall take place until an updated hydraulic model has been submitted to and approved in writing by the local planning authority. The update to the model shall address areas identified for improvement as highlighted red and amber in the Environment Agency's Hydraulic Model Review (Model Review NWGC Final -19.09.18). It shall also provide a representation of the proposed final development proposal and identify property boundaries in relation to the updated flood extents and details of any flood mitigation such as compensation, should this be intended.
- 11) No development shall take place until an updated Flood Risk Assessment (FRA) has been submitted to and approved in writing by the local planning authority. The updated FRA shall incorporate the updated Hydraulic Model outputs as well as details of flood resilience measures including, for example, the setting of finished floor levels no lower than 600mm above the climate change level.
- 12) No development shall take place, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include detailed proposals for:
  - a) the parking of vehicles of site operatives and visitors;
  - b) the routing of construction traffic to and from the site;
  - c) the location of loading and unloading of plant and materials and of contractors' compounds.
  - d) proposed working hours for demolition and construction activities to take place and for the delivery of materials to and removal of waste materials from the site;
  - e) the location and specification of all construction accesses and roadways from the public highway to site compounds and working areas;
  - f) the control of noise and vibration;
  - g) the control and suppression of dust.
  - h) the storage and management of construction waste;
  - i) the location and specification of wheel washing facilities and/ or other measures to prevent vehicles leaving the site depositing mud and soil on the public highway.

The approved CMS shall be adhered to throughout the construction period.

- 13) No development shall take place until full details of a sustainable drainage system for the development hereby approved has been submitted to and approved in writing by the local planning authority. The submitted details shall include:
  - a) details of infiltration testing;
  - b) final drainage layout plans;
  - c) typical cross sections and details of proposed SuDS features;
  - d) network calculations;
  - e) proposed finished floor levels (set to a minimum of 150mm above surrounding ground levels);

- f) exceedance flows showing that surface water flood risk has been mitigated on and off site;
- g) a programme for implementing the works in accordance with the approved Phasing Plan.

The sustainable drainage works shall be completed in accordance with the approved details and programme. No building or part of the development shall be occupied or brought into use until the surface water drainage works serving that building or part have been completed and are in operation.

- 14) No development (including demolition and ground works) shall take place until a scheme a Written Scheme of Investigation (WSI) detailing a programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The WSI shall thereafter be implemented in full in accordance with the approved details.
- 15) No development (including demolition, ground works and vegetation clearance) shall take place until a Badger Protection Scheme (BPS) for the protection of badgers using the site and for mitigating the effects of the development on their habitat within the site has been submitted to and approved in writing by the local planning authority. The BPS shall include details of the protection and mitigation measures required both during the construction period and once the development is complete and a programme for the implementation of those works in line with the approved Phasing Plan. The BPS shall be carried out in accordance with the approved details and programme.
- 16) No development (including demolition, ground works and vegetation clearance) shall take place until an Invasive Non-native Species Protocol (INSP) has been submitted to and approved in writing by the local planning authority. The INSP shall include detailed proposals for the containment, control and removal of all Japanese knotweed, Cotoneaster and Rhododendron on the site and a programme for undertaking the necessary works. The measures shall be carried out strictly in accordance with the approved details and programme.
- 17) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees on the site and on immediately adjoining land(the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 18) All work for the pruning or cutting back of retained trees shall be carried out in accordance with British Standard BS3998 'Recommendations for Tree Work' 2010 and with any subsequent edition of those recommendations.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 19) No removal of trees, hedges or shrubs shall take place between 1 March and 31 August inclusive unless a scheme to protecting nesting birds on the site has been submitted to and approved in writing by the local planning authority. If a scheme for the protection of nesting birds has been approved in writing by the local planning

authority no trees, hedges or shrubs on the site shall be removed between 1 March and 31 August inclusive other than in accordance with the approved scheme.

- 20) The site accesses and related visibility splays shall be constructed in strict accordance with the details shown on the approved plans (Drawing Nos: 16094-06-3 Rev A; 16094-06-2 Rev A; 16094-04 Rev D; and 16094-06-04 Rev A) and the approved Phasing Plan. The approved visibility splays shall thereafter be maintained free of any obstruction or vegetation above 0.9m in height.

#### Phased Conditions

- 21) No development shall take place within any approved phase unless samples of the materials to be used in the construction of the external surfaces of the buildings in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 22) No development shall take place within any approved phase unless full details of hard and/or soft landscape works for that phase and a programme for the implementation of those works have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) proposed finished levels or contours;
  - b) means of enclosure, hard surfacing materials, minor artefacts and structures;
  - c) proposed and existing functional services above and below ground;
  - d) fully annotated planting plans to a scale of 1:200, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs.
  - e) other information shall include planting schedules, noting species, plant sizes and proposed numbers/densities;
  - f) details of the proposed planting implementation programme.

All hard and/or soft landscape works shall be implemented in accordance with the approved details and programme and shall thereafter be maintained.

- 23) Any trees or shrubs which, within a period of two years from the completion of the phase of development of which they form a part, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.
- 24) No development shall take place within any approved phase unless full details of the materials to be used for hard and paved surfacing in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 25) No development shall take place in any approved phase unless full details of proposed boundary treatments for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) plans showing the locations of existing boundary treatments to be retained and the proposed new boundary treatments;
  - b) scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments;
  - c) details of mammal access arrangements.

The approved scheme shall be implemented before occupation of any dwelling in that phase and shall be retained thereafter.

- 26) No development shall take place in any approved phase unless a detailed lighting scheme for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- a) site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate;
  - b) site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises;
  - c) details of the lighting fittings including: colour, watts and periods of illumination;
  - d) details to clearly demonstrate that areas to be lit will not disturb bats or prevent their access to key commuting routes and foraging habitat.

All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the first occupation of any part of the development within that approved phase and shall thereafter maintained.

- 27) No development shall take place in any approved phase unless full details of earthworks and finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include the proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings.

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

- 28) No development shall take place within any approved phase until an assessment of the risks posed by any ground contamination in that phase of development has been submitted to and approved in writing by the local planning authority. The risk assessment and information required for each phase shall comprise:
- a) A preliminary risk assessment, which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.
  - b) A site investigation scheme, based on (a) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
  - c) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken and a timetable of works and site management procedures.
  - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

- 29) All ground contamination remediation measures required as a result of the risk assessment shall be provided in accordance with the details set out within the agreed remediation scheme. Prior to the first occupation of each phase of the development hereby approved, the developer shall provide written certification to the local planning authority that the measures set out in the report have been implemented in full for that phase of the development.
- 30) No development (including demolition, ground works and vegetation clearance) shall take place in any approved phase unless a Construction Ecological Management Plan (CEMP) for that phase of development has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- a) risk assessment of potentially damaging construction activities;
  - b) identification of “biodiversity protection zones;”
  - c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements);
  - d) the location and timing of sensitive works to avoid harm to biodiversity features;
  - e) the times during construction when specialist ecologists need to be present on site to oversee works;
  - f) responsible persons and lines of communication
  - g) the role and responsibilities on site of an Ecological Clerk of Works or similarly competent person;
  - h) the use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period.

- 31) No development shall take place in any approved phase unless an Ecological Enhancement Strategy (EES) for that phase of development has been submitted to and approved in writing by the local planning authority. The EES shall include (but not be limited to) details of:
- a) provision for wildlife corridors, linear features and habitat connectivity;
  - b) creation, restoration and enhancement and semi-natural habitats;
  - c) creation of new wildlife features, e.g. bird nesting features and bat roosting features within buildings and structures, ponds and badger setts;
  - d) green roofs and green/habitat walls;
  - e) a programme for the implementation of the agreed works.

The development shall thereafter be implemented in accordance with the approved details and programme.

- 32) No development shall take place in any approved phase unless a Habitat/Nature Conservation and Management Plan for that phase of development has been submitted to and approved in writing by the local planning authority. The management plans shall include:
- a) description and evaluation of the features to be managed;
  - b) ecological trends and constraints on site that may influence management;
  - c) aims and objectives of management;
  - d) appropriate management options for achieving aims and objectives;

- e) prescriptions for management actions;
- f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) details of the body or organisation responsible for implementation of the plan;
- h) monitoring and remedial / contingencies measures triggered by monitoring.

The Conservation and Management Plan shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the management plan are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

- 33) No part of the development hereby approved shall be occupied or brought into use until full details of the agreed off-site highway improvement measures and a programme for their implementation have been submitted to and approved in writing by the local planning authority and the approved measures have either been substantially completed or have been included in an agreed programme of works to ensure that the improvements are secured as each associated phase of development is completed. All delivery and timing of highway works shall be agreed in accordance with the approved Phasing Plan. The package of measures shall include:
- a) new signalised pedestrian crossings and carriageway widening at the Frankley Beeches Road/Hanging Lane crossroads;
  - b) new 2m wide footway Frankley Beeches Road along the site frontage;
  - c) pelican crossing on Frankley Beeches Road near the new school;
  - d) central refuge to the west of Guardian Close;
  - e) footway/cycle link into the site onto Elan Road;
  - f) 2m wide footway along Elan Road;
  - g) pedestrian link onto Hanging Lane and central refuge;
  - h) improved signage at the West Park Avenue/ Hanging Lane junction to further discourage the use of Hanging Lane by HGVs;
  - i) a third lane would be provided on the A38/ Tessall Lane junction to accommodate right turning movements onto Bristol Road South.
- 34) No part of any agreed phase shall be occupied or brought into use until the sustainable drainage system to serve that phase of development has been completed in accordance with the approved sustainable drainage system and a Sustainable Drainage Operation and Maintenance Plan (SDOMP) for that part of the sustainable drainage system has been submitted to and approved in writing by, the local planning authority. The approved drainage system shall thereafter be operated and maintained in accordance with the approved SDOMP.
- 35) No dwelling in any approved phase shall be occupied until the approved means of vehicular access from that dwelling to and from the public highway has been constructed in accordance with the approved plans and is available for use.
- 36) No dwelling in any approved phase shall be occupied until a Residents' Travel Plan for that phase of development has been submitted to and agreed in writing by the local planning authority. The Residents' Travel Plan shall propose measures to

actively promote the use of more sustainable transport choices for residents occupying the site and shall include:

- a) the incentives to be offered to each household upon occupation to encourage the use of modes of travel other than the car;
- b) the information to be provided to each household upon occupation with regard to public transport timetables, cycle maps, the location of local facilities such as schools, shops, education and healthcare services and walking information.

The plan shall be implemented in accordance with the approved details.

- 37) No dwelling in any approved phase shall be occupied until an electric vehicle charging point which is accessible to the occupier of that dwelling has been provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details should provide individual charging points for all dwellings that have their own garage, driveway or dedicated parking space and for charging points to be provided in 10% of all parking spaces in shared parking areas.

#### School and Community Centre conditions

- 38) The primary school shall not be brought into use unless a School Travel Plan has been submitted to and approved in writing by the local planning authority. The School Travel Plan shall include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet these objectives. The plan shall thereafter be implemented in accordance with the approved details.
- 39) The rating levels for cumulative noise from all plant and machinery, associated with the school and community facility, shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing Laeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.
- 40) No above ground works shall take place for the construction of the school or community hub unless details of the extract ventilation and odour control equipment for those buildings, including details of any noise levels, noise control and external ducting have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 41) No above ground works shall take place for the construction of the school or community hub until details of facilities for the storage of refuse within the curtilage of that building have been submitted to and approved in writing by the local planning authority. The refuse facilities shall be provided in accordance with the approved details before the buildings are first occupied and shall thereafter be maintained.
- 42) The community hub shall only be used between the hours of 0700-2300 daily.



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# Report to the Secretary of State for Housing, Communities and Local Government

by Paul Singleton BSc (Hons) MA MRTPI  
an Inspector appointed by the Secretary of State

Date: 6 December 2018

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TOWN AND COUNTRY PLANNING ACT 1990

BIRMINGHAM CITY COUNCIL

APPEAL MADE BY

BLOOR HOMES (WESTERN)

Inquiry Held on 2-5, 10-12 and 16 October 2018

Site of former North Worcestershire Golf Club Ltd, Hanging Lane, Birmingham B31 5LP

File Ref: APP/P4605/W/18/3192918



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## **Appendices**

- A Appearances**
- B Five Year Housing Land Supply: Evidence and Conclusions on Identified Supply**
- C Inquiry Documents**
- D Core Documents**
- E Documents relating to Costs Applications**
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## GLOSSARY

5YHLS	5 Year Housing Land Supply
B&BCWT	Birmingham and Black Country Wildlife Trust
BCC	Birmingham City Council
BDP	The Birmingham Development Plan – Adopted January 2017
BMHT	Birmingham Municipal Housing Trust
CAD	Costs Application Document
CD	Core Document
CIL	Community Infrastructure Levy
CPO	Compulsory Purchase Order
DAS	Design and Access Statement
DF	Development Framework Plan
DfE	Department for Education
dph	dwellings per hectare
DTA	David Tucker Associates
EA	Environment Agency
EIA	Environmental Impact Assessment
EiP	BDP Examination in Public
EIR	BDP Examining Inspector’s Report dated 11 March 2016
ES	Environmental Statement
GI	Green Infrastructure
HIF	Housing Investment Fund
HMA	Housing Market Area
ILP	Indicative Layout Plan
LPA	Local Planning Authority
NPPF	National Planning Policy Framework 2018
2012 NPPF	National Planning Policy Framework 2012
OAN	Objectively Assessed Needs
NWGC	North Worcestershire Golf Club Ltd
PAN	Planned Admission Number
POE	Proof of Evidence
PPG	Planning Practice Guidance
PSI	Potential Site of Importance for nature conservation
RfR	Reason for Refusal
S106	Section 106 of the Town and Country Planning Act 1990
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SLINC	Site of Local Importance for Nature Conversation
SoCG	Statement of Common Ground
SoS	Secretary of State
SUE	Sustainable Urban Extension
SuDS	Sustainable Drainage System
TA	Transport Assessment
TPO	Tree Preservation Order
UDP	Birmingham Unitary Development Plan 2005 Saved Policies January 2017
WMAS	West Midlands Ambulance Service

**File Ref: APP/P4605/W/18/3192918**

**Site of former North Worcestershire Golf Club Ltd, Hanging Lane, Birmingham B31 5LP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Bloor Homes (Western) against the decision of Birmingham City Council.
- The application Ref 2017/02724/PA, dated 24 March 2017, was refused by notice dated 31 August 2017.
- The development proposed in the appealed application is outline application, with all matters reserved except access, for the demolition of the club house and development of up to 950 dwelling, public open space, primary school, multi-use community hub, new access points and associated infrastructure.

**Summary of Recommendations: that the appeal should be determined on the basis of the revised proposal for up to 800 dwellings and should be allowed.**

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**1. Procedural Matters**

- 1.1 Shortly before the Inquiry Birmingham City Council (BCC) made an application (Document AC1) for a partial award of costs against Bloor Homes (Western) (Bloor Homes). An application was subsequently made by Bloor Homes for a partial award of costs against BCC (AC2). BCC subsequently withdrew its original application and submitted a new application (AC3), on revised grounds, for a partial award of costs against Bloor Homes. The applications set out in Documents AC2 and AC3 are the subject of a separate report.
- 1.2 The appeal was recovered by the Secretary of State (SoS) for his own determination by means of a direction dated 31 January 2018<sup>1</sup>. The reason given was that the appeal involves development of over 150 units, or on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.3 The appealed application was made in outline form with all detailed matters other than means of access reserved. The application was refused for two reasons. Reason for Refusal (RfR) 1 on the Council's decision notice asserts that the site was not specifically allocated for housing in the recently adopted local plan, that the principle of development is not acceptable, and that material considerations have failed to indicate otherwise. It states that the proposal represents unsustainable development and is contrary to Section 38(6) of the Planning and Compulsory Purchase Act 2004, Policy PG1 of the Birmingham Unitary Development Plan (BDP) (adopted January 2017) and the provisions of the NPPF (paragraphs 2, 15-17, 47-49).<sup>2</sup>
- 1.4 RfR 2 states that the Master Plan fails to pay sufficient regard to the site constraints of ecology, trees and important landscape feature or the local context. As such the Master Plan and proposed development zones would not provide a suitable balance between development areas and open space and would fail to consider connectivity, context (especially in regard to density) and

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<sup>1</sup> See main file

<sup>2</sup> The paragraph references are to the 2012 NPPF

internal layout. It alleges conflict with a number of BDP policies, with paragraph 3.14 to 3.14D of the Birmingham Unitary Development Plan (2005- Saved Policies January 2017) (UDP), and with the fundamental design considerations set out in paragraph 56 of the NPPF.<sup>3</sup>

- 1.5 Following the refusal the appellant's consultancy team undertook a review the proposals culminating in a revised Development Framework Plan (DF)<sup>4</sup> and revised Indicative Layout Plan (ILP)<sup>5</sup>. The key changes between these and the equivalent drawings in front of the Council at the time of its decision can be summarised as follows:
- (i) The area of land proposed for built development is reduced from 19.4 hectares (ha) (60% of the total site area) to 17.9ha (55.3% of the total site area). The amount of land to be used for open space is increased from 10.95ha to 12.45ha.
  - (ii) The number of dwellings proposed is 'up to 800' rather than 'up to 950'.
  - (iii) The density of residential development is reduced from 49 dwellings per hectare (dph) to 45 dph.
  - (iv) The minimum width of the green corridor proposed in the central part of the site is increased from 30 metres (m) to 50m.
  - (v) The width of the wildlife corridor along the eastern boundary is increased from 5m to between 10 and 33m.
  - (vi) Residential development would be set back from the Frankley Beeches Road and Tessall Lane frontages to allow for landscape treatment to those boundaries. This would involve the retention of existing boundary vegetation and its reinforcement with new tree and hedgerow planting.
  - (vii) Additional pedestrian connections are indicated between the eastern and western 'neighbourhoods' within the development scheme.
  - (viii) Residential development fronting the eastern boundary of the site (to the rear of residential properties on Josiah Road) is proposed to create a secure, positive frontage to the wildlife corridor on this boundary.
- 1.6 The revised plans were submitted to and discussed with the Council and officers took a report to BCC Planning Committee on 5 July 2018. That report (CD K3) advised members that the revised plans had been considered by BCC's urban design, ecology and arboricultural officers who were all supportive of the proposed revisions. All these officers considered that the revised DF would provide an appropriate basis to achieve an acceptable development subject to the approval of layout and other detailed matters at reserved matters stage and that appropriate mitigation and long term management measures could be secured by means of planning conditions.
- 1.7 The Committee resolved not to defend RfR 2 at the appeal. In line with that resolution, the Council submitted no evidence in respect of design, landscape, trees or ecology and did not challenge the appellant's evidence on these

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<sup>3</sup> Also referring to the 2012 NPPF

<sup>4</sup> fpcr Drawing No. 6863-L-04 Revision T

<sup>5</sup> fpcr Drawing No. 6863-L-05 Revision E

matters. RfR 2 has, accordingly, been withdrawn. The appellant did, however, call witnesses to deal with design, landscape trees and ecology and with transport and accessibility to respond to concerns raised in the representations from interested third parties.

- 1.8 The appellant carried out public consultation on the revised DF and ILP in June and July 2018 and I deal with the scope and results of that consultation in section 5 below. The appellant's written evidence also addresses the effects of a development of up to 950 dwellings but its intention is that the appeal be considered and determined on the basis of the reduced number of dwellings and the revised DF. Having withdrawn RfR 2 on the basis of these revisions the Council supports that approach.
- 1.9 The proposal is for development which requires an Environmental Impact Assessment (EIA). An Environmental Statement (ES) was submitted with the application in March 2017 in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the 2011 Regulations). Although these have been superseded by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 the 2011 Regulations continue to apply in this case<sup>6</sup>. The assessment of effects set out in the ES is predicated on a development of up to 950 dwellings and on the assumptions comprised in the earlier version of the DF<sup>7</sup> with regard to the distribution and balance of built development and open space within the site and landscape and ecological mitigation.
- 1.10 No formal revision of the ES has been carried out to reflect the revised DF and the lower number of dwellings now proposed. My Pre-Inquiry Note (ID1) advised that I wished to be informed whether the conclusions in the ES as to the significant effects of the proposal remain valid in light of the amended housing numbers and revised DF. In response, Counsel for the appellant submitted a written advice (ID4). This advises that, having assumed a development of up to 950 dwellings, the ES has been prepared to consider a 'worst case' scenario in terms of the potential environmental effects in line with the Rochdale judgment.<sup>8</sup> On this basis the ES remains appropriate and does not need to be updated.
- 1.11 It might be expected that a reduction in the maximum number of dwellings would lead to a reduced level of impact in respect of many of the potential effects on the environment. However, mindful that the revised DF does more than reduce the scale of residential development, I requested that the effect of these changes should be addressed at the Inquiry.
- 1.12 The Council made The Birmingham (Former Golf Club, Hanging Lane, Northfield) Tree Preservation Order 2017 (TPO)<sup>9</sup> 5 July 2017 and the TPO has subsequently been confirmed. This is an area TPO covering the entire site and protecting all the trees within it. The stated reason for the TPO is that the trees add greatly

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<sup>6</sup> Regulation 76 of the 2017 provides that the 2011 Regulations continue to apply where an appellant has submitted an ES before the commencement date of the new Regulations (16 May 2017).

<sup>7</sup> fpcr Drawing No. 6863-L-04 Revision O

<sup>8</sup> R v Rochdale MBC ex parte Milne [2000] EWHC 650 (Admin)

<sup>9</sup> See Appeal Questionnaire documents

to the amenity of the site and surrounding locality and that the Council considers it expedient in the interests of amenity that they should be preserved.

- 1.13 In my Pre-Inquiry Note I observed that the ES had not been updated to reflect the making of the TPO. I requested that ES Table 6.19 be updated to indicate which trees would likely need to be removed to facilitate a development in accordance with the revised DF. I also requested detailed plans and schedules to show the numbers and categories of trees that would need to be removed to facilitate the construction of the vehicular accesses for which detailed approval is sought.<sup>10</sup> In addition, I asked for the appellant's views as to the effect of the development on the TPO and the contribution that the protected trees make to the amenity of the site and surrounding locality. Mrs Kirk's supplementary note (ID20) deals with these matters.
- 1.14 At the time of the refusal there was an outstanding objection from the Environment Agency (EA) on the grounds that further information and modelling was required to show the true extent of flooding on the site. Following the EA's review and consideration of further information relating to the Hydraulic Model for the development the EA updated its position in a letter dated 26 September 2018. That letter<sup>11</sup> withdraws the EA objection subject to appropriate conditions being attached to any permission granted as a result of the appeal.
- 1.15 The Birmingham and Black Country Wildlife Trust (B&BCWT) did not respond to the consultation on the outline application but subsequently submitted a letter of objection to the Planning Inspectorate.<sup>12</sup> That objection was responded to in the supplementary note prepared by Mr Goodman (ID23) and a written response from the Council (ID39).
- 1.16 The West Midlands Ambulance Service (WMAS) did not respond to the consultation on the application but was subsequently contacted by Richard Burden MP. An email from WMAS dated 7 September 2018<sup>13</sup> was forwarded to the Planning Inspectorate. It sets out information on the number of movements, including 'blue light' movements, to and from the WMAS Ambulance Hub located about 1km to the south-west of the appeal site. It expresses some concerns about the possible effect on WMAS's ability to respond to emergency calls. The appellant's written response is provided in Mr Parfitt's supplementary note at ID19.
- 1.17 Both parties submitted proofs and rebuttal evidence concerning what planning obligations are required to meet the need generated by the proposal for secondary school places. These witnesses were not formally called but did participate in the round table discussion of planning obligations.
- 1.18 Two Statements of Common Ground (SoCG) were submitted. That relating to general matters (General SoCG) is dated 3 October 2018 (ID11) and that

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<sup>10</sup> Under Regulation 14 of the Town & Country Planning (Tree Preservation) Regulations the effect of a grant of detailed planning permission is that consent is given for the felling of any protected trees that would need to be removed to facilitate the implementation of that permission. This does not apply to the outline planning permission that would be granted on the remainder of the site should the appeal be allowed.

<sup>11</sup> See main file

<sup>12</sup> See main file

<sup>13</sup> See main file

relating to matters of transportation and accessibility (Transportation SoCG) is dated 1 October 2019 (ID16). I have taken these into account.

- 1.19 As agreement had not been reached between BCC and the appellant on the planning obligations required in relation to the appeal the appellant submitted a number of documents at the start of the Inquiry. These comprised a draft legal agreement under Section 106 of the Town and Country Planning Act 1990 (S106 Agreement) (ID24), a summary of the draft agreement (ID25), Table of Obligations (ID26), a draft Unilateral Undertaking (UU)(ID27), and a summary of that document (ID28). Further progress was made in negotiations outside of the Inquiry and only the draft S106 Agreement was discussed at the Planning Obligations session. The draft agreement was subsequently revised in light of those discussions and a signed version of that agreement, dated 31 October 2018 has subsequently been submitted (ID47). I deal with the planning obligations in section 12 of the report.
- 1.20 I carried out an accompanied visit to the site and surrounding area on 9<sup>th</sup> October 2018 and viewed the key road junctions assessed in the Transport Assessment (TA) prepared by David Tucker Associates (DTA) and the locations of the proposed off-site highway improvements. At the request of interested persons I undertook a second, unaccompanied visit on 15 October to observe the operation of those key junctions during the PM peak.
- 1.21 On 26 October 2018, the Government published "*Technical consultation on updates to national planning policy and guidance*" which includes possible amendments to the NPPF definition of 'deliverable' in relation to sites included in a local authority's housing land supply. Part of the consultation is relevant to this case but the words outlined in the document remain the subject of consultation and may not reflect the final position. I have not given any weight to the possible changes and have considered the appeal on the basis of the current definition.
- 1.22 In drafting my report I identified the possible need for two additional conditions, which had not been included in the Council's draft schedule and were not discussed at the Inquiry, in order to deal with necessary mitigation of potential environmental effects as identified in the ES. In the interests of fairness the main parties were given the opportunity to comment on the need for and possible wording of those conditions. I have had regard to the comments received in finalising the report.
- 1.23 A large number of sites included in the identified sites part of the Council's 5YHLS were challenged by the appellant and a significant volume of information about those sites was included in the Core Documents. In order to avoid duplication of evidence, Appendix E deals with each of the disputed sites or categories of sites in turn. In each case this sets out the appellant's arguments as to why sites should be removed from the supply or why the number of dwelling completions assumed should be reduced, the Council's response and my conclusions. My findings as to the effect on the overall numbers of dwellings that should reasonably be included in the 5YHLS are carried across into my main conclusions as set out in section 14 of the report.



## **2. The Site and Surroundings**

- 2.1 Section 4 of the general SoCG (ID11) includes an agreed description of the appeal site and surroundings. The site extends to 32.35 hectares (ha) as shown on the Site Location Plan (CD H3) and was formerly used as a golf course by North Worcestershire Golf Club Ltd (NWGC). Following deterioration in its financial position over a number of years, NWGC decided to close the course at the end of March 2016 and the site has remained vacant since.
- 2.2 It is a greenfield site within the urban area of Birmingham and is located within a predominantly residential area. It lies within the Longbridge ward but adjoins the Northfield ward at its eastern edge. Its northern and western boundaries are formed by Frankley Beeches Road and its southern boundary by Elan Road. The eastern boundary adjoins a strip of land, of about 3.5 to 4m in width, which forms a shared alleyway to the rear of the houses on the west side of Josiah Road. The only dwellings that back directly onto the site are the two storey apartments at Guardian Close (on Frankley Beeches Road) and a short run of detached houses on the north side of Tessall Lane. Around the remainder of its perimeter the site extends up to the highway boundary and is screened from public view by dense tree and hedge planting<sup>14</sup>.
- 2.3 The site is irregular in shape with notable changes in levels. The highest point, at about 205m above AOD, is close to the Frankley Beeches Road/ Egghill Lane roundabout and the lowest, at about 176 AOD, is where Hanging Brook, which runs through the site, exits onto Hanging Lane. The former club house occupies a raised plateau from which the ground falls steeply into the valley formed by Hanging Brook. There is a second raised area of ground in the south western part of the site.<sup>15</sup>
- 2.4 The grass has regularly been mowed and vegetation cut back and the site retains the form and appearance of a golf course. It is characterised by the managed grassed areas of the former fairways and greens with woodland blocks and narrow tree belts between these and around the site perimeter. Following vandalism and arson attacks prior notification approval has been issued for the demolition of the former club house. Three small outbuildings remain intact.
- 2.5 Vehicular access for the NWGC use was from Hanging Lane and this remains as the only vehicular access to the site. There are no public footpaths or rights of way into or across the site and the site has been maintained as a secure site since the golf course closed. Other than the TPO the site is not subject to any landscape or other designations.
- 2.6 The parties agree that the site is in an accessible location in relation to local shops and facilities with all parts of the proposed development being within about 400m of a bus stop. Train services are available from the nearby Longbridge and Northfield railway stations. The Access and Movement Strategy and Plan within the Transport SoCG (ID16) propose off-site improvements to help facilitate walking and cycling trips.

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<sup>14</sup> See aerial photographs at Appendix 3 and photographs at Appendix 6 to Mr Jackson's POE

<sup>15</sup> See Constraints and Opportunities Plan (fpcr Drawing No. 6863-L-02 Revision F in Plans Folder)



### 3. Planning Policy

3.1 The decision notice refers to policies in the 2012 National Planning Policy Framework (the 2012 NPPF) which has been superseded by the revised NPPF issued in July 2018. The proofs refer to the relevant sections of the new NPPF and references in the written evidence were updated as necessary to reflect revisions made to the Planning Practice Guidance (PPG) in September 2018.

3.2 The development plan comprises the Birmingham Development Plan (BDP), adopted in January 2017, and the Birmingham Unitary Development Plan 2005 Saved Policies January 2017 (UDP). The general SoCG includes a long list of BDP policies agreed to be relevant but the only policy referred to in RfR 1 is Policy PG1.

3.3 Policy PG1 is headed 'Overall Levels of Growth' and states that:

*"Over the Plan period significant levels of housing, employment, office and retail development will be planned for and provided along with supporting infrastructure and environmental enhancements.*

- *51,000 additional homes<sup>16</sup>.....*

*Birmingham's objectively assessed need for the period 2011-2031 is 89,000 additional homes, including about 38,000 affordable dwellings. It is not possible to deliver all this additional housing within the City boundary. The City Council will continue to work actively with neighbouring Councils through the Duty to Co-operate to ensure that appropriate provision is made elsewhere within the Greater Birmingham Housing Market Area to meet the shortfall of 37,900 homes, including about 14,400 affordable dwellings within the plan period. Policy TP48 provides further details on this".*

3.4 BDP paragraph 4.4 explains that, by the end of the plan period in 2031, Birmingham's population is expected to rise by 156,000. In relation to the objectively assessed need (OAN) for an additional 89,000 homes, paragraph 4.6 states that the Council has sought to maximise the level of housing delivery within the City boundary but that it has not been possible to meet the full requirement within City boundary. Hence, the BDP seeks to provide for only 51,100 dwellings within the boundary.

3.5 The inability to accommodate the full OAN within Birmingham reflects the fact that land supply is limited even when Green Belt options are considered. The BDP advises that options outside of the City's boundaries will need to be explored to meet some 37,900 of the total 89,000 dwellings required to meet the OAN. Paragraph 4.7 provides more detail on BCC's intention to work with other authorities in the Greater Birmingham Housing Market Area (HMA) to secure the development of homes in those areas to contribute to meeting that unmet need. In addition to Birmingham itself, the HMA covers The Black Country, Bromsgrove, Redditch, Solihull, North Warwickshire, Tamworth, Lichfield, Cannock Chase, South Staffordshire and parts of Stratford-on-Avon.

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<sup>16</sup> The policy then lists a number of other targets for employment, retail, office and waste management provision.

