

**Town and Country Planning Act 1990 (As Amended)**

**Land at Foxhole Farm Bolney**

**Sequential Test Assessment**

**Produced by**

**Judith Ashton Associates in Liaison with Ramboll**

**On behalf of**

**Wates Developments Limited**

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**Appendix A** Mead Realisations and Redrow Homes Appeal and High Court Decision

## 1. Introduction

- 1.1 Judith Ashton Associates have been instructed by Wates Developments Limited to prepare a Sequential Test Assessment of the Land at Foxhole Farm Bolney in conjuncture with Ramboll UK Limited.

## 2. The Sequential Test

### i. **National Planning Policy Framework (NPPF)**

- 2.1 The NPPF (December 2024) seeks to direct development away from areas at highest risk of flooding, however, where development is necessary in those areas, it should be made safe for its lifetime without increasing flood risk elsewhere (para.170). Paragraph 172 states that a sequential, risk-based approach to the location of development, accounting for all sources of flooding, and the current and future impacts of climate change should be taken so as to avoid flood risk to people and property. To do this, and manage any residual risk, para 172 indicates that this can be achieved by:

- a) *“Applying the sequential test and then if necessary, the exception test...*
- b) *Using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much uses as possible of natural flood management techniques as part of an integrated approach to flood risk management).”*

- 2.2 Para 173 explains that a sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding, by following the steps set out below.

- 2.3 Within this context para 174 explains that *‘The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites, appropriate for the proposed development, in areas at lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.*

- 2.4 Para 175 continues: *The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).*

### ii. **Planning Practice Guidance (PPG)**

- 2.5 The PPG echoes the NPPF, stating that the aim of the sequential test is to ensure that development is directed towards areas at lowest risk of flooding (Paragraph: 023 Ref. ID: 7-023-20220825). Paragraph 027 (Ref. ID: 7-027-20220825) and 028 (Ref. ID: 7-028-20220825) of the PPG set out how to define the approach and the reasonable alternatives for the sequential test.

- 2.6 Paragraph 027 states that for individual planning applications, subject to the sequential test, the area to apply the test to:

*“[...] will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school.”*

- 2.7 Paragraph 028 goes on to define a ‘reasonably available’ site as:

*“[...] those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.*

*These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available’.”*

- 2.8 The Flood Risk Assessment: The Sequential Test for Applicants Guidance (February 2017) advises that the search area for alternative sites should be discussed with the Local Planning Authority (LPA) and once the area has been agreed, the applicant is to look for sites that could be suitable for accommodating the proposed development.

### **iii. Implications of the Mead Realisations High Court Decision**

- 2.9 The Council will be aware of the recent Mead Realisations and Redrow Homes appeal (Refs. 3313624; 3314268) and High Court (Refs. AC-2023-LON-002327 and AC-2023-LON-002481) decisions centering on the interpretation of the sequential test in the NPPF and PPG (Appendix A).
- 2.10 With particular reference to the application of the sequential test and the relevance of alternative sites, Justice Holgate determined that the issue of need is not wholly irrelevant, highlighting that the PPG suggests that the relevant catchment area will be affected by need considerations, concluding that not all need considerations must be excluded in assessing the ‘appropriateness’ of alternative sites (Appendix A, High Court Decision, para. 101).
- 2.11 The decision goes on to highlight that a need and/or market demand case can be based on a range of factors, for example, the mix of land uses proposed and any interdependencies between them, the size of the site, density, etc. (para. 103).
- 2.12 In addressing specific needs in his decision, Justice Holgate at para.104 suggests that specific need, together with the merits of the proposal, may be relevant to defining an appropriate area of search or catchment area, and whether other sites in lower flood risk zones possess the characteristics to render them ‘appropriate’ alternatives.
- 2.13 It is evident, therefore, that the site-specific benefits proposed to be delivered as part of a development proposal define the area of search in the application of the sequential test.

## **3. Flood Risk on the Site**

- 3.1 As stated in Paragraph 2.2 above, the aim of the sequential test is to direct development to areas with the lowest risk of flooding from all sources (NPPF, para.168).
- i. Fluvial Flood Risk**
- 3.2 The Environment Agency’s Flood Map for Planning identifies the site as being within Flood Zone 1, where there is a low probability of flooding.



Figure 1: Fluvial Flood Risk

**ii. Surface Water Flood Risk**

3.3 The Environment Agency's Risk of Flooding from Surface Water (RoFSW) mapping was updated in January 2025 and shows the chance of flooding from surface water to areas of land. The mapping identifies the site as predominantly having a very low chance of flooding. However, there are areas considered to have a medium and high chance of surface water flooding in the northeast, northwest, and southern parts of the site; most of which are located outside the proposed area of built development and would be expected to be managed as part of the surface water drainage strategy.



Figure 2: Surface Water Flood Risk

#### 4. **Proposed Development**

##### 4.1 The proposed development is for:

*Outline planning application (appearance, landscaping, layout and scale reserved), for the erection of up to 200 dwellings; a community building (use class F1) encompassing land for education provision, together with associated access, ancillary parking and landscaping; the creation of a vehicular access point from the A272 Cowfold Road, and pedestrian and cycle only access to The Street; and creation of a network of roads, footways, and cycleways through the site; together with the provision of countryside open space, children's play areas, community orchard, and allotments; sustainable drainage systems and landscape buffers.*

#### 5. **Parameters for the Sequential Test**

##### 5.1 As highlighted in the sections above, the proposed development defines the extent of the catchment area for sites to be considered in the sequential test. The proposal for Land at Foxhole Farm as a whole, is specific to both the ability to deliver up to 200 dwellings and

associated community facilities in Bolney in accordance with the spatial strategy set out in the MSDC Submission Draft Local Plan, to provide significant amounts of public open space and the ability to alleviate some of the existing flooding issues experienced by the residents of The Street and as such, any potential alternative sites must possess similar features to be able to accommodate the specific package proposed.

- 5.2 In summary, the component parts of the proposed development are:
- Flood alleviation measures on-site to reduce the existing flooding issues in The Street.
  - The provision of 200 new homes, including 30% affordable.
  - The provision of a community building (Use Class F1), to be set aside for use by Kangaroos, a well-established charity within Mid Sussex who support children, teenagers and adults with severe learning disabilities and complex needs, by providing a supportive environment where their members can develop social and life skills.
  - The provision of over 8ha of public open space with pedestrian and cycle routes through the space.
- 5.3 As set out in Section 2, the search area for the application of the sequential test is unlikely to be supported where the parameters are defined by general need. The following subsections consider the specific provisions of the proposed development to be used when considering the area of search for reasonably available, alternative sites.

#### Flood Alleviation Measures

- 5.4 A sustainable drainage strategy is being developed, which would propose to limit the surface water discharge from the proposed development to the mean annual flood return period, considered a 1 in 2.33 year event. To achieve this, the surface water runoff generated on-site would be conveyed and attenuated using Sustainable Drainage Systems (SuDS), such as swales and larger surface water storage/attenuation basins, which would capture and convey surface water before releasing it at a rate that replicates natural systems.
- 5.5 The swales and attenuation basins would be designed to deliver sufficient capacity to collect and temporarily store water during a 1 in 100 year annual probability event with an appropriate allowance for climate change (45% in this instance), before discharge, at the equivalent greenfield rate described above, into the wider drainage network beyond the site.
- 5.6 In the context of the above the proposed SuDS measures in the northeastern part of the site have been designed to intercept any surface water runoff that is presently directed toward The Street and capture and store said runoff before diverting it west. As a result, the risk of surface water flooding along The Street will be reduced as a result of the proposed development.

#### Proposed community facility

- 5.7 The proposed development provides for a community building (Use Class F1), to be set aside for use by Kangaroos, a well-established charity within Mid Sussex who support children, teenagers and adults with severe learning disabilities and complex needs, by providing a supportive environment where their members can develop social and life skills. Their existing facility is no longer fit for purpose, and they have been looking for some time for a new facility within the district to serve their needs. Furthermore, the West Sussex Education, Health and Care Plan suggests the need for places in such facilities has risen from 3,423 in 2015 to 8,802 at the end of September 2024, which demonstrates the scale of need across the county.

## Public Open Space

- 5.8 In terms of open space, the proposed development includes the required space for youth and adult use, as well as equipped children's play space, in accordance with the Council's Development Infrastructure and Contributions SPD (October 2019) and the updated requirements set out at Appendix 5 of the Submission Draft Local Plan (December 2023). In addition to this requirement, the proposed development includes approximately eight hectares of open space with pedestrian routes through it, providing a substantial benefit to Bolney.
- 5.9 In summary, the package as a whole is extremely specific to the Bolney. Without the new homes' element of the proposal, these benefits will not be forthcoming and as such, the development must be considered a single planning unit.

## **6. Conclusion on Scope of Sites to be Assessed**

- 6.1 Having reviewed the recent appeal and High Court decisions regarding the application of the sequential test to sites at risk of flooding, it has been agreed with MSDC that the scheme proposed is specific to Bolney.
- 6.2 With this in mind, there are just three alternative sites that have been identified in the Councils Strategic Housing and Economic Land Availability Assessment (SHELAA) that may be able to deliver a similar scheme with these benefits:
- Land at Glebelands Field, Lodge Lane, Bolney – SHELAA Site 749.
  - Land Adjacent to Packway House, North of Bolney - SHELAA Site 541.
  - Hangerwood Farm, Foxhole Lane, Bolney- SHELAA Site 930.
- 6.3 These three sites, together with the application-site, will form the basis for the sequential test.

## **7. Sequential Test Methodology**

- 7.1 The sequential test methodology conducted in this study involves the following stages:
- Appraise the pool of sites listed in para 6.2 above in terms of their likelihood of flooding.
  - Rank sites in terms of likelihood of flooding from fluvial or tidal sources, then surface water runoff, then groundwater (as indicated in the flow chart (Figure 3)).
  - Establish the development capacity of the sites taken from the reviewed documentation.
- 7.2 The assessment of the sites will be undertaken in relation to their likelihood of flooding. The following flooding data will be collected on each site:
- Area of site covered by Flood Zones 1, 2, 3a & 3b;
  - % of site covered by Flood Zones 1, 2, 3a & 3b;
  - Whether the site is on a dry island (i.e. in a low probability flood zone but surrounded by land with a greater probability of flooding);
  - Impact of climate change on fluvial flood risk;
  - Probability of surface water flooding occurring (low, medium, and high);
  - % of site subject to surface water flooding occurring (low, medium, and high);
  - Risk of reservoir flooding occurring;
  - Potential for groundwater flooding to occur.
- 7.3 The identification of sites that are dry islands is important as the NPPF and PPG highlight the need for consideration of safe access and escape routes for developments in flood risk areas. Dry islands have the potential to be cut off in a flood event. If it is not possible to achieve safe access and egress, promoted sites in these areas may be unacceptable for development on flood risk grounds.

**Figure 3 - Site Ranking Flow Chart**



- 7.4 The impacts of climate change will be considered using the most comprehensive and complete form of modelling available at the time.
- 7.5 Each site boundary has been identified and measured along with the flood boundaries for each source of flood risk within the site boundary. This includes the risks as listed above.
- 7.6 It is recognised that sites may lie in a number of flood zones. Where this occurs, a precautionary approach will be followed whereby the highest risk flood area in which the site is located will be used to classify the site, even if only a marginal area of the site is affected.
- 7.7 As sites in Flood Zone 1 (FZ1) are all considered equal in respect of fluvial flooding they will be ranked according to the percentage of the site that falls into the 1% AEP (Annual Exceedance Probability) surface water extent.
- 7.8 Those sites unaffected by the 1% AEP surface water extent, or those sites where the same percentage of the site is located in the 1% AEP, have been ordered according to the percentage of the site falling within the 0.1% AEP extent.
- 7.9 Where sites achieve the same fluvial score, the extent of surface water flood risk has been taken into account using the Environment Agency's RoFSW (Risk of Flooding from Surface Water) mapping. Land with a high chance of such flooding (greater than a 3.3% annual chance) has initially been used to rank sites.
- 7.10 The sites are then further ranked according to land with a medium chance of surface water flooding (between a 3.3% and a 1% annual chance).
- 7.11 The 1% AEP surface water flood extent was deemed a more relevant factor than the 0.1% AEP surface water flood extent because of its greater chance of occurrence, and because it accords with the principle of the NPPF in terms of planning, i.e. ascribing more significance to areas at risk from flooding from 1% AEP events or greater.
- 7.12 The 0.1% AEP surface water flood extent has only been considered in terms of ranking the sites and the event and is considered highly unlikely to occur. It should also be noted that the event does not have to be directly designed for within a proposed development.
- 7.13 Where sites are equal in fluvial flood risk and lie outside this surface water flood extent,

they have been ordered alphabetically according to the site name.

- 7.14 If any sites have a joint position in the ranking of sites following the ordering process, the % of the sites in question which are at risk from surface water and groundwater flooding will be used to decide which site should gain a higher position in the overall ranking.
- 7.15 The risk of flooding from reservoirs will not be significantly relied on at this point given that the flood risk that exists from reservoir failure is considered residual. The data relating to sewage flooding will also not be relied upon to distinguish between sites which are tied in the overall ranking as the data cannot be applied at site level.

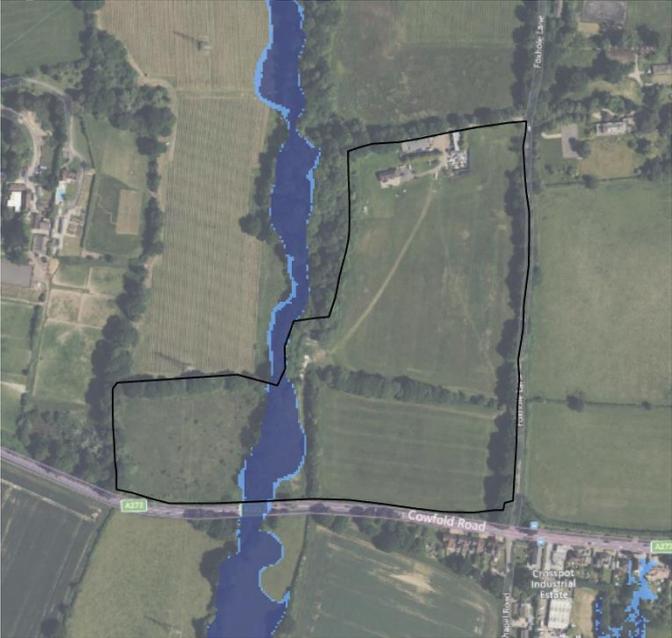
## 8 The Results of the Sequential Test

- 8.1 The Results of the Sequential Test for the three sites as listed in para 6.2 above, and for the subject site, is set out below:

**Table 1 – Sites subject to Sequential Test**

Sifting Rank (based on overall flood risk)	Address and site reference	Gross Area (ha)	No. of Units	% of site subject to fluvial flood risk and level of risk	% of Site at SWFR (Yearly chance of flooding between 2040 and 2060)
1	Land at Glebelands Field, Lodge Lane, Bolney  SHELAA Site 749	5.2	150	0%	Parts of the site are in an area of low chance (approximately 0.5% of overall site area) – see Figure 6 below
2	Land Adjacent to Packway House, North of Bolney  SHELAA Site 541	4.2	150	0%	Parts of the site are in areas of low or medium chance (approximately 5% of overall site area) – see Figure 5 below
4	Hangerwood Farm, Foxhole Lane, Bolney  SHELAA Site 930	9.2	240	Approximately 5% of the site is in Flood Zone 3 and Flood Zone 2 - as per Figure 4 below	Parts of the site are in areas of low, medium, and high chance (approximately 4% of overall site area) – see Figure 7 below
3	Land East of Foxhole Lane  SHELAA site 1120	16.9	200	0%	Parts of the site are in areas of low, medium, and high chance (approximately 4.5% of overall site area) – see Figures 1 and 2 above.

**Figure 4 – Fluvial - Hangerwood Farm**



**Figure 5 - Surface Water - Packway House**



**Figure 6 - Surface Water - Glebelands Field**



**Figure 7 - Surface Water - Hangerwood Farm**



8.2 The above demonstrates that for all of the sites listed in Table 1 above, including the subject site, the proportion of the site subject to any form of flood risk is low. For the subject site, approximately 4.5% of the overall site area is indicated to be at risk from surface water. In the sifting of flood risk ranking only, the Land East of Foxhole Lane site is identified as the third most potentially preferable site due to the areas at a high chance of surface water flooding in the northeast and south. As set out in Section 9 below, in the case of the subject site, where the site is indicated to be at risk from surface water flooding, the proposed built development will be located away from these areas and where this is not possible, such as at the location of the proposed site access, the risk will be mitigated by design.

## **9 MSDC Level 2 Strategic Flood Risk Assessment August 2024**

9.1 In preparing for the Local Plan Examination, MSDC produced a Level 2 Strategic Flood Risk Assessment (SFRA) of sites identified as proposed allocation within the Submission Draft District Plan. This was prepared in accordance with the then 2023 National Planning Policy Framework (NPPF) and the August 2022 Planning Practice Guidance (PPG). The objectives of the Level 2 SFRA were to:

- Assess the flood risk to proposed sites using the latest available flood risk data and climate change uplifts where available.
- Provide information and mapping to show flood risk from all sources for each site option.
- Provide recommendations for making the site safe from flooding throughout its lifetime where the Exception Test is required.
- Take into account, as far as practically possible the most recent policy and legislation in the NPPF, PPG and LLFA SuDS guidance.

9.2 In commenting upon the Land at Foxhole Farm, Appendix 1 of the SFRA advises as follows:

## Current Risk summary

Fluvial		
% of the site within		
FZ1	FZ2	FZ3
100	-	-

Surface Water	
% of the site within	
1 in 30	0.6
1 in 100	1.0
1 in 1000	2.7

Groundwater	
% of the site within	
<25	93.6
25-50	-
50-75	-
>75	-
Not at risk: 6.4	

Reservoir	
% of the site within	
Wet day	-
Dry day	-

Flood Defences
The site is not in an area benefitting from flood defences.

Flood Warning Area
The site is not located within a flood alert or flood warning area.

### 'Sources of flood risk:

#### Topography

The site is reasonably flat, gently sloping from north-west to south-east. Site elevation varies from 40mAOD in the north, 37mAOD in the east, 23mAOD in the south and 40mAOD in the west.

#### Location of site within catchment

The site is located in the northern upper course of the Bolney Sewer catchment.

#### Existing drainage features

Watercourse (non-main) located approximately 220m to the west of the site.

#### Flood history

No historic flood outlines are recorded at the site on the EA Recorded Flood Outlines dataset.

MSDC has no record of flooding around this site.

Sewer flooding incidents have been reported in postcode areas in part of and around the site.

#### Surface Water

According to the risk of flooding from surface water data, a small area of the site (0.6%) is at high risk of surface water flooding.

During the 3.3% current day AEP flood, areas along the north-eastern boundary of the site and the southern boundary are identified for surface water flooding.

Those areas expand slightly during the 1% and 0.1% AEP flood with some fragmented surface water flow routes mapped in the central southern parcel of the site. Depth reaches up to 0.9m and hazard rates are up to 'Moderate' (danger for some) with some 'significant' (danger for most) along the northeastern boundary of the site.

#### Fluvial

The entire site is located in Flood Zone 1, so has a less than 0.1% annual probability or river flooding.

#### Groundwater

The majority of the site is located within an area classified as have <25% susceptibility to groundwater flooding.

#### Superficial geology

None.

#### Bedrock geology

Upper Tunbridge Wells Sand – Sandstone And Siltstone, Interbedded In Southern Part Of The Site, Weald Clay Formation -Mudstone In Northern Part Of The Site.

#### Reservoir

The site is not at risk of flooding from high-risk reservoirs.'

### 'Flood risk management infrastructure

The site is not protected by any formal flood defences.

No residual risks from breach or overtopping of flood defences or reservoir failures have been identified at this site.'

## ***'Emergency Planning***

### ***Flood warning***

*The site is not located within a flood alert or flood warning area.*

### ***Access and egress***

*Flood Hazard is 'Low' directly adjacent to the site for the 'Medium' Risk scenario based on the EA's Risk of Flooding from Surface Water Maps. However, areas of 'Significant' and 'Extreme' Hazard are identified to the west and east of the site along Cowfold Road. Safe access/egress to the wider area would need to be considered in more detail as part of a detailed Flood Emergency Plan for the site.'*

## **Climate Change**

<b>Portion of site at future fluvial flood risk</b>		
<b>Future Flood Zone 2</b>	<b>Future Flood Zone 3</b>	<b>Future Flood Zone 3b</b>
-	-	-

<b>Portion of site at future pluvial flood risk</b>			
<b>Management catchment</b>	<b>CC allowance</b>	<b>Present day 1% AEP extent</b>	<b>CC coverage</b>
Adur and Ouse	45%	0.7%	2.7%

## ***'Planning implications***

*A Flood Risk Assessment and Foul Sewerage and Surface Water Assessment will be required to be submitted as the site covers an area greater than 1ha.*

*Exception Test is not required in accordance with Table 2 of the Planning Practice Guidance Flood Risk and Coastal Change.*

*As the site is at risk of flooding from surface water, it will be necessary to assess the development under design flood conditions and provide appropriate mitigation in accordance with the guidance set out in the SFRA and the advice of the EA. Development should be avoided in flow paths. A surface water drainage strategy should be provided which utilises Sustainable Drainage Systems to reduce the rate of discharge to greenfield runoff rates in accordance with the guidance set out in the SFRA and advice of the LLFA (WSCC). The drainage strategy should address any isolated patches of surface water flooding on site. No development should be located in Present day or Future Flood Zone 3b unless can be demonstrated otherwise through modelling.'*

- 9.3 It is clear from the above that the Level 2 SFRA acknowledged the fact surface water flooding did occur on site, primarily along the northeastern boundary and the southern boundary of the site, with fragmented surface water flows mapped in the central southern parcel of the site; and that the hazard rates of 'Moderate' (danger for some) with some 'significant' (danger for most) along the northeastern boundary of the site identified. Notwithstanding the above, the site was deemed suitable for development and continued to be identified as a proposed allocation.
- 9.4 Unfortunately the Level 2 SFRA did not assess the completing sites in Bolney as they were not proposed allocations. Furthermore, the Strategic Housing and Economic Land Availability Assessment (SHELAA) (2024), and the site selection paper (2024) only commented upon whether sites were in fluvial flood risk zones 1, 2 and 3, so their assessment of the other sites in Bolney in flood risk terms are limited.
- 9.5 In the context of the above we note that the new Environment Agency's RoFSW mapping has resulted in the following changes on the flood mapping on the subject site:

- a) the area of risk along the northeastern boundary is in a broadly similar area to before but with further encroachment into developable area of site.
- b) the area of risk in the central southern parcel is in a broadly similar area to before but with increased chance/level of risk.
- c) the area of risk along the southern boundary is in a broadly similar area to before but with increased chance/level of risk.
- d) a new area of low risk has been identified in the southeast part of southern development area.

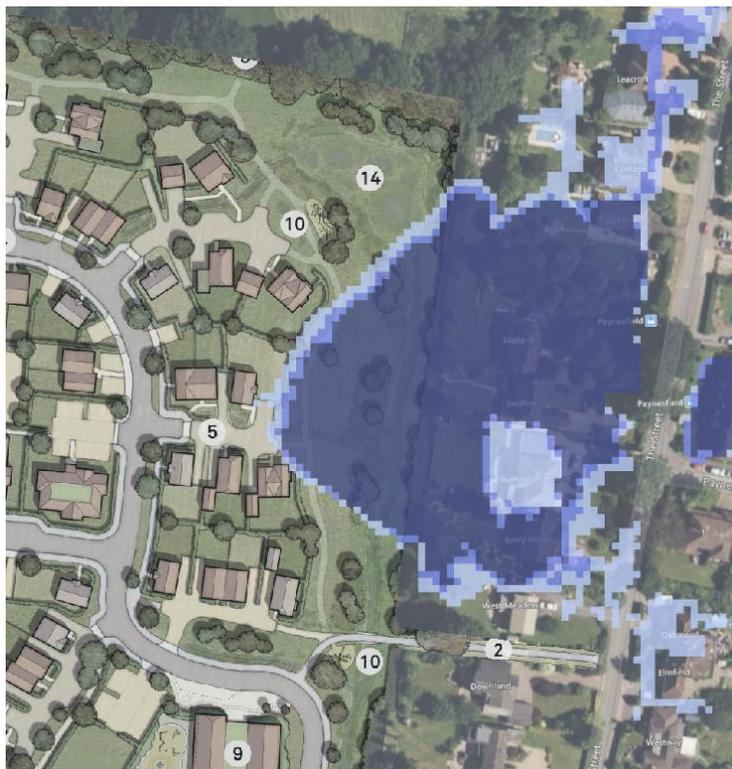
9.4 These changes would not, we believe, change the Councils' conclusions in the Level 2 SFRA.

