APP/P1940/V/26/3378268

LAND EAST OF OXHEY LANE
CARPENDERS PARK

CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY
THREE RIVERS DISTRICT COUNCIL[1]

RfR1: Inappropriate development in the Green Belt, not justified by "very special circumstances" ("VSC")

1. It is common ground[2] between the Council and the Applicant that unless (i) the Site is "grey belt" land and (ii) the requirements of para. 155 of the *National Planning Policy Framework* ("**NPPF**" and "**Para. 155**", respectively) are met, the Scheme would be inappropriate development in the Green Belt for the purpose of para. 153 of the NPPF and "very special circumstances" ("**VSC**") would need to be shown, for the Scheme to be acceptable in principle.

2. The Council's case is that:

   2.1. The Site is not grey belt; and

   2.2. In any event, the requirements of Para. 155 are not met; such that

   2.3. The Scheme would be inappropriate development in the Green Belt – and VSC do not exist.

The Site is not grey belt

3. The Site is not grey belt land. As Ms Fitzgerald and Mr Dawson explain in their proofs of evidence, the Site strongly contributes to purpose (a) of para. 143 of the NPPF[3] ("**Purpose A**" and "**Para. 143**").

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[1] References to a witness conceding, accepting, agreeing, acknowledging or recognising a point are references to their responses in cross-examination, unless otherwise stated.
[2] Para. 4.17 of the Planning SoCG (CD6.4).
[3] The Site also makes a moderate contribution to purpose (b) of Para. 143 and additionally contributes to purpose (c) (Fitzgerald proof (CD6.14), paras. 5.64 and 5.65).

4. Mr Evans and Mr Allin are wrong to suggest that Dr Alex Williams in his written advice to the Council concludes that "the Site should be considered Grey Belt". As Mr Allin conceded, there is no explicit reasoning to that effect in the advice. Read fairly, it is plain that the advice expresses no view on the question.

5. The Council's Stage 2 Green Belt Review[4] identifies Parcel SO3, within which the Site lies, as making a "Significant" contribution to "Purpose 1" (which equates to Purpose A). Parcel SO3 is also identified as making a "Moderate" contribution to "Purpose 2" (which equates to Purpose B) and a "Significant" contribution to "Purpose 3" (the equivalent to Purpose C). Mr Allin contends that Parcel SO3 "covers a much larger area than the Site and so applying the Parcel conclusions to the Site is not correct and results in an inaccurate assessment of impact". This is not accepted. The Stage 2 review notes expressly that "[t]here are no notable variations in harm within the parcel"[5].

6. Turning to the PPG, the Site possesses all of the "Illustrative features" that are identified in relation to a "Strong" contribution to Purpose A:

   6.1. It is free of existing development. (This is common ground.)

   6.2. It lacks <u>physical</u> features in reasonable proximity that could restrict and contain development. That is because it lacks such physical features to the south. Mr Allin acknowledged that there is, at present, <u>no</u> physical feature that demarcates the southern boundary of the Site.

   6.3. It is adjacent or near to a large built up area. (This is also common ground.)

   6.4. It would, if developed, result in an incongruous pattern of development, given the limited development that has thus far taken place on the eastern side of Oxhey Lane in this location.

7. Conversely, considering the Site's performance against the illustrative features for a "Moderate" contribution:

[4] CD4.21, pdf p. 112.
[5] *Ibid.* under "Potential to limit harm".

7.1. The Site's location "adjacent or near to a large built up area" does not assist in determining whether the contribution is "Strong" or "Moderate" because that is identified as an illustrative feature for both levels of contribution;

7.2. The illustrative feature of "having physical feature(s) in reasonable proximity that could restrict and contain development" is <u>not</u> present (above; and see further below);

7.3. The Site is plainly <u>not</u> partially enclosed by existing development – Mr Allin accepted this;

7.4. The Site does not contain existing development; and

7.5. On any realistic view, the Site is subject to "other urbanising influences" only to a very limited degree. Mr Allin agreed (with reference to para. 6.13 of his proof) that "the existing built-up boundary of Carpenders Park" should be discounted from his list of urbanising influences, given that being adjacent or near to a large built up area is an illustrative feature of <u>both</u> Strong and Moderate contributions (and so cannot assist in distinguishing between the two). That leaves only the existing Carpenders Park Care Home, the phone mast and traffic noise. Those influences do not affect the entirety of the Site; Mr Allin agreed that the Inspector <u>should</u> consider the <u>extent</u> of any urbanising influences.

8. On "physical features":

8.1. Mr Allin would not accept that the question for the Inspector is whether, <u>in the round</u>, there are reasonably proximate physical features that could restrict and contain development. He argued that "one boundary would be enough to tip it into Moderate". That is obviously incorrect. By way of example (put to Mr Allin), a physical feature along one boundary of a square site would plainly <u>not</u> be effective to restrict and contain development.

8.2. As Mr Allin did accept, the PPG does not state that a site will only make a Strong contribution to Purpose A if there is a prospect of sprawl in <u>all</u> directions. Where (as here) there is a prospect of sprawl in <u>one</u> direction, it follows that there <u>are not</u> reasonably proximate physical features that "could restrict and contain development".

