

**IN THE MATTER OF:**

**LAND NORTH OF LITTLE GREEN LANE, CROXLEY GREEN**

**APP. REF. 6004972**

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**APPELLANT CLOSING SUBMISSIONS**

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**Introduction**

1. This is an appeal by Richborough Ltd (“the Appellant”) against the decision of Three Rivers District Council (“the Council”) to refuse outline planning permission for up to 600 homes, a 5-bed property for children’s supported living, a one-form entry primary school with land for expansion, local centres for NHS health and social care and retail/café provision, and substantial country park and open space areas (“the Scheme”) at Land North of Little Green Lane, Croxley Green (“the Site”).
2. For many years, the Council has placed obstacle after obstacle in the way of this Site coming forward for large-scale residential development, despite the overwhelming need for such development in Three Rivers, and the overwhelming planning merits of this Scheme at this Site. Most starkly, that has included the Council’s obstinate refusal of this application at Committee, against clear Officer advice that the Scheme was both Grey Belt and demonstrated very special circumstances in any event<sup>1</sup>, and its refusal on two separate occasions to allocate the Site within its emerging local plan, again contrary to cogent and clear Officer advice<sup>2</sup>.
3. Now, no doubt with the benefit of further careful and professional advice, through the course of this inquiry process, those obstacles have come crashing down, one by one. First to fall was the incomprehensible Reason for Refusal 2<sup>3</sup>, which alleged deterioration to Ancient Woodland despite the fact that the Appellant had already agreed to buffers representing more than double those required under Natural England

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<sup>1</sup> CD 4.3, §7.22.40

<sup>2</sup> Cameron Austin-Fell, Proof of Evidence (CD 13.1), §2.2

<sup>3</sup> CD 9.9

standing guidance around all such Woodlands<sup>4</sup>. That was swiftly followed by an acceptance on the Council's part that their Officers had been right all along, that the Site was Grey Belt, and that very special circumstances were demonstrated anyway, in the event that it was not<sup>5</sup>. By that stage, the Council accepted that planning permission should be granted<sup>6</sup>.

4. Still, however, the Council sought to fight on, and to introduce further obstacles. A four-day inquiry was convened to consider whether the Council was correct to object to two aspects of the Appellant's draft section 106 agreement, despite the fact that (as explained further below) both were added principally to account for the Council's own woeful approach to affordable housing delivery across the past two decades. Then, finally, on the first day of that inquiry, the house of cards crumbled altogether, the Council conceded that its position on even those issues was untenable, leaving all material matters (save for a minor dispute about education contributions) finally agreed between the Council and the Appellant.
5. The reality is that it should not have taken a wholly unprecedented intervention from the Secretary of State, for the first time in history specifically directing the Council to include this specific site within its emerging local plan (which the Council has now done, thereby relying upon the Site for the plan to be found sound)<sup>7</sup>, to force the Council to concede that the planning merits of the Scheme fell overwhelmingly in favour of the grant of permission. Nonetheless, that position has now been reached, and reached clearly – there is no dispute between any of the parties to this inquiry that planning permission should be granted, that it should be granted in the terms sought, and that it should be granted subject to the version of the section 106 agreement sought by the Appellant, subject to the dispute surrounding education.
6. That being so, in Closing, the Appellant will address the issues before the Inspector and the Secretary of State according to the list of main issues identified by the Inspector on the opening day of the inquiry:

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<sup>4</sup> CD 4.3, §§7.16.8-7.16.12

<sup>5</sup> CD 9.10 (Withdrawal Letter); CD 9.18, §§3.10-3.12

<sup>6</sup> CD 9.10

<sup>7</sup> Cameron Austin-Fell, Proof of Evidence, §5.21

- a. Whether the proposal would be inappropriate development in the Green Belt, having regard to the NPPF and relevant development plan policies;
  - b. The effect of the proposal on the openness and purposes of the Green Belt;
  - c. The effect on the character and appearance of the area;
  - d. The effect on ancient woodland, safety and the free flow of traffic on the highway network, and heritage assets;
  - e. Whether necessary obligations and financial contributions are provided for affordable housing, secondary education, and step-free access to Croxley station; and
  - f. If the development does represent inappropriate development, is any harm by reason of inappropriateness, and any other harm, clearly and demonstrably outweighed so as to amount to the necessary ‘very special circumstances’.
7. It bears repeating that the Council and the Appellant are now in alignment on each of those six issues, and remain in alignment that this appeal should be allowed, and planning permission granted<sup>8</sup>.

**(1) Is the proposal inappropriate development in the Green Belt?**

Policy Framework

8. Per NPPF Policy GB6(1), development is inappropriate in the Green Belt unless it falls within one of the categories in Policy GB7. For the purposes of this appeal, the relevant exception is GB7(1)(g), which essentially reflects paragraph 155 of the December 2024 NPPF, save that it is now expressed as a national decision-making policy. The questions before the Secretary of State are accordingly whether:
- a. the development would utilise Green Belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
  - b. there is evidenced unmet need for the type of development proposed;
  - c. the development would be in a sustainable location, with particular reference to policy TR3 of the Framework; and

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<sup>8</sup> CD 9.5, §8.1

- d. in the case of major development involving the provision of housing, the development proposed complies with policy GB8.
9. Policy GB8, in turn, contains the ‘Golden Rules’ previously within paragraph 156 of the NPPF, and requires (in summary) the Scheme to provide (a) 50% affordable housing, (b) *“necessary improvements to local or national infrastructure”*, and (c) *“the provision of new green space, or improvements to existing green space, which is accessible to the public”*.

GB7(1)(g)(i): Does the development utilise Grey Belt land?

10. Grey Belt is defined within the Glossary to the 2026 NPPF in the same manner as it was under the 2024 Framework: *“land in the Green Belt...that...does not strongly contribute to any of purposes (a), (b), or (d) in policy GB2”*. The Inspector will now additionally be assisted by the inclusion within Annex E to the Framework of guidance relating to the proper definition and application of those purposes.
11. The uncontested evidence before the inquiry, provided by Ms Gruner on behalf of the Appellant, is that the Site does not strongly contribute to any of those purposes. As Ms Gruner identifies, for the reasons set out in her detailed Proof of Evidence, the Site makes a moderate contribution to purpose (a)<sup>9</sup>, a moderate contribution to purpose (b)<sup>10</sup>, and no contribution to purpose (d)<sup>11</sup>. All of those levels of contribution are agreed by the Council<sup>12</sup>. That is plainly sensible, for the following reasons.

*Contribution to purpose (a)*

12. Annex E is clear that purpose (a) does not apply to ‘villages’. Croxley Green itself is agreed by the parties to be a village, but one that is contiguous with the built-up edge of Watford, which clearly does fall within purpose (a)<sup>13</sup>. The contribution of the Site to purpose (a) must therefore be assessed for its relationship with the wider Watford built-up area<sup>14</sup>.

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<sup>9</sup> Silke Gruner, Proof of Evidence (CD 13.3), §5.16

<sup>10</sup> Silke Gruner, Proof of Evidence, §5.17

<sup>11</sup> Silke Gruner, Proof of Evidence, §5.21

<sup>12</sup> Statement of Common Ground (CD 9.5), §§6.10, 6.11, 6.12-6.20; Joint Topic Statement of Common Ground on NPPF Implications (CD 9.18), §3.8

<sup>13</sup> CD 9.18, §3.7

<sup>14</sup> CD 9.18, §3.7

13. Annex E indicates that a site is only likely to make a strong contribution to purpose (a) where it demonstrates all three of (1) a lack of physical features in reasonable proximity that could restrict and contain development, (2) being adjacent to, or near, a large-built up area, and (3) resulting in an incongruous pattern of development if developed, such as an extended ‘finger’ of development. As Ms Gruner explains, the Site possesses at best just one of those three characteristics, such that applying national policy, it cannot provide more than a moderate contribution<sup>15</sup>.
14. As to (1), the Site is bounded by physical features restricting further development on almost all sides – in almost all cases, this is Ancient Woodland which remains subject to one of the most protective policies in the entire NPPF. To the eastern side of the Site (within the red-line boundary, but east of any proposed development) sits Ancient Woodland. To the east of the red-line boundary of the Site sits Rousebarn Lane, beyond which is further dense woodland and rising ground towards Cassiobury Park, a Registered Park and Garden, and significant heritage constraint. To the north of the Site sits Rousebarn Lane again, beyond which is Whippendell Wood, which is both Ancient Woodland and a SSSI. To the north-west of the Site, beyond the hedgerows, sits both Merlin’s Wood and Dell Wood (again, both Ancient Woodland), and to the west of the Site is another Ancient Woodland belt at Long Newland’s Spring<sup>16</sup>.
15. The result is that, with the exception of a small aspect of the red-line boundary to the west of the Site which is bounded with hedgerow only, the Site is bounded on all sides by physical features which would undoubtedly restrict future development<sup>17</sup>. To take the contrary view would be to assert that development covering Ancient Woodland, SSSIs, protected heritage assets, or a combination of all three is a reasonable likelihood – plainly, it is not. As such, the first of the three indicators of a site which makes a strong contribution to purpose (a) does not apply.
16. As to (2), while Croxley Green is not itself a large built-up area, reading it as part of the broader Watford/Rickmansworth urban area, and taking a precautionary approach, the second indicator is likely satisfied<sup>18</sup>. That, the Appellant would simply note,

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<sup>15</sup> Silke Gruner, Proof of Evidence, §§5.4, 5.16

<sup>16</sup> Silke Gruner, Proof of Evidence, §5.8

<sup>17</sup> Silke Gruner, Proof of Evidence, §5.10

<sup>18</sup> Silke Gruner, Proof of Evidence, §5.12

reflects the unarguable sustainability credentials of the Site – it is in close proximity to Croxley Green Local Centre, with primary schools, shops, GP surgeries, and transport links into the centre of London all easily accessible on foot or by bike<sup>19</sup>.

17. As to (3), the Scheme proposes an entirely logical extension of the current Croxley Green urban area, pursuant to which its north-eastern extent would simply be extended further northwards, up to the physical boundaries identified above. Far from creating an isolated finger of development, it would simply extend the settlement boundary and create a new, permanent settlement edge in that location, as Ms Gruner’s Figure 5.1 demonstrates<sup>20</sup>. It is important not to conflate the extension of a settlement boundary into the Green Belt with an ‘incongruous pattern of development’ – all Green Belt development will extend and change the shape of a development boundary. The question is whether it does so in a manner that is incongruous<sup>21</sup>. As Ms Gruner’s diagrams demonstrate, that is plainly not the case here.
18. The end result, therefore, is that absent two of the three features delineated in national policy as indicative of a site which makes a strong contribution to purpose (a), the only sensible conclusion is that the Site does not make such a contribution, and that its contribution is no greater than moderate<sup>22</sup>.
19. It is highly relevant to observe that Ms Gruner’s analysis accords entirely with that within the Officer Report, which also correctly observed that the Site was bounded by Ancient Woodland and SSSIs, and thereby by physical features “*which would ensure their permanence as physical boundaries*”<sup>23</sup>. The Report went on to observe, again precisely as Ms Gruner suggests, that development of the Site would not result in an incongruous pattern of development, but would simply “*extend the northern edge of the existing settlement*”<sup>24</sup>. The Appellant entirely endorses that analysis; had the Council heeded its wisdom sooner, this appeal simply would not have been necessary.

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<sup>19</sup> Cameron Austin-Fell, Proof of Evidence, §6.32

<sup>20</sup> Silke Gruner, Proof of Evidence, §5.14

<sup>21</sup> Silke Gruner, Proof of Evidence, §5.15

<sup>22</sup> Silke Gruner, Proof of Evidence, §5.16

<sup>23</sup> CD 4.2, §7.1.21

<sup>24</sup> CD 4.2, §7.1.21

### *Purposes (b) and (d)*

20. The position can be much more shortly stated in respect of purposes (b) and (d). Purpose (b) is expressly concerned only with the merging of towns, rather than any smaller settlements<sup>25</sup>. The closest town to the Site is the western edge of Watford, which sits approximately 1km to the east. Between the two are Cassiobury Park and a large area of woodland. That being so, the Site makes no more than a moderate contribution to preventing the merging of towns; the clear visual and spatial separation will be retained<sup>26</sup>. Purpose (d) is of no application – the Site is not proximate to any historic towns, and the Site therefore makes no contribution to purpose (d)<sup>27</sup>. As already noted, that position is agreed between the Appellant and the Council in full<sup>28</sup>.

### *Overall*

21. For those reasons, as Ms Gruner explains, the Site makes no more than a moderate contribution to purposes (a) and (b), and no contribution at all to purpose (d). The Site is therefore, as the Council now sensibly accepts, and as was the position taken in the initial Officer Report, Grey Belt land.

### *Contrary evidence on Grey Belt*

22. As already indicated, Ms Gruner, those appearing for the Council at this inquiry, and the Officer Report are in total agreement that the Site is Grey Belt land. It is, however, necessary briefly to deal with the representations of Interested Parties, who sought to rely on other aspects of the Council's evidence base to suggest the contrary. Ms Gruner's Proof provides a complete and comprehensive response to all such points:

- a. Both the 2017 Stage 1 Green Belt Study, and the 2019 Stage 2 Green Belt Study significantly pre-date both the concept of Grey Belt, and the PPG which now provides significant guidance on the circumstances in which sites will contribute to Green Belt purposes to different extents. Both are of very limited assistance for that reason alone<sup>29</sup>. In any event, neither is inconsistent with the Appellant's case. The Stage 1 Study assessed Parcel C6 (a much larger area, of

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<sup>25</sup> Annex E, paragraph 4

<sup>26</sup> Silke Gruner, Proof of Evidence, §5.17

<sup>27</sup> Silke Gruner, Proof of Evidence, §§5.18-5.21

<sup>28</sup> CD 9.18, §3.8; CD 9.5, §§6.10-6.11

<sup>29</sup> Silke Gruner, Proof of Evidence, §§4.2, 4.9

which the Site forms the south-eastern portion, closest to the existing settlement) as making a contribution at the middle level of a three-point scale<sup>30</sup>. It specifically declined to indicate that C6 made a ‘significant contribution’ to purpose (a), and caveated even that conclusion by observing that more detailed analysis would be required due to the pressure for development to meet housing needs in the area<sup>31</sup>. The Stage 2 Study, for its part, was addressing the discrete question of harm associated with release (rather than contribution)<sup>32</sup>, but even on that basis, specifically concluded that the release of Parcel CG8 would have “*a negligible impact on adjacent Green Belt land*”, specifically because “*the surrounding registered parkland and ancient woodland constraints mean there would be no significant increase in the containment of adjacent Green Belt land, nor any weakening of the boundary of the urban edge*”<sup>33</sup>. The Appellant agrees.

