

LAND NORTH OF
LITTLE GREEN LANE,
CROXLEY GREEN

OPENING STATEMENT
ON BEHALF OF
THREE RIVERS DISTRICT COUNCIL

Introduction

1. The Council refused planning permission for the application (contrary to officer recommendation) on 3 grounds relating to: Green Belt, Ancient Woodland and s.106 Obligations [CD 4.3].
2. Mindful of the need to keep its case under review, the Council's case has altered since the date of refusal, in light of changing circumstances and advice. Reason for Refusal ("RfR") 2 was withdrawn on 24 April 2026 and RfR1 was withdrawn on 24 June 2026. Neither RfR is pursued by the Council, as set out in the Statement of Common Ground ("SoCG") dated 7 July 2026 [CD9.5].
3. The reasons for the Council's change of position on the RfR are set out in the Note dated 24 August 2026 [CD9.15] requested by the Inspector on 30 July 2026. In summary:

RfR1

- 3.1. The Green Belt/Grey belt issue ("RfR1"). The officer's report ("OR") to Planning Committee considered the characteristics of the site, having regard to the impact on the purposes of the Green Belt, and reached a clear conclusion that the site was Grey Belt land and that the then requisite tests in National Planning Policy Framework ("NPPF") paragraphs 155-157 were met, such that the proposal did not constitute inappropriate development in the Green Belt. However, Councillors disagreed.
- 3.2. On review, there was concern that the decision did not pay full regard to the assessment considerations set out in the Planning Practice Guidance ("PPG") (now set out in NPPF 2026 Annex E). When also considered in the context of the Minister's Direction [CD6.4] to include the site within the Regulation 19 Pre-Submission Local Plan, it was considered appropriate to obtain legal advice.

3.3. The advice supported the original recommendation of officers and concluded that the site was likely to be considered to be Grey Belt, having regard to the tests in the NPPF.

3.4. Extensive discussions were held with Councillors and senior staff, and based on the legal advice, the Minister's Direction and a detailed review of the merits, it was decided not to pursue RfR1. The Council formally withdrew this reason for refusal on 24 June 2026 (as confirmed in the second SoCG dated 7 July 2026 [CD9.5]).

RfR2

3.5. Ancient Woodland. On review, and after taking advice, the Council considered that the scheme provided sufficient mitigation to ensure there would not be material adverse effects on the woodland such that deterioration would occur. In particular, in reviewing further the comments from the Forestry Commission, it was considered that appropriate mitigation measures could be secured at reserved matters stage as part of the comprehensive landscaping scheme, to adequately mitigate the effects of the development. Further, when having regard to the benefits of the scheme, the Council concluded that a robust argument could not be presented in support of the RfR. Therefore, the Council formally withdrew RfR2 on 24 April 2026 (as confirmed in the first SoCG dated 8 May 2026 [CD9.4]).

4. The Council now considers that planning permission should be granted for the appeal scheme, subject to appropriately worded conditions and a s.106 Obligation that secures requirements necessary to make the development acceptable in planning terms.
5. Accordingly, the Council does not produce evidence in relation to any of the “main” or “other” issues identified¹, to put a positive case to the Appellant's witnesses through cross-examination, other than on the limited remaining issues concerning the s.106/affordable housing issues relating to the Mortgagee Exclusion Clause (“MEC”), the Appellant's proposed cascade mechanism, and the County Council's requirements for secondary school and post 16 contributions².

¹ Paragraphs 14 and 16 of the CMC Note [CD9.7].

² Although evidence has also been produced by both main parties in relation to limited differences on housing land supply shortfall, this matter is now dealt with in a joint note [CD9.14]. The contribution sought by TfL in relation to step-free access at Croxley Station is addressed in their written submissions (see below).

6. Therefore, overall, the main parties agree that planning permission should be granted subject to the imposition of suitable conditions and the completion of a satisfactory s.106 Obligation. That overall agreement is not disturbed by any differences between the Appellant's team and the Council's witnesses on any specific issues, including the matters set out above that remain in issue, or as to matters of judgment on the weight attributed to identified harms and benefits.
7. On 13 August 2026, the Secretary of State ("SoS") recovered the appeal for her determination.

Remaining Issues

HLS

8. As confirmed in the SoCG dated 7 July 2026 [CD9.5], the Council cannot demonstrate a 5 year HLS. Further, it is common ground with the Appellant that whether one takes the Council's HLS figure (1.16 years), or the Appellant's figure (0.59 years)³, the shortfall is substantial (SoCG paragraph 6.36).