8.3. The reference to "one or more features" in the PPG (on Moderate) is not referring to "physical feature(s)" – that is, it is not referring specifically / only to the first bullet point. Rather, it is referring to "one or more features" that weaken the land's contribution to Purpose A – i.e. to the list of four bullet points that follows.

8.4. The Shafford appeal decision[6] is an example of a site having been found to make a Strong contribution to Purpose A even though there were several strong physical features that provided "bulwarks against further development" (the canal; and Lower Road – see para. 23 of the decision letter). Mr Allin accepted that the appeal decision did not support the argument that the presence of one reasonably proximate physical feature is enough to make a Strong contribution to Purpose A unlikely. Moreover, the Shafford appeal site at least had "a simple post and wire fence" between the site and the adjacent open field (the fence being described by the inspector as "a weak feature"). There is at present no physical feature at all on the Site's southern boundary.

8.5. The Applicant invokes the Flood Storage Area ("**FSA**"). That is not a physical feature; it is a planning designation. To conclude that the Site does not make a Strong contribution to Purpose A – because it does not "lack physical feature(s) in reasonable proximity", etc. etc. - on the basis of a planning designation (such as the FSA) as opposed to a physical feature would be to depart from the PPG. This point was accepted by Mr Allin. Mr Allin also confirmed that he was not inviting the Inspector to depart from the PPG.

8.6. The Applicant's reliance on the FSA is also unsupported by its own GBA, submitted in support of the Application. At para. 3.8 the GBA only identifies "the topography and woodland" as physical features in reasonable proximity that could restrict and contain development.

8.7. At para. 2.3 of his rebuttal, Mr Allin suggests that if the Inspector concludes that the Site does have "physical feature(s) in reasonable proximity that could restrict and contain development", he must conclude that the Site only makes a Moderate (as opposed to Strong) contribution to Purpose A. That suggestion is obviously incorrect. As Mr Allin conceded in cross-examination, the PPG is not worded to that effect; it does not state that if such physical features are present, a site's contribution "will" or "must" be

[6] CD5.9.

Moderate. Mr Allin's position in his rebuttal was also undermined by his insistence[7] that the Inspector could still find only a Moderate contribution even if (i) <u>all</u> of the illustrative features for "Strong" were present and (ii) only one of the distinguishing illustrative features for "Moderate" (urbanising influences) was present. If – as Mr Allin contends – a conclusion of Moderate could be reached with only one of the "Moderate" illustrative features present, logically the same must be true of the illustrative features for "Strong".

9. On incongruity:

9.1. The Council notes that a comparison of the illustrative features identified in the PPG for "Strong" and "Moderate" contributions to Purpose A suggests that a site that is (as here) <u>not</u> "partially enclosed" by existing development, <u>will</u> result in an incongruous pattern of development. See the reference within "Moderate" to "...be partially enclosed by existing development, <u>such that</u> new development <u>would not</u> result in an incongruous pattern of development"[8]. Mr Allin agreed that "incongruous pattern of development" must mean the same thing for both "Strong" and "Moderate".

9.2. The existing Carpenders Park Care Home and the phone mast are themselves incongruous; the Scheme would exacerbate the incongruity[9]. There is nothing in the Applicant's suggestion that "it would be surprising if the Secretary of State had directed an allocation for incongruous development": as Mr Allin accepted, nothing is yet known of the Secretary of State's views about the Site, <u>save that</u> he wants the case for allocation to be examined. On a related point, Mr Allin acknowledged that there is no evidence that Carpenders Park will expand in advance of the Local Plan process; and confirmed that <u>he</u> was not claiming that expansion of Carpenders Park (over to the other side of Oxhey Road) was inevitable.

9.3. Mr Allin confirmed in cross-examination that he was relying on the proposed secondary school allocation (for the land immediately to the north of the Site) as part of his case on Purpose A, specifically in relation to his "incongruity" argument. This reliance is misplaced. It is contrary to the legal advice provided by Mr Banner KC[10] and

[7] In XX.
[8] Emphases added.
[9] Fitzgerald, oral evidence.
[10] Main SoCG, pdf p. 27 at para. 30.

Mr Allin conceded (in response to a question from the Inspector) that the proposed allocation cannot affect the existing contribution of the Site to Purpose A.

10. Finally in relation to Purpose A, Mr Allin confirmed that he was not inviting the Inspector to place any weight on the Fairfax[11] or Leighton Buzzard[12] appeal decisions in that regard.

The requirements of Para. 155 are not met

11. In any event, even if one were to conclude that the Site is grey belt, the Scheme would remain inappropriate development in the Green Belt because the requirements of Para. 155 are not met. The Scheme would not be in a sustainable location and so Para. 155c is not satisfied.

12. It is common ground[13] that for half of the Site, there would be no local facilities within comfortable walking distance (800m). Only two (Little Hearts Pre-School and St Meryl Primary School) would be within comfortable walking distance of the centre of the Site. Furthermore, there is a significant slope on the Site, which means that walking routes are ultimately likely to be less direct (in order to achieve the gradients necessary to facilitate access for all users). Mr Hamshaw accepted that the internal Site layout will not ultimately reduce the walking distances identified by Ms Fitzgerald[14] (and agreed by Mr Hamshaw) – because she has calculated those distances “as the crow flies” (thus, there is no shorter route).