- b. There are two significant issues with the more recent Stage 4 Green Belt Review, conducted by Arup in two parts in September 2025 and February 2026. First, and contrary to the position expressed by Interested Parties, that Review has never been adopted by the Council, nor been tested at examination. Second, and more importantly, it is simply not methodologically sound. Most starkly, the September 2025 Review did not actually involve any assessment of the land itself, rather a recategorization of observations made in the 2017 and 2019 studies, transposed into newly labelled categories<sup>34</sup>. It also failed properly to reflect national policy on the approach to purpose (a), a failing which, when pointed out at appeal, resulted in the need for the February 2026 update, as Arup themselves rather sheepishly admitted<sup>35</sup>. When it arrived, however, even the February 2026 update did not involve a re-evaluation of the land itself, instead simply tweaking a small number of the conclusions reached, only by factoring in reference to the physical features identified above, which had previously been missing from the purpose (a)

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<sup>30</sup> Silke Gruner, Proof of Evidence, §4.5

<sup>31</sup> Silke Gruner, Proof of Evidence, §4.8

<sup>32</sup> Silke Gruner, Proof of Evidence, §4.12

<sup>33</sup> Silke Gruner, Proof of Evidence, §4.15

<sup>34</sup> Silke Gruner, Proof of Evidence, §4.21

<sup>35</sup> Silke Gruner, Proof of Evidence, §4.29

assessment<sup>36</sup>. The result, unfortunately, is that the two reviews are unimpressive pieces of work, which do not reflect national policy, and cannot undermine the wholly policy-compliant analyses undertaken both by Ms Gruner, and in the Officer Report.

23. In light of all of the above, the only sensible conclusion to reach, as the Appellant has throughout indicated, is that the Site is Grey Belt land.

*Footnote 7*

24. For the avoidance of doubt, as the Inspector will no doubt be well aware, while Ms Gruner refers within her Proof of Evidence to the non-application of Footnote 7 features<sup>37</sup> (such that the Site is not subsequently removed from the definition of Grey Belt), that stage of the analysis is no longer present in the 2026 Framework. It is no longer necessary to undertake an assessment of Footnote 7 policies as part of the assessment of whether a site is Grey Belt land.

GB7(1)(g)(i): Does the development fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan?

25. It is obvious that the very high threshold set in the remainder of GB7(1)(g)(i) is not crossed here – development at the Site would not fundamentally undermine the remaining purposes of the Green Belt, across the plan area. That is wholly unsurprising in respect of a site that is a relatively small part of a very large area of Metropolitan Green Belt washing over Three Rivers and adjacent areas, particularly where that site sits at the southernmost corner of that Green Belt, as close as could be to the existing settlement edge. As Ms Gruner explains, the development of the Site will have no impact on the ability of adjoining Green Belt land to the east, north, and west to continue to fulfil its purposes as Green Belt to the extent that it current does<sup>38</sup>.
26. That, too, is a matter of agreement with those appearing for the Council on this appeal, and with the Officer Report, which quite correctly noted that the Site’s *“location at the existing urban edge of Croxley Green and its enclosure by defensible*

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<sup>36</sup> Silke Gruner, Proof of Evidence, §§4.32-4.33

<sup>37</sup> Silke Gruner, Proof of Evidence, §§5.23-5.26

<sup>38</sup> Silke Gruner, Proof of Evidence, §§6.3-6.7

*boundaries*” would have a limited effect in the wider context of such a large area of Green Belt<sup>39</sup>. Once again, had that advice been heeded by the Council sooner, planning permission would have been granted, and the substantial delay now occasioned to the consent of sustainable development which is so deprecated by the NPPF<sup>40</sup> could have been avoided altogether.

GB7(1)(g)(ii): Is there an evidenced unmet need for the type of development proposed?

27. It could not be clearer that there is an unmet need for both market and affordable housing within Three Rivers. Footnote 41 of the Framework puts that beyond doubt for the purposes of GB7 itself – indeed, the Council fails against both metrics: it cannot demonstrate a five-year housing land supply (indeed, it is woefully short), and has failed the Housing Delivery Test consistently for over a decade<sup>41</sup>. In reality, however, that does not touch the sides of the real position on the ground. As Mr Harris explains, and as is dealt with in more detail below, the need for housing in Three Rivers is nothing short of overwhelming; its housing land supply is amongst the worst in the entire country<sup>42</sup>. There could be no clearer evidence of that than the Secretary of State’s truly unprecedented intervention in the Council’s emerging local plan, as already identified above.

GB7(1)(g)(iii): Is the development in a sustainable location?

28. The Site is plainly a highly sustainable location. First, the Scheme itself will include a large number of facilities to make it internally sustainable, including a primary school, retail and café facilities, healthcare and social care services, and extensive public open space. Second, the Site is located at the edge of Croxley Green, providing comfortable walking and cycling access to local shops and other facilities within the urban edge of Watford. Third, the Site is also within easy access of Croxley station (thereby providing easy access into the heart of London via the London Underground), and bus stops with services into Watford and further afield. Fourth, all of the above is to be bolstered by a package of sustainable transport initiatives, including Beryl Bike docking stations on site, the introduction of a brand-new dedicated bus service serving Rickmansworth, Watford, Croxley, and Watford Junction, and a seasonal bus pass for

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<sup>39</sup> CD 4.2, §7.1.33

<sup>40</sup> Policy S3(1)(c)

<sup>41</sup> Cameron Austin-Fell, Proof of Evidence, §5.17

<sup>42</sup> Cameron Austin-Fell, Proof of Evidence, §4.17

each dwelling. The importance of every aspect of that analysis is reflected within TR3 itself, which specifically encourages the need to “*offer a genuine choice of transport modes for residents and users*”. The Site is, in short, in a highly sustainable location.

GB7(1)(g)(iv): Compliance with GB8/Golden Rules

29. As noted above, there are essentially three aspects of the Golden Rules to be considered, which are preserved by GB8: (1) affordable housing, (2) infrastructure improvements, and (3) provision of green space. Each is considered in turn.

*(1) Affordable Housing*

30. The applicable requirement within Three Rivers is an affordable housing contribution representing 15% above the highest requirement that would otherwise apply by way of development plan policy, up to a 50% cap. The target identified in local policy is 45%, under CP4(a). In full compliance with GB8, the Scheme proposes 50% affordable, which is a total of 300 affordable homes in an area which the local plan recognised as long ago as 2011 had “*an identified and pressing need for affordable housing*”<sup>43</sup>. Since then, that need has only increased, and exponentially so. Wholly unsurprisingly, Mr Stacey therefore advocates that very substantial weight should be afforded to the Golden-Rules compliant level of affordable housing provided<sup>44</sup>.
31. At one point, the Council sought to undermine that position by reference to the ill-fated argument that the inclusion of a cascade mechanism within the section 106 agreement, which Ms Fitzgerald suggested created a “*risk*” that affordable housing “*might*” not be provided, which “*undermined the Appellant’s ability to demonstrate compliance with the ‘golden rules’*”<sup>45</sup>. Even setting aside the layers of abstraction inherent in that suggestion, it was obviously ill-founded from the outset, as it rested on the assumption that, even if the cascade operated in full, and the affordable housing landed as Discount Market Sales (“DMS”) housing, it would still be affordable within the meaning in national policy<sup>46</sup>. Ms Fitzgerald’s contrary suggestion was never a sensible one, was never consistent with national policy, and

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<sup>43</sup> Policy CP4(a) (CD 5.1, p.44)

<sup>44</sup> James Stacey, Proof of Evidence (CD 13.6), §8.22

<sup>45</sup> Elizabeth Fitzgerald, Proof of Evidence (CD 12.1), §6.34

<sup>46</sup> NPPF, Annex B Glossary (PDF p.104, paper p.102)

was rightly abandoned by the Council through Mr Keen KC on the first day of the inquiry.

32. The result is that there is no dispute, nor should there ever have been dispute, that GB8(1)(a) is satisfied.

*(2) Infrastructure Improvements*

33. The Scheme proposes considerable infrastructure improvements within the local area, which are benefits in their own right, as well as benefits that go to compliance with the Golden Rules<sup>47</sup>. They include (a) two proposed points of access from Durrants Drive and Links Way, (b) footpath and cycleway connections throughout the Scheme, (c) the retention and incorporation of an existing PRow, (d) contributions towards active travel links, (e) other sustainable travel improvements including Beryl Bike stations and a dedicated bus service, and (f) the fleet of on-site services already outlined above and below including a new primary school, medical centre, and health and social care services. That position is, once again, common ground with the Council<sup>48</sup>, and common ground with the analysis in the Officer Report<sup>49</sup>.

*(3) Provision of Green Space*

34. It bears emphasis, particularly in light of the comments made by Interested Parties about the importance of retaining local green space, that one of the flagship aspects of the Scheme is that it retains some 60% of the overall site area as guaranteed public open space<sup>50</sup>. That includes a country park, areas for play and recreation, allotments, and a community orchard, all of which contribute to satisfy GB8(1)(c) with room to spare. Once again, those are independent benefits of the Scheme considered in greater depth below, and once again, they are matters on which the Appellant, the Council at appeal<sup>51</sup>, and the Officer Report<sup>52</sup> are in complete agreement.

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<sup>47</sup> Cameron Austin-Fell, Proof of Evidence, §§6.77-6.80

<sup>48</sup> CD 9.5, §6.27

<sup>49</sup> CD 4.2, §§7.1.42-7.1.44

<sup>50</sup> Cameron Austin-Fell, Proof of Evidence, §6.94

<sup>51</sup> CD 9.5, §6.27

<sup>52</sup> CD 4.2, §7.1.45

## Overall

35. For those reasons, in agreement with the Council at appeal<sup>53</sup> and the Officer Report<sup>54</sup>, the Appellant invites the Inspector and Secretary of State to conclude that the Site satisfies all the requirements of GB7 and GB8 of the NPPF. That has two vitally important consequences for the determination of this appeal.
36. First, per GB6(1), the Scheme does not represent inappropriate development in the Green Belt, such that no harm to the Green Belt arises. It is a long-established feature of Green Belt policy that appropriate development does not generate any Green Belt harm, a position recently reaffirmed yet again by the High Court in the context of the 2024 NPPF<sup>55</sup>. That applies to the Scheme too – no harm to the Green Belt therefore arises.
37. Second, not only does that conclusion eliminate any Green Belt harm, national policy also dictates that substantial positive weight in the planning balance should be applied as a result of compliance with the Golden Rules, per GB8(2). That, as the Inspector will be well aware, is not double-counting – it simply reflects the fact that the Scheme carefully and deliberately satisfies the Government’s prescribed public interest test for major housing development on Green Belt land<sup>56</sup>.
38. The result, therefore, of all of the above analysis is that (1) the Scheme is wholly compliant with GB7 and GB8, (2) as a result, the Scheme is not inappropriate development in the Green Belt, (3) that being so, no Green Belt harm arises, and (4) to the contrary, substantial positive weight in the planning balance must be afforded, under national policy. Once again, it bears repeating that all of the above analysis is now accepted both by the Council on this appeal<sup>57</sup>, and by the Officer Report at application stage<sup>58</sup>.

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<sup>53</sup> CD 9.18, §3.9

<sup>54</sup> CD 4.2, §§7.1.46-7.1.47

<sup>55</sup> Per Choudhury J at [38]-[71] of *Mole Valley District Council v Secretary of State for Housing, Communities, and Local Government* [2025] EWHC 2127 (Admin)

<sup>56</sup> Cameron Austin-Fell, Proof of Evidence, §6.77

<sup>57</sup> CD 9.18, §§3.9-3.12

<sup>58</sup> CD 4.2, §§7.1.46-7.1.47

## **(2) Effect on Openness and Purposes of the Green Belt**

39. The starting point as regards main issue 2 is that identified above – if the Inspector and Secretary of State adopt the common ground that pervades the Green Belt issue, this issue simply does not arise. If the Scheme is not inappropriate development in the Green Belt, there is no requirement to go on to consider the effect of the Scheme on the openness and purposes of the Green Belt – as Lindblom LJ identified at [20] and [24] of *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404, the consideration of whether development is inappropriate itself involves considering the effect on openness and purposes. That being so, if the Inspector and Secretary of State agree with the position as identified above at paragraph 38, this issue falls away altogether.
40. Failing that, there remains no contrary evidence before the Inspector or Secretary of State to that included within Ms Gruner’s Landscape and Visual Impact Assessment (“LVIA”)<sup>59</sup>. Her view is that limited harm would arise to purpose (a) (in light of the very well-contained nature of the Site against the wider Green Belt, and the amount of open space preserved)<sup>60</sup>, moderate harm to purpose (c) (again in light of the well-contained nature of the Site, its clear relationship to the existing Croxley Green settlement, and its position as a logical extension of that settlement)<sup>61</sup>, and limited harm to purpose (e)<sup>62</sup>, but no harm to either purposes (b)<sup>63</sup> or (d)<sup>64</sup>. As regards openness, the LVIA identifies a moderate to high level of harm to openness as a result of the inevitable change from an open, greenfield site into a developed site, but is again clear that other than the definitional harm arising, that harm is limited to the immediate, localised harm on-site<sup>65</sup>.
41. For the reasons set out below, while in such circumstances substantial harm would be required by Policy GB6(2) to be afforded to that harm, it is clear that such a level of

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<sup>59</sup> CD 1.17

<sup>60</sup> CD 1.17, §6.23

<sup>61</sup> CD 1.17, §6.28

<sup>62</sup> CD 1.17, §6.30

<sup>63</sup> CD 1.17, §6.25

<sup>64</sup> CD 1.17, §6.29

<sup>65</sup> CD 1.17, §§6.32-6.37

harm is substantially outweighed by the very special circumstances addressed below, precisely as was identified by Officers at Committee<sup>66</sup>.