- 3.6 Policy TP48 is concerned with monitoring and promoting the achievement of the growth targets in Policy PG1. This sets out the indicators which would trigger a full or partial review of the BDP. Among these are:
- A failure to provide a 5YHLS in any monitoring year with the following 2 monitoring years indicating no recovery in the position;
  - Housing completions falling more than 10% below the targets in the trajectory over any rolling 3 year period;
- 3.7 Policy TP48 states that BCC will play an active role in promoting the provision and delivery of the 37,900 homes elsewhere in the HMA and will monitor progress with this. If progress is falling short of the level required, BCC will undertake a review of the reasons for this. If that review indicates that it is necessary to reassess capacity for housing provision in Birmingham, a full or partial review of the BDP will be undertaken. Key indicators which would trigger a review include the failure of a relevant Council to submit a replacement or revised Local Plan, providing an appropriate contribution to Birmingham's unmet need, for examination within 3 years from the adoption of the BDP.
- 3.8 In response to my questions, the planning witnesses for both parties confirmed that the site is not allocated in the BDP for any specific purpose and is not subject to any land use designation. Their combined responses identified Policies TP27, TP28 and TP30 as being of particular relevance in considering the acceptability in principle of an application for housing development on a site with no allocation or designation in the development plan.
- 3.9 Policy TP27 states that new housing is expected to contribute to making sustainable places and sets out a number of attributes by which such neighbourhoods are characterised. These include a wide choice of housing sizes, types and tenures, access to shops, services and employment opportunities, convenient options to travel by sustainable means, a strong sense of place, environmental sustainability and attractive, safe and multi-functional public spaces.
- 3.10 Policy TP28 sets out a number of criteria concerning the location of new housing against which applications are to be considered. These relate to matters such as flood risk, scope for remediation if required, accessibility to shops and services, availability of infrastructure to support the development proposed, and the proposal being sympathetic to historic, cultural or natural assets.
- 3.11 Policy TP29 sets out the planned trajectory for housing delivery. This breaks the Plan period of 2011-2031 into 3 phases and puts forward a stepped approach to annual average rates of housing delivery as follows:
- 1,650 dwellings per annum (2011/12 – 2014/15)
  - 2,500 dwellings per annum (2015/16 – 2017/18)
  - 2,840 dwellings per annum (2018/19 – 2030/31).
- 3.12 On the recommendation of the BDP Examining Inspector, the trajectory over the first phase reflects the actual delivery achieved over this period to avoid the need to impose a retrospective requirement for 2011-15 that could not be met

simply by increasing the supply of housing land from 2015 onwards.<sup>17</sup>

Paragraph 8.13 of the reasoned justification to the policy states that the annual provision rates are *“not ceilings and that housing provision over and above that set out in the annual trajectory will be encouraged and facilitated wherever possible”*.

- 3.13 Policy TP30 states that proposals for new housing should seek to deliver a range of dwellings to meet local needs and support the creation of mixed, balanced and sustainable neighbourhoods. New housing should be at a target density responding to the site and its context. A density of at least 50 dph is indicated in areas well served by public transport and at least 45 dph on other sites outside of the City Centre.
- 3.14 Policy TP31 seeks 35% affordable homes on developments of 15 dwellings or more. Paragraph 8.21 states that the Council is committed to providing high quality affordable housing for people unable to access market housing. Paragraph 8.22 notes that the 2012 Strategic Housing Market Assessment (SHMA) found that about 38% of the City’s overall housing requirement is for affordable housing.
- 3.15 RfR 2 cited policies in paragraphs 3.14-3.14D of the UDP which are concerned with design matters. That reason has been withdrawn but a number of third parties raise concerns about the effect of the proposal on the character of the site and its surroundings. These issues are relevant when considering whether the proposal complies with these UDP policies.

#### **4. Planning History**

- 4.1 Bloor Homes submitted an outline planning application<sup>18</sup> on 31 March 2016 for the redevelopment of the site for up to 1,000 dwellings, a primary school, a community hub and associated public open space. This is referred to in the evidence as “The Original” or “Old” application and the documents relating to it are at CD E1-E3. BCC officers prepared a Committee report (CD E1) recommending that permission be refused for 6 reasons but the application was withdrawn prior to the Committee meeting. The appellant states that this was to facilitate discussions with BCC and to try to agree matters through a resubmission<sup>19</sup>.
- 4.2 The TA produced for the original application was submitted with the appealed application and has not been revised. Its assessment of trip generation and effects on the road network and nearby junctions is, therefore, based on a development of up to 1,000 dwellings. The ES was revised and is based on a scheme of up to 950 dwellings.

#### **5. The Proposal**

- 5.1 In June/July 2018 the appellant carried out public consultation on the revised DF and ILP. A consultation letter from the appellant’s agent, Harris Lamb, (CD J7) explaining the revisions and the reasons for making those changes, together with reduced copies of the revised plans (CD J5 and J6) was sent to all parties

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<sup>17</sup> Paragraph 86 of EIR (CD F3)

<sup>18</sup> Reference 2016/02717/PA

<sup>19</sup> Mr Downes main POE paragraph 5.5

that had been notified of the planning application and all those who submitted comments or representations on the application. Notice of the consultation was put in the Birmingham Post (CD J9) and on social media and a public meeting to discuss the revised plans was held on 26 July 2018. All responses received by the appellant's agent (Harris Lamb) were submitted to the Planning Some 81 written responses were received as summarised in the note and schedule at CD J8 with 37 in support of the proposal and 44 objecting to it. These objections raise similar issues to those raised by objectors to the planning application. None of the objections received in response to the June 2018 consultation are directly concerned with the changes comprised in the revised DF and ILP. Neither do any of these objections indicate a preference for the larger development of up to 950 dwellings or the earlier versions of the DF and ILF submitted with the planning application.

- 5.2 At the Inquiry interested persons were given an opportunity to comment on this consultation process. Many of those who spoke were critical of the consultation carried out by the appellant prior to making the original (1,000 dwellings) application and the level of engagement with the local community at various other stages. However, in response to my direct questioning, they all confirmed that they had received the appellant's notification concerning the revised DF and ILF.
- 5.3 Some referred to having had difficulty speaking with the contact named in the Harris Lamb letter and suggested that some in the local community might not have understood how any comments made would be taken into consideration in the appeal. However, their answers to my questions and the number of written responses received indicate that the consultation was successful in reaching its intended audience. I am satisfied that this consultation complied with the principles established in the Wheatcroft judgment<sup>20</sup> and that no party who should have been consulted has been denied the opportunity of being consulted on those proposed changes.
- 5.4 The amended proposal is for the demolition of the former club house and redevelopment of the site for up to 800 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure. The appeal seeks detailed permission for means of access with all other detailed matters reserved for subsequent approval.
- 5.5 The parties agree that the means of access for which detailed approval is sought should be restricted to the proposed vehicular accesses at this stage. The requirement for a good level of permeability is agreed to be important. However, the parties consider it desirable to maintain flexibility as to the detailed positioning of the pedestrian and cycle accesses to be provided in addition to those available at the vehicular access points so that these are considered alongside the detailed site layout.
- 5.6 The existing access to the former club house and car park would be closed off and four new vehicular accesses would be provided. These are shown on the plans in the Transport SoCG comprising DTA Drawing Nos<sup>21</sup>:

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<sup>20</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

<sup>21</sup> Appendices SP4-7 of Mr Parfitt's main POE

16094-06-3 Revision A: Proposed Residential Site Access from Frankley Beeches Road

This would be a simple priority T junction on Frankly Beeches Road a short distance to the west of Guardian Close.

16094-04 Revision D: Proposed Residential Site Access from Frankley Beeches Road/ Egghill Lane roundabout

This access would form a new, fourth arm of the existing roundabout junction of Frankley Beeches Road with Egghill Lane.

16094-06-4 Revision D: Proposed Residential Site Access from Tessall Lane

This would be a priority T junction with ghost islands to form 'back to back' right turn lanes into the proposed site access and Farren Road.

16094-06-2 Revision A: Proposed School Site Access

This access would serve the primary school and community hub and any parking associated with these uses, the sports pitches and play space. It would be in the form of a simple priority T junction on Frankley Beeches Road.

In all cases approval is sought for the proposed accesses and associated visibility splays and the construction of approximately 20m of road within the site boundary.

- 5.7 The revised DF shows two main areas of land for residential development, together extending to some 17.9 ha and separated by a central 'green corridor' varying from about 50m to more than 120m in width. All dwellings in the south eastern development zone would be served by the vehicular access from Tessall Lane and there would be no vehicular connection between this and the other residential development zone. That zone would be accessed from the new accesses from Frankley Beeches Road the Frankley Beeches Road/ Egghill Lane roundabout. The DF reserves the option that these access points could be connected together by the internal estate road but this would be a matter to be resolved as part of any future reserved matters application.
- 5.8 The green corridor, which would extend both sides of Hanging Brook, would comprise an 'eco-park' and areas of new parkland and habitat. The eco-park would provide wetland areas and include a number of storage basins and other features associated with the proposed sustainable drainage system (SuDS) and a new pond(s) to replace the existing pond on the site. It would also incorporate existing and new woodland planting and species rich grassland.
- 5.9 The green corridor would provide opportunities for informal recreation and would be directly accessible from the proposed residential areas via a network of paths and cycle routes. The DF indicates the retention of many of the existing blocks of trees in the green corridor and around the site perimeter and in three central blocks within the eastern development zone. Retained and additional planting would form a wildlife corridor of between 10 and 33m width along the site's eastern boundary.
- 5.10 The main play space and sports facilities would be on the raised plateau in the north east corner of the site close to the primary school and community hub. These would comprise a multi-use games area (MUGA), local equipped area for

play (LEAP) and neighbourhood equipped area for play (NEAP) and an informal kick-about area. A second LEAP would be provided in the green corridor in the central part of the site. Green infrastructure (GI) (excluding the primary school and community hub sites) would cover a minimum of 12.45 ha, representing about 38% of the total site area.

- 5.11 The DF identifies a site of 1.8ha for the primary school. The parties have agreed that sufficient land should be made available for the construction of a one form entry school which can be extended to a two form entry school at a later date<sup>22</sup>. The S106 agreement includes an obligation to fund the cost of building the 1 form entry school on the site and the payment of a financial contribution to increase capacity at another local school to meet the additional 0.12 form entry need generated by the development. The community hub would occupy a site of about 0.2ha and would have a minimum of 1,000 square metres (sq. m) gross floor space. The appellant has had discussions with organisations that might be interested in occupying or using the community hub but no detailed plans for its design, layout or use have been agreed.
- 5.12 The residential development would have an average density of 45 dph and provide a range of 1 and 2 bed apartments and 2, 3, 4 and 5 bed houses. Up to 280 (35%) of the total number of new dwellings would comprise affordable homes including homes for social rent, affordable rent and shared ownership.

## **6. Common Ground**

- 6.1 The General SoCG (ID11) confirms that the NWGC club closed for reasons of viability, that there is no prospect of this use being resumed and that there is no objection to the loss of the golf course. The parties agree that there are no technical or environmental objections to the proposal subject to the imposition of conditions to secure mitigation of the effects on ecology, trees, landscape and loss of open space.
- 6.2 The Transportation SoCG (ID16) is between the appellant and BCC as Local Highway Authority following BCC's review of the TA and the Stage 1 Safety Audit<sup>23</sup>. There is agreement as to existing traffic flows on the local network, the level of traffic generation for the proposal, traffic distribution, the impact on the network and key junctions, and the highway improvement measures needed to mitigate that impact. It is agreed that the site has good accessibility to services, facilities and public transport and the measures proposed as part of the proposed sustainable access and movement strategy are also agreed.
- 6.3 The Transportation SoCG identifies that mitigation measures would be required at some nearby road junctions to ensure that they continue to operate effectively at the forecast year of 2026.<sup>24</sup> These are:

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<sup>22</sup> See paragraph 3.5 of the General SoCG (ID11)

<sup>23</sup> CD R5

<sup>24</sup> Allowing for both the effect of traffic generated by the development and local traffic growth to that date



Frankley Beeches Road/ Hoggs Lane/ Hanging Bridge signalised crossroads (DTA Drawing No. 16094-08 Revision A)<sup>25</sup>

A new right turn lane on the Hoggs Lane approach by widening the carriageway would increase the operational capacity of the junction and provide an improved alignment for vehicles travelling between Hanging Lane and Hoggs Lane.

Minor carriageway widening by using land within the appeal site would allow the creation of a defined turning area within the junction to reduce the propensity for right turning vehicles to block traffic on Frankley Beeches Road.

A38 (Bristol Road)/ Tessall Lane signalised crossroads (DTA Drawing No. 16094-10)<sup>26</sup>

In addition to works already planned at this junction the proposal would create a third lane on the Tessall Lane approach to accommodate right turning movements onto the A38 (south). This could be achieved within the existing highway boundary.

It is agreed that all other relevant junctions would continue to operate within capacity following the completion of the development.

- 6.4 Agreement has been reached on a schedule of off-site highway works to help facilitate pedestrian and cycle movements which would be secured by means of a Grampian type planning condition and a Highways Act agreement. These are indicated on DTA Drawing No. 16094-11 included in the Transportation SoCG and include new and improved pedestrian crossings and improvements to bus stops. The detail of these works would be subject to approval at a later stage.
- 6.5 It is common ground that the OAN for Birmingham over the BDP plan period to 2031 is for 89,000 additional homes and that the BDP plans for 51,100 of this need within the City boundary, with the remainder being met by provision in other local authorities within the HMA. It is agreed that the 5YHLS should be calculated by reference to the 51,100 requirement and that a 5% buffer should be added in accordance with paragraph 73 of the NPPF. It is also agreed that the current 5YHLS runs from 1 April 2018 to 31 March 2023 and the base date is 1 April 2018.
- 6.6 By the close of the Inquiry agreement had been reached on the nature and scale of obligations relating to: affordable housing provision; the delivery of the site for the new primary school and developer contribution towards its construction; a financial contribution to provide the additional primary school places needed over and above those within the new school; the provision of on-site public open space and its future management; the sum of £1,600,000 as a Sports Improvement Fund payment; the construction and delivery of the community hub; and the developer's adherence to a Local Employment Plan during the construction of the proposed development.
- 6.7 The areas of remaining dispute in respect of planning obligations relate to the Council's request for an additional Sports Improvement Fund payment to compensate for the loss of recreational land and for a contribution to increase

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<sup>25</sup> Included in the TA (CD H10) and at Appendix SP12 to Mr Parfitt's PoE

<sup>26</sup> Included in the TA and at Appendix SP13 to Mr Parfitt's PoE

the capacity in local secondary schools. These matters are considered in more detail in section 12 of this report.

## **7. Environmental Information**

- 7.1 The ES was prepared in respect of a development of up to 950 dwellings and has not been updated to reflect the lower number now proposed. Its conclusions as to the potential significant environmental effects need to be considered in that context. The potential transport, ecology, tree, landscape and visual effects were dealt with in the evidence to the Inquiry in response to my request for clarification about the effect of the amended proposal and revised DF and to respond to third party concerns. I have identified the need for a condition relating to the felling or cutting back of vegetation to be done outside of the bird breeding season in order to secure necessary mitigation that was identified in the ES. The need for this condition has been agreed by the parties. Although the EA had previously had concerns about flood risk these have now been resolved subject to the attachment of conditions to any outline permission that might be granted that would require the submission of an updated hydraulic model and flood risk assessment in tandem with of any reserved matters submission.
- 7.2 In relation to the historic environment, the ES identifies the most significant effect to be the potential damage to or loss of buried archaeological features which may be present in parts of the site during the construction period. It recommends that this could adequately be mitigated for by carrying out a programme or archaeological investigation and recording and that if was done, the residual effect would be reduced to minor adverse which is not significant under the EIA regulations. There is no other technical information in relation to archaeology and the need for a condition requiring that investigation and recording has been agreed by the parties.
- 7.3 The Air Quality chapter of the ES concludes that impacts of the traffic generated by the proposal on the air quality for local residents have been shown to be acceptable at the worst-case locations, with concentrations being well below the air quality objectives. It does identify the potential for adverse dust impacts during construction works but advises that this could adequately be mitigated for by using appropriate dust suppression measures which would be required by condition as part of the Construction Method Statement. There was no objection to the application from the Council's environmental health officers subject to appropriate conditions being attached to any permission granted with regard to a ground contamination survey and verification report, any plant and machinery installed at the primary school and community hub and provision of charging points for electric vehicles. All of these matters were included in the draft conditions submitted to the Inquiry.
- 7.4 The ES identified the potential for noise disturbance to future residents of the proposed development from traffic on the surrounding roads but this is a matter that would need to be considered in relation to the detailed layout if and when this is submitted at reserved matters stage. Potential adverse effects during construction could be dealt with by agreement of working hours and appropriate methods of noise and vibration control as part of a construction environmental management plan or method statement. The need for a method statement was identified in the draft conditions submitted to the Inquiry and there was no



objection from the Council's environmental officers in relation to noise or vibration.

- 7.5 The ES concluded the proposal would have positive socio-economic effects in relation to the provision of new homes, construction employment and investment and the increase in population in the area. It noted the requirement for mitigation in relation to the increase pressure on primary school facilities but assessed the overall effect on other community, health, sports and recreations facilities as beneficial and minor and not significant under the EIA Regulations. The Council's concerns about the need for financial contributions in relation to secondary school provision and additional sports pitches are discussed in Section 12 and I deal with local resident's concerns about the pressure on local services in my conclusions.
- 7.6 The ES chapter concludes that the potential impacts from risks associated with the ground conditions within site could satisfactorily be mitigated for by adopting best practice in the construction works. However, it notes the need for an intrusive site investigation prior to construction commencing so that any longer term risks can be identified and dealt with. The need for a further contamination survey and verification report was identified in the draft conditions. In relation to waste, the ES identifies the need for construction and demolition waste to be managed appropriately and that this should be covered in the construction management plan or method statement and that appropriate provision should be made for the storage and collection of waste and recyclable materials within the design of the development. The need for this provision and for a construction method statement was identified within the draft conditions submitted to the inquiry.

## **8. The Case for Birmingham City Council**

The gist of the Council's case is as follows.

- 8.1 The BDP has recently been adopted and is entitled to be treated with appropriate weight. The proposal conflicts with Policy PG1 because the site is not allocated for housing development. It cannot reasonably be treated as a windfall site due to its large size and the scale of development proposed and because the site was considered as a possible allocation in the BDP and was rejected by the Examining Inspector. Accordingly, it does not comply with the definition of a windfall site as set out in the NPPF. It would undermine public confidence in the planning system if large housing sites not allocated for that purpose are brought forward by means of ad-hoc planning applications and appeals.
- 8.2 The Council has a 5YHLS and the appellant has not been able to demonstrate otherwise. The BDP policies should, therefore, be given full weight. The proposal conflicts with the BDP strategy and objectives. The appellant has underestimated the harm to public confidence that would be caused by a grant of permission in this case. There are no material considerations that outweigh the conflict with the development plan.

### *Policy*

- 8.3 The BDP was adopted in January 2017 following a public examination and has been found to be sound. The site was promoted as a potential housing

allocation but was rejected by the Examining Inspector. No application was made to challenge the adoption of the BDP.

- 8.4 Harris Lamb's representations to the EiP<sup>27</sup> show that the appellant argued that the BDP was defective as a matter of principle because of a failure to allocate the appeal site for housing development. That is implied by their complaint that the plan did not meet the "justified" or "effective" tests and should not be considered sound<sup>28</sup>. These representations were rejected in the Examining Inspector's Report (EIR).<sup>29</sup> The main arguments advanced to the EiP are identical to those advanced at the appeal.
- 8.5 The Council rejects the contention that the Examining Inspector's decision not to support the site's allocation was made only on site specific and technical grounds. At Paragraph 61, the EIR is clear that he rejected the scheme because it fell outside the balance that he had struck between the level of provision of new homes within and outside of the City boundary. That is an issue of principle and there has been no change in circumstances since the EiP that would justify a grant of planning permission.
- 8.6 Mr Wood states in his proof of evidence (POE) (paragraph 4.7) that the Examining Inspector accepted that the site's location was sustainable and in the southern suburbs of the City but concluded that it would not be appropriate to allocate it for housing use. The Inspector was aware that BCC was unable to meet its full OAN within its administrative area because he was addressed by the appellant's representatives on this point. He still concluded that the allocation of additional sites including the appeal site would not be justified.
- 8.7 The Council accepts that there has been slippage in the delivery of the Langley Sustainable Urban Extension (SUE) and that the SUE will not deliver the number of new homes previously envisaged within the plan period. This is not, however, a relevant new fact. It is in the nature of broad, structural decisions made in a local plan context that facts will subsequently emerge which disrupt earlier assumptions. This is not a basis for re-opening questions that have been settled through the forward planning process. The BDP contemplates that events might not materialise quite as anticipated and Policy TP48 allows for exactly that.
- 8.8 PolicyTP48 sets out a series of triggers for an early review of the BDP. The only ones of relevance are the absence of a five year supply and progress towards meeting the overspill figure of around 38,000 homes outside of the City. BCC is not in control of the other local authorities in the HMA and the most it can achieve is to monitor progress of this provision. Only a short period has passed since the BDP was adopted and progress towards meeting this part of the OAN is steady. The appellant has not suggested that this trigger has been activated and the decision as to whether an early review is needed is left to BCC. The Council has not considered this necessary. This is properly a matter for the Council's judgment and it is difficult to see how the Secretary of State (SoS) can take this any further.

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<sup>27</sup> Mr Woods' Appendix MW1

<sup>28</sup> Harris Lamb comment form December 2013 at Appendix MW1 Part 3

<sup>29</sup> CD F3

- 8.9 The development plan hangs together as a coherent whole. Although the Plan allows for an early review in certain circumstances none of these circumstances apply. The BDP therefore remains intact. BDP Policy PG1 sets a threshold of 51,100 new homes to be provided within the City boundary. This provision explicitly excluded the appeal site and the Council rejects the contention that the site can come forward as a 'windfall'.
- 8.10 The NPPF glossary defines windfall sites as "*sites not specifically identified in the development plan.*" Having regard to that definition BCC argues that the appeal site cannot be considered to be a windfall because it was identified as a possible housing allocation in the BDP, was carefully considered by the Examining Inspector and was rejected. Mr Wood considers this approach to be consistent with NPPF paragraph 68 which expresses support for windfall sites of small to medium size<sup>30</sup>.
- 8.11 Under cross examination Mr Wood stated that the glossary definition of windfall sites should be read together with the text in the NPPF as a whole but, in response to my question, he confirmed that he relies only upon the glossary and paragraph 68 to inform his judgement on what the term should be understood to mean. Having regard to paragraph 68, Mr Wood considers that the site's size and the scale of development proposed, which are comparable to some of the housing planned in the Growth Areas within the BDP, are further reasons why the proposal cannot be considered to be a windfall development.
- 8.12 In its closing submissions, the Council rejects the contention that there is no size threshold in the NPPF definition for two reasons. First, when paragraphs 68-70 of the NPPF are read as a whole, it is clear that the SoS has in mind a limit on the size of windfall sites which are described as "small" and "medium". A 35 ha site of 800 houses cannot reasonably be described as small or medium. Secondly, those adjectives denote a relative concept of size which must give way to local circumstances. For example, what might be a small site in Northumberland might be regarded as a medium or large site in central Birmingham. It all depends upon local context.
- 8.13 The Strategic Housing Land Availability Assessment (SHLAA) provides the context for the application of NPPF advice in Birmingham. Table A4.2 in the 2018 SHLAA<sup>31</sup> shows that, in Birmingham, a small site is less than 0.06 ha and a medium site is one that is larger than 0.06 ha. This reflects the City's dense urban fabric and industrial heritage. The application of the concept of a windfall must bear some relationship to these orders of size in the context of Birmingham and, therefore, excludes a site of 35ha.
- 8.14 Mr Downes agreed, in cross examination, that a proposal can conflict with a development plan either by reference to strategy and objectives or detailed development management policies. In this case the conflict is with the former. It would be inimical to the plan-led process to allow this large housing site to come forward outside of the development plan process when it has already been considered and rejected through that process.

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<sup>30</sup> Mr Wood main POE page 24

<sup>31</sup> CD F1

### *5 year housing land supply*

- 8.15 At Appendix 1 to her rebuttal proof, Mrs Han sets out concessions about the deliverability of housing on some of the sites within the 2018 5YHLS<sup>32</sup> that had been challenged in the appellant's evidence. At paragraph 2.6 she gives her view that all but 4 of the disputed sites should remain in the 5YHLS but that the number of units to be delivered on some sites should be reduced. These changes lead to a reduction in the total supply from 20,413 to 20,183 (a deduction of 230 dwellings) resulting in an identified supply of 6.72 years. Mrs Han's final position on all the disputed sites in the identified supply component of the 5YHLS is set out in the combined table at document ID18. I deal with this detailed evidence in Appendix B to this report.
- 8.16 The 2018 SHLAA (CD F1) has been prepared in accordance with the methodology set out in the PPG<sup>33</sup> with the assessment relating to all sites in excess of 0.06 ha. In addition to issuing a call for sites in October 2017, the Council examined land within its ownership, sites with planning permission and development allocations. Each site was assessed for its suitability, availability and achievability. Lead-in times and build-out rates have been taken into account and the assumptions on these matters (Appendix 5 to the SHLAA) are based on past delivery rate assessment. The Council has not taken for granted developers' aspirations but has approached all sites with the same consistency.
- 8.17 The Council considers that there is no requirement for a lapse rate. The BDP Examining Inspector was satisfied with the SHLAA methodology and did not require that a lapse rate be applied (paragraph 56 of CD F3). The conservative allowance for windfalls used in calculating the supply counters the need for a lapse rate and the inclusion of a lapse rate could make the figures less reliable. Windfall completions are expected to exceed the allowance assumed in the 5YHLS by a significant degree. Even if a lapse rate of 5% is applied to all sites with planning permission that have not yet commenced and a rate of 10% is applied to all other sites the Council would still be able to demonstrate a 5YHLS. The same would be true even if higher rates of 10% and 20% were to be applied. This is shown in Table 2 of Mrs Han's rebuttal evidence.
- 8.18 The SHLAA represents some 3-6 months of work by officers in assessing all the potential sites and provides a robust assessment of the supply. The Council has taken a pragmatic and cautious approach to deliverability with the result that the 5YHLS is very conservative; only 43% of the total capacity identified in the SHLAA has been assessed as being deliverable within 5 years. The 5YHLS is also robust, with 45% of the dwellings being on sites which are under construction and a further 42% on sites with detailed planning permission or prior approval for permitted development works.
- 8.19 Only 2.6% of the dwellings in the 5YHLS are identified as other opportunity sites but 27 of the 31 sites in this category are in the Council's Birmingham Municipal Housing Trust (BMHT) 5 year development programme. BMHT was set up in 2009 and has completed 3,000 homes and is currently the largest provider of affordable homes in the City. Whilst the BMHT sites do not have planning permission they are amongst the most certain to be delivered. Most are small

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<sup>32</sup> CD F2

<sup>33</sup> The key stages in the assessment are set out in Appendix 2 of the SHLAA at CD F1

sites (under 50 units). Based on an assessment of a sample of completed sites the average time for determination of a BMHT planning application is 2-3 months. Even if applications were not submitted until April 2020 all these sites would be delivered by 2023, allowing for average lead-in and build-out rates.

- 8.20 The issues around the 5YHLS have narrowed and the matters in dispute relate to specific points on supply. The five year requirement is uncontested. The policy-on figure is 51,100 and a 5% buffer is added to this. As the appellant accepts, this indicates that BCC has satisfactorily discharged its obligations as to the provision of housing land in the recent past. This concession provides the essential backcloth to considering the detail of the supply discussion.
- 8.21 The 5 year requirement is 15,018, including the 5% buffer. Mr Hawley's evidence at Table 8<sup>34</sup>, in which seven classes of site are set out and the differing assumptions of both parties are described, further narrows the issues in dispute. In broad terms, the parties differ within the range of 15,000 to 20,000 units, providing for a land supply of between 5.1 to 6.79 years. Even if Mr Hawley's evidence is accepted in its entirety, the Council can still demonstrate a five year supply.
- 8.22 The appellant seeks to show a deficiency in the 5YHLS by supplementing Mr Hawley's "planning" deductions of sites or units with a series of "market" deductions arising from Mr Willet's evidence. However, the appellant has made a serious error even in the terms of its own evidence.
- 8.23 Mr Hawley's paragraph 13.4 states that he has made "planning" deductions from the headline figure of 5,208 City Centre apartments. These total 1,296 units, leaving a residual figure of 3,912 City Centre apartments in the 5YHLS calculation. Mr Hawley states that this residual figure should be subject to a 50% reduction in line with Mr Willet's market evidence, resulting in a further reduction of 1,956 units from the City Centre apartment category. This is put beyond doubt by row 8 of Mr Hawley's Table 9<sup>35</sup> which states: "*Mr Willet's adjusted reduction for City Centre Apartments - 1,956*".
- 8.24 This is an error because Mr Willet's evidence argues for a deduction of only 1,192 units from the City Centre apartment category on market grounds. By adopting a figure of 1,956 Mr Hawley has made an additional deduction of c.700 units for which there is no evidential support. Mr Willet explained this discrepancy by contending that his evidence was "market facing" whereas Mr Hawley had applied a "planning approach". The Council asserts that that cannot be right. The 1,956 unit reduction in Table 9 is wholly and exclusively attributable to Mr Willet's market concerns but is c.700 more than the maximum for which Mr Willet argues. Mr Willet also accepted during evidence in chief that he had wrongly deducted a number of units from the supply.
- 8.25 When these 700 units are added back into the supply (as they must be) the 5YHLS position asserted by the appellant becomes highly marginal. If every issue and assessment is resolved in favour of the appellant, the best they can demonstrate is a marginal five year supply. As issues and assessments move increasingly in favour of the Council the five year supply becomes more robust.

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<sup>34</sup> Mr Hawley main POE p49

<sup>35</sup> Mr Hawley main POE p50



The issues with regard to the deliverability of sites are, therefore, important to the resolution of this matter.

- 8.26 The appellant argues that the NPPF policy advice about deliverability is now fundamentally different to the previous advice and that, for this reason, the guidance in the Court of Appeal judgment in *St Modwen*<sup>36</sup> is out of date. Both those assertions are wrong. In *St Modwen*, the Court emphasised the need to exercise planning judgment in considering the issue of deliverability. That point was accepted by Mr Hawley as providing the foundation for the approach to this issue. It is also affirmed in the Hallam Land Court of Appeal judgment quoted by Inspector Fagan at paragraph 60 of the Coalpit Heath, South Gloucestershire appeal decision<sup>37</sup>.
- 8.27 There is a need to focus on probabilities and prospects rather than certainty as the benchmark for the acceptable level of evidence. Paragraph 41 of the *St Modwen* judgment emphasised the distinction between deliverability and actual delivery. The former is a judgment whilst the latter is a statement of fact. The Council rejects the appellant's contentions that that distinction is no longer valid and that the revised NPPF's requirement for a demonstration of clear evidence has to be treated as meaning the achievement of certainty. In his decision in the *Pocklington East Riding of Yorkshire* appeal,<sup>38</sup> at paragraph 12, Inspector Baird quotes both *Wain Homes* and *St Modwen* and then states: "*I take this to mean that for a site to be deliverable, it should be capable of being delivered not that it will be delivered*".
- 8.28 Inspector Spencer takes this up in the *Holme on Spalding Moor* decision.<sup>39</sup> At paragraph 11, she quotes the judgment of Ousley J in *St Modwen* (affirmed as correct by the Court of Appeal) in which he says: "*The assessment of housing land supply does not require certainty that the housing sites will actually be developed within that period. The planning process cannot deal in such certainties. The problem of uncertainty is managed by assessing "deliverability" over a five year period ...*" This body of law is applied by Inspectors and provides the standard method for addressing probabilities in this area of policy. It is highly unlikely that the SoS would have introduced a fundamental change to the policy approach by slightly changing the language in the third sentence of a glossary definition in the NPPF.
- 8.29 The appellant has adopted the wrong approach to deciding whether a site included in the 5YHLS as deliverable should be so included. This undermines the reliability of the appellant's assessment and suggests that BCC's judgments are more dependable because the Council has correctly applied the policy test. When the apportionment of the burden of proof which arises from the revised definition is considered, the discussion about "deliverability" becomes a second order issue in the appeal. This is because the appellant's contention, that the Council must achieve a high standard of evidence to prove that the delivery assumptions underpinning the 5YHLS are correct, misunderstands the policy and is wrong in law.

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<sup>36</sup> *St Modwen Developments & SSCLG & East Riding of Yorkshire Council & Save Our Ferriby Action Group* [2017]EWCA Civ 1643 at CD C2

<sup>37</sup> APP/P0119/W/7/3191477 dated 06.09.18 at Mr Stacey Rebuttal POE Appendix JSr5

<sup>38</sup> APP/E2001/W/16/3165930 dated 01.11.17 at Mr Wood's Appendix MW/4

<sup>39</sup> APP/E2001/W/16/3165880 dated 17.08.17 at Mr Wood's Appendix MW/5

- 8.30 It is agreed that the appellant carries the burden of proof for some 80% of the disputed sites; that is for sites with detailed permission, sites under construction and small sites which together comprise over 2,000 units. If the appellant fails to discharge that burden on even half of that number the Council can demonstrate a five year supply. However, the evidence on each site within those categories amounted to a short digest or commentary in Mr Hawley's proof. That is a long way short of providing compelling evidence capable of discharging the burden in respect of those sites.
- 8.31 Mr Hawley's deduction, of c. 1,000 units, from the windfall category because of his scepticism about delivery from this source is arbitrary and unjustified. NPPF paragraph 70 requires that attention be paid to the past and future in assessing the reliability of a windfall allowance. Table A4-2 in the 2018 SHLAA<sup>40</sup> shows historic windfall completions many times greater than the allowance included in the forward supply. Paragraph 5.4 states that windfalls have historically played a very important role in enabling housing growth in Birmingham and paragraph 6.1 confirms that: "*Windfalls have made an important contribution to meeting the city's housing growth over the last 20 years*".
- 8.32 The prospects in the future are equally positive. The evidence of Mrs Han and Mr Willet provide an optimistic picture of a buoyant economy with market confidence, rising rents, economic activity, the retention and attraction of young people and an expanding population. This provides the 'compelling evidence' that NPPF paragraph 70 has in mind when making assumptions about a windfall allowance. The SoS is invited to conclude that BCC can demonstrate a 6.79 year housing land supply. If the SoS is disinclined to identify a number the Council would be content for him to conclude that the Council can demonstrate a robust housing land supply which comfortably exceeds the five year threshold.