13. The Site’s main access is beyond the recommended 400m to the nearest bus stop and is also beyond the recommended 800m from the railway station. For the reasons identified in more detail by Ms Fitzgerald in her proof of evidence, the proposed provision of an additional hourly bus service would not be effective to encourage people to use means of transport other than the private car. It is obvious that the need for an effective bus service (to encourage people away from the private car) will depend upon the ease/difficulty with which local facilities can be accessed by walking/cycling – Mr Hamshaw agreed that one had to “look at things in the round”. Here, there is a clear need for an effective bus service given that the walking distances (combined with the topography) will be unachievable for many people. Mr

[11] CD5.5.
[12] CD5.7.
[13] Hamshaw XX.
[14] Proof para. 5.83.

Hamshaw said that he “wouldn’t deny” that some people would be put off by the (in)frequency of the proposed additional bus service.

14. It was put to Ms Fitzgerald that her points on the bus service were “really a question of the drafting of the S. 106”. That is nothing to the point, since the Applicant is not proposing any revisions to the S. 106 in this regard. Moreover, many substantive objections to a planning application (e.g. a failure to provide affordable housing in accordance with policy requirements) could theoretically be overcome by different wording in a s. 106 obligation.

15. It was also put to Ms Fitzgerald that if this Site were found not to satisfy para. 155c of the NPPF, that finding would “kill Grey Belt policy”. That was not and is not accepted. As Mr Allin agreed, the outcome for this Site will not set any precedent - because every site requires an individual exercise to be undertaken, whereby site conditions (walking distances, topography, nature of proposed use(s), etc.) are assessed; and in the light of that assessment, a conclusion is reached as to what obligations (including any financial contributions) are required to ensure that the development would be in a sustainable location. Most sites are capable in principle of being made sustainable: ultimately, the question is whether the measures that would be required are viable.

16. The Applicant relies upon the position of the highway authority (the County Council) – but as Mr Allin accepted, the specific task of reaching a conclusion on Para. 155c falls to the Council as local planning authority; not to the County Council as highway authority.

17. Ms Fitzgerald acknowledged that her position was inconsistent with the Council’s decision on Woodlands Cottage. She was however correct to identify that there is very little information before this inquiry in respect of the latter decision (only the officer’s report[15] and the minutes of the Committee meeting[16]). Whilst on the face of it there is an inconsistency, the Inspector here is not able to interrogate the true extent of that inconsistency by comparing the relevant application documents for Woodlands Cottage to the analysis that has been provided in respect of the Scheme. Mr Allin referred[17] to a point in the Woodlands Cottage minutes in relation to the GP surgery, to suggest that Committee members had considered topography; but that reference served only to highlight a distinction between Woodlands Cottage and the Site here (the minutes suggest that for Woodlands Cottage, only

[15] CD4.32.
[16] CD4.33.
[17] XX2.

one route to one local facility was impacted by topography). Moreover, Woodlands Cottage was an application for full planning permission and so the internal site layout would have been known when the application was considered.

18. Finally on Para. 155c, Mr Allin refers at para. 2.22 of his rebuttal to the Council's February 2026 Access to Services Study[18]. As he acknowledged, however, that study potentially over-represents the sustainability of the Site (as compared to that of the Woodlands Cottage site) – the Site is materially larger than the Woodlands Cottage site; and para. 3.17 of the study explains that "[p]articularly on larger sites, it is recognised that the walking/cycling distance from the access point may not be representative of all future residents on the site, given that depending on the final site layout it may be the case that some residents live a notable distance from the access point".

VSC do not exist

19. For VSC to exist, the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the Scheme would need to be clearly outweighed by other considerations (para. 153 of the NPPF).

20. Nothing turns on the fact that Ms Fitzgerald uses a different "scale" to weigh benefits and harms to that used by Mr Allin. It is common ground that there is no prescribed scale; and the Applicant did not at any point actually suggest that Ms Fitzgerald's scale had "masked the true extent [of benefits] at the top order". Mr Allin expressly confirmed that he was not making any such suggestion.

21. The Scheme's benefits do not clearly outweigh its harms. Those benefits are acknowledged by the Council. Ms Fitzgerald gives[19] substantial weight to the delivery of market, affordable and self-build housing; significant weight to the delivery of housing with care; moderate weight to the proposed children's home; moderate weight to the proposed public open space; and additional limited weight to both (i) the economic benefits of the Scheme and (ii) the improved connectivity that a new crossing over Oxhey Road would provide. Significant weight also falls to be given to compliance with the Golden Rules, although the decision-maker should take care to avoid any double-counting of benefits in doing so[20].

[18] CD4.62.
[19] Proof (CD6.14) para. 5.121 ff; and oral evidence.
[20] Fitzgerald XX2.

22. It is not accepted that the proposed children's home should attract more than moderate weight. The provision proposed is three beds. Giving significant weight to that (small) quantum of provision would reduce the incentive for applicants to seek to bring forward a higher quantum (whether as multiple small units, or a single larger unit).