## 10 The Potential for Mitigation at Foxhole Farm

10.1 The proposed development at Foxhole Farm has been specifically designed to ensure that residential development is located outside of 'High, Medium and Low' surface water risk areas and that these areas are instead used for water-compatible uses.

10.2 Within the context of the above, in noting the changes to the flood mapping on the site bought about by the new RoFSW mapping we can confirm:

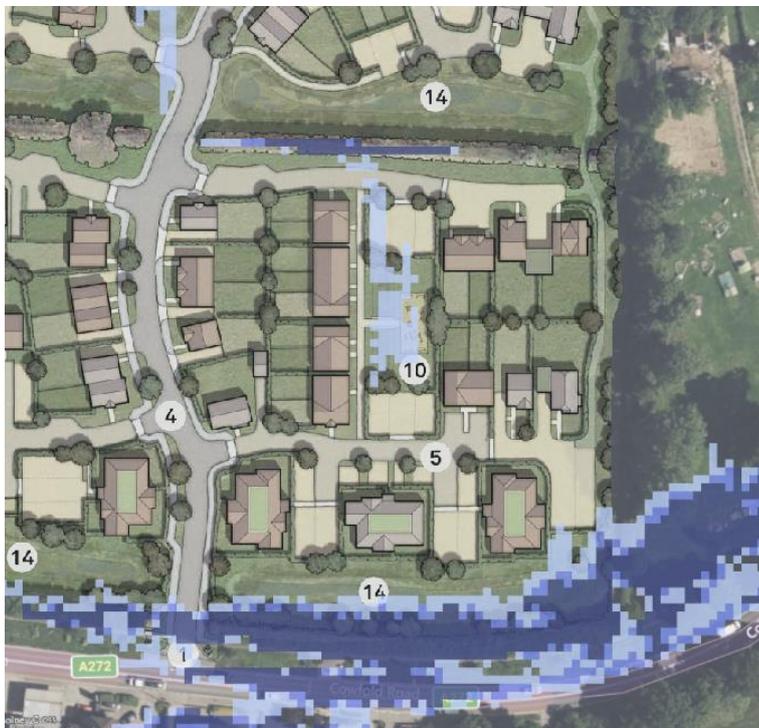
- a) No dwellings are present in the area of risk along the northeastern boundary. Only small proportions of access roads/parking bays are only shown to encroach into low chance areas.



- b) No dwellings are present in the area of risk in the central southern parcel. Only small proportions of private access roads/parking bays are only shown to encroach into low chance areas; and an additional swale feature has been proposed within the area of risk.



- c) No dwellings are present in the area of risk in the southeastern parcel. Only small proportions of private access roads/parking bays are only shown to encroach into low chance areas; and an additional swale feature has been proposed within the area of risk.



- d) Whilst the proposed access is shown to pass through an area deemed to be at a high risk from surface water flooding, as set out in the Transport Assessment that accompanies this application, there is no other suitable location for the proposed access. There are highway capacity, landscape, and heritage issues that prevent

access off Foxhole Lane or The Street, and highway constraints that prevent the access being moved further west along Cowfold Road. All this said, the area of risk is associated with an existing ditch located east to west adjacent to the southern boundary of the site. It is proposed at the location of the proposed access to culvert the existing ditch with an approximate 225mm culvert and to raise levels sufficiently to provide a cover of at least 0.75m to the proposed culvert at the location of the existing ditch. As part of the development works, the existing ditch will additionally be cleared and re-profiled to restore it to its original, lower bed level. The existing ditch is presently heavily silted and full of debris, ditch clearance and bed lowering will lead to an improvement in drainage and a reduction in flood risk at this location. Furthermore, the proposed works will provide significant betterment at the location of the proposed ditch which following the works will be able to provide significantly more storage volume than is presently available. The proposed culvert beneath the access road is designed to ensure a connection for surface water between the parts of the ditch to the east and west of the proposed access road location, and to ensure the existing capacity of the ditch is not reduced. An analysis of existing levels at the proposed access location indicates the natural fall of the land away from the site and toward the south, highlighting that any surface water falling in the location would naturally be directed south and away from the site. An analysis of proposed levels at the location of the proposed access indicates that water levels at the proposed location of the give-way would only need to reach negligible depths before they would be naturally directed away from the site and toward the south. On this basis the proposed access is deemed to be safe for emergency access/egress. Furthermore, whilst site-specific modelling at this location is not considered necessary and the access as proposed is considered safe for emergency access and egress, a Flood Hazard assessment will be undertaken as part of the submitted Flood Risk Assessment. It is noted that as a result of the proposed surface water drainage strategy and the proposed works described above, there will be a significant reduction in surface water reaching Cowfold Road from the site. The proposed development/works will not therefore have an adverse impact on the houses located on the south side of Cowfold Road and where surface water flooding on Cowfold Road is a direct result of runoff from the site/the existing ditch at the southern boundary, this should see a significant reduction.

- 10.3 The design approach adopted to the development of the Land at Foxhole Farm, together with the surface water drainage strategy, as set out in the Flood Risk Assessment and Drainage Strategy Reports, look to ensure that flood risk at the site can be managed in a safe and sustainable manner.

## **11 Other Material Considerations**

- 11.1 Whilst SHLAA sites 541 and 749 score preferable in terms of the sequential test, we note that:

### Land Adjacent to Packway House, North of Bolney - SHLEAA Site 541

- 11.2 This site is located within the AONB and the site assessment report supporting the local plan (SSP3 appendix 3) scores the site very negatively in terms of landscape impacts advising:

*'High impact on AONB due to loss of woodland, scale of site and poor relationship with main village.*

*High site which slopes to the south.*

*No watercourses mapped.*

*Site to the north of the main village in an area of scattered development along London Road.*

*Poor relationship to main village and of a significant scale in comparison to existing*

*settlement. London Road is a historic routeway.*

*The PROWs to the north and west of the site are also historic and the one to the west forms part of the High Weald Landscape Trail.*

*Significantly wooded site, particularly in southern part with wood pasture in the north. Post-medieval field system.*

*Very limited views into the site from London Road and PROWs due to trees. Priority habitat (deciduous woodland), is present on part of the site.*

*Impact on this habitat needs to be considered as the NPPF requires the conservation, restoration and enhancement of priority habitat. To achieve this aim, appropriate mitigation measures may need to be specified.*

*Natural England consider this allocation to be major development within the AONB.'*

- 11.3 This site was rejected at Stage 2(b) of the site selection process (see SSP3 appendix 4) because: *'Areas of Outstanding Natural Beauty (AONB) should be protected and enhanced. The site is located within the High Weald AONB. Development of the site would cause detrimental impact to the AONB and should be avoided. (NPPF Para's 176,177).*

*The site is therefore considered unsuitable for development and has been excluded from further assessment.'*

- 11.4 Clearly this site is not large enough to accommodate 200 dwellings and the proposed community facility and countryside open space proposed at Foxhole Farm. In addition, it is not positioned in a location that would be capable of addressing the surface water flooding issues that exist along The Street at present.

#### Land at Glebelands Field, Lodge Lane, Bolney - SHELAA Site 749

- 11.5 Not only does the SHELAA (SSP5 Appendix 1) question whether safe access is available; the Site Assessment Report supporting the Local Plan (SSP3 Appendix 3) scores the site negatively in terms of access advising:

*'Site approach would require improvements to accommodate further development, achievability is uncertain.*

*Access could be achieved from Foxhole Lane (south of the ancient woodland) or Lodge Lane, however these are particularly narrow and may not be suitable for a site of this size. In particular, the site is on a narrow blind bend in Lodge Lane.'*

- 11.6 In addition to the above it also scores negatively in terms of landscape impacts and impacts on listed buildings and conservation areas; and is not large enough to accommodate 200 dwellings and the proposed community facility and countryside open space proposed at Foxhole Farm; or is it positioned in a location that would be capable of addressing the surface water flooding issues that exist along The Street at present.

- 11.7 In the context of the above we note that the site was rejected at Stage 2(c) of the site selection process (see SSP3 Appendix 4) because:

*'It has not been demonstrated that safe access to the site can be achieved due to the location of the access. The site is located in an area with low capacity for change.*

*Although adjacent to the built-up area, the site lies in a rural setting and feels detached from the rest of the village. Access to a main service centre is only likely by private car. This site is therefore considered unsuitable for development and has been excluded from further assessment.'*

#### Hangerwood Farm, Foxhole Lane, Bolney - SHELAA Site 930

- 11.8 This site was rejected at Stage 2(a) of the site selection process (see SSP3 Appendix 4) because: *The site is disconnected from the defined built -up area and settlement boundary. Development of the site does not meet the requirements of 'achieving*

*sustainable development'. (NPPF, Chapter 2). The site is therefore considered unsuitable and has been excluded from further assessment.'*

#### Other SHELAA sites in Bolney

- 11.9 The land East of Foxhole Lane was one of 4 sites taken forward for testing through the site selection process. The others being:  
Land East of Paynesfield, Bolney – SHLAA site 526 – 3.1ha - capacity for 30 dwellings<sup>1</sup>;  
Land West of London Road (north), Bolney – SHLAA site 543 – 2.7ha - capacity for 81 dwellings; and  
Land West of Bolney Place, Cowfold Road – SHLAA site 1133 – 1.2ha - capacity for 10 dwellings<sup>2</sup>.
- 11.10 Whilst none of these sites are at risk of Fluvial Flooding, parts of site 1133 are at risk from surface water (low, medium, and high chance), as is the western side of site 526 and the eastern side of site 543. In addition, cumulatively they would not accommodate 200 dwellings, and the proposed community facility and countryside open space proposed at Foxhole Farm. And nor are they positioned in a location that would be capable of addressing the surface water flooding issues that exist along The Street at present.

## **12 Summary and Overall Conclusions**

- 12.1 Planning Practice Technical Guidance on Flood Risk and Coastal Change states that the Sequential Test: *"...approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, as far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding."* (Paragraph: 023 Reference ID: 7-023-20220825).
- 12.2 As also stated in the Planning Policy Technical Guidance and reiterated in recent appeal decisions, it is *"Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe throughout its lifetime and not lead to increased flood risk elsewhere."* (Paragraph: 029 Reference ID: 7-029-20220825).
- 12.3 This assessment has been based on information contained in the Mid Sussex SHELAA. This document includes a list a total of 18 sites in the parish of Bolney of which 3 were of comparable size to the Land at Foxhole Farm. The SHELAA reviews these and suggests that 13 of these are "Not Deliverable or Developable", including the 3 comparable sites.
- 12.4 Of the remaining 5, two relate to the application site. None of the remaining three are of sufficient size to provide for the scale of development proposed on the application site.
- 12.5 The Land at Foxhole Farm is identified as the 3<sup>rd</sup> preferable site in the parish due to the potential surface water flood risk flow paths flowing across the site/ pooling within it, and the 1<sup>st</sup> sequentially preferable site overall when considering the quantum of development, suitability, availability, and achievability.
- 12.6 The Land at Foxhole Farm is not at fluvial flood risk, but at some surface water flood risk. This risk can be managed through the design process, as indicated above and through the SuDS strategy as referenced above and demonstrated in detail within the

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<sup>1</sup> We assume this is because of its proximity to the grade 1 Mary Magdalene church, albeit it is not clear from the SHELAA

<sup>2</sup> We assume this is because of its proximity to the conservation area and other on designated heritage assets/ existing on-site vegetation, albeit it is not clear from the SHELAA.

accompanying Drainage Strategy and Flood Risk Assessment reports. The proposed development accords with National and Local Planning Policy with regard to the management of surface water both existing or proposed and has the potential to provide betterment by virtue of the works proposed within the northeastern corner of the site.

# Appendix A

**Mead Realisations and Redrow Homes Appeal and High Court Decisions**



Neutral Citation Number: [2024] EWHC 279 (Admin)

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12/02/2024

Before :

**THE HON. MR. JUSTICE HOLGATE**

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Case No: AC-2023-LON-002327

**BETWEEN:**

**MEAD REALISATIONS LIMITED**

**Claimant**

- and -

- (1) THE SECRETARY OF STATE FOR  
LEVELLING UP, HOUSING AND  
COMMUNITIES**  
**(2) NORTH SOMERSET COUNCIL**

**Defendants**

AC-2023-LON-002481

**BETWEEN:**

**REDROW HOMES LIMITED**

**Claimant**

- and -

- (1) THE SECRETARY OF STATE FOR  
LEVELLING UP, HOUSING AND  
COMMUNITIES**  
**(2) HERTSMERE BOROUGH COUNCIL**

**Defendants**

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**Charles Banner KC and Isabella Buono** (instructed by **Clarke Willmott Solicitors**) for the **Claimant** in AC-2023-LON-002327

**Zack Simons and Isabella Buono** (instructed by **Osborne Clarke LLP**) for the **Claimant** in AC-2023-LON-002481

**Hugh Flanagan and Piers Riley-Smith** (instructed by the **Government Legal Department**) for the **First Defendant** in both claims

**Emmaline Lambert** (instructed by **Hertsmere Borough Council**) for the **Second Defendant** in AC-2023-LON-002481

**North Somerset Council** did not appear and were not represented.

Hearing dates: 17 and 18 January 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 12 February by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## Mr. Justice Holgate:

### Introduction

1. These two claims raise issues about the interpretation and application of the sequential test in national policy on flood risk.
2. In AC-2023-LON-002327 Mead Realisations Limited (“Mead”) brings a challenge under s.288 of the Town and Country Planning Act 1990 (“TCPA 1990”) to the decision of the Inspector on behalf of the first defendant, the Secretary of State for Levelling Up, Housing and Communities, dated 20 June 2023 dismissing its appeal against the refusal by the second defendant, North Somerset Council (“NSC”), of an application for planning permission for residential development of up to 75 dwellings at Lynchmead Farm, Ebdon Road, Wick Street, Lawrence, Weston-Super-Mare (“the Lynchmead decision”).
3. In AC-2023-LON-002481 Redrow Homes Limited (“Redrow”) brings a challenge under s.288 to the decision of the Inspector on behalf of the same defendant dated 19 July 2023 dismissing its appeal against a deemed refusal by the second defendant, Hertsmere Borough Council (“HBC”), of an application for planning permission for residential developments of up to 310 units and land reserved for a primary school, community facilities and a mobility hub on land at Little Bushey Lane, Bushey (“the Bushey decision”).

### Relevant Policies

4. The National Planning Policy Framework (“NPPF”) was first published by the Secretary of State on 27 March 2012. These claims relate to the NPPF published on 20 July 2021, the version in force at the dates of the respective public inquiries and decision letters.
5. Chapter 2 of the NPPF deals with “achieving sustainable development”. Paragraph 11c-d sets out the presumption in favour of sustainable development (as analysed in *Monkhill Limited v Secretary of State for Housing, Communities and Local Government* [2020] PTSR 416; [2021] PTSR 1432 and *Gladman Developments Limited v Secretary of State for Communities, Housing and Local Government* [2021] PTSR 1450). In the present cases the local planning authorities were unable to demonstrate a 5-year supply of deliverable housing sites within their respective areas and so the presumption in favour of sustainable development, otherwise known as the “tilted balance”, was engaged, unless disapplied by limb (i) or limb (ii) of paragraph 11d.
6. Under limb (i) the presumption is disapplied where *inter alia* the application of the NPPF policies “that protect areas or assets of particular importance provides a clear reason for refusing the development proposed”. Those policies include the policies relating to “areas at risk of flooding or coastal change” (see footnote 7). Where flood risk policy does not provide a clear reason for refusing permission, the tilted balance applies unless any adverse impacts of granting permission would “significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole” (limb (ii)).

7. Chapter 14 of the NPPF deals with the challenges posed by climate change, flooding and coastal change. Paragraphs 159 to 169 deal with flooding. The overall objectives are set out in para. 159:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”

8. Paragraphs 160 to 161 address the preparation of strategic policies and development plans. Paragraph 161 provides:

“All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

- a) Applying the sequential test and then, if necessary, the exception test as set out below;
- b) ...”

9. The submissions in these cases have focused on para. 162, which sets out the sequential test:

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

The sequential test applies not only to plan-making but also to development control decisions. The words “from any form of flooding” refer not only to flooding from rivers or the sea, but also surface water flooding.

10. If the sequential test is passed, that is there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, then it may be necessary to apply the “exception test” in accordance with paras. 163 to 165:

“163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

164. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

165. Both elements of the exception test should be satisfied for development to be allocated or permitted.”

11. Annex 3 (referred to in para.163) classifies different types of land use, namely “essential infrastructure” (e.g. infrastructure which has to be located in a flood risk area), highly vulnerable (e.g. caravans and installations requiring hazardous substances consent), more vulnerable (e.g. hospitals, care homes, residential development), less vulnerable (shops, services, offices and industry) and water-compatible development.
12. Paragraph 164(a) allows the need for the development plus any sustainability benefits to be balanced against flood risk.
13. Paragraph 167 requires that a development proposal should not increase flood risk elsewhere. Applications should be supported by a site-specific flood risk assessment. The Environment Agency is responsible for classifying land by reference to the annual probability of flooding from a river or the sea. For zone 1 the probability is less than 0.1%, for zone 2 below 1% from rivers or below 0.5% from the sea, and for zone 3 1% or above from rivers or 0.5% or above from the sea. A flood risk assessment is required for all development in zones 2 or 3 and certain development in zone 1.
14. On 6 March 2014 the Secretary of State introduced a website containing Planning Practice Guidance (“PPG”) which may be amended from time to time. The section on flood risk was amended on 25 August 2022.
15. Development plans are prepared to determine the need for different types of development and their distribution across the area of the plan. It is plain from para. 026 of the PPG that the need for development is a relevant consideration in plan-making. That need should be reviewed where the sequential test is not satisfied.
16. The PPG describes how the sequential test should be applied in determining planning applications. The test is applied to an area “defined by local circumstances relating to the catchment area for the type of development proposed”, for example the catchment area of a school. The need for a certain type of development (e.g. to sustain an existing community) may limit the area of search for alternative sites to an area in flood zones 2 and 3 and so sites further afield may not be reasonable alternatives (PPG para. 027). Nationally or regionally important infrastructure may involve an area of search beyond the area of the local authority.

17. The submissions in this case have largely focused on para. 028 of the PPG:

**“What is a “reasonably available” site?**

‘Reasonably available sites’ are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available’.

The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.”

18. Ground 1 in Mead’s claim is concerned with the Inspector’s treatment of the relationship between para. 162 of the NPPF, para. 028 of the PPG and policy “CS3: Environmental impacts and flood risk assessment” of the North Somerset Core Strategy 2017.
19. What the Inspector referred to as the “first part” of CS3 reads as follows:

“...

Development in zones 2 and 3 of the Environment Agency Flood Map will only be permitted where it is demonstrated that it complies with the sequential test set out in the National Planning Policy Framework and associated technical guidance and, where applicable, the Exception Test, unless it is:

- development of a category for which National Planning Policy Framework and associated technical guidance makes specific alternative provision; or
- development of the same or a similar character and scale as that for which the site is allocated, subject to demonstrating that it will be safe from flooding, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.”

20. So the first part of Policy CS3 requires development in zones 2 or 3 to comply with the sequential test in the NPPF and, where appropriate, the exception test. In DL 10 the Inspector noted that the “technical guidance” had been withdrawn and so he did not place any weight upon that document.<sup>1</sup>

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<sup>1</sup> This was identified in 3.46 of the Core Strategy as the “Technical Guidance to the National Planning Policy Framework” issued in March 2012 alongside the 2012 version of the NPPF. Para.1 of the Guidance states that it retained key elements of earlier national planning policy documents “as an interim measure pending a wider

21. The remaining part of CS3 states:

“For the purposes of the Sequential Test:

1. The area of search for alternative sites will be North Somerset-wide unless:

- It can be demonstrated with evidence that there is a specific need within a specific area;

or

- The site is located within the settlement boundaries of Weston (including the new development areas), Clevedon, Nailsea and Portishead, where the area of search will be limited to the town within which the site is located.

Other Local Development Documents may define more specific requirements.

2. A site is considered to be ‘reasonably available’ if all of the following criteria are met:

- The site is within the agreed area of search.
- The site can accommodate the requirements of the proposed development.
- The site is either:
  - a) owned by the applicant;
  - b) for sale at a fair market value; or
  - c) is publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty.

Sites are excluded where they have a valid planning permission for development of a similar character and scale and which is likely to be implemented.”

22. The Inspector referred to these paragraphs as the “first and second sections”. They are said to be “for the purposes of the sequential test.” The first section states that generally the area of search will be the whole of North Somerset’s area. That was common ground in the Mead case (see DL 12). However, the policy also states that the area of search may be based upon a different area in which there is shown to be a specific need. The second section of CS3 states that a site is considered to be “reasonably available” if all

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review of guidance to support planning policy.” The Government’s website states that this Guidance was withdrawn on 7 March 2014, having been replaced by the PPG issued on the previous day.

of the criteria set out are met. The argument in ground 1 of the Mead case focused on this second section of CS3.

23. The claimant's argument in the Redrow case does not rely upon any part of the statutory development plan for Hertsmere. It appears that policy SADM14 of the Site Allocations and Development Management Policies Plan (adopted in November 2016) essentially replicates policy in the NPPF. In the subsequent draft Hertsmere Local Plan, policy H10 allocated an area which included the Bushey appeal site, for up to 350 homes, community facilities, local retail, flexible workspace, a primary school and public open space. However, on 27 April 2022 HBC decided to withdraw that draft plan.

### **A summary of the decision letters**

#### *The Lynchmead decision*

24. Mead's application was for an outline planning permission with all matters reserved except access (DL 2).
25. The Inspector defined the main issue in the appeal as the effect on the development of flood risk, in particular the sequential test (DL 6). The benefits of the scheme and housing land supply were considered as part of the overall planning balance (DL 7).
26. The site lies within flood zone 3 with a "high probability" of flooding from the sea (DL 8).
27. The Inspector found at DL 12 to DL 22 that the proposal met the sequential test in the second part of policy CS3 of the Core Strategy because (a) the area of search had been borough-wide and (b) there were no alternative sites meeting the criteria for "reasonable availability" set out in the "second section" of CS3. The Inspector decided that two other sites owned by Mead were not reasonable alternatives because they could only accommodate 70 or 74 dwellings rather than the 75 dwellings proposed for the appeal site (DL 16), indicating his strict application of the criterion in CS3 that a site should accommodate "the requirements of the proposed development."
28. The Inspector dealt with national flood risk policy at DL 23 to 40. Here he concluded that the sequential test in national policy was not met because there were reasonably available sites for residential development appropriate for the proposal with a lower flood risk than the appeal site. In reaching this conclusion he applied the NPPF read together with the PPG.
29. The Inspector addressed the overall planning balance at DL 50 to 60. He treated the provision of 75 dwellings as the most important benefit, given that the Council could only demonstrate a supply of housing land of 3.5 years. The provision of 30% of the housing as affordable dwellings was a significant benefit. There were also some economic, bio-diversity and community benefits.
30. The Inspector said that set against the benefits of the proposal there was the harm that would arise if the development were to be flooded. He dealt with flood risk at DL 55 to 56:

“55. Set against those benefits is the harm that would arise if the development were to flood. Evidence provided by the Council indicates that tidal flood waters could be deep. Such flooding would enter dwellings and surcharge drains. Standing water would be likely to be present for some time before water levels returned to normal. Such flooding would cause extensive damage both to buildings and their contents, requiring significant repair or replacement. There may also be adverse health and environmental impacts. The risk of this harm occurring weighs significantly against the proposal.

56. Irrespective of the degree of risk of flooding occurring or measures that could be taken to make the development resilient to flooding during its lifetime, the Framework is clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. I have found that there are such sequentially preferable sites available. This weighs heavily against the proposal.”

31. At DL 58 the Inspector found that national policy on flood risk provided a clear reason for refusal and therefore disappplied the presumption in favour of sustainable development (para. 11d(i) of the NPPF).
32. Accordingly, the Inspector struck a “non-tilted” balance. He decided that the benefits of the proposal were outweighed by the failure to meet the sequential test and the significant harm that would occur if the development were to be flooded (DL 59). In those circumstances, the Inspector said that there was no need for the exception test to be applied and he dismissed Mead’s appeal.

