From:	Massow, Alan
To:	Steve Carnaby
Subject:	Hatfield Peverel Neighbourhood Plan
Date:	08 July 2019 15:06:00
Attachments:	19-07-08 DL+IR Gleneagles Way 3180729.pdf 19-07-08 DL+IR Stone Path 140 3180725.pdf 19-07-08 DL+IR HP Stone Path 80 3162004.pdf

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Dear Steve,

Please can you forward the attached appeal decisions to the examiner which relate to planning appeals at Stonepath Drive and Land East of Gleneagles Way Hatfield Peverel? The appeals have been allowed.

Alan

Alan Massow MRTPI
Principal Planning Policy Officer
Braintree District Council | Causeway House, Bocking End, Braintree, CM7 9HB
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Ministry of Housing, Communities & Local Government

Our ref: APP/Z1510/V/17/3180729

Mr Jonathan Dixon
Savills (UK) Ltd
Unex House
132-134 Hills Road
Cambridge
CB2 8PA

8 July 2019

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY DAVID WILSON HOMES EASTERN
LAND EAST OF GLENEAGLES WAY, HATFIELD PEVEREL, CM3 2JT
APPLICATION REF: 16/02156/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry from 12 December 2017 to 30 January 2018 into your client's application for outline planning permission for residential development of up to 120 dwellings, together with associated open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel in accordance with application ref: 16/02156/OUT, dated 16 December 2016.

2. On 12 July 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that that planning permission be granted subject to conditions.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated and agrees with his recommendation. He has decided to grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. On 21 June 2018 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the judgement of the Court of

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Justice of the European Union (CJEU) in Case C-323/17 People Over Wind and Sweetman v Coillte Teoranta on the correct application of the Habitats Directive 92/43/EEC, which was handed down on 12 April 2018.

6. On 1 August 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the new National Planning Policy Framework, which was published on 24 July 2018.

7. On 2 October 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the revised guidance on how councils should assess their housing need, which was published on 13 September 2018, and on new household projections for England published by the Office of National Statistics on 20 September 2018.

8. On 5 March 2019, the Secretary of State wrote to the main parties, to afford them an opportunity to make representations on the implications, if any, on the following documentation:

    - Written Ministerial Statement (WMS) on housing and planning issued on 19 February 2019

    - 2018 Housing Delivery Test measurement data published on 19 February 2019

    - The Government's response to the technical consultation on updates to national planning policy and guidance, dealing with the calculation of Local Housing Need and other matters, including the People Over Wind and Sweetman v Coillte Teoranta issue, published 19 February 2019.

    - Revised National Planning Policy Framework, published on 19 February 2019.

    - Updated guidance for council's on how to assess their housing needs (document).

    - Braintree District Council's latest published 5 year supply statement, January 2019 (see also paragraphs 36 to 43 of this letter).

    - Latest position statement with regard to the emerging Hatfield Peverel Neighbourhood Plan, and weight to be attached to that.

    - Three recent planning casework decisions (brought to the Secretary of State's attention by the Stone Path Meadow Residents Group - SPMRG).

9. A list of representations received in response to these letters, is set out at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

10. In addition, a number of representations were received following the close of the inquiry. These raised a variety of issues, and are dealt with under the considerations of main issues below. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is also at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

12. In this case the development plan consists of the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR25-32.

13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

14. The emerging plan comprises the Braintree New Local Plan (BNLP) and the Hatfield Peverel Neighbourhood Development Plan (NDP). The Secretary of State considers that the emerging BNLP policies of most relevance to this case include those set out in IR34-38 and the emerging NDP policies of most relevance are HPE1, HPE2 and HPE6 as described at IR41-42.

15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

16. At the time of the Inquiry the examination hearings into part 1 of the BNLP were due to commence in January 2018, with Part 2 to follow at a later date. The Secretary of State notes that on 8 June 2018, the Inspector for the emerging Local Plan wrote to the three local planning authority areas covered by the Part 1 Examination, setting out his views as to the further steps he considered necessary in order for the Section 1 Plan to be made sound and legally-compliant, and seeking views on options to pursue these matters. A joint response from the three authorities dated 19 October proposed suspending the Examination until February 2019, with a view to sitting again in June. In the light of these letters, and for the reasons given in IR425-428, the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLP.

17. The Secretary of State notes that while some progress has been made with regard to the NDP since the close of the Inquiry, the further examination of the NDP has not yet concluded. For the above reasons, and for the reasons given in IR429-431, the

Secretary of State agrees with the Inspector that very limited weight can be given to the NDP at this stage.

Main issues

Policies in the Framework on delivering a wide choice of high quality homes

18. For the reasons given in IR420-422, the Secretary of State agrees with the Inspector that the Green Infrastructure Plan and Design and Access Statement set important context and establish important principles at this outline application stage, and that there is no evidence to suggest that the application site will not provide a range of high quality homes.

The extent to which the proposed development is consistent with the development plan for the area

19. For the reasons given in IR435-437, the Secretary of State agrees with the Inspector that although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight, and he considers that a moderate weighting is appropriate. The Secretary of State further agrees with the Inspector for the reasons in IR435-437 that the appeal proposals would be in accordance with the spatial strategy. For the reasons given in IR438-446, the Secretary of State further agrees with the Inspector that there is a conflict with adopted development plan policies RLP2 and CS5, concerning development outside of defined boundaries of settlements, where countryside policies apply. The Secretary of State further agrees with the Inspector that the conflict with policies RLP2 and CS5 should attract moderate weight when it comes to the overall planning balance, given that they would act to restrict the supply of housing and frustrate the aim of the Framework paragraph 59. He notes that the local planning authority in their representation of 22 October 2018 share his view as to the weight to be attached to policies RLP2 and CS5 at this time.

The effect of the development on the landscape character of the area and the visual impact that the development would have

20. The Secretary of State agrees with the Inspector's view in IR448 that it is necessary to take into account the context of the appeal site**,** and notes the historic pattern of growth described in IR 448-449. For the reasons given in IR450-458 the Secretary of State agrees with the Inspector at IR459 that the studies presented set an important context for an assessment of the effect of the development proposed on the character of the landscape, and that none of the studies suggest that suitably designed development could not be accommodated. However, the Secretary of State also acknowledges that the development would have some adverse effect on landscape character by the replacement of a small arable field with a housing development. The impact however would be very localised and limited.

21. In terms of visual impact, for the reasons given in IR461-472, the Secretary of State agrees with the Inspector's assessments of the impact of the development on views

across the site to the landscape beyond and views back towards the settlement edge from distance.

22. For the reasons given in IR473-478 the Secretary of State agrees with the Inspector that the development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape, and enhance the settlement edge as it appears as a feature in the landscape. He finds no conflict with the landscape elements of policy RLP 80, or of the third paragraph of policy CS8.

23. For the reasons given in IR479, the Secretary of State agrees with the Inspector that while harm in relation to visual impact has been identified, this can only attract limited weight. In particular, he agrees with the Inspector's view on the very limited weight to be attached to policy HPE6 of the emerging NDP concerning protected views, given concerns around the evidence base supporting that policy as well as the more general point around progress on that plan.

The effect of the development on community infrastructure

Education

24. The Secretary of State notes that by virtue of his decision on this case and on the proposals at land off Stone Path Drive, Hatfield Peverel, that the four residential developments listed in the letter attached to the Education Statement of Common Ground (Inquiry Document ID1.8) are now being taken forward. There is therefore a need for additional primary school capacity. While the issue will resolve itself over time through the operation of the admissions policy, there would be a short term impact which is most likely to manifest itself through additional journeys to school, either by bus or private car.

Health

25. The Secretary of State notes the Inspector's summary of evidence submitted on health matters at IR487-489, and has considered the subsequent closure of the Sydney House and Laurels surgeries to new registrations.

26. The Secretary of State remains of the view, for the reasons set out by the Inspector in IR490-492, that in terms of both health and education, the Appellant has entered into planning obligations to make all the contributions that have been requested to mitigate any effect from the appeal scheme, and that a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Erosion of gap between Hatfield and Witham

27. For the reasons given in IR493-494, the Secretary of State agrees with the Inspector that this matter has "material planning consideration" status, and that there would be a conflict with emerging NDP policy HPE1. He notes the current position with the emerging BNLP described in IR495, and the matters at IR497-498 which could fall to be addressed by the appointed examiner for the emerging NDP.

28. For the reasons given in IR500-504, the Secretary of State agrees with the Inspector that the loss of the field to residential development would have no perceptible effect on the effective gap between Hatfield Peverel and Witham, and that only very limited weight can be given to the conflict with policy HPE1.

Loss of best and most versatile agricultural land

29. All parties were content to proceed on the basis that the application site should be considered to be best and most versatile agricultural land. For the reasons given in IR505-509, the Secretary of State agrees that the application proposal would not protect best and most versatile agricultural land as required by policy CS8, and also that policy CS8 is inconsistent with paragraphs 170, 171 and footnote 53 of the Framework. In accordance with Framework paragraph 213, the Secretary of State finds that limited weight should be given to the conflict with policy CS8.

Other matters

30. A post-inquiry representation referred to the cancellation of one bus route that served Hatfield Peverel. The Secretary of State has taken this into account, but remains of the view that Hatfield Peverel still demonstrates good public transport links.

Appropriate Assessment

31. Following the reference back to parties exercise described in paragraph 5 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this application and presented to the inquiry is no longer legally sound.

32. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an Appropriate Assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Annex C. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

33. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where a plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the that the plan or project will not adversely affect the integrity of the habitats site.

Five year housing land supply

34. The Secretary of State has considered the Inspector's findings as regards housing land supply at IR512-516. However, following the publication of the revised Framework, guidance on the calculation of local housing need, and revised household forecasts, he has set out his own conclusions below.

35. Paragraph 73 of the Framework indicates that in the circumstances of this case, local housing need should be applied. The Secretary of State has therefore calculated the local housing need figure based on the methodology published alongside the revised Framework 19 February 2019.

36. On 11 April 2019, the local authority published an Addendum to their Monitoring Report, and a 5 Year Supply Site Trajectory. This reflected the Housing Delivery Test 2018 data

published in February 2019; new affordability ratios published by the Office for National Statistics on 28 March 2019, and additional information relating to supply of sites.

37. In summary, the Addendum set out a 5 year land supply position for the authority of 5.29 years. While the version of the monitoring statement on which the Secretary of State referred back to parties was published on 15 January 2019, given the minor change in the authority's assessment from 5.42 years supply to 5.29 years, and given his conclusions below, the Secretary of State did not consider it necessary to further refer back to parties on this issue.

38. The Secretary of State has reviewed the material published on 11 April 2019, and has also considered the representations of parties made on this issue in response to his letter of 5 March 2019 and, subsequent emails recirculating representations that had been received.

39. Planning Practice Guidance states that in principle an authority will need to be able to demonstrate a 5 year land supply at any point to deal with applications and appeals, unless it is choosing to confirm its 5 year land supply, in which case it need demonstrate it only once per year. *Paragraph: 038 Reference ID: 3-038-20180913*

40. In this case, the authority has not chosen to confirm its 5 year land supply. Paragraph 74 of the National Planning Policy Framework sets out that this can only be carried out through a recently adopted plan (defined in footnote 38 of the Framework) or subsequent annual position statement. In the circumstances, the Secretary of State has therefore considered the latest evidence before him.

41. Having reviewed the housing trajectory published on 11 April 2019, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission does not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site within five years. He has therefore removed 10 sites from the housing trajectory, these are listed at Annex D to this letter.

42. The Secretary of State considers that, bearing this definition in mind, the authority are able to demonstrate around 4.15 years supply.

43. The Secretary of State has therefore concluded that the authority is unable to demonstrate a 5 year housing land supply. Given this finding, and the objective of significantly boosting the supply of new homes, he attaches great weight to the provision of housing.

Planning conditions

44. The Secretary of State has given consideration to the Inspector's analysis at IR394-413, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy tests set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

45. Having had regard to the Inspector's analysis at IR414-417, the planning obligation dated 8 January 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR418 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

46. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application. Having had regard to the Inspector's analysis at IR414-417, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

47. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies RLP 2 and CS5 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

48. The Secretary of State has concluded that the authority is not able to demonstrate a 5-year supply of housing land, therefore the presumption in favour of sustainable development applies because of the effect of paragraph 177 of the revised Framework (as set out in paragraph 33 of this letter above).

49. The Secretary of State considers that the housing benefits of the proposal carry great weight, and the economic benefits in terms of jobs and increased expenditure carry moderate weight. He attaches limited weight to the enhanced biodiversity arising from the new boundary planting.

50. The Secretary of State considers that the conflict with the adopted development plan policies attract moderate weight, and that harm caused in relation to visual impact is limited. He further concludes that only very limited weight can be attached to conflict with policy HPE6 of the emerging NDP. He attaches very limited weight to the conflict with emerging policy HPE1 which seeks to address the coalescence of settlements and limited weight to the conflict with policy CS8 (BMVL).

51. Overall, the Secretary of State concludes that there are material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that planning permission should be granted.

Formal decision

52. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to the conditions set out in Annex B of this decision letter for residential development of up to 120 dwellings, together with associated open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel in accordance with application ref: 16/02156/OUT, dated 16 December 2016.

53. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

56. A copy of this letter has been sent to Braintree District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

General representations

Party	Date
Mr East	14 and 26 March, 23 May and 7 September 2018
Rt Hon Priti Patel MP, encl correspondence from Mr East and Mr Ellison	15 March 2018
Mr Kearns	22 March, 18 April and 5 June 2018
Cllr Derrick	6 April 2018
Mr Simmonds	6 June 2018
Rt Hon Priti Patel MP	2 October 2018
Hatfield Peverel Parish Council	12 November 2018 and 18 February 2019

Representations received in response to the Secretary of State's reference back letter of 21 June 2018

Party	Date
Hatfield Peverel Parish Council	6 August (x3) 2018

Representations received in response to the Secretary of State's reference back letter of 1 August 2018

Party	Date
Hatfield Peverel Parish Council	14 and 29 August (x2) and 5 September 2018
Savills	15 August 2018

Representations received in response to the Secretary of State's reference back letter of 2 October 2018

Party	Date
Hatfield Peverel Parish Council	10 and 22 October 2018
Savills	11 and 19 October 2018
Braintree District Council	22 October 2018

Representations received in response to the Secretary of State's reference back letter of 5 March 2019

Party	Date
Hatfield Peverel Parish Council	25 March, 2 and 18 April 2019
Savills	25 March (x3) and 2 April (x2) 2019
Braintree District Council	26 March 2019

Annex B List of conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 120 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the approved plans listed below:
Approved Plans:

Location Plan:	1296/01 FINAL
Access Details:	45604-P-SK205

5) Prior to first occupation of the development hereby permitted the provision of the following works shall have been completed, details of which shall have been submitted to and approved in writing by the local planning authority prior to implementation:
   - The access to the application site shown in principle on drawing 45604-P-SK205
   - The cycle/pedestrian access between Gleneagles Way and Glebefield Road as shown in principle on Drawing 45604-P-SK200
   - Improved no entry signage at the end of the A12 southbound off-slip for drivers on The Street, plus improved speed limit signs and road markings for drivers leaving the A12 as show in principle on Drawing 45604-P-SK202
   - Improvements to the visibility splay from Gleneagles Way towards the A12 southbound off-slip shown on Drawing 45604-P-SK20 to include trimming/removal of vegetation/trees, relocation/replacement of signs/street furniture/lamp column(s), regrading/hardening of highway land.
   - A footway and (A12) road signage improvements at The Street/A12 north bound on-slip junction as shown in principle on Drawing 45604-P-SK201.
   - Improvements to the (A12) road signage, kerb alignment and road markings at The Street/Maldon Road as shown in principle on Drawing 45604-P-SK201.
   - The provision of dropped kerbs and associated works where the footway from Hatfield Peverel to Witham crosses the A12 northbound on-slip to the south of the Petrol Filling Station (former Lynfield Motors site), Hatfield Road, Witham.
   - The provision of a zebra crossing on B1019 Maldon Road in the approximate position shown on Drawing 45604-P-SK207

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Together with any submission of reserved matters, details of sound insulation measures must be submitted to and approved in writing by the local planning authority. The details must demonstrate that internal noise levels do not exceed 35 dB LAeq 16 hour in living rooms during the daytime (07:00 - 23:00) and also do not exceed 30 dB LAeq 8 hour in bedrooms during the night-time period (23:00 - 07:00) as set out in BS 8233: 2014. In addition, the details must demonstrate that maximum night-time noise levels in bedrooms should not exceed 42 dB LAmax more than 10 to 15 times per night. The development must be carried out in accordance with the approved details.