### **(3) Effect on Character and Appearance**

42. Character and appearance was not a reason for refusal, and was never pursued as a basis for refusing planning permission by Officers at Committee, Members at Committee, or the Council at appeal. There was also no objection to the Scheme from the Council's Tree and Landscape Officer<sup>67</sup>. Those judgments are all well-founded – for the reasons identified in the LVIA, adopted in the Officer Report, while there will inevitably be an impact on character and appearance, that impact will be localised, limited, and will diminish over time as the extensive proposed landscaping becomes more established.
43. By way of context, it is important to observe that the Site is not covered by any statutory or non-statutory designations for landscape, is not a valued landscape<sup>68</sup>, and largely comprises ordinary arable land<sup>69</sup>. There is landscape interest created by the presence of Ancient Woodland within the Site, but the Site is not itself tranquil or rural in feel, as a result of its proximity to Croxley Green, and therefore the urban edge of Watford and Rickmansworth<sup>70</sup>. It is against that background that the inevitable impacts on upon character and appearance must be judged.
44. In terms of visual effects, as the LVIA identifies, views into the Site are generally limited by dense vegetation surrounding it, particularly to the north, east, and west, save for the public footpath crossing the Site. Views of the northern part of the Scheme will be available from that footpath, but they will be behind the country park, and softened by proposed landscaping. Beyond the immediate vicinity of the Site, medium- and longer-distance views are largely heavily filtered through existing vegetation, which will be obscured further by proposed landscaping, or where they are not filtered, are largely read against the existing urban edge of Croxley Green. That being so, in the round, visual impact will be limited and localised<sup>71</sup>.

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<sup>66</sup> CD 4.2, §7.22.40

<sup>67</sup> CD 4.2, §7.16.12

<sup>68</sup> CD 9.5, §6.53

<sup>69</sup> CD 1.17, §4.20

<sup>70</sup> CD 1.17, §4.20

<sup>71</sup> CD 1.17, §§5.13-5.23

45. The character of the Site will also inevitably change, as the LVIA recognises – open land will be replaced with residential development. There are, however, several reasons that that landscape change will be limited, and a series of reasons that any such change does not come close to amounting to a reason to refuse planning permission. First, much of the Site will remain as open space – some 60%. That heavily limits the extent of change to landscape character. Second, the Site is already read in character terms against the backdrop of the urban edge of Croxley Green, which itself merges with Watford and the north of London as a result. Third, the nature of the Site and the development proposed means that the Scheme when built-out will ultimately read as a logical extension of that urban edge. That all being so, while there will inevitably be changes to landscape character, they are limited and localised once again, and do not come close to providing a reason for refusal<sup>72</sup>.
46. It is again important to emphasise that there is no contrary evidence before the Inspector, or the Secretary of State. The Officer Report adopted the analysis of the LVIA in full<sup>73</sup>, and no dispute was raised as to either methodology or conclusions by the Council's Tree and Landscape Officer<sup>74</sup>. No further evidence has been served by the Council on this appeal. That being so, the united position is that landscape and character impacts, while present and therefore required to be weighed in the balance, do not come close to providing a basis for refusing planning permission.

#### **(4) Effect on Ancient Woodland, Highways, and Heritage**

47. It is once again now common ground with the Council at the conclusion of this inquiry that no unacceptable impacts arise in respect of any of Ancient Woodland<sup>75</sup>, Highways<sup>76</sup>, or Heritage<sup>77</sup> matters. That was always the case in respect of Highways and Heritage – even Committee Members, whose disagreement with Officers on the issues of Green Belt and Ancient Woodland was always unreasonable, did not depart from their advice on Highways<sup>78</sup> and Heritage<sup>79</sup>. As regards Ancient Woodland, while

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<sup>72</sup> CD 1.17, §§5.24-5.27

<sup>73</sup> CD 4.2, §§7.2.1-7.2.17

<sup>74</sup> CD 4.2, §7.2.16

<sup>75</sup> CD 9.5, §6.65

<sup>76</sup> CD 9.5, §6.71

<sup>77</sup> CD 9.5, §6.79

<sup>78</sup> CD 4.2, §§7.7.1-7.7.43

<sup>79</sup> CD 4.2, §§7.6.1-7.6.17

the Council initially resolved to refuse planning permission in part based on impacts upon such Woodland, that position was very sensibly withdrawn on the receipt of proper advice. That being so, the position of all parties, and all technical evidence, points in one consistent direction – planning permission cannot reasonably and rationally be refused on any of the above grounds.

#### Ancient Woodland

48. Two policy tests are relevant for present purposes: (1) per Policy N6(2) (previously NPPF paragraph 193(c)), planning permission should only be refused on the basis of impacts on irreplaceable habitats where development would result in the “*loss or deterioration*” of those habitats, and (2) per Policy N6(1)(b)(i) (previously NPPF paragraph 192(b)), planning permission should only be refused on the basis of impacts upon SSSIs where there would be an “*adverse effect (either individually or in combination with other developments) on the site’s features of special scientific interest*”. As Mr Forbes-Laird explains, the basis of the notification of Whippendell Wood as a SSSI, which relies essentially upon the features which render it Ancient Woodland, means that those two issues can conveniently be considered together<sup>80</sup>.
49. For two simple and straightforward reasons, neither policy threshold is close to being surmounted in this case. First, the Scheme proposes no loss of any Ancient Woodland. That is an incontrovertible and agreed fact; not even Reason for Refusal 2 suggested otherwise. Second, the Scheme complies in full with Natural England and Forestry England Standing Advice, imposing buffer zones of 15m to both on-site and off-site Ancient Woodland in all places, extending to some 30m in most cases<sup>81</sup>. That being so, there is also no prospect of any material deterioration to any Ancient Woodland as a result of the Scheme. In circumstances in which there is neither loss of, nor deterioration to, Ancient Woodland, and no adverse effect upon the features of special scientific interest of a SSSI, neither of the national policy tests is surmounted, and planning permission should be granted.

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<sup>80</sup> Julian Forbes-Laird, Proof of Evidence (CD 13.8), §2.2.2

<sup>81</sup> Julian Forbes-Laird, Proof of Evidence, §3.3.7

50. At various stages, both the Council and certain statutory consultees have taken different views on that position. As Mr Forbes-Laird explains, on proper analysis, none is now supported on the evidence:
- a. *The Council* – Reason for Refusal 2 relied upon deterioration of Ancient Woodland by reason of “*intensification of use*”. By the time the application reached Committee, that was contrary to the advice of Planning Officers<sup>82</sup>, the Council’s internal Ecologist<sup>83</sup>, Natural England<sup>84</sup>, and the Forestry Commission<sup>85</sup>. There was never any technical evidence to support a level of intensification of use leading to deterioration of Ancient Woodland, in light of the mitigation package provided by the Appellant. That, for the avoidance of doubt, continues to include<sup>86</sup>: (a) the provision of a 24ha country park with secured management for the lifetime of the development, (b) buffer zones around Ancient Woodland which substantially exceed Natural England’s standing guidance, and (c) conditioned requirements for an Ancient Woodland Recreational Management Plan and Construction Environmental Management Plan to provide further protection. Reason for Refusal 2 was rightly withdrawn early in the process; in truth, it should never have been advanced.
  - b. *Natural England* – As the Officer Report noted, Natural England now offers no objection to the proposal, subject to suitable mitigation. It has suggested five aspects of mitigation, each of which is to be secured either through the section 106 agreement, or through conditions<sup>87</sup>.
  - c. *Woodland Trust* – The Trust maintains an outstanding objection, on the basis of concerns about recreational visitor pressure at Dell Wood, Green Lane Wood, and Long Newlands Spring in particular. That is ill-founded for two reasons. First, it is not supported on the evidence, for each of the identified woodlands. As Mr Forbes-Laird explains, Green Lane Wood is to be protected via a Management Plan pursuant to which it will be fenced off from public

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<sup>82</sup> CD 4.2, §7.16.16

<sup>83</sup> CD 4.2, §7.16.9

<sup>84</sup> CD 4.2, §7.16.8

<sup>85</sup> CD 4.2, §7.6.10

<sup>86</sup> Julian Forbes-Laird, Proof of Evidence, §§3.2.2-3.2.4

<sup>87</sup> Julian Forbes-Laird, Proof of Evidence, §§3.2.1-3.2.8

access entirely<sup>88</sup>, while Long Newlands Spring is not in a natural location to accept or generate significant extra footfall as a result of the Scheme<sup>89</sup>. As to Dell Wood, the difficulty with the Trust's position is that the Trust itself encourages visitors to visit Dell Wood – it is difficult to see that it can consistently encourage extra visitors to Dell Wood, while simultaneously objecting to extra visitors on the basis of potential deterioration<sup>90</sup>. That being so, their concerns are not well-founded on the evidence. Second, and in any event, they are a clear outlier – as already identified, none of the Council corporately, individual Planning, Ecology, and Tree Officers, Natural England, or the Forestry Commission object to the Scheme. That is unsurprising in light of the above evidential position.

51. That being so, there is no reason for the Inspector or Secretary of State to depart from the common ground now established between all main parties that no policy conflict arises in relation to Ancient Woodland.

### Highways

52. Various Interested Parties raised concerns about the impact of the Scheme upon existing congestion on the local highway network. Two points of context are relevant in that assessment. First, the threshold in national policy is high – TR6(4) invites refusal of planning permission only where the impact upon the transport network in terms of capacity and congestion is “*severe*”, or where the impacts on safety are “*unacceptable*”. Second, that position runs contrary to the position of the Council on this appeal<sup>91</sup>, Planning Officers at Committee<sup>92</sup>, Hertfordshire County Council as local highways authority<sup>93</sup>, National Highways<sup>94</sup>, and Active Travel England<sup>95</sup>, all of whom accept that planning permission should be granted, and raise no objection on highways grounds.

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<sup>88</sup> Julian Forbes-Laird, Proof of Evidence, §3.2.6

<sup>89</sup> Julian Forbes-Laird, Proof of Evidence, §3.3.3

<sup>90</sup> Julian Forbes-Laird, Proof of Evidence, §§3.3.4-3.3.9

<sup>91</sup> CD 9.5, §6.71

<sup>92</sup> CD 4.2, §7.7.43

<sup>93</sup> CD 4.2, §7.7.31

<sup>94</sup> CD 4.2, §7.7.35

<sup>95</sup> CD 4.2, §7.7.37

53. The concerns of Interested Parties coalesced mainly around three objections: (1) the impact upon congestion and safety within Croxley itself, particularly around the two site accesses, (2) concerns around the extent to which sustainable travel modes including the proposed bus service will be secured, and (3) the extent to which wider mitigation will be secured. With respect, none of those concerns are well-founded.
54. As to Croxley itself, the Appellant has committed to the introduction of an area-wide 20mph zone<sup>96</sup>, with specific traffic calming measures to be secured through the submission of a section 278 scheme<sup>97</sup>, alongside stop lines on Little Green Lane itself<sup>98</sup>. Capacity along Durrants Drive will be addressed through the introduction of new parking areas along the road, again to be secured via section 278 scheme<sup>99</sup>. The proposal is therefore to guarantee £130,000 each for remedial and safety works at both the Durrants Way and Links Way accesses, a further £562,000 for enhanced traffic calming measures, and £25,000 of dedicated financial contribution to upgrade Rousebarn Lane between Little Green Lane and Gade Avenue<sup>100</sup>. In short, the Appellant has thought carefully and comprehensively about the impact of the Scheme on the highways in and around Croxley, discussed those matters in detail with the local highway authority, and committed to measures specifically designed to ensure there will be no “*severe*” or “*unacceptable*” impacts.
55. As to sustainable travel, as Mr Parker explains, the proposed improvements are again significant and comprehensive. They include (1) the provision of Beryl Bike docking stations, with at least 15 e-bikes provided, at a cost of £45,000, (2) the introduction of a dedicated bus service secured for at least five years providing links to Rickmansworth, Watford, Croxley station, and Watford Junction, at a cost of just under £2 million, (3) a seasonal bus pass for each dwelling, at a cost of over £500,000, (4) improvements to Rousebarn Lane and the public right of way in its proximity to encourage walking and cycling, (5) a contribution towards the Local Cycling and Walking Infrastructure Plan<sup>101</sup>, and (6) a substantial contribution towards step-free access at Croxley underground station. Each will be secured either through

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<sup>96</sup> James Parker (CD 13.10), Proof of Evidence, §2.6.12

<sup>97</sup> CD 4.2, §7.7.29

<sup>98</sup> CD 4.2, §7.7.17

<sup>99</sup> CD 4.2, §7.7.16

<sup>100</sup> CD 4.2, §7.7.29

<sup>101</sup> James Parker, Proof of Evidence, §2.6.5

the section 106 agreement or conditions. It is wholly unsurprising, in light of that range of improvements, that Active Travel England do not object to the application.

56. The result, therefore, is that the Appellant has committed to a comprehensive transport package, including both direct highways improvements and improvements dedicated to active and sustainable travel. There is simply no reason for the Inspector or the Secretary of State to divert from the unified position of the Appellant, Council, and all statutory consultees that permission should not be refused on highways grounds.

### Heritage

57. Once again, the Appellant, the Council on this appeal<sup>102</sup>, Planning Officers at Committee<sup>103</sup>, and the relevant consultee (here, the Council's Heritage Officer<sup>104</sup>) all agree that heritage issues do not generate any reasons for refusal.
58. It is common ground that: (1) the only two heritage assets to which consideration needs to be given are Durrants House (a Grade II Listed building) and Cassiobury Park (a Grade II Registered Park), (2) there is no harm of any level to any other heritage assets, as a result of a lack of intervisibility or association between the Site and those assets<sup>105</sup>, and (3) the level of harm caused to both Durrants House and Cassiobury Park is 'harm of a low degree' (previously 'less than substantial harm at the lower end of the scale'), chiefly as a result of extensive landscape buffering proposed as part of the Scheme<sup>106</sup>. There is simply no evidence before the Inspector or the Secretary of State to contradict that position.
59. That being so, NPPF HE6(4) requires the effect on the significance of both assets to be weighed against the public benefits of the proposal, while affording substantial weight to the conservation of designated heritage assets, and recognising that special regard must be given to the desirability of preserving heritage assets pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Once again, all parties agree that that balance falls in favour of the public benefits,

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<sup>102</sup> CD 9.5, §6.79

<sup>103</sup> CD 4.2, §7.6.17

<sup>104</sup> CD 4.2, §§7.6.8-7.6.11

<sup>105</sup> CD 9.5, §6.78; CD 4.2, §7.6.8

<sup>106</sup> CD 9.5, §6.78

which are set out below under main issue 6<sup>107</sup>. The result is that there is no basis for refusing planning permission on the basis of any heritage impacts.