23. The new road crossing properly only attracts limited weight. There is no existing safety issue and Mr Allin recognised that the crossing was being provided (at least "in part") to meet the needs of the Scheme. In reality, any additional / wider public benefit is incidental.

24. No weight should be given to the potential secondary school allocation to the north of the Site, for the reasons summarised above. Mr Allin conceded that weight need not be given.

25. Against the above benefits, the following harms fall to be weighed:

    25.1. Green Belt harm: in addition to the "definitional" harm that the Scheme would cause to the Green Belt by reason of inappropriateness, the Scheme would conflict with Green Belt purposes (a), (b) and (c); and would cause harm to the openness of the Green Belt. Para. 153 of the NPPF expressly requires <u>substantial</u> weight to be given to that Green Belt harm (including to the harm to Green Belt openness);

    25.2. It is common ground that the Scheme would result in landscape harm[21]. Significant weight should be given to that harm; and

    25.3. Significant weight should be given against the Scheme to its failure to provide meaningful alternative modes of transport, which leaves the Site poorly connected and not in a sustainable location.

26. When the harms that would result from the Scheme are taken into account, those harms are not "clearly outweighed" by other considerations (including the benefits of the Scheme). It follows that the necessary VSC do not exist.

[21] Planning SoCG (CD6.4) at para. 4.28.

27. The Council acknowledges that this is a finely balanced case[22]. However, it is common ground[23] that there will not be VSC if the benefits outweigh the harms <u>but do not do so clearly</u> (which is the conclusion that Ms Fitzgerald arrives at[24]).

28. Finally as regards RfR1, it is common ground[25] that only limited weight should be given to the fact that the Minister for Housing has directed that the Site be included in the Reg. 19 consultation. The Minister in his 15 April 2026 letter[26] expressly acknowledges that <u>examination</u> remains the appropriate forum "for testing individual site allocations and the supporting evidence base in a transparent and impartial manner". The Council reiterates – and this is also common ground[27] – that the VSC test is a stricter and more demanding test than the test of "exceptional circumstances" that applies where it is proposed to change the Green Belt boundary through the local plan process: ***R (o.a.o. Luton BC) v Central Bedfordshire Council*** [2015] 2 P&CR 19 at [54] and [56] *per* Sales LJ (Tomlinson and Longmore LJJ agreeing).

<u>RfR2: No adequate s. 106 obligation</u>

29. On the basis that the S. 106 now includes blue pencil clauses enabling both (i) the Moratorium Period within the mortgagee exclusion clause and (ii) the question of enforceability against individual occupiers and owners to be dealt with in the manner contended for by the Council, the Council is now satisfied with the drafting of the S. 106.

30. Point (i) is dealt with in more detail below. The Council's position on point (ii) is set out in its separate submissions (15 July 2026).

<u>The mortgagee exclusion clause in the S. 106</u>

31. The "**Moratorium Period**" in the mortgagee exclusion clause[28] ("**MEC**"[29]) within Sch. 5 to the S. 106 should be five months rather than the three months that is proposed by the Applicant. That is for the following reasons:

[22] Fitzgerald XX2.
[23] Allin XX2.
[24] XX2.
[25] Allin XX2.
[26] ID.7.
[27] Allin XX2.
[28] Cl. 5.1 of the current draft of the S. 106.
[29] Referred to elsewhere as the "mortgagee-in-possession" clause / "mortgagee protection clause".

32. The Applicant accepts that <u>a</u> Moratorium Period is necessary. So does the Greater London Authority ("**GLA**") and the National Housing Federation ("**NHF**"), the latter acknowledging in its letter dated 11 June 2026 ("**the 11 June Letter**"[30]) that there <u>should</u> be a "time period in which [a lender] must first try to preserve the property assets within the affordable sector" and that that time period "must not be excessive, so that the ability of the lender to realise the secured assets quickly is not compromised".

33. The Applicant's position is that a three-month Moratorium Period satisfies the "**Reg. 122**" test[31], i.e. that it is <u>necessary to make the development acceptable in planning terms</u>; directly related to the development; and fairly and reasonably related in scale and kind to the development.

34. The Applicant's acceptance that a three-month Moratorium Period <u>is</u> necessary gives the lie to its suggestion that the risk of affordable housing loss is "in practice extremely remote"[32] and not significant[33]; and that a five-month Moratorium Period would "serv[e] no practical purpose"[34] and be of "negligible" positive effect[35]. The Applicant accepts that the risk of affordable housing loss <u>is</u> sufficiently serious to necessitate a three-month Moratorium Period. It has singularly failed to explain – still less actually to evidence – why the risk is sufficiently great to necessitate a three-month Moratorium Period but insufficiently great to necessitate a five-month Moratorium Period. The Applicant has failed to provide that explanation and evidence despite having had <u>several years</u> in which to do so, having been contesting the length of the Moratorium Period with the Council since the ***Sarratt*** appeal[36], which was heard in autumn 2023. Mr St John Williams candidly accepted[37] that he had <u>failed to explain</u> why the "practical risk" justified three months but not five.