*Other material considerations*

- 8.33 On behalf of the Council Mr Wood considers that the potential to stimulate construction employment is not unique to the appeal proposal and that it is not clear how far this would benefit the local community. He gives this relatively limited weight. He states that any economic benefit derived through the contribution that future residents might make to the local labour supply would be difficult to quantify and that the payment of Council Tax and New Homes Bonus should only attract moderate weight as they are not specific to the proposal. He considers that an increased pool of disposable income generated by incoming residents would apply to any form of housing development.
- 8.34 Mr Wood attaches only moderate weight to the provision of up to 800 new homes in a mix of sizes, types and tenures having regard to the fact that the Council is delivering housing in the City in accordance with BDP Policy PG1. This is notwithstanding his acceptance that the Langley SUE is likely to deliver about 2,000 dwellings within the BDP Plan period rather than the 5,000 units previously assumed<sup>41</sup>. He accepts the need for affordable housing in the City and attaches significant weight to the 35% affordable homes that the proposal would deliver.

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<sup>40</sup> CD F1

<sup>41</sup> See updated trajectory at ID41

- 8.35 He acknowledges the potential benefits of the eco-park, wider public access to public open space and that the play space provision would rectify gaps in the provision of play space to the north and east of the site. He attaches moderate weight to these social benefits. Given the uncertainty as to the form and use of the community hub he attaches only limited weight to this. He considers that the games areas, new primary school and educational contributions are required as mitigation and should not be regarded as benefits.
- 8.36 The site is agreed to be in an accessible location but Mr Wood argues that this should be given only limited weight because the proposal does not accord with Policy PG1. As there would be a net loss in the total area of open space comprised in the site, he does not consider the provision of 12.45 of GI to be an environmental benefit and does not accept that there would be a net increase in biodiversity on the site. He does not judge the potential benefits sufficient to indicate that the appeal should be determined other than in accordance with the development plan. In cross examination he declined to add the market and affordable housing and other potential benefits together and afford these a combined weight in the overall planning balance. He considered that this would risk conflating the benefits.
- 8.37 Overall, BCC considers these issues to be a matter for the judgment of the SoS. The Council contends that provision made by the proposal to offset external costs does not constitute an independent benefit and that the alleged benefits do not outweigh the statutory presumption. The appeal should, therefore, be rejected. The Council refers to Mr Downes' agreement that the approach taken by Inspector Graham in the Oundle appeal decision<sup>42</sup> is correct in principle; namely that if the proposal is not "sustainable" the appeal should be dismissed. That principle applies in this case.

#### *B&BCWT Objection*

- 8.38 In its written response to B&BCWT's objection (ID 39) BCC states that, notwithstanding the outcome of the appellant's Local Site Assessment, the appeal site has potential as a Site of Local Importance for Nature Conversation (SLINC). Officers have had regard to the local site assessment criteria in their assessment of the proposal. The revised DF does not directly address the issue of the site's potential SLINC status but does more effectively address concerns relating to its value. The revised DF adheres to the requirements of the NPPF and BDP Policy TP8 by following the "mitigation hierarchy" and delivering a biodiversity net gain.
- 8.39 Careful phasing of the development would be required to ensure that mitigation measures can be delivered and demonstrated to be effective before existing habitats are removed. Effective management of the GI would be essential to ensure that the ecological value of retained and newly created habitats is sustained once the development is completed and occupied. The draft conditions proposed by BCC would provide a mechanism by which appropriate mitigation and future management could be secured.

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<sup>42</sup> APP/G2815/A/2209113 dated 29.09.14 at Mr Wood's Appendix MW/7



### *Sport Improvement Fund contribution*

8.40 BDP Policy TP11 refers to the loss of existing sports facilities. Paragraph 3 says:

*"Sports and physical active facilities will be protected from development, unless it can be demonstrated that they are surplus to requirements through a robust and up to date assessment of needs. Where there is an identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality of replacement provision is provided".*

8.41 BCC and Sport England accept that the site is surplus for golf use but BCC does not consider it surplus to all sports. Policy TP11 requires compensation for the loss of the facility with mitigation of a similar value to the community. BCC calculate the cost of laying out new sports pitches elsewhere to be £15 per sq. m. Multiplying that figure by the 17.9 ha of land to be developed for residential use gives a total of £2,685,000. That is the estimated cost of replacement provision elsewhere and BCC considers that this payment should be directed to the provision of facilities for sporting use rather than open space. This is the level of compensation that is due.

8.42 During the course of the application, Sport England requested funding for the provision of enhanced football facilities in the form of two 3G artificial pitches and associated parking and changing facilities at an estimated cost of £1,600,000. BCC supports that provision. If that cost is deducted from the £2,686,000 total compensation payable it leaves a sum of £1,085,000 (the 'Additional Sport Improvement Fund Contribution') that should be included in the S106 planning obligations.

### *Secondary School contribution*

8.43 The parties agree that a development of up to 800 homes of the type and size envisaged would be likely to accommodate 168 pupils of secondary school age. BCC accepts that not all families moving into the development would be new to the area and that a percentage of pupils would already be attending local schools. However, the City is experiencing growth in all year groups and there is net growth in demand for high school places.

8.44 BCC uses the national formula to calculate the number of school places required to serve new housing developments and it is not its practice to apply discounts for the proportion of pupils who attend Grammar, faith or other schools outside the main school sector. The Department for Education (DfE) adopt a surplus capacity figure of 2% when assessing capacity in relation to capital funding for school places. However DfE has confirmed in their email to Mr Marlow (ID44) that there is no recommended level of surplus and that local authorities can set a level appropriate to their local circumstances while not carrying excessive levels. BCC's practice has been to apply an allowance of between 2.5 and 5%.

8.45 Although the officer report stated that local secondary schools are full BCC acknowledge that this is not the case and that there would be capacity for an additional 44 pupils to be accommodated in the period up to 2020. There would not, however, be sufficient capacity to provide the residual 124 secondary school places required.

- 8.46 BCC does not accept that there are 154 surplus places at Turves Green Boys School. Lower admission limits have been applied in the upper school as a result of the phased expansion resulting from the recent rebuilding of the school. There are currently 57 vacancies but the school is likely to be operating at 100% of its capacity (with 150 in each year group) within the next four years. At Colmers School there are only 3 vacancies in Year 7 and 97% of its capacity is filled. A surplus of 5% is considered tolerable to allow for in-year changes and the school is accordingly considered to be full.
- 8.47 Balaam Wood School is operating at 84% of capacity with vacancies clustered in the upper year groups. It is seeing increased intakes and is likely to be full to capacity over the next 4 years. The Planned Admission Number (PAN) has been reduced from 107 to 97 to assist the school on its school improvement path following an Ofsted inspection. Even if the PAN was reinstated to its former level the school would be likely to reach capacity in a few years' time.
- 8.48 The Council maintains that an additional 124 secondary school places would be required to meet the likely needs generated by the development and that a financial contribution of £2,221,451<sup>43</sup> is needed to provide appropriate mitigation for this additional demand on secondary school provision in the area.

## **9. The Case for Bloor Homes (Western)**

The case for the appellant is summarised as follows.

- 9.1 The site is a redundant golf course within the built-up area of Birmingham. It has been vacant and unused for nearly two years and the buildings on it have been subject to vandalism and arson. There is no public access. The number of houses proposed has been reduced to a maximum of 800 and the open space has been increased by 1.5 ha, leading the Council to withdraw RfR 2. It is EIA development that has been fully assessed under a worst-case scenario. The development would be in a sustainable location and deliver a policy compliant level of affordable housing. There is no objection to the loss of the golf course and the public open space proposed far exceeds the necessary requirement.
- 9.2 Policy PG1 is concerned only with setting the housing target and there is no sensible basis for alleging a breach through an individual application. Even if that were not the case, a plethora of material considerations weigh in favour of the proposal. The appellant challenges the Council's 5YHLS but does not rely upon this. The availability of an up-to-date development plan and 5YHLS is no bar to the delivery of new homes on greenfield sites. If the SoS agrees that the Council is unable to demonstrate a 5YHLS the tilted balance under paragraph 11 of the NPPF is triggered. It is evident that the adverse impacts of granting planning permission would not outweigh the benefits.

### *Policy*

- 9.3 In cross examination Mr Wood confirmed that, in respect of RfR1, the Council relies only on the first sentence of Policy PG1 which reads:

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<sup>43</sup> 124 places x £17,914.93 per additional school place

*“Over the Plan period significant levels of housing, employment, office and retail development will be planned for and provided along with supporting infrastructure and environmental enhancements.*

*- 51,100 additional homes...”*

- 9.4 PG1 sets no ceiling for growth. It would be perverse if it did so given the need for around 38,000 dwellings to be met in other local authority areas outside of Birmingham. Not only does the BDP prescribe no ceiling but paragraph 8.13 of the explanatory text to Policy TP29 ‘Housing Trajectory’ states that:

*“Whilst the trajectory sets out annual provision rates, they are not ceilings. Housing over and above that set out in the trajectory will be facilitated wherever possible”.*

That is a strong statement of the Council’s intent.

- 9.5 The BDP allocates specific sites for only some 12,950 dwellings in the Growth Areas GA2-GA10 and relies upon windfall sites for the majority of the 51,100 unit requirement. Together with the GA1 (City Centre) allowance, the site allocations account for only about 50% of the housing target. At least half of that target will need to be delivered on windfall sites.

*Whether the site is a windfall site*

- 9.6 The definition of “windfall sites” in the NPPF glossary is easily understood and there is no need to look at the 2012 NPPF definition as an ‘aid to interpretation.’ The wording of policy should be given its ordinary and sensible meaning. In any event, reference to the 2012 NPPF does not support the Council’s case. Under the old definition a windfall site is one not identified in the Local Plan process whereas the new definition states that they are sites not identified in the development plan. The term “development plan” can be understood by reference to section 38(3) of the Planning and Compulsory Purchase Act 2004 which states that:

*“For the purposes of any other area in England the development plan is ...the development plan documents (taken as a whole) which have been adopted or approved in relation to that area”*

- 9.7 The definition does not include development plan documents still to be adopted or the process of preparing the development plan but simply the adopted development plan documents. In the present case that is the BDP. There is no agreement between the Council’s witnesses as to whether any size threshold applies to windfall sites. Mrs Han stated that the Council does not have any size limit whereas Mr Wood asserted that a limit can be inferred by reference to NPPF paragraph 68. That assertion is misplaced.
- 9.8 Found under the heading of “*Identifying land for homes,*” paragraph 68 is there to remind local authorities that small and medium sites can make an important contribution to meeting housing need. It encourages authorities to support windfall sites through their policies and decisions but gives no guidance that windfall sites can only be small or medium in size. Mr Wood accepted that, when determining the application for its redevelopment for 210 dwellings, BCC’s

planning officers treated Hall Green Stadium<sup>44</sup> as a windfall site but was unable to say either what a large site is or what maximum size threshold should be applied to windfall sites.

- 9.9 The contention that the appeal site cannot be a windfall because it was considered and rejected by the BDP Examining Inspector is unfounded. The NWGC site is dealt with in the EIR<sup>45</sup> at paragraphs 222 and 223 which read as follows:

*"North Worcestershire Golf Club [NWGC] is in financial difficulties and is shortly to close. Its course, which could potentially accommodate around 800 new dwellings, is in a sustainable location outside the Green Belt in the southern suburbs of the city. At present there is no public access to the course, and it is likely that provision of open space as part of any development could compensate for the loss of public views from the site perimeter (para 222).*

*However, the course is surrounded by residential streets and lies some distance from the nearest main roads. While I was shown details of proposed access points to the site, there has been no detailed analysis of the impact of traffic from an 800-house development on the local road network or on local residents' amenity. In the absence of such analysis, the allocation of NWGC for development would not be justified. No other substantial areas of greenfield land in Birmingham were shown to be available for development" (para 223).*

- 9.10 It is clear from these paragraphs that the Examining Inspector found that the site is in a sustainable location in the southern suburbs and that the provision of open space would compensate for loss of views from the perimeter. His only concern was that there was inadequate evidence before him on the likely traffic impact of its development. This matter has since been resolved. Any assertion about him having an 'in principle' objection to the allocation of the site for housing is incompatible with his finding that it is in a sustainable location. If the Council's proposition were correct, it would have the perverse effect of dissuading land owners from putting potential sites forward in 'call for sites' exercises in case they were rejected and, in consequence, forever barred from being considered as suitable sites regardless of their merits.

#### *BDP reliance on windfalls*

- 9.11 The Council's 2014 SHLAA assumed 7,600 completions on windfall sites over the rest of the Plan period to 2031. The Examining Inspector found this a realistic and achievable figure. His expectation that this was likely to be exceeded (paragraph 58 of EIR at CD F3) has been borne out. Table A4.2 of the 2018 SHLAA (CD F1) shows 1,395 completions on windfall sites in 2016/17 and 1,593 in 2017/18. The SHLAA records that windfalls have played "a very important role in enabling housing growth in the City" (paragraph 5.4), and that they have made "an important contribution to meeting the city's housing growth over the last 20 years".
- 9.12 Because the BDP is predicated upon windfall sites windfalls are 'planned' for within the context of Policy PG1. That reliance has been increased by

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<sup>44</sup> See paragraph 6.19 of Officer report at CD S32(c)

<sup>45</sup> CD F3

substantial delays in bringing forward the Langley SUE. That site was removed from the Green Belt to provide development including approximately 6,000 new homes (BDP Policy GA5) with the intention that 5,000 would be delivered within the plan period. At the EiP it was assumed that the SUE would start to deliver housing soon after the adoption of the BDP and contribute to increased delivery in housing completions under the stepped trajectory. Paragraph 85 of the EIR notes that:

*"From 2018 and for the rest of the plan period there is a further step up in the delivery trajectory to 2,850 dpa, largely accounted for by the output from the Langley SUE which is expected to reach maximum annual output by that date".*

- 9.13 In the April 2017 SHLAA, the Langley SUE was predicted to deliver 655 dwellings between 2017 and 2022<sup>46</sup>. In the 2018 SHLAA<sup>47</sup> no dwellings are expected to be delivered within the period to 2023. Mr Wood advised that the earliest date for a start on site is 2023-24 but no evidence was presented to confirm that. Delivery of new homes at Langley is now anticipated to continue until 2041 meaning that only about 2,000 homes will be delivered the BDP plan period. The expected shortfall of some 3,000 in the number of homes at Langley by 2031 will further increase the Council's reliance on windfall sites to meet the 51,100 target. This is not just a numerical point.
- 9.14 Policy GA5 identifies the SUE as *"a destination for families wishing to live in Birmingham"* and that it is intended to provide a mix of housing types and tenures including affordable housing. The delay in bringing it forwards means that the BDP will not provide family and affordable housing in the numbers required. Given the overwhelming focus of present delivery on City Centre apartment schemes it will also fail to deliver the mix of housing types needed. The appeal proposal would provide exactly those types of properties and could deliver these in the short term<sup>48</sup>.
- 9.15 Accordingly, there is no breach of Policy PG1 and reference to Policy TP28 adds nothing to the Council's case. No conflict is alleged with the first 5 criteria and the last bullet serves simply to ensure that other policies are taken into account.

#### 5YHLS

- 9.16 NPPF paragraph 67a requires that Councils should identify a supply of *"specific deliverable sites for years one to five of the plan period"*. There is a clear distinction between the definition of "deliverable" in the glossary to the new NPPF and that in the 2012 NPPF<sup>49</sup>. The previous one allowed the assumption that all sites with planning permission could be included unless clear evidence indicated otherwise. The present definition allows the assumption that small sites and sites with detailed planning permission can be included unless clear evidence indicates otherwise. Sites with outline planning permission, permission in principle, allocations or those identified on a brownfield register may only be included where there is clear evidence that completions will begin

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<sup>46</sup> See extract at ID30 – site N646

<sup>47</sup> See pro-forma for Site N646 at CD F1

<sup>48</sup> See trajectory for site development at ID36

<sup>49</sup> Footnote 11 on page 12



within 5 years. This is different from the previous and lower bar of schemes being implemented within 5 years.

- 9.17 The previous PPG (2014)<sup>50</sup> indicated a presumption in favour of including all sites with planning permission and all allocations, and also allowed sites with neither a development plan allocation nor a planning permission to be included. This is the text cited in the St Modwen judgment (CD32). The Court of Appeal's approach was predicated on the old definition in the NPPF and the now superseded PPG guidance as to the meaning of "deliverable".
- 9.18 The words "realistic prospect," remain in the first part of new definition but must be read in the context of very different guidance in the revised PPG. The rest of the definition does not adopt a "realistic prospect" threshold. Instead, in relation to sites with outline permission and the other categories listed, it requires that the Council should have clear evidence that housing completions will begin within 5 years. There is no scope for applying a "realistic prospect" threshold to this part of the definition.
- 9.19 Counsel for BCC sought to introduce arguments about the standard of proof required but the adoption of that legal concept is not appropriate in relation to planning decisions. The Inspector and SoS are free to reach their conclusions based on the plain English meaning of the words "*housing completions will begin within 5 years*". A judgement should be made on the evidence and without the qualification of a lower "realistic prospect" threshold.
- 9.20 Once first completions have been delivered on such sites the realistic prospect test applies to the separate issue of what will be delivered over the 5 year period. On sites with detailed permission and small sites, the onus is on the appellant to justify why a site should be discounted but the evidence threshold is the same. For these sites the test requires clear evidence that homes will not be delivered within 5 years. No part of that test requires a "realistic prospect" threshold for discounting sites from the 5YHLS.
- 9.21 The first sentence of the NPPF definition is concerned with delivery rates. The second and third sentences are concerned with the separate issue of lead-in times. What the Government has done is to tighten up the definition of lead-in times. The Court of Appeal's distinction between deliverable and actual delivery, in paragraph 41 of the St Modwen judgment, is based on the 'realistic prospect' test. That is no longer the test for lead-in times. However, Mr Hawley confirmed that, even if the realistic prospect test is applied to all sites he would still discount the same sites and numbers of units from the 5YHLS. He has identified specific reasons why these sites or dwellings should not be included.
- 9.22 What constitutes "clear evidence" for the purpose of assessing deliverability is a matter of planning judgment. The definition refers to sites no longer being viable, there being no demand for the type of units and sites with long term phasing plans but this is a non-exhaustive list. The matters that might be raised are unlimited and an appellant is entitled to raise issues such as the fact a site is still operating as a commercial business or as offices. When the inclusion of a site within the 5YHLS is challenged, there is an onus on the Council to produce evidence to rebut that challenge. There is no general

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<sup>50</sup> Appendix 1 to Mr Hawley's rebuttal proof

standard of proof and what is required will depend on each site but this may include market evidence where relevant.

- 9.23 Mr Willet's evidence identifies various sites in the City Centre that have been mothballed or where no real progress has been made towards the construction of the dwellings that the 5YHLS assumes will be delivered. His expert opinion is that not all these sites will begin and that a 50% discount to the number of homes assumed is appropriate. This evidence is supported by the market reports appended to his POE and by his discussions with 2 high profile City Centre letting agents who have privately expressed their concerns about the oversupply of stock coming forward (paragraph 7.4 of POE). The application of market realism is a perfectly acceptable way of challenging sites in the supply. As the Council present no separate market evidence it is difficult to see how the decision maker can leave that challenge unanswered.
- 9.24 Mr Hawley relies on Mr Willet's evidence for the deduction he makes to reflect the market evidence but Mr Willet does not seek to tell Mr Hawley what figure to deduct from the 5YHLS. Mr Willet works from a different time period because he is considering when the market would expect sites to come forward. He uses the term "under construction" with its plain English meaning rather than as used in the categorisations adopted by the Council. Mr Hawley's adoption of a 50% deduction from the numbers assumed to be provided by City Centre apartments with detailed permission is based on the principle that Mr Willet explains in his evidence. There is no inconsistency between Mr Willet's evidence and that of Mr Hawley. Looking for similar numbers in their respective proofs misses the key difference about their different roles at the Inquiry.
- 9.25 The appeal decision in relation to land at Woolpit, Suffolk<sup>51</sup> is the first in which an Inspector has considered the meaning of the revised definition of 'deliverable'. Inspector Stephens' comments at paragraph 65 that:
- "The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of 'Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed planning permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The onus is on the LPA to provide that clear evidence for outline permissions and allocated sites."*

- 9.26 At paragraph 69 he continues as follows:

*"The updated PPG on Housing and economic land availability assessments sets out guidance on what constitutes 'deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so."*

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<sup>51</sup> APP/W3520/18/3194926 dated 29.09.18 at ID9

- 9.27 Inspector Stephens did not need to depart from the relevance of the St Modwen judgment but his comments are instructive. As agreed by the Council the correct approach to be taken under the revised definition is that:
- i) the burden of proof lies with the appellant for small sites and sites with detailed planning permission to show that they are not deliverable within five years, i.e. there is a rebuttable presumption;
  - ii) for sites with outline planning permission, allocations, sites with permission in principle and sites on a brownfield register the burden lies with the Council to demonstrate clear evidence that such sites are deliverable and that completions will occur within five years;
  - iii) there remains disagreement between the parties as to where the burden of proof lies in respect of permitted development sites.
- 9.28 PPG paragraph 36<sup>52</sup> outlines what might be required to demonstrate that housing completions will begin within 5 years. The clear evidence required may include:
- "-any progress being made towards the submission of an application;*
- any progress with site assessment work;*
- any relevant information about site viability, ownership constraints or infrastructure provision."*
- 9.29 Examples of such evidence include a statement of common ground between the local authority and site developer confirming delivery intentions and anticipated start dates and build-out rates and a hybrid planning permission for large sites linked to a planning performance agreement that sets out the timescales for conclusion of reserved matters applications and discharge of conditions. These examples are not a closed list but indicate of the level of detail required.
- 9.30 PPG paragraph 47 states that local authorities should carry out an annual assessment of their 5 year land supply in a robust fashion based on up-to-date and sound evidence. Authorities may need to develop a range of benchmarks and assumptions to inform and test assessments. Such assumptions should be;
- (i) based on clear evidence;
  - (ii) consulted upon with stakeholders (including developers);
  - (iii) regularly reviewed and tested against actual performance; and
  - (iv) should be clear, transparent and available as part of assessments. That is the approach identified by Inspector Stephens at paragraph 69 of his decision. The Council's evidence does not meet those standards.
- 9.31 The Council's evidence concerning the deliverability comprises the 2018 SHLAA report (CD F1) and the 5YHLS 2018-33 report (CDF2). For all sites carried across from the SHLAA, the 5YHLS report simply reproduces the SHLAA pro-forma site assessment sheet. The information on those sheets is, however, very limited. They show the number of completions anticipated in Years 1-5, 6-10 and 10+ but do not include a housing trajectory showing annual delivery. They provide brief information on land ownership, date and type of planning permission, last known use, and any heritage or environmental designations. Using "Yes/No" tick boxes they provide only brief information on factors such as

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<sup>52</sup> Appendix 2 to Mr Hawley's rebuttal proof



contamination, the need for demolition of existing buildings, and the presence or absence of site access issues.

- 9.32 In most instances, there is no analysis of a likely start date or whether there are any constraints to be overcome. The majority of the sheets provide no indication that discussion has taken place with the site owner/developer or any detailed information on build-out rates or phasing. They take no account of whether the site is held by a house builder/residential developer or is simply a site with planning permission owned by land traders/investors/speculators. Without this detail the 5YHLS does not provide a robust assessment of whether sites are likely to come forward within the five-year period. No other evidence is provided by the Council to show that this is the case.
- 9.33 The appellant's evidence shows that some of the information in the pro-forma sheets is incorrect, some is out of date and some unrealistic. Most disclose no attempt to analyse constraints or to interrogate the prospect of site delivery. Many such questions could have been answered had the Council engaged with the development industry but it has chosen not to do so. This has significant repercussions for the quality of its evidence in support of the claimed 5YHLS.
- 9.34 Mrs Han asserted that sites with detailed planning permission that have been 'implemented' should be counted in the 5YHLS but this does not provide clear evidence that housing will actually be delivered within 5 years. Many planning permissions are preserved by making a material start. The appellant accepts that it carries the burden for showing why sites with detailed planning permission sites should be discounted. However, despite producing a rebuttal proof, the Council has not provided any more detailed evidence to show that housing will be delivered on the sites that the appellant has challenged.
- 9.35 The dogmatic nature of the Council's approach was demonstrated in Mrs Han's response to the Inspector's questions regarding site N536<sup>53</sup> where permission was first granted in 2010 and was extended for a further 3 years in July 2013. Despite the minimal works undertaken to implement the permission and a photograph taken 2 years' later which shows a complete absence of any subsequent construction, Mrs Han insists that the site should be characterised as being "under construction".
- 9.36 In relation to Site E446<sup>54</sup> the photographs demonstrate that no construction works are ongoing. There is no information in the SHLAA or 5YHLS to indicate what works have been undertaken. Mrs Han said that this was in an officer report but that was not before the Inquiry. This is a further example of the Council failing to provide more detailed information about delivery in response to the appellant's challenge.
- 9.37 The Council has granted extended time limits on a number of large and complex sites within the 5YHLS. For example, the Masshouse site (Site CC220 at CD S48) was granted permission in 2008 with a period of 8 years for submission of reserved matters. The appellant accepts that Phase 1 will deliver new homes within 5 years but questions the inclusion of Phase 2 when no residential

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<sup>53</sup> CD S49

<sup>54</sup> CD S50

developer or builder has yet been identified to take that phase forward. The Council continues to include it without further analysis.

- 9.38 On site N856 (CD S29) outline planning permission for 504 units was granted in December 2015. Mrs Han's evidence is that a new application for 750 dwellings is anticipated. The SHLAA has increased the capacity to 750 units with the first 150 to be delivered in Year 5 even though no new application for this larger number has yet been made. Mrs Han accepted that the developer was unlikely to build out the present outline permission and that no information is available as to the timescales and conditions that might be attached to any new permission. Nevertheless, and with apparent reliance upon a planning performance agreement which is neither referenced in the SHLAA or 5YHLS report nor available on the Council's website, the Council maintains that the site should be retained in the 5YHLS. Other information that the Council relies upon is not available because there is no publicly accessible record of applications to discharge conditions.
- 9.39 The assumptions about lead-in times and build-out rates that underpin the 5YHLS are taken directly from Table A5.1 of the SHLAA<sup>55</sup> and are based on average historical delivery rates. They do not meet the requirements of PPG paragraph 47 since:
- i) The calculations and data behind them are not transparent;
  - ii) The calculations and data behind the headline figures are not available; and
  - iii) There is no indication that, in formulating the assumptions, there has been any consultation with stakeholders including developers (save, presumably, for monitoring site completions).
- 9.40 The Council states that its assumed contribution from windfall sites of 272 dwellings per year is conservative in the context of past completions. Table A.4.6 in the SHLAA indicates that 72% of all completions over the periods 2016/17 and 2017/18 were on windfall sites but that cannot be confirmed. The Council holds information on the constituent make-up of those claimed windfalls for 2017/18 but cannot produce this for the other reporting years. There can, therefore, be no certainty that all the dwellings included as windfall completions were actually on sites that had not previously been identified in the SHLAA<sup>56</sup>.
- 9.41 Mr Hawley argues (paragraph 12.3 of main POE) that some 28.8% of the completions recorded by the Council in 2017/18 as windfalls were on sites of 10 dwellings or more. As these are large sites he contends that they should be removed from the windfall category as the NPPF definition of deliverable excludes the use of a large site windfall allowance. In the absence of any other information to remove the large site allowance he proposes that the windfall allowance should be reduced by 28% from 340 dpa to 242 dpa.

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<sup>55</sup> CD F1 at page 40

<sup>56</sup> Note that the SHLAA defines windfall sites as "sites that have not previously been identified at the time that detailed planning permission is granted. That means not only that they have not been identified in the local plan process but also that they have not been included in the SHLAA". (Paragraph 3.2 of Part A4 to the SHLAA at CD F1)

- 9.42 In Mr Hawley's opinion a windfall allowance should be included only in years 4 & 5 rather than in years 2-5. He considers that the majority of windfall permissions that have been granted will have conditions that require a commencement within 3 years. As such there are windfall sites that will be completed over the next 3 years that already have planning permission and are included in the Council's commitment figures. That being the case a windfall allowance for years 1 & 2 would result in double counting. By applying both of these discounting factors Mr Hawley suggests a total windfall allowance within the 5YHLS of 484 dwellings rather than the 1,360 adopted by the Council.
- 9.43 In asserting that that there is no need to apply a lapse rate because the conservative windfall allowance offsets the need to do so and that the application of such a rate would make the assessment less reliable Mrs Han referred to the EIR. There are no such references in the EIR. Mrs Han confirmed that she had not attended the EiP and could not say whether there had been any discussion about lapse rates. She also accepted that some sites included in the 5YHLS had in fact lapsed. In relation to Site CC377 (CD S4) she conceded that the 73 apartments which the 2018 5YHLS assumes will be delivered within the 5 year period, should be deleted because the planning permission will expire in November 2018.
- 9.44 Mr Hawley's position is that a lapse rate of 10% should be applied to all sources of supply within the 5YHLS other than the 'under construction' and windfall categories. He justifies this by reference to 2 larger sites where planning permission has expired (paragraph 12.7 of POE) and a number of permissions in relation to the disputed sites that he says have expired or are soon to expire.
- 9.45 In addition, the identified 5YHLS is heavily reliant upon City Centre apartment schemes. Some 85% of the dwellings in the "under construction" category and 83% of those with detailed permission comprise City Centre apartment schemes.<sup>57</sup> The 5YHLS does not, therefore, provide for a varied portfolio of development opportunities.
- 9.46 The Council's assumption that City Centre apartment schemes will deliver 100% of the units predicted within the 5 year period is a further risk factor. On Mr Willet's evidence these schemes have a higher risk profile than other market segments because:
- i) They require a substantial capital outlay with no return until the development (or a phase of it) is completed and sold;
  - ii) They take longer to build and can only be released to the market in a single block or in tranches;
  - iii) Large numbers of apartments coming onto the market leads to competition for buyers which can depress sales values and require incentives or discounting. This impacts on investment return and influences investment decisions;
  - iv) Large numbers of new stock impacts on the value of second hand stock, again influencing investment decisions in relation to the second hand stock. As the principal investors are domestic and overseas buy-to-let/ private rented sector investors a depreciation in the value of

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<sup>57</sup> Tables 4 & 5 at page 23 of Mr Hawley's main POE

existing investments will negatively influence their investment in new schemes.

- 9.47 The appellant has not challenged some two thirds of the Council's 5YHLS. However, it has produced clear and robust evidence to show why each site that it has challenged should be discounted or why the number of units expected to be delivered within the 5 year period on that site should be reduced. The appellant's detailed evidence on the disputed sites within the identified sites part of the 5YHLS is set out in Appendix B.
- 9.48 On the basis of that evidence the parties' final positions regarding disputed sites are set out in the combined table produced by Mr Hawley (ID 18) and can be summarised as follows:

Source	BCC Original Figure	Appellant's Original Figure	BCC Revised Figure	Appellant's Revised Figure
Under Construction	9111	8802	9060	8804
Detailed Planning Permission	7615	6022	7540	6063
Outline Planning Permission	773	38	713	38
Permitted Development	868	264	868	264
Allocations in BDP	155	-200	155	-200
Other Opportunity	531	-89	487	-89
Windfalls	1360	484	1360	484
Sub-Total	20,413	15,321	20,183	15,364
Years Supply	6.79	5.1	6.72	5.12
Adjusted – 50% attrition rate applied to remaining City Centre apartments schemes still in supply	-	-1956	-	-1956
<b>Total</b>	<b>20,413</b>	<b>13,365</b>	<b>20,183</b>	<b>13,408</b>
<b>Years supply</b>	<b>6.79</b>	<b>4.45</b>	<b>6.72</b>	<b>4.46</b>

### *Affordable Housing*

- 9.49 Mr Stacey's evidence on affordable housing provision was not challenged. Table 7.1 of his proof shows that, over the first 6 years of the plan period 2,757 new affordable homes were provided against a target provision of 5,820 (6x970). When the losses of social rented dwellings through right to buy purchases is taken into account that equates to a net provision of only 151 new affordable homes over that period (Mr Stacey's Tables 7.2 & 7.3) against an identified need for 970 affordable homes each year. This represents only 1% of all completions over those 6 years and 3% of the affordable housing need for that period. It has also resulted in a net delivery shortfall of 5,669 affordable homes over the plan period to date.