9) Together with any submission of reserved matters, details of the proposed boundary mitigation (noise barrier) must be submitted to and approved in writing by the local planning authority. The details must demonstrate that external noise levels will not exceed 55 dB LAeq 16 hour in any of the private residential gardens. The development must be carried out in accordance with the approved details.

10) Prior to the commencement of development hereby permitted, a wildlife protection plan shall be submitted and approved by the local planning authority identifying appropriate measures for the safeguarding of protected species and their habitats within that Phase. The plan shall include:

    an appropriate scale plan showing protection zones where any construction activities are restricted and where protective measures will be installed or implemented;

    details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;

    details of how development work will be planned to mitigate potential impacts on protected species, as informed by the project ecologist;

    a person responsible for:

    a) compliance with legal consents relating to nature conservation;
    b) compliance with planning conditions relating to nature conservation;
    c) installation of physical protection measures during construction;
    d) implementation of sensitive working practices during construction;
    e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
    f) provision of training and information about the importance of "Wildlife Protection Zones" to all construction personnel on site.

    All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

11) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and

lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

12) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

13) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

14) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

    - identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

    - show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

    All lighting shall be installed, maintained and operated in accordance with the approved details.

15) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

    A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

    No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

    Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted

to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Limiting discharge rate to 1.25l/s/ha;

- Providing sufficient storage to manage the 1 in 100 year + 40% climate change storm event on site with no flooding of the formal drainage system during the 1 in 30 year event. Provide sufficient storage so that no flooding will occur during the 1 in 30 year event in the case of pump failure;

- Provide adequate treatment across all elements of the development.

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

    The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.

21) As part of the submission of the first reserved matters application as detailed within Condition 1, an Arboricultural Method Statement (AMS) shall be submitted and approved in writing by the local planning authority. The AMS will include a Detailed Tree Protection Plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (to include frequency of visits; and key works which will need to be monitored) and how they will record their monitoring and supervision of the site.

    The development shall be carried out in accordance with the approved details.

    Following each site inspection during the construction period the Project Arboricultural Consultant shall submit a short report to the local planning authority.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities within that Phase of the development and shall remain in place until after the completion of the development.

The local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) Prior to submission of the first application for Reserved Matters pursuant to this planning permission an updated survey of the application site will have been carried out by a suitably qualified and experienced ecologist to investigate the potential presence on the application site of badgers, bats, reptiles and Great Crested Newts.

    Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority for approval as part of the first application for Reserved Matters pursuant to this planning permission.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) Prior to the submission of the first reserved matters application, details must be submitted to demonstrate that ambient concentrations of nitrogen dioxide will not exceed the UK annual mean objective concentration of 40µg/m3 at any residential property location within the development.

28) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residents' Travel

Information Pack for sustainable transport, approved by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

29) Prior to the first occupation of the development hereby permitted the overhead electricity cables crossing the site east /west shall be diverted underground.

Annex C – Screening & Appropriate Assessment

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AS AMENDED FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Project Title and Location: Called-In planning application No. APP/Z1510/V/17/3180729 Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

Project description:- erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works. (Planning Application Ref: 16/02156/OUT, dated 16 December 2016.)

Completion Date: November 2018

Project description – further information

1. The project site and surroundings are described at paragraphs 19 – 24 of the Inspector's report arising from a public inquiry held into this application between 12 December 2017 and 30 January 2018. The project proposal is described at paragraphs 44 – 45 of that report, in the planning application documentation and in the Environmental Statement. A copy of the inspector's report is attached to this assessment.

Competent authority

2. The above project, having been called-in by the Secretary of State for Housing, Communities and Local Government, is to be determined by him using his powers under section 77 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

Part 1 - Screening

3. A Screening Opinion provided to the Inquiry (produced by Braintree District Council took account of mitigation measures at the screening stage and concluded that no Appropriate Assessment was required. A judgment in the Court of Justice of the European Union (CJEU) in *People Over Wind and Sweetman* and *Coillte Teoranta* (12 April 2018) means this assessment is no longer legally sound.

4. It will now fall to the Secretary of State to take a screening decision for this application, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

Screening Assessment

Relevant documentation

5. The Secretary of State has taken into account the document "Habitats Regulations Assessment Report Land North East of Gleneagles Way, Hatfield Peverel, Essex" ("HRA Report") dated June 2018 In this Screening, all references to sections, unless otherwise stated, are to that document. He has also taken into account comments made by parties to whom this document was circulated on 12 July 2018, namely the local planning authority, Rule 6 parties to the Inquiry, and the developer in the cases heard at the same Inquiry, Refs: APP/Z1510/W/16/3162004 and APP/Z1510/V/17/3180725: both on Land off Stone Path Drive, Hatfield Peverel, CM3 2LG.

6. The Secretary of State notes and agrees with sections 1 and 2 of the HRA Report, which set out relevant background and context, the legislative and policy background, factual information about the SAC, SPA and RAMSAR site and its relation to the application site, and the conservation status of the SAC, SPA and RAMSAR site.

7. With regard to the issue raised by Hatfield Peverel Parish Council at paragraph 11.c of their response, he has considered the new Zones of Influence set out in the RAMS update provided by SPMRG in their response to the Stone Path Drive cases, and has had particular regard to the methodology used for arriving at these zones. He is content that it is appropriate to consider only the Blackwater Estuary SPA and the relevant part of the Essex Estuaries SAC for the purposes of this Assessment.

Consideration and Conclusions

8. In screening the proposals before him, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.

9. The conservation objectives for the Essex Estuaries Special Area of Conservation are:

   Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
   - **The extent and distribution of qualifying natural habitats**
   - **The structure and function (including typical species) of qualifying natural habitats, and**
   - **The supporting processes on which qualifying natural habitats rely**

10. The conservation objectives for the Blackwater Estuary (Mid-Essex Coast Phase 4) Special Protection Area are:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- **The extent and distribution of the habitats of the qualifying features**
- **The structure and function of the habitats of the qualifying features**
- **The supporting processes on which the habitats of the qualifying features rely**
- **The population of each of the qualifying features, and,**
- **The distribution of the qualifying features within the site.**

11. The Secretary of State has carefully considered section 3 of the HRA Report on Potential Adverse Impacts, in particular 3.4 and 3.5. He concludes that the development proposals, with proposed conditions 4, 17, 18 and 19, should have no significant impact on designated sites in respect of urbanisation, atmospheric pollution, water abstraction and water quality.

12. The Secretary of State considers that, in the absence of mitigation or avoidance measures, there would be the potential for the application proposal to give rise to a likely significant effect due to increased disturbance from recreational activities, namely walking and dog-walking. He considers that the distance from the designated sites means that regular visits from new residents would be unlikely, and that the public open space provided as an integral element of the proposals, together with links to the existing public right of way would provide opportunities for informal recreation for both new and existing residents. He therefore concludes that the proposals are not likely to have a significant effect on the interest features of the SAC, SPA, or RAMSAR site, when considered in isolation.

13. The Secretary of State does however find that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.

14. He has considered the issues raised by Hatfield Peverel Parish Council at paragraph 11.e of their response, concerning whether a median or worst-case estimate should form the basis of estimates of impact.

15. While he has found potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, through walking, dog walking and informal recreation, when considered in combination with other plans and projects, the Secretary of State disagrees that a worst-case scenario should be used for the purposes of this assessment. The test at this screening stage is one of a likely significant effect. In the Secretary of State's opinion, this test requires estimating the most likely impact based on available evidence, rather than the worst potential impact.

Overall conclusions

16. The Secretary of State has concluded that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.

17. In light of that conclusion the Secretary of State considers that, in light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment.

18. As the competent authority in this case, he has gone on to carry out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

19. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects, and has determined that an Appropriate Assessment is required.

20. In accordance with the *People Over Wind and Sweetman* and *Coillte Teoranta* ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the site. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

Relevant documentation

21. The Secretary of State has had regard to the previously mentioned document "Habitats Regulations Assessment Report Land North East of Gleneagles Way, Hatfield Peverel, Essex" dated June 2018,("the HRA Report") and the responses received thereto following reference back to parties. In addition, he has also had regard to documents considered at the Public Inquiry, as set out in Annex A of the Inspector's report, in particular Core Documents Set C, "Documents submitted by David Wilson Homes Eastern" and "Documents submitted during the Inquiry by the parties".

22. The Secretary of State's appropriate assessment has not simply relied on and adopted the above information and responses to it. Rather, the Secretary of State has considered the relevant information independently, and reached his own conclusions. He has also sought the views of Natural England as the appropriate nature conservation body on a draft of this assessment, which are summarised at paragraph(s) 31-32 of this Appropriate Assessment.

Consideration

23. At the prior screening stage, the Secretary of State has already concluded that the application proposals would not be likely to have a significant effect on the SAC, SPA and RAMSAR site other than in respect of disturbance effects. In respect of disturbance effects, the Secretary of State has considered the proposed measures to avoid / mitigate the potential for significant impact on the SAC, SPA and RAMSAR site, set out in sections 4.1 and 4.2 of the HRA report.

24. The Secretary of State agrees that the provision of public open space and access to the Public Right of Way (PROW) network will provide opportunities for informal recreation and alleviate both existing and potential increased recreation at the SPA / RAMSAR site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure.

25. The Secretary of State also considers that the provision of information to support the use of the local footpath network, together with a proportionate financial contribution towards improvements to the PROW network will also serve to encourage new residents to utilise existing public rights of way in the vicinity, and support the diversion of visitors away from the designated sites.

26. The Secretary of State further agrees that the financial contribution towards the Essex Recreation Disturbance Avoidance Monitoring Strategy (RAMS) visitor monitoring surveys at the Blackwater Estuary will help to identify any management measures which may be necessary to mitigate and manage for potential impacts at the designated site.

27. He has paid close attention to the case made by Hatfield Peverel Parish Council in their response, in which they cite Case C-142/16 Commission v Germany contending that monitoring is not mitigation. The Secretary of State notes that in paragraph 37 of the report of Case C-142/16, that the impact assessment proposing the mitigation measure in question did not contain definitive data regarding its effectiveness, and merely stated that its effectiveness could only be confirmed following several years of monitoring.

28. The Secretary of State has considered the precise wording of the signed and dated S106 Agreement provided to the Inquiry, which was the subject of discussion at a round table session on the final sitting day of the Inquiry. The Blackwater Estuary Mitigation Contribution Purposes are defined as being used towards:

> "…the provision of visitor management measures (which may include surveys) to raise awareness of the effects of visitor disturbance at the Blackwater Estuary SPA/RAMSAR site"

29. The Secretary of State considers that this envisages that the contribution could be used towards other measures, and has taken into account the note on the RAMS update provided by SPMRG in their response which states at paragraph 4.4.3 that the three most common forms of generic mitigation are: habitat creation, education and communication, all of which would seem to be allowable under the wording of the S106 Agreement. He therefore concludes that in this case, there is sufficient certainty that a robust mitigation will be provided if required.

30. For the above reasons, the Secretary of State considers that the proposed package of on and off-site measures would be sufficient to ensure no likely significant adverse effect on the SAC / SPA / RAMSAR site, either in isolation or in combination with other plans or proposals.

Natural England's advice

31. Natural England have advised, consistent with their previous comments that a financial contribution towards 'offsite' mitigation measures at the Blackwater Estuary would be required. The mitigation measures that will be funded are consistent with the aims and aspirations of the emerging Essex Coast disturbance Avoidance and Mitigation Strategy (RAMS).

32. Provided the contribution is fully secured, Natural England agree that the proposal would not have an adverse effect on the integrity (AEoI) of the Essex Estuaries SAC and Blackwater SPA and Ramsar site, either when considered alone or in combination with other plans or projects.

Consideration and Conclusions

33. Having concluded that the proposal will not adversely affect the integrity of the SAC / SPA / RAMSAR site, and having given careful consideration to the advice of Natural England the Secretary of State has considered how the proposed mitigation / avoidance measures

needed to ensure the acceptability of the proposal are to be secured should the application be granted.

34. Promoting the local footpath network by supplying all new residents with a map and guide to local (circular) walking routes is secured by Condition 28.

35. The “green infrastructure” package for this development, including public access to the adjacent PROW which will provide a link to a circular walk to the PROW network to be available all year round is an integral part of the proposals. Taken together with a financial contribution towards improvements to the Public Rights of Way (PRoW) network within the vicinity of Hatfield Peverel, secured by Schedule 10 of the s106 agreement dated 8 January 2018, the Secretary of State is satisfied that these will provide an opportunity for dog walkers in close proximity to the development site, thus diverting them away from visiting the Blackwater Estuary (Mid-Essex Coast Phase 4) SPA & Ramsar site.

36. The financial contribution towards the Essex Recreation Disturbance Avoidance Monitoring Strategy (RAMS) is secured by Schedule 9 of the s106 agreement dated 8 January 2018.

37. Accordingly, the Secretary of State is satisfied that if the application were granted outline planning permission, the mitigation and avoidance measures he has deemed necessary to make the application proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

38. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Annex D - Sites removed from housing trajectory published on 11 April 2019

Local Plan Site reference	Planning Application reference	Name and address of site
GOSF 251	BTE/17/0610/OUT BTE/18/2007/FUL	Land South of The Limes Gosfield
GGHR 283 HASA 293	BTE/17/0575/OUT BTE/18/1749/FUL	Land east of Sudbury Road Halstead
	BTE/16/0569/OUT	Land NE of Inworth Rd Feering
KELV 335	BTE/17/0418/OUT	Station Field, Land west of Kelvedon Station Station Road (Monks Farm) Kelvedon
RIDG 359	BTE/17/1325/OUT BTE/19/0635/FUL	SE side Ashen Rd, at junction with Tilbury Rd Ridgewell
EARC 225	BTE/15/1580/OUT	Land rear of Halstead Road Earls Colne
WIS 10X	BTE/14/1528/OUT	Former Bowls Club And Land At Old Ivy Chimneys Hatfield Road Witham
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Land north of Conrad Road Witham
WIS 09	BTE/12/1071	Land south of Maltings Lane Witham
BOS6H	BTE/15/1319	Land West of Panfield Lane

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 20 March 2018

THE TOWN AND COUNTRY PLANNING ACT 1990

BRAINTREE DISTRICT COUNCIL

APPLICATION BY

DAVID WILSON HOMES EASTERN

Inquiry Held on 12 December 2017

Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

File Ref(s): APP/Z1510/V/17/3180729

File Ref: APP/Z1510/V/17/3180729
Land east of Gleneagles Way, Hatfield Peverel CM3 2JT

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 12 July 2017.
- The application is made by David Wilson Homes Eastern to Braintree District Council.
- The application Ref 16/02156/OUT is dated 16 December 2016.
- The development proposed is erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works.