35. In reality, the Applicant is simply wrong to contend that a Moratorium Period longer than three months fails the test of necessity:

[30] Annex 1 to St John Williams rebuttal.
[31] Reg. 122 of the Community Infrastructure Levy Regulations 2010 ("**the CIL Regulations**").
[32] St John Williams rebuttal para. 3.9.
[33] *Ibid.* para. 9.1.
[34] *Ibid.* para. 7, p. 11.
[35] *Ibid.* para. 9.3.
[36] CD5.1.
[37] XX.

36. First, Mr Pinnock is correct to identify[38] that there is a real risk that three months would be inadequate to complete the transfer of 128 affordable homes in this case. The summary timeline that he provides[39] illustrates that a distressed disposal could well take more than three months to complete from start to finish[40]. It was accepted in evidence by the Inspector in the ***Sarratt*** appeal, which was for a considerably smaller number of affordable homes[41].

37. Mr St John Williams did not dispute either the steps identified in the summary timeline nor the timescales there set out. His rebuttal[42] criticises Mr Pinnock for having mischaracterised the role of the Council in the process – but Mr St John Williams did not suggest that a receiver would be able to move more swiftly. As regards the reliance placed by Mr St John Williams on the reasonable endeavours clause[43], he accepted that such a clause would be of no utility in a situation where all parties were using reasonable endeavours but the three-month period proved to be simply too short.

38. Mr St John Williams relies heavily on the "primacy" (and efficacy) of the regulatory framework. As to that, however:

    38.1. Whilst he argued that "a lot of the legwork will already have been completed" prior to the commencement of the Moratorium Period, he was clear that his evidence was not that three months would be adequate to complete the transfer of the 128 affordable homes ("I wouldn't say what could be done in a distressed situation – it would depend on the quality of the stock, the quantity of stock, the availability of other organisations, there needs to be a demand…"[44]).

    38.2. If it were correct that nothing / little remained to be done at the start of the Moratorium Period (i.e. following the "legwork" done by the regulatory framework), there would be no need to subject the mortgagee or receiver to a "reasonable endeavours" clause, i.e. to "a positive contractual obligation to use reasonable endeavours to complete a

[38] Proof para. 6.1.1.
[39] Proof, Annex 6.
[40] Proof para. 6.1.2.
[41] Proof paras. 6.1.3 and 6.1.4.
[42] At para. 2.5.
[43] Rebuttal pp. 7-8, paras. 3-4.
[44] XX response.

disposal to another registered provider ["**RP**"] or to the Council within the moratorium period"[45]. Mr St John Williams accepted this.

38.3. On the Applicant's own case, there is obviously a limit to the efficacy of the regulatory framework. The necessity of a three-month Moratorium Period is accepted by the Applicant, the GLA, the NHF and the RPs. If the regulatory framework were effective to undertake <u>all</u> of the "legwork", there would be neither need nor justification for any Moratorium Period at all.

39. <u>Secondly</u>, the lenders plainly take the view that there is (at least) a real, material risk that a three-month Moratorium Period will be inadequate to complete a distressed disposal of affordable homes. There is no other explanation for their willingness to lend on a market value ("**MV**"[46]) basis with the three-month Moratorium Period in place. If the lenders were of the opinion that there was no real / material risk of the three-month Moratorium Period proving inadequate (or to put the point another way – that there was no real / material <u>prospect</u> of the ability to sell the units on the open market[47] arising), they would confine themselves to lending on an existing use value ("**EUV**"[48]) basis. This is Mr Pinnock's "Obvious Inference"[49]. Again, the Applicant has no answer to it, despite having had a period of several years over which to identify and articulate one.

40. <u>Thirdly</u>, as Mr St John Williams conceded, neither the GLA nor the NHF identifies a "cliff edge" at the end of three months, beyond which a Moratorium Period is not necessary. Neither organisation contends that the Moratorium Period must not / cannot be more than three months. The NHF's position is simply that the Moratorium Period must not be "excessive", i.e. must not compromise the ability of the lender to realise the secured assets quickly (above).

41. <u>Fourthly</u>, as Mr St John Williams accepted, the "industry consensus" around a three-month Moratorium Period does <u>not</u> extend to local planning authorities ("**LPAs**"), who – unlike commercial parties – serve the public interest. Only 23% of all LPAs in England have accepted

[45] St John Williams rebuttal, p. 7 para. 3.
[46] "Market Value Subject to Tenancies", abbreviated elsewhere to "MV-STT" / "MV-ST". I shall use "MV" for convenience.
[47] I.e. free from affordable housing restrictions.
[48] "Existing use value – social housing", abbreviated elsewhere to "EUV-SH". I shall use "EUV" for convenience.
[49] Proof, para. 5.1(b).

the NHF standard MEC (or the GLA equivalent) without amendment[50]. Whilst Mr St John Williams argues that the 23% figure "materially understates the true extent of acceptance of the three-month moratorium period across the sector", he conceded that there was no evidence that even the slimmest majority (51%) of LPAs were happy with a three-month Moratorium Period. Moreover, given that the Site lies outside of London, in the Council's submission the view of LPAs across England generally is of more relevance than that of the GLA.