- 9.50 It is important to remember that the need is generated by families and individuals unable to secure suitable accommodation to meet their needs. The level of need has shot up. At 1 April 2018 the number of households on BCC's Housing Register was 9,234. The new information (ID40) shows that the number is now 12,051, an increase of nearly 3,000 households. Against that level of need the net provision of only 151 affordable homes over the plan period to date is pitiful. That trend is likely to worsen over the short to medium term because of the heavy reliance in the 5YHLS on City Centre apartments schemes which, as the Council accepts, deliver little if any affordable housing.
- 9.51 It is agreed that there is a housing crisis both nationally and locally. The position is getting worse in Birmingham. The 38,000 dwelling unmet need to be provided outside of the City includes 14,400 affordable units but BCC is failing even to provide the affordable housing proposed in its own area. The provision of affordable housing in the City has collapsed.

#### *Public consultation*

- 9.52 When properly considered the representations about the inadequacies of the public consultation amount to a complaint that no alternative proposals for the re-use of the site were on the table. The representations show that there is no consistent view as to what alternative the site could be used for.
- 9.53 From the start the appellant has undertaken an extensive programme of local consultation to inform the evolution of a proposed residential scheme (e.g. its design, its scale, how to mitigate any potential impacts of it, landscape and highways matters). The consultation is necessarily framed by the residential proposal and is not designed to explore alternative uses. The level of engagement is beyond that which would ordinarily occur and is an exemplar of public consultation. Given that extensive consultation it is indicative of the degree of local objection that the number of local residents attending the Inquiry never exceeded eight people and, on most days, was limited to 4 or 5.
- 9.54 The proposal to develop up to 800 dwellings is a reduction from that submitted (950 dwellings). That amendment falls properly within the Wheatcroft principles as demonstrated by:
- i) The further round of consultation undertaken with regard to the revised scheme by post and email directly to local residents;
  - ii) The confirmation to the Inquiry by all members of the public present that they had received such notification;
  - iii) The submissions made by those members of the public present show that they objected to the scheme in any event (i.e. a 'root and branch' objection in principle);
  - iv) That revision being a reduction in the scale of development proposed;
  - v) The Council's recognition that the amendments properly fall within the Wheatcroft principle.

#### *Traffic and highways*

- 9.55 The Highways SoCG (ID16) confirms the Council's agreement, as the Local Highway Authority, that there are no adverse highways impacts such that the proposal should be refused. A further note submitted to the Inquiry [ID19] by

Mr Parfitt raises nothing that was not already in his evidence. It does, however, provide a targeted response to third party concerns.

- 9.56 The WMAS email refers to 105 ambulance movements per day but this includes non-‘blue light’ movements to and from the Hub approximately 1km to the south west of the site. The TA assesses the effect of the proposal at 11 key junctions along five routes from the Ambulance Hub to the wider highway network including the new site access junctions proposed. Figure 1 of ID19 provides a comparison of total delay along each of those routes at: (i) 2026 assuming base traffic levels without the appeal development or proposed mitigation; and (ii) in 2026 assuming base traffic levels with the development of the appeal scheme and proposed mitigation.
- 9.57 Figure 1 shows that blue light vehicles would experience additional delays on two of the routes (to the north-west and the south) of about 2 seconds. There would be no change on the route to the west. On the route to the north east, via Frankley Beeches Road, journey times would be improved as a result of the proposed mitigation works, with delays reduced by between 4 and 9 seconds. The route to the east, via Tessall Lane, would have a substantially improved outcome with a reduction in delays of between 46 and 108 seconds in peak periods. The extra lane proposed on the Tessall Lane approach to its junction with the A38 would also provide greater scope for blue light vehicles to ‘push through’ stationary traffic. The concerns about ambulance response times are not borne out by proper analysis
- 9.58 The TA was the subject of a scoping exercise agreed with BCC as Local Highway Authority<sup>58</sup>. Future growth and development commitments, including at Longbridge, are accounted for in the traffic modelling. The TA provides a robust assessment for conditions at the modelled year of 2026. It is particularly robust as it has been carried out on the basis of a 950 dwelling scheme rather than the 800 dwellings now proposed and because the development is expected to be completed before the 2026 modelling year. Mr Parfitt confirmed that it was extremely robust on the impact of traffic likely to be generated by the residential development and the primary school. In his opinion, compared to the 950 dwelling scheme, there would be some 15% fewer movements in the AM peak and 20% fewer in the PM peak.
- 9.59 The Transport SoCG records BCC’s agreement that the site is a sustainable location with good access to local buses and 2 railway stations and significant improvements are proposed on the nearby road network to enhance pedestrian crossing facilities and local bus stops. Given these improvements, and the evidence from the local transport census that some 25% of journeys to work in this part of Birmingham are made by public transport, objectors’ fears that the development would be wholly car dependent are not well founded.
- 9.60 The TA demonstrates that the traffic generated by the development could be accommodated on the local network without significant adverse effects and that all relevant junctions will operate satisfactorily subject to the mitigation works agreed. These works offer scope for a net improvement in the operation of some junctions compared to the situation that would arise with traffic growth but no development.

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<sup>58</sup> See Highway Technical Notes at CD R1



### *Local wildlife and nature conservation*

- 9.61 Mr Goodman's note (ID23) confirms that B&BCWT's objection does not raise any matters not already considered in Section 8 of the ES and his POE. The site's identification as a Potential Site of Interest (PSI) provides a marker for further exploratory work to ascertain its value. The assessment<sup>59</sup> demonstrates that, under most assessment categories, the site has low value and does not conform to the selection criteria for designation as a SLINC.
- 9.62 That assessment shows no significant adverse effects on the retained open space, habitats and species. This is agreed by the Council. Mr Goodman stated his opinion that all potential effects on ecological features would be reduced by virtue of the reduction in the number of dwellings and that no negative effects would result from the changes proposed in the revised DF.
- 9.63 The revised DF clarifies that a substantial proportion of the site would be retained as GI and demonstrates the opportunities for significant enhancement and long term management of its biodiversity value. The mitigation strategy at section 8 of Mr Goodman's POE demonstrates how these opportunities can be further developed at reserved matters stage. He considers that the scale of the GI would enable this to fulfil a 'stepping stone' function, linking the wider countryside and existing habitat areas within the Hanging Brook valley.
- 9.64 Mr Goodman stated that there is no evidence of the presence on or use of the site by Great Crested Newts and that the bat roost in the clubhouse and the 'single clan' badger setts could be dealt with under a NE licence. He saw no difficulty in a licence being obtained. The badgers would be retained on the site with the provision of artificial setts. There are no rare species of bats using the roost and the site's foraging potential is relatively limited. The proposal would provide increased foraging opportunities for bats. It would deliver ecological enhancements as required by NPPF paragraph 174 and does not conflict with any of the principles set out in paragraph 175.

### *Trees and TPO*

- 9.65 The site is unusual in terms of the opportunity it provides to secure residential development alongside carefully considered and managed improvements to the existing trees. Outline design has sought to retain the highest quality trees and protect their root protection areas. The scope for tree retention has increased with the reduction in the number of dwellings. Mrs Kirk confirmed that the reduced scale of development and the changes within the revised DF have a wholly positive effect in terms of the potential impact on existing trees.
- 9.66 Mrs Kirk's response to the Inspector's Pre-Inquiry Note and updated tree plan at ID20 shows that the revised DF provides for the retention of about 55% of the existing tree cover. An additional 8,000 sq. m of tree covered area would be retained compared to the 950 dwelling scheme with most of the additional trees being of Category A classification in the Tree Survey (CD H21). Two additional individual trees-T18 (Category B) and T48 (Category B) would also be retained. The area of new tree planting envisaged in the eco-park, public open space and landscape buffers would be approximately 23,500 sq. m. In combination with

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<sup>59</sup> As summarised in paragraphs 1.8-1.12 of ID23

retained trees this would provide cover equating to about 74% of the existing tree cover. This does not take into account additional planting that might be expected in private gardens.

- 9.67 The design team has carefully considered how best to utilise existing trees. The redevelopment of a former golf course inevitably requires the removal of a significant number of trees but many of those that would be lost are either non-native or tall thin trees that were planted because of their fast growing habit. A number of trees are suitable for lifting and transplanting within the site and this could further reduce the overall number lost as a result of the appeal proposal.
- 9.68 Mrs Kirk submitted a series of plans showing the proposed site accesses overlaid on the tree plan.<sup>60</sup> Table 1 to her note summarises what trees would need to be felled to facilitate the construction of those accesses. Very few individual trees and only small parts of existing tree groups would be lost. Given the very extensive tree cover to be retained around the site boundary these losses are not significant.
- 9.69 Government guidance is that an area TPO should only be made as a temporary measure until the trees can be fully assessed and classified.<sup>61</sup> That assessment will necessarily run parallel to the reserved matters process. The Council's Tree Officer is content that the scheme is capable of coming forward in a way which would retain and protect the best examples of trees across the site.
- 9.70 The visual amenity value is largely derived from public views of the belt of trees to the site perimeter. The DF would retain large blocks of the highest quality trees on the perimeter and in the central area of open space and eco-park and provide significant areas of new tree planting. The overall change in the site's contribution to the visual amenity of the site and surrounding area would not be significant. However, the provision of public access to the open space, where no such access currently exists, would increase the level of amenity. For these reasons the proposal would not have a significant adverse effect on protected trees or on the purposes of the TPO.

#### *Landscape and visual effects*

- 9.71 Some 38% of the site area would comprise GI. This compares favourably with the 21-30% GI cover provided in a typical urban extension or garden village. In addition, particular features of the proposal, including the eco-park and green corridor mean that it performs well in respect of urban and landscape design and that there would be a positive improvement in terms of public experience. The landscape design process has been able to retain the more valuable woodland and the brook and to take advantage of the site topography to provide a wide and robust area of public open space that would add character and a strong sense of place.
- 9.72 Mr Jackson assesses the landscape impact as minor moderate adverse and the visual impact as minor adverse on completion. Both of these impacts would reduce as new mitigation planting becomes established. Due to the retention and enhancement of boundary vegetation only a small number of existing

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<sup>60</sup> Fpcr Drawings 6863-T-01 to 05 included in the bundle of drawings at ID20.

<sup>61</sup> Mrs Kirk POE paragraph 4.7



dwelling would have views into the development and longer range views are very restricted. Where these are available, the site is seen in the context of the surrounding urban development. Mr Jackson confirmed that all potential landscape and visual effects would be reduced by reason of the reduced number of dwellings and the changes in the revised DF. The site currently has low to moderate landscape and visual amenity value. This would be increased as a result of the management and maintenance plan. The provision of public access would also significantly enhance its amenity value to the local community.

#### *Affordable Housing*

- 9.73 Most of the interested persons who spoke at the Inquiry agree that affordable housing provision would be a positive benefit of the proposal. Mr Kennedy considered that adequate provision is being made by the private sector through houses acquired under the 'right to buy' process coming onto the rental market. The appellant respectfully disagrees.
- 9.74 The main concerns are whether the housing would be genuinely 'affordable', whether it would actually be delivered, and what level of benefit it would bring. Councillor Armstrong's view that the affordable housing provision would not assist with the issue of homelessness is inconsistent with BCC's Homelessness Strategy which notes that "*Social housing is a scarce resource*" and "*It is clear that the supply of social rented property is insufficient to meet the requirements of homeless households.*"<sup>62</sup> The proposed provision will be affordable in line with tenure specific rental/price guidelines and will deliver a range of affordable dwellings in the mix that the Council requires.

#### *Scheme benefits and other material considerations*

- 9.75 The only disbenefit asserted is the alleged conflict with Policy PG1 which is rejected by the appellant. Against that alleged disbenefit the positive benefits of the scheme, which sit across the three strands of sustainable development, weigh heavily in favour of the proposal.
- 9.76 Consideration should also be given to the lack of progress by the other local authorities within the HMA towards providing new homes to meet Birmingham's unmet need. North Warwickshire has agreed to provide 3,800 units and the Inspector's report on its Local Plan is expected shortly. Solihull's proposal to provide 2,000 dwellings in its draft Local Plan has attracted objections including one from BCC on the grounds that the figure is too low. There is no agreement as to how or where the majority of the 38,000 units will be provided.
- 9.77 The appellant accepts that the monitoring thresholds in Policy TP48 do not, as yet, require BCC to undertake a review of the BDP. But the 3 year deadline of January 2020 is only 14 months away. This is not a long period in terms of local plan preparation, particularly given the limited progress to date. The fact that no provision is in place to meet most of the unmet need is a material consideration in favour of the proposal. The 800 dwellings proposed would reduce the quantum that has to be met outside the City boundary.
- 9.78 The BDP relies upon Green Belt release for one of its major allocations. The exporting of Birmingham's unmet need is also likely to require Green Belt land

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<sup>62</sup> Pages 20 & 24 of BCC Homelessness Strategy at CD F12

in some other authority areas. For example, North Warwickshire proposes to use Green Belt land to meet its housing need and its share of Birmingham's unmet need. The development of up to 800 dwellings on the appeal site would provide the potential that Green Belt land elsewhere will not be needed to meet the OAN. This is a material consideration in favour of the scheme.

9.79 The benefits of the proposal can be summarised as follows:

- Provision of affordable homes helping to meet the acute housing need. In the circumstances of this case that provision should carry very great weight.
- Market and family housing to contribute to meeting the BDP objectives of meeting the needs of all residents.
- Allowing people to access housing locally when a substantial proportion of Birmingham's housing need is to be exported outside of the City boundary.
- The community hub.
- Substantial GI and new cycling and pedestrian routes on land which is presently not accessible to the general public.
- Delivering housing in a sustainable, accessible location.
- The opportunity to create enhanced habitats and increase bio-diversity.
- Providing 800 homes potentially leads to that quantum of housing not having to be delivered on Green Belt land.
- The scheme represents the effective use of under-utilised land within the built-up area and contributes toward meeting the unmet needs of the area consistent with paragraphs 118b and 120 of the NPPF.
- New resident expenditure in the local economy.
- Jobs and expenditure during the construction phase.
- Delivering family housing for those who work in the city without them having to move to other towns / locations to meet their housing need.

#### *The Planning Balance*

9.80 The appellant's primary case is that the proposal accords with the BDP and should be approved. There are no material considerations which indicate otherwise. If conflict with the development plan is found other material considerations weigh positively in the planning balance and, taken together, indicate that the appeal should be allowed.

9.81 If the SoS finds that the proposal does not accord with the development plan but that BCC cannot demonstrate a 5YHLS the tilted balance applies and lies overwhelmingly in favour of the scheme. Even if the SoS finds that the proposal does not accord with the development plan and that BCC can demonstrate a 5YHLS the appeal should still be approved because the material considerations in favour of the proposal would still substantially outweigh any conflict with the development plan.

### *Planning Obligations*

- 9.82 There is agreement so far as primary education provision is concerned and the needs arising from the proposal are provided for in the s106 agreement.
- 9.83 BCC argues that there is insufficient capacity in local secondary schools and that the shortfall amounts to a maximum of 124 places. This issue only arises as to future capacity. It is agreed that not all the places required would be in Year 7 and that some pupils will already be enrolled at local schools and will remain at those schools after moving home.
- 9.84 It is agreed that the January 2018 Census data provides the most reliable source for assessing current pupil numbers. The Council's argument that a surplus of 5% capacity in a school is tolerable is rejected. DfE and the Education and Skills Funding Agency allow for 2% for planning purposes<sup>63</sup> and this is the appropriate figure to use. The debate should be about the physical capacity of schools rather than the PAN. Statutory guidance is that the net capacity should match the PAN but the PAN for two local schools has been reduced below the capacity level.
- 9.85 At Balaam Wood the original PAN of 107 provided for a total pupil roll close to its capacity of 546 places. Due to issues not concerning the school's physical characteristics the PAN has been reduced and now stands at 90. Some 85 places (17 per year group)<sup>64</sup> that have not been taken into account in the Council's assessment would make a major contribution to meeting the 124 place requirement. In addition, S106 contributions can only be used to increase physical capacity. As no capital works are required to bring pupil numbers back up to Balaam Wood's full capacity no S106 contribution can be justified.
- 9.86 As at September 2018, Turves Green Girls School was operating at 87% capacity with 127 surplus places across the year groups. Turves Green Boys was operating at 87% capacity with 91 surplus places. Colmers School (the largest secondary school in the vicinity of the appeal site) was operating at 92.5% capacity with spaces available in every year group. There is ample capacity within local secondary schools to meet the needs generated by the proposal.
- 9.87 The Sports Improvement Fund contribution of £1.6m for 2 artificial pitches at existing local facilities is justified and provided for in the S106 agreement. However, there is no justification for the additional contribution sought. The former golf club was not open to the public and the site was not and is not used by the community. Policy TP 11 does not require compensation in these circumstances. There is no explanation as to how the figure of £15 per sq. m. of new sports provision, on which the claimed contribution is based, has been calculated and no evidence to support that figure.

## **10. The Case for Interested Persons**

- 10.1 The following paragraphs summarise the statements made by interested parties and their answers to questions from appellant's advocate and me as

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<sup>63</sup> DfE Note re Capital Funding for School Places, 2018-19 Explanatory Note at Appendix 2 to Mr Hunter's rebuttal proof.

<sup>64</sup> Mr Hunter's rebuttal proof at paragraph 7.21

appropriate. The full texts used by interested persons are within the Inquiry Documents Folder 1. Points already covered by another interested party have not been repeated.

**Richard Burden MP**

- 10.2 Mr Burden is a local resident and the Member of Parliament for the Birmingham Northfield constituency. He referred to the comment in the BDP EIR that there had been no detailed analysis of the impact of an 800 dwelling development on the local road network or on local residential amenity and that, without that analysis, the allocation of the site for housing development would not be justified. Mr Burden does not agree that the analysis carried out by the appellant demonstrates that the road network would be able to cope. He is also concerned that the traffic surveys in the TA are out of date with some pre-dating other significant developments in the local area.
- 10.3 He said that Frankley Beeches Road is a main route into Northfield and onwards towards Birmingham in the morning and in the opposite direction in the evening, in both cases with commuters seeking to avoid the main A38 at Longbridge. The roundabout at Frankley Beeches Road/ Egghill Lane is a particular pinch point. The officer report on the application stated that this would be approaching capacity in 2026 as a result of traffic growth; i.e. without the additional traffic from the proposal. Mr Burden thinks that the proposal to form a fourth arm to that junction would make matters worse.
- 10.4 The officer report also stated that the junction of Frankley Beeches Road with the A38 would soon be operating at capacity in the morning and evening peaks and that development-generated traffic would lead to it operating at a "*degree of saturation exceeding 90% in both directions*". Mr Burden has previously asked BCC to look at the signal phasing but has been told that the junction is operating satisfactorily despite there being regular traffic jams. He is not convinced by the appellant's contention that adequate mitigation can be provided by changing the traffic light sequence at the junction.
- 10.5 Mr Burden said that the Tessall Lane/ A38 signal junction experiences regular queues and the officer report said that this was approaching capacity. He is not convinced that a third lane on the Tessall Lane approach could be fitted in and questions how this would provide much mitigation. He also reiterated his concerns that the proposal would lead to an increase in emergency vehicle response times and potentially put lives at risk. In response to Mr Young's questions, Mr Burden accepted that it is the appellant's intention to bring the development forward earlier than 2026 but considered that there would be congestion at peak times.
- 10.6 Mr Burden stated that the site sits on high ground and that the open land within it has always provided a giant soakaway protecting residents on lower ground from flooding. He noted the EA's withdrawal of its objection but understands that they require sustainable drainage issues to be scrutinised and considers that the precautionary principle should be given due weight. Flooding events have occurred several times in recent years and many people living within a mile of the site have suffered their effects. He does not wish this situation to be made worse.

- 10.7 Mr Burden was critical of the quality of the consultation in respect of the site's redevelopment. Roadshows have been carried out but local feedback is that these were promotional rather than consultative with limited opportunity for people to have a say about the site's future. BCC has also been fairly minimalist in consulting on the proposals and the planning obligations.
- 10.8 In response to my question about the letters of support received Mr Burden was surprised at this level of support for the proposal. However, he recognised that there are real concerns about the ability of local people to access both the housing market and affordable housing and said that housing related issues account for the major part of his constituency work. He welcomed the provision of more social rented housing as that is where the main deficit exists but questioned whether the other types of affordable housing proposed would genuinely be affordable for local people. He acknowledged that City Centre apartments provide limited affordable housing but considered that the main constraint on the delivery of affordable homes lies in the financial climate and the constraints on the ability of local authorities to build social housing.

***Roger King***

- 10.9 Mr King said that local people do not understand why the Inquiry is needed when the SoS has received a report recommending that the site should not be allocated for housing development in the BDP. He argued that the site is neither greenfield nor brownfield but is a unique area of open space that has benefitted from over 100 years of maturity and that serves as a natural lung for the local community.
- 10.10 Birmingham is short of tree cover and it is no solution to rip out the majority of the trees to "shoe horn" in 800 homes. Such a proposal should only be permitted in exceptional circumstances. In response to Mr Young, Mr King stated that he was not aware that this test relates to proposals in the Green Belt but considered that there would need to be an exceptional case to justify the site's development in breach of the development plan. There has been a significant level of development in the area over recent decades and the site is an oasis in the midst of high density housing. Sympathetic redevelopment might be acceptable; for example, retirement housing or a care home with the majority of the existing woodland retained and bequeathed to the local community.
- 10.11 Mr King argued that the development would be car based because the bus stops and local railway stations are a considerable walk away. Hence, the proposal would lead to problems on the local highway network and Mr King shares Mr Burden's concerns about the impact on nearby road junctions.

***Gerald Kennedy***

- 10.12 Mr Kennedy lives on Tessall Lane. He was critical of the consultation undertaken, stating a working group which suggested by the appellant was never formed and that no opportunity had been given to local residents to explore the 12 areas of concern identified in the initial consultation. He alleged

that Bloor Homes had declined to attend a meeting of Longbridge Ward Committee in June 2014 as recorded in the minute of that meeting<sup>65</sup>.

- 10.13 Mr Kennedy argued that, due to the scale of recent development in Northfield and Longbridge, no more housing is needed. Saturation point has been reached and local services and infrastructure are unable to cope with more development. He referred to vacancies in a local care village and the withdrawal of 3 estate agents from the local area as evidence of the lack of need for the proposal.
- 10.14 He questioned the need for affordable housing as there is already a good level of access to private rented housing in the area. The local need is for accommodation for homeless people but the appeal proposals would not provide for that need. He rejected the appellant's contention that poor conditions in the private rented sector justify the provision of more affordable housing. The Council has powers under the Housing Act 2004 to require landlords to make improvements. He also argued that shared ownership housing would be out of reach of local people because of the costs associated with this method of purchase and the likely future service charges for shared equity purchasers.
- 10.15 In addition to sharing concerns about congestion and emergency vehicle response times Mr Kennedy raised particular concern about the site access from Tessall Lane. He considers that this would be in a dangerous location because it would be on a steep hill which is particularly narrow at this point. In his view the proposals failed to take into account the recently introduced restrictions on access from the A38 into Farren Road for all vehicles except buses. All other vehicles now need to enter Farren Road from Tessall Lane resulting in a significant increase in traffic through this junction. In reply to Mr Young, he accepted that the traffic order had been introduced to reduce the use of Farren Road for rat-running but did not think that this would work.
- 10.16 Mr Kennedy said that removing TPO trees would be a rejection of the democratic process and thought that safeguarding issues could arise from the primary school and community hub being on the same site. He also considered that the need for electric gates at the access to the school would lead to service vehicles queuing on the highway and result in danger for other road users.

### ***Stuart Turner***

- 10.17 Mr Turner lives on Hanging Lane close to its junction with Tessall Lane. He stated that there are regular traffic queues on the approach to the junction. Together with on-street parking, this makes it difficult and dangerous to reverse out of his drive. Whichever route he takes the local roads are very busy and there are regular queues at nearby junctions including those onto the A38 and at Frankley Beeches Road and Hanging Lane. Local roads are dangerous particularly for children walking to the local schools. He also stated that Hanging Lane floods after heavy rain.

### ***John Churchman***

- 10.18 Having lived in the area for over 30 years Mr Churchman has regularly walked, cycled or travelled by bus on the roads around the site. In his view the site represents an important area of open land that is a haven for wildlife, much of

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<sup>65</sup> Mr Kennedy's Appendix 4 at ID13



which would lose its home if the site is redeveloped as proposed. Its importance is increased because there are few local parks accessible to local people and many community facilities have closed or been burned down.

- 10.19 He argues that, if no longer needed as a golf course, the site should be seen as a potential public asset. Local people should have the right to help determine how its future use can benefit the local community but have been denied that right. They have only been given the opportunity to comment on the plans already put forward. There must be other potential green uses that should be considered before the site is redeveloped for housing. It should be a real windfall for the community. The current proposal fails in terms of consultation, imagination and the exploration of alternative uses.
- 10.20 Mr Churchman raised concern about the location of the proposed pedestrian crossing on Frankley Beeches Road which will be in a dangerous position where forward visibility for vehicles is reduced by a bend and the gradient in the road. He considers that the proposal do not make adequate provision for cyclists, questioning whether routes through the site would bring real benefit to cyclists wishing to use the surrounding roads. He argued that local GP surgeries would be unlikely to cope with the increased demand. He also raised concerns about the housing mix, the sale of houses on a leasehold basis with high ground rents and charges, who would manage the community hub and the future management of the site more generally.

### ***Councillor Armstrong***

- 10.21 Councillor Armstrong is a local resident and ward councillor for the Northfield ward. He has a background in community work and community engagement and does not feel that the appellant has carried out genuine consultation. Mr Young put to him the dates and nature of the meetings with local councillors and other consultation events that had taken place before and after the submission of the planning application. Councillor Armstrong stated that he had been elected relatively recently but had been involved with the local community prior to his election. He was unable to recall whether he had been aware of all of the events mentioned. Based on what he had seen and experienced he maintained his views about the inadequacy of the consultation.
- 10.22 Whilst recognising that the appellant has a range of experts on its professional team, Councillor Armstrong argued the need for detailed engagement with local people who have expert knowledge of the local area and its needs. He raised concerns about the potential effect of the loss of so many trees on climate change, air quality and the water table but acknowledged that he had not been aware of the proposed SuDS strategy for the site. He expressed support for the provision of affordable housing but questioned whether the appellant had spoken with BCC's experts on homelessness in Birmingham. In response to Mr Young, he accepted that he had had time only to skim read rather than study the Council's Homelessness Strategy in detail since his election

## **11. Written Representations**

- 11.1 The officer report (CD K2) records that the application consultation resulted in 136 letters of objection, a petition of objection with 546 names and 6 letters of support. Paragraph 4.28 lists the key concerns of objectors as relating to:

- The loss of a longstanding leisure facility;
- The local area having already experienced high levels of development and the impact on local services and infrastructure;
- The density of housing proposed;
- Loss of space for wildlife;
- Traffic impacts and concerns about noise and pollution;
- Drainage and flood risk;
- Loss of views and overlooking and disturbance during the construction period; and
- A likely increase in crime levels.

11.2 Those who wrote in support welcomed the extra public open space, the school and community hub. Many commented that if this scheme is not supported the site would remain as a wasted space which would eventually be picked up by another developer (paragraph 4.29).

11.3 The notification of the making of the appeal generated some 68 written objections from interested persons and 130 representations in support of the proposal. Of those 130 representations, 10 are from people who identify themselves as existing or former shareholders in NWGC.

11.4 The objections include letters from Richard Burden MP and two local councillors. The issues raised largely reflect the objections to the planning application with a significant proportion of objectors raising concerns about traffic and highway safety. Many objectors say that there has been too much development in the area and that local services would not be able to cope; there is particular concern about school places and health care services.

11.5 Many objectors comment that the land is not allocated for development and that there are alternative brownfield sites available. Many express concern about the scale of development and whether the affordable housing would be within the reach of local people. Concerns about flood risk, loss of open space and a green lung, the effect on wildlife and the risk of increased crime and anti-social behaviour are also shared by many objectors. Some residents who live close the site are concerned about the effect on their living conditions, both during construction and following completion of the proposal, and a small number comment that few of the NWGC shareholders who are likely to benefit financially from the grant of planning permission actually live in the area.

11.6 Many of the 130 supporters express frustration and confusion at BCC's decision to refuse planning permission on a site which is well located in terms of access to local services, public transport and employment areas. Many note that Birmingham has a pressing need for new homes and state that it would be much better to develop the appeal site rather than build in the Green Belt or on greenfield sites in the countryside or in neighbouring local authority areas.

11.7 A large number state that there is an urgent need for new market and affordable housing, with many referring to family members who are struggling to find suitable accommodation in the area. There is wide consensus within



these representations that the development has been planned to include green space and community facilities and not just housing and general support for the provision of a large area of publicly accessible open space. Some refer to the arson and vandalism that has occurred since the golf course closed and the problems that this has caused for local residents and the police. Some say that the proposal would help to support local shops and services.

- 11.8 The appellant carried out a further consultation exercise in June and July 2018 in relation to the reduction in the number of dwellings proposed and the revised DF. The representations received in response to that consultation are included and summarised in CD J8. Of the 81 written representations received, 37 were in support of the proposal and 44 were against.
- 11.9 The objectors at this stage raise a similar range of issues as those raised in objections to the original application and those submitted in response to the appeal notification letter. These include concerns about traffic impacts, additional pressure on local schools and services, flood risk, the effect on the greenspace within the site and the need for the proposed housing. Some also say that 800 dwellings is still too large a development for the site, that more open space should be provided and that the site would be better used as a park or for leisure facilities. None directly oppose the changes in the revised DF.
- 11.10 Those writing in support argue that the proposal would provide much needed housing to help meet the essential needs of the City and reduce the need to develop Green Belt land. Others comment that the revised DF has addressed previous concerns and that the proposal would give better access to educational facilities and represent an appropriate balance between built development and green infrastructure. No significant issues were raised for the first time.

## **12. Planning Obligations**

- 12.1 I have assessed the revised S106 Agreement (ID47) in light of the Community Infrastructure (CIL) Regulations 2010 and paragraph 56 of the NPPF which state that planning obligations must only be sought where they meet the following tests:
- Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 12.2 Most of the obligations within the signed S106 Agreement are agreed between the parties but there remains disagreement as to the payment of the Additional Sports Improvement Fund Contribution and the Secondary School Contribution. Clauses (G), (H) and (I) of the recital to the agreement are written as 'blue pencil' clauses that allow for these specific obligations to be struck out if the SoS concludes that they do not meet the relevant tests.
- 12.3 The agreement would bind the site owners to ensure that 35% of all dwellings constructed comprise affordable homes in accordance with the affordable housing mix of 20% affordable rented, 10% social rented and 5% shared ownership units. An affordable housing plan would need to be submitted and approved to show the proposed distribution of affordable homes in each phase of development. The agreement sets specific targets to ensure that the

affordable homes are delivered in tandem with the market housing. The agreement includes ongoing obligations about the future ownership and management of these dwellings to ensure that they remain as affordable homes over the long term. These obligations are necessary to ensure compliance with BDP Policy TP31 and the 35% provision accords with the requirements of that policy.

- 12.4 The parties agree that there would be insufficient primary school places to accommodate the needs of the development. The obligations to provide a site and funding for a new primary school would provide capacity for a development of up to 712 dwellings. The obligations provide for the transfer of the land and payment of contributions so as to ensure that the school can be constructed and be operational at an early phase of development. The S106 agreement also provides for a financial contribution to provide for increased capacity at another local school to cater for the additional places needed to serve a development of more than 712 dwellings. These obligations are needed to mitigate the impact on local school infrastructure and the financial payments have been calculated in accordance with standard methodology.
- 12.5 The agreement requires the approval of a works specification for the proposed on-site open space and that the open space works should be carried out in a phased manner in line with the phased development of the dwellings. It includes obligations concerning a payment of fees to enable the Council to supervise the works. The agreement would secure public access to the proposed open space and provide for its future management and maintenance. These obligations are needed to ensure compliance with BDP Policy TP9 which sets out standard requirements for the provision of open space in new housing developments. The level of provision would exceed the minimal requirements for a scheme of 800 dwellings but the additional GI is an important element in ensuring adequate mitigation for the effects on wildlife and nature conservation interests.
- 12.6 Although it would provide more than the minimum area of open space required the appeal proposal would not provide for formal sports pitches as required under the assessment of needs generated by the development. The payment of the Sports Improvement Fund Contribution is necessary to meet the increased demand for such facilities and to offset the increased pressure on the use of existing sports facilities in the local area. Sports England has identified specific projects that would fill an existing gap in local sports provision and the financial contribution fairly reflects the estimated cost of that provision.
- 12.7 A development of up to 800 new dwellings would increase pressure on existing community facilities in the wider area and the provision of an on-site community hub is agreed to be an appropriate form of mitigation for this impact of the scheme. The proposed size of the community hub is proportionate to the scale of residential development and is needed to render the proposal acceptable.
- 12.8 The S106 agreement commits the developer to implement the Employment Plan which seeks to ensure that the investment made in the construction of the proposed development will provide maximum benefit to local people and the local economy. This includes measures such as advertising vacancies locally, working in partnership with organisations to recruit local people in employment and training, and provide training opportunities on the construction site.