Summary of Recommendation: The application be approved.

Procedural Matters

Matters common to all three schemes considered at the Inquiry

1. The Inquiry opened on 12 December 2017 and sat for eight days. I carried out an unaccompanied visit to the site and a tour of the surrounding area on 3 January which included viewpoints to which I was directed by the parties. Closing submissions were made in writing in sequence during January. The Inquiry was closed in writing on 30 January 2018 following receipt of all outstanding documents including obligations entered into under s106 of the principal Act.

2. Three schemes were considered at the Inquiry; the application listed in the summary details above; an appeal against the refusal of an application by Gladman Developments Ltd (GDL) for outline planning permission for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works on Land off Stone Path Drive, Hatfield Peverel, Essex (ref: APP/Z1510/W/16/3162004); and an outline application in the same terms but for up to 140 dwellings at the same address and submitted by the same applicant (ref: APP/Z1510/V/17/3180725).

3. In each case all matters except access are reserved for future determination.

4. The two applications were called in for determination by the Secretary of State on 12 July 2017. In each case the reason given was that he wished to be informed about:
   i) Policies in the National Planning Policy Framework (Framework) on delivering a wide choice of high quality homes;
   ii) The extent to which the proposed development is consistent with the development plan for the area; and
   iii) Any other matters the Inspector considers relevant.

5. The appeal was recovered for determination by the Secretary of State on 12 October 2017. In this case the reason given for the direction under s79 of the principal Act was that, having called in application 16/01813/OUT (file ref: APP/Z1510/V/17/3180725) which affects the same site, the Secretary of State wishes to re-determine the appeal himself so that he can consider both proposals at the same time. The appeal was therefore recovered because of the particular circumstances.

6. No pre-Inquiry meeting was held. Instead, I issued two pre-Inquiry notes on 8 November 2017 (INSP1) and 5 December 2017 (INSP2) and a further email dated 7 December 2017 relating specifically to housing land supply issues (INSP3).

7. In response to these notes three documents were produced on behalf of both GDL and David Wilson Homes Eastern (DWH). These are Cumulative Air Quality Impact Assessment (ID1.4), a Transport/Highways Note (ID1.5) and a Statement of Common Ground (SOCG) with Essex County Council (ECC) on education issues (ID1.8). A further Briefing Note: Clarification of Presentation Provided by Mr John Webb (ID20) was produced following the submissions from interested persons on the first day of the Inquiry.

8. Some evidence was common to all three schemes. This included that on housing land supply which was heard, at the parties' request, by way of a round table discussion. Much of the policy evidence was also common to all three schemes.

9. I issued a further note following the close of the Inquiry sessions (INSP4). This concerned a heritage matter that is not relevant to this application and also sought clarification of the submissions made in respect of Core Strategy policy CS1. In short, I asked whether it was the whole policy that should be considered to be out of date or just that part of it relating to housing numbers and, depending on the answer to that, whether the spatial strategy embedded in the policy could still be considered current if the settlement boundaries predicated upon out of date housing supply numbers could not. The clarifications provided have been taken into account.

10. In a further response before the close of the Inquiry the Parish Council advised that a Habitats Regulation Assessment Screening Report was submitted to Natural England on 18 December 2017 and, further, that Natural England's comments were received by the Council on 25 January 2018. Although the comments have not been made available to the Inquiry, the Parish Council states '…at face value the comments appear positive enabling the Neighbourhood Development Plan to progress.' It further advises that a meeting has been arranged for 5 February with the Council to discuss the way forward and '…to agree how to expedite the Plan.'

11. GDL co-ordinated the core documents listed in Annex A. Although there are three sets, one for each GDL scheme and another for the conjoined Inquiry, all three sets are listed in each report since reference was made throughout to all three sets. DWH prepared its own core documents specific to the scheme that is the subject of this report. The documents listed as being submitted during the Inquiry relate to all three schemes. It is perhaps worth noting that only a limited number of the documents listed was referred to in the written and oral evidence.

Matters specific to this application

12. Before the Inquiry the Planning Inspectorate agreed to the request made by Hatfield Peverel Parish Council (HPPC) to be a made Rule 6 (6) party.

13. The application was supported by a number of documents which are listed as SAV1 to SAV28 inclusive in Annex A.

14. DWH has prepared and submitted a SOCG with each of the Council and HPPC (SOCG4 and SOCG 5 respectively). Each follows the same format. Among the

matters that are agreed are the relevant policies of the adopted and emerging development plan, the application site and its surroundings, the application proposal and the position on a wide range of detailed considerations that are listed. Although the precise terms of each agreement is different (for example SOCG5 with HPPC does not acknowledge that the scheme would make a substantial contribution to the shortfall in five year housing land supply), each agrees that the Council cannot currently demonstrate a five year supply of housing land.

15. The SOCG between DWH and the Council records DWH's view that the objectively assessed housing need (OAHN) for market and affordable housing is higher than that proposed by the Council in the emerging development plan. In the event, this dispute was not pursued. DWH also records that it expects to contest the conclusions of the Council's updated five year housing land supply assessment when it is published.

16. There are five matters in dispute between DWH and HPPC. These are:
    a. The weight to be given to relevant polices in the adopted and emerging development plans;
    b. The weight to be given to the conflict with the spatial strategy of the development plan;
    c. The degree of harm to the rural character of the area and the landscape setting of the village and the weight to be given to that harm;
    d. Whether the proposal would result in a loss of part of the significant gap of open countryside between the settlements of Hatfield Peverel and Witham such as to harm the identities of these separate settlements; and
    e. Whether the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

17. An Obligation pursuant to s106 of the Act was entered into by DWH and the Council and a completed document (ID59) was submitted before the close of the Inquiry.

18. The Council issued a Screening Opinion on 28 August 2015 to the effect that a development of approximately 140 dwellings was not EIA development (paragraph 4.1 SOCG4). The Secretary of State came to the same view having considered the scheme both on its own and in combination with others.

The Site and Surroundings

19. The application site is about 5.2ha in extent and is situated on the north eastern side of Hatfield Peverel. To the north east again is the town of Witham.

20. The topography of the site, which is currently in use as arable farmland together with associated field margins, is generally flat. To the north east of the site is agricultural land and, beyond that, a fishing lake introduced following mineral extraction.

21. It is thus a greenfield site located outside but adjoining the built-up area of the village. In that respect it is bounded to the west by existing residential

development at Gleneagles Way, Wentworth Close, Birkdale Rise, Ferndown Way, Woodham Drive and Vicarage Crescent with the village beyond. A single private dwelling (Small Acres) lies immediately to the south. To the north is The Street (B1137) and the A12 slip road. The A12 links Ipswich, Colchester and Chelmsford to the M25 and east and central London beyond.

22. Agricultural vehicles use a break in the hedge in the south east corner to access the land. Other vehicular accesses are available from Birkdale Rise and Ferndown Way. A public right of way links Maldon Road to the south west of the application site with agricultural land to the north west. At present this path does not connect to the application site.

23. The site does not contain nor does it form part of any heritage asset or setting of any heritage asset. It lies within Flood Zone 1, the lowest probability of flooding.

24. The site is within the designated Hatfield Peverel Neighbourhood Plan (NDP) Area. The village is a Key Service Village (KSV) identified in the adopted development plan. Although slightly renamed, that status is maintained in the emerging plan. There is a good range of services and facilities in the village centre which is close to the application site. There are four bus stops within 0.5km of the application site used by various bus services. There are frequent services to Witham, Colchester, Chelmsford and other nearby settlements with less frequent services on Sundays. Trains run from the village to London Liverpool Street, Colchester, Braintree and other destinations.

Planning Policy

Adopted development plan

25. The adopted development plan for the area includes the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. Included in the SOCGs is a lengthy list of what are termed policies relevant to the application. Included in CD11.1, set B and CD10.1, set B are those policies and the supporting text that are of particular relevance to the determination of this application.

The LPR

26. Policy RLP 2 states that new development will be confined to the areas within town development boundaries and village envelopes. Outside these areas countryside policies will apply although exceptions may be made for affordable housing schemes which comply with LPR policy RLP 6. Such considerations do not apply in this case. Policy RLP 3 sets out a number of criteria that all residential development within development boundaries and village envelopes must meet.

27. RLP 80 addresses landscape features and habitats. In essence it requires applicants to assess the impact of a proposed development on wildlife and distinctive landscape features and for proposals in mitigation of any impacts to be put forward. Development that would not integrate successfully into the local landscape will not be permitted.

28. Other LPR policies listed in the SOCG are in a form designed to ensure that the technical requirements of statutory and other consultees are given policy force.

The wording is generally in the form of not allowing development unless required measures are secured.

The CS

29. Policy CS1 sets out the housing provision that will be made over the period 2009 to 2026. It also sets out where those new dwellings will be located. These include KSVs; Hatfield Peverel is such a village. Policy CS2 sets out the requirement for developments to provide affordable housing with the target percentage being determined by the location of the proposed development. A target of 40% applies on sites in rural areas.

30. The precise wording of policy CS5 is as follows:

> *Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.*

31. The natural environment and biodiversity is addressed by policy CS8. This is a policy that covers almost two sides of A4. The gist however is that developers are required to have regard to, or to take account of, the impact of the proposed development on a wide range of factors. Of relevance to this proposal are the protection and enhancement of the natural environment in the widest sense, the protection of the best and most versatile agricultural land, the character of the landscape and its sensitivity to change and the minimisation of exposure to flood risk.

32. Policy CS9 is in many respects a general design principles policy. A good provision of high quality and accessible green space including accessible natural green space to meet, among other things, amenity needs is secured by policy CS10. Policy CS11 sets out, in essence, that development contributions towards necessary infrastructure services and facilities will be secured through, among other things, planning obligations.

Emerging development plan

Braintree New Local Plan (BNLP)

33. The BNLP was submitted to the Secretary of State in October 2017. The examination has therefore commenced. It is in two parts. Part 1 (CD12.3 set B) plans strategically across three local planning authority areas. At the time of the Inquiry the examination hearings were due to commence in January 2018. Part 2 (CD12.4 set B) relates to the Council area only. Hearing dates have yet to be arranged. There are a substantial number of representations raising fundamental issues with both parts of the BNLP. Those made by GDL are at CD33.1, set C.

34. Although in Part 1 policy SP 2 continues a spatial strategy for North Essex that seeks to accommodate development within or adjoining settlements according to their scale, sustainability and role, it also proposes three new garden communities one of which would be to the west of Braintree. Policy SP 3 sets out housing needs which for Braintree are 14,320 dwellings over the period 2013 to 2033 on the basis of an OAHN of 716 dwellings per annum.

35. Turning to part 2, the broad spatial strategy for the Council area is to concentrate development on the town of Braintree, planned new garden communities, Witham and the A12/Great Eastern Mainline corridor and Halstead. Hatfield Peverel lies within the A12/Great Eastern Mainline corridor and is identified as a KSV. Policy LPP 1 states:

    Within development boundaries, development will be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material adverse detriment to the existing character and historic interest of the settlement.
    Development outside development boundaries will be strictly controlled to uses appropriate to the countryside to protect the intrinsic character and beauty of the countryside.

36. Policy LPP 31 proposes a comprehensive redevelopment area on land between the A12 and the Great Eastern Main Line. This comprises four areas; the former Arla Dairy site; Sorrell's Field; Bury Farm; and a smaller site to the rear of Station Road. Among the list of things that the development will be expected to provide are financial contributions to early years and childcare provision, contributions towards primary and secondary education facilities and contributions to other community facilities including health provision as required by the NHS.

37. Landscape character and features are subject to policy LPP 71. This requires, in broad summary, applications for development to demonstrate an understanding of the landscape character of the area and show how the development proposed would fit in. Development that would not successfully integrate into the local landscape will not be permitted.

38. Green buffers are proposed through policy LPP 72 where it is considered desirable to prevent coalescence of two settlements. No green buffer is proposed between Hatfield Peverel and any other settlement such as Witham.

Hatfield Peverel Neighbourhood Development Plan (NDP)

39. The NDP (CD15.2, set B) has been submitted for examination and the examiner appointed. At Appendices MR23 to MR 25 of Mr Renow's proof (HPPC1) is the exchange of letters between the examiner and HPPC. On 5 September 2017 the examiner set out the two 'important' matters about which she had 'serious concerns in respect of the progress of the examination and the (HP)NDP meeting the statutory Basic Conditions' (MR23). Having considered the reply dated 13 September 2017 from HPPC (MR24), she wrote again on 20 September declining to continue the examination while the necessary additional work was undertaken (MR25). The reason given was '…the issues raised are sufficiently substantive that I feel to do so runs the risk of undertaking work that could later be found to be abortive and incur unnecessary costs to the local authority.'

40. The NDP is subject to unresolved objections including those from GDL (CD33.2, set C) and DWH (SAV50 and SAV52).

41. Policy HPE1 creates a green wedge along the eastern development boundary of Hatfield Peverel to avoid coalescence with Witham. The policy sets out those types of development that would be permitted within the green wedge provided that the open nature of the area is maintained. The list is very similar to those

listed in Framework paragraph 89. However, the 'very special circumstances' caveat set out in Framework paragraph 87 is not included.

42. The retention of existing trees, hedgerows and habitats, the mitigation of their loss and the retention of natural boundary treatments and the provision of new areas through new development is the subject of policy HPE2. The protection of the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment is achieved through policy HPE6.

Relevant Planning History

43. An outline application for the erection of up to 145 dwellings and associated infrastructure was refused planning permission in April 2016.

The Proposals

44. The application has been submitted in outline with all matters except access reserved for future approval. Access would be via Birkdale Rise. Up to 120 dwellings would be provided with 40% being affordable housing.

45. The application was accompanied by a Design and Access statement (SAV7) and a Parameters Plan (SAV4). Both are illustrative only and not therefore for approval. They do however indicate how the development might be implemented.

The cases put by the parties

46. Although three separate developments were being considered at the Inquiry, that was not, in the main, how the evidence was presented and tested. This was inevitable and the most efficient use of Inquiry time as there was a significant degree of commonality in, for example, the evidence given on policy and housing land supply topics. Counsel for GDL adopted the submissions of Mr Tucker in respect of both these matters. Similarly, Mr Tucker adopted the submissions of Ms Osmund-Smith in a limited number of matters and the case made by GDL in that respect is therefore set out below.

47. Although Stone Path Meadow Residents Group (SPMRG) has no interest in this application, Ms Scott did call evidence and make submissions about both policy and housing land supply. Those are included below for completeness since Mr Tucker refers to them in his submissions on these matters. Relevant SPMRG documents are also listed in Annex A.

48. Closing submissions were submitted in the same sequence as they would have been presented at the Inquiry. The usual convention whereby the scheme promoter hears the cases against the proposal before making its case was thus observed. As will be clear, Mr Tucker has responded to points made by other advocates.