#### **(5) Section 106 Obligations**

60. In Opening, the Appellant identified four outstanding issues on which the Inspector was due to hear evidence, relating to the terms of the section 106 agreement<sup>108</sup>. The fourth of those issues has now fallen away – having finally received, at quite literally the last possible moment, further information from Transport for London seeking to justify their contribution request of £1.065 million, the Appellant is now content not to contest that contribution.
61. Furthermore, as the Inspector will be well aware, on two of the three remaining issues (namely those concerning the Mortgagee in Possession (“MiP”) clause and the cascade mechanism) the Appellant’s position is now common ground, the Council having withdrawn its objection to both on day one of the inquiry. No Interested Parties have filed any representations contrary to that agreed position, or commenting upon either issue in any way, with the result that there is complete agreement that the section 106 agreement should feature a cascade mechanism, and should feature an MiP clause with a 3-month moratorium period. The result is that the only contested issue upon which the Inspector has heard evidence relates to the amount (but not the principle) of the primary education contribution sought by Hertfordshire County Council (“HCC”).
62. It is nonetheless necessary to deal with each of those three outstanding issues in Closing in some detail. That is because, while they may appear technical, the issues relating to the cascade and MiP clause are in fact of considerable practical significance to all those operating within the residential development sector.
63. Both issues are, at their heart, about delivery, specifically of affordable housing. The Government could not have been clearer, both in ministerial statements rendered since the general election in 2024, and in the approach taken in the August 2026 NPPF, that turbocharging the delivery of affordable housing nationwide is a national priority, to seek to remedy decades of under-delivery, which has had such a devastating effect on

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<sup>107</sup> CD 9.5, §6.78

<sup>108</sup> Appellant Opening Submissions (CD 15.5), §3

those most at need in our society. Both of the section 106 issues pursued by the Appellant go to the heart of that policy objective – the terms of an MiP clause are ‘make or break’ in seeking to ensure that a Registered Provider (“RP”) can actually be found to take on the affordable housing secured through the permission in the first place, while the cascade plays a vital role in ensuring that such housing remains affordable in the unlikely event of any difficulties arising at a later stage.

64. For those reasons, it is important that the Council’s belated agreement to the Appellant’s position on both is not read as simply withdrawing those issues from consideration. There are still a number of local authorities across the country (albeit an ever-dwindling minority) who seek to insist upon different versions of the MiP clause, or who contest the imposition of a cascade mechanism, with obviously detrimental effects on the delivery of affordable housing nationwide. To assist the Inspector and Secretary of State, therefore, both issues are addressed in full below.

#### MiP Clause

65. Before the Council’s belated concession, the dispute between the parties was narrow but important, and concerned the moratorium period embedded within the MiP clause. The Appellant has always sought the industry-standard version of that moratorium, namely a 3-month period, while the Council previously sought a 5-month period. To appreciate the significance of that difference, and to understand why the Council’s position is so poorly founded on the evidence, it is important to appreciate why such clauses exist at all, and to understand their commercial purpose.
66. MiP clauses are, in short, essential for RPs to secure funding to acquire affordable housing in the first place<sup>109</sup>. Importantly, the Council has never disputed that such clauses are required, or that their purpose is to facilitate lending for RPs<sup>110</sup>. Lenders will value such properties either on the basis that they are to be social housing in perpetuity<sup>111</sup>, or on the basis that they are to be subject only to the restrictions of an existing tenancy<sup>112</sup>. MiP clauses enable lenders to lend at the latter, higher rate,

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<sup>109</sup> Richard St. John Williams, Proof of Evidence (CD 13.16), §11; James Bullivent, Proof of Evidence (CD 13.15), §2.2.3

<sup>110</sup> Richard St. John Williams, Proof of Evidence, §14; Roy Pinnock, Proof of Evidence (CD 12.4), §§2.3.4, 5.2, 5.3(a)-(b), 6.3.1(a)

<sup>111</sup> Existing Use Value – Social Housing (“EUV-SH”), Giles Sutcliffe, Proof of Evidence (CD 13.13), p.3.

<sup>112</sup> Market Value Subject to Tenancies (“MV-STT”), Giles Sutcliffe, Proof of Evidence (CD 13.13), p.3.

because they provide them with greater certainty that their security can ultimately be realised free of any affordable housing restrictions. The difference is vast – between 50-70% in most cases<sup>113</sup>. Practically, therefore, the effect of MiP clauses is that they are the difference between an RP being able to deliver affordable housing, and it being unable to do so – they are the difference between securing affordable housing, and losing it.

67. In recognition, however, of the importance of securing affordable housing stock long-term, there is a balance built in. Lenders cannot simply dispose of such stock as market housing pursuant to the MiP clause immediately upon the very unlikely event of an RP defaulting. They are first required to use reasonable endeavours to dispose of the units to someone who can keep them in that use – either the local authority, or a different RP. By that route, affordable housing stock is afforded some protection. Importantly, it is protection which, over many years, lenders have shown themselves as willing to accept while still valuing the stock on the basis of the higher rate of lending, enabling RPs still to obtain them.
68. But there is a tipping point. For obvious reasons, there comes a point at which the extent of that protection of affordable stock is sufficiently strong that lenders simply value it on the basis that it may always remain affordable housing; the significantly lower rate. It is for that reason that the length of the moratorium period is so essential. A 3-month period has been demonstrated over many years to strike that balance appropriately. The question which was before the Inspector prior to the Council's concession was simply this: whether there was sufficient evidence to show that a 5-month period would not trigger that tipping point.
69. The Appellant has furnished the Inspector and Secretary of State with a swathe of evidence demonstrating that a 5-month period clearly would trigger that tipping point. The Appellant has presented evidence from no fewer than four witnesses on this specific issue, each presenting evidence with the benefit of extremely long experience of operating in different corners of the affordable housing market. Mr Baird (amongst the most experienced planning solicitors in the country<sup>114</sup>) and Mr St. John

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<sup>113</sup> Richard St. John Williams, Proof of Evidence, §10

<sup>114</sup> John Baird, Proof of Evidence (CD 13.11), §§1.1-1.5

Williams<sup>115</sup> (a very experienced advisor to the social housing sector, including on the regulatory and funding arrangements of private RPs) deal very regularly with the mechanics of section 106 agreements, and the mechanics of securing funding for affordable housing, respectively. Mr Sutcliffe has been a Chartered Surveyor for 30 years, and is expert in identifying why lenders value affordable housing differently according to different versions of the MiP clause<sup>116</sup>. Mr Bullivent, arguably most importantly, has spent the last 10 years as a Senior Development Manager at one of the leading affordable housing consultancies in England and Wales, having previously spent 11 years as a Development Manager for a leading RP, dealing with the practical consequences of precisely this issue<sup>117</sup>. Their evidence combines to render the position overwhelmingly in favour of a 3-month moratorium period, for five reasons.

70. First, it is simply the industry standard clause, adopted by the only recognised body qualified to opine on behalf of the industry as a whole, namely the Property Finance Working Group of the National Housing Federation<sup>118</sup>. That is a body comprising sector-experienced lawyers, valuers, and other operators, which has specifically devised a model MiP clause, which has been in operation for over a decade<sup>119</sup>, and which it expressly recommends for use across the industry as striking the appropriate balance between the interests of lenders, RPs, and LPAs. Crucially, it includes a 3-month moratorium. The Council, even when defending this aspect of the appeal, never produced any evidence to show that any other moratorium period could reasonably be considered the industry standard, nor anything close to that. Indeed, the Council failed to produce any evidence to suggest that their 5-month period was anything more than a frolic within Three Rivers alone<sup>120</sup>. It cannot be overemphasised that the 3-month period which the Appellant has sought throughout is therefore the industry standard.

71. Second, a 3-month moratorium period is overwhelmingly the period adopted by local planning authorities across the country. Three aspects of the Appellant's evidence demonstrate that most starkly. First, as Mr Bullivent explains, that period has been

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<sup>115</sup> Richard St. John Williams, Proof of Evidence, §§1-7

<sup>116</sup> Giles Sutcliffe, Proof of Evidence, p.1

<sup>117</sup> James Bullivent, Proof of Evidence, p.3

<sup>118</sup> James Bullivent, Proof of Evidence, §2.2.11; John Baird, Proof of Evidence, §2.4

<sup>119</sup> Richard St. John Williams, Proof of Evidence, §43

<sup>120</sup> See, for e.g., Adam Ralton, Proof of Evidence (CD 12.3)

utilised in 97% of section 106 agreements issued by Home Counties authorities in the last two years on schemes of over 50 dwellings<sup>121</sup>. Second, Mr Baird, a Partner at one of the leading Planning firms in the country for over 20 years, has never come across an LPA requiring a moratorium period in excess of 3 months, despite his long and deep experience<sup>122</sup>. He, with the benefit of that experience, describes 3-month moratoria as “*completely standard*”, and exhibits some 19 section 106 agreements upon which he has advised in the last 18 months, not one of which contains a moratorium of longer than 3 months<sup>123</sup>. Third, as Mr Sutcliffe notes, even now, LPAs are continuing to shift towards that 3-month period, with Cheshire East Council and York City Council both having done so very recently<sup>124</sup>. It is deeply unfortunate that Three Rivers has failed, until now, to recognise the strength of the tide against it.

72. Third, the unchallenged evidence before the Inspector is that the difference between a 3-month and 5-month period has a genuine and substantial effect on the approach of lenders. As Mr Sutcliffe explains, the difference is between affordable housing stock valued at ‘Existing Use Value – Social Housing’ (“EUV-SH”) (i.e. on the basis that it will be used as social housing in perpetuity), and stock valued at ‘Market Value Subject to Tenancies’ (“MV-STT”) (i.e. according to its market valuation, subject to any existing tenancies)<sup>125</sup>. Critically, the Council has called no evidence to dispute Mr Sutcliffe’s expert view that (a) a 5-month moratorium period will result in lenders being substantially more likely to value stock according to the lower, EUV-SH metric<sup>126</sup>, and (b) as a result, RPs are able to access between 50% and 70% less funding to be able to purchase affordable stock in the first place, on the basis of a 5-month moratorium<sup>127</sup>. In short, the economics of the situation are indisputable – RPs will be between 50% and 70% worse off if 5-month moratorium periods are adopted.
73. Fourth, and unsurprisingly, the evidence directly from RPs themselves is that the inclusion of moratorium periods of longer than 3 months represents an active disincentive to becoming involved in taking on affordable housing at all. That is

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<sup>121</sup> James Bullivent, Proof of Evidence, §2.3.4 and Appendix 4.1

<sup>122</sup> John Baird, Proof of Evidence, §4.1

<sup>123</sup> John Baird, Proof of Evidence, §4.4 and Appendix 1

<sup>124</sup> Giles Sutcliffe, Proof of Evidence, p.2

<sup>125</sup> Giles Sutcliffe, Proof of Evidence, p.3

<sup>126</sup> Giles Sutcliffe, Proof of Evidence, p.4

<sup>127</sup> Richard St. John Williams, Proof of Evidence, §10

hardly surprising, given the effect so doing would have on their finances, as set out above. On this appeal specifically, the Appellant has conducted two detailed consultation processes, identifying three RPs interested in offering on the Site – two of those have made it clear that they would only do so if a 3-month moratorium was included<sup>128</sup>. The position of the third is unclear – to the Appellant, they indicated that such a period “*should be avoided*”, while a more senior individual adopted the position of the other two RPs in the context of a different appeal, i.e. that a 5-month moratorium was a deal-breaker to their involvement<sup>129</sup>. The results of that exercise accord entirely with the results of the exercise undertaken as part of the appeal at Oxhey Lane, in which just one of eleven RPs contacted by the appellant in that case were prepared to make an offer on the basis of a 5-month moratorium, again with the caveat that such a period was far from ideal<sup>130</sup>. All of that evidence points to a very clear conclusion – RPs are reticent to do business in Three Rivers, one of the authorities in the direst need of affordable housing nationwide, as a direct result of the Council’s previous blanket insistence on 5-month moratorium periods.

74. Fifth, the Government has already made its provisional position clear in relation to this precise dispute as regards medium-sized sites. The consultation document issued by MHCLG a little over a week ago specifically indicated that it was, “*aware of different approaches across LPAs, which can have implications for the level of funding that Affordable Housing Providers are able to secure*”<sup>131</sup>. It therefore sought to propose a draft MiP clause to be used as a standard clause, in the interests of “*greater certainty and consistency*”, specifically because an MiP clause, “*needs to be acceptable to funders to allow Affordable Housing Providers to finance the acquisition of the units*”<sup>132</sup>. Tellingly, but not surprisingly in light of the above, a 3-month period is adopted in the draft agreement attached, specifically because in MHCLG’s words, it “*aligns with the three-month period encouraged by the National Housing Federation and is generally accepted by lenders*”<sup>133</sup>. It is of course important to note that those observations were made in the context of a consultation

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<sup>128</sup> James Bullivent, Proof of Evidence, §3.2.6

<sup>129</sup> James Bullivent, Proof of Evidence, §§3.2.7-3.2.8

<sup>130</sup> James Bullivent, Proof of Evidence, §3.3.4

<sup>131</sup> CD 15.6, pp.42

<sup>132</sup> CD 15.6, p.42

<sup>133</sup> CD 15.6, p.42

document only, and that they concern medium-sized sites. The key point, however, is that the observations of MHCLG apply with exactly equal force to larger sites, such as the Appeal Site – every word of that consultation document could be transposed exactly onto the situation before the Inspector, as the Appellant’s evidence shows.