#### *The Bushey decision*

33. Redrow’s application was for an outline planning permission for up to 310 residential units and land for a primary school, community facilities and mobility hub, with all matters reserved other than access. The site comprised 18ha of fields used for grazing by horses (DL 13).
34. The site lies in the Green Belt and therefore in policy terms the proposal was for “inappropriate development”. The main issues were the effect of the proposed development on the openness and purposes of the Green Belt and on the character and appearance of the area, whether the location was suitable with regard to policies on flood risk and whether any harm to the Green Belt and other harm was clearly outweighed by very special circumstances. The only area of disagreement on flood risk related to the application of the sequential test (DL 9 and DL 12).
35. It was common ground between Redrow and HBC that the site does not make an important strategic contribution to the Green Belt (DL 33).
36. The Inspector assessed the effects of the proposal on the openness of the Green Belt at DL 38 to DL 44. The proposal would significantly reduce spatial openness (DL 39 to DL 40). There would be a significant and long-term localised effect on visual openness

(DL 41). There would be a significant reduction in visual openness for viewpoints outside and within the site (DL 42 to DL 43). Overall there would be significant harm to both the visual and spatial openness of the Green Belt (DL 44). There would be respectively modest, very limited and no harm to the three purposes of this part of the Green Belt (DL 45 to DL 52).

37. The proposed development would have a significant, harmful effect on the character and appearance of the area (DL 53 to DL 66).
38. A “main river” and some other watercourses run through the site. There are two reservoirs within respectively 350m and 1.5km of the site. Although much of the site lies within flood zone 1, the course of the main river falls within zones 2 and 3 and 10% of the overall site is affected by reservoir flood risk (DL 67 to DL 68). Parts of the site are subject to varying degrees of surface water risk (DL 69). Although Redrow had sought to locate built development within zone 1 for fluvial flood risk, the Inspector said that it was necessary to consider all the development proposed and all sources of flood risk affecting the site. Consequently, the sequential test had to be applied to the whole site (DL 75).
39. The Inspector found that Redrow had taken a reasonable and pragmatic approach by defining the area of search as the whole borough (DL 78 to DL 84).
40. The Inspector found that, on the evidence, there were 13 sites which potentially would be reasonably available and it had not been shown that the proposed development could not be located elsewhere on land at a lower risk of flooding. Accordingly, the proposal did not satisfy the sequential test and conflicted with para. 162 of the NPPF. The inspector gave very substantial weight to this factor (DL 85 to DL 100).
41. At DL 103 to DL 124 the Inspector assessed all the matters upon which Redrow relied as very special circumstances for the purposes of Green Belt policy. HBC has a housing supply of only 1.23 to 2.25 years and the shortfall in meeting the requirement for a 5-year supply of housing land is between 2,104 and 2,875 dwellings. The Inspector described this supply as “woeful” and symptomatic of a chronic failure by HBC to deliver housing. The council is amongst the worst performing authorities on housing land supply in the country (DL 109). The Inspector gave “very substantial weight” to Redrow’s proposal to develop up to 310 residential units and the provision of 40% affordable housing (DL 110 to DL 113).
42. But the Inspector concluded that the benefits of the proposal did not amount to very special circumstances clearly outweighing the harm it would cause, including harm to policy on flood risk (DL 126 to DL 130).
43. The presumption in favour of sustainable development was disapplied by the clear reasons for refusal based on Green Belt and flood risk policies (para. 11d(i) of the NPPF) (DL 131 to DL 132).

### **The issues**

44. There are a number of points of principle which are common to both claims, as well as specific points in relation to the decision letters in each case. The parties helpfully

agreed a list of issues. I summarise that list so as to reflect the way in which the oral argument proceeded.

45. In relation to both claims:

- (i) The claimants submit that on a true interpretation of para. 162 of the NPPF the Inspector was required to consider whether there were alternative sites which could accommodate the development in fact proposed in its various particulars, including form, quantum and intended timescales for delivery, and not some other hypothetical development. The claimants submit that in each decision letter the Inspector failed to adhere to that interpretation;
- (ii) The claimants submit that the PPG is incapable of imposing a more stringent set of requirements than the NPPF. They say that in each case the Inspector wrongly treated para. 028 as requiring a different approach to that required by para. 162 of the NPPF.
- (iii) The claimants submit that, properly interpreted, para. 028 of the PPG provides that to be sequentially preferable to the proposal, alternative sites must be capable of accommodating identified needs for the type of development at issue. They say that in each decision letter the Inspector failed to adhere to that interpretation;
- (iv) The claimants submit that need for the proposed development is relevant to the application of the sequential test. They submit that the Inspector in each case either wrongly excluded or disregarded that need.

46. In summary, Mr. Charles Banner KC submitted on behalf of Mead that:

- (i) PPG must be subservient to policy in the NPPF. It cannot alter or override the NPPF;
- (ii) PPG cannot be treated as a mandatory requirement, either in relation to the application of tests or the identification of considerations which are or are not material;
- (iii) PPG may be an aid to the interpretation of the NPPF, but only where it corresponds to a NPPF policy or falls within the four corners of that policy;
- (iv) Considerable caution is required in interpreting PPG;
- (v) PPG is not a binding code.

47. In his reply Mr. Banner accepted that if either Inspector had treated the PPG as elucidating the NPPF in “a non-binding manner,” that would not in itself be legally objectionable. I did not understand Mr. Zack Simons (appearing for Redrow) to disagree. But they submit that both Inspectors had erred by treating para. 028 of the PPG as a binding code.

48. Mr. Simons adopted Mr. Banner’s overall analysis.

49. It should be noted that there has been no challenge to the lawfulness of para. 028 of the PPG.
50. Counsel treated the remarks of Dove J in *R (Menston Action Group) v City of Bradford Metropolitan District Council* [2016] PTSR 466 at [41] as laying down a general principle that PPG is subservient to the policy in the NPPF for which it provides practice guidance. It cannot override the NPPF.
51. They submitted that PPG is not policy but guidance, relying on the following passage from the judgment of Lieven J in *Solo Retail Limited v Torridge District Council* [2019] EWHC 489 at [33]:
- “In my view the NPPG has to be treated with considerable caution when the Court is asked to find that there has been a misinterpretation of planning policy set out therein, under para 18 of *Tesco v Dundee*. As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in *Tesco v Dundee* applied to the Development Policy there in issue.”
52. Mr. Banner and Mr. Simons also said that the PPG must not be elevated into a binding code which prescribes the steps required to be taken when determining a planning application. The PPG is merely practice guidance which is only intended to support the policies in the NPPF (*R (White Waltham Airfield Limited) v Royal Borough of Windsor and Maidenhead* [2021] EWHC 3408 (Admin) at [78]-[79] and *Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2842 (Admin) at [165] to [166], [174] and [177] to [180]).
53. By contrast, in *R (Kinsey) v London Borough of Lewisham* [2021] EWHC 1286 (Admin), a decision cited by both Mr. Banner and Mr. Hugh Flanagan (for the first defendant), Lang J took a different approach to part of the PPG dealing with harm to heritage assets. The judge quashed the decision to grant planning permission because of a failure to identify the degree of harm to heritage assets within the “less than substantial harm” category in accordance with the PPG. She decided that that part of the PPG should not be treated with the “considerable caution” indicated in *Solo Retail* at [53] and that if a decision-maker was going to depart from such national guidance, he should give reasons for doing so (see [66], [73]-[74] and [88]-[89]). In effect, the court treated that part of the PPG as policy.
54. The decisions cited in argument raise the question whether there is a sharp legal divide between the NPPF and the PPG which treats the former as policy and the latter as not?

### The legal status of national planning policy

55. It is necessary to go back to first principles. In *R (Alconbury Developments Limited) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295 at [69] and [74], Lord Hoffman explained that development control does not involve deciding between the rights or interests of particular persons. “It is the exercise of a power delegated by the people as whole to decide what the public interest requires.” That is a “policy decision.”
56. Lord Clyde added at [139] that “planning is a matter of the formation and application of policy”. Planning and the development of land concerns the community as a whole, not just the locality where the particular case arises, but wider social and economic considerations which are properly subject to central supervision. By means of a central authority, the Secretary of State, some degree of coherence and consistency in the development of land can be achieved. National policy is part of the framework for consistent, predictable and prompt decision-making [140]. Consistent with the democratic principle, responsibility for that national policy lies with the Secretary of State accountable to Parliament [141]. The formulation of national policy is an essential element of securing coherent and consistent decision-making, but is subject to the principle that the exercise of discretion must not be fettered [143].
57. In *R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] 1 WLR 3923 the Court of Appeal reiterated the importance of the Secretary of State’s democratic accountability for national policy. That applies not only to the NPPF but also to written ministerial statements (“WMS”) and PPG [25].
58. In *Hopkins Homes Limited v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865 Lord Carnwath JSC clarified the legal source of the Secretary of State’s power to make national policy at [19] to [21]. It is not a prerogative power. Instead, it derives expressly or by implication from the planning legislation which gives him overall responsibility for the oversight of the planning system. Inspectors determining statutory appeals on behalf of the Secretary of State are required to exercise their own judgment within the framework of national policy set by government.
59. However, Lord Carnwath added at [24] to [26] that the scope of the NPPF should not be overstated. In the determination of planning applications it is no more than “guidance” and as such, one of the “other material considerations” to which the decision-maker must have regard (s.70(2) of the TCPA 1990). It does not displace the primacy given by s.38(6) of the Planning and Compulsory Purchase Act 2004 to the statutory development plan. The weight to be given to conflict or compliance with the NPPF is a matter of judgment for the decision-maker, a decision with which the court may only intervene on public law grounds (*Gladman Developments Limited v Secretary of State for Communities and Local Government* [2021] PTSR 1450 at [33(3)]).
60. In my judgment, that analysis applies also to WMS and the PPG. Mr. Banner agreed.
61. In dealing with national policy, it is helpful to recall this general statement by the Supreme Court in *R (A) v Secretary of State for the Home Department* [2021] 1 WLR 3931 about the role played by policies at [39]:

“They constitute guidance issued as a matter of discretion by a public authority to assist in the performance of public duties. They are issued to promote practical objectives thought appropriate by the public authority. They come in many forms and may be more or less detailed and directive depending on what a public authority is seeking to achieve by issuing one. There is often no obligation in public law for an authority to promulgate any policy ...”

62. I do not think that it is accurate or helpful to say that PPG is only guidance, as if to suggest that it has a different *legal*, as opposed to *policy*, status from the NPPF, or that fundamental legal principles on policy do not apply to both. In *Hopkins* Lord Carnwath referred to the NPPF as “guidance”. Neither the NPPF nor the PPG has the force of statute. Neither has a binding legal effect. The ability of the Secretary of State to adopt either derives from the same legal source of power as the central planning authority. The NPPF does not have some special legal status, the effect of which is to restrict the ability of the Secretary of State to change such national policy (or the role of the courts in interpreting any such change) to an amendment made to the NPPF itself.
63. PPG was introduced in 2014 following the “External Review of Government Planning Practice Guidance” carried out by Lord Taylor of Goss Moor in December 2012, following the introduction of the NPPF. The Review recommended the replacement of the then hotchpotch of circulars, statements, guides and letters from the Department’s Chief Planner by “formal Government Planning Practice Guidance” to support the NPPF. “Formal planning guidance should be recognised as such through being clearly identified, referenced, dated and accessible in one place as a coherent and understandable suite” (p.7). A few examples help to illustrate how the NPPF and PPG relate to each other in practice.
64. For many years the three legal tests for the validity of conditions attached to a planning permission (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578) were elaborated by six policy tests contained in DoE circular 1/85 and then 11/95. As Lindblom LJ stated at [16] in *R (Menston Action Group) v City of Bradford Metropolitan District Council* [2016] EWCA Civ 796 (a separate claim for judicial review from that considered by Dove J), the policy in the now revoked Circular 11/95 is contained in both the NPPF and the PPG. Paragraph 57 of the current NPPF simply lays down the six policy tests. The PPG explains the application of those tests. I do not see why the PPG should not be treated as a statement of planning policy.
65. Where a proposed development would have an impact upon a heritage asset, paras. 201 to 202 of the current NPPF require a decision-maker to decide whether that development would cause “substantial” or “less than substantial” harm to the significance of that asset. The answer to that question determines which policy test is to be applied. “Substantial” is not defined in the NPPF. Paragraph 018 of the section of the PPG dealing with the historic environment states:

“In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic

interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting."

This passage sets out a general test or approach for applying the NPPF. The PPG is planning policy which provides more specific guidance.

66. In *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government* [2021] 1 WLR 5761 the Court of Appeal considered "public benefits" which in paras. 201 to 202 of the NPPF are to be weighed against harm to a heritage asset. Although the NPPF does not define the term, the PPG explains what may qualify as a public benefit (para. 020) (see [75] to [77]). Again the PPG is operating here as a policy.
67. The policies in the NPPF vary in style. Some, like Green Belt policy, are relatively detailed and prescriptive (as policies). Other parts of the NPPF set a framework and the PPG provides more specific or detailed policy guidance on, for example, conditions in planning permissions, development affecting heritage assets and, as we shall see, the sequential test for flood risk cases.
68. In *Bushell v Secretary of State for the Environment* [1981] AC 75 Lord Diplock stated at p.98 that "policy" is a protean word covering a wide spectrum. At a national level it may relate to matters of strategy or high policy, typically the subject of debate in Parliament. But it can also cover technical matters, such as a decision to adopt a uniform method for assessing the need for different road schemes in different parts of the country competing for finite public resources. A statement that a particular technical method or guidance should normally be followed in decision-making can properly be described as policy. Indeed, such statements may be found in the policies of development plans.
69. I do not accept that guidance for decision-making should or should not be treated as policy according to whether it is the subject of prior consultation. Generally, the NPPF and amendments to that document have been consulted upon. But that has not always been the case. In *R (Richborough Estates Limited) v Secretary of State* [2018] PTSR 1168 Dove J referred to evidence of several substantial changes being made to the NPPF without consultation. He rejected the contention that there is a legitimate expectation that the making of changes to the NPPF must be subject to consultation [67] to [75]. On the other hand, there are examples of public consultation being carried out before national policy (including NPPF) has been changed by WMS and PPG. *West Berkshire* dealt with a major change to the policy requirement for housing development to provide affordable housing by the introduction of an exemption for small sites through a WMS and PPG. In March 2018 the Secretary of State consulted on draft amendments to the NPPF alongside more detailed guidance set out in draft changes to the PPG.
70. As a matter of *policy*, PPG is intended to support the NPPF. Ordinarily, therefore, it is to be expected that the interpretation and application of PPG will be compatible with the NPPF. However, I see no legal justification for the suggestion that the Secretary of State cannot adopt PPG which amends, or is inconsistent with, the NPPF. Mr. Banner was unable to point to any legal principle by which the court could treat such a PPG as unlawful. *West Berkshire* is one example of the Secretary of State introducing a new

national policy through WMS and PPG which amended, and was inconsistent with, the pre-existing national policy as set out in the NPPF. In addition, Annex A to the Department's consultation in March 2018 on draft amendments to the 2012 NPPF identified amendments to that document which had already been made through WMSs (see also *R (Stephenson) v Secretary of State for Housing, Communities and Local Government* [2019] PTSR 2209 at [18]).

71. Similarly, I am unimpressed by the claimants' argument that PPG cannot be adopted which is "restrictive" of policy in the NPPF. Where a policy in the NPPF is expressed in very broad or open terms, more detailed guidance in the underlying PPG may be rather more focused as to the approach to be taken. To describe that PPG as restrictive, and therefore inappropriate, is likely to be one-sided and unhelpful. Additions to, or changes in, policy may produce winners and losers. Parties affected by policy will have different points of view. In *West Berkshire* the change of affordable housing policy was favourable to the developers of small housing sites. For them it was not restrictive. But many local planning authorities criticised the change as making it more difficult for them to meet their local requirements for affordable housing. For them the change was restrictive. This simply reflects the fact that planning policy has to address competing interests and views in the overall public interest.

### **Legal principles on the interpretation and application of planning policy**

72. The interpretation of a planning policy is an objective question of law for the court to determine, read in accordance with the language used and its proper context. But the application of policy, properly interpreted, is a matter for the decision-maker, subject only to review by the courts on *Wednesbury* principles. Many policies are framed in language the application of which requires the exercise of judgment, which may only be challenged if irrational or perverse (see *Tesco Stores Limited v Dundee City Council* [2012] PTSR 983 at [18] to [20]). But a genuine issue about the interpretation of a policy is logically a prior question to the application of that policy [21].
73. In *Hopkins* Lord Carnwath stated that the same principles apply both to national and development plan policy [23]. He emphasised a point made by Lord Reed in *Tesco* at [19], that some policies may be expressed in broader terms, so as not to require, or lend themselves to, the same level of legal analysis as a more specific policy. It is necessary for the courts to guard against over-legalisation of the planning process. Practitioners must not elide the important distinction between issues of interpretation appropriate for judicial analysis and issues of judgment in the application of policy [23] to [26].
74. *R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2020] PTSR 221 illustrates the distinction. Lord Carnwath, giving the judgment of the Supreme Court, referred to the warning given in *Hopkins* against the danger of "over-legalisation" of the planning process. He noted the contrast between the "relatively specific" policy considered in *Tesco* and policies expressed in much broader terms not susceptible to the same level of legal analysis [21]. He held that "openness" in national Green Belt policy is an example of the latter. The court interpreted the policy as far it was necessary and possible to go. Openness is the counterpart of urban sprawl and linked to the purposes of Green Belt policy. It is open-textured and a number of factors are capable of being relevant when it is applied to the particular facts of a specific case. Visual considerations *may*, not *must*, be taken into account. But whether they are taken into account and, if so, how that is done, are matters of planning judgment for the

decision-maker. Openness is not limited to visual matters. It may include how built up the Green Belt is at the time of the decision and how built up it would become if a proposed development were to go ahead [22] to [26].

75. The decision of the Court of Appeal in *Bramshill* provides a further example of the distinction drawn by the Supreme Court. The NPPF states that, in general, the development of “isolated homes in the countryside” is to be avoided. This is a concept of planning policy, not law. It is not defined in the NPPF and does not lend itself to rigorous judicial analysis. As a broadly framed policy, its application depends upon the facts of each case and requires the application of planning judgment in a wide variety of circumstances. The court’s function, both in interpreting the policy and in reviewing its application, is therefore limited [30]. The court decided that the policy refers to remoteness from a settlement but not remoteness from other dwellings [31] to [33]. That was the reach of the court’s interpretive role for that policy. In that instance we soon arrive at the decision-maker’s role to apply the policy using judgment.
76. In *R (Asda Stores Limited) v Leeds City Council* [2021] PTSR 1382 Sir Keith Lindblom SPT stated at [35]:

“National planning policy is not the work of those who draft statutes or contracts, and does not always attain perfection. The language of policy is usually less precise, and interpretation relies less on linguistic rigour. When called upon – as often it is nowadays – to interpret a policy of the NPPF, the court should not have to engage in a painstaking construction of the relevant text. It will seek to draw from the words used the true, practical meaning and effect of the policy in its context. Bearing in mind that the purpose of planning policy is to achieve “reasonably predictable decision-making, consistent with the aims of the policy-maker”, it will look for an interpretation that is “straightforward, without undue or elaborate exposition” (see *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 at para. 41). Often it will be entitled to say that the policy simply means what it says, and that it is the job of the decision-maker to apply it with realism and good sense in the circumstances as they arise – which is what local planning authorities are well used to doing when making the decisions entrusted to them (see *R (on the application of Corbett) v Cornwall Council* [2020] JPL 1277, paras. 65 and 66).”

77. I also bear in mind the following additional points made by Sir Keith Lindblom SPT in *R (Corbett) v Cornwall Council* [2023] JPL 126:

“(2) In seeking to establish the meaning of a development plan policy, the court must not allow itself to be drawn into the exercise of construing and parsing the policy exhaustively. Unduly complex or strict interpretations should be avoided. One must remember that development plan policy is not an end in itself but a means to the end of coherent and reasonably predictable decision-making in the public interest, and the product of the local planning authority's own work as author of

the plan. Policies are often not rigid, but flexible enough to allow for, and require, the exercise of planning judgment in the various circumstances to which the policy in question applies. The court should have in mind the underlying aims of the policy. Context, as ever, is important (see *Gladman Developments Ltd. v Canterbury City Council* [2019] EWCA Civ 699, at [22], and *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, at [16], [17] and [39]).

(3) The words of a policy should be understood as they are stated, rather than through gloss or substitution. The court must consider the language of the policy itself, and avoid the seduction of paraphrase. Often it will be entitled to say that the policy means what it says and needs little exposition. As Lord Justice Laws said in *Persimmon Homes (Thames Valley) Ltd. v Stevenage Borough Council* [2005] EWCA Civ 1365 at [24], albeit in the context of statutory interpretation, attempts to elicit the exact meaning of a term can ‘founder on what may be called the rock of substitution – that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation’.”

78. As the courts have often said, some policies simply mean what they say. The words used may be incapable of, or not susceptible to, further elaboration. But where a court is engaged in interpreting the words of a policy, it may have to decide whether a particular consideration is or is not relevant to the application of that policy (see e.g. *Bramshill* at [75] above). According to the language used and context, a policy may *require* a decision-maker to take a consideration into account, not as a matter of law, but as a matter of policy which, of course, is not binding.
79. In other cases a policy may be expressed so as to *allow* a decision-maker to take a consideration into account. So a court may say that a factor is capable of being taken into account by a planning authority. Whether the authority does so, and if so to what extent, will involve its use of judgment, particularly where the policy is set out in broad terms.
80. The interpretation of a policy is generally based upon the express language used, its context and purpose. But when the court is looking at those matters it may decide that a particular meaning is *necessarily* implicit in a policy (see e.g. the analysis by the Supreme Court in the *Tesco* case of the sequential approach in retail policy generally, set out in [94] below). But the court will be cautious about entertaining an argument of this kind. Its role is to interpret, not make, policy. An implicit meaning would at least have to be necessary, clear and consistent with the language used in the policy and appropriate, having regard to the range of circumstances in which the policy may fall to be applied.
81. Often, where a policy is silent on a subject, the court will not be able to arrive at an implicit meaning. In *Tewkesbury Borough Council v Secretary of State for Housing, Communities and Local Government* [2022] PTSR Dove J rejected the authority’s argument that national policy required an oversupply of housing land in previous years

in a district to be taken into account as part of a current assessment of that area's land supply for the next 5 years. At [43] he said:

“In the absence of any specific provision within the Framework there is no text falling for interpretation, and it is not the task of the court to seek to fill in gaps in the policy of the Framework. It is far from uncommon for there to be gaps in the coverage of relevant planning policies: they will seldom be able to be designed to cover every conceivable situation which may arise for consideration. Again, that is perhaps unsurprising given the breadth of the potential scenarios which may arise in the context of a planning application on any particular topic, especially where it is a high level policy with a broad scope like the Framework which is being considered. When it arises that there is no policy covering the situation under consideration then it calls for the exercise of planning judgment by the decision-maker to make the necessary assessment of the issue to determine the weight to be placed within the planning balance in respect of it. In the absence of policy within the Framework on the question of whether or not to take account of oversupply of housing prior to the five-year period being assessed in the calculation of the five-year housing land supply the question of whether or not to do so will be a matter of planning judgment for the decision-maker, bearing in mind the particular circumstances of the case being considered.”

82. Dove J considered whether PPG filled the “gap”, or silence, in the NPPF, but concluded that the PPG did not assist in that instance [44]. It followed that it was a matter of judgment for the decision-maker as to whether to take a previous oversupply of housing into account when dealing with the 5 year land supply issue and, if so, how ([44]-[47]).
83. In *Braintree District Council v Secretary of State for Communities and Local Government* [2018] 2 P & CR 9 Lindblom LJ said *obiter* at [36] that he doubted that it would be right to exclude guidance in PPG as a possible aid to understanding the policy to which it corresponds in the NPPF. But it was held that in that case the relevant policy in the NPPF was clear and there was no need to refer to other statements of policy, whether in the NPPF or elsewhere.
84. In *R (Bent) v Cambridgeshire County Council* [2018] PTSR 70 Mr. David Elvin QC sitting as a Deputy High Court judge stated that the general principles on the interpretation and application of planning policy apply also to PPG (see [36] to [37]). I agree. But I would add that parts of the PPG contain practical guidance or statements of good practice which depend upon the application of judgment by the decision-maker and may not be not susceptible to judicial interpretation.
85. In *Hopkins* Lord Carnwath said that the courts should respect the expertise of planning inspectors and start with the presumption that they will have understood the policy framework correctly. Their position is analogous to that of expert tribunals and so the courts should avoid undue intervention in policy judgments within their areas of specialist competence [26].