49. It is fair to say that he is quite critical of the way in which some arguments have been put by Mr Graham for HPPC and, to a much lesser extent, Ms Scott for SPMRG. In short, the criticisms are that the case has been developed, if not actually changed, from that trailed in the statement of case; evidence from witnesses has been misrepresented and concessions in cross examination ignored.

50. I believe there is some substance to all of those criticisms and I have had regard to that in coming to my conclusions. While I have recorded the flavour of the criticisms in presenting the case set out, the exact, sometimes robust, phrasing used has not been included. Each closing submission is nevertheless listed and available to read in full.

The case for David Wilson Homes Eastern

Introduction

51. The land use issues raised against the DWH scheme are comparatively modest and are accepted by the Council not to be sufficient to outweigh the benefits of the scheme. This, in the context of a District where there is agreed to be an immediate need for additional housing land. Moreover, whilst HPPC and a handful of residents from the Gleneagles Estate have challenged the DWH case, it is perhaps of note that most of the time at this inquiry has been spent on the merits of the GDL schemes; the site specific merits of the DWH site were discussed and challenged in less than a day.

52. It was stated in opening that this is a comparatively straightforward proposal. In reality nothing which has been presented over the course of the Inquiry to change that position.

53. It is agreed with the Council that there is a significant deficit against the required 5 Year Land Supply (5YHLS) and there therefore is an immediate need for additional housing, which will necessarily have to include land that is presently undeveloped.

54. It is agreed that there is an immediate need for additional affordable housing.

55. There is no statutory consultee who has objected to the application scheme.

56. The only policy objections (albeit not raised by the Council) relating to the DWH proposals relate to:
    i) breach of 'in principle' countryside policies which are based upon settlement boundaries which are agreed by the HPPC's planning witness to be out of date; and
    ii) breach of policies in respect of a draft and flawed NDP which can only be afforded the most limited weight;

57. Requested contributions to infrastructure etc. are provided for in full in the s106 obligation.

58. The application site is located in a sustainable location (in this respect DWH acknowledges and adopts the case made by GDL) and relates well to the settlement of Hatfield Peverel which it is agreed will need to accommodate additional growth.

5 year housing land supply

59. Framework paragraph 47 directs that local planning authorities must identify and update a "supply of specific deliverable sites" to provide 5 years' worth of housing against their housing requirements. Deliverable is defined in footnote 11:

To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular, that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

60. In *St Modwen Developments Ltd v SOSCLG* [2017] EWCA Civ 1643 (paragraph 38, CD32.18 set C) the approach that should be taken to assessing whether a site is "deliverable" in the context of the footnote 11 definition is confirmed. Properly understood the judgment does no more than reiterate the ordinary and natural meaning of the words of the footnote. It does not, as Mr Graham sought to argue for HPPC, reduce the threshold for assessing yield from deliverable sites. In that case the Appellant was contending that only those sites with planning permission should be considered to be deliverable. Self-evidently, whether or not a site is counted into the exercise as "deliverable" is only the first step of the exercise - the crucial issue in this case is what comprises the likely yield of the deliverable sites. Doubtless this important distinction will be clear to the Secretary of State.

61. It appears from his closing submissions that Mr Graham has misinterpreted this important judgment. In response to HPPC's closing submissions, (paragraph 5, ID48) there is no judicial authority that "deliverable" means, as Mr Graham submits, 'non-fanciful'. The judgment of Lindblom LJ is clear that "deliverable" in the context of Framework paragraph 47 is defined solely by footnote 11. Mr Graham's submission in this regard is simply wrong.

62. To the minimum requirement to demonstrate a 5YHLS must be added a buffer of 5% or 20% depending upon whether there has "been a record of persistent under delivery". The courts have clarified what is meant by "persistent under delivery" in *Cotswold DC v SOSCLG* [2013] EWHC 3719 (paragraph 47, ID1.15). Essentially, whether under delivery has been persistent is a matter of planning judgment, considering a reasonable period of time for analysis and against a justifiable housing requirement which can include consideration of what is proposed in an adopted plan and evidence of need. Addressed below is why it is considered that a 20% buffer is appropriate.

63. The starting point for the numerical calculation of the 5YHLS is to identify an appropriate requirement against which to judge the available supply of deliverable sites. In this case the requirement of the adopted CS is based upon a hopelessly out of date figure derived from the "policy on" content of the long defunct Regional Spatial Strategy. In those circumstances it is agreed with all parties that it is appropriate to identify the OAHN based upon the most up to date evidence, without any policy adjustment.

64. What figure comprises the OAHN will be a matter of intense debate at the forthcoming examination in public of the emerging BNLP, to which there is intense dispute. That debate will take place in January 2018. However, given that the decisions of the Secretary of State will be made after this debate has taken place GDL/DWH in this Inquiry have taken the pragmatic decision not to use the Inquiry as a dry run for those arguments, but rather to accept for the

purposes of the Inquiry that the Council's figure is the correct one. Should compelling evidence arise to support a contrary position prior to the decision of the Secretary of State then that will be drawn to his attention in advance of that decision.

65. Thus, for the purposes of the Inquiry, Mr Spry adopts the Council's estimated OAHN of 716 dpa derived from the evidence base from the emerging BNLP. There is no disagreement between any of the parties to this Inquiry that this approach is reasonable and thus, this is the appropriate starting point.

66. The disagreement between the parties relates to the following areas:
    i) Liverpool or Sedgefield approach for addressing the shortfall:- The applicants and the Council have agreed, again for the purpose of this Inquiry, that the correct approach is Sedgefield. It is noted that the Council is pursuing the Liverpool methodology at their Local Plan examination, however it properly accepts, that without specific support from the examining Inspector, it could not reasonably support such an approach for the purpose of this Inquiry;
    ii) 5% or 20% buffer;
    iii) The supply of deliverable sites - There is a dispute between SPMRG and GDL/DWH on the sites that should be considered to be deliverable and therefore included in the supply with SPMRG arguing for the inclusion of draft local plan allocations. That position is expressly rejected by the Council which does not consider that those sites should be afforded sufficient weight to be included, given the stage in the process and the degree of unresolved controversy which relates to them. There is then the more important debate about the likely yield from a handful of disputed sites as between the Council and Mr Spry. This disagreement on yield on those sites is essentially one of judgment based upon agreed facts and is covered in detail in ID1.14 where the difference between the parties is reduced to a yield of 68 dwellings.

67. HPPC lead no evidence on the point. The submissions made in closing on which sites should be included must therefore be given no weight.

Liverpool v Sedgefield

68. The only parties advocating for a "Liverpool" approach - ie spreading the shortfall over the whole of the local plan period - are the Rule 6 parties. The Council has agreed that this is not the correct method for calculating the 5YHLS position for this Inquiry, whilst arguing for that position through the BNLP examination. Its reasoning is robust - until the examining Inspector endorses a different approach then based upon recent appeal decisions, the "preferred" approach of Planning Practice Guidance (PPG) of the Sedgefield methodology is to be preferred.

69. Notably there was no discernibly logical argument put forward by either of the Rule 6 parties to support a contrary case for the use of Liverpool. The best that was offered was that the Liverpool methodology would be appropriate because when looking back at the record of under delivery it is claimed that the Council cannot meet its requirement in the short term and therefore Liverpool should be used - repeated in the SPMRG closing (paragraph 86(ii), ID49). With the greatest of respect, this is not sound planning. Not only is it in conflict with

guidance to the contrary in PPG, but also it has serious social consequences, given that the shortfall in delivery is not one which arises over the next 15 years but rather it exists right now, at the start of the 5 year period under consideration. Not to do so now means deferring the meeting of needs - which is the antithesis of the tone and content of Framework paragraph 47.

70. The argument is that it is simply not possible to deliver the undersupply in the first 5 years. It is accepted the PPG says that the undersupply should be addressed within 5 years "where possible". However, self-evidently the correct approach to this guidance is to start from a position that it is possible and only change that view where it is shown to be impossible. An impossibility cannot be proven through previous undersupply - the very problem the buffer seeks to address. An impossibility might be proven in cases where the LPA's area is highly constrained e.g. AONB, Green Belt, other designations, or where there is clear market evidence of saturated demand. However, it is strongly submitted that "not possible" is a high bar and one which is not close to being met in this case.

71. The illogic in respect of the DWH site is even more striking since it argues that a site should not be released to a national housebuilder in a sustainable location because there are concerns about the ability of the market to deliver.

72. Thus, if a local planning authority cannot meet its housing requirement, the answer is to release more sites, not to accept that past under delivery represents the benchmark for future delivery and to thereby leave more families without a home.

73. The reality of the Rule 6 parties' position is clear from the SOCG on Additional Housing Supply Sites (ID37). This shows that they need to convince the Secretary of State in respect of all of their points in order to demonstrate a marginal excess against the 5YHLS - i.e. it is only on their flawed analysis of the additional sites together with the use of the Liverpool method and with only a 5% buffer that they can mathematically demonstrate a marginal excess over the 5YHLS. If nothing else this evidences just how dire the position on 5YHLS is in this District. If objectors have to argue for a swathe of implausible assumptions and can still only just show a mathematical exceedance then the clear reality of the land supply position is Braintree falls significantly below what is needed. If there was any doubt to the contrary then no doubt the Council would not have readily conceded the absence of a 5YHLS a matter of weeks before the start of the BNLP examination hearings.

74. In her written evidence, Mrs Jarvis for HPPC attempted to make a somewhat curious secondary argument that even if there was a need for additional housing then development should be distributed evenly within the hierarchy of settlements at the tier within which Hatfield Peverel falls (paragraph 2.15, HPPC2) However, in cross examination that point was rapidly abandoned.

75. First, she accepted that the table within the adopted CS is a minimum figure and therefore one can conclude that the table does not form a basis for a mathematical exercise in allocating the shortfall of housing within the hierarchy. Second, when she was carefully taken through the emerging BNLP she readily accepted that it contained significant changes to the adopted strategy of housing distribution - most obviously in its dependence upon the new Garden Communities - but crucially given the enhanced role of Hatfield Peverel as part of

the A12 corridor of growth. With all due respect to Mrs Jarvis her point went nowhere and it certainly does not support the proposition that she intended that the DWH proposals are out of scale with the settlement, let alone the more radical distribution point made at paragraph 2.15 of her proof.

76. In conclusion, DWH, supported by the Council, strongly submit that the Sedgefield approach must be preferred for this Inquiry. The social dimension of sustainable development must require the shortfall to be delivered within the 5 years - to do otherwise is simply to put off the requirement to boost significantly the supply of housing and results in a failure to meet the requirements of those who want to own a home in this part of the country.

The Buffer - 20% or 5%

77. The Council argues for a 5% buffer, GDL/DWH for 20%. The evidential basis for the debate is the update (ID1.11) to table 5.1 in Mr Spry's proof of evidence (4/POE). This updated the completions figures for the early part of the period. The updated table shows:
    i) The Council has not met annual requirement figure since 2011/12;
    ii) There has been persistent and significant under-delivery between 2012-2017;
    iii) There is under-delivery against current half year (April to Sept 2017);
    iv) In combination, there has been under-delivery of housing against the requirement of:
        - 458 - 16.5 yrs
        - 1,002 - 10.5 yrs
        - 1,448 - 9.5 yrs

78. This table compellingly illustrates the inescapable conclusion that there has been persistent under delivery of housing in Braintree. Against this, the Council's unconvincing contention was to argue that it was "unfair" to judge them against an OAHN of 716 from 2013 when the figure was only introduced in November 2016. Rather it was argued that the lower Structure Plan figure should be used. However, the Council will have been well aware that an increased OAHN was likely given the household projections figures (detailed in the updated table 5.1) which were consistently in excess of the Structure Plan figure.

79. It is also clear that the Council was aware of the likely increase in OAHN as evidenced in the minutes of the Council's meeting on 30 June 2014 (1/POE, Appendix 2). Under agenda item 23 the Council decided to withdraw the Site Allocation Development Management Development Plan Document. One of the points noted by the Council was that the Framework would impact on the housing need figures derived from the CS and that under a Framework compliant methodology, those numbers would go up. It is disingenuous by the Council to now say at this Inquiry that they were not aware of the housing numbers going up; plainly they were aware of this from at least 30 June 2014. Therefore not only is it sound planning to backdate the OAHN to 2013, but the Council were also well aware of the requirement to increase their housing figures.

80. The Council's approach is wholly unconvincing. Not only would it be to "reward" tardy plan making but it means judging under-delivery against the wrong metric. The intention of the buffer is not one of "punishing" a local authority which would

then bring in concepts of fairness. Rather it is an objective exercise to determine whether or not there is a need to increase the well of sites from which the development industry can draw in order to achieve the OAHN. In this case it is now known that the target of the adopted plan was substantially below what it ought to have been in order to meet the agreed OAHN and that delivery was also well below the OAHN. It is therefore known that delivery was persistently below what it should have been and more importantly there is no suggestion that the lower Structure Plan target was somehow constraining delivery.

81. The Framework, published in 2012, could not be clearer at Framework paragraph 215: local planning authorities had a period of 12 months to bring policies into line with the Framework and after this date, the weight to be given to any pre-Framework policy would depend on the consistency with it. This includes, as it must, pre- Framework housing requirement figures, such as those used by the Council taken from the now-revoked East of England Plan. The Council ought to have updated their housing requirement in this 12-month period and done so in a way that reflects Framework paragraph 159 which establishes that this should meet "household and population projections" (the figures for which are included in Mr Spry's updated table 5.1 and would have been known to the Council at the time). They could have done so in a Framework compliant way with a partial review. They did not do this and still have not done this. The only Framework compliant way is therefore to back date the OAHN requirement to 2013/14.

82. The Council argue in their closing (paragraph 23 to 24, ID47) that the OAHN figure from 2013/14 was not the "target" at the time as that figure only became known in 2016. Target is the wrong word; it is about meeting housing need. The Framework is clear. Framework paragraph 47 bullet point 2 requires local planning authorities to identify sites to meet their "housing requirements", that means the need at the time. It does not mean the need as it was last identified. To adopt such an approach could result in years of need being unmet simply because a Council has not carried out the necessary work to assess the actual housing need in its area. Mr Cannon's approach would be another reward to the sluggish authority and must be rejected. Mr Spry's must be preferred as an approach that supports the Government's clear objective of boosting the supply of housing by assessing need as it actually is, not as it once was.

83. The appeal decisions cited by SPMRG on this point (paragraphs 90 – 92, ID49) are not on point. The first decision (ID44) was in the context of an authority that had over supplied for an 8 year period. Plainly this Council is a long way from this having undersupplied over a number of years. The second decision (ID43) is also in the context of an authority that had over supplied. The arguments of DWH on this point should be preferred.

Conclusions on 5YHLS

84. If the Secretary of State accepts that the correct approach to calculating the land supply position in Braintree is Sedgefield/20%, then the supply is 3.3 years against the Council's OAHN figure. It is only if the Secretary of State concludes that all the stars have aligned and that the correct approach is Liverpool/5% with the additional sites put forward by the Rule 6 parties, that the Council could crawl over the line and show a 5YHLS - 5.38 years. It is GDL/DWHs' submissions that such a conclusion, given the weakness of the argument and absence of

supporting evidence, grossly over-stretches the elastic potential of planning judgment.

85. Should the Secretary of State conclude that the correct approach is Sedgefield/20% (or indeed Sedgefield/5, or Liverpool 5/20), then the Council cannot demonstrate a 5YHLS and there is a serious deficit against the minimum policy requirement of Government such that there is an immediate need to redress that deficit. Moreover relevant policy consequences kick in.