12.9 I am satisfied that all of the obligations listed above are necessary to render the proposal acceptable in planning terms, are directly related to the development and are related in scale and kind to the development proposed. These meet the relevant tests and can, in my view, be afforded weight in the determination of the appeal. The additional contributions requested by the Council do not, in my view, meet those tests.

12.10 In respect of the Additional Sports Improvement Sum, the third paragraph of BDP Policy TP11, which the Council relies on, states that sports and physical activity facilities will be protected from development unless it can be demonstrated that they are surplus to requirements through a robust and up-to-date assessment of need. That assessment has been carried out and all parties, including BCC and Sport England, agree that the golf course is surplus to requirements in terms of the need for such facilities in the area.

12.11 The potential requirement for payment of compensation arises in the second sentence of that paragraph which reads:

*"Where there is identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality of replacement provision is provided."* (my emphasis).

12.12 The agreed position is that there is no identified need for the golf course. There may, as the Council's contends, be a need for additional sports pitches at other facilities in the area. However, the appeal site does not contain and has never contained any sports pitches and no such facilities will be lost as a result of the appeal proposal. Policy TP11 is sport specific and does not require replacement provision or compensation for the loss of any sports facilities for which there is no identified need.

12.13 In my judgment, the Council's rationale for seeking such compensation is founded on a misreading of its own development plan policy and there is no justification for the inclusion of the Additional Sports Improvement Fund in the S106 Agreement. I consider that this obligation does not meet the relevant tests and that it would be improper to take it into account in the determination of the appeal.

12.14 I agree that that the assessment of capacity in local secondary schools should be based on the physical capacity of the local schools rather than their PAN. This is preferable as physical capacity can be measured and agreed by reference to a standard formula. It is also an important distinction given that planning obligations should not be requested or used other than for capital work to increase the physical capacity of a local school or schools to provide any additional places that are required.

12.15 Although the DfE has confirmed that the 2% surplus capacity allowance is not a recommended amount to be followed by local authorities, it would be difficult for developers and decision makers to have to apply a range of different ratios in different local authority areas. The 2% figure provides a reasonable and consistent ratio to be applied to such calculations. In the interests of clarity it is also preferable to use school census data that has been checked and verified and which is in the public domain. The January 2018 census provides the most robust indicator of current pupil numbers in local secondary schools.

12.16 I accept that some families moving into the proposed development will have children who already attend a local school and who will not, therefore, require a new secondary school place but this would also apply to primary aged children. As no discounting factor has been applied in the calculation of the primary school places needed, I see no reason to apply one in relation to the number of secondary school places required. No validated figures are available for the number of children who might attend Grammar, faith or independent schools. In my experience it is not standard practice to discount the level of need in respect of such considerations. There is no agreed basis on which this could be done. The disputed capacity is, therefore, in respect of 124 of the total 168 secondary school places needed to serve the development.

12.17 Taking the above approach to the assessment, surplus capacity exists within the following schools:

Balaam Wood - 239 places

Turves Green Girls - 127 places

Turves Green Boys - 91 places

Colmers School - 91 places

12.18 In total, these schools have 548 surplus places compared to the overall requirement of 168 places to meet the needs likely to be generated by the proposal. Some of this spare capacity may be taken up by population growth and the needs generated by other residential development in the area but the Council has not demonstrated that there will be insufficient capacity to provide the 168 places required. Accordingly, I conclude that there is no justification for payment of the Secondary School Contribution. That proposed obligation does not meet the relevant tests and it would not be appropriate to take such an obligation into account in the determination of the appeal.

### **13. Conditions**

13.1 A list of conditions (ID8) and the reasons for their suggested inclusion was discussed at the Inquiry. Two additional conditions were specifically requested by the EA in their letter withdrawing their objection to the proposal. As noted previously I identified that two additional conditions may be required to secure necessary mitigation in relation to archaeology and the protection of breeding birds and the parties have agreed that these conditions should be attached to any permission granted as a result of the appeal. Other than as set out below, I am satisfied that the suggested conditions would meet the tests in NPPF paragraph 55. The list of conditions that I recommend should be attached to the outline permission in the event that the SoS concludes that the appeal should be allowed is set out at Appendix F.

13.2 Conditions 1-3 are standard conditions required under s92 of the Town and Country Planning Act 1990 with regard to the approval of reserved matters and commencement of development. The appellant suggested that a time limit of 1 year from the date of permission be set for the submission of reserved matters details for the first phase of residential development with 3 years for the subsequent phases. This would be in line with the trajectory submitted to the Inquiry (ID36) and might be appropriate if the SoS was to conclude that the proposal is contrary to the development plan.

- 13.3 If, in those circumstances, the scheme's potential to deliver a large number of dwellings by 2026 was found to be a material consideration of such weight that it would help to justify a grant of planning permission contrary to the provisions of the development plan it would be appropriate that the planning conditions should secure that early delivery. That does not, however, reflect my conclusion that no such conflict arises. Given the appellant's intention to progress the development in two main phases in line with the trajectory I see no justification for applying a longer period for the submission of reserved matters as suggested by the Council.
- 13.4 Conditions 4 and 5 define the scope of the permission and condition 6 is required to ensure that the development is carried out in general accordance with the revised DF. Condition 7 requires the prior approval of a phasing plan for the development. Condition 8 relates to the provision of open space within the site and specifies that this should have a minimum area of 12.45 ha in line with the DF. I see no need for the condition proposed by the Council to set a maximum land area to be used for residential purposes given that condition 4 imposes a limit on the number of dwellings that can be constructed. Condition 9 relates to the provision of the play areas. Conditions 10 & 11 relate to flood risk and condition 12 requires the approval of a Construction Method Statement before development is commenced.
- 13.5 Condition 13 requires the prior approval of a sustainable drainage system. Following the discussion of the draft condition at the Inquiry, I consider that the system submitted for approval should relate to the whole site in order to ensure a satisfactory development even if it can subsequently be implemented in a phased manner. Condition 14 sets out the requirement for a written scheme of archaeological investigation. Conditions 15, 16, 17, 18 and 19 relate respectively to protected species, the removal of invasive vegetation, the protection of retained trees during the construction period, the pruning of trees to be retained and the carrying out of the removal of trees, hedges and shrubs outside of the bird breeding season. Condition 20 is needed to ensure that the site accesses are constructed in accordance with the approved plans.
- 13.6 Conditions 21-27 require the prior approval of various details for each phase before that phase is commenced and for the replacement of any trees or shrubs that die or are otherwise lost after the completion of the landscaping works. Conditions 28 & 29 require further investigation of the potential for ground contamination in each phase and appropriate action if the risk of contamination is identified. The need for these conditions was discussed at the Inquiry and in my view the ES does provide sufficient grounds for requiring further assessment in relation to some parts of the site. I have not included one of the conditions in the draft list as this would duplicate my condition 27. Conditions 30-32 require approval of a Construction Ecological Management Plan, Ecological Enhancement Strategy and Habitat/ Nature Conservation Plan for each phase of development.
- 13.7 Condition 33 is a Grampian condition relating to the various off-site highway improvements that are agreed to be required. As discussed at the Inquiry, I have removed the reference in the draft condition to the funding of these works as that would not meet the relevant tests. Conditions 34-37 are pre-occupation conditions requiring the specified works to be completed before any dwellings in an agreed phase are first occupied. Conditions 38-42 set out specific requirements and controls in relation to the primary school and community hub.

## **14. Inspector's Conclusions**

14.1 On the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. References in square brackets [] are to earlier paragraphs in this report.

### *The amended appeal proposal*

14.2 The appellant seeks that the appeal should be determined on the basis of the amended proposal for up to 800 dwellings which would be taken forward in accordance with the revised DF. The Council supports these changes and has withdrawn RfR 2 on this basis. [1.5-1.8] [14.2] In the event that outline planning permission is granted, the parties agree that a condition should be attached requiring that development is carried out in general accordance with the revised DF.

14.3 The consultation on the revised DF and ILP was sufficiently comprehensive in its scope to afford all those who should have been consulted on those changes to have the opportunity to comment. The interested persons who spoke at the Inquiry confirmed receipt of the correspondence from the appellant's agent and that they had been aware of the consultation and its general purpose. The consultation complied with the Wheatcroft Principles and no interested persons have been denied the opportunity to have their say about the proposed amendments. [1.8] [5.3]

14.4 The proposal is EIA development and regard must be had to whether the changes in the revised DF give rise to any greater or significantly different effects than those assessed in the ES prepared in relation to the previous DF and proposal for up to 950 dwellings. Counsel for the appellant sought to provide reassurance that the 950 dwellings scheme represented a 'worst case scenario' and that no updating of the ES is required. [1.10]

14.5 In my view that provides only a partial response. However, in response to my questions all of the appellant's technical experts confirmed their professional opinion that the reduction in dwelling numbers and revised DF would reduce the scale of likely environmental effects and that no new adverse effects would be introduced. [1.11] [9.58-9.65] [9.72] Taking this evidence into account the amended proposal would not result in any new or significantly different environmental effects or be of such a nature or scale as to bring the findings of the ES into question. I consider that the determination of the appeal on the basis of the amended scheme and revised DF would not breach the prohibition, within Regulation 3 of the 2011 Regulations, on granting planning permission without consideration of the environmental information relevant to the proposal.

14.6 I therefore recommend that the appeal should be determined on the basis of the amended proposal for up to 800 dwellings and the revised DF.

### *Main considerations*

14.7 In light of the withdrawal of RfR 2 and the progress made towards agreement on appropriate planning obligations the main considerations in the appeal are:

- a) Whether the appeal site is an appropriate location for the form and scale of development proposed having regard to the provisions of the development plan and national policy in the NPPF; and



- b) Whether the Council is able to demonstrate a 5 year supply of deliverable sites for new housing in accordance with paragraph 67 of the NPPF.

*The meaning of "windfall sites"*

- 14.8 In its original sense a "windfall" is an apple or other fruit blown from the tree by the wind. All the apples growing on a tree might potentially suffer that fate but an apple only becomes a "windfall" once it has fallen to the ground. If one applies that logic to the use of the term in relation to housing supply a site can accurately be recorded as a "windfall site" only when some housing development has been completed on it. Until that has occurred it can be no more than a potential windfall site.
- 14.9 In the definition of "windfall sites" [8.10-8.13] [9.6-9.8] in the NPPF glossary the words "development plan" can reasonably be understood to mean the development plan documents that form the adopted development plan, not the more extensive interpretation for which the Council argues. The definition is simple and unambiguous. It means that a site developed for housing purposes is a windfall site if it is one which is not allocated or otherwise identified (for example as a key site in a designated Growth Area) in the development plan. This is consistent with the NPPF's statement that the planning system should be plan-led (paragraph 17) and its requirement (at paragraph 67) that planning policies should identify specific deliverable sites to meet housing needs over years 1-5 of the plan period and either specific developable sites or broad locations to meet the needs over years 6-10 and, where possible, years 11-15.
- 14.10 The revised definition does no more than simplify and clarify that in the glossary to the 2012 NPPF. That used the words "*specifically identified in the plan process*" but did not, in my view, convey anything more than a reference to sites which have not been allocated or otherwise referred to in the adopted plan. The application of the definition in the manner that the Council suggests would have the outcome that landowners could be dissuaded from putting sites forward in response to a 'call for sites' for fear that rejection at that stage would bar them from securing a residential permission on that site for the duration of the plan period. [9.10] That outcome would plainly not assist local authorities in significantly boosting the supply of housing in their areas.
- 14.11 It is self-evident that the purpose of the glossary is to define various terms used in the NPPF so that the reader can better understand the meaning of its policies. The glossary's value would substantially be diminished if it was necessary to cross refer to text in the main body of the document in order to understand what the definitions in the glossary mean. [8.11] Such an approach is counter-intuitive and defies logic. The Council's contention that the glossary's definition of windfall sites needs to be understood by reference to paragraphs 68-70 of the NPPF is, therefore, misguided.
- 14.12 Those paragraphs are concerned with "Identifying land for homes." Paragraph 68 serves only to remind local authorities that small and medium size sites can make an important contribution to meeting housing needs. It encourages them to promote the development of a good mix of sites for this purpose through various measures including by supporting the development of windfall sites through their policies and decisions. This means that windfalls can contribute to the supply of small and medium sites for housing but does not mean that



windfall sites can only be of small or medium size. [9.8] That would be a misreading of the paragraph.

14.13 Paragraph 69 encourages the provision of small and medium sites for housing specifically through the allocation of such sites in neighbourhood plans. It makes no reference to windfalls. Paragraph 70 is concerned with windfall sites more generally. It sets out the requirement for compelling evidence to support any windfall allowance that a local planning authority proposes to make when assessing the anticipated supply of housing in its area.

14.14 Although paragraphs 68 & 69 are concerned with the provision of small and medium sites, paragraph 70 is not. It deals with the separate matter of windfalls more generally and there is no cross reference between this and paragraphs 68 & 69. I find nothing in these paragraphs to support the Council's proposition that only small and medium sized sites should be characterised as windfall sites. [8.10-8.12] [9.8]

14.15 The Council contends that the definition needs to be applied within the local context such that what constitutes a windfall site in Birmingham is different in terms of size to a windfall site in Northumberland. Given my clarification that a site only becomes a windfall site when housing has been developed on it, it is likely that the windfall sites in both of those local authority areas would be found to be of various sizes and scales of development if records were kept over a reasonable time period. There is nothing in the NPPF definition to support the Council's assertion that a site of 35ha should not be treated as a windfall site in Birmingham. [8.12]

14.16 Moreover, it is apparent that the Council does not apply this distinction in its development management practice. With an area of 4.3 ha and capacity for 210 dwellings the Hall Green Site would not constitute either a small or medium site of the type contemplated in NPPF paragraph 68 which characterises such sites as ones which are often built out relatively quickly. That potential could not sensibly be ascribed to a proposal for the redevelopment of an operational greyhound racing track which has only an outline permission with 12 pre-commencement conditions attached to it. Nevertheless, paragraph 6.19 of the officer report on that application (CD S32) clearly states the officer's view that the site would constitute a windfall housing site. [9.8]

14.17 I note that the officer formed this conclusion on the basis that the site is not identified in the SHLAA. I also note that the 2018 SHLAA includes its own definition of a windfall site as one that has not previously been identified through the local plan process or included in the SHLAA at the point at which detailed planning permission is granted. [Footnote 56] However, the SHLAA makes it clear that this definition is adopted for the purposes of the Windfall Assumptions Paper and the windfall allowance in the SHLAA.<sup>66</sup> It does not purport to and cannot change the NPPF definition of windfall sites.

14.18 The Council's approach would leave it with a difficulty as to how it records housing completions on large sites not previously identified in the local plan or the SHLAA. If they cannot be listed as windfalls then some new, and as yet

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<sup>66</sup> Paragraph 3.1 of Section A4 in CD F1

unknown, classification would need to be devised so that these are not lost in the Council's annual monitoring and updating of the 5YHLS.

#### *BDP Examining Inspector's Report*

- 14.19 For the reasons given above, I do not consider that either the BDP plan preparation process or the EIR form part of the 'development plan' for the purposes of applying the NPPF definition of windfall sites. Neither do I agree that a site can, in principle, be debarred from being granted planning permission for housing use because it was considered and rejected in the plan preparation process. I do, however, accept that the reasons given at that stage for not allocating the site could provide a relevant framework for assessing any future planning application for the site's development for housing. It is, therefore, necessary to consider why the allocation of the appeal site was not supported by the Examining Inspector.
- 14.20 In approaching this question it is useful to note that the Inspector faced a particular set of challenges in judging the soundness of the BDP. At paragraph 216 of the EIR, he notes that Birmingham is not the only local authority that faces difficulties in accommodating its OAN within its own boundaries but that the scale of the potentially unmet need in Birmingham "*is exceptional and possibly unique.*" The SHLAA that was before him showed that, without Green Belt release, there were sites identified for around 46,000 homes which is only just over half of the OAN of 89,000 dwellings. In that same paragraph, he acknowledges that the development of Green Belt land is necessary to provide an additional 5,000 homes and concludes that the evidence does not support any additional strategic Green Belt release.
- 14.21 I agree that the Inspector was faced with striking a balance between the level of provision that could sustainably be made within the City boundary and that to be met elsewhere. [8.5] In striking that balance he had to be as confident as he could possibly be that the full 89,000 dwellings would be delivered somewhere and within the plan period. Importantly, his decision as to what number of dwellings could realistically be provided within Birmingham directly determined the residual number to be met elsewhere in the HMA. He would also have been aware that, once the BDP was adopted, that residual figure would be fixed as the target that the relevant authorities would together seek to take forward in their local plans. Hence, any subsequent failure on BCC's part to deliver its major housing developments would risk leaving a significant shortfall against the OAN target of 89,000 new dwellings.
- 14.22 At the EiP the Inspector was asked to consider the allocation of the NWGC site which had not been included and assessed in the Council's SHLAA. In such a situation the Inspector would have needed to be satisfied as to the availability and suitability of the site for housing development and that the development envisaged was capable of being delivered within the plan period. In view of the particular challenges he faced in relation to the BDP examination he would, I think, have seen deliverability as a particular risk for the reasons set out above.
- 14.23 The only references to the site within the 56 page EIR are at paragraphs 222 & 223. [9.9] On a fair reading the first two sentences of paragraph 222 record the Inspector's conclusions that the site was available, is in a sustainable location and is not in the Green Belt. They also note that it is located in Birmingham's southern suburbs. It is reasonable to assume that the Inspector saw this as a

point in favour of a possible allocation given his observation, at paragraph 56, that most of the larger sites identified in the SHLAA are in the inner-city wards rather than the higher value suburbs.

- 14.24 The last sentence of paragraph 222 identifies the loss of public views as a possible issue but notes that this potential impact of development would likely be compensated for by the provision of public open space within the site. Given his reference to there being no public access at present it can be inferred that the Inspector considered this a potential benefit of the site's development.
- 14.25 Paragraph 223 notes the potential constraints arising from the site being surrounded by residential streets and some distance from the nearest main roads. It states that the Inspector had seen details of proposed new access points but had not been provided with a detailed analysis of the traffic impact of an 800 dwelling development or of its potential effect on the amenity of residents living close to the site. No other issues are raised in that paragraph.
- 14.26 Read together, these paragraphs confirm that the Inspector found that the site met the tests of availability and suitability for residential use and that it had particular advantages in terms of its location outside of the Green Belt and in the suburbs. The only reason that he gives for not supporting its allocation is the absence of detailed assessments of the likely impact of traffic on the network and on residential amenity. These issues go to the question of deliverability and the paragraphs show that he was not satisfied that a development of around 800 houses could be delivered because of these potential constraints. This conclusion implies only that he had insufficient information to be able to recommend the site's allocation. In my view it is wrong to place any wider interpretation on the Inspector's words in these paragraphs.
- 14.27 I agree that the Inspector reached this conclusion in the full knowledge that, if adopted without the site's allocation, the housing target within the BDP would be a long way short of meeting the OAN as noted in paragraph 61 of the EIR. [8.6] However, I do not consider that either that paragraph or paragraphs 222 & 223 provide any meaningful support for the Council's assertion that he rejected the site in principle.

#### *BDP Policies*

- 14.28 The Courts have ruled that planning policy statements should be interpreted objectively in accordance with the language used, read in its proper context. Applying that approach to BDP Policy PG1 leads me to conclude that it is a strategic rather than a development management policy. [9.2] In relation to housing the policy simply states that an additional 51,000 homes, together with the infrastructure and environmental enhancements to support that growth, will be planned for and provided over the plan period. The 51,100 dwellings figure is a target and not a ceiling for the scale of housing considered appropriate within Birmingham. This is confirmed at paragraph 8.13 of the BDP. [9.4]
- 14.29 There is a tick in the 'Planning Management' box within the implementation matrix for Policy PG1. That is unsurprising given that, ultimately, the proposed housing can only be provided (insofar as the BDP is able to achieve this) through the grant of planning permissions. The policy does not include any criteria or requirements against which planning applications can be measured or

assessed. For this reason I agree with the appellant that it is difficult to see how any housing application could be found to be in breach of the policy. [9.2]

- 14.30 I do not accept that a grant of permission for the proposal would undermine public confidence in the planning system and the plan-led approach. [8.1-8.2] [8.14] That might be arguable if it had been demonstrated that such an outcome would have a harmful effect on the spatial strategy underpinning the BDP or that it would delay or frustrate the delivery of other key housing sites, for example in regeneration areas. No such harm has been suggested by the Council. Instead, it relies on its assertion that the Examining Inspector rejected the site's allocation in principle to support that part of its case. For the reasons already set out that is not a fair or accurate interpretation of what is said in the EIR.
- 14.31 I consider that the proposal does not conflict with Policy PG1 or with its underlying objective of delivering 51,100 new homes in the City. Indeed, the provision of 800 new dwellings, including up to 280 affordable homes, would make a positive contribution towards meeting the policy's objective of meeting the needs of Birmingham's growing population (BDP paragraph 4.5).
- 14.32 As confirmed by the planning witnesses, the appeal site is not subject to any land use allocation or designation and can be regarded as an unallocated site or 'white land'. The key policies of relevance to the assessment of an application for housing development on such a site are BDP Policies TP27, TP28 and TP30. [3.8]
- 14.33 These policies set out specific criteria against which planning applications can be assessed and are intended to operate as development management policies. That BCC considers this to be the case is evidenced in the officer report on the Hall Green Stadium application (CD S32). That report refers to the policies as numbered in the then draft BDP, but it is clear from paragraphs 6.20 to 22 that it was specifically against these policies that the acceptability in principle of the site's development for housing was assessed.
- 14.34 Mr Wood also suggested that the proposal would not comply with the final bullet of Policy TP28 by virtue of the alleged conflict with Policy PG1. [9.15] However, if there is no conflict with PG1 that objection falls away. Some of the third party concerns need to be considered before reaching a final conclusion on the proposal's compliance with TP27 and TP28. However, no other conflict with these key policies has been suggested by the Council.

*The meaning of "deliverable"*

- 14.35 Much of the Inquiry was spent debating the meaning of the NPPF's definition of "deliverable". It would, therefore, be useful for me to set out my conclusions on this before addressing the specific issue of whether or not BCC can demonstrate a 5 year supply of deliverable housing sites.
- 14.36 In comparing the new definition in the NPPF glossary to that in Footnote 11 to the 2012 NPPF it is clear that important changes have been made. I do not believe those changes to be as fundamental as the appellant suggests. [9.16-9.21] In the 2012 definition the first sentence stated a general requirement that *"sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that the development of the site is*

*viable.*" The second sentence set out a presumption that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years.

- 14.37 Other than the deletion of the reference to viability the first sentence in the revised definition is unchanged and serves to set out a general requirement that applies to all sites included in the housing land supply. The significant change, in the second part of the definition, is that the presumption of deliverability is removed in respect of sites with outline planning permission, permission in principle, allocated in a development plan or identified on a brownfield register, in respect of which there is now a requirement for clear evidence that housing completions will begin within five years. As agreed by the parties this places the onus on the local planning authority to justify the inclusion of such sites in the 5YHLS. [8.30] [9.27]
- 14.38 For sites with detailed planning permission, the presumption of deliverability until permission expires carries with it an underlying assumption that schemes will be implemented within the normal 3 year life of the permission. The same cannot be assumed for sites which only have outline or no planning permission and which need to go through or complete the planning approval process before they can be implemented. Hence, the requirement for evidence that they will progress to the point of delivering housing completions within 5 years.
- 14.39 The essential consideration under both definitions is whether or not sites included in the 5YHLS will actually deliver housing within the 5 year period. In my view, that assessment is still to be made on the basis of realistic prospect and not on any greater burden of proof. As established in the St Modwen judgment (paragraph 38), that does not mean that for a site to be considered deliverable it must be certain or probable that the housing will in fact be delivered upon it. [8.27] In that paragraph, Lord Justice Lindblom refers to Lord Gill's statement, in paragraph 78 in the Suffolk Coastal judgment (CD C1), that the requirements set out in the NPPF reflect the futility of local authorities including sites in their 5YHLS which have no realistic prospect of being developed within five years.
- 14.40 The previous definition included a requirement for "clear evidence" to rebut the presumed deliverability of sites with planning permission. That did not require those challenging the inclusion of a site with planning permission to do more than demonstrate that there is no realistic prospect that housing will be delivered on that site. The new definition requires 'clear evidence' that housing completions will begin within 5 years on certain categories of site. That does not, however, mean that the local planning authority must demonstrate certainty that housing completions will begin within that period.
- 14.41 I have carefully considered the appellant's submissions but cannot agree that that there is no scope for the concept of 'realistic prospect' in carrying out the assessment of deliverability as set out in the second and third sentences. [9.20] In my view 'realistic prospect' remains the central test against which the deliverability of all sites must be measured. Similarly, I am not persuaded that the changes are so fundamental that the first sentence of the definition can be said to be concerned only with delivery rates and the second and third with the separate issue of lead-in time. [9.21] The changes to the wording do not support this wholly different approach to the assessment of deliverability.



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

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

*The Council’s 5 year housing land supply*

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

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

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

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

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

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

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

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



14.53 The effect of these reductions is to reduce the total number of dwellings in the Council's revised assessment of the identified supply from 19,023<sup>67</sup> to 18,206.

#### *Windfalls*

14.54 The 5YHLS assumes a contribution from windfall sites of 1,360 dwellings over years 2-5, equating to 340 dpa. It is not possible to be certain that all of these were on sites that had not previously been identified in the SHLAA at the date on which detailed planning permission was granted. [9.40] However, the recorded completions are so far in excess of the assumed 340 dpa windfall allowance that this uncertainty is not sufficient to suggest that the allowance is anything other than conservative or to call it into question. I note that the Examining Inspector also came to that view.

14.55 I see no justification for Mr Hawley's suggestion that a windfall allowance should only be included for years 4 & 5 of the 5YHLS. Windfall sites may come in a variety of forms and sizes and some will be capable of being delivered more quickly than others. There are no reasonable grounds to assume that most of the sites that might potentially contribute to the assumed 1,320 dwellings windfall completions will already have planning permission and will be recorded elsewhere in the 5YHLS. I see very limited risk of double counting and no need to adjust what is already a conservative figure. [9.42]

14.56 Similarly, I see little merit in the argument that a reduction should be made to the allowance to discount large site windfalls. [9.41] By definition the details the potential sites that might deliver those completions are unknown and the only logical basis for determining the allowance is by reference to past completions on windfall sites. Given my conclusion that the NPPF definition of windfall sites does not set any size threshold I see no reason to adjust the allowance as the appellant suggests.

#### *Lapse Rates*

14.57 In my experience lapse rates are appropriate only where clear evidence, gathered over a reasonable period of time, has shown that planning permissions on a significant number of sites within the claimed 5YHLS are being allowed to expire and are not making their assumed contribution to completions over the 5 year period. Mr Hawley refers to two such sites in his main proof and Mrs Han accepted that the planning permissions on 2 sites and the prior approval on one other site had expired or were about to expire. These few examples do not justify the application of a lapse rate.

14.58 The Council was unable to provide historic information on the numbers of permissions that have lapsed<sup>68</sup> and dwellings that have not been delivered as a result. [9.40] In the absence of any historic data I am unable to conclude either

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<sup>67</sup> See Appendix 2 to Mrs Han's rebuttal evidence. Note that there is an error in the 'adjusted supply' column in that table. This shows the total number of dwellings with outline permission as 155 where the combined table of disputed sites at ID18 shows a total of 355 dwellings on those sites. The figures below that row have been adjusted accordingly.

<sup>68</sup> Appendix 12 to Mr Hawley's main POE

that a lapse rate is necessary or that the 10% figure suggested by the appellant would be appropriate even if there was a clear need for such a rate.

14.59 Even if I am wrong in that judgment, the application of a 10% lapse rate to the sites with planning permission and allocations as suggested by the appellant would not reduce the adjusted supply below the 5 year threshold. Using the figures from Mrs Han's Appendix 2 with my corrections and my adjustments for the sites that I propose should be removed the revised figures would be as follows.

Source	Figures without lapse rate	Figures with 10% lapse rate
Under construction	9,060	9,060
Detailed planning permission	7,540	6,786
Outline planning permission	568	511
Permitted development	868	781
Allocations	0	0
Other opportunity sites	140	126
Windfalls	1,360	1,360
Total	19,536	18,624
Years' supply	6.50	6.20

#### *Market Evidence*

14.60 Mr Willet's evidence provides a positive review of the local economy with low unemployment, an 11.5% increase in business numbers, increased visitor numbers, record breaking office take-up in 2017, annual growth in house prices and many other positive indicators. Together with Mrs Han's rebuttal, this paints an optimistic picture of the prospects for future prosperity, for example in terms of graduate retention, inward migration and an expectation that the number of young people living in the City will rise to 1.3 million by 2039 which translates into some 100,000 additional households in the City over the next two decades. [8.32]

14.61 This summary of economic and market conditions is informed by the detailed studies appended to Mr Willet's POE. The Knight Frank report records that the scale and pace of economic growth in the region has been significant and that the area is establishing itself an alternative to London as a business hub. It notes that the City is receiving billions of pounds in infrastructure investment and that hosting the 2022 Commonwealth Games is likely to bring further economic and social benefits. It also states that, given the uplift in job creation, amenity, transport and population the demand for City Centre living and property in the area around Birmingham "is expected to continue to grow"

(page 5). There appears to be little in this report that supports Mr Willet's concerns about the future capacity of the City Centre residential market.

- 14.62 The CBRE report appears mainly to comprise a factual review of the Private Rented Sector (PRS) stock already in the City and in the pipeline. The section concerned with demand indicates a likely demand for high quality rented accommodation from people in the 'Transient Renters' group as these mature and move up the career ladder. It says that recent trends create a very positive backdrop for buy-to-rent development in Birmingham as they demonstrate an established market for aspirational and high quality city centre accommodation which is likely to spill out further. The report notes that a small proportion of private renters have annual salaries more than £50,000 but otherwise suggests a continuing healthy demand for PRS development in the City Centre.
- 14.63 Against this background Mr Willet's concerns about the future capacity to support City Centre residential growth appear unduly pessimistic. [8.31-8.32] [9.23] I do not question his knowledge and experience of the Birmingham residential market. However, his professional opinion as to the capacity of the market to absorb the scale of City Centre apartments currently under construction and in the pipeline appears to be supported only by private discussions with two other property practitioners rather than by any direct evidence. Given the optimistic picture painted in the submitted economic and market reports I consider that Mr Willet's concerns should be treated with some caution, notwithstanding that the Council did not call an expert witness on this matter. [9.23]
- 14.64 The essential part of Mr Willet's evidence is set out in section 6 of his POE and Table 2 at Appendix 5. This shows that he accepts that the 5,928 units already under construction will be delivered in the period Q4 of 2018 to the start of Q4 of 2021. As none of these were completed at the 5YHLS base date they would all contribute to meeting completions within the 5 year period.
- 14.65 He says that sites with planning permission that have not yet commenced account for some 5,695 units.<sup>69</sup> These are assumed to deliver over the 5 year period Q4 2021 to Q4 2026 at an annual average rate of 1,192<sup>70</sup>. It is this average rate that he contends should be reduced by 50% to reflect the likely non-delivery of schemes because of his market concerns. At paragraph 7.12 he suggests that, once the oversupply in this market is evident for all to see, traders and other investors/developers will exit the City Centre PRS market and will be forced to sell sites at a loss.
- 14.66 The Council's submissions are that Mr Willet's only argues for a reduction of 1,192 as shown in his Table 2 and that there is no evidence to support the reduction of 1,956 units which Mr Hawley makes to the City Centre apartment component of the 5YHLS in his Table 7. [8.24] The appellant contends that Mr Hawley does not directly transfer Mr Willet's figure into his table but, instead, applies the principle of a 50% discount to those dwellings in the 5YHLS which comprise City Centre apartment schemes with detailed permission. [9.24] Mr

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<sup>69</sup> Figure adjusted from 5,995 by Mr Willet in evidence in chief

<sup>70</sup> This figure should also be adjusted to 1,139 to reflect the reduction in the total number in the pipeline. However, as the original figure is used in the Council's closing submissions I have used that figure in the text above.

Hawley says (paragraph 13.4) that he has applied the 50% discount only to the residual figure that remains after the deductions made for 'planning' as opposed to 'market' reasons.