86. Similarly, Sir Geoffrey Vos C (as he then was) stated in *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 that the courts should give local authority planning committees advised by their officers the space to exercise their own planning judgment (see [62]-[64]).
87. I should mention that the passages cited by the parties from *Solo Retail, White Waltham, Bramley* and *Menston* do not help to resolve the grounds of challenge in this case. It is necessary to read those passages in the context of what the issues were in those cases and what was really decided by the court, as well as wider legal principles on planning policy, its interpretation and application summarised above.
88. In *Solo Retail* the claimant unsuccessfully relied upon guidance in PPG on retail impact analysis to argue that full impact analysis should have been carried out for a small amount of convenience floorspace in a proposal for a comparison goods store. As Lieven J said at [30] that was really an argument about the *application* of policy, not its *interpretation*. The PPG did not set out mandatory requirements [12], [30] and [34] to [35].
89. In *White Waltham* Lang J rejected the challenge under ground 1 to the adequacy of the noise assessment which had been carried out, including the impact on occupants of the proposed dwellings of the existing airfield and its permitted use [56] and [60] to [66]. In those circumstances, the claimant's reliance under ground 2 upon PPG guidance added nothing of substance [77].
90. In *Bramley* Lang J decided that the relevant part of the PPG on the use of agricultural land for solar farms did not mandate that a sequential search be made for alternative sites with a poorer land quality. The PPG did not create a binding code [177] to [180].
91. In *Menston* the claimant relied upon a passage in the PPG to argue that national policy required an authority determining a planning application to assess not only whether the development would be in an area at risk of flooding, or whether existing flood risk would be exacerbated, but also whether the proposal took the opportunity to *reduce existing flood risk* [36]. Dove J decided that the 2012 NPPF laid down that requirement for plan-making but not for development control [40]. I agree with the second reason given by Dove J in [41] for rejecting the claimant's complaint that the local authority had failed to address opportunities for improvement of flood risk. On a fair reading, the passage in the PPG (cited at [22]) did not seek to contradict the difference in approach set out by the NPPF for plan-making and development control [41].
92. The PPG referred *inter alia* to the designing of off-site works "to protect and support development in ways that benefit the area more generally". In my judgment, works of that nature would generally not have a sufficient connection with a proposed development to be a material consideration in deciding whether it should receive planning permission (*R (Wright) v Forest of Dean District Council* [2019] 1 WLR 6562; *DB Symmetry Limited v Swindon Borough Council* [2023] 1 WLR 198). Given that planning policy should if possible be read compatibly with principles of planning law, the PPG did not purport to give guidance on development control, contrary to the submission of the claimant in *Menston*. Accordingly, this was an example of PPG which was not an aid to the interpretation of NPPF policy for dealing with planning applications. It illustrates the need for care and caution in the use of such material.

### The interpretation of the sequential test in the NPPF and the PPG.

93. I return to the *Tesco* case. The Supreme Court had to resolve an issue about the meaning of the sequential approach to the location of new retail development and other town centre uses. The policy preference was for new development to be located on “suitable sites” first in town centres, followed by edge of centre locations and, only then, in out of centre locations accessible by a choice of means of transport. The issue before the House of Lords was whether “suitable” meant suitable for meeting identified deficiencies in retail provision in the area, or suitable for the development proposed by the party applying for planning permission [13]. The court decided that the latter was the correct meaning. But that was based not only on the sequence of preferences, but also additional text which referred to meeting the requirements of developers and retailers and the scope for accommodating the proposed development. There was nothing in the policy to support the alternative construction that suitability for the purposes of the sequential test was limited to meeting deficiencies in the retail provision of an area [27].
94. However, the Supreme Court added that suitability for the proposed development was qualified by a specific policy requirement for “flexibility and realism” from retailers, developers and planning authorities [28]:

“.... The need for flexibility and realism reflects an inbuilt difficulty about the sequential approach. On the one hand, the policy could be defeated by developers’ and retailers’ taking an inflexible approach to their requirements. On the other hand, as Sedley J remarked in *R v Teesside Development Corporation, Ex p William Morrison Supermarket plc* [1998] JPL 23, 43, to refuse an out-of-centre planning consent on the ground that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. The guidance seeks to address this problem. It advises that developers and retailers should have regard to the circumstances of the particular town centre when preparing their proposals, as regards the format, design and scale of the development. As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals, in order that their scale may fit better with existing development in the town centre. The guidance also advises that planning authorities should be responsive to the needs of retailers. Where development proposals in out-of-centre locations fall outside the development plan framework, developers are expected to demonstrate that town centre and edge-of-centre options have been thoroughly assessed. *That advice is not repeated in the structure plan or the local plan, but the same approach must be implicit: otherwise, the policies would in practice be inoperable.*” (emphasis added)

The need for flexibility and realism was necessarily implicit in those policies which did not refer expressly to those requirements.

95. Turning to retail policy in the NPPF, in *R (Aldergate Properties Limited) v Mansfield District Council* [2016] EWHC 1670 (Admin) Ouseley J decided that “suitable” and “available” referred to the broad type of development proposed in a planning application by approximate size, type of retailing and range of goods, incorporating flexibility, but excluding the corporate attributes of an individual retailer [35] to [38].
96. Where flood risk is in issue, para.162 of the NPPF sets out the sequential preference as follows:
- “... reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.”
97. This is a broad, open-textured policy. There is no additional language indicating how the issue of “appropriateness” should be approached or assessed. There is nothing to suggest that the object is *restricted* to meeting the requirements of the developer or applicant for planning permission, or of his particular proposal on the application site he has selected. On the face of it, the question of appropriateness is left open as a matter of judgment for the decision-maker.
98. This takes us back to the “inbuilt difficulty” of a sequential approach referred to in *Tesco* at [28]. The policy to steer new development to areas with the lowest risk of flooding would be defeated if any examination of alternative sites is restricted by inflexible requirements set by developers. But a broad, non-specific approach by planning authorities to sequential assessments which generally disregards development requirements could lead to inappropriate business decisions being imposed on developers or the market. There is a need for realism and flexibility on all sides.
99. It is not difficult to see why para. 162 of the NPPF has been expressed so broadly as compared, for example, with the retail policies considered in the *Tesco* case. Paragraph 162 applies to all types of development. Some development may be of a specialised or highly specific nature with particular or intrinsic requirements as to the site, form and scale of development, access, and catchment. Examples could include a power station, transport infrastructure, a school or waste disposal facilities. Other forms of development, such as residential, may have no, or fewer, specific requirements for the purposes of a sequential assessment.
100. There is nothing in the language of the NPPF which could justify the court adopting the highly specific interpretation contended for by the claimants, namely alternative sites which could accommodate the development in fact proposed in its various particulars, including form, quantum (both as to site area and amount of development) and intended timescales for delivery. That interpretation would tend to exclude any consideration of other planning considerations which could be considered to affect appropriateness. It would render the sequential test ineffective.
101. It is common ground that when a development plan is being prepared, the sequential test is applied in the context of policies aimed at meeting the housing, employment and other development needs of the local authority’s area, or other relevant “catchment” (see also para. 026 of the PPG). Paragraph 166 of the NPPF states that where an application is made for development on a site allocated in a development plan which satisfied the sequential test, that test does not have to be applied again. Where in other cases a sequential test is being carried out for the first time in relation to an application

site, I see no logical reason why the issue of need should be treated as wholly irrelevant to that assessment as Mr. Flanagan suggested. In addition, para. 027 of the PPG suggests that the relevant catchment area or area of search for some types of development will be affected by need considerations. On that basis, I do not see why *all* considerations of need must be excluded when considering the “appropriateness” of alternatives.

102. A developer may put forward a case that the specific type of development he proposes is necessary in planning terms and/or meets a market demand. It then becomes a matter of judgment for the decision-maker to assess the merits of that case and to decide whether it justifies carrying out the sequential assessment for that specific type or for some other, perhaps broader, description of development. Paragraph 162 of the NPPF does not exclude either approach, but leaves to the decision-maker the selection of the approach to be taken. For example, a decision-maker may consider in the circumstances of a particular case that more weight should be given to the objective of steering development towards areas with a lower flood risk.
103. A need and/or market demand case could be based on a range of factors, such as location, the mix of land uses proposed and any interdependence between them, the size of the site needed, the scale of the development, density and so on. But the decision-maker may also assess whether flexibility has been appropriately considered by the developer and by the local planning authority.
104. So far, I have been dealing with an applicant’s case on a *specific* need for the type of development proposed. Depending on the merits of the case put forward, this may be relevant to deciding the appropriate area of search and whether other sites in lower flood risk zones have characteristics making them “appropriate” alternatives.
105. By contrast, I do not consider that a *general* need for a type of land use across the local authority’s area, e.g. for housing or employment, or a shortfall in a 5 year supply of housing land, is relevant when deciding whether other sites are sequentially preferable and reasonably available alternatives. That general need or shortfall does not help a decision-maker to determine whether a particular site (with its relevant characteristics) qualifies as an “appropriate” alternative to the site selected by the applicant for his proposed development. General need may influence the scope of an area of search, but that is a different issue in a sequential assessment.
106. Paragraph 162 of the NPPF also stipulates that an alternative site be “reasonably available” for the proposed development. That raises issues of judgment for the decision-maker as regards ownership, or the ability to become an owner, so that the site may be developed. “Reasonably available” also has a temporal dimension. The start date and duration of the proposed development may be relevant considerations. But para. 162 of the NPPF does not require that the availability of an alternative site should always align closely with the trajectory for the developer’s proposal. Here again, flexibility on all sides is a relevant consideration, together with any material aspects of need and/or market demand.
107. To summarise, I have rejected the claimants’ highly prescriptive interpretation of para. 162 of the NPPF. Instead, applying the approach in *Tesco* at [28] and on a straightforward reading of the NPPF, I have identified factors which are capable of being relevant considerations which a decision-maker may assess as a matter of judgment.

108. It follows that para. 028 of the PPG does not conflict with para. 162 of the NPPF. The PPG performs the legitimate role of elucidating the open-textured policy in the NPPF. The PPG describes “reasonably available sites” as sites “in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.” The PPG provides for issues as to suitability of location, development type, and temporal availability to be assessed by the decision-maker as a matter of judgment in accordance with the principles set out above. In this context, the PPG correctly states that “lower-risk sites” do not need to be owned by the applicant to be considered “reasonably available.” That is consistent with the need for flexibility on all sides.
109. The PPG also states that reasonably available sites *may* include “a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.” Whether such an arrangement is so capable depends on the judgments to be made by the decision-maker on such matters as the type and size of development, location, ownership issues, timing and flexibility. Taking into account his assessment of any case advanced by the developer on need and/or market demand, the decision-maker may consider smaller sites (or disaggregation) if appropriate for accommodating the proposed development.
110. I note that the PPG refers to a “series of smaller sites.” The word “series” connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. This addresses the concern that a proposal should not automatically fail the sequential test because of the availability of multiple, disconnected sites across a local authority’s area. The issue is whether they have a relationship which makes them suitable in combination to accommodate any need or demand to which the decision-maker decides to attach weight.
111. Lastly, para. 028 of the PPG states that the absence of a 5-year supply of housing land is not relevant to the application of the sequential test to individual proposals. That is consistent with the analysis in [105] above on how general need sits in relation to para. 162 of the NPPF. Such broader issues of need fall to be considered as part of the overall planning balance, in which flood risk considerations will be one component, rather than the sequential test.
112. I have addressed the interpretation of both para. 162 of the NPPF and para. 028 of the PPG, in so far as that falls within the court’s remit, matters of judgment which are for the decision-maker and the broad division between those two areas. The interpretation I have adopted does not involve treating either the NPPF or the PPG as a “binding code.” That would be impermissible. For the reasons I have given, the NPPF and the PPG can and should be read together harmoniously.
113. Paragraph 028 of the PPG is a proper aid to clarifying and understanding the meaning of the NPPF. Mr. Banner accepts that the PPG may perform that role so long as it is not treated as a binding code. However, that submission is a potential source of confusion which needs to be avoided.
114. In *West Berkshire* the Court of Appeal held that a policy-maker is entitled to express his policy in unqualified terms. In order for a policy to be lawful, there is no requirement for it to use the word “normally”, or to allow explicitly for the making of exceptions,

or to prevent the fettering of discretion in some other way. This principle holds good even where a policy is expressed in mandatory terms (see [21] and [25]). The principle applies to both the NPPF and the PPG.

115. The interpretation of para. 162 of the NPPF, read together with para. 028 of the PPG, is an objective question of law for the court, not for the judgment of a decision-maker. Although the process of interpretation does not need to allow for exceptionality or discretion, that does not involve treating either policy as binding. Once the court has reached its conclusions on interpretation, it is the application of those policies which must not involve a fettering of discretion by treating them as binding. We are back to the fundamental distinction between interpretation and application of policy. The two must not be elided or confused.
116. Having dealt with these points of principle I turn to deal with the remaining criticisms of the two decision letters.

### **The challenge to the Lynchmead Farm decision**

#### *Ground 2*

117. It is convenient to begin with ground 2. This relates to three aspects of appropriateness: timing, type of development, and size of sites and disaggregation.
118. With regard to timing, the appellant's expert gave evidence that, subject to the grant of permission, it was anticipated that development could begin on the appeal site in early 2025 and be completed within about 2 years. In his closing submissions to the Inspector, Mr. Banner said the uncontested evidence was that the two sites already in the ownership of the appellant (ST17 and ST34) were not "available to be developed at the point in time envisaged for the development" because existing infrastructure on site belonging to either National Grid or Western Power needed to be moved. But the court was not shown anything in Mead's submissions or evidence indicating what would have to be done to that infrastructure or the timescale involved (including why that could not be achieved in the period of about 2 years before the anticipated start of development).
119. At DL 30 the Inspector accepted that the start date of early 2025 was "not unreasonable" although a possibly "optimistic estimate." Nonetheless he proceeded on the basis that an alternative would need to be "available" by that time.
120. Mr. Banner criticises the paragraph which follows:

"31. However, 'available to be developed' means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the appeal scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure or undertake hydraulic testing, but that does not alter the fact that the land would be available to be developed."

121. Allowing for flexibility, the Inspector was entitled to say that development of an alternative site did not have to follow the *same* timescale as was envisaged for the appeal proposal. He recognised that the start date and build-out rates can be affected by many site-specific factors, including the need to relocate infrastructure, but that does not mean that an alternative is not “available to be developed.” Comparison of availability between two sites involves matters of degree. It does not require precise alignment. This is a matter of judgment for the Inspector. On the material shown to the court it is impossible to say that his judgment was irrational.
122. With regard to the type of development proposed on the appeal site, the Inspector said this at DL 29:

“29. The first relates to the meaning of the phrase ‘type of development’. I consider that this means any site that is capable of accommodating residential development, the ‘type’ of development being ‘residential’. Although the appellant may anticipate the appeal proposal to consist of lower density suburban houses, the application has been made in outline with all matters other than access reserved. The only constraint on the type of development proposed is that contained in the description, which is for ‘...a residential development of up to 75 dwellings...’. I have also had regard to the general approach to planning for residential development in the district, where spatial policies do not constrain the types of dwellings within allocated or windfall sites. Even where some sites require developments to be of a higher density, they would still have the effect of providing residential dwellings on sites with a lower risk of flooding than the appeal site and would therefore achieve the purpose of the sequential test.”

123. Mr. Banner criticises the Inspector’s decision to treat the proposal as being for residential development in general rather than lower density suburban housing. But this is an issue going to the application of policy, not interpretation and therefore a matter for the Inspector’s judgment. On the material before the court, the claimant has come nowhere near demonstrating irrationality and so the criticism must be rejected.
124. I would add that at DL 38 the Inspector did consider in the alternative the claimant’s approach to describing the type of development:

“38. Even if a more restrictive definition of the type of development were to be used, taken to mean residential development of a suburban nature, and the availability of sites for development was taken to be now, in the sense that they either have extant planning permission (or a resolution to grant) for residential development or are allocated for residential development in the current development plan with delivery expected at least in part by 2025, then there are still many alternative sites that would meet the Framework definition of reasonably available<sup>11</sup>.”

125. Mr. Banner criticised this paragraph because one of the sites relied upon by the Inspector in the final sentence was site ST17 (see footnote 11) where infrastructure would need to be relocated. But I have already rejected the criticism made of the Inspector's handling of timing, which included this infrastructure issue ([118] to [121] above).
126. The complaint about the Inspector's treatment of type of development is also linked to the size of site or disaggregation point. Under ground 2 the claimant argued that the PPG was inconsistent with the NPPF on this subject. I have rejected that argument.

*Ground 5*

127. Under ground 5 the claimant criticised the Inspector's construction of para. 028 of the PPG because in DL 33 he decided that need was not a relevant factor in the application of the sequential test:

“The appellant also suggests that housing need is a relevant consideration in the sequential test. I disagree. I can see no reason for interpreting the Framework in that way. I consider that for individual applications ‘the proposed development’ means that sought, not the housing needs of the district. ...”

128. I do not see any legal error in DL 33 as far as that paragraph goes. For the reasons set out in [105] above, neither the general housing needs of a district or a shortfall in meeting those needs, addresses the issue posed by the sequential test, namely whether an alternative site has qualities making it appropriate and available for the proposed development. But that leaves the question whether Mead advanced any specific case on need for a type of development described as 75 lower density, suburban houses over the timescale envisaged for the appeal site? If so, did the Inspector fail to address that case? Did he consider how smaller sites could form a “series” addressing that need?

129. In his closing submissions to the Inspector, Mr. Banner made a number of points on the interpretation of policy and then said this at para. 34:

“These considerations ... lead to the conclusion that the key question for the sequential test is whether sequentially preferable alternative sites can accommodate the area's needs for this type of development by the point in time envisaged for the development.”

130. Mr. Banner asserted that Mead's evidence before the Inspector covered quantitative and qualitative aspects of that need. But no such material has been shown to the court to establish that the subject of need was addressed beyond the passage quoted in [129] above. The court gave the claimant an opportunity to produce any such material to Mr. Flanagan for discussion and hopefully agreement. Mr. Flanagan informed the court after the hearing was concluded that the material he had been shown did not take the matter any further. There was no specific case put quantitatively, or even qualitatively, on a need for low density suburban family housing. That has not been contradicted.

131. In these circumstances, Mead cannot possibly criticise the Inspector for the way in which he dealt with the type of development proposed and his conclusion that need was

irrelevant to the application of the sequential test, at least on the evidence placed before him. The Inspector correctly dealt with the proposal's contribution to meeting general housing need in DL 51 as part of the overall planning balance.

132. I have already addressed the other aspects of ground 5 relating to the interpretation of the PPG.

*Ground 1*

133. Ground 1 is concerned with the relationship between para. 162 of the NPPF, para. 028 of the PPG and policy CS3 of the Core Strategy. In DL 23 the Inspector said that the second section of policy CS3 (setting out criteria for determining whether a site is reasonably available) was now inconsistent with the NPPF because of the clarification of para. 162 of that policy by para. 028 of the PPG. He noted that there had been no material change to the text of the NPPF itself from the version current when the Core Strategy was examined and adopted.
134. In DL 24 to DL 26 the Inspector identified the respects in which policy CS3 differed from the clarification of national policy by the PPG:

“24. In the PPG, reasonably available sites are defined as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

25. The PPG says that these could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. There is nothing in the PPG that requires smaller sites to be adjacent to one another, as suggested by the appellant. A series of separate small residential sites would still provide suitable alternative land for equivalent development at a lower risk of flooding.

26. The PPG also says that such lower-risk sites do not need to be owned by the applicant to be considered reasonably available. Reasonably available sites can include ones that have been identified by the planning authority in site allocations or land availability assessments. There are no exclusions in the PPG relating to sites with planning permission or that publicly owned land must be formally declared to be surplus.”

135. In DL 27 the Inspector said:

“Paragraph 219 of the Framework states that due weight should be given to development plan policies, according to their degree of consistency with the Framework. In this case, because of the inconsistency between the documents as to what is meant by reasonably available, I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework as interpreted by the PPG.”

136. In DL 41 the Inspector set out his overall assessment of the appeal proposal against policy CS3:

“41. The first part of Policy CS3 requires that development will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework. As I have concluded that the Framework’s sequential test would not be complied with, it follows that the proposed development is in conflict with the first part of Policy CS3. Other than for the definition of the area of search being North Somerset-wide, I consider the remainder of the second part of Policy CS3 to be out-of-date because it is inconsistent with the Framework. I therefore conclude that the proposed development conflicts with Policy CS3 overall. As Policy CS3 was agreed as being the most important policy in determining this appeal, I conclude that the proposal also conflicts with the development plan when taken as a whole.”

137. In summary, Mr. Banner submitted in his skeleton that:

- (i) The Inspector accepted that the appeal proposal accorded with policy CS3 of the Core Strategy;
- (ii) Policy CS3 must have been found “sound” by the independent Inspector who conducted the examination of the Core Strategy, which would have necessitated a conclusion that CS3 (specifically the criteria in the second section of CS3) was consistent with national policy;
- (iii) There is no material difference between the 2012 version of the NPPF current when the Core Strategy was adopted and the relevant parts of the 2021 NPPF, a point accepted by the Inspector in DL 23;
- (iv) At DL 41 the Inspector concluded that (a) because the proposal conflicted with the current NPPF, it also conflicted with the first part of policy CS3 (see [19] above) and (b) the second section of CS3 (with which the proposal complied – see [27] above) was out of date because it is inconsistent with the current NPPF. On that basis the Inspector concluded that the proposal conflicted with CS3 overall and, because CS3 was the most important policy in the Core Strategy for determining the appeal, with the development plan taken as whole;
- (v) The Inspector’s conclusions in (iv) above depended upon his reliance upon para.028 as affecting the interpretation of the current NPPF;
- (vi) The Inspector erred in law because his reasoning involved treating para.028 of the PPG as having changed the objective meaning of the NPPF and of the Core Strategy.

138. As to point (i), the key issue resolved by the Inspector was the application of the criteria in the second section of policy CS3. In DL 14 to DL 22 he found that there were no alternative sites available satisfying those criteria (see [21] and [27] above). It was just

those criteria which he found to be inconsistent with the NPPF (in DL 23 to DL 27 and DL 41).

139. As stated point (ii) is incorrect,<sup>2</sup> but it is not essential to Mead’s argument. In his oral submissions Mr Banner also relied upon the fact that the first part of policy CS3 requires compliance with the sequential test in the NPPF, implying that the criteria in the second section of CS3 were considered to be consistent with the NPPF when the Core Strategy was adopted in 2017.
140. The main thrust of Mr. Banner’s argument lies in points (v) and (vi). Point (v) is not controversial.
141. I see no possible legal error in the Inspector’s conclusion that the proposal conflicted with the first part of policy CS3 because it conflicted with the sequential test in the NPPF read together with the PPG. It was not suggested by Mead that policy CS3 should be interpreted as referring solely to the 2012 version of the NPPF and ignoring any alterations to that document. So if the NPPF had been amended by including the text contained in para.028 of the PPG, Mead could have no legal complaint. I have explained that there is no legal principle which prevents national policy in the NPPF being altered by a WMS and/or PPG. In any event, para.028 of the PPG is consistent with the open-textured language of para.162 of the NPPF properly understood. The former has merely clarified the latter. The Inspector correctly treated the PPG as having elucidated the NPPF.
142. For essentially the same reasons, the Inspector did not commit any error of law when he concluded that the criteria in the second section of policy CS3 are out of date because they are inconsistent with the NPPF read together with the PPG (DL 23 to DL 27 and DL 41).
143. Mr. Banner submits that the Inspector erred because in treating the PPG as interpreting the NPPF (or defining “reasonably available” sites) he was applying the PPG as a “binding code.” I have already explained why that argument is unsustainable (see [114] to [115] above).
144. For these reasons I reject all of the grounds of challenge to the Lynchmead Farm decision.

### **The challenge to the Bushey decision**

145. Redrow’s “Flood Risk Sequential Test and Exception Test” (May 2023) presented a sequential assessment covering the whole of the Borough (4.3).

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<sup>2</sup> Section 20 of the Planning and Compulsory Purchase Act 2004 requires that a development plan taken *as a whole* to be “sound”. The Act does not define what is meant by “sound”. But para.35 of the 2021 NPPF sets out policy requirements for a *plan* to be considered sound, including consistency with the NPPF “and other statements of national policy”. Consequently, it is not unlawful for a development plan not to be consistent with national policy in every respect (per Lindblom J as he then was, in *Grand Union Investments Limited v Dacorum Borough Council* [2014] EWHC 1894 (Admin) at [59]). Local circumstances may justify a departure from national policy (see e.g. *Camden London Borough Council v Secretary of State for the Environment* (1990) 59 P & CR 117 and *West Berkshire* at [19] to [21] and [25] to [26]). Mead has not shown the court any evidence on how policy CS3 was assessed in the examination of the Core Strategy.