86. In the absence of a 5YHLS, Framework paragraph 49 says that "relevant policies for the supply of housing" are not to be considered up to date. The Supreme Court in *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37 concluded that decision makers should adopt a narrow approach to identifying which policies should be considered as "relevant policies for the supply of housing" (paragraph 57, CD31.2 set C). However, this may not be the point of the exercise (paragraph 59):

> *The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies.*

87. The approach is endorsed at paragraph 83:

> *If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.*

88. The weight to be given to particular policies in the adopted and emerging local plans is addressed in due course. However, the point that must be taken from *Suffolk Coastal* is that where it is environmental (or other) policies that have resulted in the failure to demonstrate a 5YHLS, then those policies are as susceptible to having their weight reduced in the balance as those policies that fall within the definition of "relevant policies for the supply of housing".

89. HPPC's closing submissions on the ratio of *Suffolk Coastal* must be rejected (paragraph 36 and 37, ID48). The Supreme Court is not removing the s38(6) test; that is at the heart of decision making. It is a judgment about the weight to be given to policies where the plan is absent, silent or out of date. Mr Graham's approach of dismissing Framework paragraph 14 as "no more than guidance" rather than crucially important national policy which should be afforded substantial weight, is an invitation to the decision maker to fall into serious error.

90. Overall therefore it is firmly submitted:
    i) there is plainly a substantial deficit as against the minimum requirement to demonstrate a 5YHLS;
    ii) the effect of that is that Framework paragraph 49 is engaged;
    iii) that alone is sufficient to warrant engaging the presumption in Framework paragraph 14;
    iv) it is agreed that there is no immediate prospect of the emerging BNLP being adopted and therefore the only means by which the deficit can

be addressed is through the grant of planning permissions in sustainable locations; and

v) substantial weight should be afforded to the provision of general market housing which contributes to meeting that deficit.

Landscape issues

91. The Secretary of State is invited to place substantial reliance upon Jeremy Smith's proof of evidence (DWH3) and the landscape and visual impact assessment (LVIA) that underpins it which sets out the landscape considerations in a balanced and compelling way. That is not merely an exercise in advocacy, but for the following compelling reasons:
    i) the LVIA is the only LVIA which has been produced by anyone;
    ii) that LVIA was audited by the Council before it resolved to grant planning permission and was found to be methodologically sound;
    iii) no serious attack has been launched by anyone on the methodology of the LVIA. Whilst in cross examination HPPC sought to "test" some of the elements of the LVIA, HPPC had no comparable evidence to set against it;
    iv) the case in fact put to Mr Smith appeared to be to criticise him because he had taken localised viewpoints where either the application site will be seen in the context of immediately adjacent infrastructure or housing, or where it will be barely seen at all. Rather than making the HPPC's case, such arguments lead to the conclusion that the loss of this ordinary field, which is heavily influenced by adjacent urban development will give rise to no more than highly localised impacts which are readily capable of mitigation. What views will remain will be of housing from within the existing urban area - which is self-evidently characteristic and not harmful.

92. Thus, the reality from the Inquiry is that the totality of HPPC's landscape objections to the DWH scheme, both those put in a couple of pages of Mrs Jarvis's proof as well as the case put in cross examination, are deeply unconvincing. Whilst it is undoubtedly the case that the development of previously undeveloped land on the edge of a settlement gives rise to some inevitable harm, the loss of this otherwise unremarkable and unimportant area of agricultural land gives rise to harm at only the lowest end of the spectrum.

93. HPPC's case prior to the start of the Inquiry was that such a loss was not warranted - in particular because it will impinge upon an important view highlighted in the NDP and secondly that it will result in an unwarranted erosion of the gap between Hatfield Peverel and Witham. It is respectfully submitted that this approach is deeply a misguided one in both landscape and planning policy terms.

Erosion of the Gap

94. At policy HPE 1, the NDP seeks to prevent coalescence between Hatfield Peverel and Witham. It aims to do this by identifying a "green wedge" (page 24 – 25, CD16.3 set C). The previous version of this policy in an earlier draft of the NDP inappropriately references "Green Belt", rather than the provision of a green wedge as now included in the consultation draft of the NDP. While ostensibly recognising that this was inappropriate, the NDP policy now remarkably attempts

to promote a policy which is even more restrictive than Green Belt, as examined in evidence. Thus, in the Green Belt, planning permission ought to be granted if very special circumstances were evidenced, yet HPE1 provides no such provision. Similarly if a Green Belt were being established then a local planning authority would look to identify safeguarded land for future development to protect the inner boundary of the Green Belt, but here the HPE1 designation comes hard up against the settlement edge.

95. Mr Renow accepted in cross examination that the gap between Hatfield Peverel and Witham would still be almost a kilometre with the development. The assertions in paragraph 191 of HPPC's closing submissions were not put to Mr Smith and were not made by either HPPC witness.

96. The reality of policy HPE 1 is that it is trying to bestow Green Belt-style protection on the land between Hatfield Peverel and Witham, which probably provides an even more constrained policy context, contrary to any reasonable interpretation of the Framework.

97. It is also plain that this NDP policy draws no support from any credible evidence base, nor from adopted or emerging local plan policy. The BNLP (paragraphs 8.31 to 8.36 and policy LPP72, CD16.2 set C) sets out the thinking on green buffers by the Council. Notable by its absence is any protection for the gap between Hatfield Peverel and Witham, in which sits the DWH site.

98. Similarly the underlying landscape evidence base of the NDP does highlight concerns over coalescence, but not in relation to the tract of land within which the application site sits, which makes no mention at all about its supposed role in supporting an important gap.

99. It is noted that HPPC seeks some comfort in its approach from a single sentence email from an officer in the policy team of the Council (ID26), who provides a view which is patently at odds with that of the Council in promoting draft policy LPP72. It is unclear on what possible authority such an email might have been written, but the weight to be afforded to it must be very limited indeed. More importantly, policy HPE1 is subject to substantial and serious objection from both the public and the private sector which seriously diminishes the weight to be afforded to it. Most notably, there is an outstanding objection to this policy by the Essex County Council Spatial Planning Manager. In his objection he notes:

> *ECC notes that this [policy HPE 1] is not consistent with Policy LPP 72… The area along the eastern boundary of Hatfield Peverel is subject to a development, which has been approved by BDC, but is subject to a call-in. Consequently, this would infer that BDC does not consider this area as meeting the requirements, which seek to prevent coalescence of settlements.*

100. It is remarkable that HPPC did not seek to draw this to the attention of the Inquiry. With respect however it is the death knell for any contention that any more than the most limited weight should be afforded to policy HPE1.

An Important View?

101. Policy HPE 6 in the NDP (CD16.3 set C) seeks to:

protect the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment (2015). Any proposed development, or alterations to an area within these views must ensure their key features can continue to be enjoyed including distant buildings, areas of landscape and open agricultural countryside.

102. There are a whole host of reasons why this policy should be given very little, if any, weight in the final planning balance:

i) As Mrs Jarvis accepted, it is not consistent with policy LPP72 in the BNLP.

ii) In 2015, the Landscape Partnership carried out a Local Landscape Character Assessment for Hatfield Peverel (LLCA) (CD18.4 set C) that forms a fundamental part of the evidence base for the Neighbourhood Plan. The DWH site is within LLCA 4 (page 23 CD18.4). This independent study produced by landscape experts, identifies the key views within the LLCA as shown on the plan on page 23. The blue arrow pointing northeast goes along the public right of way which runs approx. 200m south of the site save for a very thin sliver of land to the extreme south of the site proper which it is intended will provide a landscaped link to the footpath network. When that is compared with the key views that have been included in the NDP (page 33, CD16.3, set C), what is immediately striking is that the view within the proximity of the application site identified by the independent experts is not the one carried forward into viewpoint 5 in the NDP. The experts, undertaking an approach with a recognisable methodology, identify the views out from the start of the public right of way which runs along the southern/eastern boundary of the site and which will be covered by public open space in the application, that view will be entirely unaffected by the appeal proposals. The NDP, at viewpoint 5, dismisses this and instead promotes a view from the end of a residential cul-de-sac, with no entrance to a public right of way that looks directly across the development site.

The reasons given for this change by Mr Renow in cross examination were that these views were voted for by local people and are considered to be the views deserving of policy protection within the NDP although Mr Renow did fairly accept that VP5 in the NDP is clearly inconsistent with the LLCA. More fairly still, he accepted that this was not a proper basis to plan protected views. Therefore HPPC's own evidence given by the person who claims to be at the heart of the neighbourhood planning process, is that the view protected in the NDP has no proper evidential basis. Instead, as Mr Smith made clear in his evidence, the view along the public right of way, that does have landscape value, will have any impacts upon it mitigated through boundary planting and the provision of public open space.

iii) The Workshop for Important Views document (CD 18.6 set C) which sets out the analysis that supposedly led to the inclusion of viewpoint 5 in the NDP as an important view, exposes the reality of the selection. This document, at page 6, where the potential views within LLCA 4 were considered, states as follows with regard to the view across the

application site that eventually became important view 5 in the NDP - "*Key features - line of tall trees, flat field, hedgerows and trees*", but perhaps most revealing "*Value to the community* **-** *not sure if this area has any value but the residents like the view*" (emphasis added). The true purpose of the identification of the important views is finally revealed when examining why some of the sites were removed from the NDP. The view of the River Ter (CD18.6 set C, page 2, row 6), that one might consider to be a quintessential view, was removed as it is "*Not subject to planning*". Likewise that the view over St. Andrews Church was removed despite being the "*Historic core of the settlement*". Thus, if the view in the NDP has any claim to be an important one then it is in the teeth of the evidence and based upon the fact that an unknown number of people seem to "like it". As put in cross examination, it is difficult to escape the inference that those promoting the NDP have sought to promote not the important view recommended by an expert but an unimportant view in order to make a case opposing the DWH site.

iv) Mr Renow sought to criticise the DWH assessment for not having taken account of the views of the community. A landscape character assessment undertaken by a professional landscape architect is intended to convey the objective judgment of the "assessor" and therefore is very rarely materially influenced by the views of the public, unless representations raise an objectively justifiable concern which had not been previously considered. The point is that it is a professional piece of work, which follows recognised guidance, not an informal local referendum on popularity of views. Indeed, when the Neighbourhood Plan team did attempt to take the view of locals as to which views were "important" it did so in a haphazard and inconsistent way which deviated from its purported evidence base. However even on that approach it is of note that the view from Gleneagles Way (proposed to be protected in the NDP) came 4th out of 5 proposed views. So even on his own argument, it does not suggest that even the local community find the view particularly important.

v) The final piece of evidence exposing the real intentions of the NDP is set out at CD18.3, set C - Hatfield Peverel Site Assessment 2017. The application site is considered at page 8. It identifies no beneficial opportunities at the site, despite those drafting this document in 2017 being aware of this application to develop the site. Mr Renow accepted in cross-examination that the non-preferred sites were marked in this document with no opportunities in contrast with the preferred sites. It is in short an admitted exercise in advocacy and not evidence worthy of the name. Mr Renow reasonably made the above concession and it must be given significant weight. Paragraph 99 of the HPPC closing submissions which row back from this concession on this point can be afforded no weight at all.

vi) HPPC note in their closing submissions that policy HPE6 deals with views 'identified by the community and the Hatfield Peverel Landscape Character Assessment'. Those are the words in the policy, but so far as relevant to the appeal site those words are flatly contradicted by the evidence base (see above). Indeed Mr Renow properly accepted in

cross examination that the choice of views was only based upon community views - a process with no recognised methodology.

The emerging NP

103. The reality is that the NDP, insofar as it addresses landscape issues, is a partial document. It is not a balanced piece of planning analysis that looks to meet housing need and protect landscapes meriting protection. The motivation appears to have been in part to stymy development in Hatfield Peverel other than on the Arla Dairy site. Consequently, the landscape policies within the NDP should be given very limited, if any, weight. They lack any balanced and considered evidence base and are subject to detailed and robust objection. Additionally, as will be addressed in more detail below, the NDP is some considerable way from being made and is best described as being "stalled" with no immediate hope of being restarted.

Landscape Conclusions

104. The reality of the landscape evidence with regard to the DWH site as it has emerged to the Inquiry is that Mr Smith's approach and assessment withstood challenge and were essentially not contradicted by contrary evidence. The effects of the development on the wider landscape are assessed as minor. Likewise, the visual effects of the development are properly characterised as highly localised especially once the mitigation has matured. As Mr Smith's photographs readily demonstrate there will then be no intervisibility between Hatfield Peverel and Witham, both as a result of distance, intervening landscaping, proposed landscaping as well as the marked effects of the intervening ridge that Mr Smith described. That position will not alter even if the emerging BNLP allocations are endorsed. No proper challenge was raised to Mr Smith's assessment of the scheme against the Eastleigh test. To be blunt just as with landscape, the issue of an impact upon coalescence of settlement is a makeweight point as far as the Gleneagles site is concerned.

105. Regrettably, Mr Graham has not properly recorded the evidence of Mr Smith on landscape. He did not accept that there would be clear intervisibility between the application site and Witham - evidenced in the photo montages. Mr Smith did state that it would be possible to see Wood End Farm as one leaves Hatfield Peverel on the A12. This is not the same as views from the DWH site and nor would it impact upon coalescence.

106. HPPC seek to draw attention to the view from D's Diner as making a positive contribution to the character of the area (paragraph 193 ID48). As Mr Smith made clear in cross examination, this view includes the A12 on the left, the cycle path, an unsurfaced car park in the foreground and the existing housing and diner to the right. The proportion of the view that is occupied by the application site is relatively small and, most importantly the context of new homes in this view, would be existing urban development and substantial infrastructure to both the left and right. Using the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA3) process there is no doubt that this visual effect would be less than significant.

107. Finally, DWH, through Mr Smith, produced a document to the Inquiry (Statement of Landscape Principles, ID46), which should be read alongside the parameters plan (SAV4) and the design and access statement (SAV7). This sets

out in plain terms the approach the developer will take to mitigating the limited landscape harms caused by the development. The conclusion the Secretary of State will be invited to make is that there are no supportable landscape reasons for refusing this scheme. HPPC seem to suggest (paragraph 192 ID48) that a 9 metre high barrier of planting along the eastern edge of the site would "detrimentally change the character of the locality". There is however already a belt of shrubs and trees along this edge of the site and these extend to above 15 metres in height. Some of the existing trees are non-native. The DWH proposals would augment and enhance the existing planting in a manner which is entirely in character with the area.

Planning

108. DWH's planning case is set out in the proof of evidence from Mr Jonathan Dixon (DWH1), which was subject to only the most limited of challenges.

109. As stated in opening, the site is not in or adjacent to any heritage or landscape related designations and there are no technical reasons put forward to warrant the withholding of consent. The landscape objections put forward by HPPC have been addressed above and do not come close to providing a sound policy and legal basis for withholding consent, let alone comprising a basis to displace the presumption in favour of sustainable development.

110. The relevant policy issues in adopted and emerging local plans are limited to policies of minimum housing provision within the settlement hierarchy (CS1); general protection for the countryside (CS5); emerging policies on development boundaries (LPP 1); and policies in the NDP that have already been considered.

111. Dealing firstly with CS1. As Mrs Jarvis rightly accepted, this policy is presumed to be out of date as a result of the failure to show a 5YHLS. Therefore, it will carry reduced weight in the overall planning balance. However, it is also out of date and therefore of reduced weight, for several other reasons.