14.67 Mr Willet adopts a 5 year period of Q4 2021 to end of Q3 2026 compared to the 5YHLS period which runs only to the end of Q1 of 2023. For this reason it is difficult to compare the two sets of information. However, what does seem to be clear is that Mr Willet's concern about future oversupply leads him to apply his 50% attrition rate only to completions anticipated from Q4 of 2021 onwards and not to completions before that date.

14.68 As the Council notes, a 50% discount to his assumed annual average rate over those 2 years amounts to a total reduction of 1,192 units. [8.24] In addition, if Mr Willet's approach is applied to the 5YHLS period the attrition rate should be applied only to completions anticipated in the last 6 quarters of the 5 year period (Q4 of 2021 to Q1 of 2023) and not to the completions assumed prior to Q4 of 2021.

14.69 On that basis I see no grounds applying a 50% discount to all City Centre apartment schemes with detailed permission or to Mr Hawley's 'residual figure'. The schemes within this source of supply will be of varied types and scales and would likely have been at various stages of design, tender or site mobilisation at the base date. No trajectory is available to show anticipated completions but annual average rates might usefully be adopted. Whilst no completions might be expected in year 1 of the 5 year period it is not unreasonable to assume completions in this category over years 2-5.

14.70 If Mr Willet's full annual average completion rate of 1,192 dpa (298 per quarter) is applied to the period from Q1 of 2019 to end of Q3 of 2021 (10 quarters) and his discounted rate of 596 dpa (149 per quarter) is applied to the period from Q4 2021 to end of Q1 2023 (6 quarters) this would provide the following completions:

Period 1	(10 x 298)	2,980
Period 2	(6 x 149)	894
<b>Total</b>		<b>3,874</b>

14.71 According to Mr Hawley's Table 6, the total number of City Centre apartments with detailed permission included in the 5YHLS is 5,028. [8.24] If 3,874 of those are completed the shortfall from this source would amount to 1,154 units. This is close to the overall 2 year discount of 1,132 which the Council says is the maximum that Mr Willet argues for. It also shows that, even if Mr Willet's concerns about the market are accepted, the maximum deduction that should reasonably be made for market as opposed to planning reasons is 1,154 units rather than the 1,956 proposed by Mr Hawley. If my adjusted 5 year supply figure of 19,536 in my table above is reduced by 1,154 units (with no lapse rate) the resulting supply of **18,382** would be comfortably above the 5 year requirement of 15,018.

14.72 The market attrition rate is a form of lapse rate and it would not be appropriate to apply both this and Mr Hawley's 10% lapse rate. Some adjustment would, therefore, be needed to the figures in the third column of my table to avoid double discounting in relation to this group of sites. However,

even if both the 10% lapse and the market attrition rate are applied without that refinement, the resulting figure of **17,470** (18,624 -1,154) would still result in a supply of 5.82 years.

14.73 For these reasons I conclude that the Council is able to demonstrate a 5YHLS and that there is insufficient evidence to show otherwise. There is no justification on these grounds for deeming the most relevant development policies to be out-of-date and NPPF paragraph 11d is not, therefore, engaged in relation to the appeal.

#### *Public consultation*

14.74 I understand the desire of some in the local community that there should have been engagement about alternative uses before any proposals for a specific use or range of uses were consulted upon. However, the land is in private ownership and there is no development plan designation which either provides protection to its former use or limits the uses to which it might be put. In those circumstances such wider engagement might only have been likely if BCC or another public body had sought to acquire the site for a non-commercial or community use.

14.75 The appellant's interest is in securing a residential development and the engagement carried out has been framed by that objective. [9.53] They should not be criticised for taking that approach. There appears to be some uncertainty as to why the working group was not carried forward but the public consultation undertaken was both appropriate in its form and sufficiently extensive to enable interested persons to comment on the proposals. [9.53]

14.76 There has been substantial local objection to the proposal at all stages of the application and appeal processes and it is clear that many local people maintain a root and branch objection to the scheme notwithstanding the reduction in dwelling numbers and the changes made in the revised DF. However, it is notable that the notification of the making of the appeal has also attracted around 130 letters of support and that these outnumbered the written objections received at that stage. [11.3] Many supporters consider that the proposed housing is badly needed and acknowledge the appellant's efforts to provide a substantial area of public open space and other community benefits within the residential development.

#### *Traffic and highways*

14.77 A proposal of this scale is likely to attract significant concern about potential impacts on the local highway network and key junctions near to the site. Although a large development, the site has the advantage of providing an opportunity for 3 new accesses to serve the residential development and a separate access for the school and community hub. Because of this arrangement and the proposal that there should be no internal road link between the two housing development zones [5.7] peak hour movements will not all be focused on one road junction as might otherwise be the case.

14.78 Notwithstanding the concerns raised, I consider that the site is in a highly accessible location with regard to the nearest bus stops and services and the nearby railway stations. [6.2] The pedestrian and cycle routes proposed within the site and the package of off-site improvements agreed in the Transport SoCG

will make a meaningful contribution to facilitating and encouraging future residents to walk or cycle to access local services and facilities and public transport. [6.4] Given this level of accessibility, and the evidence that some 25% of journeys to work in the local area are made by public transport, it is reasonable to assume that a significant proportion of trips will be by modes other than the private car. [9.59]

14.79 The TA has been prepared on a robust basis as it has assumed a development of 1,000 dwellings rather than the maximum of 800 now proposed. On Mr Parfitt's unchallenged evidence that change is likely to result in approximately 15% fewer traffic movements in the AM peak and 20% fewer movements in the PM peak than assumed in the traffic modelling in the TA. I note Mr Burden's concerns [10.2] but it is clear that the traffic counts have not been used in isolation and that growth has been applied to ensure the accuracy of the assumed background levels at the modelled year of 2026. As the appellant plans that the development will be fully completed by 2026 (ID36) that provides for a robust assessment of the likely traffic effects. [9.58]

14.80 My observations of key junctions in the PM peak are that, although busy, they operate efficiently with most queuing traffic able to clear the junction in a single green phase of the signals. I saw only limited queues at the Frankley Beeches Road/Egghill Lane roundabout with traffic being able to clear the junction relatively quickly. These observations generally support the TA's findings as to the current operation of those junctions. The TA has been assessed by BCC's Highways Officers who are satisfied that the traffic generated can be accommodated on the network without an unacceptable effect on highway safety or on any nearby junctions subject to the agreed mitigations works being completed. [6.4] [9.55] There is no technical evidence to the contrary.

14.81 In my view the proposed works would provide adequate mitigation and ensure that the junctions continue to operate effectively. The mitigation proposals would bring positive benefits for the operation of the Frankley Beeches Road/Hoggs Lane and Tessall Lane/A38 junctions as detailed in Section 5 of Mr Parfitt's POE. These works have been the subject of an independent Stage 1 safety audit which found no significant areas of concern.

14.82 Having assessed the highway evidence I see no reason why the site access junctions should not operate effectively and safely. The visibility splays required are within land which is either in the highway or within the appellant's control and there is no reason why these cannot be achieved. Although I note Mr Kennedy's concerns about the recently introduced traffic order on Farren Road this is intended to prevent the use of that road for rat running. If that objective is achieved increased movements resulting from the need for residents to access Farren Road at its southern end would be offset by a general reduction in through traffic. [10.15] The provision of a right turn lane from Tessall Lane into Farren Road and the resultant limitation on the ability of vehicles to park close to the junction would improve rather than reduce safety at that junction. The proposed access meets the design standards with regard to forward visibility for vehicles approaching on Tessall Lane.

14.83 Mr Parfitt's supplementary note (ID190) shows that the time taken for emergency vehicles to pass along key routes from the Ambulance Hub would not materially be affected. A minor delay of about 2 seconds for peak hour



journeys on two of the routes would be more than offset by reductions in journey times of up to 108 seconds on other routes. There is, therefore, no evidence that the proposal would have a significant adverse effect on the ability of WMAS to respond to emergency calls. [9.57]

14.84 The proposed primary school access has been subject to an independent safety audit and no significant concerns have been raised. The school is likely to need a site that can be made secure but I see no reason why this should not be designed to provide adequate queuing space off of the highway and expect that BCC will seek such provision in the detailed layout of that site. The decision that the pedestrian crossing on Frankley Beeches Road should be signalised has been taken to address safety concerns about its location on that road. This is an appropriate means of ensuring that drivers have ample warning of the crossing when approaching this section of the road (paragraph 51 of ID19).

14.85 I consider that the effects of the proposal on the local highway network and highway safety would be acceptable. There are no reasonable grounds for refusal having regard to paragraph 109 of the NPPF and no conflict with the development plan in this regard.

#### *Local Wildlife and Nature Conservation*

14.86 As a result of its past use and managed landscape the site is of low habitat and biodiversity value and the potential significant impacts are limited to the effects on the single bat roost and the badger setts within the site. Adequate mitigation can be provided for these potential effects and the badgers can be retained on the site. No difficulties are anticipated in obtaining the licences to carry out the necessary mitigation. [9.64]

14.87 Beyond that, the likely effects of the proposal are positive rather than negative. The provision of a large area of open space, focused on the existing brook and incorporating new ponds and wetland areas, additional woodland and mixed planting, and a dedicated eco-park provide a genuine opportunity for the biodiversity of the site to be enhanced by a significant degree. The commitment, by means of planning conditions and obligations, to bring these areas under a management and maintenance regime would secure these as long term benefits of the proposal. [9.63]

14.88 Given this evidence, I see little substance in B&BCWT's objection and consider that this has been adequately responded to. The proposal does not conflict with BDP Policy TP8, which seeks that development should not cause harm to local sites of importance for biodiversity or to priority habitats and species unless any harm can adequately mitigated, or with any of the policies in paragraphs 170 and 171 of the NPPF.

#### *Trees and TPO*

14.89 The redevelopment of the former golf course for residential purposes could not be achieved without the need to remove a substantial number of trees. However, the approach set out in the revised DF provides for most of best quality tree groups and individual trees to be retained. In pure numbers the overall loss of trees would not be insignificant but the revised DF and the reduction in the number of dwellings provide for a considerable improvement compared to the potential impact of the previous 950 dwelling scheme. [9.66] A

number of Category A trees would be removed but my observations on the site visit are that a considerable proportion of those that would be lost are non-native trees or tall thin specimens that have been planted for their fast growing habit.

14.90 With the new tree planting envisaged, the eventual tree coverage would equate to about 74% of the existing position. Opportunities would be available at reserved matters stage to consider the possible retention of other individual trees in the detailed layout, to assess the prospects for transplanting trees that might otherwise be lost, and to look for opportunities for in-curtilage and other additional planting. Given those further opportunities, the revised DF provides a sound basis for achieving an appropriate balance between an attractive and efficient residential layout and retaining the best of the existing tree cover. [9.66]

14.91 An area TPO is generally intended as a short-term protection and is often subsequently replaced by a new order(s) providing protection to individual trees and tree groups that have been found in a more detailed assessment to warrant protection over the long term. That more detailed assessment would likely be done before or as part of the Council's assessment of detailed proposals for site layout and landscaping. [9.69]

14.92 At present the amenity value of the trees is mainly derived from the visibility of perimeter trees from the surrounding roads. Most of the trees inside this dense perimeter screen are not visible from outside of the site. The majority of existing trees to the perimeter would be retained with additional planting where there are gaps. Their contribution to the amenity of the site and its surroundings would be largely unchanged. By providing public access to the substantial open space in the central part of the site the proposal would enable local people to see and enjoy the significant woodland blocks and individual trees that are currently hidden from public view. [9.70]

14.93 As a result of this public access and the long term maintenance and management arrangements that would be put in place, there would be a net benefit in terms of the contribution which the retained trees make to the visual amenity of the site and surrounding area. This would be sufficient to offset any harm resulting from tree loss within the development zones.

14.94 A grant of detailed permission for means of access would give consent for the felling of trees which is necessary to facilitate the construction of the accesses and visibility splays. The plans and schedule included in ID20 show that these works would result in the loss of only a small number of individual trees (all of Category B quality) and of very small portions of tree groups of Category A quality. [9.68] These losses would not be significant in relation to the overall numbers of trees around the perimeter and would not have a material effect on the amenity value of the perimeter planting. The small scale of these losses demonstrates that the access points would be well sited so as to minimise their effect on the perimeter planting.

#### *Landscape and Visual effects*

14.95 The site is a managed rather than a natural landscape reflecting the site's long use as a golf course. There are some larger blocks of trees inside the perimeter belt but much of the planting between fairways comprises narrow strip planting

of fast growing and non-native trees. The site is almost fully screened from public view and only a very small number of residential properties back onto the site. Medium to long distance views are limited and, where these exist, the site is seen in the context of the surrounding suburban development. For these reasons I agree that the site has only low to moderate landscape and visual amenity value. [9.72]

14.96 With the extent of vegetation to be retained and opportunities for additional planting, the visual effects of the development would be very modest and limited to a very small number of receptors. The revised DF provides for some 38% of the site to be retained as GI on completion of the development. I agree that this provides the opportunity to create a development framed by a mature landscape which would have a strong sense of place. [9.71]

14.97 The reduction in dwelling numbers allows the retention of more of the existing landscape features and a larger area of the site to be used as open space and GI. These changes have had a wholly positive benefit in terms of the potential landscape and visual effects. [9.72] The minor landscape harm that would be caused by the introduction of a large number of buildings into a currently open site would largely be offset by the creation and long term management of the proposed GI and the provision of public access which would enhance the public experience of the landscape compared to the existing situation. [9.71]

14.98 Having regard to the outline nature of the proposal I consider that the proposal does not conflict with BDP Policy PG3, which requires that new development should demonstrate high design quality contributing to a strong sense of place and should respond to site conditions and the local area context. Similarly, I do not consider there to be any conflict with UDP Paragraphs 3.14 to 3.14D which require that development should achieve a high quality of design and follow good design principles.

14.99 The appeal site can, therefore, be concluded to be an appropriate location for the scale and form of development proposed having regard to the provisions of the development plan and relevant national planning policy.

#### *Environmental information*

14.100 As noted above the ES was prepared in respect of a development of up to 950 dwellings. It has not been updated to reflect the reduced number now proposed and its conclusions as to the key environmental effects of the proposal need to be considered in that context. The Council's concerns with regard to the effect of the proposal on trees, landscape and ecology have all been resolved by the submission of the revised scheme and I am satisfied that this has had a wholly positive outcome in relation to these potential effects. The reduction in the proposed number of dwellings is positive in relation to potential effects on the road network and highway safety and renders the TA and the Transportation chapter of the ES very robust.

14.101 The EA has withdrawn its objection subject to the attachment of appropriate planning conditions on any permission that may be granted and there are no outstanding objections in relation to drainage or flood risk from any technical consultee. Other areas of mitigation that were identified in the ES are covered within the suggested conditions.

14.102 In light of the above considerations I conclude that the proposal would not give rise to any significant residual environmental effects and that all necessary mitigation to avoid that outcome can be secured by means of planning conditions and obligations.

*Conclusions on development plan*

14.103 For the reasons set out above I consider that the proposal does not conflict with BDP Policy PG1. I find no conflict with any other policies of the development plan. Neither do I find any conflict with any of the policies in the NPPF. I conclude that the proposal accords with the development plan and, having regard to paragraph 11c of the NPPF, that it comprises sustainable development that should be approved without delay.

14.104 If the SoS accepts my finding in this regard there is no need for him to consider other material considerations or to reach a conclusion as to whether or not the Council is able to demonstrate a 5YHLS. If, however, the SoS concludes that there is a conflict with the development plan, consideration needs to be given to whether there are material considerations that would justify a grant of planning permission.

*Conclusions on harm*

14.105 In light of my finding that the proposal does not conflict with Policy PG1 I conclude that it would not cause any harm to the objectives or spatial strategy that underpins the BDP. I reject the Council's concerns that allowing the appeal would undermine public confidence in the development plan process and the plan-led system. I have not identified any other material harm.

*Potential benefits*

14.106 The proposal would deliver up to 800 family homes in a range of sizes and tenures and in an accessible location in the southern suburbs of the City. It would support the BDP objectives of meeting the needs of a growing population and maximising the level of housing delivery within the built up area of the City.

14.107 Policy TP48 sets out a timescale of 3 years from the adoption of the BDP for monitoring progress made by other authorities in meeting Birmingham's unmet housing need within their local plans. It is, therefore, too early to form any definitive conclusion as to whether a material shortfall in that provision is likely. [8.8] However, a shortfall of around 3,000 dwellings against the 51,100 target within the City boundary is highly likely due to the delay in bringing forward the Langley SUE. The major contribution which that development was expected to make to the provision of new family homes during the plan period will also be substantially reduced. [9.13-9.14] In those circumstances the 800 family homes which the appeal scheme could deliver in the period up to 2026 is a social benefit of significant weight.

14.108 Mr Stacey's unchallenged evidence shows that only 2,757 new affordable homes were provided in the City over the first 6 years of the plan period. This represents less than half of the target provision and a net increase of only 151 affordable homes if Right to Buy sales are taken into account. On either measure there has been a very low level of provision against a background of a pressing and growing need for new affordable homes in Birmingham. [9.49-9.51]

- 14.109 Given the heavy reliance in the 5YHLS on City Centre apartment schemes it is difficult to see how that recent trend of can be reversed over the short to medium term. Against this background, the delivery of up to 280 affordable by about 2026 in a mix that matches the Council's requirements is a social benefit of considerable weight. [9.50]
- 14.110 The proposed community hub has the potential to deliver significant social benefit but, at present, the form and content of this facility is undefined. Only limited weight should be attached to it. The on-site open space and play provision would extend beyond that needed to meet the standard planning requirements and help fill gaps in existing provision in the locality. [8.35] The opening up of public access to an attractive area of open space on land that is not currently accessible would also a positive benefit. I attach moderate weight to these social benefits and some, limited weight to the longer term benefit that might result from the provision of a site for a primary school capable of being extended into a 2 form entry school at a later date. [5.11]
- 14.111 The construction of the development would involve substantial investment and would create or support employment in the construction sector over a period of about 8 years. The scale of impact on local employment and the local economy of such development can never be guaranteed but the Local Employment Plan seeks to maximise opportunities for local people to access construction jobs and training. The proposal would also provide the potential for a long term benefit to local businesses through the expenditure by future residents on goods and services. Given the scale of the development, the length of the construction period and the accessibility of the site to a large part of the urban area I attach significant weight to these economic benefits.
- 14.112 I agree that the appeal scheme would represent the effective use of underutilised land in the urban area but only limited weight can be given to this benefit because it does not comprise previously developed land. I also attach limited weight to the appellant's argument that allowing the appeal proposal might avoid the need for use of Green Belt land elsewhere. Until more progress has been made by other authorities towards identifying housing provision to meet Birmingham's unmet need it is difficult to assess the extent to which Green Belt land might be needed to secure that provision. I do, however, agree that the proposal would result in a net increase in the habitat and biodiversity value of the site and the long term management of those improved habitats. [9.63] I attach moderate weight to this environmental benefit of the proposal.

### *The Planning Balance*

- 14.113 For the reasons already given I do not accept the Council's contention that the proposal conflicts with BDP Policy PG1 or any other development plan policy. However, if such a conflict was to be found the benefits that I have listed above are material considerations in favour of the proposal. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, I consider that these benefits would provide sufficient indication that permission should be granted notwithstanding the development plan conflict.
- 14.114 If, contrary to my finding, the SoS concludes that the Council is unable to demonstrate a 5YHLS then NPPF paragraph 11d is engaged and the tilted balance in favour of a grant of planning permission applies. My clear judgement is that the limited adverse impacts of the proposal would not significantly and

demonstrably outweigh the benefits of granting planning permission when assessed against the policies in the NPPF taken as a whole.

14.115 Under all of these scenarios I consider that the appeal proposal constitutes sustainable development having regard to paragraph 8 of the NPPF. The circumstances of this case are, therefore, quite different from those in the Oundle appeal decision and that decision does not provide any precedent for the determination of this appeal. [8.37]

14.116 Accordingly, I conclude that the appeal should be allowed and that outline planning permission should be granted on the basis of the revised proposal for the development of the site for up to 800 dwellings.

## **15. Inspector's Recommendations**

15.1 I recommend that that appeal should be considered and determined on the basis of the amended proposal for a development of up to 800 dwellings to be developed in general accordance with the revised DF.

15.2 I recommend that, in his decision letter, the SoS should rule that the proposed obligations relating to the Additional Sports Improvement Fund Contribution and the Secondary School Contribution do not meet the relevant tests for planning obligations and are not required to render the proposal acceptable in planning terms.

15.3 I recommend that the appeal should be allowed and that outline planning permission with all matters reserved except for access, should be granted for the demolition of the club house and the development of up to 800 dwellings, public open space, primary school, multi-use community hub, new access points and associated infrastructure subject to the conditions in the schedule at Appendix F.

*Paul Singleton*

INSPECTOR



Appendix A

**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Crean QC instructed by Kate Chorlton-City Solicitor BCC

He called:

Uyen Phan Han BSc (Hons) PG Dip MRTPI Planning Policy Manager BCC

Mark Wood BA (Hons) B.Tp PG Dip MRTPI MCILT

FOR THE APPELLANT:

Christopher Young QC and Christian Hawley of Counsel instructed by Patrick Downes-Harris Lamb

They called:

James Stacey BA (Hons) Dip TP MRTPI Tetlow King Planning

Simon Hawley BA (Hons) MA MRTPI Harris Lamb

Adrian Willet BSc (Hons) FRICS FCIH Highgate Land and Development

Simon Parfitt BA MSc CMILT David Tucker Associates

Kurt Goodman BSc (Hons) MSc MCIEEM FPCR Environment and Design Ltd

Helen Kirk Dip Arb. MARborA MICFor FPCR Environment and Design Ltd

Timothy Jackson BA (Hons) Dip LA CMLI FPCR Environment and Design Ltd

Patrick Downes BSc (Hons) MRICS Harris Lamb

INTERESTED PERSONS:

Richard Burden MP Member of Parliament for Birmingham Northfield

Councillor Oliver Armstrong BCC Councillor - Northfield Ward

John Churchman Local Resident

Gerald Kennedy Local Resident

Roger King Local Resident

Stuart Turner Local Resident

## Appendix B

### **Five Year Housing Land Supply- Evidence and Conclusions on Identified Supply**

1. In this appendix I set out the parties' evidence as to why, in their view, individual sites included within the identified sites part of the 5YHLS should either be removed or retained, together with my conclusions on these. The sites are grouped under the categories listed in the combined table of disputed sites at ID 18. For each site I set out the appellant's evidence and the Council's response followed by my conclusions. Site references are as they appear in the SHLAA and 5YHLS report together with the CD references which contain the detailed information submitted by the appellant in relation to each site. The detailed evidence on the identified sites is in the main proof and rebuttal submitted by Mr Hawley on behalf of the appellant and in Mrs Han's rebuttal (Appendix 1).

#### ***Sites Under Construction***

##### CC220 (CD S48) Land Bounded by Priory Queensway and Chapel Street

###### *Appellant*

2. Planning permission was granted in March 2008 with 8 years for reserved matters. Phase 1 of 603 units is under construction but is at least 1 year away from completion. It is unclear whether construction can be arranged for those dwellings to be occupied prior to the completion of Phase 2. Phase 2 (223 dwellings) has not been sold to a residential developer and there is no construction contract in place. There is no evidence as to viability or when it might start to deliver dwellings. All 223 dwellings in Phase 2 should be removed from the 5 year supply.

###### *Council*

3. Phase 1 is nearing completion and Phase 2 expected to be completed within 5 years based on average build rates. Retain in supply.

###### *Conclusion*

4. The presumption that housing will be delivered within 5 years applies to all of sites in this category unless there is clear evidence to the contrary. The NPPF definition indicates that this might comprise evidence that the sites are no longer viable, there is no longer a demand for the types of units proposed, or sites have long term phasing plans. This is not an exhaustive list of examples but it is noted that the appellant's evidence does not demonstrate that any of these circumstances apply to the disputed sites in this category.
5. No contact has been made with the site owner about the sale of Phase 2 to a developer or the likely timescales for delivery of the 223 dwellings. In the absence of that detailed information it is reasonable for the Council to apply assumptions as to build-out rates where these are based on the historical delivery rate assessment set out in Appendix A5 of the SHLAA.
6. For City Centre apartment schemes of 200+ units the average build out rate indicated in Appendix A5 is 137.8 dpa. This is the rate that should be applied to this site. Construction of Phase 1 (603 units) started prior to the base date and

the parties agree that, as at September 2018, this was nearing completion. Reserved matters approval is in place for Phase 2. Even if construction of that phase is not started until April 2021 the average build-out rate suggests that the 223 units could be completed by the end of March 2023. There is ample time for Phase 2 to be sold and a construction contract to be let to achieve that outcome. I conclude that the full 826 units should be retained in the 5YHLS.

E446 (CD S50) Green Lane, Bordesley Green

*Appellant*

7. Permission was granted in 2010 and an extension of time was approved to October 2016. There is no publicly available information to show what works have been carried out to implement the permission or that the 7 pre-commencement conditions have been discharged. Recent photographs show no construction works underway and that the retail premises remain on the site. The site (8 dwellings) should be removed.

*Council*

8. Conditions on the original consent were discharged via an approval issued in October 2015. Permission was subsequently granted in June 2016 to change the proposed ground floor use from retail units to a dental surgery and minor material amendments also approved in May 2018 to changes some of the conditions. The officer reports for both these recent applications state that the permission has been implemented. Retain in supply.

*Conclusion*

9. Planning permission for the site's redevelopment for 8 dwellings has been implemented and remains extant. The more recent submission of minor material amendments to increase the number of dwellings and vary some planning conditions was not required to safeguard the planning permission and can be taken as an indication of the site owner's intention to carry out the development. Demolition of the existing buildings has not yet begun but the photographs do not suggest that these are occupied or in active use. There are no obvious obstacles to the redevelopment being taken forwards with 8 dwellings being delivered within the 5 year period. The site should, therefore, be retained.

N536 (CD S49) Land adj. 7 Sutton Square, Sutton Walmley & Minworth

*Appellant*

10. Planning permission was granted in 2013 with an expiry date of July 2016. The permission has been implemented by constructing footings but there has been no subsequent construction activity. The only evidence produced is a reference to the owner having said that construction will be completed within 2 years. The site (1 dwelling) should be removed.

*Council*

11. Site visit notes from housing monitoring year 2016/17 show that foundations had been put in. Officers revisited site on 19 September 2018 and the owner confirmed an intention to complete the development within 2 years. The site should be retained.

*Conclusion*

12. Although the officers' visit (September 2018) came after the base date it served to confirm the Council's understanding, when updating the SHLAA, that the planning permission for a single dwelling had been implemented by the construction of foundations. Although two years may have passed since those works were carried out this does not provide clear evidence that the site will not be taken forward. Indeed, the evidence from the site owner is that he intends to complete the development within 2 years. There is no evidence to justify the removal of the site from the 5YHLS

S29 (CD S46) Land adj. 163 Cole Valley Road, Hall Green South

*Appellant*

13. Planning permission was granted for demolition of a single dwelling and erection of 2 new dwellings in 2014. Demolition took place in 2015/16. BCC has had no contact with site owner and has no plans for a completion notice. As 2 years have passed since the demolition without any further construction activity the site (1 dwelling) should be removed.

*Council*

14. The existing house was demolished in 2016/16 monitoring year and permission implemented. 2 new dwellings can be implemented in 5 year period.

*Conclusion*

15. The planning permission granted in April 2014 has been implemented by means of the demolition of the single house on the site and remains extant. The only evidence produced by the appellant is a recent photograph that shows that no construction has yet started. That does not constitute clear evidence that the owner has no intention to redevelop the site or that there is no realistic prospect of the 2 dwellings being completed in the 5 year period. The site should be retained.

CC77 (CD S44) 70 Constitution Hill

*Appellant*

16. Planning permission was granted in 2013 with 3 years for the submission of reserved matters. BCC issued a Lawful Development Certificate confirming implementation of the permission in 2016 but has no other information. There is no construction activity on the site and no contact has been made with the owner. The site (109 dwellings) should be removed.

*Council*

17. A Lawful Development Certificate (LDC) granted in March 2017 confirms that the planning permission has been lawfully implemented. Retain in supply.

*Conclusion*

18. The LDC confirms that the planning permission for 109 dwellings was implemented before the April 2016 expiry date and remains extant. For this to have been issued the Council would need to have been satisfied that the pre-commencement conditions had been discharged. Given the number and nature

of those conditions this would have required a significant investment of time and cost on the site owner's part. Although no further construction activity appears to have taken place that does not constitute clear evidence that the owner has no intention to redevelop the site in accordance with that permission.

19. Applying the Council's average annual build rate or 92.3 dpa for City Centre apartment scheme of 100-200 units the 109 dwellings could be completed within 1 year. There is ample time for the development to be built out and the 109 dwellings to be completed within the 5 year period. The site should be retained.

### ***Sites with Detailed Planning Permission***

#### CC263 (CD S1) 45-51 Holloway Head, Ladywood

##### *Appellant*

20. Planning permission expires on 23 December 2018. Partial demolition has taken place but the site is boarded up with no sign of construction activity. BCC's evidence confirms that a number of the 21 pre-commencement conditions have yet to be discharged. Condition 1 requires a contamination assessment and a remediation scheme to be approved. BCC accepts that this goes to the question of viability but has not contacted the owner to ascertain the timescale for the delivery of the dwellings. Mr Hawley's appendix 7 shows that the sale of the site to the developer was delayed. The site (484 dwellings) should be removed.

##### *Council*

21. An application was made in August 2018 to vary planning conditions 9 & 11 and an application made in September 2018 to discharge condition 17 but there are other pre-commencement conditions still to be discharged. Retain in supply.

##### *Conclusion*

22. A large number of pre-commencement conditions were attached to the full permission but it is not unusual for the details needed to discharge such conditions to be submitted many months after permission has been granted particularly where the site is being sold on to a developer. At the 5YHLS base date, 9 months were available for those conditions to be discharged and a commencement made on site before the 3 year deadline of 22 December 2018. Given that time window it was reasonable for the Council to assume that the permission could lawfully be implemented.
23. Mrs Han's rebuttal evidence shows that applications for the discharge of pre-commencement conditions have subsequently been made. Her supplementary note at ID32 confirms that there no details still required to discharge the 21 pre-commencement conditions. Although this information was provided after the base date it serves to support the reasonableness of the Council's underlying assumption, in including the site in the 5YHLS, that the permission would be implemented by the 3 year deadline.
24. Given the number and nature of pre-commencement conditions the preparation and submission of this information will have required a significant investment of time and cost on the applicant's part. This can be taken as indicating an intention to implement the permission. If the conditions are discharged and a

commencement is made by 22 December there would be more than 4 years remaining to achieve the 484 completions which the 5YHLS assumes.

25. Although no trajectory has been provided by the site owner this rate of delivery is achievable having regard to the Council's historic average build out rate of 137.8 dpa on City Centre apartment schemes of 200+ units. Although the sale to a developer was not due to be completed until 31 July 2018 the fact that this has been progressed should increase rather than decrease confidence that the completions will be delivered within the 5 year period. The site should be retained.

CC379 (CD S5) Legge Lane/ Camden Street, Soho & Jewellery Quarter

*Appellant*

26. Planning permission expires on 23 December 2018. An application for discharge of some pre-commencement conditions (1, 3, 4, 12, 13 & 17) is due to be determined by 24 October but a further 11 pre-commencement conditions yet to be discharged. There is no evidence as to who the intended developer is and BCC has had no contact with the site owner regarding timescales for delivery. The site (100 dwellings) should be removed.

*Council*

27. An application for discharge of conditions was made in time to enable commencement before December expiry of permission. Retain in supply.

*Conclusion*

28. As at the base date of 1 April 2018, there were nearly 9 months remaining for the pre-commencement conditions to be discharged and a commencement to be made before the expiry date of 23 December 2018. As with the previous site, it was reasonable for the Council to assume that the permission would lawfully be implemented. A subsequent application for the discharge of pre-commencement conditions can be interpreted as a statement of intent that the permission will be implemented.
29. I accept the appellant's evidence that this application does not cover all of the pre-commencement conditions on the permission. However, I do not consider that the remaining conditions are ones which are overly complex or which are likely to require a substantial amount of work in preparing the necessary information. The appellant has not produced clear evidence to show that there is no realistic prospect that the 100 dwellings assumed in the 5YHLS will not be delivered. The site should, therefore, be retained.

CC381 (CD S7) BOERM Phase 2 & 3 Digbeth Park/ Park Street, Bordesley & Highgate

*Appellant*

30. Planning permission is due to expire on 8 January 2019. An application has been made to discharge some of the conditions but there is no evidence that this covers all pre-commencement conditions or that these have been discharged. The owner appears to be an off-shore Special Purpose Vehicle with no evidence of a residential developer involvement. No contact has been made with owner regarding delivery timescales. The site (198 dwellings) should be removed.