42. In short: there is simply no proper evidential basis on which the Secretary of State could safely conclude that a three-month Moratorium Period <u>does</u> pass the test of necessity; but a five-month Moratorium Period does not. To the contrary: a five-month Moratorium Period <u>is</u> necessary on the facts of this application, to avoid the real risk that a shorter period would prove inadequate to complete the transfer of the Scheme's 128 affordable homes.

43. Mr St John Williams contends that a Moratorium Period in excess of three months would have a "significant and immediate" negative effect[51]. That contention is not accepted. It has been shown to be unsupported by the evidence:

44. <u>First</u>, even the Applicant does not go so far as to suggest that <u>no</u> lender would lend <u>on an MV basis</u> with a five-month Moratorium Period. Rather:

    44.1. There is no direct evidence from any lender before the inquiry;

    44.2. The position of Mr St John Williams' firm (Addleshaw Goddard) is that the Moratorium Period will "often" (not "always") be three months[52];

    44.3. There is no evidence that <u>no</u> lender would lend on an MV basis if the Moratorium Period were four or five months (rather than three). Both Mr St John Williams and Mr Stevenson accepted this point;

    44.4. Indeed, Mr St John Willams acknowledged that lenders <u>will</u> sometimes lend at MV even where the Moratorium Period exceeds three months. He expressly acknowledges

[50] St John Williams proof, para. 65.
[51] Rebuttal, para. 9.3(c).
[52] Pinnock proof para. 2.3.

in his proof[53] that "[t]he precise terms of any mortgagee exclusion clause are a matter for negotiation between the parties to the section 106 agreement". He confirmed in oral evidence[54] that "the time limits ultimately come down to what is negotiated between the parties". Whether a lender is prepared to lend on an MV basis where the Moratorium Period exceeds three months is ultimately a matter of valuation: see Mr St John Williams' proof at paras. 57 to 59. It is a case-by-case exercise.

45. Critically, the Applicant has provided no evidence from any valuer explaining the prospect of a lender being willing to lend on an MV basis (in respect of the Scheme's affordable homes) (i) with a three-month Moratorium Period in place; and (ii) with a five-month Moratorium Period in place.

46. Mr St John Williams accepted that such evidence could have been provided. It has not been. The Applicant has failed, therefore, to establish that it would not be possible for an RP to obtain funding on an MV basis for the Scheme's affordable homes. Indeed, the Applicant has not even established that it would be difficult for an RP to do so.

47. Secondly, RPs have previously and continue to deliver affordable housing where the Moratorium Period exceeds three months:

47.1. Clarion purchased the 72 affordable homes at Killingdown Farm in 2023[55], with a five-month Moratorium Period[56]. Clarion's position in autumn 2024 was that its minimum charging requirement was EUV (not MV); and that whether it would be happy with EUV would be a "business decision [...] that would need to be looked into (case by case)". That was notwithstanding that Cala had informed Clarion that it (Cala) had "told [the Council] to get [the Moratorium Period] changed"[57];

47.2. Four- or five-month Moratorium Periods are also in play at: Former Little Furze School (18 affordable homes); Land at Woodside Road (96 affordable homes); Land at Foxgrove Path (53 affordable homes); and Grove Court (42 affordable homes)[58]. There

53 Para. 44.
54 XX.
55 Stevenson rebuttal, para. 2.9.
56 Ralton proof para. 2.14.
57 Pinnock proof, pdf p. 46.
58 Ralton proof paras. 2.14 and 2.15.

is nothing in Mr Stevenson's suggestion[59] that the Scheme's size makes a five-month Moratorium Period "less likely" to be acceptable: as Mr Stevenson acknowledged, WCHT was aware of the Scheme's size in responding to his questions and did not say that it would not accept a Moratorium Period of "between 4 and 6 months" for the Scheme.

48. Thirdly, as regards the evidence in Mr Stevenson's proof on the responses from RPs:

48.1. Mr Stevenson confirmed that he had not explored whether there were additional RPs operating within the Council's area, beyond those included in the Council's list of "recommended" RPs. The S. 106 does not require the RP for the Scheme to be on the Council's list;

48.2. The RPs were not asked whether they had previously accepted a Moratorium Period in excess of three months;

48.3. The questions put to the RPs by Mr Stevenson[60] were (except for Q3) "closed" rather than "open", requiring a "Yes" or "No" answer and indeed – as Mr Stevenson accepted - positively anticipating that the answer to both "Would you accept a moratorium period of between four and six months?" and "Would you still be able to make an offer at a reduced value to reflect the restriction to EUV-SH?" would be "No". Less weight should be given to the RP responses than they might have attracted had the question(s) been put in a more open / neutral manner (the RPs could, for example, simply have been asked what moratorium period would be acceptable to them and why).

48.4. In the Council's submission it is also telling that some of RPs appear to have changed their position (since autumn 2024) without explanation. Mr Stevenson conceded that there is no evidence from any RP of any relevant change in market conditions since autumn 2024. The Council does not, of course, criticise the RPs – or any commercial party – for acting in furtherance of their own interest. The advantage to the RPs of being able to secure lending on an MV as opposed to EUV basis is, however, obvious – and that context should be acknowledged in considering the RPs' evidence.

[59] Para. 2.11.
[60] Proof, para. 5.2.