146. Redrow sought planning permission for up to 310 dwellings and land reserved for educational and community uses on a site of 18.2ha. They followed the guidance in the PPG by applying a margin of plus or minus 25% to the site area, number of dwellings and density. So the assessment considered sites (or groupings of sites) between 13.6ha and 23.1ha in area, capable of accommodating between 232 and 388 dwellings. However, the assessment said that alternative sites, whether solus or smaller sites grouped together, needed to be capable of accommodating the appeal scheme as a whole: market housing, 40% affordable housing, 5% custom and self-build housing, land for a primary school and community hub and substantial open space (4.7 to 4.8). Redrow contended that the benefits of the proposed development, including the amount of open space, could not be spread across a number of smaller disconnected, disparate sites. A primary school and community hub required sufficient land in one location to enable delivery and be accessible to existing and proposed communities (5.3).
147. Redrow considered that only sites which were “available immediately” could be treated as “reasonably available” for the proposed scheme, given the intended timescales for development. The appellant was both the owner of the appeal site and a housebuilder committed to a reduced timescale for the submission of reserved matters. Sites larger than the appeal site would be likely to require co-ordination with other developers and owners and therefore require more time. They would be unlikely to be reasonably available to Redrow at the point in time envisaged for the development (4.9, 4.12 and 5.15).
148. In a statement of common ground Redrow and HBC agreed that residential development on the appeal site would take about 5 years to complete. Redrow said that work would commence on site in 2024 with first completions in 2025, whereas HBC said that first completions would begin in 2027.
149. Redrow said that it was looking for sites with immediate availability, partly in order to alleviate the severe inadequacy of the housing land supply in Hertsmere. Redrow assessed that HBC had a supply of only 1.23 years of land, rather than the requisite 5 years. As the owner of the appeal site, they would be able to progress development more quickly. The proposal would also contribute to meeting the acute need for affordable housing (4.12 to 4.14, 4.16, 5.13, 5.15 and 5.25).
150. In DL 84 the Inspector accepted Redrow’s approach of treating the whole of Hertsmere borough as the area of search. She added that any residential scheme such as the appeal proposal would contribute to meeting housing need wherever located in that area and that the school and community facility could also be appropriate on other sites in the Borough.
151. At DL 85 to DL 100 the Inspector considered the assessment of reasonably available sites. She was not persuaded that Redrow’s range of plus or minus 25% for defining site size and capacity had been justified or was consistent with the “advice” in the PPG on a “series” of smaller sites (DL 87).
152. At DL 88 she said:
- “88. With regard to the grouping of smaller sites, the proposed development would comprise around 310 homes, land for a primary school and a mobility hub, as well as green

infrastructure. Although this represents a large, possibly even strategic scheme with non-residential elements, I see no reason why a number of smaller sites could not accommodate all these elements. As in the North Somerset appeal, smaller sites would not necessarily need to be contiguous. I agree with the Council that a series of sites would potentially indicate three or more sites. Equally, I am not convinced that part of a larger site would not represent a reasonable proposition in some circumstances, though considerably larger sites may take longer to bring forward and would not be reasonably available.”

153. The Inspector concluded that completion of dwellings would begin in 2026, somewhere between the estimates provided by Redrow and HBC (DL 89 to DL 90).
154. On timing the Inspector said at DL 91 that in line with the Lynchmead Farm decision the development on an alternative site would not necessarily have to follow the appeal scheme’s trajectory for start and build out dates in order to be considered “available.” Nevertheless at DL 92 she said that alternative sites should “be available for development at the point in time envisaged for the proposed development,” echoing the language of para. 028 of the PPG.
155. The Inspector was asked to address a list of 14 sites which HBC said were reasonably available, appropriate for the proposed development and with a lower flood risk. Redrow contended that none of those sites qualified and so there was no sequentially preferable location to the appeal site (DL 93).
156. The Inspector dealt with 4 sites larger than the appeal site at DL 94:
- “94. HEL181 Compass Park, HEL347 Land to northeast of Cowley Hill, HEL362 South of Potters Bar, and HEL379 Kemprow Farm, Radlett are larger sites with lower flood risk than the site. The appellant’s evidence with regard to the reasonable availability of these larger sites is not compelling as it lacks detail on how long it might take for these sites to come forward and whether this would be outside the expected timeframe for delivering the proposed development. Despite having been reliant on timescales from the 2019 HELAA, the appellant has not contacted landowners to understand availability and likely timing of delivery. While I understand the appellant’s concerns about time taken for land acquisition, there is simply not sufficient information to demonstrate to me that these sites would not be reasonably available on the basis of timescales.”
157. The Inspector said that a fifth site larger than the appeal site was not “reasonably available” because its development timescale for 800 houses was 16 or more years (DL 98).
158. In relation to the 9 other sites which were smaller than the appeal site, the Inspector said at DL 95 that Redrow had ruled them out because they were smaller than the lower

end of its range for site size and dwelling numbers, an approach which she had rejected (DL 87).

159. At DL 96 the Inspector disagreed with additional reasons given by Redrow as to why 4 of the smaller sites did not qualify as reasonable alternatives.

160. At DL 97 the Inspector arrived at the following overall conclusion on the 9 smaller sites:

“97. For all of the aforementioned smaller sites, I recognise that there are a range of different constraints affecting them, but no site is likely to be without constraints. I consider that it has not been adequately demonstrated that they are not reasonably available and that the proposed development could not be delivered through a series of smaller sites.”

161. At DL 99 the Inspector said:

“99. In summary and having considered all the disputed sites, I find that some 13 sites would potentially fall within the meaning of reasonably available. It has therefore not been demonstrated that the proposed development could not be located elsewhere in an area at lower risk of flooding...”

162. I have dealt with Redrow’s contentions on the interpretation of para. 162 of the NPPF and para. 028 of the PPG ([96] to [115] above). I will now deal with the remaining issues which arise under their three grounds of challenge.

163. Mr. Simons accepts that Redrow cannot obtain an order to quash the decision by succeeding on ground 1 alone. They need to succeed on ground 1 in conjunction with ground 2. Alternatively, ground 3 provides a freestanding justification for quashing the decision.

#### *Ground 1*

164. Mr. Simons submits under ground 1 that the Inspector’s approach to sites smaller than the appeal site was legally flawed. He says that the Inspector has, without explanation, departed from the approach in para. 162 of the NPPF, and even para. 028 of the PPG. Instead of looking at sites of around 18.2ha, or down to 13.6ha, and capable of accommodating 310 dwellings, or down to 232 units, she has considered an alternative based on a number of smaller, unconnected sites. She did not address the case advanced by Redrow that that approach could not deliver the range of interconnected benefits which the appeal scheme would deliver and for which there was a need (see [146] above).

165. There is some force in Mr. Simons submissions. Redrow’s case, as summarised above, was relevant to the application of the sequential test. The court was not shown any material from HBC challenging that case. The Inspector does not appear to have addressed the matter, despite its significance for the planning appeal. It was a matter which the Inspector should have considered.

166. At DL 97 the Inspector merely said that it had not been adequately shown that the proposed development could not be delivered through a “series” of smaller sites. There was no indication of any connection or relationship between those sites relevant to the justification for the appeal scheme put forward by Redrow.
167. However, on the issue of size Mr. Simons acknowledges that the claimant has no basis for challenging the way in which the Inspector dealt with the larger sites in DL 94. It is for this reason that he rightly accepts that the decision could not be quashed on ground 1 unless the claimant also succeeds on ground 2.

### *Ground 2*

168. Under ground 2 Mr. Simons criticises the Inspector’s approach to availability of alternatives in terms of timing. In particular he challenges the Inspector’s statement in DL 91 that the development of an alternative site does not necessarily have to follow the trajectory of start and build-out dates for the appeal scheme. He submits that this did not accord with the NPPF read together with the PPG (see para. 36 of his skeleton). Here Redrow, as both the owner of the appeal site and a house builder was seeking to start and complete the development as soon as possible.
169. However, Mr. Simons was right to accept that the sequential test does not require precise alignment between the timescales for an appeal scheme and alternatives.
170. When the Inspector dealt with the larger sites she criticised Redrow’s evidence as lacking in detail on how long it might take for those sites to come forward and “whether this would be outside the expected timeframe for delivering the proposed development.” In other words, the Inspector did not reject the timescale put forward by Redrow. The flaw in its case was the lack of evidence to show that alternative sites would take materially longer to come forward. This was because Redrow had relied upon timescales set out in a 2019 document and had not contacted the owners of those sites to obtain *current* information on availability and timescales. The Inspector said that she understood Redrow’s concerns about the time that might be needed for land acquisition. But for the reasons she gave in DL 94, there was insufficient information to show that the larger sites would not be “reasonably available” in terms of timescale.
171. Accordingly, the Inspector’s error under ground 1 is not material to the lawfulness of her decision and grounds 1 and 2 must be rejected.

### *Ground 3*

172. Under ground 3 Redrow criticises the Inspector for failing in the application of para. 162 of the NPPF to have regard to housing need and the implications of failing to meet that need. The claimant submits:
- (i) The aim of the NPPF is to steer a district’s development needs to areas with the lowest risk of flooding from any source;
  - (ii) A district’s needs should be accommodated, as far as possible, in areas of lowest risk;

- (iii) Accordingly, a decision-maker must take account of the level of current need in a district for the type of development proposed and whether that unmet need is capable of being met in areas of lowest flood risk (see para. 44 of skeleton).
173. I agree with Mr. Flanagan that that approach describes the type of exercise which is undertaken in the preparation and examination of a development plan (see e.g. para. 026 of the PPG). Where there remains unmet need which cannot be allocated to areas satisfying the sequential test, that factor together with any other constraints, *may* lead to a policy decision that not all of the identified need should be met. Alternatively, it *may* be decided that all or some part of that residual need should be met notwithstanding that the sequential test has not been satisfied. Either way, the treatment of unmet need is not an input to the sequential assessment for identifying reasonably available alternative sites. The sequential approach is not modified in those circumstances. Instead, the policy-maker will decide what to do with the outcome of applying the sequential test.
174. A similar analysis applies in the determination of planning applications. Where there is an unmet need, for example a substantial shortfall in demonstrating a 5-year supply of housing land, that shortfall and its implications (including the contribution which the appeal proposal would make to reducing that shortfall) are weighed in the overall planning balance against any factors pointing to refusal of permission (including any failure to satisfy the sequential test). If the total size of sequentially preferable locations is less than the unmet housing need, so that satisfying that need would require the release of land which is not sequentially preferable, that too may be taken into account in the overall planning balance. But these are not matters which affect the carrying out of the sequential test itself. Logically they do not go to the question whether an alternative site is reasonably available and appropriate (i.e. has relevant appropriate characteristics) for the development proposed on the application or appeal site. Instead, they are matters which may, for example, reduce the weight given to a failure to meet the sequential test, or alternatively increase the weight given to factors weighing against such failure.
175. In para. 36 of their statement of facts and grounds Redrow contended that if the Inspector had been entitled to treat the 13 disputed sites as sequentially preferable, they would not come close to meeting the housing needs of the Borough, because in DL 108 to 109 the Inspector had identified a shortfall of between 2,104 and 2,875 dwellings in meeting the requirement for a 5-year supply of housing land. New homes would be required on many more sites than the 13 disputed sites and therefore would necessitate the use of land where flood risk is the same as, or worse than, the risk relating to the appeal site.
176. In para. 43 of their detailed grounds of resistance HBC said that Redrow did not give particulars of this contention, which they disputed. In para. 38 of his detailed grounds of resistance the Secretary of State said that on HBC's evidence to the inquiry the 13 disputed sites had a total capacity of 4,105 dwellings, in excess of the unmet need figures in DL 109.
177. Redrow's Reply and a second witness statement by Ms. Katheryn Ventham, a planning consultant acting for Redrow, responded that the capacity of the 13 disputed sites (4,105 dwellings) could not be compared to the shortfall in the 5-year housing land supply (2,104 to 2,875) because the former represents capacity deliverable over a substantially

longer timeframe. Indeed, HBC's own land supply assessment showed that only 1 of the 13 sites was expected to deliver units during the following 5 years, amounting to only 50 dwellings.

178. I can see that if Redrow had submitted to the Inspector that there was a substantial need for housing which could not be met entirely on sequentially preferable sites (and even more so in the next 5 years), so that additional sites with a similar or worse flood risk would need to be developed, that would be a significant factor to be addressed in the overall planning balance. It could reduce the weight to be given to the failure to satisfy the sequential test. Here the Inspector gave that failure "very substantial weight" (DL 100). It would have been arguable that the flood risk implications of satisfying the unmet need for housing land was an "obviously material consideration," such that it was irrational for the Inspector not to have taken it into account (*R (Friends of the Earth Limited) v Secretary of State for Transport* [2021] PTSR 190 at [116] to [120]). Alternatively, it could have been said that there was a failure to comply with the duty to give reasons in relation to a "principal important controversial issue" between the parties.
179. The problem faced by Redrow is that, as Mr. Simons accepted, this argument was not put before the Inspector. Redrow did not consider it to be material, let alone obviously material. It was not raised as a substantial issue between the parties. The Inspector cannot be criticised for acting irrationally, or for failing to give reasons, in relation to an argument of this kind which the claimant did not see fit to rely upon at any stage in its appeal. Ground 3 must therefore be rejected for this reason alone.
180. There is also an objection to the raising of a new point of this kind in a statutory review in the High Court. If Redrow had raised at the public inquiry the point now advanced under ground 3, HBC and any other participant would have had an opportunity to adduce evidence if thought appropriate, or, at the very least, to make submissions. Just as important is the point that the matter could have been addressed in a single appeal process. The Inspector would have been able to make any additional findings of fact, to evaluate the weight to be given to the outcome of the sequential test and to strike the overall planning balance, taking into account Redrow's additional point as part of its entire case.
181. If the court were to quash an Inspector's decision because of a new point of this kind, it would probably be necessary for the appeal process to be repeated in its entirety or in large part. At the very least, the same Inspector, or a new Inspector, would have to receive fresh submissions and prepare a new decision letter and evaluate the various policy and planning considerations all over again. The general principle is that new evidence and/or new submissions should not be entertained as a basis for quashing an Inspector's decision if this would mean an Inspector would have to make further findings of fact and/or reach a new planning judgment (see e.g. *R (Newsmith Stainless Limited) v Secretary of State for the Environment, Transport and the Regions* [2017] PTSR 1126 [15]).
182. As in civil proceedings more generally, resources for planning inquiries and hearings are finite and need to be distributed efficiently between all parties seeking to have planning issues resolved. There is therefore a strong public interest in the finality of such proceedings. Parties are generally expected to bring forward their whole case when a matter is heard and determined. No proper justification has been advanced by Redrow

for the court to exercise its discretion exceptionally to entertain a new point which could have been, but was not, raised before the Inspector.

### **Conclusion**

183. I have rejected all of the grounds of challenge raised by Mead and Redrow. Both claims for judicial review must be dismissed. I express my gratitude to counsel and the parties' legal teams for the presentation of their cases and assistance.



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## Appeal Decision

Inquiry held between 23-25 May 2023

Site visit made on 23 May 2023

**by Guy Davies BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20<sup>th</sup> June 2023

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**Appeal Ref: APP/D0121/W/22/3313624**

**Land at Lynchmead Farm, Ebdon Road, Wick St Lawrence,  
Weston-super-Mare BS22 9NY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mead Realisations Ltd against the decision of North Somerset Council.
  - The application Ref 20/P/1579/OUT, dated 12 June 2020, was refused by notice dated 8 July 2022.
  - The development proposed is an outline planning application (with all matters reserved except access) for a residential development of up to 75 dwellings and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application is made in outline with all detailed matters reserved for later consideration other than for access. A layout plan has been included but this is for illustrative purposes only. It was confirmed at the inquiry that access relates to the two junctions proposed with the Ebdon Road and their associated geometry. It does not extend to the internal roadways shown on the illustrative layout plan.
3. Amended location and access plans were submitted by the appellant, but subsequently withdrawn. I have therefore determined the appeal based on the plans on which the Council made its decision.
4. Two legal undertakings have been submitted with the appeal. I comment on these obligations later in my decision.
5. During the course of the appeal, the main parties reached agreement that the effect of lighting within the site on foraging bats could be adequately mitigated through design, the details of which could be secured by condition. This overcomes the third reason for refusal on the Council's decision notice. I address the need for an appropriate assessment under other matters.

### Main Issue

6. The main issue is the effect on the development of flood risk, including application of the sequential test and, if necessary, the exception test.

7. It is also necessary to consider the benefits of the scheme, and housing land supply. I do this as part of the overall planning balance.

## **Reasons**

### *Flood risk*

8. The site lies within Flood Zone 3 as defined on the Environment Agency's Flood Map for Planning. Within the flood zone there is a high probability of flooding from the sea. At present the site and surrounding land is protected by coastal flood defences but the Planning Practice Guidance (the PPG) advises that for the purposes of the sequential test the presence of existing flood risk management infrastructure should be ignored, as the long-term funding, maintenance and renewal of this infrastructure is uncertain. The risk of flooding is likely to increase over time due to climate change.
9. For development proposals in areas known to be at risk from flooding, national planning policy as set out in the National Planning Policy Framework (the Framework) requires the application of the sequential test. The aim of the test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Only if it is not possible for development to be located in areas with a lower risk of flooding should development be considered, subject to the exception test.

### *Development plan policy*

10. Policy CS3 of the North Somerset Council Core Strategy 2017 (the Core Strategy) requires that development in Flood Zones 2 and 3 will only be permitted where it is demonstrated that it complies with the sequential test as set out in the Framework and, where applicable, the exception test. Reference is also made to associated technical guidance although this has now been withdrawn and I have therefore not placed any weight upon it.
11. For the purposes of the sequential test Policy CS3 sets out 2 further sections to aid interpretation of what constitutes a reasonably available site.
12. The first section states that the area of search for reasonably available alternative sites will be North Somerset-wide. This is accepted by both main parties.
13. The second section states that a site is considered to be reasonably available if all of the following criteria are met: the site is within the agreed area of search, the site can accommodate the requirements of the proposed development, and the site is either owned by the applicant, for sale at a fair market value, or publicly-owned land that has been formally declared to be surplus and available for purchase by private treaty. The section also states that sites are excluded where they have a valid planning permission for development of a similar character and scale and which is likely to be implemented.
14. The appellant argues that none of the 39 alternative sites put forward by the Council are reasonably available, because they fail one or more of the criteria set out in the second section of Policy CS3. Notwithstanding the Council's closing submissions, the evidence presented by its witnesses does not seek to challenge that argument to any great extent, relying instead on the

assessment of reasonably available sites as defined in national flood risk policy and guidance rather than the second section of Policy CS3, which it considers to be out of date. Nevertheless, it is necessary for me to start by assessing how the appeal proposal rates against Policy CS3, before moving on to consider other material considerations in the Framework and PPG.

15. Applying the criteria set out in the second section of Policy CS3, all the sites lie within the agreed area of search, which is the district of North Somerset. However, only approximately one third of the sites<sup>1</sup> when taken individually could accommodate up to 75 dwellings, which is a requirement of the proposed development as set out in its description.
16. None of those larger sites are owned by the appellant. The appellant does own 2 smaller sites<sup>2</sup> but neither of these individually would enable a development of 75 dwellings. ST17 has a resolution to grant permission for up to 70 dwellings, and ST34 is allocated for 74 dwellings in the current development plan. Both get very near that now proposed in terms of unit numbers but would not accommodate all of the requirement of the proposed development.
17. The appellant advances the argument that there needs to be a commonality of ownership to accord with the relevant criterion, and that while ST17 and ST34 are owned by the applicant, the appeal site is not<sup>3</sup>. Reading the criterion on its face that is not relevant; it is whether the applicant owns alternative reasonably available sites. However, that is a moot point given my finding that neither are sufficient to accommodate the appeal proposal.
18. Of those sites able to accommodate 75 dwellings neither party has provided me with definitive evidence on whether the sites are for sale at a fair market value or not. Many are already owned by developers whose current intention is to develop them, but that would not necessarily prevent a sale being negotiated. Conversely, while the appellant notes that some of the sites<sup>4</sup> are not being actively marketed by their owners they were submitted to the local plan call-for-sites carried out in 2020, which indicates a willingness to offer the land for development. Notwithstanding those considerations, I do not have positive evidence that any of the sites are actively for sale, or that if they are the asking price reflects a fair market value.
19. In terms of publicly owned land, the Council owns 2 sites<sup>5</sup> which could accommodate 75 dwellings. Although ST9 in particular appears ready and available for development I was provided with no evidence to show that either met the more onerous requirements of the relevant criterion that they have been formally declared to be surplus and that they are available to purchase by private treaty. The Council suggests that sites such as ST9 acquired for the purpose of redevelopment do not need to be declared surplus in order to be sold. However, that is not how the criterion in Policy CS3 has been worded.
20. It is also argued by the appellant that town centre sites such as ST9 could not accommodate the requirements of the proposed development because they would be of a higher density than that envisaged for the appeal scheme. I

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<sup>1</sup> ST9, ST14, ST16, ST18, ST21, ST47, ST55, ST68, ST69, AS1, AS6, AS7, AS9

<sup>2</sup> ST17, ST34

<sup>3</sup> I was informed the owners of the appeal site are Alistair Mead and Katherine Hawke

<sup>4</sup> ST14, ST16, ST21

<sup>5</sup> ST9, ST18

consider this issue in more detail later in relation to interpretation of the PPG, but it is a moot point in terms of ST9 for the reason given above.

21. Some of the sites are subject to extant planning permissions<sup>6</sup> and are therefore precluded by the last paragraph in Policy CS3.
22. Taking these factors together, I conclude that there is insufficient evidence to demonstrate that any of the alternative sites proposed as reasonable alternatives by the Council meet all of the bulleted criteria set out in the second section of Policy CS3.

*National flood risk policy*

23. Moving on to consideration of the proposal against national planning policy, the second section of Policy CS3 is now inconsistent with the Framework. Although the wording of national planning policy on flood risk in the Framework is largely the same as it was when Policy CS3 was adopted, the interpretation of it has been clarified by more recent guidance contained in the PPG.
24. In the PPG, reasonably available sites are defined as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
25. The PPG says that these could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. There is nothing in the PPG that requires smaller sites to be adjacent to one another, as suggested by the appellant. A series of separate small residential sites would still provide suitable alternative land for equivalent development at a lower risk of flooding.
26. The PPG also says that such lower-risk sites do not need to be owned by the applicant to be considered reasonably available. Reasonably available sites can include ones that have been identified by the planning authority in site allocations or land availability assessments. There are no exclusions in the PPG relating to sites with planning permission or that publicly owned land must be formally declared to be surplus.
27. Paragraph 219 of the Framework states that due weight should be given to development plan policies, according to their degree of consistency with the Framework. In this case, because of the inconsistency between the documents as to what is meant by reasonably available, I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework as interpreted by the PPG.
28. There are also differences between the main parties in the interpretation of some of the wording used in the PPG.
29. The first relates to the meaning of the phrase 'type of development'. I consider that this means any site that is capable of accommodating residential development, the 'type' of development being 'residential'. Although the appellant may anticipate the appeal proposal to consist of lower density suburban houses, the application has been made in outline with all matters other than access reserved. The only constraint on the type of development proposed is that contained in the description, which is for '...a residential

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<sup>6</sup> ST68, ST69, AS9

- development of up to 75 dwellings...'. I have also had regard to the general approach to planning for residential development in the district, where spatial policies do not constrain the types of dwellings within allocated or windfall sites. Even where some sites require developments to be of a higher density, they would still have the effect of providing residential dwellings on sites with a lower risk of flooding than the appeal site and would therefore achieve the purpose of the sequential test.
30. The second relates to the meaning of the availability of a site 'at the point in time envisaged for the development'. It was estimated on behalf of the appellant that, subject to permission, the appeal scheme could start on site by early 2025. Although that may be an optimistic estimate it is not unreasonable and would mean that an alternative site would need to be available to be developed by that time.
  31. However, 'available to be developed' means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the appeal scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure or undertake hydraulic testing, but that does not alter the fact that the land would be available to be developed.
  32. On that basis I consider that those alternative sites which have planning permission for residential development (or a resolution to grant), are allocated for residential development in the development plan, or which in principle accord with the spatial strategy of the development plan (including suitably sized development on the edge of existing built-up areas) are available to be developed at the point in time envisaged for the proposed development. Those which do not accord with the spatial strategy of the development plan and are reliant on the emerging plan to be allocated, I consider would not. I reach that view because the emerging plan is still at an early stage in its development, may well change, and in any event is unlikely to be adopted before early 2025.
  33. The appellant also suggests that housing need is a relevant consideration in the sequential test. I disagree. I can see no reason for interpreting the Framework in that way. I consider that for individual applications 'the proposed development' means that sought, not the housing needs of the district. There may be a perverse incentive to promote larger rather than smaller schemes in areas of flood risk, but that is hypothetical at best as larger schemes outside settlement boundaries are likely to conflict with the Council's spatial strategy. In any event it is not relevant in this case as I am required to consider the proposal in front of me.
  34. The Council and the Environment Agency have jointly published an advice note on flood risk<sup>7</sup>. The advice note has been written to help explain how the Council will consider planning applications where flood risk is an issue. It refers to national guidance which differs from the criteria in Policy CS3 and says that the Council will give greater weight to the more recent guidance.
  35. It is agreed between the main parties that the advice note cannot be used to modify or impose additional requirements on existing policies in the

<sup>7</sup> Development Management Advice Note – development and flood risk issues, November 2019

development plan<sup>8</sup>. I accept that to be the case, as the advice note has not been through the statutory process for adoption of development plan documents as set out in regulations<sup>9</sup>. However, the guidance provided in the PPG is a material consideration which I have taken into account in my decision. Since I have considered this guidance directly, I do not need to place reliance on the advice note.