S.106/Affordable Housing

MiP

9. It is the Council's case that the "moratorium period" in the MEC⁴ within Schedule 2 to the S.106 Obligation [CD14.6] should be five months rather than the three months proposed by the Applicant.
10. As Mr Pinnock explains (Proof [CD12.4]), the MEC purpose is to achieve an appropriate balance between preserving affordable housing in perpetuity and lender recovery, avoiding a period that is excessively short. That is a planning judgment for the Inspector and SoS in this case. The Appellant's case is that the 3-month period is sufficient because it is the market-standard period, because the distressed-sale scenario is unlikely, and because a longer period could have funding and delivery consequences. That does not address the Council's practical point: if the MEC is triggered, there is a real risk that three months is

³ See HLS Note prepared by Mr Harris and Ms Fitzgerald dated 21 August 2026 [CD9.14].

⁴ Referred to elsewhere as the "mortgagee in possession clause"/"mortgagee protection clause".

not a realistic or adequate period for the distressed disposal or transfer of 300 affordable homes.

11. Mr Ralton’s evidence (Proof [CD12.3]) demonstrates that despite the issue becoming contentious in relation to some developments in the District, moratorium periods in excess of 3 months have been accepted by Registered Providers, on schemes permitted and built out (and also imposed on appeal, when contested, on two occasions).
12. The draft s.106 Agreement includes a “blue pencil” clause (Schedule 2, paragraph 1.16 CD14]), to enable the Secretary of State (“SoS”) to elect between a three-month and a five-month moratorium period. This ensures that the outcome of the debate on the MiP point will not determine the outcome of the Appeal.

Cascade

13. The Appellant proposes the inclusion of a Cascade Mechanism (Schedule 2 of the s.106 Agreement, paragraphs 1.17-1.24 [CD14.6]).
14. As Ms Fitzgerald (Proof paragraphs 6.12-6.25 [CD12.1] and Examination in Chief) explains, the proposed cascade mechanism is not considered acceptable because, effectively, it offers an unjustified alternative mechanism to the delivery of the required affordable housing provision⁵ and provides no certainty as to the affordable housing that will be provided, or the adequacy of what is proposed, in terms of local affordability.
15. Whilst Discount Market Sale Dwellings constitute affordable housing within the meaning of the NPPF (Glossary), the definition in the s.106 Agreement is inadequate because, as Ms Fitzgerald explains (Proof 6.12-6.25 [CD12.1]): (i) units sold at a discount of 20%, (or even 30%) below local market value would be unaffordable to many of those in need (see above); and (ii) as drafted, the s.106 Agreement does not define eligibility with regard to local incomes and local house prices⁶.

⁵ 50% (300) of the dwellings as affordable units, comprising: 70% of affordable housing to be affordable rented (whether affordable or social) and 30% as intermediate (Affordable Ownership): SoCG dated 7 July 2026 [CD9.5] paragraph 6.40.

⁶ The Council has suggested drafting changes to address these matters (negotiations continue).

16. Further, the proposed cascade is an inappropriate mechanism to be imposed at the outset (of granting permission) due to the loss of control it could entail in relation to affordable housing delivery in Three Rivers District. The standard approach should be followed; if, in future, evidenced delivery problems arose, a Deed of Variation of the s.106 Agreement might then be required⁷.

S.106 – Secondary Education and TfL

17. The Appellant takes issue with the amount (but not the principle) of the contribution sought by the County Council for Secondary Education. The Appellant takes issue (in principle and amount) with the Post 16 Education contribution sought. Mr Martin of the County Council explains (Rebuttal [CD12.28]) why the contributions sought by the County are justified and meet the CIL Regulation 122 tests.

18. TfL seeks a contribution towards the cost of providing step-free access at Croxley Station and has submitted written representations in justification [CD3.4-3.7 and 14.25]. The Appellant objects to the amount of the contribution⁸.

Planning Balance

19. The starting point for decision-making is that development which accords with the Development Plan should be permitted, unless material considerations indicate otherwise: see s.38(6) Planning and Compulsory Purchase Act 2004; s.70 Town and Country Planning Act 1990. The Inspector and, in due course, the SoS will need to reach a view on whether the proposed development complies with the Development Plan. The section 38(6) duty can only be properly performed if the decision-maker establishes whether or not the Development accords with the Development Plan as a whole. Development Plan policies can pull in different directions. A decision-maker is required to assess the proposal against the potentially competing policies and then decide whether in the light of the whole plan the proposal does or does not accord with it. This is not a mathematical or mechanical

⁷ The draft s.106 Agreement also includes a “blue pencil” clause (paragraph 1.23) to the effect that if the SoS expressly states in the Decision Letter that the Affordable Housing Cascade Mechanism is not necessary to make the Development acceptable in planning terms, is not directly related to the Development, or is not fairly and reasonably related in scale and kind to the Development, paragraphs 1.17 to 1.22 (inclusive) of Schedule 2 shall be of no effect. This ensures that the outcome of the debate on the Cascade Mechanism issue will not determine the outcome of the Appeal.