75. For those reasons, therefore, the Appellant submits that it is nothing short of imperative that the Inspector advises the Secretary of State in favour of a 3-month moratorium clause, to ensure that the affordable housing which this permission secures in one of the least affordable areas in the country is actually delivered.
76. It is necessary briefly to deal with the Council’s now-abandoned case in response. It is necessary to do so only briefly, because in abandoning it, the Council have accepted its inherent weaknesses. The nub of Mr Pinnock’s evidence was a short point – that practically, there is a risk that a 3-month moratorium period does not permit adequate time for the distressed sale of 300 affordable homes<sup>134</sup>. That suffers from at least two fatal defects.
77. First, it takes no account at all of just how unlikely it is that such a distressed sale would ever be required. As already identified, the 3-month period is a balance between different risks. One of those risks is that identified by Mr Pinnock. But, contrary to his evidence, it is incoherent to seek to suggest that that risk must take pride of place above all other real-world consequences, without having any regard at all for how likely it is to actually eventuate. The whole game of balancing risk must involve consideration of how likely the event in question is to actually happen. When considering the evidence of Mr St. John Williams and Mr Bullivent, the answer is clear – it is vanishingly unlikely. In the last quarter of a century, just 16 affordable homes have been lost through MiP clauses actually coming into effect, out of a total of over 330,000 such homes secured through section 106 agreements – just 0.005%<sup>135</sup>. That is the function of a carefully-designed, and detailed regulatory regime. As Mr St. John Williams has explained<sup>136</sup>, standing between an RP and a distressed sale is:

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<sup>134</sup> Roy Pinnock, Proof of Evidence, §6.1.1

<sup>135</sup> James Bullivent, Proof of Evidence, §4.9

<sup>136</sup> Richard St. John Williams, Proof of Evidence, §10

- a. the Regulator of Social Housing’s ongoing regulatory oversight including extensive mandatory reporting requirements<sup>137</sup>;
- b. the Regulator’s informal intervention tools, including the ability to impose regulatory requirements, agree voluntary undertakings, and facilitate mergers or acquisitions by other RPs (which has been the end result in the case of financial difficulties with RPs in all but one case historically)<sup>138</sup>;
- c. the operation of section 145 of the Housing and Regeneration Act 2008, which provides for a statutory moratorium pursuant to which any lender seeking to take steps to enforce their security must, in the case of affordable housing, first give notice to the Regulator, and is then prevented from doing anything at all for 28 days, while the Regulator takes steps to avoid a distressed sale<sup>139</sup>;
- d. even if that statutory moratorium is insufficient, the Regulator can then apply under the Housing and Planning Act 2016 for a housing administration order, upon which a further interim moratorium runs until that application is determined, followed by a permanent moratorium if the application is granted<sup>140</sup>; and
- e. as Mr St. John Williams identifies, even if all of the above fails, major credit rating agencies still factor in the likelihood of the Government providing extraordinary support to rescue an RP in financial distress, in preference to a distressed sale<sup>141</sup>.

78. Taken together, it is clear beyond doubt that those mechanisms operate to render the possibility of a distressed sale of 300 homes actually happening almost inconceivable. The proof of that is in the pudding – the value and strength of the regulatory mechanism has recently been expressly recognised by the High Court, Court of Appeal<sup>142</sup>, and major credit ratings agencies as already identified<sup>143</sup>.

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<sup>137</sup> Richard St. John Williams, Proof of Evidence, §§22-24

<sup>138</sup> Richard St. John Williams, Proof of Evidence, §§34-40

<sup>139</sup> Richard St. John Williams, Proof of Evidence, §§26-28

<sup>140</sup> Richard St. John Williams, Proof of Evidence, §§29-33

<sup>141</sup> Richard St. John Williams, Rebuttal Proof of Evidence (CD 13.18), §24

<sup>142</sup> Richard St. John Williams, Rebuttal Proof of Evidence, §19

<sup>143</sup> Richard St. John Williams, Rebuttal Proof of Evidence, §§22-26

79. Second, Mr Pinnock’s case does not tackle, or even address in passing, any of the more important aspects of the Appellant’s case. The Council and Mr Pinnock have called no evidence on any of the following: (1) to suggest that a 3-month period is not industry standard, (2) to suggest that a 5-month period is industry standard instead, or anything close to it, (3) to suggest that the difference in valuation is not likely to result from a longer moratorium period, or (4) to suggest that RPs are perfectly comfortable with a longer period in any event. Those are the key practical questions, which Mr Pinnock’s focus on the hypothetical completely ignores.
80. In the round, therefore, the Appellant submits that the proper position in relation to MiP clauses is clear. 3-month moratoria are overwhelmingly the industry standard, for the very good reason that all aspects of the industry now accept that they strike the appropriate balance, including the majority (but, regrettably, not all) of LPAs. The Council’s concession was far too late in the day, but is welcomed. The Inspector and Secretary of State are therefore invited to adopt the conclusion of Mr Austin-Fell<sup>144</sup> that a 5-month moratorium period would not meet the test in Regulation 122(2)(a) of the Community Infrastructure Levy Regulations 2010, as it would go beyond that which is “*necessary to make the development acceptable in planning terms*”, and to endorse the 3-month period identified, for all of the reasons set out above.

### Cascade

81. The substantive issue between the Council and the Appellant at the opening of this inquiry concerned whether a cascade mechanism should be included at all. The Council has now, again, conceded the weakness of its case on that point of principle – a cascade should now be included, the details of which have now also been agreed. Once again, however, it is important that that point of principle is not lost amidst agreement between the parties – the inclusion of a cascade is another very significant aspect of a section 106 agreement when securing the delivery of affordable housing. It should not be overlooked that until day one of this inquiry, the Council proposed to exclude it altogether.
82. To appreciate why that is so, it is again important to understand the purpose of a cascade, which is essentially twofold – (a) to ensure that in the event of reduced RP

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<sup>144</sup> Cameron Austin-Fell, Rebuttal Proof of Evidence (CD 13.2), §§1.14-1.15

demand in an area, affordable housing stock is actually retained as affordable housing, rather than simply disappearing into market housing or a payment *in lieu*, and (b) to ensure that there is no delay built into the process in the event that the cascade is required, where time would otherwise be lost negotiating a deed of variation. The Government rightly recognises in its recent consultation response that a cascade will not be appropriate in every local authority area<sup>145</sup> – in LPAs which are delivering affordable housing at acceptable rates, and where RP demand is accordingly good, it may well be legitimate to exclude a cascade, on the basis that the likelihood of it actually being required is outweighed by the benefits of the LPA retaining control over the consequences of any issues arising. But the same is emphatically not true where there is reduced RP demand, as the Government again recognises<sup>146</sup> – in such cases, it is essential to include a cascade to provide certainty, and avoid delay, in the unlikely but materially possible event that RP demand is slower than desired.

83. That being so, there has always been a crushing irony at the heart of the Council's case – they have long sought to resist the inclusion of a cascade mechanism, despite the fact that it is their own lamentable failure to deliver affordable housing over such a prolonged period that has caused reduced RP demand within Three Rivers, necessitating the cascade in the first place.
84. There are ultimately four short reasons that a cascade is appropriate here.
85. First, and contrary to Ms Fitzgerald's initial position<sup>147</sup>, its whole purpose is to ensure that the 300 affordable homes secured as part of the permission will remain affordable homes in the event that neither the Council nor an RP can secure the tenure mix presently identified. DMS, which sits at the bottom of the cascade, has been expressly recognised as a form of affordable housing in national policy across several recent iterations of the NPPF, and remains as such in the 2026 iteration<sup>148</sup>. As Mr Stacey therefore explains, the Council's objection was misguided from the outset – a cascade mechanism which cascades down to DMS has as its guiding purpose a desire to

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<sup>145</sup> CD 15.6, p.43

<sup>146</sup> CD 15.6, p.43

<sup>147</sup> Elizabeth Fitzgerald, Proof of Evidence, §6.32

<sup>148</sup> NPPF, Glossary (p.104)

retain, not lose, affordable housing<sup>149</sup>. That point deserves emphasis – any housebuilder to whom the Appellant will ultimately sell the Site will not welcome DMS housing, as it has the effect of cannibalising its own stock. In effect, it results in a large number of homes on the Site being offered at almost half price, despite being no different from those being offered at full price. The Appellant’s offer is not to make any kind of commercial gain – quite the opposite. The purpose is to seek to actually ensure that affordable housing is actually secured.

86. Second, as already noted, the Government’s recent consultation document on section 106 agreements in the context of medium-sized sites expressly noted that cascade mechanisms, “*may be appropriate in areas where there is evidence of reduced Registered Provider demand*”<sup>150</sup>. The cascade mechanism which the Appellant now relies upon mirrors precisely the cascade suggested within the draft agreements produced alongside that consultation document, save in two respects, namely (1) that the final stage is set at DMS rather than payments *in lieu*, and (2) there are two separate stages built into the cascade at which the Appellant will have to suggest alternative housing mixes if no RP can be found for the current mix (as opposed to just one such stage within the draft). On both counts, therefore, the cascade here provides greater security for affordable housing than the draft. There is, as a result, simply no reason for the Council to object to its terms – it no longer does so.

87. That must sit alongside the recent announcement on 24<sup>th</sup> August 2026 by the Government of £9.58 billion of funding through the Social and Affordable Homes Programme for RPs and LPAs to support the delivery of 73,600 social and affordable homes. The clear direction of travel is towards the need to deliver affordable homes at a rapidly increased rate, and to put in place measures to ensure that delivery actually happens. It is for that precise reason, chiming with that objective, and seeking to ensure that an RP will actually take on the affordable stock secured by the permission, unburdened by the delay of any deed of variation negotiations, that a cascade is included here.

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<sup>149</sup> James Stacey, Rebuttal Proof of Evidence (CD 13.7), §§2.19-2.21

<sup>150</sup> CD 15.6, p.43

88. Third, there is clear evidence of reduced RP demand within Three Rivers before the Inspector and Secretary of State on this appeal. The results of the May 2026 exercise conducted by the Appellant are abundantly clear from Mr Bullivent's evidence – of the six RPs who responded to decline any interest in the Site, five identified the location of the Site within Three Rivers as a barrier to involvement, whether for reasons directly connected to the Council's historic approach, or otherwise<sup>151</sup>. That evidence is again, it is important to emphasise, uncontested, and directly answers the question posed in MHCLG's consultation document<sup>152</sup>.
89. Fourth, taking all of the above together, the clear policy direction is contrary to the use of deeds of variation as an alternative. There are two issues with such deeds. First, they require willingness to engage, and agreement, from the LPA within the first five years. That is far from straightforward to obtain – in the Appellant's experience, such deeds are not marked for high priority, and it can often take considerable time to procure that engagement. Second, as already indicated, they cause considerable delay and cost, unnecessarily. Again, the Appellant's experience is that such deeds can take at least six months to agree, incurring legal fees on both sides – all of which holds up, and reduces the prospect of delivery of, affordable housing. That is the opposite of the Government's present intention.
90. For those reasons, therefore, it is clear that the Council were correct to concede the inclusion of a cascade mechanism, and the Inspector and Secretary of State are invited to reach the same conclusion.

#### Education Contribution

91. The vast majority of matters relating to the education contributions requested by Hertfordshire County Council ("HCC") are now agreed. There is no dispute as regards either primary or SEND contributions<sup>153</sup>. The dispute between the parties relates only to the amount (but not principle) of the contributions to be made to secondary and post-16 education. In that regard, HCC takes the view that the Appellant should be required to fund a total of 120 secondary school places (equating to approximately £3.6 million) and 25 post-16 places (equating to approximately

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<sup>151</sup> James Bullivent, Proof of Evidence, §3.2.9

<sup>152</sup> CD 15.6, p.43

<sup>153</sup> Christopher Martin, Rebuttal Proof of Evidence (CD 12.28), §1.3

£750k), resulting in a total contribution of around £4.3 million<sup>154</sup>. The Appellant remains of the view that the Regulation 122 test is met in respect of only 51 secondary school places (equating to approximately £1.5m)<sup>155</sup>, and no post-16 places<sup>156</sup> – a total contribution of £1.5 million.

92. Even in relation to that outstanding dispute, there is a good deal of common ground. The Appellant accepts HCC's calculation of pupil yield from the Scheme as being 120 secondary school pupils, and 25 post-16 pupils<sup>157</sup>. As Mr Martin helpfully distils<sup>158</sup>, there are really three issues remaining between the parties: (1) the quantum of school place capacity within secondary schools (i.e. Years 7-11), (2) the relationship between Rickmansworth and Watford Secondary Planning Areas ("SPAs"), and the effect of that on the contributions sought, and (3) the quantum of post-16 capacity (i.e. Years 12-13). On each, for the reasons explained by Mr Kinghan, the Appellant's evidence is to be preferred.

*(1) Quantum of Secondary Capacity (Years 7-11)*

93. Two matters of context are vital. First, the starting point for the analysis of secondary capacity is that this is a Scheme which will not even begin to be occupied until 2029/30, and is not expected to be fully occupied until 2033/34<sup>159</sup>. That being so, whatever Mr Martin may have to say about current capacity is largely irrelevant – the Scheme will have no impact at all upon current secondary capacity. That was largely accepted in cross-examination. Second, we are content that it is appropriate to work on the basis that HCC schools should operate with 5% surplus capacity in order to account for fluxes, notwithstanding other guidance referring to a 2% figure. The Appellant's suggested contribution therefore expressly works on the basis that a contribution is required for any cohort in which capacity dips below 5%. There is no issue before the Inspector as to that built-in safeguard.