36. Drawing these matters together, I consider that for the purposes of applying the sequential test in this appeal, a reasonably available alternative site is one whose location lies within the district of North Somerset, can accommodate residential development, and would be available for development at the point in time envisaged for the proposal as interpreted above. The alternative sites could include a series of smaller sites so long as collectively they are capable of accommodating the proposed development. There is no need for such smaller sites to be contiguous. Sites do not need to be owned by the applicant, nor are they excluded because of an extant planning permission or resolution to grant. So long as a site is available to be developed there is no need for further evidence that they are for sale or, in the case of publicly owned land, declared to be surplus and available for purchase by private treaty.
37. Applying those criteria to the alternative sites put forward by the Council, I find that many fall within the meaning of reasonably available in the Framework, as set out in the PPG<sup>10</sup>.
38. Even if a more restrictive definition of the type of development were to be used, taken to mean residential development of a suburban nature, and the availability of sites for development was taken to be now, in the sense that they either have extant planning permission (or a resolution to grant) for residential development or are allocated for residential development in the current development plan with delivery expected at least in part by 2025, then there are still many alternative sites that would meet the Framework definition of reasonably available<sup>11</sup>.
39. Other than in specific instances, individual sites were not discussed in detail at the inquiry as both main parties accepted that the question of whether a site was deemed to be reasonably available depended largely on my conclusions on the differences in interpretation of the wording of the PPG, and the respective weight given between Policy CS3 on the one hand, and the Framework as informed by the PPG on the other.
40. I conclude that the proposed development fails the sequential test as set out in the Framework because there are reasonably available sites for residential development appropriate to the proposed development on land with a lower risk of flooding than the appeal site.
41. The first part of Policy CS3 requires that development will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework. As I have concluded that the Framework's sequential test would not be complied with, it follows that the proposed development is in conflict with the first part of Policy CS3. Other than for the definition of the area of

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<sup>8</sup> Legal Statement of Common Ground, 2 May 2023

<sup>9</sup> Town and Country Planning (Local Planning) (England) Regulations 2012

<sup>10</sup> ST5, ST8, ST9, ST10, ST14, ST16, ST17, ST21, ST24, ST26, ST29, ST33, ST34, ST35, ST36, ST40, ST41, ST52, ST68, ST69, AS8, AS9, AS10, AS11, AS12

<sup>11</sup> ST5, ST17, ST21, ST24, ST26, ST29, ST33, ST35, ST40, ST52, ST68, ST69, AS8, AS9, AS10

search being North Somerset-wide, I consider the remainder of the second part of Policy CS3 to be out-of-date because it is inconsistent with the Framework. I therefore conclude that the proposed development conflicts with Policy CS3 overall. As Policy CS3 was agreed as being the most important policy in determining this appeal, I conclude that the proposal also conflicts with the development plan when taken as a whole.

## **Other Matters**

### *Legal undertakings*

42. Two legal undertakings have been submitted with the appeal. The first secures obligations to provide 30% affordable housing, financial contributions towards employment support, bus stop provision, sustainable travel and fire hydrants, an agreement covering employing local labour during the construction phase, and on-site play space together with maintenance arrangements.
43. Having considered the reasons for these obligations as set out in the Council's compliance statement and discussed at the inquiry, I am satisfied that they meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the Regulations) in addressing additional demands placed on infrastructure and public facilities arising from the development or to meet policy requirements in the development plan. I place weight on them in reaching my decision.
44. The second legal undertaking contains further obligations relating to flood mitigation by lowering ground levels on land within the River Banwell catchment area, and financial contributions towards automation of a sluice gate on the River Banwell and sports pitch provision at the Priory Community School. These additional obligations have been put forward by the appellant as wider sustainability benefits for the purposes of the exception test.
45. While these additional obligations may bring indirect benefits, paragraph 57 of the Framework requires that obligations must only be sought where they meet all of the three tests set out in the Regulations. In this case, while the flood mitigation and sluice gate automation may reduce the risk of fluvial flooding from the River Banwell, that is not the source of flood risk which materially affects the appeal site, which comes from tidal flooding. Future occupants of the development might benefit from improved and additional sports facilities at the Priory Community School. However, the Council has earmarked the community infrastructure levy to help fund sport and leisure infrastructure, and does not therefore seek separate contributions for that purpose.
46. Having regard to the above, I consider that these additional obligations are not necessary to make the development acceptable in planning terms, nor in the case of flood mitigation and sluice automation are they directly related to it. The obligations therefore fail at least one of the tests in the Regulations, and I give them little weight in this appeal.

### *Appropriate assessment*

47. The site lies some distance from the North Somerset and Mendip Bats Special Area of Conservation but there is evidence that it is being used by Greater Horseshoe bats as part of their foraging and commuting grounds. Development on the site therefore has the potential to indirectly affect the Special Area of Conservation.

48. Agreement has been reached between the main parties and Natural England on suitable mitigation to avoid any adverse effects, which could be secured by condition. Although it would be normal for me to carry out an appropriate assessment in accordance with the Conservation of Habitats and Species Regulations 2017, given my decision on the appeal that is not necessary in this case, and I have not considered this issue any further.

### *Appeal decisions*

49. Twelve appeal decisions have been included in the core document list. Although some were referred to during the inquiry, neither party place a great deal of reliance on them. Given the site-specific differences between them and the appeal site, and the policy differences with those on sites outside the district, I do not find them particularly relevant to the issues raised in this appeal. Other than where I have specifically referenced an appeal decision in my reasoning, I have therefore given them little weight.

### **Planning Balance**

50. It is necessary for me to consider what benefits would flow from the proposed development and to weigh those against the harm that would arise from the development being at risk of flooding.
51. So far as benefits are concerned, the most important would be the provision of up to 75 new dwellings to meet housing demand in the area. Given the lack of housing land supply in the area, which most recently has been found to be of the order of 3.5 years<sup>12</sup>, that provision would be of significant benefit. The provision of 30% of dwellings as affordable would also be of significant benefit in helping to meet the needs of those unable to afford housing on the open market.
52. Some economic benefits would accrue from the development, both during the construction phase for the building industry and local employment, and in the longer term indirectly through additional spend in the local economy and the availability of a larger labour force. The Framework places significant weight on the need to support economic growth and productivity<sup>13</sup>. In my view that policy is aimed more at growth in the commercial and industrial sectors, but I acknowledge that the economic effects of the development would be of benefit and I give them moderate weight.
53. There would also be some ecological and community benefits arising from the inclusion of open space and play areas within the scheme. Although at this stage those benefits are unquantified because landscaping is a reserved matter, based on the information I have before me I nevertheless give them some limited beneficial weight.
54. Other matters covered by the obligations in the first of the submitted legal undertakings or those agreed between the main parties as regards limits on external lighting are necessary to make the development acceptable in planning terms or to address wider policy requirements. These are of neutral weight in the planning balance.

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<sup>12</sup> APP/D0121/W/21/3285624 – Land at Farleigh Farm and 54 and 56 Farleigh Road, Backwell

<sup>13</sup> National Planning Policy Framework, paragraph 81

55. Set against those benefits is the harm that would arise if the development were to flood. Evidence provided by the Council indicates that tidal flood waters could be deep. Such flooding would enter dwellings and surcharge drains. Standing water would be likely to be present for some time before water levels returned to normal. Such flooding would cause extensive damage both to buildings and their contents, requiring significant repair or replacement. There may also be adverse health and environmental impacts. The risk of this harm occurring weighs significantly against the proposal.
56. Irrespective of the degree of risk of flooding occurring or measures that could be taken to make the development resilient to flooding during its lifetime, the Framework is clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. I have found that there are such sequentially preferable sites available. This weighs heavily against the proposal.
57. Paragraph 11 of the Framework requires that where the policies most important for determining the application are out-of-date, to grant planning permission unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal. I have determined that Policy CS3, which is the most important policy for determining this appeal, is partly out-of-date. It is also the case that due to the lack of a 5-year housing land supply, for applications involving the provision of housing, footnote 8 of the Framework deems that policy to be out-of-date.
58. However, footnote 7 of the Framework clarifies that national policy relating to areas at risk of flooding or coastal change is one of the policies in the Framework that protects areas or assets of particular importance. As that policy provides a clear reason for refusal, the presumption in favour of sustainable development (sometimes referred to as the 'tilted balance') is not engaged in this case.
59. Although the benefits of providing housing, including affordable housing, in an area with an acknowledged shortfall of housing land would be significant, I conclude that the failure to meet the sequential test and the significant harm that would arise if the development were to flood outweigh those benefits and the other advantages outlined above.
60. As I have concluded that the development fails the sequential test and should not be allowed, there is no need for me to apply the exception test in this case.

### **Conclusion**

61. I conclude that the proposal would conflict with the development plan when taken as a whole, and that it would also conflict with national planning policy on minimising flood risk to new development. Other material considerations do not outweigh the harm so caused. The appeal should therefore be dismissed.

*Guy Davies*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Charles Banner KC, counsel for the appellant, who called:

Ian Jewson	Director, Oneleven Property Ltd
Nick Bosanko	Technical Director, Vectos

Proofs of evidence were also submitted by:

Alban Henderson	Director, Walsingham Planning
Dr Matthew Cowley	Director, EAD Ecology Ltd

### FOR THE COUNCIL:

Timothy Leader, counsel for North Somerset Council, who called:

Simon Bunn	Flood Risk Manager, North Somerset Council
Marcus Hewlett	Principal Planning Officer, North Somerset Council

Alistair Mead for the appellant joined the discussion on sites ST17 and ST34.

Neil Underhay for the Council attended the discussion on conditions and the legal undertakings.

### INTERESTED PARTY:

Councillor Marcia Pepperall	Weston-super-Mare North Worle Ward
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## **DOCUMENTS**

Received during or after the Inquiry:

1. Opening statement for the appellant
2. Opening statement for the Council
3. Legal Statement of Common Ground and appendices
4. Closing statement for the Council
5. Closing statement for the appellant
6. Completed legal undertakings.



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## Appeal Decision

Inquiry held on 3, 4, 16 and 17 May, 29 and 30 June, 5, 7, and 13 July 2023.

Site visit made on 17 May 2023.

**by Joanna Gilbert MA (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 July 2023**

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### **Appeal Ref: APP/N1920/W/23/3314268**

#### **Land at Little Bushey Lane, Bushey.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Redrow Homes Limited against Hertsmere Borough Council.
  - The application Ref 22/1071/OUT, is dated 14 June 2022.
  - The development proposed is residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works. (Outline Application with Appearance, Landscaping, Layout and Scale Reserved).
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#### **Decision**

1. The appeal is dismissed and planning permission for residential development (up to 310 units) with access from Little Bushey Lane, and land reserved for primary school, community facilities and mobility hub (Class E) along with car parking, drainage and earthworks to facilitate drainage, open space and all ancillary and enabling works (Outline Application with Appearance, Landscaping, Layout and Scale Reserved) is refused.

#### **Application for costs**

2. An application for costs was made by Redrow Homes Limited against Hertsmere Borough Council. This is the subject of a separate decision.

#### **Procedural Matters**

3. The planning application was in outline, with all matters reserved for subsequent approval except access. I have considered the appeal on that basis.
4. The description of development in the banner heading is taken from the appeal form as the description appears to have been amended following the planning application's submission.
5. On 17 February 2023, National Highways lifted their objection in respect of the M1 motorway, specifically regarding Junction 5's capacity and flood risk.
6. Following the appeal's submission, the Council's putative reasons for refusal were endorsed by the Council's Planning Committee on 23 February 2023.
7. Amended parameter plans and an amended Flood Risk Assessment (FRA) were produced with regard to drainage and flood risk in early March 2023. These were subject to further public consultation between 16 March and 6 April 2023. I have had regard to the responses to this consultation. No prejudice would be

caused to any parties by my consideration of these amended documents, given the extent of consultation.

8. On submission of the main parties' proofs of evidence on 5 April 2023, the Council and the Lead Local Flood Authority (LLFA) raised concerns about the absence of a sequential test (ST) in relation to all sources of flooding. Further concerns were also raised in respect of drainage. The need to undertake the ST gave rise to the Inquiry being phased across May, June and July 2023.
9. On 10 May 2023, a Statement of Common Ground (SOCG) – Flood Risk and Drainage confirmed that the only remaining area of disagreement with regard to flood risk and drainage related to the ST. This resulted in amendment of the third main issue to reflect the change in circumstances.
10. The appellant provided their ST evidence on 22 May 2023. The Council and the LLFA provided their ST rebuttals on 12 June 2023. As there were remaining areas of dispute, a further SOCG was requested but not provided until 28 June 2023. I have dealt with matters pertaining to the ST in the decision below.
11. I have had regard to a signed and executed unilateral undertaking submitted and dated 13 July 2023 and a signed and executed bilateral undertaking between the appellant and Hertfordshire County Council (HCC) submitted and dated 13 July 2023.

### **Main Issues**

12. The site lies within the Metropolitan Green Belt. As the main parties agree that the proposed development would constitute inappropriate development in the Green Belt with regard to the National Planning Policy Framework (the Framework), the main issues in this appeal are:
  - a) The effect of the proposed development on the openness and purposes of the Green Belt;
  - b) The effect of the proposed development on the character and appearance of the area;
  - c) Whether the proposed development would be in a suitable location with regard to local and national policies relating to flood risk; and
  - d) Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development.

### **Reasons**

#### ***The site and the proposed development***

13. The site comprises some 18 hectares of fields used for grazing by horses. Immediately north and east, it adjoins pasture fields and the vegetated buffer separating the site from the M1 and A41 road corridor (the road corridor). Beyond the road corridor are Hilfield Park and Aldenham reservoirs, Hilfield Castle, Aldenham Country Park, and the London Elstree Aerodrome.
14. To the south-east, there are further fields with Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College beyond and closer to Elstree Road. To the south and west, the site adjoins Little Bushey Lane and the rear gardens of residential properties on Little Bushey Lane, The

Squirrels, and Wayside Avenue. The frontage to Little Bushey Lane is bounded by trees and hedges. West and north-west, there are further pasture fields, Hart's Farm Stables, and relatively recent residential development.

15. The fields within the site are bounded by mature native hedgerows and post and rail fencing. A number of watercourses flow across the site. There are several large, mature trees, as well as dead and fallen trees, within field boundaries or dotted sporadically across the fields.
16. The site's topography varies, with the land at the southern and western boundaries at up to 105 metres above Ordnance Datum (AOD) and land to the north of the site at around 88 metres AOD. A high-voltage power line crosses the site north to south. Two pylons are located within the field east of The Squirrels and Wayside Avenue. A gas main runs across part of the site.
17. Two public rights of way (PROW) 33 and 40 cross the site. PROW 33 travels from the site's western edge at Little Bushey Lane and runs north-eastwards towards the road corridor, while PROW 40 crosses the site from Little Bushey Lane and runs south-eastwards to the road corridor where it crosses the M1 via a footbridge towards the A41.
18. The proposed development would comprise up to 310 residential units, land for a primary school, and a community mobility hub. There would be a new vehicular access from Little Bushey Lane, as well as pedestrian and cycle access through the site with the diversion of PROW 33 and 40. The green infrastructure would include informal recreation areas, sustainable drainage features, trees and hedgerows.

### ***Policy context***

#### *National policy*

19. Chapter 13 of the Framework seeks to protect Green Belt land. Paragraph 137 of the Framework confirms that the Government attaches great importance to Green Belts. Paragraph 138 of the Framework sets out Green Belt purposes. Paragraph 147 of the Framework confirms that inappropriate development, is by definition, harmful to the Green Belt and should not be approved except for in very special circumstances. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
20. Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment, including criterion b) of paragraph 174 which refers to recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. I have dealt with elements of the Framework pertaining to flood risk below. Relevant elements of the Planning Practice Guidance (PPG) are set out within the decision.

*Local policy*

21. The Development Plan for Hertsmere includes the Hertsmere Local Plan Development Plan Document: Core Strategy (CS), adopted in January 2013, and the Hertsmere Local Plan: Site Allocations and Development Management Policies Plan (SADM), adopted in November 2016.
22. CS Policy SP1 deals with the creation of sustainable development. It prioritises developing brownfield land and delivering development opportunities in Borehamwood, but also expects all existing built up areas within urban settlements to accommodate opportunities for meeting local housing, jobs growth and other development needs. Amongst other things, it seeks development that ensures a safe, accessible and healthy environment; conserves and enhances biodiversity; mitigates the environmental impact of transport; avoids prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment; avoids inappropriate development within the Green Belt; and avoids development in the floodplain and close to river corridors unless the requirements of the ST and exception test (ET) have been met and flood prevention/mitigation measures are in place.
23. CS Policy SP2 requires a positive approach that reflects the Framework's presumption in favour of sustainable development. CS Policy CS1 states that the Council will make provision for at least 3,990 additional dwellings between 2012 and 2027. It outlines that the SADM will factor in a range of considerations in identifying new locations for development. CS Policy CS2 prioritises locating the majority of residential development in Borehamwood, Potters Bar and Bushey, with up to 25% of new housing in Bushey.
24. CS Policy CS3 confirms that where housing delivery has fallen below the required minimum rate over a rolling three year period by at least 20% and at the same point in time the expected completions over the following five years will be insufficient to compensate for the shortfall of the minimum required annualised rate, a review of housing allocations will be undertaken including consideration of safeguarded land for housing and land presently designated as Green Belt. New housing development will only be permitted if satisfactory arrangements are in place to provide the necessary infrastructure.
25. Aiming to increase the supply of affordable housing, CS Policy CS4 states that developments of five self-contained, residential units or more (gross), or residential sites of more than 0.2 hectares, should make provision for affordable housing. On sites of 15 units or more, a mix of social rented housing, affordable rent and intermediate housing will be required, with the precise tenure and dwelling mix to be agreed by the Council. At least 35% affordable housing is sought in the appeal location. The policy's aims equate to an affordable housing target of 1,140 from 2012 to 2027.
26. CS Policy CS12 states that all development proposals must conserve and enhance the borough's natural environment, including biodiversity, habitats, protected trees, and landscape character, in order to maintain and improve environmental quality, and contribute to the objectives of the adopted Greenways Strategy and the Hertsmere Green Infrastructure Plan. Policy SADM11 covers landscape character and asserts that development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the borough. Reference is made to the Hertfordshire Landscape Character Assessments.

27. In respect of Green Belt, CS Policy CS13 refers to a general presumption against inappropriate development within the Green Belt, as defined on the Policies Map and confirms that such development will not be permitted unless very special circumstances exist. Development proposals, including those involving previously developed land and buildings, in the Green Belt will be assessed in relation to the Framework. Further villages and Green Belt sites are named, but are not of direct relevance here. Policy SADM22 confirms that the Green Belt boundary is shown on the Policies Map, while Policy SADM26 outlines criteria for development standards in the Green Belt, including development's scale, height and bulk being sympathetic to and compatible with its landscape setting and not being harmful to the openness of the Green Belt.
28. CS Policy CS16 looks to minimise and mitigate development's environmental impact, with reference to avoiding development in the floodplain and close to river corridors unless the requirements of the ST and ET have been met and flood prevention/mitigation measures are in place as required by the Environment Agency; incorporating the use of sustainable urban drainage where appropriate to reduce risk of flooding; and achieving reduced energy consumption and using energy from renewable resources. CS Policy CS17 deals with energy and CO<sub>2</sub> reductions.
29. Amongst other things, CS Policy CS18 states that provision of required key community facilities should be made as part of the development in consultation with the local community and local service providers and in order to meet or fund any infrastructure impact, having regard to the provisions of CS Policy CS21, while CS Policy CS19 supports proposals for the provision or dual use of key community facilities, including educational, healthcare and recreational facilities, subject to any environmental constraints and other relevant policies. CS Policy CS21 deals with planning obligations.
30. Policy SADM13 confirms that the natural environment of watercourses and areas of water will be improved wherever possible through Policy SADM16, which sets out key principles for watercourses. Policy SADM13 advocates that watercourses, including culverts, land adjacent to rivers, functional floodplains and flood storage areas should be restored to their natural state. It also states that new built development will normally be directed to Flood Zone 1, in preference to Flood Zones 2 or 3 as shown on the Policies Map. Policy SADM14 is set out in more detail in paragraphs below on flood risk. Policy SADM15 sets out criteria for sustainable drainage, particularly for major developments.
31. With regard to highways and access, Policy SADM40 sets out requirements for development to be accessible by a range of transport modes, including sustainable transport, to have safe and convenient routes through the site and access to adjoining routes, and not to cause or add significantly to road congestion or unduly harm the flow of vehicles, amongst other things.
32. The Draft Hertsmere Local Plan (Regulation 18, dated September 2021) (DHLP) included Policy H10 which sought to allocate sites for housing. Site allocation B1: Land East of Little Bushey Lane, Bushey included the site, Hart's Farm Stables, and land north-east of the stables for housing development (up to 350 homes) with community facilities, local retail, and flexible workspace, land for a two-form entry primary school, and public open space. Although the DHLP underwent public consultation, the Council decided on 27 April 2022 to set

aside the DHLP. It is agreed that no weight should be afforded to the DHLP, though the evidence base for the DHLP is a material consideration.

### ***Purposes and openness of the Green Belt***

33. The Metropolitan Green Belt is a strategic mechanism which stretches across a number of counties, including Hertfordshire. It is agreed between the main parties that the site is not one which makes an important strategic contribution to the Green Belt.
34. In developing the DHLP's evidence base, the Council commissioned the Green Belt Assessment (Stage 1) Report: Methodology and Assessment of Green Belt Parcels (January 2017)(Stage 1 assessment). The Stage 1 assessment involved considering how different areas perform against the Green Belt purposes set out in the Framework. Subsequently, further assessment on smaller parcels was undertaken as part of the Hertsmeare Green Belt Assessment Stage 2: Final Report (March 2019)(Stage 2 assessment) and the Annex Report (January 2019)(Stage 2 assessment annex).
35. The Stage 1 assessment's Green Belt Parcel 6 is a large parcel located to the north and east of Bushey Heath/Bushey and includes the site. It describes the parcel as being connected to the large built-up area of Watford and forming part of the essential gap between Watford and Bushey Heath/Bushey Village and part of the essential gaps between these settlements and North Bushey and Elstree. It was found to be predominantly rural in character with more urbanising influences in the west and east. The Stage 1 assessment recommended that parcel 6 performs strongly against the purposes, but there is clear scope for sub-division. It stated that the area south of Little Bushey Lane, which may score less strongly, should be considered further.
36. Forming part of parcel 6, parcel SA-57 within the Stage 2 assessment and annex comprises some 57 hectares of land between Little Bushey Lane and the road corridor and includes the site. The Stage 2 assessment annex concludes that removal of parcel SA-57 from the Green Belt would have a limited impact on the strategic Green Belt's role as it is already characterised by urban influences and contained by the settlement edge and the road corridor, which would prevent any further sprawl and act as an additional barrier to the merging of settlements. It states that limited views to wider countryside and moderate levels of containment by urban form mean that this area is not a visually sensitive part of the Green Belt. It found that parcel SA-57 could be considered for release, particularly the southern area.
37. Notwithstanding that the DHLP was set aside prior to examination and albeit that larger parcels than the site itself were assessed at both stages, the Stage 1 and 2 assessments provide helpful assessment. While I note Mr Radmall's view that the Stage 1 and 2 Green Belt assessments are different in their strategic scope from his locally focused evidence, I afford the assessments significant weight as material considerations.