⁸ It is unclear to the Council whether the Appellant objects in principle and amount, or amount only.

exercise. A series of judgments are required. Determining whether a proposal is in accordance with the development plan is a matter of planning judgement for the planning decision-maker⁹.

20. The parties agree that the proposed development accords with the Development Plan taken as a whole and, as set out above, that planning permission should be granted, subject to the imposition of suitable conditions and completion of a satisfactory s.106 Obligation to secure affordable housing, custom and self-build housing and necessary infrastructure: paragraph 9.1 of the SoCG dated 7 July 2026 [CD9.5].
21. It is agreed between the main parties that the site is Grey Belt land, as defined in the NPPF Glossary and that the Appeal scheme is not inappropriate development in the Green Belt because the requirements of NPPF Policies GB7 and GB 8 are met (see SoCG dated 7 July 2026 paragraphs 6.10-6.35¹⁰ [CD9.5])).
22. NPPF Policy S5(1) states that only certain forms of development should be approved outside settlements, (as listed in (1)(a)-(j)). These should be approved, unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework. Policy S5(1)(j) states:

“Development which would address an evidenced unmet need (including, but not limited to, development proposals involving the provision of housing where the local planning authority cannot demonstrate a five year supply of deliverable housing sites or scores below 75% in the most recent Housing Delivery Test), and where the development would:

 - i. Be physically well-related to an existing settlement (unless the nature of the development would make this inappropriate) and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure...”
23. However, NPPF Policy S5(5) states:

“This policy does not apply to development proposals in the Green Belt or on land designated as Local Green Space, which should instead be determined in accordance with policies HC8, GB6, GB7 and/or GB8 (as appropriate). However, where development would not be inappropriate in these locations (through the application of policies HC8 and GB7), proposals should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the

⁹ These principles are well-established, will be uncontentious between the parties, and have been judicially approved in *R (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508, at [45].

¹⁰ In the context of the previous NPPF Grey Belt definition and policies 155-157.

national decision-making policies in this Framework, and applying paragraph 2 of this policy.”

24. Policy S5(2) states:

“In applying this policy, the circumstances in which the benefits of approving development proposals are likely to be substantially outweighed by adverse effects include, but are not restricted to, situations where the development proposal would fail to comply with one of the national decision-making policies which state that development proposals should be refused in specific circumstances.”

25. As set out above, it is common ground that the appeal scheme complies with Policies GB7 and GB8 and is not inappropriate development in the Green Belt. When assessed against the national decision-making policies in the Framework, and applying paragraph 2 of Policy S5, it is also common ground between the main parties that the benefits of the scheme are not substantially outweighed by adverse effects.

26. In terms of harms arising, as the site is located outside the defined settlement boundary, it is common ground with the Appellant that the appeal scheme gives rise to conflict with the spatial strategy of the Development Plan. The parties agree that the weight to be afforded to these policies in the Development Plan carry limited weight, having regard to both the consistency of these policies with the NPPF and the Council's HLS position. It is further agreed in relation to heritage, that the proposal would result in harm but not substantial harm or total loss to the significance of the Grade II listed Durrants House and the Grade II Registered Park and Garden at Cassiobury Park, through changes to their settings; a low level of harm that does not provide a reason to prevent development, when weighed against the public benefits of the scheme. In terms of the loss of greenfield land and landscape harm, the development would result in the loss of a greenfield site and a change in the character of the site itself. The parties agree that the site is not within a statutory landscape designation, not best and most versatile agricultural land and is not a valued landscape for the purposes of the NPPF (SoCG dated 7 July 2026, paragraphs 7.14-7.16 [CD9.5]).

27. As to benefits, a list of agreed benefits is set out at section 7, p24, of the SoCG dated 7 July 2026 [CD9.5].

28. Whilst the weight afforded to both the identified harms and benefits differs in some respects (see section 7 of the SoCG dated 7 July 2026 [CD9.5] and the Note on Weightings produced

by Ms Fitzgerald dated 24 August 2026 [CD9.17]), it is agreed that the harms do not outweigh the benefits.

Conclusion

29. As set out above, it is common ground that the appeal scheme complies with Policies GB7 and GB8 and is not inappropriate development in the Green Belt. When assessed against the national decision-making policies in the Framework, and applying paragraph 2 of Policy S5, it is also common ground between the main parties that the benefits of the scheme are not substantially outweighed by adverse effects.
30. Therefore, the Council considers that, subject to the imposition of suitably worded conditions and the s.106 Agreement, the appeal should be allowed and planning permission granted for the proposed development.

Graeme Keen KC

Landmark Chambers
27 August 2026