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<sup>154</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.1

<sup>155</sup> Matthew Kinghan, Proof of Evidence (CD 13.20), §6.3

<sup>156</sup> Matthew Kinghan, Proof of Evidence, §§5.22-5.23

<sup>157</sup> Matthew Kinghan, Proof of Evidence, §4.3

<sup>158</sup> Christopher Martin, Rebuttal Proof of Evidence, §1.2

<sup>159</sup> Matthew Kinghan, Proof of Evidence, §5.16

94. On that footing, Mr Kinghan's calculations are set out very clearly within his Proof of Evidence in Tables 4.4<sup>160</sup> and 4.6<sup>161</sup>. Table 4.4 adopts HCC's own forecasts between 2029/30 (the first year of occupation of the Scheme) and 2031/32 (at which point HCC's forecasting stops<sup>162</sup>). Thereafter, between 2032/33 and 2034/35, Mr Kinghan adopts the conservative approach of maintaining the level of capacity shown in the last of HCC's forecasts, and projecting it forward to the 2032/33-2034/35 period as remaining static, notwithstanding the consistent downward trend in forecast demand<sup>163</sup>. In short, while all trends currently point to capacity increasing year on year, Mr Kinghan conservatively assumes that that increase will cap out in 2031/32, however unlikely that may be. On that basis, as Mr Kinghan identifies, it is possible to identify 11 cohorts out of a total of 30 in which capacity is below the agreed 5% surplus<sup>164</sup>. Mr Kinghan then factors in, in his Table 4.6, the impact of the Scheme (i.e. 25 extra secondary school pupils per year). That alters the capacity figures, but still results in just 11 out of 30 cohorts with capacities below the 5% surplus. 11 cohorts amounts to 51 places, and therefore the contribution of £1.5m<sup>165</sup>.
95. Mr Martin's various lines of attack as regards that analysis all fail. Much of his Proof of Evidence seeks to criticise Mr Kingham for inaccurately relying upon Department for Education data, not HCC data<sup>166</sup>. That is just wrong – as identified above, Tables 4.4 and 4.6 utilise HCC data, not DfE data. The various points put to Mr Kinghan in cross-examination as to the utility of the DfE data are therefore irrelevant.
96. Thereafter, Mr Martin sought to rely extensively upon the fact that the forecasts relied upon do not take into account other completions and commitments within Watford Borough Council<sup>167</sup>. The fatal issue with that proposition is that, other than a bare figure of residential completions across a five-year period<sup>168</sup>, HCC has not provided any contrary set of figures, which the Inspector might set against Mr Kinghan's, to show that there are capacity issues flowing from those Watford commitments. In fact,

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<sup>160</sup> Matthew Kinghan, Proof of Evidence, §5.17

<sup>161</sup> Matthew Kinghan, Proof of Evidence, §5.19

<sup>162</sup> Matthew Kinghan, Proof of Evidence, §5.16

<sup>163</sup> Matthew Kinghan, Proof of Evidence, §5.16

<sup>164</sup> Matthew Kinghan, Proof of Evidence, §5.17 and Table 4.4

<sup>165</sup> Matthew Kinghan, Proof of Evidence, §6.3

<sup>166</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.8

<sup>167</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.5

<sup>168</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.5

regardless of his job title, Mr Martin has not even provided any details or data as to what those commitments actually are, from which the Appellant might have been able to do the necessary work. The reality, therefore, is that the Inspector has absolutely none of the detail that he would require in order to accept Mr Martin's case – no detail on the type of schemes to which he refers, no detail on their yield, no detail on their housing mix, and (crucially) no detail on capacity within Watford schools. All of that was accepted by Mr Martin. All are required before one can even begin to examine whether Mr Martin is right to rely upon commitments in Watford as reducing capacity below 5%.

97. That being so, Mr Martin's Watford point amounts to no more than the bare assertion that 'the capacity figures might be lower, but we don't know whether they are, or by how much'. That is nowhere near good enough to justify a contribution, under the terms of Regulation 122, of over £3 million.
98. Finally, Mr Martin sought to rely upon live (but undetermined) planning applications within Three Rivers, and future allocations within the Regulation 19 local plan. Even leaving aside just how far from coming to fruition that plan is, it is perfectly obvious once again that the Appeal Scheme should not be required to resolve issues that may be caused by other schemes in the future. That is all the more so for draft allocations, for whose impact the local plan process can be expected to account accordingly through CIL contributions or allocation-specific requirements.
99. That all being so, Mr Martin's criticisms do not touch the heart of Mr Kinghan's analysis at all. Mr Kinghan's remains the only fully evidenced contribution figure before the inquiry, and should be approved for that reason.

*(2) Impact of relationship between Watford and Rickmansworth SPAs*

100. The Appellant does not dispute that there is crossover between the two SPAs. The real question for the Inspector is whether that makes any difference to the above analysis. It does not, for two short reasons. First, Mr Martin accepts in his own Rebuttal Proof that the HCC forecasts upon which Mr Kinghan relies, "*take into account migration patterns between different planning areas*"<sup>169</sup>. Second, as already identified – Mr

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<sup>169</sup> Christopher Martin, Rebuttal Proof of Evidence, §2.2

Martin does not provide any contrary figures of his own, to show his alleged capacity figure, which justify the contribution sought. This issue, therefore, while not disputed at a level of principle, simply does not affect the position set out above at all.

(3) *Quantum of Post-16 Capacity (Y12-13)*

101. Absent any HCC-specific data for post-16 capacity, Mr Kinghan relies upon Department for Education data to calculate the position for Y12-Y13. That data demonstrates significant capacity of 39.9% at Croxley Danes School, and 61.3% at Westfield Academy, as well as 3.2% at Rickmansworth School, and 2% at St Clement Danes School. The total capacity is accordingly 26.5%<sup>170</sup>. It is on that basis extremely difficult to see how HCC can request any post-16 contribution at all – there is clearly very substantial headroom available already.
102. Mr Martin again takes issue with Mr Kinghan’s data, despite its provenance, describing it as “*not accurate*”<sup>171</sup>. There are two problems with that:
  - a. First, and yet again Mr Martin does not provide any contrary statistics. The best that HCC had provided prior to the opening of this inquiry was a set of figures demonstrating current practical capacity in Y7-11<sup>172</sup>, which quite obviously does not answer the point relating to post-16 contributions. In his Rebuttal Proof of Evidence, Mr Martin went no further, simply suggesting that contributions were required for all of the 25 post-16 pupils which the Scheme would generate, without identifying why HCC’s capacity figures supported that approach<sup>173</sup>.
  - b. Second, when Mr Martin finally did pop up with some alternative figures (entirely unprompted and without prior warning, during his evidence-in-chief), they served only to prove the Appellant’s point. The Appellant only needs to find 25 places. 300 available places at Westfield Academy (which is within a 3km radius of the Site), against a current number of pupils on roll of 155<sup>174</sup>,

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<sup>170</sup> Matthew Kinghan, Proof of Evidence, Table 3.2, §3.9

<sup>171</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.17

<sup>172</sup> Matthew Kinghan, Proof of Evidence, §5.22

<sup>173</sup> Christopher Martin, Rebuttal Proof of Evidence, §3.16

<sup>174</sup> Matthew Kinghan, Proof of Evidence, §3.9, Table 3.2

provides some 145 available places – almost six times as many places as the Appellant needs. Mr Martin ultimately had no answer to that, regardless of how hard his colleague attempted to procure one with the preloaded questions asked of Westfield Academy representatives<sup>175</sup>.

103. That all being so, it is genuinely difficult to see the basis upon which the Council can continue to seek a contribution for post-16 places at all. Mr Kinghan has identified vast capacity in at least one local school, and the Council has provided literally nothing to the contrary.

#### *Overall*

104. For those reasons, it is perfectly clear that the Appellant's suggested contributions are the only figures before the inquiry which do meet the Regulation 122 test. The Inspector and Secretary of State are invited to apply the blue pencil clause accordingly.

#### **(6) Very Special Circumstances**

105. In the event that the Inspector or Secretary of State disagrees with the common position of all parties to this inquiry that the Scheme is not inappropriate development in the Green Belt<sup>176</sup>, it remains necessary to consider under GB6(2) whether permission should nonetheless be granted as a result of the presence of very special circumstances, whereby harm to the Green Belt is clearly outweighed by other considerations, ascribing the appropriate substantial harm to the Green Belt which would be caused. Those matters also fall to be considered as the overall benefits of the Scheme in the planning balance, on either analysis.
106. The clearest demonstration of the benefits of the Scheme, and the extent to which they clearly outweigh the harms demonstrated even if the Site is not Grey Belt, is that the Council still agrees that in that eventuality, planning permission should be granted, because very special circumstances are demonstrated<sup>177</sup>. That reflects agreement in the individual planning judgments of the Council's Officer at application<sup>178</sup>, Ms

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<sup>175</sup> "...in responding we need to show how there is not enough capacity in our schools..."

<sup>176</sup> CD 9.18, §2.7

<sup>177</sup> CD 9.18, §3.12

<sup>178</sup> CD 4.2, §7.22.40

Fitzgerald on behalf of the Council at appeal<sup>179</sup>, and Mr Austin-Fell on behalf of the Appellant<sup>180</sup>. That agreement is wholly unsurprising in light of the scale of those benefits, and the weight that is properly to be afforded to them.

#### Provision of Market Housing/Housing Land Supply

107. The message from the Government to Three Rivers District Council in particular could not be clearer – more houses need to be delivered, and they need to be delivered now. It is difficult to think of any further indicators within the confines of the planning system that could drive that message home any more clearly:

- a. The Council's housing land supply position is truly woeful. The detail of that position will be dealt with in greater detail below, but even on Ms Fitzgerald's case, a housing land supply of 1.16<sup>181</sup> would place the Council as the 12<sup>th</sup> worst of the 242 authorities in the country<sup>182</sup>. If Mr Harris is correct, and the true position is just 0.59 years<sup>183</sup>, there would be just one local authority in the entire country with a worse housing land supply<sup>184</sup>. That is truly shocking.
- b. The current development plan is simply of no assistance at all. It was adopted in a time before the NPPF even existed, and has now expired altogether.
- c. In terms of delivery, as Mr Austin-Fell identifies, the position is equally hopeless, and has been for many years. The Council has failed to pass the Housing Delivery Test during any three-year period since 2015, in most cases failing by a sufficient amount to trigger the presumptions in national policy<sup>185</sup>. That has resulted in a staggering shortfall in delivery of some 4,804 dwellings arising<sup>186</sup>.
- d. Perhaps most alarmingly, there is no solution on the horizon. It is approaching a decade since the Council's emerging local plan began preparation<sup>187</sup>. The

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<sup>179</sup> Elizabeth Fitzgerald, Proof of Evidence, §§7.5-7.6

<sup>180</sup> Cameron Austin-Fell, Proof of Evidence, §5.44

<sup>181</sup> CD 9.14, §4.1

<sup>182</sup> Cameron Austin-Fell, Proof of Evidence, §4.17

<sup>183</sup> CD 9.14, §4.1

<sup>184</sup> Cameron Austin-Fell, Proof of Evidence, §4.17

<sup>185</sup> Cameron Austin-Fell, Proof of Evidence, §5.17

<sup>186</sup> Cameron Austin-Fell, Proof of Evidence, §5.18

<sup>187</sup> Cameron Austin-Fell, Proof of Evidence, §5.16

NPPF has been through seven different iterations within that period. Having finally managed to limp towards a Regulation 19 draft plan, with which the Council resolved to proceed in January 2026<sup>188</sup>, the Secretary of State was then required to make the first of two unprecedented interventions, preventing the Council from taking any further steps, because the plan proposed to meet barely half of the standard method local housing need, a shortfall of over 5,000 dwellings<sup>189</sup>. Just weeks later, a second unprecedented intervention required the Council to add a further set of sites, including allocations up to a minimum of 85% of need<sup>190</sup>. The alarming reality for the Council, therefore, is that their attempts to prepare a local plan have fallen so far short of that which is so obviously required that the Secretary of State has had to do it for them. There could be no clearer indicator of the embarrassing reluctance of Three Rivers District Council to provide the housing that its own constituents so desperately need.

108. Against that background, it is wholly unsurprising that the parties agree that the highest available level of weight should be afforded to the delivery of some 600 homes<sup>191</sup>. The Council continues to resist use of the ‘very substantial category’ – it is not at all clear why<sup>192</sup>.

109. Although it does not affect the extent of weight to be afforded to the delivery of homes, the Inspector has before him very clear evidence that the Council’s housing land supply position is, in fact, substantially worse than the Council accepts. Mr Harris identified in his Proof of Evidence a total of 13 sites which ought to be removed or altered as against the Council’s claimed supply, as well as the windfall allowance<sup>193</sup>. The Council has already conceded that Mr Harris was entirely correct in respect of 6 of those 13 sites<sup>194</sup>, resulting in the removal of 137 dwellings, and in the supply reducing from the claimed 1.31 years to 1.16 years. For the reasons Mr Harris

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<sup>188</sup> Stephen Harris, Proof of Evidence (CD 13.4), §2.3

<sup>189</sup> Stephen Harris, Proof of Evidence, §2.3

<sup>190</sup> Stephen Harris, Proof of Evidence, §2.4

<sup>191</sup> CD 9.19, §15

<sup>192</sup> CD 9.19, §§12-14

<sup>193</sup> Stephen Harris, Proof of Evidence, §5.1

<sup>194</sup> CD 9.14, §3.1

has given, however, that position can properly be reduced yet further, to well below a 1-year supply:

- a. *Land at the rear of 17-49 Church Lane, Sarratt* – The site has outline planning permission only, granted on appeal almost 2.5 years ago. No application for reserved matters has been made, and there is no indication from the Council that any such application is likely to be forthcoming. It is worth noting in passing that, as discussed, that is in part a result of difficulties surrounding the MiP clause. The requirement in national policy is for ‘clear evidence’; here, there is none at all. 83 dwellings should be removed<sup>195</sup>.
- b. *Trinity Court, Rickmansworth* – The prior approval upon which the Council relies to convert the site from Class E to 38 dwellings is approaching its two-year anniversary. The site is currently advertised as an office to rent, and planning permission was recently granted for alterations to the car park adjacent to the site which are inconsistent with that prior approval. There is no clear evidence of deliverability. 38 dwellings should be removed<sup>196</sup>.
- c. *Knoll Oak, Northwood* – Outline planning permission was granted over two years ago, with no reserved matters application submitted or, apparently, mooted. To the contrary, the Council has apparently been engaging in pre-application discussions with the developer about an entirely different, and substantially larger, scheme<sup>197</sup>. There is no clear evidence of delivery within 5 years. 28 dwellings should be removed<sup>198</sup>.
- d. *The Fairway Residential Home, Oxhey Hall* – The Council now accepts that the site does not benefit from planning permission at all, either outline or full, outline permission granted in June 2023 having expired<sup>199</sup>. The Council seeks simply to rely upon the County Council’s “*intent to sell the site and for the*

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<sup>195</sup> Stephen Harris, Proof of Evidence, §§5.3-5.11

<sup>196</sup> Stephen Harris, Proof of Evidence, §§5.31-5.37

<sup>197</sup> Elizabeth Fitzgerald, Proof of Evidence, §5.26

<sup>198</sup> Stephen Harris, Proof of Evidence, §§5.38-5.46

<sup>199</sup> Elizabeth Fitzgerald, Proof of Evidence, §§5.31-5.32

*site to deliver by 2030/31*”<sup>200</sup>. That is not evidence, but mere assertion<sup>201</sup>. 18 dwellings should be removed.