### ***Openness of the Green Belt***

38. The Framework confirms at paragraph 137 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness can have both spatial and visual elements as

- highlighted by the PPG<sup>1</sup> which considers that, when assessing the impact of a proposal on the openness of the Green Belt, a number of matters may need to be considered. These include openness being capable of having both spatial and visual aspects; the duration of the development, and its remediability; and the degree of activity likely to be generated, such as traffic generation.
39. The site is presently used for horse grazing and by pedestrians using PROW 33 and 40. The proposed development would introduce a significant volume of vehicular and pedestrian movements associated with housing, the school and mobility hub. This would dramatically alter the existing degree of activity on site. Furthermore, the change in the nature of the site would be long-standing. Both of these factors would have a negative effect on openness.
  40. Apart from the presence of pylons, the site itself is free from built development, with limited post and rail fencing, hedgerows and trees providing enclosure and separation of fields. While this is not unique, the proposed development would introduce a significant quantum of built development. Spatially, built form or supporting infrastructure would indicatively occupy some 57% of the site or 10.4 hectares, with the remainder to be indicatively laid out as green infrastructure. While the proposed development would represent a considerably smaller site than parcel SA-57 in the Stage 2 assessment and matters of appearance, landscaping, layout and scale are reserved for determination with scope for mitigation of the spatial effect, the proposed development would significantly reduce spatial openness.
  41. In terms of visual openness, views of the site from Little Bushey Lane are presently relatively open, due in part to the declining quality and extent of hedgerows. Despite some sections of hedging and trees and the pylons, it is possible to look across the site from Little Bushey Lane and see an area of open fields, with housing, Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College to the south and south-east and Hart's Farm and housing at Rossway Drive to the west and north-west. Given the likely concentration of development close to existing built development at Little Bushey Lane and the increased level of vehicular activity, even with sympathetic landscaping, the localised effect on visual openness would be significant and long-standing.
  42. Looking from viewpoints outside the site along the road corridor, the site is viewed with the aforementioned built development on the edge of Bushey. Given the strong presence of built form adjacent to the site, this gives a sense of the semi-urban nature referred to in relation to parcel SA-57 in the Stage 2 assessment annex and reduces the site's rurality given its overall containment by urbanising influences. Though there would be a significant reduction in visual openness as built development would be in greater proximity to the road corridor, this would be partly mitigated by the green corridor acting as a buffer.
  43. When standing within the site, one presently experiences the greatest sense of openness when walking along PROW 40. Although this route would be retained, its future users would experience significantly altered surroundings as built form would adjoin and enclose the earlier part of the route from Little Bushey Lane up to the proposed green corridor. Even with soft landscaping and open

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<sup>1</sup> Paragraph 64-001-20190722: What factors can be taken into account when considering the potential impact of development on the openness of the Green Belt?

spaces at intervals along the proposed route with lateral views along street corridors, this would represent a significant change in visual openness.

44. Considering the totality of effects, the proposed development would cause significant harm to openness that would be both visual and spatial, long-standing, and would result in a considerably greater level of activity.

#### *Purposes of the Green Belt*

45. As defined by paragraph 138 of the Framework, the Green Belt serves five purposes. Though both assessments refer to the purposes numerically rather than alphabetically, I have used the nomenclature within the Framework. The main parties agree that purposes d) and e) are not of relevance. I have no reason to disagree.
46. The application of purpose a) on checking the unrestricted sprawl of large built-up areas hinges on the definition of a large built-up area. The Stage 1 assessment has Borehamwood as the only tier 1 settlement with Bushey and Potters Bar at tier 2, while the Stage 2 assessment defines Borehamwood as the only large built-up area within Hertsmere, with other towns such as Watford and parts of Greater London being large built-up areas.
47. Although the Stage 1 assessment found that parcel 6 met purpose a) moderately, this is unsurprising given the parcel's large size and position partially abutting Watford's built-up area. At Stage 2, the smaller parcel of SA-57 was found not to meet purpose a) as it did not abut the edge of a distinct large built-up area in either physical or perceptual terms. Mr Radmall's evidence conflicts with the Council's earlier Green Belt assessment work as he sees Bushey as a large built-up area on the map and when driving through it.
48. While Bushey's village core has been retained, post-war suburban development has altered the overall perception of Bushey as a place. Bushey is larger than some nearby settlements, such as Elstree. Notwithstanding this, Bushey remains a smaller built-up area than Borehamwood and spatial separation from other large built-up areas is retained. Bushey does not therefore form the large built-up area outlined in purpose a). If I had found that Bushey was a large built-up area, sprawl or the perception of sprawl would be restricted by the existing housing development to the north-west, the south, and south-west, as well as by the road corridor and the green corridor along the Bushey Heath Drain. As such, I find that there would be no harm to purpose a).
49. Turning to purpose b), which deals with preventing neighbouring towns from merging into one another, the Stage 1 assessment found parcel 6 to meet purpose b) strongly and the Stage 2 assessment found parcel SA-57 to score moderately against purpose b). Although the proposed development would reduce the gap between built development in Bushey and neighbouring settlements, it would not be closer to Radlett than the closest point of the Rossway Drive development. Although it would slightly reduce the gap between Bushey and Borehamwood, given the physical severance of the two settlements by the road corridor and the intervening land beyond the road corridor, I consider that the reduction in the gap would be extremely limited.
50. Even if Elstree were to be considered a town rather than a village, the proposed development would not extend towards Elstree as much as parcel SA-57 and would continue to maintain a significant gap between the settlements.

This gap is further defined by the road corridor and by the steeper landform to the south-east. These would assist in reducing any perceptual coalescence. Additionally, the green corridor within the proposed development would reduce any perception of merging of Bushey and Elstree. I find therefore that there would be very limited harm in respect of purpose b).

51. In respect of purpose c) on assisting in safeguarding the countryside from encroachment, the Stage 1 assessment found parcel 6 to meet purpose c) moderately, and the Stage 2 assessment found parcel SA-57 to meet the purpose weakly. Mr Clark considers the harm to purpose c) would be limited, while Mr Radmall finds that the site makes a moderate contribution to purpose c) and considers that semi-urban character applies to the site's setting, not to its intrinsic character. The site lies next to, but outside the settlement boundary.
52. The site is undoubtedly affected by urbanising features, including the road corridor and housing at Rossway Drive and on and adjoining Little Bushey Lane. The sense of urbanisation is somewhat reduced to the south-east as the site adjoins further fields and paddocks, with Caldecote Farm, the Niland Conference Centre, Rosary Priory Convent and Immanuel College further away from the site abutting Elstree Road. While there is intervisibility between the site and the wider countryside beyond the road corridor, the site does not have a wholly rural character given its aforementioned setting. Even when walking across the fields which form the site, its rural attributes and sense of tranquillity are compromised by the visual appearance of adjoining built form and the aural experience of vehicles on the neighbouring road corridor. Therefore, I consider that the harm in respect of purpose c) would be modest.

### ***Character and appearance***

53. The proposed development is in outline form, with parameter plans and an indicative masterplan. The landscaping would be part of reserved matters and the appellant is not restricted specifically to the aforementioned plans. However, the aforementioned plans demonstrate what could be brought forward on site and include a landscaped buffer between proposed built development and the road corridor. It is a reasonable assumption that landscaping would be located generally as shown on these plans.
54. Primary mitigation would indicatively take the form of setting the built development back from existing watercourses on higher ground. In addition to the use of the existing watercourses to create the proposed development's structure, further consideration has been given to the existing hedgerows and trees to visually, physically and perceptually connect the built-up area with its wider setting. Secondary mitigation takes the form of illustrative landscaping proposals, with green spaces, linkages, hedgerows, trees, and watercourses.
55. The site lies within the National Character Area 111: Northern Thames Basin, an area extending from Hertfordshire to the Essex coast. Though both main parties agree that the site is not devoid of landscape value, it is also agreed by the main parties that the site and its vicinity do not constitute a valued landscape in the terms of paragraph 174 a) of the Framework which seeks to protect and enhance valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan.
56. As far as the Hertfordshire County Landscape Character Assessment (HCLCA) is concerned, the site's north-western third falls within Landscape Character Area

- (LCA) 22: Borehamwood Plateau, while the south-eastern two-thirds fall within LCA23: Elstree Ridge and Slopes. The character assessments for LCA22 and LCA23 highlight both positive and negative features.
57. LCA22 is described in the HCLCA as an area of gently undulating landform and considerable pasture within an intact landscape framework, with tall hedgerows and field trees containing views into and across the landscape. Positive reference is made to the two reservoirs and to parkland areas within the grounds of private schools, but this is not relevant to the site. It is asserted that LCA22's integrity is diluted on approaching towns that enclose to the east, west and south. Within LCA22's key characteristics, negative reference is made to fragmentation and disruption by the road corridor, pylons and raw edges of built development. In terms of visual and sensory perception, LCA22 is generally coherent apart from to the south-west where there is a mix of recreational, industrial and agricultural uses and the noisy road corridor contributes to the downgrading. The HCLCA identifies that the aim should be to improve and restore LCA22.
58. LCA23 is located between Bushey Heath and Borehamwood. The HCLCA illustrates its landscape character as being an area never very far from the impact or presence of built development despite its general containment behind and among vegetation. The area's spine is formed by a marked and well-treed ridge, while pasture, with some overgrazing and poor fencing, dominates the side slopes. Though largely screened by planting, the M1 passes through the area and is described as noisy. Amongst the key characteristics described in LCA23's summary profile, reference is made to considerable equestrian pasture, increasing impact of horse grazing, and the road corridor creating a major impact. When looking at physical influences and land cover and land use, the HCLCA refers to the primary land use being pasture, and exclusively for horses, with some paddocks seeming to be suffering from over-grazing. The HCLCA identifies that the aim should be to conserve and restore LCA23.
59. The site consists of overgrazed fields with hedgerows and trees in varying condition. There has been some loss of hedgerow and introduction of fencing. While open pasture grassland is representative of LCA23 in particular and is a positive feature, the ongoing degradation of the fields is unfortunate, but does not diminish their inherent value. Despite the degradation and their relative lack of rarity, the fields have a strong sense of place. Although the site is not within a valued landscape, the Landscape Institute's Technical Guidance Note 02/21: Assessing landscape value outside national designations (2021) advises that deliberately neglecting an area of landscape and allowing its condition to deteriorate should not be allowed to diminish its value in a planning context.
60. Though screened largely from view, the road corridor is intrusive within the locality, given vehicle noise depending on the wind direction. The road corridor physically separates the site from adjacent countryside. Additionally, the aerodrome exerts some aural and visual influence, with planes taking off and landing. Furthermore, Bushey's settlement edge is very visible from the site. Indeed, the settlement edge exerts a substantial influence on the site's setting.
61. The proposed development would develop open fields, thereby reducing the overall extent of open pasture fields within the relevant LCA. Even though only part of the site would contain built development and some parts of the site would remain open, the existing field pattern would not remain. While there are

urbanising effects with relatively stark edges of existing built form, I consider that the open fields themselves are sensitive and highly susceptible to change. There would be a major adverse effect on the open pasture fields at Year 1, which would continue in Year 15 as planting would not alter the overall effect of the loss of the open pasture fields.

62. Turning to landform, the parties' views differ quite substantially in terms of the effects at Years 1 and 15. As part of developing the DHLP, the Council commissioned LUC to produce Outline Landscape Appraisals for potential development sites in Hertsmere: Final report (October 2020). The LUC report outlines constraints for potential allocations, including Site 4: HEL215, HEL336 and B1 (HEL201): Land east of Little Bushey Lane of which the site is part.
63. The LUC report refers to LCA22 and LCA23 and confirms that effects on these LCA could be avoided or minimised by retaining public access with opportunities for countryside experience and providing opportunities to experience longer views from elevated areas; retaining all existing vegetation as far as possible, particularly mature trees; and enhancing the on-site watercourse, floodplain character and valley landform. The appellant has sought to address these points. However, land levels would change in some areas and the gently undulating landform would alter significantly with the introduction of built form and supporting infrastructure and would no longer be clearly visible. As such, the degree of physical change would be marked and would be of a moderate-major adverse level at Years 1 and 15.
64. There would be greater visual effects at Years 1 and 15 on views 2 (south from PROW 33), 3 (View east from Little Bushey Lane), 4 (View north-east from little Bushey Lane), 20 (View south-west from PROW 40) and 21 (View west from PROW 40 bridge over M1) than for the remainder of the landscape viewpoints. In view 3 in particular, the proposed access road would dominate the foreground, while views from PROW 33 and 40 would be significantly affected by enclosing built development, despite green and blue infrastructure proposals. The sense of walking through the countryside, albeit close to the urban edge, would be fundamentally eroded.
65. While the appellant views the overall effect on landscape character to be limited by reason of the existing landscape's condition, existing built form's urbanising effect, the area's fragmentation and disruption by the road corridor, and the aforementioned primary and secondary mitigation, I consider that all these factors would not overcome the significant change that would occur within the site. The site's open character would be lost due to the introduction of an extensive area of built form and retained landscape features would be subsumed within the built-up area, thereby reducing their visual influence.
66. I conclude that the proposed development would have a significant harmful effect on the character and appearance of the area, contrary to CS Policies SP1 and CS12 and SADM Policy SADM11, as set out above. It would also conflict with paragraph 174 b) of the Framework insofar as it seeks to recognise the intrinsic character and beauty of the countryside. This has significant weight.

### ***Flood risk***

67. Within the north-eastern part of the site, the Bushey Heath Drain, an Environment Agency Main River, runs south-east to north-west. Some ordinary watercourses run through the site, one travelling along a central field

boundary, while another runs through the southern part of the site. The Hilfield Park Reservoir is approximately 350m to the north-east, while Aldenham Reservoir is some 1.5km to the east.

68. The Environment Agency publishes mapping for different sources of flooding. This data indicates that much of the site is in Flood Zone 1 for flooding from fluvial sources. However, the course of the Bushey Heath Drain watercourse falls within Flood Zones 2 and 3. Approximately 10% of the site is also affected by reservoir flood risk from Hilfield Park Reservoir.
69. The Environment Agency's data indicates that there is a surface water flow path flowing through the east of the site in a south-east to north-west direction, consistent with the Bushey Heath Drain and adjacent land. An area of medium and high surface water risk lies along the field boundary across the centre of the site. Additional potential surface water flow paths at low and limited areas of medium flood risk are indicated in the site's south-west and north-west areas. This mapping does not account for the impact of climate change. Surface water flooding on the site could occur as a result of overland surface water flow paths and from the site's own surface water run-off.
70. Paragraph 159 of the Framework confirms that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
71. Paragraph 162 of the Framework states that the aim of the ST is to steer new development to areas with the lowest risk of flooding from any source. It also asserts that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, and confirms that the strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. The PPG<sup>2</sup> confirms that even where an FRA shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied.
72. Policy SADM14 deals with flood risk and contains numerous criteria, many of which pertain to principles for managing and mitigating flood risk on site. However, the first two criteria (i) and (ii) relate to avoiding and reducing the risk of flooding by (i) locating development within areas of lower flood risk through the application of the ST and then applying an ET in line with the Framework; and (ii) ensuring that development proposals in flood risk areas actively manage and reduce flood risk by applying the sequential approach at site level. The supporting text to Policy SADM14 does not provide further detail on how the ST should be applied.
73. No mention is made of Policy SADM14's criteria (i) and (ii) in the appellant's FRA. Paragraph 6.2 of the appellant's FRA states that ST is generally required for sites that have not been allocated within the Local Plan. It confirms that application of the ST falls outside the scope of the FRA.

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<sup>2</sup> Paragraph 7-023-20220825 What is the aim of the sequential approach?

74. The appellant did not undertake an ST prior to submitting the application, or at any time during the application's lifetime. This is somewhat surprising as the Framework confirms that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. The onus was on the appellant to undertake the ST. The Framework has not altered since July 2021, though the PPG was updated more recently in August 2022 with particular reference to the need to consider all sources of flooding including surface water flooding. Despite repeated opportunities to do so in both consultation responses and through the officer report, neither the Council nor the LLFA confirmed that the ST was required until after the appeal was lodged.
75. Instead, the appellant sought to locate built form within Flood Zone 1, the area at the lowest risk of fluvial flooding. However, when considering the ST, the Framework refers to development and not housing. Furthermore, consideration needs to be given to all sources of flood risk affecting the site. Accordingly, I consider that it is necessary to consider the entire site when establishing whether the ST should be applied.
76. The ST has now been undertaken and the Council has provided its views on the appellant's findings. The main areas of disagreement relate to the ST area of search, the parameters for site size and grouping of sites, what constitutes 'reasonably available', and whether any sites fall within that category other than the site itself. I cover these matters below.
77. The LLFA has undertaken more nuanced work than the appellant on whether sites would be at a lower risk of flooding and has also considered the variation of risk. I agree that the granularity of the appellant's approach to assessing the level and variation of flood risk is limited, and have had regard to Ms Waters' more detailed data on flood risk in reaching my decision.

#### *Area of search*

78. The Framework does not define the ST search area's extent. The PPG<sup>3</sup> advises that it will be defined by local circumstances relating to the catchment area for the type of development. This is not exhaustive. The PPG asserts that this may be clear for some developments, for example a school catchment area, but also notes that it could be wider than a local planning authority boundary for nationally or regionally important infrastructure. The PPG<sup>4</sup> confirms that the local planning authority will need to determine an appropriate search area, based on the development type proposed and relevant spatial policies.
79. The Council's Strategic Flood Risk Assessment (Level 1)(May 2018) at paragraph 4.3 states that the ST area of search could be the borough area, or a specific catchment if this is appropriate and justification is provided, such as a school catchment area or the need for affordable housing within a specific area identified for regeneration in Local Plan policies.
80. Without any engagement with the Council or LLFA, the appellant defined the ST area of search as the whole borough. This is not consistent with the aforementioned PPG. It was posited at the Inquiry that this was due to the tight Inquiry timescales, but this should not have been seen as a limit to the production of appropriate evidence or to reaching agreement on area of search parameters. Indeed, I offered to hold the remainder of the Inquiry in October

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<sup>3</sup> Paragraph 7-027-20220825 How should the Sequential Test be applied to planning applications?

<sup>4</sup> Paragraph 7-029-20220825 Who is responsible for deciding whether an application passes the Sequential Test?

2023, which could have allowed more time for discussion. Neither main party sought to extend the timescales for the ST or for the response to the ST.

81. The Council has not produced guidance on the appropriate area of search for common development types or an up-to-date register of 'reasonably available' sites, clearly ranked in flood risk preference<sup>5</sup>. However, the Council considers that it would have been appropriate to consider parts of Hertsmere and the other Council areas within the South West Hertfordshire Housing Market Area (HMA), namely Dacorum, St Albans, Three Rivers, and Watford within a 10 mile zone from the site. However, the zone is not evenly drawn, excluding neighbouring London boroughs. Furthermore, little clarity was offered by the Council as to why the whole HMA was not chosen.
82. The 10 mile zone appears to be based on a 15 mile zone within an appeal<sup>6</sup> for a caravan and holiday lodge scheme in Newark and Sherwood, an approach which that Inspector considered overly restrictive. As the 15 mile zone relates specifically to the level of access for such schemes to fishing lakes and other associated recreational facilities, the two appeals are distinctly different from one another. Indeed, none of the elements of this appeal for housing, a primary school and a mobility hub are particularly unusual or 'niche'.
83. The Council's Appendix C identifies circa 70 sites outside Hertsmere, with only site numbers and indicative unit numbers provided. It is unclear what flood risk levels are relative to the site or if these sites would be reasonably available. I give these sites very limited weight in reaching my conclusions.
84. There is an absence of evidence that the proposed development would constitute nationally or regionally important infrastructure. While the borough is not particularly large and the site is close to the borough boundary, any residential scheme such as the appeal scheme would contribute to meeting housing need wherever it was located within the borough. Community facilities such as the school and mobility hub would not be out of place on other sites within the borough. Without convincing evidence to the contrary and despite the appellant's failure to engage with the Council on setting the area of search, I find that the appellant has taken a reasonable and pragmatic approach to defining the area of search as the borough in this instance.

#### *Reasonably available sites*

85. The PPG<sup>7</sup> describes reasonably available sites as being those in a suitable location for the type of development with a reasonable prospect of being available to be developed at the point in time envisaged for the development. It asserts that such sites could include a series of smaller sites and/or part of a larger site if capable of accommodating the proposed development. It confirms that such lower-risk sites do not need to be owned by the applicant. I can see no evidence in the PPG that it is for the Council to provide evidence on whether a site is reasonably available. Indeed, as the Council does not undertake the ST, it appears to be a task for the appellant.
86. Having referred to an appeal<sup>8</sup> in Framlingham, Suffolk which looked at sites some 15% - 20% larger or smaller than the Framlingham site, the appellant

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<sup>5</sup> Ibid.

<sup>6</sup> Appeal APP/B3030/W/22/3309438, decision issued 14 April 2023.

<sup>7</sup> Paragraph 7-028-20220825 What is a "reasonably available" site?

<sup>8</sup> Appeal APP/X3540/W/20/3250557, decision issued 29 September 2020.

has considered sites 25% above and below the size and capacity of their site, that is sites between 13.6 and 23.1 hectares and capable of accommodating between 232 and 388 homes. No clear maximum size parameter has been set by the Council, though a lower threshold of 80 homes was applied, without particularly clear evidence as to how that was reached. In addition, the appellant has considered larger sites of which the proposed development could form a part and smaller sites where they could be grouped, though the focus was on smaller sites being next to or close to one another.

87. Despite being referred to by the Inspector in the Framlingham appeal as a standard approach, I can see no reference to a standard approach in either the current PPG (August 2022) or in the previous PPG (March 2014). The Framlingham appeal predates the current PPG and was for four houses. It is not materially comparable in size to the appeal before me, and in the absence of detailed evidence from that appeal, the origins and veracity of this standard approach remain unclear to me. In any event, no such percentages are set out in the current PPG and I can see no reason to refer to a 15% - 20% margin and then introduce a more 'conservative' 25% allowance above and below the site's size and capacity. As such, I am not convinced that the appellant's maximum and minimum site sizes and site capacities were robustly chosen and were consistent with the PPG's advice on assessment of a series of smaller sites or larger sites of which the development could form part.
88. With regard to the grouping of smaller sites, the proposed development would comprise around 310 homes, land for a primary school and a mobility hub, as well as green infrastructure. Although this represents a large, possibly even strategic scheme with non-residential elements, I see no reason why a number of smaller sites could not accommodate all these elements. As in the North Somerset appeal<sup>9</sup>, smaller sites would not necessarily need to be contiguous. I agree with the Council that a series of sites would potentially indicate three or more sites. Equally, I am not convinced that part of a larger site would not represent a reasonable proposition in some circumstances, though considerably larger sites may take longer to bring forward and would not be reasonably available.
89. The appellant estimates that the proposed development would start on site in late 2024 with first completions in 2025. The Council considers that 2027 would see the first completions as it assumes two years for planning permission and two further years for discharge of conditions. I have had regard to the discussion of timescales set out in the Lichfields' Start to Finish document (2020), Table 2 of the Flood Risk Sequential Test SOCG and the Hertsmere Housing and Economic Land Availability Assessment (HELAA) methodology in Appendix B to Ms O'Brien's ST Rebuttal.
90. Given the need to undertake hydraulic modelling, determine reserved matters and discharge detailed and relatively onerous pre-commencement conditions on matters such as design coding, access works and drainage, I consider it likely that the start on site and first completions would slip somewhat in the real world, though not to as great an extent as the Council envisages. I acknowledge that the appellant, a national housebuilder, is not at a standing start. The appellant has freehold ownership of the land, has already made considerable progress towards scheme delivery in terms of the first two years

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<sup>9</sup> Appeal APP/D0121/W/22/3313624, decision issued 20 June 2023.

of the Lichfields and HELAA methodology, and has undertaken archaeological trial trenching. However, I consider that the suggested start date is overly optimistic and is more likely to result in completions starting in 2026.