49. Fourthly, no RP has said that it could not viably provide affordable housing if it were only able to obtain lending on an EUV basis. Mr St John Williams claims[61] that the MEC "facilitat[es] the delivery of affordable housing by ensuring that RPs are able to access the finance necessary to acquire and manage affordable housing units" (my emphasis). This is inaccurate. Mr St John Williams stated in oral evidence[62] "nothing has passed my desk to say that RPs wouldn't deliver schemes if it was EUV"; his view was that "borrowing on an EUV basis would be problematic for them" in the sense that they would have to "go back to [their] Board". He did not, however, suggest that a requirement to obtain Board approval would pose any insuperable difficulty.

50. This point is important. There is no evidence that RPs would not deliver schemes on an EUV basis. Indeed, the evidence from Hightown in autumn 2024[63] was that all of their schemes within the Council's area were charged at EUV.

51. The Council does not accept that it has understated (still less, "significantly" so[64]) the practical consequences of its position on MECs for housing delivery in its area. As to Mr Stevenson's evidence:

    51.1. The correspondence that is appended to his rebuttal does not include the e-mail(s) / details of any phone call(s) from Mr Stevenson that resulted in that correspondence. In particular, the authors of both Appendix 2 and Appendix 3 state that they are "pleased" to "confirm" that the MEC is a matter in dispute - but it is not possible for the Council or any other party to interrogate the terms in which Mr Stevenson apparently requested confirmation. Reduced weight should be given to the appendices in view of this lack of transparency;

    51.2. Mr Farnsworth (Cala) only states that the majority of RPs that had initially provided offers rescinded on the basis of the five-month Moratorium Period[65]. Realistically – and as Mr Stevenson conceded – if all initial offers had been rescinded for that reason, Mr Farnsworth would have said so.

[61] Proof, para. 51.
[62] XX.
[63] Pinnock proof, pdf p. 51.
[64] Stevenson rebuttal, para. 3.2.
[65] Stevenson rebuttal, Appendix 1.

51.3. Other than Cala, no-one has suggested that the MEC is the sole reason for delay in bringing their scheme(s) forward. Mr Stevenson agreed that neither the Richborough scheme nor the Obsidian scheme is "stalling" because of the MEC at the moment.

52. The Applicant's criticisms of Mr Ralton's evidence were unwarranted:

52.1. Mr Ralton's unchallenged oral evidence was that (contrary to what is said in the letter from Cala at Appendix 1 to Mr Stevenson's rebuttal) the Council had provided Cala with the requested list of RPs;

52.2. As Mr Stevenson acknowledged, the disputes in relation to the Richborough and Obsidian MECs were not public knowledge when Mr Ralton produced his proof of evidence (indeed – the terms of the Obsidian MEC are still unknown);

52.3. The MEC issue is not delaying pending applications (Mr Stevenson accepted this); and

52.4. There is absolutely nothing in the suggestion that Mr Ralton's evidence "presents an incomplete factual picture". No single witness is able to present the complete factual picture. As Mr Stevenson fairly agreed, neither side has provided the full factual position to the Inspector – he will, of course, have to take into account the evidence from both sides in order to obtain that.

53. Having regard to all of the above points, Mr St John Williams' argument[66] that the positive effect of a Moratorium Period in excess of three months would not be greater than its negative effect is not made out. Additionally, this aspect of Mr St John Williams' evidence falls to be disregarded / given no weight in any event. Whether the positive effect outweighs the negative effect is a classic question of planning judgement. Mr St John Williams confirmed that he was not qualified to give evidence on questions of planning judgement. Indeed, he confessed himself to be entirely unfamiliar with the concept of "planning judgement". He was unable even to assist in identifying those passages of his written evidence that trespass into matters of planning judgement. In the Council's submission the relevant passages are paras. 2.4, 3.5 and 9.3 of Mr St John Williams' rebuttal.

[66] Rebuttal, para. 9.3.

54. In his rebuttal, Mr St John Williams repeatedly criticises Mr Pinnock and Mr Ralton for having allegedly failed to weigh the positive effect of the longer Moratorium Period for which the Council contends, against its alleged negative effect. That criticism is not fairly made:

54.1. Mr Ralton was clear in both his written and oral evidence that he was providing <u>factual</u> evidence only;

54.2. Mr Pinnock devotes an entire section of his proof to his assessment of "Relative risks" (Section 6);

54.3. The Applicant cannot fairly criticise the Council for having (allegedly) failed to undertake analysis that it has not properly performed itself. Mr St John Williams is – as he very fairly admitted - entirely unqualified to pass comment on this question of planning judgment. Mr Allin does not engage with the point in his written evidence either, merely observing at para. 7.7 of his proof "I am of the view that an extended MIP period is not necessary to make the development acceptable in planning terms and therefore fails the tests set out within the NPPF". No further explanation is provided.

54.4. In his second evidence-in-chief – given after all of the other witnesses had completed their oral evidence – Mr Allin sought to add to his evidence on this point, opining (for the first time) that the five-month Moratorium Period was not necessary "in CIL terms" because "the risk associated with preventing delivery is greater than the risk of losing the property at the back end of the process".