- e. *Royal British Legion, Sarratt* – No planning permission exists. An outline application has been pending since November 2024, with no new documents uploaded since November 2025. Outstanding issues in respect of highways and flooding still exist, and are unresolved. There is no basis for the assertion that this is a deliverable site, let alone the requisite ‘clear evidence’ to show that. 10 dwellings should be removed<sup>202</sup>.
- f. *Land at 97 Church Lane, Sarratt* – The Council’s only dispute is as to whether this is ‘major development’ or not<sup>203</sup>. The site is 0.7ha, so plainly it is under the definition in the Glossary<sup>204</sup>. The Council has presented no evidence that the site is otherwise deliverable; outline planning permission was granted at appeal in May 2024, with no progress made since. 9 dwellings should be removed<sup>205</sup>.
- g. *42 The Fairway, Abbots Langley* – There is no dispute that the site is currently the subject of a full planning permission for change of use to a 4-bed residential home for children<sup>206</sup>. That will not contribute towards the housing land supply, as it will accommodate children moving from existing family homes; no market housing will be released. 2 dwellings should be removed<sup>207</sup>.
- h. *Windfall allowance* – The Appellant accepts that the Council is entitled to rely upon past windfall delivery averages to calculate a windfall allowance for the purposes of the five-year supply<sup>208</sup>. That is the Council’s position<sup>209</sup>. What the Council is not entitled to do, however, is include a general windfall allowance of 330 dwellings and also some 409 dwellings elsewhere within the five-year

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<sup>200</sup> Elizabeth Fitzgerald, Proof of Evidence, §5.33

<sup>201</sup> Stephen Harris, Proof of Evidence, §§5.55-5.36

<sup>202</sup> Stephen Harris, Proof of Evidence, §§5.76-5.83

<sup>203</sup> Elizabeth Fitzgerald, Proof of Evidence, §5.45

<sup>204</sup> NPPF, Glossary (p.110)

<sup>205</sup> Stephen Harris, Proof of Evidence, §§5.84-5.92

<sup>206</sup> Elizabeth Fitzgerald, Proof of Evidence, §5.46

<sup>207</sup> Stephen Harris, Proof of Evidence, §§5.93-5.96

<sup>208</sup> Stephen Harris, Proof of Evidence, §§6.6-6.7

<sup>209</sup> Elizabeth Fitzgerald, Proof of Evidence, §5.51

supply on specific windfall sites<sup>210</sup>. Including both within the 5-year supply does not remotely reflect the average windfall delivery upon which the Council relies. 330 dwellings should be removed.

110. It is, in conclusion, worth putting the above in context. It is agreed that the shortfall within Three Rivers against the standard method figure is at least 3,465 dwellings<sup>211</sup>. It is agreed that the Council's housing land supply is no higher than 1.16 years<sup>212</sup>. It is agreed that, whatever the outcome of the debate between Mr Harris and Ms Fitzgerald, the shortfall is "*substantial*". It is agreed that the highest available level of weight ought to be afforded to the provision of market housing as a result<sup>213</sup>.
111. But it remains important for the Inspector and Secretary of State to determine whether the Appellant is correct to place the shortfall at a staggering 3,979, and the housing land supply at an equally staggering 0.59 years. The Council is as recalcitrant as any local authority in the country in securing the delivery of housing, and the difference between the parties is still around 0.6 years. A solution is needed now, and it will assist nobody at all (least of all the residents of Three Rivers who are in desperate need of housing) if the Council is able to escape scrutiny of just how poor its housing land supply position is, by relying on that exact failing at appeal.

#### Provision of Affordable Housing

112. The housing crisis in Three Rivers is, however, perhaps most acute in relation to affordable housing. Three Rivers is, quite simply, astonishingly unaffordable, a position driven both by affordability trends within the area which outstrip national trends by some considerable distance, and by an almost unmitigated failure on the Council's part to deliver a remotely adequate level of affordable housing across a period spanning decades. The only evidence on that topic before the inquiry is Mr Stacey. His Proof of Evidence presents a truly dire picture:

- a. As far as need is concerned, the Council's current evidence base is the 2024 Local Housing Needs Assessment ("LHNA"), which identifies a net need for

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<sup>210</sup> Stephen Harris, Proof of Evidence, §§6.8-6.12

<sup>211</sup> CD 9.14, §4.1

<sup>212</sup> CD 9.14, §4.1

<sup>213</sup> CD 9.19, §15

527 affordable homes per annum over the period 2021-2041, equivalent to a total of 10,540 over that 20-year period<sup>214</sup>. It is immediately noteworthy that the annual affordable housing requirement calculated in the LHNA is almost three times higher than the adopted requirement within the development plan for all housing<sup>215</sup> – clearly a step-change is needed, and the settlement boundaries within that development plan are all but irrelevant in 2026.

- b. Delivery since the start of the local plan period has been truly shocking – in the last 25 years, the Council has managed to secure an average of just 33 affordable dwellings per annum<sup>216</sup>, with no affordable housing at all delivered in the Chorleywood North & Sarratt Ward in that period<sup>217</sup>. Even since the commencement of the 2024 LHNA period in 2021/22, the Council has managed to deliver just 29 net dwellings per annum, meaning that even in the four years since that period commenced, a shortfall of just shy of 2,000 homes has already arisen<sup>218</sup>.
- c. That position would be startling in any local authority; it is all the more startling in Three Rivers, which is simply one of the most unaffordable parts of the country. The average rental price within Three Rivers is some 26% higher than the national figure<sup>219</sup>, while the lower-quartile house price to income ratio is 45% higher than that national figure<sup>220</sup>. Once again, the ward-level example is telling – in the most recent monitoring period, just one affordable dwelling was advertised for let in Chorleywood North & Sarratt, which received some 25 bids from households in need<sup>221</sup>. The result is 24 real households with real people, for whom the Council cannot provide. Perhaps most alarmingly, and in direct contrast to the national picture, the position is actually worsening – that lower quartile ratio increased in Three Rivers by 6%

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<sup>214</sup> James Stacey, Proof of Evidence, §5.14

<sup>215</sup> Namely 180dpa (CD 5.1, p.38)

<sup>216</sup> James Stacey, Proof of Evidence, §6.8

<sup>217</sup> James Stacey, Proof of Evidence, §6.13

<sup>218</sup> James Stacey, Proof of Evidence, §6.20

<sup>219</sup> James Stacey, Proof of Evidence, §7.20

<sup>220</sup> James Stacey, Proof of Evidence, §7.24

<sup>221</sup> James Stacey, Proof of Evidence, §7.8

since 2023, compared to a decrease nationally of 7%<sup>222</sup>. Plainly, therefore, drastic action needs to be taken now to address the slide.

- d. There is, however, no evidence of that happening when one looks at future supply. Applying the Sedgefield approach in line with national policy, Mr Stacey calculates a requirement of 925 affordable homes in the next five years<sup>223</sup>. Against the Council's published five-year supply, even assuming that every single one of the sites provides a policy-compliant level of affordable housing, a supply of just 107 dwellings exists (i.e. a little over 11% of the total need figure)<sup>224</sup>. That figure drops to just 57 dwellings, and only 6% of the need figure, if the past gross affordable provision rate is applied<sup>225</sup>. By either route, those figures are vastly short of that which is required to provide for those most in need within the Three Rivers area.

113. Against that background, it is plain that the provision of 300 affordable homes, which would on its own represent the delivery on one site of as many net affordable homes as were delivered across the entire District in the six years between 2015/16 and 2020/21<sup>226</sup>, must be afforded Very Substantial weight.

114. The only dispute between the Appellant and the Council in that regard is whether such a weighting category should exist at all – the Council agrees that the highest available level of weighting should be afforded. As explained within the Appellant's note on weighting scales<sup>227</sup>, it is plainly appropriate, in order to reflect both the scale of need in Three Rivers, and the approach used by the Secretary of State on recovered appeals in the past, to employ Very Substantial weight. No other weighting reflects the gravity of the position as regards affordable housing within Three Rivers.

#### Provision of Custom- and Self-Build Housing

115. In addition to the market and affordable housing proposed, the Scheme is to provide a total of 12 plots, secured as serviced plots for custom- and self-build housing

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<sup>222</sup> James Stacey, Proof of Evidence, §7.25

<sup>223</sup> James Stacey, Proof of Evidence, §8.9

<sup>224</sup> James Stacey, Proof of Evidence, §8.14

<sup>225</sup> James Stacey, Proof of Evidence, §8.15

<sup>226</sup> Totalling the figures in Figure 6.4 (James Stacey, Proof of Evidence, §6.15)

<sup>227</sup> CD 9.19, §§6-11

(“CSB”). For the reasons explained by Mr Moger and Mr Austin-Fell, that too falls to be afforded substantial weight in the planning balance:

- a. First, there is clearly a substantial level of unmet CSB need within Three Rivers. 74 cumulative Part 1 entries appear on the Register across Base Periods 1 to 8, in respect of which the Council are under a duty to grant planning permission by October 2026<sup>228</sup>. That figure is, however, likely to be a significant underestimate due to the register suppression techniques introduced in Three Rivers – not least the introduction of a fee of over £200 per year simply to remain on the Register<sup>229</sup>. Mr Moger estimates that as many as 1,543 people may be interested in building their own home across Three Rivers, applying national survey data<sup>230</sup>.
- b. Second, even comparing that Register figure against CSB supply to discharge it, there remains a shortfall of 46 plots in respect of which planning permission must by law be granted by October 2026<sup>231</sup>. As Mr Moger explains, the Council’s approach of seeking to count towards supply permissions with no mechanism for securing their CSB aspect is plainly unsupportable<sup>232</sup>, as their own evidence base recognises<sup>233</sup>.
- c. Third, none of the four development plan documents actually contain any policies requiring CSB housing to be provided on schemes of any size. There is no mention of CSB housing at all in any of the Three Rivers development plan documents, and only the barest reference to CSB being “*encouraged*” within the Sarratt Neighbourhood Plan<sup>234</sup>. There is therefore no prospect of the above position changing, without schemes such as the Appeal Scheme coming forward to plug the gap.

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<sup>228</sup> Andrew Moger, Proof of Evidence (CD 13.5), §4.36

<sup>229</sup> Andrew Moger, Proof of Evidence, §§4.37-4.51

<sup>230</sup> Andrew Moger, Proof of Evidence, §4.67

<sup>231</sup> Andrew Moger, Proof of Evidence, §5.30

<sup>232</sup> Andrew Moger, Proof of Evidence, §§5.15-5.16

<sup>233</sup> Andrew Moger, Proof of Evidence, §5.38

<sup>234</sup> Andrew Moger, Proof of Evidence, §§3.46-3.47

- d. Fourth, substantial weight must therefore be afforded to the provision of 12 secured CSB plots, which would on their own discharge more than a quarter of the current cumulative shortfall within Three Rivers<sup>235</sup>.

116. The Council has provided no substantive reasoning for affording only Significant weight to the same factor<sup>236</sup>; any such reasoning could not in any event survive analysis against the weight of Mr Moger's careful and detailed evidence. Substantial weight is appropriate.

#### Supported Living for Vulnerable Children

117. The Scheme includes a five-bedroom property, specifically designed to provide residential accommodation for vulnerable children in Hertfordshire, with on-site carer accommodation. That is not unwarranted benefit-chasing. It responds to a specific request from Hertfordshire County Council, who welcome and support the inclusion of the property on site<sup>237</sup>. As the Council notes, a 5-bedroom property is larger than other schemes proposed in the District<sup>238</sup>. The parties agree that Significant weight should be afforded to its inclusion<sup>239</sup>.

#### New Primary School

118. The Scheme also includes, again at the specific request of Hertfordshire County Council, a one-form entry primary school, plus land guaranteed to allow for potential future expansion to two-form entry. While that is in part to provide for primary-age children to be generated by the Scheme itself, it is also a far wider benefit – the school will occupy a strategic role within the Croxley community more generally as a result of its location, and combination with the sustainable transport improvements guaranteed. That is all the more so where the delivery mechanism is secured. Significant positive weight should be afforded, in light of those benefits<sup>240</sup>. The Council provides no reasoning anywhere for its alternative view that only Moderate weight should be afforded<sup>241</sup>.

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<sup>235</sup> Andrew Moger, Proof of Evidence, §7.40

<sup>236</sup> CD 9.19, §15

<sup>237</sup> Cameron Austin-Fell, Proof of Evidence, §§6.50-6.52

<sup>238</sup> CD 9.21

<sup>239</sup> CD 9.19, §15

<sup>240</sup> Cameron Austin-Fell, Proof of Evidence, §§6.53-6.56

<sup>241</sup> CD 9.19, §15

### New Medical Centre

119. The proposal includes a new local centre for NHS health and social care services, to which Mr Austin-Fell quite correctly affords Significant weight. That is so for three short reasons. First, it responds to a direct quantitative need for such provision, identified and evidenced by the Hertfordshire and West Essex ICB. Second, it responds to a direct qualitative need – the closest existing practices, New Road Surgery and its Baldwins Lane branch, both operate from converted residential premises which do not meet modern NHS building guidance. The Appellant proposes a new, purpose-built surgery which will provide a direct qualitative benefit. Third, the mechanism for delivery is clear, and non-speculative. While it is, necessarily, subject to the ICB presenting an acceptable business case to NHS management, the Appellant has committed to building out the shell of the building, and to funding in part the fit-out, to the appropriate NHS specification<sup>242</sup>. Once again, the Council apportions only Medium weight to that benefit, for reasons which it fails to express anywhere<sup>243</sup>.

### Mixed-Use Local Centre

120. In addition to the NHS-specific aspect of the health and social care centre proposed, the Appellant also proposes a mixed-use local centre comprising retail and café provision, public realm and other community facilities. The 2026 Framework expressly recognises at Policy HC4 that substantial weight should be given to benefits where (a) *“new or improved public service infrastructure or community facilities would be provided”*, and (b) *“development proposals would make a demonstrable contribution towards promoting good health, preventing ill-health, reducing health inequalities or supporting social interaction in the local community”*. That is precisely what is proposed here<sup>244</sup>. The Council’s assertions about a lack of certainty as to what will come forward do not undermine that national policy position<sup>245</sup>, and their decision now to ascribe Limited weight to this as a benefit is inconsistent both with that policy position, and with the position taken in the Officer Report<sup>246</sup>.