91. Even if I agreed with the appellant's first completions in 2025, I concur with the Inspector in the North Somerset appeal that being available to be developed does not necessarily mean that the development of an alternative site would need to follow the trajectory of start and build out dates set out for the appeal scheme. It is only necessary for the alternative land to be available to be developed.
92. For this appeal, the ST approach should therefore assess alternative sites falling within Hertsmere's administrative boundary; sites of different sizes, including smaller sites where development could be delivered across one or more sites and parts of larger sites; and sites which would be available for development at the point in time envisaged for the proposed development.
93. Using Council documents<sup>10</sup> to source sites, the appellant assessed 244 sites and undertook more detailed assessment of 31 sites. Unfortunately, the appellant did not have access to the 2022 call for sites or the 2022 HELAA. Their ST reached the conclusion that their site would be the only sequentially preferable site. The Council considers that other sites would have lower flood risk and would potentially be reasonably available, rendering them sequentially preferable. I cover the 14 disputed sites in the Flood Risk Sequential Test SOCG below.
94. HEL181 Compass Park, HEL347 Land to northeast of Cowley Hill, HEL362 South of Potters Bar, and HEL379 Kemprow Farm, Radlett are larger sites with lower flood risk than the site. The appellant's evidence with regard to the reasonable availability of these larger sites is not compelling as it lacks detail on how long it might take for these sites to come forward and whether this would be outside the expected timeframe for delivering the proposed development. Despite having been reliant on timescales from the 2019 HELAA, the appellant has not contacted landowners to understand availability and likely timing of delivery. While I understand the appellant's concerns about time taken for land acquisition, there is simply not sufficient information to demonstrate to me that these sites would not be reasonably available on the basis of timescales.
95. HEL176 Former Bushey Golf and Country Club, HEL177 Dove Lane, HEL209a Land North of Barnet Lane, HEL212 Land North of Watford Road, HEL231 Starveacres, HEL274 Land at Edgwarebury House Farm, HEL349X Shenley Grange, HEL358 Land south of Shenley Road, and HEL521 Bushey Hall Farm are all at lower risk of flooding than the site. The appellant has ruled them out on the basis of the appellant's lowest site size or dwelling numbers, which I have found not to be supported by the PPG or other compelling evidence.
96. HEL349X Shenley Grange and HEL358 Land south of Shenley Road have recently had planning applications refused and the LLFA objected to both on flooding issues. However, this does not mean that either site would not be at comparatively lower flood risk than the site. While an appeal has been lodged for HEL358 Land south of Shenley Road, this would not automatically remove the site from consideration. As far as HEL176 Former Bushey Golf and Country

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<sup>10</sup> Housing Land Supply Trajectory (base date 1 April 2022); Brownfield Register (2022); Housing and Economic Land Availability Assessment (2019); DHLP; SADM, and Elstree Way Corridor Area Action Plan (2015).

Club is concerned, the emerging planning application should not be seen as a negative. For HEL209a Land North of Barnet Lane, HEL349X Shenley Grange, and HEL358 Land south of Shenley Road, other housebuilders holding options is not sufficient in the absence of detail to prevent the sites from being reasonably available.

97. For all of the aforementioned smaller sites, I recognise that there are a range of different constraints affecting them, but no site is likely to be without constraints. I consider that it has not been adequately demonstrated that they are not reasonably available and that the proposed development could not be delivered through a series of smaller sites.
98. Site HEL355 Heathbourne Green was to be allocated for 800 homes. Although it appears to be at lower risk of flooding than the site, its development timescale is a 16 year plus horizon. This site is not reasonably available.
99. In summary and having considered all the disputed sites, I find that some 13 sites would potentially fall within the meaning of reasonably available. It has therefore not been demonstrated that the proposed development could not be located elsewhere in an area at lower risk of flooding. Though I note that the appellant considers that the ET is passed, I have not applied the ET as I have found that the appeal would fail the ST.
100. I conclude the proposed development would not be in a suitable location with regard to local and national policies relating to flood risk. Accordingly, it would conflict with paragraph 162 of the Framework, CS Policies SP1 and CS16, and SADM Policy SADM14, as set out above. This has very substantial weight.

### ***Other matters***

101. I have been referred to numerous legal judgments and appeal decisions. Both main parties have sought to draw comparisons and similarities between the appeal decisions before me for a variety of reasons. Appeal decisions are unlikely to be directly comparable to one another, with differences in the size and type of development, planning policy, and housing land supply positions to name but a few differing factors. In this decision, I have referred to specific legal judgments and appeal decisions where directly relevant.
102. Many representations were made in respect of the planning application and the appeal. In addition to raising matters covered above, there were concerns about the effect of the proposed development on biodiversity, equestrianism, living conditions of neighbouring occupiers, archaeology, local infrastructure, and highway safety, including the effect on the wider strategic road network. Concern was also raised about pollution and disruption during construction. I have not dealt with these matters in any further detail given my decision.

### ***Other considerations***

103. I turn now to the other considerations advanced by the appellant, that they consider would collectively amount to very special circumstances.
104. The Framework's policy imperative to increase the supply of housing and radical change in approach from its predecessor policy documents is discussed

in the Gallagher Homes legal judgment<sup>11</sup>. Paragraph 60 of the current Framework seeks to support the Government's objective of significantly boosting the supply of homes. It clarifies that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The appeal scheme is described as being for up to 310 homes, though the appellant has confirmed that it may provide slightly closer to 300 if accounting for alterations to the parameter plans for drainage purposes.

105. CS Policy CS1 confirms that the Council will make provision for at least 3,990 additional dwellings between 2012 and 2027, an annual minimum of 266 dwellings. However, the CS is over five years old and the Inspector who examined the CS sought early review given her concerns about the housing requirement<sup>12</sup>. Due by January 2016, that early review did not take place.
106. Some 80% of Hertsmere and almost all land outside settlement boundaries is within the Green Belt. It is agreed between the main parties that the Green Belt boundaries and the settlement boundaries are substantively out of date. Reviewing and altering Green Belt boundaries substantially for the first time since the First Review of the Hertfordshire County Development Plan in 1971, the DHLP and its evidence base was predicated on releasing Green Belt land to meet future housing needs. Indeed, both main parties agree that use of Green Belt land for housing is inevitable to meet housing needs, in addition to use of brownfield land and densification. However, the DHLP was set aside in 2022.
107. The most recent Local Development Scheme (April 2021)(LDS) relates only to the DHLP. Given the absence of an up-to-date LDS and a clear pathway for Local Plan production, Hertsmere finds itself in a Catch-22 situation with planning taking place by planning application and appeal. I have little confidence at this point that the Council is moving forward effectively with efforts to meet local housing needs through the plan-led system. Regrettably, a new Local Plan is years away. In the meantime, it is agreed between the main parties that Bushey is a tier 2 settlement within the adopted settlement hierarchy and that it forms a sustainable location for development, whether one considers the current development plan, the DHLP's evidence base, or the DHLP itself in which the site was proposed for allocation.
108. The Council cannot demonstrate a five-year supply of deliverable housing and the standard method should be used to calculate the housing requirement in accordance with paragraph 74 of the Framework. However, the parties disagree on the extent of the shortfall, with the Housing Land Supply SOCG (2 May 2023) indicating the appellant's position of 1.23 years' housing supply or 942 dwellings from 2022/23 to 2026/27 and the Council's position of 2.25 years' housing supply or 1,713 dwellings over the same time period.
109. As a result, the shortfall is between 2,104 and 2,875 homes for the Council and the appellant respectively. My attention has been drawn to a legal judgment<sup>13</sup> in respect of the extent of the shortfall. Both the appellant's and Council's supply figures are woeful, representing extremely substantial shortfalls symptomatic of a chronic failure to deliver housing. Sadly, and as

<sup>11</sup> Gallagher Homes Ltd v Solihull MBC [2014] EWCA Civ 1610.

<sup>12</sup> Report on the examination into Hertsmere Revised Core Strategy, issued 5 December 2012.

<sup>13</sup> Hallam Land Management Ltd v SSCLG and Eastleigh Borough Council [2018] EWCA Civ 1808

highlighted by the Inspector in the Harris Lane, Shenley appeal<sup>14</sup>, this is likely to worsen further given the absence of progress on plan-making. Even on the Council's figures, the Council is presently amongst the worst performing in the country on housing land supply and without proper plan-making, efforts to resolve housing land supply issues are likely to be limited in extent.

110. The proposed development would deliver up to 310 residential units. In doing so it would support the Government's aim to significantly boost the supply of housing. While housing has been provided in Bushey in recent years, this has done little to improve the borough-wide shortfall of housing whichever position taken. If I were to endorse the appellant's worst-case scenario on the Council's five-year housing land supply, in light of the scale of development proposed and of the aforementioned local and national circumstances, I would give the provision of market housing very substantial weight.
111. For affordable housing, the picture is no less bleak. The South West Hertfordshire Strategic Housing Market Assessment 2016 (SHMA) identifies an annual need for 434 net affordable dwellings between 2013 and 2036, while the South West Hertfordshire Local Housing Need Assessment 2020 (LHNA) refers to an annual need for 503 affordable dwellings between 2020 and 2036. Data from the Department for Levelling Up, Housing and Communities shows that at 31 March 2022, 799 households were on the Housing Register. It is agreed in the Affordable Housing SOCG (3 May 2023) that from 2013/14 onwards, net affordable housing completions have averaged 54 per year compared to the SHMA need for 434 net affordable dwellings. This results in an average annual shortfall of 380 affordable homes. Affordable housing forms just 14% of housing completions, against CS Policy CS4's target of 35%.
112. Even bearing in mind any affordability issues addressed by the standard method and the policy-off nature of the SHMA and LHNA figures, there is a pressing, persistent and acute need for affordable housing within Hertsmere, which should be addressed as a matter of urgency. This is an area where house prices are well in excess of the national or even the East of England average, and where rents are rising. The ongoing shortfall of affordable housing would have real consequences, either in terms of homelessness or people living in unsuitable accommodation. In the context of paragraph 8 of the Framework, such a shortfall and the likely inadequate future supply fails to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations.
113. I understand that the Council's joint venture Hertsmere Living seeks to deliver affordable housing. While this is positive, it is unclear how many homes will be provided via this route in the short and medium-term. I also note that nearby Rossway Drive and Plomley Place provided around 71 affordable housing units. Notwithstanding this, the proposed development would deliver 40% affordable housing, in excess of CS policy CS4's requirement of 35% in this location, equating to up to 124 affordable homes. This would deliver over double Hertsmere's net annual average of affordable homes. In light of the extent of the gap between need for and provision of affordable housing, I afford this very substantial weight.
114. Turning to the matter of self and custom house building, the proposed development would include approximately 10 serviced plots secured by legal

<sup>14</sup> Appeal APP/N1920/W/22/3311193, decision issued 25 May 2023.

agreement. Under the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under the Act to have regard to this and to give enough suitable development permissions to meet the identified demand.

115. The Framework includes the requirement to plan for the needs of self and custom builders and is supported by the PPG, which advises that local authorities should use the demand data from registers, supported by additional data from secondary sources, to understand and consider future need for this type of housing in their area<sup>15</sup>. There is no adopted local planning policy for self and custom house building. The main parties agree in the Self-Build and Custom Housebuilding SOCG that such provision is an important part of the Government's strategy to resolve the housing crisis.
116. Around 80 names are on the Council's register, including associations. Doubt has been cast on public awareness of the register; the risk of demand being underestimated; robustness of assessment and review; use of secondary data; whether permissions have been appropriately recorded as and restricted to self and custom-building; and whether the statutory duty is met. Though some progress has been made with the delivery of plots, I concur with these doubts and consider that there would be substantial unmet need for this form of housing. I therefore attribute the provision of up to 10 serviced plots for self and custom-building substantial weight.
117. Paragraph 81 of the Framework asserts that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. The proposed development would deliver temporary economic benefits during construction and longer-term economic benefits. Temporary benefits would include some 342 direct and indirect construction jobs and wider economic output resulting from those jobs. Over the longer-term, economically active residents would contribute to the success of the local and wider economy in terms of economic output and commercial expenditure. I afford the economic benefits of the proposed development significant weight.
118. A net biodiversity gain of 20.33% habitat units, 39.42% hedgerow units and 12.41% river units is committed to by condition. Paragraph 180 of the Framework currently indicates opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity. The Environment Act 2021 requires 10% biodiversity net gain, but has not yet come into use. Other appeal decisions<sup>16</sup> have given differing weight to biodiversity net gain. However, given the extent to which biodiversity net gain would exceed 10%, I afford this moderate weight.
119. DHLP allocation B1 included a new primary school, but this did not move forward as the DHLP was set aside. The proposed development includes land for the primary school which is secured via planning obligation. HCC forecasting

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<sup>15</sup> Paragraph 57-011-20210208 What is the relationship between the register and the Strategic Housing Market Assessment?

<sup>16</sup> Including Appeal APP/B1930/W/21/3279463, decision issued 31 January 2022; Appeal APP/V1505/W/22/3296116, decision issued 11 November 2022; and Appeal APP/X0415/W/22/3303868, decision issued 8 March 2023.

indicates that additional primary school capacity is unlikely to be required within the next five years, with demand being absorbed by other local schools. However, the proposed development is considered by HCC to contribute to additional cumulative demand locally, the scale of which will be dependent upon the Local Plan's progress. This is something of a paradox. I consider that it has not been demonstrated at this point that the new school is necessary. I give the provision of land for the primary school only moderate weight.

120. The proposed development would include delivery of a package of sustainable transport measures, secured by planning obligation. This includes a contribution of £1,397,121 for a 30 minute frequency bus service between new bus stops adjacent to the site, and Watford Junction and Borehamwood stations for a five year period; £40,000 towards personalised travel planning; £648,939 for cycling and walking routes; £30,000 for updating school travel plans for a number of nearby schools; sustainable travel vouchers; travel planning and travel plan monitoring for the proposed development. Many of these measures mitigate the proposed development's effects and are necessary, but I consider that the bus service provision and the enhancement of cycling and walking routes would also represent benefits for the wider local community. I give these benefits moderate weight.
121. Paragraph 126 of the Framework refers to the creation of high quality, beautiful and sustainable buildings and places as being fundamental to what the planning and development process should achieve. While the appellant is committed to delivering a high quality development and a condition requires a site-wide design code, I consider high quality design to be an essential tenet of development. Accordingly, this is not a benefit and is neutral in weight.
122. The proposed development would have a mobility hub, secured by planning obligation. This would include a café, reading area, shared office space, sustainable transport information, a bike stop, electric vehicle charging and cycle parking, and parcel drop off and collection. This is agreed by the main parties as being of moderate weight. I see no reason to disagree.
123. The main parties are in agreement that significant levels of accessible open space should have moderate weight. I concur with this finding. However, enhanced access to the countryside and the enrichment of blue/green infrastructure would provide no more than a limited benefit over and above the provision of open space. I give this limited weight.
124. Reference has been made to sustainable building measures such as electric vehicle charging, and use of insulation, air source heat pumps, and photovoltaic panels above Building Regulations. As electric vehicle charging is adequately covered by Building Regulations, I discount this as a benefit, apart from the additional charging offered within the mobility hub above. With regard to the other sustainable building measures, I afford these limited weight in the absence of detail in what is an outline application.

### ***Planning obligations***

125. I have only addressed the planning obligations to ascribe weight to the benefits of other considerations. Given my findings below, it has not been necessary to examine the planning obligations any further.

***Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development***

126. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
127. For this appeal, substantial harm would arise from inappropriateness, the significant reduction in openness, and conflict with two of the five Green Belt purposes, though the identified conflict with the purposes would be very limited and modest. These are three important elements contributing to the substantial weight to the actual and definitional harm to Green Belt. Though the Council chose to, I have not sought to apply a sliding scale to any specific level of substantial weight.
128. A Court of Appeal judgment<sup>17</sup> has confirmed that the interpretation given to any other harm in what is now paragraph 148 of the Framework is such that it is not restricted to harm to the Green Belt. There would be significant harm to the character and appearance of the area and very substantial harm in relation to whether the site is in a suitable location with regard to local and national policies relating to flood risk.
129. The other considerations are weighted as follows: very substantial weight for the provision of both market and affordable housing; substantial weight for self and custom-build housing; significant weight for economic benefits; moderate weight for biodiversity net gain, the provision of land for the primary school, the package of sustainable transport measures, the mobility hub, and significant levels of accessible open space; limited weight to enhanced access to the countryside, the enrichment of blue/green infrastructure, and sustainable building measures. High quality design is neutral in weight.
130. I have had regard to the other considerations. However, these do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the proposed development do not exist. The proposed development would therefore conflict with CS Policy SP1 and CS13, SADM Policy SADM26, and the requirements of chapter 13 of the Framework which have been summarised above.
131. The main parties agree that there is no five-year housing land supply, although they disagree on the extent of the shortfall. The lack of five-year housing land supply indicates that paragraph 11 (d) of the Framework applies and the policies which are most important for determining the application are out-of-date. CS Policy SP2 sets out similar requirements. I have had regard to a legal judgment<sup>18</sup> which confirms that where there are relevant development plan policies, but the most important for determining the application are out-of-date, planning permission should be granted (subject to section 38(6) of the 2004 Act) unless either limb (i) or limb (ii) is satisfied. The application of each limb is essentially a matter of planning judgment for the decision-maker.

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<sup>17</sup> SSCLG & Others v Redhill Aerodrome Ltd [2014] EWCA Civ 1386

<sup>18</sup> Monkhill Ltd v SSHCLG & Waverley Borough Council [2019] EWHC 1993 (Admin)

132. In this instance, it is necessary to consider limb (i) of paragraph 11 (d) and footnote 7 of the Framework. For footnote 7 purposes in this appeal, the relevant policies within the Framework are those pertaining to land designated as Green Belt and areas at risk of flooding. These policies provide clear reasons for refusal of the appeal. As the Monkhill judgment confirms, where more than one footnote 6 policy is engaged (now footnote 7), limb (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal. The presumption in favour of sustainable development is overcome in this appeal.

133. Despite the proposed development's merits, the very special circumstances do not clearly outweigh the conflict with the development plan and national policy in the Framework with regard to the totality of harm. In conclusion, the proposal would conflict with CS Policies SP1, SP2, CS12, CS13 and CS16, SADM Policies SADM11, SADM14, and SADM26, and paragraphs 148, 162, and 174 of the Framework, as set out above. As such, the appeal fails.

### Conclusion

134. For the reasons set out above, the appeal should be dismissed and planning permission should be refused.

*Joanna Gilbert*

INSPECTOR

### Appearances

#### For the Council

Emmaline Lambert, Counsel

Instructed by Mr Harvey Patterson,  
Head of Legal Services, Hertsmere  
Borough Council

She called:

James Dale

Hertfordshire County Council

Georgia O'Brien MA

Senior Planning Officer, Hertsmere  
Borough Council

Grace Middleton MA

Senior Planning Officer, Hertsmere  
Borough Council

Peter Radmall MA B.Phil CMLI

Peter Radmall Associates

Martin Ross BA PGDip

Senior Planning Officer, Hertsmere  
Borough Council

Matthew Stimson

Shoosmiths

Charlie Thompson

Growth and Infrastructure,  
Hertfordshire County Council

David Uncle

Hertfordshire County Council

Katherine Waters MSc BSc C.WEM MCIWEM	Technical Director, WSP
Ross Whear BA (Hons) MA (Urban Design)	Head of Planning and Economic Development, Hertsmere Borough Council
Daley Wilson PGDip	Senior Planning Officer, Hertsmere Borough Council

### **For the Appellant**

Zack Simons and Isabella Buono,  
Counsel

Instructed by Mrs Kathryn Ventham,  
Director, Stantec

They called:

Nicole Cameron	Solicitor, Cripps
Patrick H Clark BA MA Lsc. Arch. CMLI	Landscape Planning Associate Director, Stantec
Caroline Featherston BSc (Hons) MSc MRTPI	Planning Associate, Stantec
Nicholas Martin Paterson-Neild BA (Hons) MPhil MRTPI	Director, Stantec
Andrew Moger BA (Hons) MA MRTPI	Director, Tetlow King Planning
Daniel Simpson BSc PhD CEcol	Director, Aspect Ecology
James Stacey BA (Hons) Dip TP MRTPI	Managing Director, Tetlow King Planning
Matt Thomas MSc FCILT FCIHT	Director, Vectos
Kathryn Ventham BSc (Hons) MSc MRTPI	Director, Stantec
Colin Whittingham BSc (Hons) MSc MCIWEM C.WEM PIEMA	Director, LDE division of RSK

### **Interested Parties**

Maxie Allen	Councillor, Hertsmere Borough Council
Daren Nathan	Local resident and member of Little Bushey Community group
Chris Shenton	Councillor, Hertsmere Borough Council
Andrew Williams	Local resident and member of Little Bushey Community group

### **Documents submitted during and after the Inquiry**

- ID1: Transport and Highways Statement of Common Ground between Redrow Plc and HCC, May 2023 (v3)
- ID2: Appellant's Opening and List of Appearances
- ID3: Council's Opening
- ID4: Housing Land Supply Statement of Common Ground, May 2023, including Disputed Sites List
- ID5: Self-Build and Custom Housebuilding Statement of Common Ground, 9 May 2023
- ID6: Affordable Housing – Statement of Common Ground, 9 May 2023
- ID7: Statement of Common Ground – Flood Risk and Drainage, May 2023
- ID8: Schedule of Draft Conditions
- ID9: Transport and Highways Statement of Common Ground between Redrow Plc and HCC, May 2023 (v4)
- ID10: Hertsmere Borough Council CIL Compliance Statement Addendum
- ID11: Draft planning obligation by deed of agreement between Redrow Homes Limited and HCC, received on 16 May 2023
- ID12: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 16 May 2023
- ID13: Appeal decision APP/D2320/W/20/3247136, Land at Pear Tree Lane, Euxton, Chorley
- ID14: Email dated 17 May 2023 from the Council with regard to a proposed condition to remove permitted development rights
- ID15: Flood Risk Sequential Test and Exception Test, May 2023
- ID16: Land at Little Bushey Lane, Bushey: Proof of Evidence on Sequential Test Matters of Caroline Featherston MRTPI
- ID17: Rebuttal Proof of Evidence and Appendices A - E- Sequential Test (Planning) of Georgia O'Brien MA
- ID18: Rebuttal Proof of Evidence and Appendix A – Sequential Test (Flooding) of Katherine Waters MSc BSc C.WEM MCIWEM
- ID19: Supplementary Proof of Evidence Addendum – Sequential Test (Planning) and Addendum Proof - Appendix A of Martin Ross BA PGDip
- ID20: Supplementary Proof of Evidence Addendum – Sequential Test (Planning) and Addendum Proof - Appendix A of Martin Ross BA PGDip - Updated
- ID21: Draft conditions received 26 June 2023
- ID22: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 27 June

2023

- ID23: Appeal decision APP/N1920/W/22/3311193, Land adjacent and to the rear of 52 Harris Lane, Shenley WD7 9EG
- ID24: Flood Risk Sequential Test Statement of Common Ground, June 2023
- ID25: Statement made by Councillor Maxie Allen
- ID26: Appeal decision APP/D0121/W/22/3313624 Land at Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston-super-Mare BS22 9NY.
- ID27: Revised statement made by Councillor Maxie Allen
- ID28: Statement made by Councillor Chris Shenton
- ID29: Planning Benefits Table
- ID30: Start to Finish: What factors affect the build-out rates of large scale housing sites? Second Edition, Lichfields, February 2020
- ID31: Briefing Note prepared by RSK – Flood Risk and Drainage, 3 May 2023
- ID32: 2014 Planning Practice Guidance Flood risk and coastal change
- ID33: Draft planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on 5 July 2023
- ID34: Final schedule of planning conditions, received on 6 July 2023
- ID35: Ms O'Brien's meeting notes for meeting between appellant, Council and LLFA, dated 22 February 2023
- ID36: Appellant's costs application, received on 6 July 2023
- ID37: HCC's response in respect of transfer of part of the registered title, received on 6 July 2023
- ID38: Draft planning obligation by deed of agreement between Redrow Homes Limited and HCC, and its appendices, received on 6 July 2023
- ID39: Education Position Statement, dated 24 February 2023
- ID40: Draft TP1 Form with comments from HCC, received on 7 July 2023
- ID41: Draft TP1 Form – clean version from appellant, received 7 July 2023
- ID42: Email from HCC in respect of condition on reserved matters for the primary school, including a committee report for 21/00356/FPM Land West of Stevenage, received 7 July 2023
- ID43: Email from Council agreeing to amended main issue on flood risk, received 7 July 2023
- ID44: Email from appellant agreeing to amended main issue on flood risk, received 7 July 2023
- ID45: Draft TP1 Form – clean version from HCC, received 7 July 2023
- ID46: Email from HCC regarding planning obligation progress, received 10 July 2023

- ID47: Council's closing submissions
- ID48: Appellant's closing submissions
- ID49: Completed planning obligation by unilateral undertaking by Redrow Homes Limited in favour of Hertsmere Borough Council, received on and dated 13 July 2023
- ID50: Email from appellant regarding company name change for members of the appellant's team, received 13 July 2023
- ID51: Completed planning obligation by deed of agreement between Redrow Homes Limited and HCC, received on and dated 13 July 2023
- ID52: Council's response to appellant's costs application, including appendices, received 14 July 2023
- ID53: Appellant's reply on costs application, received 17 July 2023