### *Council*

31. Discharge of conditions 1 & 19 was approved June 2017. An application for variation of some conditions was approved in July 2018 and a current application for discharged of conditions is likely to be determined by early November. These recent applications suggest a commitment to implement the permission.

### *Conclusion*

32. The permission is not due to expire until 9 January 2019. At the base date, 2 pre-commencement conditions had been discharged and 9 months remained available to secure the discharge of other pre-commencement conditions and to make a start on site. It was reasonable for the Council to assume that these things would occur over that period. The subsequent application to discharge other pre-commencement conditions indicates an intention that the permission will be implemented. The remaining pre-commencement conditions are not ones which require extensive information to be submitted to secure their discharge.
33. I do not consider that the appellant has produced clear evidence to show that there is no realistic prospect that the 198 dwellings assumed in the 5YHLS will not be delivered. The site should, therefore, be retained.

### **Small Sites**

#### *Appellant*

34. There are numerous small sites with planning permission due to expire shortly after the 1 April 2018 base date. At that dated there was no evidence that pre-commencement conditions on these had been discharged or of construction activity on site. BCC included them notwithstanding that, in some cases, permission was due to expire only a few weeks after the base date. These 10 sites account for 18 dwellings. Site E740 (CD S12) only has planning permission for a change of use to B2/B8 but had also been included in the 5YHLS with an anticipated contribution of 37 dwellings. These should be deleted.

#### *Council*

35. The base date is 1 April 2018 so sites with consent that has not expired before that date should be included. If sites where permission has subsequently expired are now to be removed then BCC should be able to add new sites on which planning permission has been granted after the base date. However the Council accepts the deletion of Site N815 for 2 dwellings as this permission expired on 1 April.

#### *Conclusion*

36. These sites do not comprise major development and, under the NPPF definition, benefit from the presumption that the homes which have been permitted will be delivered unless there is clear evidence to the contrary. On this basis it was reasonable for the Council to include them in the 5YHLS unless the permission had expired at the 31 March cut-off date.
37. The Council accepts that the permission on some of the sites has expired after 1 April. However, as there is no opportunity to add sites on which planning permission is granted after the 31 March it is necessary to adhere to that cut-off to provide consistency in the assessment. I see no justification for removing any

of the small sites other than N815 which has already been reflected in the Council's revised figures.

***Sites with Outline Planning Permission***

E101 (CD S25) The Comet PH, Collingbourn Avenue, Bromford & Hodge Hill

*Appellant*

38. BCC accepts that it carries the burden of proof in relation to these sites but its evidence is no more detailed than for the other categories of site. Neither has more detailed information been provided in the Council's rebuttal. The appellant maintains, in respect of all of the disputed sites in this category, that the existence of outline permission alone does not constitute clear evidence that housing completions will take place within 5 years
39. Outline permission was granted in 2017 and no reserved matters application yet made. An application for a reduced number of dwellings (20 instead of 27) was made after the base date but there is no information from the developer and no SoCG in place. The site (29 dwellings) should be removed.

*Council*

40. There is a current application for a revised scheme of 20 dwellings. The site should be retained in the supply but number of dwellings should be reduced from 29 to 20.

*Conclusion*

41. Sites with outline planning permission do not benefit from the presumption that the housing permitted on them will be delivered within 5 years under the revised definition. Because they still have to go through or complete the planning approval process there is no underlying assumption that development will commence in 3 years. Clear evidence is required to show that the housing completions will actually be delivered within the 5 year period. PPG provides examples of what that clear evidence might comprise.
42. In respect of this site no reserved matters application had been made at the base date. The site pro-forma provides no information about what progress had been made towards making such an application. No other information was available as to likely lead-in times and build-out rates. The Council accepts that the subsequent submission of a full application for a revised scheme of 20 dwellings means that the number of dwellings assumed in the 5YHLS should be reduced. As that application was made after the base date it cannot be relied upon as clear evidence that the dwellings assumed in the 5YHLS will actually be delivered. For these reasons I consider that the site and the full 29 dwelling contribution should be removed.

E379 (CD S26) Nocks Brickworks, Holly Lane, Erdington

*Appellant*

43. Outline planning permission was granted in 2013. A reserved matters application was submitted in 2017 but remains undetermined. Persimmon does not intend to rely upon the outline permission but no new application has been made and

contamination issues may affect viability. BCC accept that it is difficult to say when completions will occur. The site (50 dwellings) should be removed.

*Council*

44. An EIA screening opinion was issued in July 2018 and a full application including works for remediation of the site is to be submitted. Due to scale of remediation needed BCC proposes that yield within 5 year period be reduced to 50 dwellings.

*Conclusion*

45. A reserved matters application was submitted in January 2017 and the site pro-forma records that, at the base date, this application was under consideration. The fact that it had been in for over a year suggests that there were key issues to be resolved but the site-pro forma records that a remediation strategy was being agreed. There was, therefore, evidence of some progress with regard to the reserved matters and, on this basis, the inclusion of 100 of the total 200 dwellings proposed on the site within the 5YHLS was not an unreasonable assumption.
46. Given the issue of a screening opinion in July, it seems that discussions were ongoing at the base date and that Persimmon have subsequently taken the decision to submit a new full application rather than pursue the reserved matters approval. That application was submitted after the base date but that does not, in my view, call into question the Council's reliance on the progress that had been made in relation to the reserved matters application at the base date. Based on the discussions about contamination, the Council proposes that the assumed contribution within the 5 year period should be reduced from 100 to 50. I accept that amendment but see no justification for removing the site in its entirety.

N14 (CD S27) Old Oscott Hill, Oscott

*Appellant*

47. Outline permission was granted in 2016 with an expiry of 2021. The site largely comprises a former orchard to a former convent. The application was made by the Archdiocese. There is no evidence of a residential developer involvement or about timescales for delivery. BCC accepts that it relies on the outline permission to justify its inclusion. The site (14 dwellings) should be removed.

*Council*

48. BCC accepts that no reserved matters application has been made. As the outline permission does not expire until June 2021 there is still 2 years for reserved matters approval and construction of the 14 dwellings.

*Conclusion*

49. It is clear from Mrs Han's written and oral evidence that the Council relies on the existence of the outline planning permission to justify this site's inclusion in the 5YHLS. No reserved matters applications have been submitted and BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence in respect

of these sites falls short of what is required under the new definition. There is accordingly a justification for the removal of the site.

E799 (CD S28) 89 Coleshill Road, Bromford & Hodge Hill

*Appellant*

50. Outline permission was granted in 2016 and no reserved matters application has been made. There is no evidence of a residential developer involvement or of timescales for delivery. No SoCG. An additional full permission has been granted but this was after the base date. The site (33 dwellings) should be removed.

*Council*

51. A full application was submitted on 2 March 2018 and approved on 6 June 2018 for 33 dwellings. The site should be retained.

*Conclusion*

52. The site has outline planning permission which expires in November 2019. No reserved matters application had been made but a full application for 33 dwellings had been submitted before the base date. There may be a number of reasons why the applicant decided to make a full rather than a reserved matters application but, given that it proposes the same number of dwellings, that submission demonstrates good progress towards securing the delivery of that number of homes on the site.

53. As that application was not approved until after the base date the site is correctly recorded within the outline permissions category but that does, not in my view, call into question the assumptions made in the 5YHLS about the deliverability of the 33 dwelling contribution within the 5 year period. The site should, therefore, be retained in the supply

N856 (CD S29) 38 Heath Street South, North Edgbaston

*Appellant*

54. Outline permission was granted in December 2015 for 504 dwellings but there is no reserved matters application. BCC states that a new application for 750 dwellings is expected but this information was provided after the base date. Reliance was placed on a Planning Performance Agreement (PPA) that was not before the Inquiry. There is no evidence that a new application will be made, what timescales and conditions might be attached to any new permission, or of likely timescales for delivery. Its inclusion is not supported by evidence that completions will take place within 5 years and all 150 dwellings should be removed.

*Council*

55. A PPA has been agreed for a mixed use development of the site including 750 dwellings. Public consultation was carried out in April and a full application is expected in late 2018. Based on average build out rates the completion of 150 dwellings on the site is achievable within 2-3 years. There is, therefore, ample time remaining for the submission and approval of full application to enable these completions to be achieved.

### *Conclusion*

56. Outline permission for a mixed use development including 504 dwellings was granted in 2015. The 3 year deadline for submission of reserved matters is 23 December 2018 and no application had been made as at the base date. However, the SHLAA pro-forma records that the Council had information from the new owners of their intention to develop the whole site for housing. It states that pre-application discussions were ongoing and that an application was expected in autumn 2018. The pro-forma indicates a total site capacity of 700 dwellings and the 5YHLS assumes that 150 will be completed within the 5 year period.
57. Given that the principle of residential use had already been established it was reasonable for the Council to include the site in the 5YHLS with 150 dwellings expected to be delivered within the 5 year period. The discussions as to the making of a new application in place of a reserved matters provided the Council will information as to the progress being made towards delivery and the subsequent signing of a PPA and confirmation that public consultation about the revised proposal was carried out in April 2008 confirms the reasonableness of the Council's judgment.
58. As no new permission is yet in place the site is rightly included within the outline permissions category of sites. The fact that a new application is now to be made in place of a reserved matters submission does, not in my view, call into question the assumptions made in the 5YHLS about the deliverability of the 150 dwelling contribution within the 5 year period. The site should be retained in the supply.

### S10 (CD S30) Selly Oak Hospital, Selly Oak

#### *Appellant*

59. Outline permission granted in October 2013. A reserved matters application submitted in September 2018 remains undetermined and it cannot, at this stage, be certain that it will be approved. BCC is unable to identify a developer involvement and there is no information from the landowner on likely timescales for delivery and no SoCG. The site (153 dwellings) should be removed.

#### *Council*

60. This is the balance of an outline consent with the rest of the site either completed or under construction. A reserved matters application was submitted on 10 September 2018. The site should be retained.

### *Conclusion*

61. The site forms part of a larger site on which outline planning permission was granted in October 2013 for a mixed use development including up to 650 dwellings with a reserved matters deadline of October 2023. The majority of those dwellings had been completed or were under construction at the base date and the 150 units included in the 5YHLS is the remaining balance of that outline consent. Although no reserved matters application for these units had been submitted as at the base date the SHLAA pro-forma records that discussions were ongoing with the developers to bring the site forward.

62. The pro-forma does not indicate what information the Council had gleaned from its discussions about the likely timescale for making a reserved matters application and, in that sense, the SHLAA is not as transparent as it could be. However, the note does not indicate any concern that a reserved matters application would not be made in time to deliver the 150 units within the 5 year timescale. Given that some 500 dwellings had already been brought forward on the site I do not consider it unreasonable that the balance of the dwellings were included in the 5YHLS on this basis. The subsequent submission, after the base date, of a reserved matters application in September 2018 confirms that the Council's assumptions were reasonable. The site should be retained.

S889 (CD S31) Land at Monmouth Road, Della Drive and Penrith Croft, Bartley Green

*Appellant*

63. There is existing outline permission but a new application was lodged by Birmingham Municipal Housing Trust (BMHT), after the base date, for detailed planning permission. It is not known whether there are any objections or if it will be approved. Other than its inclusion in the single page spreadsheet showing BMHT's 5 year programme of sites (Appendix 8 to Mrs Han's rebuttal proof) there is no evidence as to the timeframe for delivery of housing on the site or whether there are any site constraints. This is of particular concern given that BMHT is part of the Council and that checks could easily have been made. The site (77 dwellings) should be removed.

*Council*

64. BMHT made a full application for 77 dwellings in August 2018. The site should be retained.

*Conclusion*

65. Outline permission for 80 dwellings was granted in August 2016 with a 3 year period for submission of reserved matters. No reserved matters application had been made by the base date. The SHLAA pro-forma states that the site is in BMHT's five year programme but gives no information as to any discussions that the planning officers have had with BMHT or any indication of when a reserved matters application might be made.

66. The BMHT future programme is a single page spreadsheet which provides very limited information about site constraints and no information about when planning or reserved matters applications are likely to be made. The final column is headed 'start on site' with indicated dates of 18/19, 19/20 and 20/21. This shows that some sites predicted to start in 18/19 are still at 'site identification' stage and that the vast majority in the 19/20 start date category are at 'site analysis' or 'site identification' stage. There is no explanation in the schedule as to what these terms mean and Mrs Han was unable to provide any information even as to what is meant by a 'start on site' in the schedule.

67. Based on the very limited information available it is difficult to avoid the conclusion that, other than for the sites already under construction or at tender stage, the start dates set out are aspirational. They appear not to be supported by any detailed analysis of what the lead-in times or build-out rates that might realistically be on what is a very wide range of site types and sizes. In my view this falls short of the clear evidence now required that there is a realistic prospect



that housing completion will be delivered on the site within the 5 year period. On the basis of this evidence the site should not have been included in the 5YHLS and should be removed. I note that an application was made in August 2018 but this was submitted after the base date. I can see no evidence that those preparing the 5YHLS were aware that this was likely to be submitted during 2018.

#### S992 (CD S32) Hall Green Stadium

##### *Appellant*

68. There is no evidence, other than the existence of the outline permission, to demonstrate that completions will be delivered with 5 years. Information that a reserved matters application was reported to Committee in September 2018 came after the base date. There is no information on site constraints or delivery timescales and no SoCG. The site (150 dwellings) should be removed.

##### *Council*

69. A reserved matters application is due to be reported to Planning Committee on 27 September with a recommendation for approval. The site should be retained.

##### *Conclusion*

70. The SHLAA pro-forma records that a reserved matter application had been made by the base date. This would have provided officers with clear evidence that there is a realistic prospect that the assumed contribution of 150 dwellings will be completed within the 5 year period. The site should be retained.

#### S935 (CD S33) 6 Selly Hill Road, Bournbrook & Selly Park

##### *Appellant*

71. The outline permission expires in March 2021 and no reserved matters application has been made. There is no evidence of developer involvement, no information from the owner on delivery and no SoCG. The site (10 dwellings) should be removed.

##### *Council*

72. The outline permission does not expire until March 2021 so there is time for the site to be developed out to provide 10 dwellings.

##### *Conclusion*

73. The Council relies on the existence of the outline planning permission to justify the site's inclusion in the 5YHLS. No reserved matters application has been submitted and BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence in respect falls short of what is required under the new definition. There is accordingly a justification for the removal of the site

E787 (CD S34) Elite House, 95 Stockfield Road, Tyseley & Hay Mills

*Appellant*

74. An outline permission for a second floor extension expires in 2020 with conversion of the existing building included under permitted development rights. Recent photographs show the building comprises vacant offices. There is no evidence of developer involvement, no information from the landowner on delivery timescales and no SoCG. The site (14 dwellings) should be removed.

*Council*

75. The outline consent does not expire until July 2020 leaving ample time for a reserved matters approval and implementation to deliver the 14 dwellings.

*Conclusion*

76. The Council relies on the existence of the outline planning permission to justify the site's inclusion in the 5YHLS. No reserved matters application has been submitted. BCC is unable to produce any other information about progress in preparing a reserved matters submission or a planning performance agreement or any information about likely lead in times and build out rates. The Council's evidence falls short of what is required under the new definition. There is a justification for the removal of the site.

***Permitted Development Sites***

*Appellant*

77. In respect of these sites the Council considers that the onus lies with the appellant to provide evidence why they should be discounted but the appellant disagrees. The Framework and PPG are silent on this question but securing Prior Approval for permitted development rights requires little time, investment or effort. It is good practice, when managing assets, to secure such approvals for conversion to residential use as this may provide options for the future and increase the value of the asset. Also there is no requirement to do anything further once Prior Approval has been obtained. This increases the need for the Council to check whether they are likely to deliver any housing.
78. BCC includes these sites up to the expiry of the Prior Approval even though the relevant permitted development rights require that the conversion works are completed within 3 years. No prudent developer would leave implementation towards the end of their 3 year life as if the works or not completed by the 3 year deadline the benefit of the Prior Approval falls away. It is inappropriate for BCC to rely upon the full 3 year life of Prior Approvals granted on such sites.
79. There are 9 sites with a combined yield of 575 dwellings which the appellant argues should be removed from the 5YHLS. The reasons include that the buildings are still in occupation and, in some cases, are being actively marketed for office use, no evidence of a residential developer involvement, no information from the owner re delivery timescales and no SoCG.

### *Council*

80. The shortest expiry date of the disputed sites is 1 June 2019 leaving 9 months from now (September 2018) for the works to be completed. All other sites have between 1 and 2.5 years left. All sites should remain in the supply.

### *Conclusion*

81. For the reasons already set out, my view is that sites with Prior Approvals for conversion to residential use under permitted development rights benefit from the NPPF presumption that the units proposed will be delivered unless there is clear evidence to the contrary. I do, however, accept the appellant's argument that it is not realistic for the Council to apply that presumption up until the date that the Prior Approval expires because the standard conditions within the Town & Country Planning (General Permitted Development) (England) Order 2015 require that the works must be completed within 3 years of the date of prior approval date. Hence, there is a need to build in some time allowance for the works to be carried out when considering whether or not there is a realistic prospect that the dwellings will be completed.
82. There is no guidance as to what cut-off date might be used to reflect this key difference between sites with prior approval and those with detailed planning permission. The scale of the projects in this category is likely to vary quite widely but, as a general guide, it might be reasonable to assume a minimum 3 month period for the completion of works to convert an office or industrial premises to residential use. If that is applied to this category of sites in the 5YHLS, any sites with a prior approval due to expire within 3 months of the 31 March cut-off date (i.e. before 30 June 2018) would not be included in the 5 year supply.
83. I acknowledge that my 3 month period is an arbitrary judgement as to what period should be allowed. However, even if a 6 month period (which would be generous for many of the smaller schemes) was adopted there would be no justification for excluding any of the disputed sites from the 5YHLS. The earliest expiry date of any of the prior approvals is June 2019 (Site E769). Most of the sites have considerably longer periods available for the works to be completed. None of these sites should, therefore, be removed.

### ***Allocated Sites***

E106- E111 inclusive, E485, E487 & E489 (CD S52-S60 inclusive)

### *Appellant*

84. These sites are located in close proximity to one another on the Bromford Estate. There are all in Flood Zone 3. The SHLAA states that discussions re flood risk measures are ongoing but there is no information as to what these might comprise, whether funding is needed and whether they pose a risk to viability and delivery. Some of the sites fall within the BDP's definition of open space and there may be policy hurdles to be overcome. As they are in BMHT's programme it is likely that they would be built out in series rather than in parallel so the overall build-out time is likely to be extended.

*Council*

85. These are in the BMHT 5 year programme with a start date of 2019/20 giving 3 years for the 160 dwellings to be completed. This is achievable given BMHT's historic delivery rates.

*Conclusion*

86. No planning applications have been submitted in relation to any of these sites and the SHLAA pro-forma sheets give no indication as to when applications might be made. In all cases it appears that the Council has relied upon their inclusion in the BMHT 5 year programme to justify their inclusion in the 5YHLS. I do not consider that the BMHT schedule provides any confidence that the start dates indicated will be met. It provides no information as to realistic lead-in times and build-out rates for each of these sites.

87. This is particularly important in respect of 6 of the sites (E106-E11) for which the pro-forma sheets indicate that discussions are ongoing about flood mitigation measures. Neither those sheets nor the BMHT schedule provide any information as to the nature and scale of the issues or what implications this might have for viability and lead-in times.

88. The SHLAA notes that site E485 is designated as public open space but gives no indication as to the loss of this open space is to be dealt with in policy terms.

89. When preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. Whilst BMHT may have a track record of delivery that does not provide sufficient confidence about the deliverability of housing on the individual sites within the 5YHLS as required by the NPPF. All of these sites and their combined contribution of 160 dwellings should be removed from the supply.

E61 (CD S51) Yardley Brook, Colehill Lane, Glebe Farm & Tile Cross

*Appellant*

90. This is a former sewage works with significant contamination issues and no planning permission. BCC's best evidence is that a start is expected sometime next year. The BMHT schedule gives only an indicative start date and there is no project update re progress dealing with the contamination or preparing an application. Mr Hawley's evidence identifies a number of detailed issues relating to contamination, securing EA approval for any remediation works, undertaking habitat and other surveys and securing agreement with National Grid to work adjacent to a 132Kv cable as well as the procurement of a developer for the scheme. The site (100 dwellings) should be removed.

*Council*

91. The site is in the BMHT 5 year programme with a start date of 2020/21 which gives 3 years for the completion of the 160 dwellings. This is achievable based on BMHT's historic delivery rates.

*Conclusion*

92. No planning application has been submitted and the SHLAA pro-forma gives no indication as to when applications might be made. As for the 9 sites above it

seems that the Council has relied upon their inclusion in the BMHT 5 year programme to justify their inclusion in the 5YHLS.

93. The pro-forma notes that this is a former sewage works and refers to HCA funding for remediation. No further information is available on the nature and extent of the works or the implications for lead-in time before a start can be made and in cross-examination Mrs Han accepted that there is no real evidence that the proposed dwellings can be delivered on this site within 5 years.
94. I consider that, when preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. The site should be removed from the supply.

E768 (CD S61) Highgate Road, Sparkbrook

*Appellant*

95. This is allocated in a Neighbourhood Development Plan which says that a development brief is to be prepared but that has not yet been done. BCC accepts that neighbourhood plan allocations do not require consideration of viability or deliverability and there is no evidence on its viability. The site is listed in the BMHT schedule as being at site identification stage. The site (45 dwellings) should be removed.

*Council*

96. The site is in the BMHT 5 year programme with a start date of 2019/20 and should be retained in the supply.

*Conclusion*

97. No planning application has been submitted and the SHLAA pro-forma gives no indication as to when an application might be made. It is reasonable to presume that this can only be done after the development brief has been prepared and approved if this is intended to guide the development proposals. The pro-forma indicates that the site comprised open space but that improved open space is to be provided on site.
98. The Council has relied upon its inclusion in the BMHT 5 year programme to justify its inclusion in the 5YHLS. I consider that, when preparing the 5YHLS, the Council did not have clear evidence to show a realistic prospect that housing completions would be delivered within the 5 years. The site should be removed from the supply.

N814 (CD S62) Former Birchfield Library, Alston

*Appellant*

99. The site is partly BCC owned but a compulsory purchase order and HIF funding are needed. The outcome of these cannot be guaranteed. If the scheme is being used for the Common Wealth Games it could not be available for general residential use until after summer 2022. It is not known what works might be needed to convert the units for general residential use. The site (50 dwellings) should be removed.

### *Council*

100. The CPO is needed to address rights that tenants may have had over the land. Existing tenants are to be served notice in December 2018 to vacate and the site will be available in mid-2019. HIF funding bid is due in last week of September or first week of October 2018. The site is part of the Perry Barr redevelopment for Commonwealth Games.

### *Conclusion*

101. The SHLAA pro-forma includes no information as to when an application might be expected. Although it refers to the need for HIF funding and a CPO to complete the land assembly there is no information as to how long these procedures might take or how they might impact on lead-in times. A favourable outcome cannot be assured in respect of either of these two actions but the Council appears not to have given any consideration to the associated risks to delivery.

102. Although not referenced in the SHLAA pro-forma, Mrs Han's rebuttal evidence revealed that the 50 dwellings are proposed as part of the Perry Barr redevelopment for the Commonwealth Games in the summer of 2022. Given that critical deadline, it might be expected that the Council would have produced a detailed programme for progressing the site through the funding bid, CPO, design, planning and construction phases but no information was submitted as to that detailed programme. Similarly, there is no information as to what works might be required after the completion of the Games to make the dwellings available for general use so that they do contribute to meeting the City's general housing requirements.

103. Where risk factors such as these are known about this increases the need for the Council to show clear evidence that there is a realistic prospect of housing delivery on the site. Such evidence was not available to officers when preparing the 5YHLS and no new information has subsequently been provided to demonstrate that a realistic prospect of delivery exists. The site should be removed from the supply.

### ***Other Opportunity Sites***

E594 (CD S64) Hallmoor School, Glebe Farm & Tile Cross

E860 (CD S66) Lyndhurst Estate Phases 3 & 4 Erdington

E866 (CD S67) Gressel Lane, Glebe Farm & Tile Cross

S975 (CD S71) Highfield Lane/ Woodridge Avenue, Quinton

S977 (CD S72) Long Nuke Road Recreation Ground, Barley Green

### *Appellant*

104. No planning applications have been made on any of these sites. There is no information as to when an application might be made and none on lead-in times and build out rates. Inclusion in the BMHT programme is not evidence of delivery and the sites are indicated in that schedule as being only at site identification or site analysis stage. No builder is in place. Other site specific constraints are noted in the SHLAA pro-forma.



105. In relation to E594 and E680 the pro-forma says that the site access solution is unknown. S975 and S977 were last used as a playing fields/ recreation ground so policy hurdles are likely. All the sites should be deleted.

*Council*

106. The sites are in the BMHT schedule with a start in 2019/20 and should be retained. The expected contribution for E860 should, however, be reduced from 54 to 20.

*Conclusion*

107. These 'other opportunity' sites fall outside of the NPPF definition of deliverable but all of the sites would comprise proposals for major development (10 or more houses) that did not have planning permission at the base date. For that reason they do not benefit from the presumption that the housing completions will be delivered within the 5 year period and are more akin to allocations in this respect. The burden of proof to demonstrate that housing completions will be secured within 5 years should, accordingly, rest with the Council.

108. For each of these sites the SHLAA pro-forma provides no indication as to when an application might be made or on lead-in times or build-out rates. The Council has relied upon their inclusion in the BMHT programme. I do not consider this sufficient to provide the clear evidence needed to show that there is a realistic prospect of the dwellings being delivered. The sites should be removed from the supply.

E808 (CD S65) Greenwood Academy, Farnborough Road, Castle Vale

*Appellant*

109. A planning application has been made but its outcome is unknown. There is no direct evidence on constraints, viability or timescales. The site (124 dwellings) should be removed.

*Council*

110. The site is in the BMHT schedule with a start in 2018/19 and should be retained.

*Conclusion*

111. The SHLAA pro-forma records that a planning application had been submitted by the base date. This would have provided sufficient evidence that BMHT's anticipated start date of 2018/19 could be achieved and that there is a realistic prospect that the 124 unit dwelling contribution from this site can be completed within the 5 year period. The site should be retained in the supply.

N493 (CD S68) Crown & Cushion, Birchfield

*Appellant*

112. A previous planning permission has expired and there is no indication of when a new application might be made. The site requires both a compulsory purchase order and a HIF funding bid. No direct evidence on constraints, viability or timescales. The site (100 dwellings) should be removed.

*Council*

113. A decision on the HIF bid is due any time. The site should be retained.

*Conclusion*

114. This is another site that is related to the Commonwealth Games in 2022 but where there appears to be no detailed programme available to show how its delivery can be secured. The pro-forma notes the need for a CPO to complete land assembly and for HIF funding but no timescale is indicated as to when these processes might be completed. A favourable outcome cannot be guaranteed in relation to either of these actions but there is no assessment of what risks this might pose to delivery.

115. The rebuttal evidence indicates that a decision on the HIF bid was expected in late September or early October. Not only was that information not apparently available at the base date but the outcome of that application was not made known to the Inquiry. The Council did not have the clear evidence required in relation to this site and it should be deleted from the 5YHLS.

N903 (CD S69) Leslie Road Depot, Birchfield

*Appellant*

116. There is no planning permission or application and the development requires HIF funding. There is no direct evidence on constraints, viability or timescales. The site (15 dwellings) should be removed.

*Council*

117. The site was included as a BMHT site in error. A decision on the HIF bid is expected shortly.

*Conclusion*

118. This is a Council owned site. Although the pro-forma records the need for a HIF bid it includes no information as to what risks the need for funding might pose to the delivery of the site or about when a planning application might be made. As with the previous site I consider that, when preparing the 5YHLS, the Council did not have the clear evidence required in relation to this site and that it should be removed.

S160 (CD S70) Land to rear of 15-87 Cateswell Road, Hall Green North

*Appellant*

119. There is no planning permission or application. There is no direct evidence on constraints, viability or timescales. The only supporting evidence is a recent email from Homes England who control the site stating that an application is to be made in late September or early October 2018. This was received after the base date. The site (89 dwellings) should be removed.

*Council*

120. An email from Homes England states that an application is to be made in late September or early October 2018 and that a start on site is expected in 2019. The site should be retained.

### *Conclusion*

121. No application had been submitted at the base date but the SHLAA pro-forma records that pre-application discussions had been held, that the site had been cleared and that remediation works were underway. Although it does not indicate a date when an application might be expected it is reasonable to conclude that the information that officers did have gave them confidence that one would be submitted sufficiently early to enable the 89 dwellings to be completed within the year period. The subsequent confirmation from Homes England that an application is being prepared and a start of site is to be made in 2019 confirms the reasonableness of the Council's assumptions.
122. The pro-forma could usefully have provided more detail as what information officers had obtained from the pre-application discussions. I am satisfied that the Council had sufficient evidence that progress was being made both with regard to preparing an application and in preparing the site for construction works to take place. The site should accordingly be retained in the 5YHLS.

### *Conclusion*

#### S978 (CD S73) Edgbaston Cricket Ground

### *Appellant*

123. An extant planning permission is not being relied on as a new application was submitted after the base date. The scheme proposes parking levels substantially below the standard for the 'least accessible' zone in the Car Parking Guidelines SPD. There is no direct evidence as to timescales, constraints or viability. This site (100 dwellings) should be removed.

### *Council*

124. BCC's parking standards are maxima so lower levels can be agreed. The current scheme has been subject to pre-application discussions that have informed the submission. There is also a partially implemented permission for residential development which still be completed should the developer choose. The site should be retained.

### *Conclusion*

125. Although no planning application had been submitted at the base date the pro-forma records that pre-application discussions and public consultation had taken place with regard to the residential development proposals. The note also records that previously approved and commenced developments on other parts of the site will not now be carried out. Again, although it does not indicate a date when an application might be expected, it is reasonable to conclude that the information that officers did have gave them confidence that one would be submitted sufficiently early to enable the 100 dwellings to be completed within the year period. The subsequent submission of an application after the base date confirms the reasonableness of the Council's assumptions.
126. I note the appellant's comments about the level of parking proposed in the application and the Council's response that the standards in the Car Parking Guidelines SPD are maxima and that lower levels can be accepted. Planning permission has yet to be granted but the Council has confirmed that parking

provision was discussed in the pre-application meetings and it is reasonable to assume that there is some level of agreement on the appropriate level of provision. I do not consider that this issue is likely to present a significant obstacle to the delivery of the 100 dwellings assumed in the 5 year period. The site should, therefore, be retained in the supply.