112. Had plan preparation proceeded properly, then the settlement boundaries, which were first established in the mid-1990s, would have been reviewed many years ago. However, there is nothing before the Inquiry to suggest that the settlement boundaries in the District have ever been subject to a comprehensive review (as opposed to merely amending settlement boundaries to accommodate strategic allocations), let alone in Hatfield Peverel. On the evidence it appears highly likely, therefore, that twenty year old boundaries have simply been rolled forward from an old (and a now-withdrawn) plan. Without an evidence base to support the policy, it is not enough to simply point at the words on the page and cry refuse - it must have an evidence base.

113. Mrs Jarvis suggested that the emerging BNLP part 2 (CD16.2 set C) had been based upon a review of the boundaries. However, she was only able to provide a short report which appears to have been provided at an early stage of plan preparation to identify what principles would be applied to a future review (HPPC2, Appendix PJ3). It emphatically does not record or detail that any such review has taken place. When Mrs Jarvis was pressed, she readily conceded in cross examination that she had not been able to identify any documentation to support the proposition that the boundaries in the District have been reviewed as part of the emerging BNLP process. It is plain from the evidence of all the

planning witnesses, including HPPC, that Mr Dixon's approach to the out of datedness of settlement boundaries is manifest.

114. What is clear is that the Council readily accepts that in order to meet its immediate needs that greenfield land will need to be released.

115. Hatfield Peverel is a KSV within the adopted and emerging plans. Far from being preclusive of growth, that designation explicitly anticipates that the settlement can accommodate growth. Indeed in the emerging BNLP the settlements on the A12 corridor (including Hatfield Peverel) are identified as being a particular focus for growth - a point noted by HPPC in their closing submission (paragraph 70 ID48). Mrs Jarvis readily accepted that Hatfield Peverel could accommodate additional growth. However her point appeared to be that the development of the appeal site would lead to excessive growth. However the yardstick against which she sought to judge whether that was excessive related to a plan whose period has expired and relating to a table of indicative distribution of growth which is explicitly a minimum. When pressed, she accepted that there was no policy limitation which is breached by the grant of planning permission. Certainly it is untenable to contend that the grant of planning permission in this case would comprise disproportionate growth for Hatfield Peverel.

116. Given the considerable under supply, it is essential that further land comes forward for development in Hatfield Peverel to meet the unmet need. Given the very limited objections to this site (both in substance and number), the DWH site is well placed to help the Council get closer to delivering its housing requirement.

117. Turning now to Policy CS5, this comprises a general blanket countryside protection policy. Mrs Jarvis rightly accepted that the weight to be given to this policy must be interpreted with regard to its consistency with the Framework. This policy imposes a blanket ban upon development in the countryside, which is not included in the Framework. Mrs Jarvis sought to place reliance upon Framework paragraph 17 which sets out the overarching principles. Eventually she conceded that the word "strictly" in CS5 went beyond what is included in the Framework. This policy should be given much reduced weight as it is inconsistent with the Framework and, recalling Lord Gill in *Suffolk Coastal*, such overly restrictive policies that result in less than 5YHLS must be given reduced weight or they would be frustrating the objectives of the Framework (CD31.2 set C).

118. The Council seek to argue that policy CS5 should attract moderate weight because that is what other Inspectors have concluded and it complies with Framework paragraph 17 by recognising the intrinsic character and beauty of the countryside. That submission on Framework paragraph 17 is flawed for the reasons above. Previous Inspectors' conclusions are persuasive but they are not binding, given the strength of argument that this policy carries limited weight the Inspector and ultimately the Secretary of State can, and should, come to a different conclusion.

119. Turning to the emerging BNLP (CD 16.2 set C). This directs substantial growth to the garden villages, however Mrs Jarvis accepted that the emerging plan was still subject to a lot of objections. Despite this (and remembering the terms of Framework paragraph 216) Mrs Jarvis inexplicably concluded that the BNLP

should carry "fairly significant" weight as it was compliant with the Framework. It is not entirely clear what is meant by "fairly significant weight".

120. This is particularly inexplicable as she accepted that the substantial controversy still attached to the BNLP would reduce the weight that could be attached and she finally concluded that the Inspector should "be cautious" about the weight to be attached to the plan. It seems that this conclusion is well founded and accords with the careful analysis of Mr Dixon. Mrs Jarvis agreed with Mr Dixon that the BNLP was not in a position to solve the immediate problems with the 5YHLS and that it will not solve it in the next 18 months. It was further accepted that the plan would not be adopted soon - "It has some way to go". All of these points of agreement support the position of the applicant, as put forward by Mr Dixon, that the BNLP should be given significantly reduced weight.

121. Finally, on the NDP. Despite the misguided optimism of Mr Renow, this is a very long way from being made:

122. Since the NDP proposes to allocate land and does so in a way which is inconsistent with both the adopted and emerging LP (Mr Renow cross examination), then it will need a Strategic Environmental Assessment (SEA) to be carried out. Such an exercise has not been undertaken and as Mr Renow accepted (cross examination), no steps have been taken to complete one. Indeed at times he appeared not to understand what an SEA was. The simple and undeniable fact is that if the NDP wants to allocate sites it must complete an SEA unless it is merely parasitic upon an adopted local plan (which it plainly is not). It does not remotely depend on the outcome of a Habitats Regulation Assessment (HRA) screening assessment as Mr Graham submits (para 84 ID48) which is an important but parallel legal process. The point made by SPMRG (paragraph 122 ID49) should also be rejected. Whilst the lack of the SEA might not directly affect landscape or protected views, it manifestly affects the ability of the plan to move (lawfully) to the next stage. If it cannot move forward in the process, then the weight to all policies in the plan cannot increase. Notwithstanding this, there are the other concerns with landscape and protected view policy in the NDP already explained. Mr Graham is simply wrong on this point.

123. Mr Renow's explanation as to why an SEA was not needed was because the Council has completed a HRA in respect of the planning application upon the Arla site, ie the site that the NDP proposes to allocate. This exercise was undertaken, as is required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010, because a development is proposed on the site for 145 units. To suggest that this HRA would displace the need for an SEA to allocate the site in the NDP is a fundamental misunderstanding of what is required for the NDP to allocate a site in a lawful manner. An HRA for a specific proposal is not an SEA for an allocation in a plan. If the NDP proceeds on the basis advocated by Mr Renow, it will be unlawful.

124. SAV49 is a letter from the independent examiner of the NDP. As of the letter date, 20 September 2017, it was anticipated by the neighbourhood group, as expressed to the examiner, that the SEA and HRA Screening Report would be available within 3 - 4 weeks - i.e. around mid-October 2017. No such reports have been prepared, nor is there any clear indication as to whether they ever will

be. (*note: this submission was written before HPPC notified the parties that the document had in fact been submitted to Natural England [10]*)

125. The basic conditions against which a neighbourhood plan is to be judged include compliance with European requirement and conformity with the adopted development plan. There is very clear authority that whilst there is nothing wrong with a neighbourhood plan being prepared to be consistent with both the emerging and the adopted development plan, it is against the adopted plan that the neighbourhood plan should be tested (paragraph 82 CD31.1 set C). Thus, the NDP cannot avoid meeting the obligation for a development plan which contains allocations as a plan or project to be subject to an SEA simply because it follows the lead of the emerging BNLP. Nor can it simply piggy-back on the back of the SEA for the emerging BNLP since that relates to a different plan with different considerations which will not be adopted until mid-2018 at the earliest.

126. Mr Renow accepted in cross examination that there may be a substantive problem with the SEA, but despite this, he considers that the NDP will be made well before the BNLP is adopted, at the latest June 2018. If that was the case then it would be the source of an allocation which has been untested by an SEA, and inconsistent with the adopted local plan. One reason for this is that CS policy CS4 requires the retention of existing employment sites. Paragraph 6.2 of the CS makes it clear that this also relates to KSVs. A housing allocation is plainly inconsistent with CS4. To allocate a housing site on the Arla site in advance of the emerging BNLP being adopted with such an allocation within it, and without an SEA would plainly not meet the basic conditions for a neighbourhood plan required by law.

127. In any event, it seems highly unlikely that the NDP could be lawfully made by June 2018 as a matter of simple practicalities. If the NDP seeks to allocate sites and proceeds to do so without an appropriate SEA, then it will be unlawful. Of course it could avoid any such problems by not allocating any sites or by waiting to progress further until after the BNLP is adopted, which would thereby abrogate the need for an SEA. If the NDP were modified so that it does not allocate any sites then it would still be fundamentally flawed because of the evidential issues with HPE1 and HPE 6. However if those flaws were also addressed (by deleting HPE1 and removing viewpoint 5 then such an adopted plan would not benefit from the protection of the Written Ministerial Statement on Neighbourhood Planning.

128. Moreover, just promoting the proposed allocation of the Arla Dairy site in the NDP is out of step with the BNLP (policy LLP 31) that identifies the Arla Dairy site for "mixed use of up to 200 dwellings". The NDP has far from a smooth flight path to landing. Indeed, to borrow Mrs Jarvis's words, it is a "hiccupped" plan that has various stages still to complete. She went further and said that she could not be sure whether the NDP was compliant with the Framework.

129. The argument put forward to support the argument for HPPC that the NDP should carry significant weight was because it had the support of the local community, as shown through the poll carried out by the Neighbourhood Plan group. This is wholly unsupportable in planning terms. The informal poll is not a referendum and weight does not depend simply upon popularity. It is also not an official stage in the development of the NDP. The weight to be given to the NDP must be in accordance with the requirements of Framework paragraph216. It is

plain that Mr Renow's view of how weight is to be ascribed to a neighbourhood plan has absolutely no support in national policy or guidance.

130. The conclusion on the NDP is that the policies that are relevant should only be given very limited weight for the reasons above. Therefore, whilst HPPC seeks to argue that the development is in breach of policies HPE1 and HPE 6, the weight to be afforded to such conflict with policy is substantially reduced.

Education

131. The applicant relies upon the Education SOCG (ID1.8) to evidence the absence of any education harm requiring mitigation from this development. Whilst some local residents have expressed concern at finding school places, the applicant submits that greater weight must be placed upon the education SOCG. There is no objection from Essex County Council as local education authority and planning permission should not be withheld on this basis.

132. HPPC seek to make submissions that "for many years, primary-age occupants of the Inquiry scheme would be required to travel further afield for schooling". There is simply no evidence of this before the Inquiry, which comprises evidentially unsubstantiated scaremongering and should be rejected. Had Essex County Council considered that the proposed education provision was unacceptable then it would have objected.

Highways

133. DWH rely upon the Transport Assessment (SAV25) and the highways evidence produced as part of the application to demonstrate that all highways impact can be properly mitigated. The Highways Authority has no objections to the scheme, and there is no basis to come to a different conclusion.

Conclusion

134. The Council cannot demonstrate a 5 year supply of housing land. Therefore, substantial weight should be afforded to a proposal for general market housing which helps to redress that deficit and, critically, the tilted balance in Framework paragraph14 applies. What is plain from the evidence put before this Inquiry, is that no objections have come close to significantly and demonstrably outweighing the considerable benefits of this scheme - the delivery of much needed market and affordable housing, the provision of public open space and the economic benefits of developing such a scheme. The application proposals comprise sustainable development which should be consented without delay.

135. For the Gleneagles site there can be no issues with regard to deliverability since it is controlled by a national housebuilder who, on instructions, is keen to bring the site forward for development as soon as possible.

136. As such, it is respectfully submitted that the Inspector recommends permission be granted so that development on this site can get underway - contributing meeting the housing requirement in this part of Essex.

Points from the Case for Gladman Developments Ltd adopted by David Wilson Homes and/or relevant to the determination of this application

The sustainability of Hatfield Peverel as a location for development

137. There is no evidence that Hatfield Peverel is anything other than a sustainable location for new housing growth. There are a range of services, facilities, clubs and activities that could accommodate new residents and to which new population within the village would contribute.

138. Mr Renow seeks to suggest that the village lacks the services and facilities to accommodate new development (paragraph 10 HPPC1). However, he includes at Appendix MR5 a list of clubs, organisations and businesses that exist within the village -they demonstrate the wealth of services and facilities that are available - with Mr Renow confirming that some clubs are so popular, they have had to find other venues outside of the village. Hatfield Peverel is a thriving settlement.

139. What Appendix MR5 confirms is that there are a range of social opportunities for new residents as well as a number of services and facilities that will cater for day to day living. Those include convenience stores that would provide for top up shopping, as well as hairdressers, beauticians, garages, a library, dry cleaner, florists and a number of restaurants, to name just a few. There is also the school and the surgery. Mr Renow accepted that all of those businesses give rise to employment opportunities for people working in the village.

140. Mr Renow's point was that, over time, employment opportunities in the village have reduced. However, despite that, there are no allocations within the emerging NDP for an employment site and the one allocation for housing (the Arla site) does not require a mix of uses to come forward. Mr Renow accepted there were good links for commuters from the village to travel to work either by train or bus and thus residents of Hatfield Peverel can access employment centres in a sustainable way without having to rely on the private car.

141. He also accepted the train service begins around 5am in the morning, with trains to London and runs until after midnight. He accepted that the train station is within walking distance of the site and that other nearby towns and job opportunities can be accessed by sustainable transport modes. Mr Renow accepted that people would not have to commute by car if they were leaving the village to find work.

Planning policies

Policy CS5

142. It is not GDL's case that policy CS5, or indeed the need to recognise the intrinsic beauty of the countryside can be forgotten about because CS5 is based on out of date boundaries and there is not a 5YHLS. The impact of the scheme on the landscape is an important consideration in this appeal, but CS5 requires all schemes in all open countryside to satisfy a threshold that the Framework requires only in relation to valued landscapes - to "protect and enhance". It is that threshold - a fundamental component of the policy - and what it is seeking to achieve that is inconsistent with the Framework and was exactly the point that was addressed in *Telford and Wrekin* (CD31.3 set C).

143. Mrs Jarvis alleged that the policy was consistent with the aims of the Framework paragraph 17(7) but also agreed in cross examination both that the relevant bullet point of Framework paragraph 17 does not set an absolute threshold for all development and that there is no general duty to enhance the countryside. It will be clear that the part of Framework paragraph 17 relied on provides a broad overarching principle which is to be implemented by more detailed policies within the Framework. It is relevant in that respect that Framework paragraph 6 does not include paragraph 17 within the definition of "sustainable development".

144. Moreover, that particular bullet point directly correlates to Framework Chapter 11 and paragraph 109 where what is required to be enhanced and protected are valued landscapes - not ordinary countryside.

145. Further, the observance of development boundaries is absolutely integral to the policy. If that part of the policy is removed as it must be given the out datedness of the boundary (the Council does not apply rigid boundaries – paragraph 59, CD32.2 set C), it no longer makes any sense. There is no criterion against which to measure the acceptability of development such as those before the Inquiry other than whether it is the right or wrong side of the boundary.

