

LAND NORTH OF
LITTLE GREEN LANE,
CROXLEY GREEN

CLOSING SUBMISSIONS
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. In the Opening Statement, the Council explained the reasons why the Council's case has altered since the date of refusal, in light of changing circumstances and advice.
3. Reason for Refusal ("RfR") 2 was withdrawn on 24 April 2026 and RfR1 was withdrawn on 24 June 2026, as set out in the Statement of Common Ground ("SoCG") dated 7 July 2026 [CD9.5].
4. The Council now considers that planning permission should be granted for the appeal scheme, subject to appropriately worded conditions and a s.106 Agreement that secures requirements necessary to make the development acceptable in planning terms.
5. As to the s.106 Agreement, at the outset of the Inquiry, in terms of affordable housing provision, two issues remained: the moratorium period in the Mortgagee Exclusion Clause ("MEC"); and the Appellant's proposed cascade mechanism. A considerable body of expert evidence was submitted on these two points and multiple witnesses were due to give oral evidence.
6. However, in line with the Council's on-going duty to keep its case under review, and particularly in light of the Government's consultation on Standard Planning Agreements for medium-sized sites, published two days before the Inquiry opened (on 25 August 2026 [CD15.6-15.10], the Council decided on Day 1 of the Inquiry, not to pursue its opposition

to a 3 month moratorium period, or the principle of a cascade mechanism in this case (albeit that in relation to the latter point, detailed drafting issues remained to be worked through). The drafting of the cascade mechanism has now been agreed.

7. Whilst it is the case that:

- 7.1. The Standard Planning Agreement consultation document (and suggested s.106 templates [CD15.6-15.10]) can be afforded only limited weight at this stage and is directed at a different scale of development;
- 7.2. The standard approach remains that if, in future, evidenced delivery problems arose, a Deed of Variation of the s.106 Agreement might be required;
- 7.3. Existing Government guidance makes clear LPA are not expected to adopt such cascades, except where it would work for their local circumstances¹;
- 7.4. As the roundtable discussion revealed, the convoluted and potentially long drawn out operation of the cascade may itself signal that the Deed of Variation route could in fact remain preferable and more effective;

The Consultation document nevertheless represents a clear “direction of travel” by the Government towards more standardisation of s.106 Agreements.

- 8. After careful consideration, the Council decided that the significant costs exposure - on matters that it is common ground would not be determinative of the outcome of the appeal (because of the incorporation of “blue pencil” clauses in respect of both matters in the then draft s.106 Agreement) - represented too great a risk, given the Council’s duty to look after and make best use of public funds.
- 9. In agreeing that a cascade mechanism is appropriate in this case, the crucial point is that if the Agreed Tenure Mix (70% of affordable housing to be social and affordable rented and 30% affordable ownership) cannot be achieved and the cascade flows down to Discount Market Sales, the agreed tiers of discount will ensure affordable housing sales rates that will adequately reflect local incomes and house prices (see Ms Fitzgerald Proof [CD12.1] at paragraph 6.23 and in roundtable session) and would therefore work in local circumstances.

¹ See Policy Statement: A Roadmap for Section 106 Delivery” [CD8.8], Section 1 para 2.

10. Finally, although the cascade is agreed in this case, if the Inspector/SoS nevertheless determine that the cascade mechanism is not compliant with CIL Regulations, then a “blue pencil” clause (paragraph 3.4 in the most recent draft) would ensure it is of no effect. (In such circumstances, the conventional Deed of Variation route would be open to the Appellant, if justified in future – see above.)

Remaining Issues

S.106 – Secondary Education and TfL contributions

11. 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.
12. For the reasons set out by Mr Martin, HCC’s School Planning Manager, responsible for school place planning in the west of Hertfordshire (Rebuttal [CD12.28], EinC and CX), the sums sought by the County Council should be preferred to the lower figure advocated by Mr Kinghan.
13. When capacity is properly assessed, in line with the Planned Admission Number of the relevant schools, (including a realistic assessment of post 16 capacity²) and a prudent, tried and tested in Hertfordshire capacity of 5-10% is sought to be maintained, having regard to pupil movements, future pupil fluctuations etc, and appropriate regard is given to both the relevant SPA (Rickmansworth and Watford), it is clear the contributions sought by the County (£3,628,920 for secondary, £756,025 for post 16) are justified and meet the CIL Regulation 122 tests. Mr Kinghan’s suggested figure of £1,542,391 understates the needs arising as a result of the proposed development and, if that sum were to be endorsed, would result in a material shortfall against what is required to mitigate the effects of the appeal scheme.
14. 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].

² See, in particular, Mr Martin’s evidence of the actual 6th form capacity of Croxley Danes (196) and Westfield Academy (300) [CD15.22] – accepted as accurate by Mr Kinghan (CX). For the reasons explained by Mr Martin (EC) and Mr Kinghan (in CX), Mr Martin’s evidence should be preferred to the DfE based total built area formulation that underpins the number of places set out at Kinghan Table 3.2, paragraph 3.9.

15. The Council considered TfL's request for a contribution to be reasonable in principle, given the assessment by the Appellant that the proposed development would result in a 7.1% increase in trips at Croxley Station. The Appellant whilst not necessarily opposed in principle, sought details from TfL to understand and justify the contribution sought. These were not matters the Council could assist on, and so TfL's engagement on the issue was repeatedly sought. Further late evidence (supplementing previous written submissions [CD3.4-3.7 and 14.25]) was submitted by TfL on 26 August 2026 [CD9.22-9.24].
16. On Day 1 of the Inquiry, the Inspector made a determination allowing that late evidence to be submitted but requiring a further Case Management Conference to decide how to proceed with the TfL issue. However, during the period the Inquiry was adjourned, agreement was reached between the Appellant and TfL that the contribution of £1,065,000 is necessary and compliant with CIL Regulation 122.

Planning Balance

17. 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 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-maker³.
18. 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

³ 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].

imposition of suitable conditions and completion of a satisfactory s.106 Agreement to secure affordable housing, custom and self-build housing and necessary infrastructure: paragraph 9.1 of the SoCG dated 7 July 2026 [CD9.5].

HLS

19. 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)⁴, the shortfall is substantial (SoCG paragraph 6.36).

Grey Belt

20. 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 GB8 are met (see SoCG dated 7 July 2026 paragraphs 6.10-6.35⁵ [CD9.5] and the Topic Specific SoCG dated 26 August 2026, paragraph 6.1 [CD9.18]).

21. 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...”

22. 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

⁴ See HLS Note prepared by Mr Harris and Ms Fitzgerald dated 21 August 2026 [CD9.14].

⁵ In the context of the previous NPPF Grey Belt definition and policies 155-157.

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

23. 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.”

24. 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.

25. 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]).

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

Very Special Circumstances

27. The Inspector's main issues include whether, if in due course, (and contrary to the common ground between the main parties – see above), the appeal scheme is deemed to be inappropriate development in the Green Belt, the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (“very special circumstances”).
28. The Council considers that the acknowledged benefits of the scheme and the limited harms arising (see above) mean that very special circumstances would exist to justify the grant of planning permission.

Conclusion

29. 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 Agreement. That agreement is not disturbed by any differences between the Appellant's team and the Council's witnesses on any specific issues, or as to matters of judgment on the weight attributed to identified harms and benefits (see section 7 of the SoCG dated 7 July 2026 [CD9.5] and the Notes on Weightings produced by Ms Fitzgerald dated 24 August 2026 [CD9.17] and the Appellant dated 26 August 2026 [CD9.19]); it is agreed the harms do not outweigh the benefits.

Graeme Keen KC

Landmark Chambers

4th September 2026