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<sup>242</sup> Cameron Austin-Fell, Proof of Evidence, §§6.57-6.65

<sup>243</sup> CD 9.19, §15

<sup>244</sup> Cameron Austin-Fell, Proof of Evidence, §§6.66-6.70

<sup>245</sup> CD 9.21, p.1

<sup>246</sup> Cameron Austin-Fell, Proof of Evidence, §6.67

### Sports Facilities and Play Spaces

121. The parties agree that the provision of informal sport, recreation and play provision including children's play spaces, a NewGen Active Track, and other multifunctional open space should be afforded Moderate weight<sup>247</sup>. That is plainly correct in light of the benefits for residents of both the Scheme and Croxley more generally<sup>248</sup>.

### Country Park and Public Open Space

122. The sheer scale of the public open space and country park provision to be guaranteed as part of the Scheme is evident from the illustrative layout. Some 60% of the Site would be set aside for precisely that purpose, substantially exceeding the Council's policy requirement for open space provision, and providing a major new recreational and landscape resource for all Croxley Green residents, not just those occupying the Scheme. Substantial positive weight is plainly appropriate in light of that<sup>249</sup>. For the same reason, it is difficult to understand why the Council has seen fit to downgrade the weight afforded to only Medium, on the basis that the country park does not "*add significantly to the local community provision*"<sup>250</sup>. It plainly does.

### Other Environmental Benefits

123. In addition to the environmental benefits already identified, for the reasons explained by Mr Austin-Fell, it is also appropriate to afford Moderate weight to the fact of growth occurring at a Key Centre in locational sustainability terms<sup>251</sup>, Substantial weight to the fact that the Scheme will represent low-carbon development, in line with CC2(2) of the NPPF<sup>252</sup>, Limited weight to the provision of electric vehicle charging<sup>253</sup>, and Significant weight to biodiversity net gain comprising a 34% increase in habitat units, and a 42% increase in hedgerow units<sup>254</sup>.

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<sup>247</sup> CD 9.19, §15

<sup>248</sup> Cameron Austin-Fell, Proof of Evidence, §§6.71-6.75

<sup>249</sup> Cameron Austin-Fell, Proof of Evidence, §§6.93-6.97

<sup>250</sup> CD 9.21, p.2

<sup>251</sup> Cameron Austin-Fell, Proof of Evidence, §§6.81-6.85

<sup>252</sup> Cameron Austin-Fell, Proof of Evidence, §§6.86-6.89

<sup>253</sup> Cameron Austin-Fell, Proof of Evidence, §§6.90-6.92

<sup>254</sup> Cameron Austin-Fell, Proof of Evidence, §§6.98-6.102

## Economic Benefits

124. There are also substantial benefits to be taken into account in the third NPPF domain of sustainable development – economic benefits. Significant weight should be afforded to the creation of 930 FTE jobs over the construction period<sup>255</sup>, Moderate weight to increased expenditure in the local area by new residents of some £17.7 million per annum<sup>256</sup>, Moderate weight to significantly increased council tax revenue<sup>257</sup>, and limited weight to the delivery of sustainable active travel options, including a new bus service<sup>258</sup>. The Council only provides substantive written reasons for disputing two of those weightings, neither of which is convincing<sup>259</sup>.

## Overall

125. Taken in the round, it is plain that the benefits of the Scheme are overwhelming, and do (as the Council agrees) amount to very special circumstances in the event that the Site is not considered Grey Belt. Planning is not a mathematical exercise, but it is very telling that Mr Austin-Fell identifies no fewer than 18 discrete benefits, 2 of which are to be afforded Very Substantial weight, 4 Substantial weight, and 6 Significant weight<sup>260</sup>. For those reasons, in the event that the Inspector or Secretary of State takes the view that the Scheme does amount to inappropriate development in the Green Belt, the necessary very special circumstances to grant permission in any event under Policy GB6(2) are amply present, as the Council and Appellant both agree<sup>261</sup>.

## **Planning Balance**

### Development Plan

126. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. The development plan for the purposes of this appeal comprises the Core Strategy (“CS”) (2011), the Development Management Policies Local Development Document (“DMPLDD”) (2013), the Site Allocations

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<sup>255</sup> Cameron Austin-Fell, Proof of Evidence, §§6.107-6.109

<sup>256</sup> Cameron Austin-Fell, Proof of Evidence, §§6.110-6.113

<sup>257</sup> Cameron Austin-Fell, Proof of Evidence, §6.114

<sup>258</sup> Cameron Austin-Fell, Proof of Evidence, §§6.103-6.106

<sup>259</sup> CD 9.21, p.2

<sup>260</sup> CD 9.19, §15

<sup>261</sup> CD 9.18, §3.12

Local Development Document (“SALDD”) (2014), and the Sarratt Neighbourhood Plan (“SNP”) (2025).

127. Mr Austin-Fell identifies the proper approach to be taken to each of the most important policies cited in the decision notice<sup>262</sup>:

- a. *CP11 CS/DM2 DMPLDD* – Both CP11 and DM2 concern Green Belt. The consistent approach of Inspectors within Three Rivers, including the Secretary of State at the Bedmond Road appeal has been to conclude that, where development is not inappropriate under national policy, there is no conflict with CP11 and DM2, in light of the reliance of both upon the national policy concept of ‘Green Belt’. There is no reason to deviate from that approach here, and accordingly no conflict with CP11 or DM2<sup>263</sup>. The Council accepts in any event that DM2 is inconsistent with the new NPPF, and should be afforded very limited weight<sup>264</sup>.
- b. *CP1 CS* – CP1 provides the overarching policy on sustainable development. The Scheme does not conflict with CP1; it is sustainable development<sup>265</sup>.
- c. *CP4 CS* – CP4 concerns affordable housing. Despite being out of date as a result of its age, and inconsistency with the up-to-date evidence base on affordable housing need, there is no conflict with CP4. As already identified, the Scheme provides 50% affordable housing (in excess of the 45% target in CP4), including a tenure split in line with CP4’s guideline of seeking 70% social rented housing<sup>266</sup>.
- d. *CP2 CS/PSP2 DMPLDD* – CP2 identifies the housing requirement and spatial strategy for Three Rivers. PSP2 then directs development to Key Centres. The Appellant accepts partial conflict with both, as the Site sits outside the settlement boundary of Croxley Green. That conflict is, however, only partial because (a) CP2 envisages the possibility of Green Belt edge-of-settlement

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<sup>262</sup> Cameron Austin-Fell, Proof of Evidence, §5.35

<sup>263</sup> Cameron Austin-Fell, Proof of Evidence, §§5.37-5.44, 5.48-5.49

<sup>264</sup> CD 9.18, §2.7

<sup>265</sup> Cameron Austin-Fell, Proof of Evidence, §5.45

<sup>266</sup> Cameron Austin-Fell, Proof of Evidence, §§5.46-5.47

sites coming forward in the event of a lack of 5-year housing land supply, and  
(b) Croxley Green is itself a Key Centre, such that the Scheme does comply with the strategic intent of PSP2, namely to direct growth to sustainable urban areas within Three Rivers<sup>267</sup>.

128. Reading the development plan as a whole, and weighing what is only partial conflict with two policies against what is otherwise compliance with all aspects of the development plan, the only viable conclusion at the first stage of the section 38(6) analysis, as Mr Austin-Fell identifies, is that the Scheme complies with the development plan, taken as a whole<sup>268</sup>. The Council does not dispute any aspect of that analysis<sup>269</sup>; it is common ground as a result.
129. Alternatively, if the Inspector or the Secretary of State takes a different view, it is evident that the weight to be afforded to the policy conflict identified must be severely reduced, in light of at least four obvious factors:
- a. First, the Council does not have a 5-year housing land supply, has not done so for many years, and has consistently failed the Housing Delivery Test. Both CP2 and PSP2 are restrictive of housing development in Three Rivers, and are out of date as a result. The extent of that shortfall, and its longevity, can only mean that the weight to be afforded to the conflict with both policies must be substantially reduced, even against the general span of ‘out of date’ policies.
  - b. Second, and separately, both policies set a spatial strategy based on an adopted housing requirement which bears no relation whatsoever to the actual level of housing need within Three Rivers. The difference is truly remarkable – CS CP2 identifies an annual need of 180 dwellings per year<sup>270</sup>, whereas the need calculated according to the standard method is over four times larger, at some 752 dwellings per annum<sup>271</sup>.

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<sup>267</sup> Cameron Austin-Fell, Proof of Evidence, §§5.50-5.51

<sup>268</sup> Cameron Austin-Fell, Proof of Evidence, §5.55

<sup>269</sup> Council Opening Submissions (CD 15.4), §20

<sup>270</sup> CD 5.1, p.32 (PDF p.38) (Policy CP2)

<sup>271</sup> CD 9.14, §2.2

- c. Third, the lifespan of the Core Strategy has now expired. Adopted in October 2011, it was only intended to run until 2026, meaning that at the point at which the Secretary of State ultimately takes a decision on this appeal, it will be out of date in its entirety.
- d. Fourth, and as a consequence, the Core Strategy dates from a pre-NPPF era entirely. No version of the development plan in Three Rivers has ever been examined against the policies in the NPPF. That is a stark but important aspect of the weighting exercise to be performed.

130. For all of those reasons, therefore, even if contrary to the above, either the Inspector or Secretary of State concludes that the Scheme conflicts with the development plan read as a whole, the weight to be afforded to that conflict must be substantially reduced.

#### Material Considerations

131. By either route, it is then necessary to consider whether material considerations outweigh that conclusion. The Appellant's simple submission is that the relevant material considerations point overwhelmingly in favour of the grant of planning permission, a position from which the Council does not materially demur.

#### *National Policy*

132. Policy S3(1)(b) NPPF provides that applications outside settlement boundaries should be assessed according to Policy S5. Policy S5 provides that, where a Scheme falls within one of the categories in S5(1), planning permission should be granted unless the benefits of so doing would be substantially outweighed by any adverse effects – in effect, the old 'tilted balance' under paragraph 11(d) is now applied to all categories of development within S5, even outside of settlement boundaries, save that the parties agree that the wording "*substantially outweighed*" creates a stronger, permissive bar than was previously the case<sup>272</sup>.

133. However, in the Green Belt, Policy S5(5) provides that S5 is disapplied altogether, and that schemes are to be assessed against the Green Belt policies already analysed

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<sup>272</sup> CD 9.18, §3.4

above. S5(5) is also clear that, where development is not inappropriate in the Green Belt, the same presumption should apply – proposals should be approved unless the benefits of so doing would be substantially outweighed by any adverse effects. Finally, Policy S5(2) provides that that presumption is likely to be displaced where there is conflict with “*one of the national decision-making policies which state that development proposals should be refused in specific circumstances*”. Neither party alleges that that is the case here<sup>273</sup>.

134. The analysis is therefore as follows. Although the Scheme is outside settlement boundaries, it falls to be assessed pursuant to the Green Belt policies, not Policy S5, pursuant to S5(5). For the reasons set out above, the Scheme is not inappropriate development in the Green Belt considered under those policies (i.e. GB7 and GB8). It follows, pursuant to S5(5), that planning permission should be granted unless the benefits of so doing would be substantially outweighed by any adverse effects. Neither party alleges that the policies identified in S5(2) provide such a reason for refusing planning permission, nor do they identify any accumulation of other adverse effects, capable of substantially outweighing the benefits identified. It follows that, applying national policy, planning permission should be granted.
135. The relevance of national policy does not end there. As Mr Austin-Fell identifies, read in combination with the Joint Note updating his Proof of Evidence in light of the new NPPF<sup>274</sup>, there are a series of other policies within the Framework, whose application lends even greater weight to the grant of planning permission<sup>275</sup>. The reality is that this is a scheme which is, by every metric identified in national policy, sustainable development which ought to have been granted permission “*without delay*” in any local authority area; all the more so in one of the worst-performing local authorities in the country as regards housing delivery.

#### *Other Material Considerations*

136. The position is even clearer stepping outside national policy, as regards material considerations. For all of the reasons identified above under the very special circumstances balance, it is obvious that the Scheme delivers a swathe of extremely

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<sup>273</sup> CD 9.18, §3.15

<sup>274</sup> CD 9.18

<sup>275</sup> Cameron Austin-Fell, Proof of Evidence, §6.32

significant benefits, which weigh very strongly in favour of granting planning permission, including (albeit only attracting limited weight) the allocation of the Site within the emerging Regulation 19 plan. There is no purpose in repeating those benefits, and the weight to be afforded to them, at this stage of the process; it suffices simply to observe that it is common ground that they amount to very special circumstances, such that they are quite obviously capable of outweighing any conflict with the development plan which either the Inspector or Secretary of State may, contrary to the above, identify.

137. It is right to recognise, as Mr Austin-Fell does, that adverse impacts do arise, which must also be weighed in the balance<sup>276</sup>. It is right to recognise limited harm arising from the loss of an undeveloped parcel of agricultural land, limited harm to landscape character, limited adverse weight arising from effects on the two heritage assets identified above, and limited weight to the conflict with the spatial strategy set out in CP2 and PSP2, in light of the factors reducing the weight to be afforded to that conflict already identified.

#### Overall Balance

138. The reality is that, by whichever route, the Scheme quite obviously represents development of the most sustainable kind, which ought to have been granted planning permission by the Council a very considerable time ago. It is only as a result of the obstinance of Members, ignoring professional advice on at least three occasions, that this appeal has been required at all. Planning permission should, in line with national policy, the development plan, and the overwhelming weight of material considerations, be granted without delay.

#### **Conclusion**

139. Accordingly, the Inspector is respectfully invited to recommend that the appeal be allowed, and the Secretary of State respectfully invited to allow the appeal.

**Christopher Young KC**

**Daniel Henderson**

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<sup>276</sup> Cameron Austin-Fell, Proof of Evidence, §7.20

**No5 Chambers**  
**4<sup>th</sup> September 2026**