146. The weight to be given to CS5 is of course a matter of planning judgement for the decision-taker but regard should be had to the reasoning in *Telford and Wrekin*. HPPC on *Cawrey Ltd v SSCLG* [2016] EWHC 1198 in response (paragraph 51 ID48). However, the submission also omits a key part of the very paragraph it relies on that makes clear the important distinction in that case - that the Inspector had found the Council could demonstrate a 5YHLS. That finding had a direct bearing on the Judge's findings at paragraph 50 which are reproduced in full below:

> *Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission. If reliance is then placed on NPPF, one must remember always what Lindblom LJ has said in Suffolk Coastal about its status. <u>It is not suggested in this case that this is one where the NPPF paragraph [14] test applies, which given the Inspector's findings on the effect on the landscape, and the fact that HBBC is the Borough, and Ratby the settlement, where the policies considered in Bloor applied, is unsurprising. Nor is it suggested that he should have applied NPPF [49] given his findings on housing land. There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.</u> (*emphasis added*)*

Policy RLP2

147. GDL agrees with the Council that policy RLP2 can attract only limited weight for the reasons set out in its submissions (paragraph 35 ID47). Both HPPC and SPMRG rely on the policy but do not engage with the weight to be given to it. It is clearly out of date and incapable of delivering housing to meet the needs of the population now.

The Case for Hatfield Peverel Parish Council

148. The three schemes each conflict with the statutory development plan and so the starting-point is that they should be refused permission. In essence, the decisions on the three schemes will come down to whether the potential supply of housing should be given priority over the policy objectives of directing growth to other locations within development boundaries and at higher-order settlements in order to protect the environment (including the character of the settlement and historic assets), avoid excessive pressure on local facilities and infrastructure, and reduce the need to travel. This is a question of weight, which may depend on the extent to which any shortfall in 5 year housing land supply is identified, and on the Secretary of State's confidence that the proposed housing would be delivered on site within the 5 years.

5 year housing land supply: the four step approach

Step 1: quantify the deliverable sites

149. The Secretary of State will need to ask for the purpose of applying the Framework whether there is any shortfall in terms of 'supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements' (that is, the OAHN) and the extent of any shortfall (Framework paragraph 47, second bullet, emphasis added). This is a matter of planning judgment in terms of assessing whether a particular site is 'deliverable', and the capacity of a particular site to take a given quantity of housing, but it is otherwise a straightforward quantification exercise.

150. The policy test whether housing land is to be included in the 5YHLS is merely whether there is a 'realistic' - that is, non-fanciful - prospect of housing delivery (*St Modwen v SSCLG* [2017] EWCA Civ 1643 paragraphs 35-39, CD32.18 set C). A site does not have to be allocated in any plan, let alone be granted permission, in order to be included in the 5YHLS. Its delivery does not have to be a certainty, nor even more likely than not; the policy requires that it be 'realistic'.

151. Just because a site is outside development boundaries of the current plan does not mean it should be treated as having an unrealistic prospect of development where the planning authority has allocated it in an emerging plan and is currently of the view that it is a suitable and available site, viable and achievable within 5 years for the purpose of footnote 11 of the Framework, so has included it in its 5YHLS trajectory. In the Council's closing submissions, they give the example of the Gimsons site, and assert that "[u]ntil such time as the draft allocation supersedes the present development plan status, it cannot be considered 'deliverable'."

152. This statement demonstrates that the Council has taken and continues to take a legally erroneous approach to counting sites within its 5YHLS for the purpose of Framework paragraph 47. What the Council has done is to treat sites not

allocated in the current plan as *ipso facto* incapable of being considered suitable, and has not included a single one in its land supply monitoring figures for the next 5 years. It is elementary that the adopted development plan is the starting-point but it does not predetermine the outcome of any planning application where there are good reasons for determining it otherwise than in accordance with that plan. If it were, this Inquiry would have been unnecessary. The Council cannot rationally treat sites as suitable for housing for the purpose of its forward planning but at the same time automatically treat them as unsuitable when determining actual applications just because the emerging plan has not been adopted.

153. Of course there might be other circumstances where a site allocated in an emerging plan would only become realistic for delivery in the 5 years if the plan was adopted (such as a site requiring planned infrastructure and/or a new settlement to be in existence first, if that new infrastructure or settlement would not otherwise come forward in time). No such circumstances apply here; the new settlements proposed in the emerging local plan are not proposed to come forward in the first 5 years of the plan, and are not relied upon in the early part of the housing trajectory. This is the advice in the PPG which states "If there are no significant constraints (eg. infrastructure) to overcome such as infrastructure [sic] sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe." (Paragraph: 031 Reference ID: 3-031-20140306).

154. On this analysis, it was wrong to exclude the sites that the Council is satisfied are soundly evidenced for inclusion in the trajectory showing the 'expected rate of housing delivery' for the purpose of promoting its local plan.

155. On that basis, the Secretary of State is entitled to rely on the sites counted in the housing trajectory appended to the Council's letter to the Rt Hon Priti Patel dated 29 November 2017 (ID42). On that basis, there is no, or no material, shortfall for the purpose of Framework paragraph 47. The trajectory table shows delivery in the first 5 years of the plan period as (501 + 577 + 1128 + 1443 + 1329), which is 4978 dwellings. Taking OAHN of 716, multiplying by 1.05 to allow for the 5% buffer gives 751.8 (say 752) dwellings per year), this gives 6.62 years' supply. If the Liverpool approach to adding backlog is adopted ((716 + 107) x 1.05), the annual requirement would need to be 864 which gives 5.76 years' supply (taking the OAHN figures from Alison Hutchinson's proof, (BDC1, table 1 on p.11). If the Sedgefield approach is adopted ((716 + 332) x 1.05 using Ms Hutchinson's figures) an annual requirement of 1,100 and 4.52yrs' supply is the outcome. The text of the letter to Ms Patel quotes figures of 6.24yrs and 4.9 yrs respectively, but the workings for arriving at those are not indicated.

156. Furthermore, the housing land supply position is improving and may have improved further by the time the Secretary of State issues a decision. For example, Mrs Hutchinson's Proof, (BDC1 table 2, page 12) shows improvement from 3.91 to 3.97yrs on the Liverpool approach and 3.1 to 3.9 years on the Sedgefield approach between 31 March 2017 and 30 September 2017, adopting the Council's approach of excluding the emerging allocations.

157. It is appreciated that the prospect of delivery of housing on one or more of the sites before this Inquiry may also be relevant to the determination of these

schemes, if - contrary to HPPC's submissions that these sites are not suitable - the Framework footnote 11 requirements were thought to be met and it were considered that housing on one or both was realistically likely to be delivered within 5 years (whether or not by virtue of these applications). Some addition to the supply might need to be made for that by the Secretary of State depending upon how each appeal or application is to be determined, when determining the others.

Step 2: take the OAHN

158. There was uncontested evidence at this Inquiry that the extent of OAHN is 716 dwellings annually.

Step 3: decision as to whether to add to the requirement to allow for past shortfall and over what period to expect this to be made up

159. At the Inquiry there was a debate about whether an addition should be made to the housing requirement to make up for previous shortfalls using either the Liverpool or the Sedgefield methods.

160. This exercise is essentially a policy judgment for the decision-maker which, importantly, is not prescribed by Framework paragraph 47. As Lindblom J noted in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (paragraph 108, ID61) upholding a decision to apply a Liverpool approach:

> *Neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF. In my view the inspector was free to come to his own judgment on this question.*

161. Framework paragraph 47 does not say to add previous years' shortfalls to the current OAHN to arrive at an annual requirement figure. This may be of significance when applying Framework paragraph 49 and determining whether the second bullet of the decision-taking limb of Framework paragraph 14 should apply.

162. The closest is the advice in the PPG section dealing with plan-making rather than decision-taking, which says, "Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate." This guidance is consistent with the plan-led system, and does not dictate whether to add to a current years' annual requirement when taking a particular decision to make up for previous shortfalls, nor dictate a method for doing so.

163. If an allowance to make up for past shortfalls is to be added, the Liverpool method is appropriate here because the emerging local plan contains a strategy shared with partner Essex authorities to accommodate growth in new garden communities and large allocated sites, which can better respond to the requirements for new infrastructure, and will come forward later in the plan period. The evidence of the Council's professional planner Ms Hutchinson was that in her judgment the Liverpool approach was amply justified, but that the Council felt constrained not to advocate such an approach until the examination of its emerging local plan as it had lost other appeals.

164. However, HPPC considers this to be over-timid and inappropriate. The spatial strategy of the emerging BNLP would be undermined if development in less sustainable locations was permitted with the intention to meet a short-term need, to the detriment of what the Council properly consider to be the best long-term plan for the District. At this Inquiry there was no evidence led to contest the soundness of the Council's overall approach in its emerging BNLP. Indeed, Mr Lee sought to argue consistency with it, albeit on the selective basis that some growth was proposed for Hatfield Peverel whilst downplaying the fact that the Stone Path Drive site was located in the countryside for the purpose of the emerging plan (paragraph 13.3.6,1/POE). Although no party would contend that the emerging plan should be treated as if it were already the adopted development plan, the Secretary of State is fully entitled to give weight to it and to apply the Liverpool approach to these applications and appeal.

Step 4: add buffer

165. The Framework paragraph 47 provides guidance that an adjustment should be made to the OAHN by the addition of either a 5% or a 20% buffer. This requires a different form of judgment to be made about whether the record of the local planning authority is one of 'persistent under-delivery'.

166. A buffer of 5% is the default for ensuring choice and competition in the market for land. A buffer of 20% should be added 'to provide a realistic prospect of achieving the planned supply' where there is a record of 'persistent under-delivery' (Framework paragraph 47). The point is to make an allowance for proven persistent failures of delivery, to correct for over-optimism about meeting planned-for targets or requirements and to build in a margin for failure to deliver the targets currently planned for.

167. There is no further or different purpose (other than also ensuring choice and competition in the market) for the 20% buffer suggested by the Framework. It is not specified to apply by reference to a particular level of accumulated current shortfall, and is not designed to hasten the delivery of units in response to a particular urgency of need. The purpose of the buffer is not to correct for a particular shortfall, but to address the problem of over-optimism. Any accumulated shortfall in delivery against what is now understood to be the OAHN is reflected automatically in the figure for current housing need.

168. It would be quite wrong to test 'under-delivery' anachronistically against requirements that were not known at the time. HPPC respectfully adopt the archery analogy given by Mr Cannon (paragraphs 22-23, ID47). There is no record of persistent under-delivery here.

169. Even if there were a record of persistent under-delivery, the Framework is only guidance and the purpose of applying the higher 20% buffer is to ensure 'a realistic prospect of achieving the planned supply'. The Secretary of State is entitled to assume that sites in the Council's housing trajectory are 'realistic' (HPPC has not given evidence of its own on suitability and deliverability other than on specific comprehensive development area sites at Hatfield Peverel) and can be counted on as indicating the expected rate of housing delivery.

Summary

170. Adopting the correct *St Modwen* approach to the meaning of 'deliverable sites', the Liverpool method for apportioning past under-delivery and a 5% buffer, there is no shortfall and the Council has a healthy 5.76 years' housing land supply on the latest figures. Even if one were able to demonstrate that some of the allocated sites were not realistic prospects, one would still have a 5 year supply on the Liverpool approach if there were land sufficient for 4,320, so there is a built-in healthy margin for error.

171. Whilst HPPC do not consider adopting the Sedgefield method to be appropriate, if we include the emerging allocations and a 5% buffer, there would be 4.52 years' supply, even on that basis, which is a very modest shortfall in the context of a rapidly improving supply position.

Policy issues in respect of all schemes

Framework paragraph 14 and its application-updatedness

172. The question of 'updatedness' does not depend on chronological age in itself (Framework paragraph 211) but on changes in circumstances and/or planning policy.

173. By virtue of Framework paragraph 49, shortfall in 5YHLS would usually be treated as a factor indicating policies for the supply of housing were 'out of date', hence the materiality of the 5YHLS question.

174. The term 'policies for the supply of housing' has a narrow meaning, but as the Framework is only guidance it is not appropriate to embark on a legalistic exercise of classifying policies (paragraph 59, CD31.2 set C). Whether policies for the supply of housing (or indeed other policies) are out of date does not determine the weight to be given to them, which remains a matter for the decision-maker (paragraphs 29, 55 to 56 CD32.2 set C).

Framework paragraph 14 and its application-silence

175. Mr Lee –but not Mr Dixon- sought to argue that the development plan was ‘silent’ in relation to these appeals, because “the Development Plan is now silent in respect of where development should be located outside of the strategic areas identified on the Core Strategy Proposals Map” (paragraphs 6.4.3 to 6.4.4 1/POE).

176. Mr Lee's argument cannot be sustained here. In *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 at [100]-[101], Holgate J rejected as a 'fallacy' the analogous argument that 'first, the inspector had to consider whether the plan was "silent on a particular issue" and second, that issue was where land to provide for a shortfall of 6,823 square metres of B8 floorspace should be located'. The learned judge ruled:

> *Neither paragraph 14 of the NPPF nor SD1 of the RTVLP [the local plan at issue] enable a party simply to select one of the "issues" relevant to the outcome of a planning application or appeal, so that it may be claimed that the plan is "silent" on that particular issue. Instead, the proper question for the decision-maker is whether there is a sufficient policy content in the plan taken*

as a whole to enable the planning application to be determined as a matter of principle…
… In the Bloor Homes case Lindblom J explicitly stated, at para 59, that the fact that allocations have yet to be put in place in a development plan (in that case for housing), does not mean that the development plan is "silent".'

177. The policies in the adopted Braintree Core Strategy, taken as a whole, indicate that permission should be refused because the strategy places both the Gleneagles and Stone Path Drive sites outside the village boundary in the countryside and directs growth to brownfield sites and infills within the village. Furthermore, there are emerging plan policies at an advanced stage which maintain both the Stone Path Drive and the Gleneagles sites outside the village boundary, and specifically protect the sites (particularly emerging NDP policies HPE6 on landscape setting and HE1 on coalescence).

178. Mr Lee referred to *South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173, but that case needs to be considered on its peculiar facts. There, a core strategy stated that at least 1154 dwellings would be allocated in certain larger villages including Chinnor, but no allocations had been made. The inspector had regard to the fact that the emerging local plan was at a very early options stage, and there was not even a draft emerging neighbourhood plan to give direction. It was in those circumstances that the Inspector concluded there was a 'policy vacuum on the issue of site allocations in the larger villages' (judgment at paragraphs 43 and 48, citing decision letters). The judge ruled that:

'91 …the question for the decision maker is…(1) does this development plan contain a body of policy relevant to the proposal being considered; and (2) is that body of policy sufficient to enable the development to be judged acceptable or unacceptable in principle? The first question involves an identification of the policies in question, and their correct interpretation; the second involves the exercise of planning judgment on the practical effect of that body of policy on the making of the decision in issue.

92….It follows also from the fact that the decision maker must make a planning judgment that… what matters is not simply whether the plan contains a policy which can be looked at to determine the question posed in Bloor at [50] and repeated in the last sentence of my [91] above: for its sufficiency at the time the decision is being made is an essential issue, and that involves the making of a qualitative planning judgment. I emphasise that the judgment to be made is at the time of the decision. A Development Plan may not have been "silent" when adopted, but has become so.

93… In the case of this Development Plan, the mechanism by which its housing requirement figures were intended to be translated into actual allocations was the DPD, which SODC had since abandoned. The question "how much housing does the Development Plan intend should be allocated in the period x to y" is not the same question as "where does the Plan say that that housing could or should be built?" In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.'

The judge concluded:

> *97 'This was a case where it was her planning judgment that it was the answer to the second question above which mattered… Thus, she found that there was effective silence on the critical issue. That was a planning judgment which she was entitled to form.*
> *98 Her conclusion…is a planning judgment that was open to her'*

179. Although in the case before this Inquiry, the initially envisaged site allocations document to follow the CS did not proceed to adoption, there are important distinctions from the situation in the Oxfordshire case. CS policy CS1 states that the dwellings 'will be located…On previously developed land and infill sites in the Key Service Villages and other villages'. Furthermore, unlike the South Oxfordshire case where the development boundaries and countryside protection policies were merely contained in a previous saved plan pre-dating the core strategy, CS5 states as set out above (paragraph 30).