54.5. This approach to the evidence was obviously illegitimate. It is plainly inappropriate for the final witness to wait until all other witnesses have given their evidence before seeking to add to their own. Mr Allin's additional comments should have been set out in a rebuttal proof. The peculiar suggestion from the Applicant that the timetable had not afforded sufficient opportunity for that is impossible to understand – rebuttal proofs on the MEC issue <u>were</u> produced and submitted by both Mr Stevenson and Mr St John Williams.

54.6. In any event, Mr Allin's additional comments at the eleventh hour do not improve the Applicant's position. Mr Allin confirmed in cross-examination that he was relying on the analysis set out by Mr St John Williams. That analysis amounts to an opinion on a point of planning judgement, expressed by someone with no familiarity with the latter concept. (This last point is of course not intended as any discourtesy to Mr St John Williams, who clearly has considerable experience in his areas of expertise; and was commendably frank as to the limits of that expertise.)

55. It is unclear to the Council whether the Applicant intends to argue in its closing submissions that even if the positive effect of a five-month Moratorium Period outweighs its negative effect, a three-month Moratorium Period should nevertheless be accepted on the basis that the lack of a five-month Moratorium Period is simply a point to be weighed against the Scheme in the overall tilted balance / planning balance. If that is the approach for which the Applicant contends, the Council does not agree that it is an appropriate one. There are all manner of provisions within s. 106 obligations that, taken in isolation, are unlikely to be sufficiently weighty to justify refusing planning permission. E.g., financial contributions towards schools, libraries, GP services and the like that, "in the scheme of things", might be said to be relatively modest. Such contributions are nevertheless important and are, moreover, routinely accepted to satisfy the requirements of Reg. 122. To embark down a path whereby contributions that are acknowledged to satisfy Reg. 122 are ultimately nevertheless dispensed with would, in the Council's submission, set an obviously unattractive precedent with potentially far-reaching and serious consequences.

56. By way of conclusion on the Moratorium Period / MEC:

56.1. A five-month Moratorium Period was accepted (and this Applicant's arguments were rejected) by the Secretary of State in the ***Sarratt*** appeal[67]. That was the appropriate outcome, for the reasons set out in these submissions. Additionally, however, the principle of consistency in decision-making indicates that the outcome should be the same for the present application, unless there are good reasons for taking a different approach. There are not. The evidence that is before the Inspector in this application (but was not before the ***Sarratt*** Inspector) has been analysed above and does not justify the Applicant's stance.

56.2. If the Secretary of State concludes that the five-month Moratorium Period requested by the Council does meet the Reg. 122 tests (including, being necessary to make the development acceptable in planning terms) then the "blue pencil clause" within the S. 106 will need to be utilised to amend the period from three months to five months.

[67] CD5.1.

Mr Allin accepted that if the five-month Moratorium Period were found to be necessary to make the development acceptable in planning terms but were not provided, the scheme would be <u>un</u>acceptable in planning terms and planning permission should be refused.

56.3. The Council notes that it previously[68] proposed that a blue pencil clause for the MEC be included in the S. 106, so as to enable the Secretary of State - as in the ***Sarratt*** appeal – to <u>elect between</u> a three-month and a five-month Moratorium Period. The Applicant deleted that proposal from the drafting. It was only at the very end of the first round-table session on the S. 106 – following the conclusion of all of the evidence – that the Applicant proposed that the blue pencil clause be reintroduced into the drafting. The Applicant has, therefore, changed its position from (i) allowing the outcome of the debate on the MEC point to determine – potentially - the outcome of the Application[69]; to (ii) ensuring that the outcome of the debate on the MEC point will not determine the outcome of the Application. The Council has no difficulty with the latter position. The timing of the Applicant's change in position does, however, suggest to the Council that the Applicant is less confident in its MEC case at the end of this inquiry than it was at the start.

<u>Overall conclusions</u>

57. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**") requires applications for planning permission to be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

58. As is explained in the Council's evidence[70], the Scheme does not accord with the development plan. It conflicts with it. In those circumstances, section 38(6) of the 2004 Act requires planning permission to be refused unless material considerations indicate otherwise. They do not.

59. In particular, the NPPF is an important material consideration. It indicates that planning permission should be refused.

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[68] June 2026.

[69] See previous paragraph: without a blue pencil clause for the MEC, planning permission would fall to be refused if the Applicant's arguments on the MEC point were rejected.

[70] Fitzgerald proof (CD6.14) para. 6.6.

60. Having regard to para. 11 of the NPPF, in the absence of a five-year housing land supply the policies that are most important for determining the application are deemed to be out-of-date[71]. However, the "tilted balance" in para. 11d(ii) of the NPPF is not engaged. Rather, para. 11d(i) is engaged: the application of NPPF policies that protect areas or assets of particular importance does provide a strong reason for refusing the Scheme. The relevant footnote 7 policies are those relating to Green Belt.

61. Overall, therefore, the Scheme does not accord with the development plan and material considerations do not indicate that planning permission should nevertheless be granted. The Council therefore respectfully submits that the Scheme should not be granted planning permission and the Application should be refused.

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17 July 2026

[71] Footnote 8 to the NPPF.