### Summary

127. On the basis of the above conclusions I find that there is justification to remove a number of dwellings from the Council's claimed 5YHLS as set out below:

Sites with outline planning permission:	- 145 dwellings.
Allocated Sites:	- 355 dwellings.
Other Opportunity Sites:	- 347 dwellings.
<b>Total Deductions:</b>	<b>- 847 dwellings.</b>

## Appendix C

### INQUIRY DOCUMENTS

- ID1 Inspector's Pre-Inquiry Note
- ID2 BCC Solicitor's Letter re Appellant's evidence dated 19.09.18
- ID3 Opinion of Christopher Young QC re evidence dated 26.09.18
- ID4 Opinion of Christopher Young QC re EIA dated 28.09.18
- ID5 BCC letter re S106 Agreement dated 27.09.18
- ID6 BCC CIL Compliance Statement dated 20.09.18
- ID7 Gowling WLG letter re S106 Agreement dated 28.09.18
- ID8 Schedule of draft planning conditions
- ID9 Appeal Decision Reference APP/W3520/W/18/3194926 dated 29.09.18
- ID10 Appellant's Opening Submissions
- ID11 Signed SoCG (general matters) dated 03.10.18
- ID12 Roger King – text of representations
- ID13 Gerald Kennedy – text of representations
- ID14 John Churchman - text of representations
- ID15 Richard Burden MP - text of representations
- ID16 Signed SoCG (Transport) dated 01.10.18
- ID17 Extract from Footnote 11 to NPPF 2012 re "deliverability"
- ID18 5YHL Table of Disputed Sites – Council and Appellant comments combined
- ID19 Mr Parfitt's written response to 3<sup>rd</sup> party & WMAS highway concerns
- ID20 Mrs Kirk's response to Inspector's Pre-Inquiry Note
- ID21 Mrs Kirk's response to 3<sup>rd</sup> party representations
- ID22 Mr Jackson's ES LVIA Update in relation to the revised IDF
- ID23 Mr Goodman's response to 3<sup>rd</sup> party representations
- ID24 Draft (1) Section 106 Agreement
- ID25 Summary of Draft Section 106 Agreement
- ID26 S106 Table of Obligations
- ID27 Draft Unilateral Agreement
- ID28 Summary of Draft Unilateral Agreement
- ID29 Statement of Errata to Mr Downes main Proof of Evidence
- ID30 Extract from 2017 SHLAA
- ID31 Extract from BDP Examining Inspector's Report concerning MM62
- ID32 BCC note re pre-commencement planning conditions - SHLAA site Ref CC263
- ID33 Extract from BCC report on Greenbelt Housing Delivery Options January 2013
- ID34 Extract from 2014 SHLAA
- ID35 Extract from 2014 5YHLS report
- ID36 Appellant's proposed Housing Trajectory for the appeal scheme
- ID37 Mr Hunter's Rebuttal Proof re Education contributions
- ID38 Email correspondence between BCC and DfE dated 05.10.18
- ID39 BCC written response to B&BCWT objection
- ID40 Mrs Han email re numbers on BCC Housing Register as at 15.10.18
- ID41 Updated Trajectory for housing delivery at Langley SUE (as at June 2018)
- ID42 Decision Letter re Appeal Ref APP/W1715/W/15/3130073 dated 30.11.16
- ID43 Combined table showing appeal scheme housing trajectory and available secondary school places
- ID44 Email correspondence between BCC and DfE dated 16.10.19
- ID45 Council's Closing Submissions
- ID46 Appellant's Closing Submissions
- ID47 Signed Section 106 Agreement

## Appendix D

### CORE DOCUMENTS

#### Planning Policy

- A1 NPPF 2018
- A2 National Planning Policy Guidance (NPPG)
- A3 Birmingham Development Plan (BDP)
- A4 Saved Policies UDP 2005

- B4 Mature Suburbs SPD

#### High Court and Supreme Court Cases

- C1 Judgment on the Suffolk Coastal District Council and Richborough cases.
- C2 St Modwen v Secretary of State for Communities and Local Government and East Riding of Yorkshire Council [2017]

#### Appeal Cases

- D1 Land off Barn Road, Longwick, and Buckinghamshire.  
APP/K0425/W/15/3018514
- D2 Land rear of 62 Iveshead Road, Shepshed. APP/X2410/W/15/3007980
- D3 Land at Foldgate Lane, Ludlow, Shropshire. APP/L3245/W/15/3137161
- D4 Land at Waterloo Road, Bidford-on-Avon, Warwickshire.  
APP/J3720/W/15/3089709
- D5 Land to the south and west of Whitworth Way, Wilstead, Bedfordshire.  
APP/K0235/W/16/3147287
- D6 Land at the Worcestershire Hunt Kennels, Kennels Lane, Fernhill Heath,  
Worcestershire. APP/H1840/W/15/3003157
- D7 Report to SoS: Land surrounding Sketchley House, Watling Street, Burbage,  
Leicestershire. APP/K2420/A/13/2208318
- D8 Land between Iron Acton Way and North Road, Engine Common, Yate, South  
Gloucestershire. APP/P0119/A/12/2186546
- D9 Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Cheshire.  
APP/R0660/A/13/2192192
- D10 Land at the corner of Oving Road and A27, Chichester PO20 2AG.  
APP/L3815/W/16/3165228
- D11 SoS Land at Gotham road, East Leake, Nottinghamshire.  
APP/P3040/A/07/2050213
- D12 SoS Land At Pulley Lane, Newland Road And Primslan Way, Droitwich Spa,  
(Wychavon Dc) APP/H1840/A/13/2199426
- D13 Land north of Upper Chapel, Launceston. APP/D0840/A/13/2209757
- D14 Land at Fountain Lane, Davenham, Cheshire. APP/A0665/A/14/2226994
- D15 Land north of Bill Crane Way, Lutterworth, Leicestershire.  
APP/F2415/A/12/2179844
- D16 Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon.
- D17 Land east of Buckingham Road, Steeple Claydon, Buckingham,  
Buckinghamshire. APP/J0405/W/16/3154432
- D18 Land off Worcester Road, Drakes Broughton, Worcestershire.  
APP/H1840/W/15/3008340
- D19 Broden Stables, Redlands Lane, Crondall, Farnham.  
APP/N1730/W/17/3185513



- D20 64 Biggleswade Road, Potton. APP/P0240/W/17/3176444
- D21 Land to the Rear of Castle Road and North of The Glebe, Lavendon, Olney.  
APP/Y0435/W/17/3178790
- D22 Land off Olney Road, Lavendon. APP/Y0435/W/17/3182048
- D23 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley.  
APP/D2320/A/12/2172693
- D24 Land off Elmwood Avenue, Essington. APP/C3430/A/12/2189442
- D25 Land east of Springwell Lane, Whetstone, Leicestershire.  
APP/T2405/A/13/2193758
- D26 Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire.  
APP/A0665/W/14/3000528

### **Old Planning Application 2016/02717/PA**

- E1 Committee Report
- E2 Application Plans
  - Site Location Plan (6863-L-01)
  - Indicative Layout Plan (6863-L-05-D)
  - Constraints and Opportunities Plan (6863-L-02-F)
- E3 Planning Statement (2016)

### **Local Plan Evidence Base Documents**

- F1 2018 SHLAA
  - F2 5YHLS Report January 2018
  - F3 BDP Inspector's report
  - F4 BDP Duty to Co-Operate Statement (June 2014)
  - F5 Withdrawal of BDP inspector's report holding direction
  - F6 Strategic Housing Needs Study Stage 2 report (November 2014)
  - F7 Greater Birmingham HMA Strategic Growth Study (Feb 2018)
  - F8 Greater Birmingham and Black Country Housing Market Area Strategic Locations Study (2018) Position Statement.
  - F9 Birmingham Local Plan Authority Monitoring Report Monitoring period 2016 - 2017
  - F10 BCC Local Development Scheme
  - F11 Sustainable Community Strategy – Birmingham 2026
  - F12 Homelessness Strategy 2012+
  - F13 BCC Strategic Housing Market Assessment 2012
  - F14 BCC Housing Targets 2011-31 Technical Paper (September 2013)
  - F15 BDP Planning for Birmingham's growing population Options Consultation October 2012
  - F16 Extract from Birmingham Core Strategy 2026 Consultation Draft December 2010
- 
- B1 Playing Pitch Strategy (2017)

### **Other supporting information**

- B2 Places for Living
  - B3 Places for all
- 
- G3 BCC representations on Solihull Draft Local Plan
  - G4 Solihull Local Plan Review Draft Local Plan – Summary of Representations (July 2017)

- G5 Report to the Greater Birmingham and Solihull Supervisory Board – STRATEGIC HOUSING NEEDS STUDY
- G6 Fixing our broken housing market – February 2017
- G7 Extract from the Consultation Draft Core Strategy

**Appeal - Application Documents (ref: 2017/02724/PA)**

- H1 Covering Letter
  - H2 Application Forms
  - H3 Site Location Plan (6863-L-01)
  - H4 Development Framework (6863-L-04)
  - H5 Constraints and Opportunities Plan (6863-L-02 rev F)
  - H6 Indicative Layout Plan (6863-L-05 rev D).
  - H7 Supporting Planning Statement
  - H8 Phase 1 Site Investigation Report
  - H9 Design and Access Statement
  - H10 Transport Assessment
  - H11 Confidential Badger Report - Environmental Statement: Volume 3 Appendices
  - H12 Birmingham City Council Five Year Housing Land Supply Assessment
  - H13 Community Infrastructure Levy Liability Form
  - H14 Education report
  - H15 Equality Monitoring Form
  - H16 Environmental Statement Volume 1
  - H17 Environmental Statement Volume 2
  - H18 Environmental Statement Volume 3
  - H19 Environmental Statement Non-Technical Summary
  - H20 Flood Risk Assessment
  - H21 Tree Survey
  - H22 Open Space Review
  - H23 Planning Obligation and Affordable Housing Statement
  - H24 Minerals Impact Assessment
  - H25 Statement of Community Involvement
  - H26 Highways Technical Note 004
- 
- J2 Biodiversity Impact Assessment Calculator
  - J3 Fluvial Design and Access Statement
  - J4 Precautionary Method Statement (Bats)
- 
- K1 Decision Notice 2017/02724/PA
  - K2 Committee Report 2017/02724/PA

**Consultee Responses**

- I1 West Midlands Fire Service
- I3 Severn Trent
- I4 West Midlands Police
- I5 Environment Agency
- I6 Lead Local Flood Authority
- I7 Sport England – Non- statutory role and policy
- I8 Regulatory Services
- I9 Landscape Architect
- I10 Ecology
- I11 Education
- I12 Transportation

- I13 Housing
- I14 Leisure Services
- I15 Trees
- I16 Design
- I17 District Parks Team 120717
- I18 District Park Team2 120717
- I19 Sports Development Officer 210717
- I20 Design (to revised Masterplan)
- I21 Design (to revised Masterplan)
- I22 Ecology (to revised Masterplan)
- I23 Trees (to revised Masterplan)
- I24 LLFA (response to revised Masterplan)

**Documents submitted during Wheatcroft Consultation**

- J5 Development Framework (6863-L-04 Revision T)
- J6 Indicative Layout (6863-L-05 Revision E)
- J7 Cover letter
- J8 Consultation responses and summary
- J9 Newspaper advertisement
- J10 Correspondence between HL, BCC and PINS
  
- K3 Committee report 2017/02724/PA (05/07/18)

**Transport Documents**

- R1 Transport Scoping Notes 16094-01 and 16094-02
- R2 Technical Note 16094-03
- R3 Technical Note 16094-04
- R4 Technical Note 16094-05
- R5 Stage 1 Road Safety Audit & Designer's Response

**BCC 5 Year Housing Land Supply Planning Applications**

<b>Detailed Planning Permissions</b>	
S1	CC263 - 49 to 51 Holloway Head, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S2	CC299 - Site of 36 and 38 Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S3	CC356 - 87 Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report

S4	CC377 - United Services Club, Gough Street, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S5	CC379 - Legge Lane/Camden Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S6	CC380 Land rear of Assay Office, Charlotte Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S7	CC381 - BOERMA phase 2&3 Digbeth/Park Street/Well Lane, Bordesley & Highgate
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S8	E114 - 12 - 18 Whitmore Road, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S9	E705 - Site of 477 Charles Road, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S10	E707 - 7 Land Adjacent 160 Slade Road, Stockland Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S11	E714 - Upper Floors, 138 Ladypool Road, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
(b)	Decision Notice

(c)	Committee Report
S12	E740 - 95 to 97 Cato Street, Nechells
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S13	N412 - Rear of 216 Birmingham Road, Sutton Wylde Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S14	N784 - Adjacent 95 Uplands Road, Holyhead
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S15	N788 - Old Mill Grove, Birchfield
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S16	N793 - Adjacent 62 Rosslyn Road, Sutton Walmley & Minworth
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S17	N794 - Above 277 Kings Road, Kingstanding
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S18	N808 - 1st Floor 146 Soho Road, Handsworth
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S19	N815 - 393 Dudley Road, North Edgbaston
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S20	N853 - 24 Trenchard Close, Sutton Reddicap
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report

S21	S785 - Adjacent 37 Longwood Road, Rubery & Rednal
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S22	S792 - St Judes Court, Brandwood & King's Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S23	S796 - 13A Alvechurch Road, Longbridge & West Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S24	S808 - Hill Croft/Allens Croft Road, Brandwood & King's Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
<b>Outline Planning Permissions</b>	
S25	E101 - The Comet Public House, Collingbourn Avenue, Bromford & Hodge Hill
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S26	E379 - Nocks Brickworks, Holly Lane, Erdington
(a)	Site Location Plan
(b)	Decision Notice
(c)	S106
S27	N14 - Old Oscott Hill, Old Oscott, Oscott
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S28	E799 - 89 Coleshill Road, Bromford & Hodge Hill
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106



S29	N856 - 38 Heath Street South and adjacent site, North Edgbaston
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S30	S10 - Selly Oak Hospital, Raddlebarn Road, Bournville & Cotteridge
(a)	Site Location Plan
(b)	Decision Notice
S31	S899 - Site of Near Oak Drive Dela Drive, Bartley Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S32	S922 - Hall Green Stadium, York Road, Hall Green North
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	S106
S33	S935 - 6 Selly Hill Road, Bournbrook & Selly Park
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S34	E787 Elite House, 95 Stockfield Road, Tyseley & Hay Mills
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S74	S273- Adjacent 85 Redhill Road, Longbridge & West Heath
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
<b>Permitted Development</b>	
S35	E837 - Equipoint, 1506 Coventry Road, South Yardley
(a)	Site Location Plan
(b)	Decision Notice

(c)	Committee Report
(d)	Site Visit Photograph
S36	CC74 - The Square, Ryland St, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S37	E848 - Swan Courtyard, Charles Edward Road, South Yardley
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S38	N961 - Four Oaks House, Lichfield Road, Sutton Four Oaks
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S39	E769 - Greencote House, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S40	C429 - 123 Bradford Street, Bordesley & Highgate
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S41	E787 - Elite House, 95 Stockfield Road, Tyseley & Hay Mills
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
S42	C428 Blocks 1&2 Branston Court, Branston Street, Soho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph

S43	E853 - 197-201 Streetly Road, Stockland Green
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
(d)	Site Visit Photograph
<b>Under Construction</b>	
S44	CC77 - Between 62 & 90 Constitution Hill, ho & Jewellery Quarter
(a)	Site Location Plan
(b)	Decision Notice
(c)	S106
S45	E679 - 2308 Coventry road, Sheldon
(a)	Site Location Plan
(b)	Decision Notice
S46	S29 - Adjacent 163 Cole Valley Road, Hall Green South
(a)	Site Location Plan
(b)	Decision Notice
S47	S252- 350 Groveley Lane, Longbridge and West Heath
(a)	Site Location Plan
(b)	Decision Notice
S48	CC220 - Land bounded by Priory Queensway and Chapel Street, Ladywood
(a)	Site Location Plan
(b)	Decision Notice
(c)	Committee Report
S49	N536- Land adjacent 7 Sutton Square, Sutton Walmley & Minworth
(a)	Site Location Plan
(b)	Decision Notice
S50	E446 - 551-555 Green Lane, Bordesley Green
(a)	Site Location Plan
(b)	Decision Notice
<b>Allocated in the Plan</b>	
S51	E61 - Yardley Brook, Colehall Lane, Glebe Farm & Tile Cross
(a)	Site Location Plan

S52	E106 - Between 17 Hyperion Road & 7 Papyrus Way, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S53	E107 - Adjacent 17 Papyrus Way Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S54	E108 - Junction of Tipperary Close & Trigo Croft, Bromford Estate
(a)	Site Location Plan
S55	E109 - 17 Hyperion Road, Bromford & Hodge Hill
(a)	Site Location Plan
S56	E110 - Land adjacent 25 Tri go Croft, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S57	E111 - Rear of 19 25 Trigo Croft, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S58	E485 - Berrandale Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S59	E487 - Hyperion Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S60	E489 - Tipperary Close/Chipperfield Road, Bromford Estate, Bromford & Hodge Hill
(a)	Site Location Plan
S61	E768 - Highgate Road, Sparkbrook & Balsall Heath East
(a)	Site Location Plan
S62	N814 - Former Birchfield Library and adjacent shops, Aston
(a)	Site Location Plan
<b>Other Opportunities</b>	
S63	E363- Rear of 364 to 404 Stockfield Road, South Yardley

(a)	Site Location Plan
S64	E594 - Hallmoor School, Hallmoor Road, Glebe Farm & Tile Cross
(a)	Site Location Plan
S65	E808 - Greenwood Academy, Farnborough Road, Castle Vale
(a)	Site Location Plan
S66	E860 - Lyndhurst Estate Phases 3&4, Erdington
(a)	Site Location Plan
S67	E866 - Gressel Lane, Glebe Farm & Tile Cross
(a)	Site Location Plan
S68	N493 - Crown and Cushion and adjoining land, Birchfield
(a)	Site Location Plan
S69	N903 - Leslie Road Depot, Birchfield
(a)	Site Location Plan
S70	S160 - Land to the rear of 15-87 Cateswell Road, Hall Green North
(a)	Site Location Plan
S71	S975 - Highfield Lane/Woodridge Avenue, Quinton
(a)	Site Location Plan
S72	S977 - Long Nuke Road Recreation Ground, Bartley Green
(a)	Site Location Plan
S73	S978 - Edgbaston Cricket Club, Edgbaston
(a)	Site Location Plan

Appendix E

**DOCUMENTS RELATING TO COSTS APPLICATIONS**

AC1 BCC application for Costs against the Appellant dated 27.09.18

AC2 Appellant's application for Costs against the Council dated 12.10.18

AC3 BCC application for Costs against the Appellant dated 15.10.18

AC4 BCC response to Appellant's Costs application dated 17.10.18

AC5 Appellant's final comments dated 19.10.18

AC6 Appellant's response to BCC Costs application dated 17.10.18

AC7 BCC final comments dated

## Appendix F

### **Suggested Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

*Reason: To comply with Section 92 of the Town and Country Planning Act 1990.*

- 4) The number of dwellings erected on the site shall not exceed 800.

*Reason: for the avoidance of doubt and to ensure an appropriate balance between built development and green infrastructure.*

- 5) The development hereby approved shall be implemented in accordance with the details shown on drawing numbers:

6863-L-01 - Site Location Plan March 2016

16094-06-3 Rev A - Proposed Site Access –Frankley Beeches Road (West)

16094-06-2 Rev A – Proposed Site Access- Frankley Beeches Road (East)

16094-04 Rev D – Proposed Site Access Western Roundabout Extra Arm

16094-06-04 Rev A – Proposed Site Access – Tessall Lane

*Reason: For the avoidance of doubt*

- 6) The development hereby approved shall be implemented in general accordance with the revised Development Framework Plan – Drawing Number 6863-L-04 Rev T dated 18 May 2018.

*Reason: For the avoidance of doubt and to ensure an appropriate balance of built development and green infrastructure including existing trees and vegetation.*

- 7) No development shall take place until a Phasing Plan has been submitted to and approved in writing by the local planning authority. The Phasing Plan shall identify the proposed residential development zones and the distribution of affordable housing within these zones, the areas of public open space and green infrastructure to be provided in each phase, and the means of vehicular and pedestrian and cycle access to serve each phase, and shall show how each of these elements of the development is to be phased.

The submitted details shall identify the order of delivery of each phase, the anticipated density in each phase of residential development, and the proposed access arrangements for construction traffic and location of contractors' compounds for each phase.

The development shall be implemented in accordance with the approved Phasing Plan.



*Reason: In order to secure the satisfactory development of the application site.*

- 8) The public open space to be provided within the development hereby approved shall have a minimum area of 12.45 ha and be provided in general accordance with the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The public open space shall be delivered in two phases with the first phase to be completed prior to the occupation of the 200<sup>th</sup> dwelling and the second phase to be completed prior to the occupation of the 600<sup>th</sup> dwelling.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

- 9) No development shall take place until full details of the proposed play areas have been submitted to and approved in writing by the local planning authority. The play areas shall be in the general locations indicated in the Development Framework Plan (Drawing No. 6863-L-04 Rev T). The submitted details shall include the layout of the play areas and full details of planting, hard and soft surfacing and play equipment specification including type, height and colour and a programme for the completion of the works in accordance with the approved Phasing Plan. The development shall be implemented in accordance with the approved layout/details and programme and the play areas and equipment shall, thereafter, be retained and maintained for their intended use.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3, TP9 and TP27 of the Birmingham Development Plan and Public Open Space in New Residential Development SPD.*

- 10) No development shall take place until an updated hydraulic model has been submitted to and approved in writing by the local planning authority. The update to the model shall address areas identified for improvement as highlighted red and amber in the Environment Agency's Hydraulic Model Review (Model Review NWGC Final -19.09.18). It shall also provide a representation of the proposed final development proposal and identify property boundaries in relation to the updated flood extents and details of any flood mitigation such as compensation, should this be intended.

*Reason: To reduce the risk of flooding to the development and its future users and third parties.*

- 11) No development shall take place until an updated Flood Risk Assessment (FRA) has been submitted to and approved in writing by the local planning authority. The updated FRA shall incorporate the updated Hydraulic Model outputs as well as details of flood resilience measures including, for example, the setting of finished floor levels no lower than 600mm above the climate change level.

*Reason: To reduce the risk of flooding to the development and its future users.*

- 12) No development shall take place, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include detailed proposals for:
- a) the parking of vehicles of site operatives and visitors;
  - b) the routing of construction traffic to and from the site;
  - c) the location of loading and unloading of plant and materials and of contractors' compounds.

- d) proposed working hours for demolition and construction activities to take place and for the delivery of materials to and removal of waste materials from the site;
- e) the location and specification of all construction accesses and roadways from the public highway to site compounds and working areas;
- f) the control of noise and vibration;
- g) the control and suppression of dust.
- h) the storage and management of construction waste;
- i) the location and specification of wheel washing facilities and/ or other measures to prevent vehicles leaving the site depositing mud and soil on the public highway.

The approved CMS shall be adhered to throughout the construction period.

*Reason: In order to safeguard the amenities of occupiers of nearby premises/dwellings and in the interests of highway safety.*

- 13) No development shall take place until full details of a sustainable drainage system for the development hereby approved has been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) details of infiltration testing;
  - b) final drainage layout plans;
  - c) typical cross sections and details of proposed SuDS features;
  - d) network calculations;
  - e) proposed finished floor levels (set to a minimum of 150mm above surrounding ground levels);
  - f) exceedance flows showing that surface water flood risk has been mitigated on and off site;
  - g) a programme for implementing the works in accordance with the approved Phasing Plan.

The sustainable drainage works shall be completed in accordance with the approved details and programme. No building or part of the development shall be occupied or brought into use until the surface water drainage works serving that building or part have been completed and are in operation.

*Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy TP6 of the Birmingham Development Plan and the Sustainable Management of Urban Rivers and Floodplains SPD.*

- 14) No development (including demolition and ground works) shall take place until a scheme a Written Scheme of Investigation (WSI) detailing a programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The WSI shall thereafter be implemented in full in accordance with the approved details.

*Reason: To ensure that any features of archaeological interest within the site are protected or recorded.*

- 15) No development (including demolition, ground works and vegetation clearance) shall take place until a Badger Protection Scheme (BPS) for the protection of badgers using the site and for mitigating the effects of the development on their habitat within the site has been submitted to and approved in writing by the local planning authority. The BPS shall include details of the protection and mitigation measures required both during the construction period and once the development is complete and a programme for the implementation of those works in line with the approved Phasing Plan. The BPS shall be carried out in accordance with the approved details and programme.

*Reason: In the interests of nature conservation in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.*

- 16) No development (including demolition, ground works and vegetation clearance) shall take place until an Invasive Non-native Species Protocol (INSP) has been submitted to and approved in writing by the local planning authority. The INSP shall include detailed proposals for the containment, control and removal of all Japanese knotweed, Cotoneaster and Rhododendron on the site and a programme for undertaking the necessary works. The measures shall be carried out strictly in accordance with the approved details and programme.

*Reason: In order to safeguard the nature conservation value of the site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.*

- 17) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees on the site and on immediately adjoining land (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

*Reason: In order to ensure adequate protection of all trees to be retained and to secure the satisfactory development of the application site in accordance with Policies PG3 and TP7 of the Birmingham Development Plan.*

- 18) All work for the pruning or cutting back of retained trees shall be carried out in accordance with British Standard BS3998 'Recommendations for Tree Work' 2010 and with any subsequent edition of those recommendations.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

*Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3 and TP7 of the Birmingham Development Plan.*

- 19) No removal of trees, hedges or shrubs shall take place between 1 March and 31 August inclusive unless a scheme to protecting nesting birds on the site has been submitted to and approved in writing by the local planning authority. If a scheme for the protection of nesting birds has been approved in writing by the

local planning authority no trees, hedges or shrubs on the site shall be removed between 1 March and 31 August inclusive other than in accordance with the approved scheme.

*Reason: To ensure the protection of birds using vegetation within the site for the purposes of breeding.*

- 20) The site accesses and related visibility splays shall be constructed in strict accordance with the details shown on the approved plans (Drawing Nos: 16094-06-3 Rev A; 16094-06-2 Rev A; 16094-04 Rev D; and 16094-06-04 Rev A) and the approved Phasing Plan. The approved visibility splays shall thereafter be maintained free of any obstruction or vegetation above 0.9m in height.

#### Phased Conditions

- 21) No development shall take place within any approved phase unless samples of the materials to be used in the construction of the external surfaces of the buildings in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

- 22) No development shall take place within any approved phase unless full details of hard and/or soft landscape works for that phase and a programme for the implementation of those works have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) proposed finished levels or contours;
  - b) means of enclosure, hard surfacing materials, minor artefacts and structures;
  - c) proposed and existing functional services above and below ground;
  - d) fully annotated planting plans to a scale of 1:200, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs.
  - e) other information shall include planting schedules, noting species, plant sizes and proposed numbers/densities;
  - f) details of the proposed planting implementation programme.

All hard and/or soft landscape works shall be implemented in accordance with the approved details and programme and shall thereafter be maintained.

- 23) Any trees or shrubs which, within a period of two years from the completion of the phase of development of which they form a part, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

*Reason: In order to secure the satisfactory development of the application site and secure a high quality of development in accordance with Policy PG3 of the Birmingham Development Plan.*

- 24) No development shall take place within any approved phase unless full details of the materials to be used for hard and paved surfacing in that phase have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

- 25) No development shall take place in any approved phase unless full details of proposed boundary treatments for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include:
- a) plans showing the locations of existing boundary treatments to be retained and the proposed new boundary treatments;
  - b) scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments;
  - c) details of mammal access arrangements.

The approved scheme shall be implemented before occupation of any dwelling in that phase and shall be retained thereafter.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policies PG3, TP7 and TP8 of the Birmingham Development Plan.*

- 26) No development shall take place in any approved phase unless a detailed lighting scheme for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- a) site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate;
  - b) site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises;
  - c) details of the lighting fittings including: colour, watts and periods of illumination;
  - d) details to clearly demonstrate that areas to be lit will not disturb bats or prevent their access to key commuting routes and foraging habitat.

All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the first occupation of any part of the development within that approved phase and shall thereafter maintained.

*Reason: To ensure a high quality of external environment, to complement the development proposals, to protect and reinforce local character, and to safeguard the nature conservation value of the site in accordance with Policy PG3 and TP8 of the Birmingham Development Plan, saved Paragraph 3.14 of the Birmingham UDP, Places for All SPG and Lighting Places SPD.*

- 27) No development shall take place in any approved phase unless full details of earthworks and finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings for that phase of development have been submitted to and approved in writing by the local planning authority. The submitted details shall include the proposed grading and mounding of land areas,

cross sections through the site and relationship with the adjoining landform and buildings.

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

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

28) No development shall take place within any approved phase until an assessment of the risks posed by any ground contamination in that phase of development has been submitted to and approved in writing by the local planning authority. The risk assessment and information required for each phase shall comprise:

(a) A preliminary risk assessment, which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

(b) A site investigation scheme, based on (a) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.

(c) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken and a timetable of works and site management procedures.

(d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

29) All ground contamination remediation measures required as a result of the risk assessment shall be provided in accordance with the details set out within the agreed remediation scheme. Prior to the first occupation of each phase of the development hereby approved, the developer shall provide written certification to the local planning authority that the measures set out in the report have been implemented in full for that phase of the development.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

30) No development (including demolition, ground works and vegetation clearance) shall take place in any approved phase unless a Construction Ecological Management Plan (CEMP) for that phase of development has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of "biodiversity protection zones;"



- c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements);
- d) the location and timing of sensitive works to avoid harm to biodiversity features;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication
- g) the role and responsibilities on site of an Ecological Clerk of Works or similarly competent person;
- h) the use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period.

*Reason: In the interests of nature conservation in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.*

- 31) No development shall take place in any approved phase unless an Ecological Enhancement Strategy (EES) for that phase of development has been submitted to and approved in writing by the local planning authority. The EES shall include (but not be limited to) details of:
- a) provision for wildlife corridors, linear features and habitat connectivity;
  - b) creation, restoration and enhancement and semi-natural habitats;
  - c) creation of new wildlife features, e.g. bird nesting features and bat roosting features within buildings and structures, ponds and badger setts;
  - d) green roofs and green/habitat walls;
  - e) a programme for the implementation of the agreed works.

The development shall thereafter be implemented in accordance with the approved details and programme.

*Reason: In order to safeguard the nature conservation value of the site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.*

- 32) No development shall take place in any approved phase unless a Habitat/Nature Conservation and Management Plan for that phase of development has been submitted to and approved in writing by the local planning authority. The management plans shall include:
- a) description and evaluation of the features to be managed;
  - b) ecological trends and constraints on site that may influence management;
  - c) aims and objectives of management;
  - d) appropriate management options for achieving aims and objectives;
  - e) prescriptions for management actions;
  - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - g) details of the body or organisation responsible for implementation of the plan;
  - h) monitoring and remedial / contingencies measures triggered by monitoring.



The Conservation and Management Plan shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the management plan are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy TP8 of the Birmingham Development Plan and the Nature Conservation Strategy for Birmingham SPG.*

33) No part of the development hereby approved shall be occupied or brought into use until full details of the agreed off-site highway improvement measures and a programme for their implementation have been submitted to and approved in writing by the local planning authority and the approved measures have either been substantially completed or have been included in an agreed programme of works to ensure that the improvements are secured as each associated phase of development is completed. All delivery and timing of highway works shall be agreed in accordance with the approved Phasing Plan. The package of measures shall include:

- a) new signalised pedestrian crossings and carriageway widening at the Frankley Beeches Road/Hanging Lane crossroads;
- b) new 2m wide footway Frankley Beeches Road along the site frontage;
- c) pelican crossing on Frankley Beeches Road near the new school;
- d) central refuge to the west of Guardian Close;
- e) footway/cycle link into the site onto Elan Road;
- f) 2m wide footway along Elan Road;
- g) pedestrian link onto Hanging Lane and central refuge;
- h) improved signage at the West Park Avenue/ Hanging Lane junction to further discourage the use of Hanging Lane by HGVs;
- i) a third lane would be provided on the A38/ Tessall Lane junction to accommodate right turning movements onto Bristol Road South.

*Reason: In order to secure the satisfactory mitigation of the effects of the development on the highway network and to facilitate and encourage the use of walking and cycling modes of travel and the use of public transport.*

34) No part of any agreed phase shall be occupied or brought into use until the sustainable drainage system to serve that phase of development has been completed in accordance with the approved sustainable drainage system and a Sustainable Drainage Operation and Maintenance Plan (SDOMP) for that part of the sustainable drainage system has been submitted to and approved in writing by, the local planning authority. The approved drainage system shall thereafter be operated and maintained in accordance with the approved SDOMP.

*Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with Policy TP6 of the Birmingham Development Plan and the Sustainable Management of Urban Rivers and Floodplains SPD.*

35) No dwelling in any approved phase shall be occupied until the approved means of vehicular access from that dwelling to and from the public highway has been constructed in accordance with the approved plans and is available for use.

*Reason: In the interests of highway safety and to ensure a satisfactory development.*

36) No dwelling in any approved phase shall be occupied until a Residents' Travel Plan for that phase of development has been submitted to and agreed in writing by the local planning authority. The Residents' Travel Plan shall propose measures to actively promote the use of more sustainable transport choices for residents occupying the site and shall include:

- a) the incentives to be offered to each household upon occupation to encourage the use of modes of travel other than the car;
  - b) the information to be provided to each household upon occupation with regard to public transport timetables, cycle maps, the location of local facilities such as schools, shops, education and healthcare services and walking information.
- The plan shall be implemented in accordance with the approved details.

*Reason: In order to provide future residents with a genuine choice of sustainable transport options.*

37) No dwelling in any approved phase shall be occupied until an electric vehicle charging point which is accessible to the occupier of that dwelling has been provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details should provide individual charging points for all dwellings that have their own garage, driveway or dedicated parking space and for charging points to be provided in 10% of all parking spaces in shared parking areas.

*Reason: In order to provide for more sustainable modes of travel in accordance with Policy TP5 of the Birmingham Development Plan.*

#### School and Community Centre conditions

38) The primary school shall not be brought into use unless a School Travel Plan has been submitted to and approved in writing by the local planning authority. The School Travel Plan shall include clear objectives to influence and encourage reduced dependency on the private car with a package of measures to meet these objectives. The plan shall thereafter be implemented in accordance with the approved details.

*Reason: In order to provide staff, parents and visitors with a genuine choice of sustainable transport options.*

39) The rating levels for cumulative noise from all plant and machinery, associated with the school and community facility, shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing Laeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.

*Reason: To secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan.*

40) No above ground works shall take place for the construction of the school or community hub unless details of the extract ventilation and odour control equipment for those buildings, including details of any noise levels, noise control and external ducting have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.

*Reason: In order to secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan.*

41) No above ground works shall take place for the construction of the school or community hub until details of facilities for the storage of refuse within the curtilage of that building have been submitted to and approved in writing by the local planning authority. The refuse facilities shall be provided in accordance with the approved details before the buildings are first occupied and shall thereafter be maintained.

*Reason: In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan.*

42) The community hub shall only be used between the hours of 0700-2300 daily.

*Reason: In order to define the permission and safeguard the amenities of occupiers of nearby dwellings and premises.*



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.