180. This gives a further clear steer that large housing developments in the countryside are not in accordance with the CS. Thus, Braintree's adopted plan is not, in its policies, silent about where it expects the growth to take place. The policies do not require the Site Allocations DPD before being able to say whether in principle development in green open countryside adjacent to Hatfield Peverel is encouraged: the answer is a clear 'no'. By way of further distinction, there are submitted examination drafts of the emerging BNLP, and emerging NDP. Furthermore, the question of how much development is intended in Hatfield Peverel matters as well as where that development is located.

181. In this regard, the situation here is more akin to that in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754, where the site lay within a 'green wedge' designated by a policy in the core strategy and the High Court upheld the decision that the plan was not 'silent' even though the core strategy had contemplated that a future site allocations DPD would review that boundary (see judgment at paragraphs 29, 30, 36 and 51-58).

182. The unsustainability of any argument that the development plan is silent is perhaps demonstrated by the subsequent length of Mr Lee's proof where he sets out and considers the relevant policies, and by his eventual acknowledgement (paragraph 13.2.2, 1/POE) that "Having tested the proposals against the material policies contained within the Braintree development plan I accept that the appeal proposals conflict with the Plan'. Notwithstanding his subsequent oral equivocation over this point during his cross-examination, that acknowledgement in the Proof was rightly made.

Framework paragraph 14 and its application-Specific policies in this framework

183. 'Specific policies in this framework' means policies that, applied here, indicate in the judgment of the decision-taker that permission should be refused. Such policies may include relevant development plan policies within the framework of the Framework.

184. The second bullet-point in the decision-taking limb of Framework paragraph 14 is no more than guidance and only applies where a development plan is absent, silent or out-of-date. It does not displace the statutory presumption in favour of determining applications in accordance with the development plan so that

proposals conflicting with the plan should be refused unless material considerations indicate otherwise (Framework paragraph 12). It has to be read consistently with that presumption. Where, although the plan may be generally or in some particular respects (e.g. in its policies in relation to the supply of housing) out-of-date so as to engage Framework paragraph 14, that does not determine the weight to be given to particular development plan policies. Over-legalistic interpretation of the Framework, drawing fine, unintended distinctions, is to be deprecated. These principles are clear from *Suffolk Coastal* (paragraphs 14, 21, 23, 54-56, 74 and 85 CD32.2 set C).

185. At Framework paragraph 154 it is emphasised that 'Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where'. A decision-maker is fully entitled to conclude that specific policies within the Framework -such as for protection of countryside and favouring greenfield over brownfield development- indicate that permission is to be refused without having always to conclude that benefits are 'significantly and demonstrably' outweighed by harms.

The adopted development plan

The spatial strategy

186. The CS is based on a 'hierarchy of place' (paragraphs 2.4-2.14, HPPC2) focusing growth at settlements higher up the hierarchy. In that context, at policy CS1 it identifies a minimum requirement of 600 homes for the period 2009 to 2026 at the six KSVs. The number of dwellings to be provided in these Inquiry schemes (up to 260 across the two Inquiry sites), in combination with the development permitted since 2009 in Hatfield Peverel, would greatly exceed a proportionate distribution across the villages. The proportions are relevant as well as the numbers: six KSVs are to take 12% of the homes between them (paragraphs 2.15-2.18, HPPC2).

187. Policy CS 1 further states:

These dwellings will be located (as set out in table CS1):
On previously developed land and infill sites in the Key Service Villages and other villages.

188. This means that the growth is being directed within the village, and to previously developed land, rather than to greenfield sites outside the village such as those at issue at this Inquiry.

189. The supporting text to the CS (para 9.11) noted that sites would be allocated in a subsequent DPD, and stated, 'There will also be sites, which are not yet identified in the Housing Supply Trajectory or Table 6, which could come forward through minor extensions to town or village development boundaries in the Site Allocations DPD', but this text was not part of the policy and does not cut down or qualify the policy to direct growth outside the settlement boundaries (paragraph 16, *R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567).

190. In that context, policy CS5 is an intrinsic part of the spatial strategy (paragraphs 2.19 to 2.25, HPPC2). It should be given full or substantial weight for the reasons explained by Ms Jarvis in her Proof and later in these

submissions. Saved Policies RLP2 and RLP3 are not merely hangovers but are reflected in the CS.

191. Accordingly, there is a conflict between the spatial strategy of the adopted local plan and the principle of the Inquiry schemes. The strategy has been based on sound planning principles and is consistent with the objectives in the Framework paragraphs 17, 34, 37, 38, 70, 110-111, 112 of being genuinely plan-led, minimising the need to travel, focusing development in locations that are or can be made sustainable, preferring land of lesser environmental value and previously developed land over green field land, taking account of the different roles and character of different areas, protecting the intrinsic character and beauty of the countryside, minimising adverse effects on the local and natural environment, undertaking significant development on agricultural land only when necessary, and planning for the location of housing, economic uses and community facilities and services in an integrated way.

192. Hatfield Peverel is a fairly small village with 1815 households in 2011. It has a limited range of services and little employment potential, having lost employment with loss of the Arla Dairy. For weekly or big-ticket item shopping, employment and indoor leisure facilities, it is already necessary to travel outside the village. The village can only sustainably accommodate housing growth in proportion to its role in the settlement hierarchy.

Boundaries and review

193. Mr Tucker suggested in cross-examination that the Hatfield Peverel settlement boundaries in the current and emerging local plans were merely holdovers from previous plans and that their maintenance had not been reviewed. This is not a submission supported by the evidence.

194. Both the adopted CS and the emerging BNLP have been subject to sustainability appraisal and the latter exercise specifically considered the question of retention of boundaries, assessing this as environmentally positive to landscapes and townscapes, service centre vitality, sustainable travel, climate change and accessibility compared to relying on the Framework alone; and the question of new allocations was considered (PoE/Jarvis pages 17-20 and paragraph 2.40 and Appendix PJ2, HPPC2). Spatial Strategy Formulation (ID33) refers to review criteria, options, KSVs, countryside and draft allocations. The adopted CS was found sound by the Secretary of State.

195. It is right that the policy was not to alter the boundaries to take the Inquiry sites within the village envelope of Hatfield Peverel. Strategic policy choices were taken to retain the settlement boundaries, subject to specific allocations and to creating new urban areas or extensions, and to focus growth elsewhere. These were legitimate policy choices.

196. Whilst HPPC accepts that the Secretary of State is entitled to consider provision of housing to be a material consideration weighing against applying the development plan at the Inquiry sites, there are no grounds to give less weight to the adopted or emerging development plan just because successive plans have retained the Hatfield Peverel boundary south of the A12.

Policies for the protection of the countryside

197. The suggestion by GDL that the adopted countryside policies and policy CS5 in particular are inconsistent with the Framework is wrong. Two further assertions are also misconceived. First, that the Framework draws a distinction between valued landscapes and the countryside such that 'ordinary' countryside is not subject to general protection. Second, that because the countryside and emerging NDP green wedge policies do not have built-in exceptions for beneficial housing development made them inconsistent with the Framework.

198. The Framework comprises general policy guidance. It is not a statute and must not be read like a statute. In contrast to statutes, which must be obeyed unless there is an express exception, it is an intrinsic feature of policies and guidance that they may be departed from for good reasons, where material considerations indicate otherwise. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) at paragraphs 43 and 45, Gilbart J cited Lindblom LJ's judgment in *Suffolk Coastal*:

> *The NPPF is a policy document. It ought not to be treated as if it had the force of statute… It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense."*
>
> *… Before Suffolk Coastal it had been striking that NPPF, a policy document, could sometimes have been approached as if it were a statute, and as importantly, as if it did away with the importance of a decision maker taking a properly nuanced decision in the round, having regard to the development plan (and its statutory significance) and to all material considerations. In particular, I would emphasise this passage in Lindblom LJ's judgment at [42]-[43], which restates the role of a policy document, and just as importantly how it is to be interpreted and applied. NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it.'*

199. In *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 at paragraphs 175 and 186, Lindblom J (as he then was) considered the argument that a 'green wedge' policy was inconsistent with the Framework if it restricted all house-building without an exception for a positive cost-benefit analysis, rejecting 'the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the Framework, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal'.

200. Mr Lee cited the case of *Telford and Wrekin BC v SSCLG* [2016] EWHC 3073 (Admin) (CD31.3 set C), where Lang J declined to quash a decision by a planning inspector that a policy which sought to 'strictly control' development in the countryside 'is not up-to-date and in conformity with the more recent planning policy context established by the Framework, where there is no blanket protection of the open countryside and where there is a requirement to boost

significantly the supply of housing,' such that he would give it 'less than full weight'. The *Cawrey* judgment was not cited. Lang J stated at paragraph 47,

> *In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. <u>The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF</u>, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational.* (emphasis added).

201. At its highest, the *Telford* case was therefore decided on the basis that the weight to give to various principles within the Framework pulling in different directions (supply of housing and other principles versus protecting intrinsic character and beauty) was a matter of planning judgment that Lang J would not interfere with. It is not automatically inconsistent with the Framework, as a matter of law, to have a general policy to protect the countryside by restricting the development that is presumed to be appropriate there. This judgment does not require the Secretary of State to follow the Telford inspector's approach to weight as a matter of planning judgment, which remains a matter for the decision-maker even if a policy is judged to be out of date (per *Suffolk Coastal* cited above).

202. Whether a policy is judged to be inconsistent with the Framework is a matter of planning judgment depending upon the weight to attach to different passages of the document, so long as the wording of the Framework is understood correctly. Clearly, the actual character and attractiveness of particular countryside will be relevant to the weight to place on a policy protecting the countryside, and the merits of making an exception in the particular case. Policies cannot just be applied mechanistically for the sake of it in a 'blanket' way, without regard to features of particular sites. But that is a straw man argument, because HPPC are not contending for such an approach here.

203. HPPC commend the approach taken by the Secretary of State in his decision regarding Land East of Ditchling Road, Wivelsfield, East Sussex (ID25). The relevant part of the decision concerned the question whether a materially indistinguishable general policy to protect the countryside ('CT1') outside development boundaries was inconsistent with the NPPF. In the decision letter, (para 15), the Secretary of State concluded, 'for the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision'. The Inspector had concluded as follows:

[IR 327] With respect to the adopted plan, there is conflict only with one policy, CT1, of the Local Plan, but this leads to an overall conclusion that the proposal is not in accordance with the development plan as a whole.

[IR 328] The defined Planning Boundaries as the means through which policy CT1 operates are related to development requirements that no longer apply, with an end date for these of 2011. While policy CT1 gives blanket protection to countryside, the NPPF directs specific protection to valued landscapes. Nevertheless, a core planning principle of the NPPF includes recognising the intrinsic character and beauty of the countryside. Policy CT1 is expressed as the 'key countryside policy' in the Local Plan. The proposal would involve the incursion of development on a greenfield area of countryside. Taking into account also the finding above that a five-year housing land supply is demonstrated, I consider that policy CT1 is not out-of-date for the purposes of paragraph 14 of the NPPF, and that the conflict with it should be given significant weight in the decision'.

204. It should be noted that unlike Wivelsfield, where the countryside boundaries were merely in a saved out of date policy in a time-expired plan, in this case they are a tool utilised by policy CS5 in the adopted CS which has an end date of 2026.

205. HPPC readily acknowledges that Wivelsfield was a case where there was a 5YHLS and that the weight to give to such a policy may depend on whether there is a 5YHLS, but that is a different point to the question whether it is inherently inconsistent with the Framework, and therefore always to be given low weight by virtue of Framework paragraph 215 regardless of the housing land supply. The clear decision in Wivelsfield (DL para 15) was that there is no such inconsistency. That is a planning judgment which is right and should be followed here.

206. HPPC also draws the Secretary of State's attention to the Finchingfield decision where the Inspector considered CS policy CS5 and likewise determined that it was consistent with the Framework for the purpose of Framework paragraph 215:

I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215.'(paragraph39, CD32.10 set C)*.*

Paragraph 109 and value to attach to a given area of countryside

207. Mr Lee in particular was anxious to argue that Framework paragraph 109 did not apply and that this would mean less weight should be given to the policies protecting the countryside (paragraphs 7.1.14 and 8.2.43-48, 1/POE).

208. Paragraph 109 is merely providing sensible general guidance that 'The planning system should contribute to and enhance the natural and local environment by among other things, protecting and enhancing valued landscapes, geological conservation interests and soils'.

209. The countryside is itself a type of landscape. The value to place on protection of any particular part of the countryside is ultimately entirely a matter for the Secretary of State's planning judgment, depending upon the advice in this report concerning the appreciation of the site and its features or attributes. If the Secretary of State considers the current landscape valuable at a particular spot, it is likely to be desirable, other things being equal, to preserve and enhance it. That is all paragraph 109 is getting at.

210. It would be quite inappropriate to treat paragraph 109 like a statute establishing a special category apart of 'valued' landscapes that has to be closely defined and given special status, and implying that the remainder of the countryside is not worth protecting or enhancing generally. That would be quite against the spirit of the Framework and would be just the kind of legalistic exercise that was deprecated in the *Suffolk Coastal* case by the Court of Appeal and Supreme Court.

211. The only cases to consider Framework paragraph 109 in light of argument about its meaning have stressed that a decision-maker must have regard to demonstrable physical attributes and not merely popularity. For instance, in *Stroud DC v SSCLG* [2015] EWHC 488 (CD31.20 set C), where Ouseley J stated:

> *[13] It is important to understand what the issue at the Inquiry actually was. It was not primarily about the definition of valued landscape but about the evidential basis upon which this land could be concluded to have demonstrable physical attributes. Nonetheless, it is contended that the Inspector erred in paragraph 18 because he appears to have equiparated valued landscape with designated landscape. There is no question but that this land has no landscape designation….The Inspector, if he had concluded, however, that designation was the same as valued landscape, would have fallen into error. The NPPF is clear: that designation is used when designation is meant and valued is used when valued is meant and the two words are not the same.*
>
> *[14] The next question is whether the Inspector did in fact make the error attributed to him. There is some scope for debate, particularly in the light of the last two sentences of paragraph 18. But in the end I am satisfied that the Inspector did not make that error. In particular, the key passage is in the third sentence of paragraph 18, in which he said that the site to be valued had to show some demonstrable physical attribute rather than just popularity. If he had regarded designation as the start and finish of the debate that sentence simply would not have appeared….*
>
> *[16] …The closing submissions of Miss Wigley referred to a number of features and it is helpful just to pick those up here. The views of the site from the AONB were carefully considered by the Inspector. There can be no doubt but that those aspects were dealt with and he did not regard those as making the land a valued piece of landscape. That is a conclusion to which he was entitled to come.'*

212. What *Stroud* did not do was hold that Framework paragraph 109 creates a rigid category or implies that protection of countryside not within that category was not desirable for the purposes of the Framework.

213. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198, Gilbart J ruled:

[49] NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that paragraph [109] may recognise that some has a value worthy of designation for the quality of its landscape does not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in Stroud DC v SSCLG [2015] EWHC 488 per Ouseley J or in Cheshire East BC v SSCLG [2016] EWHC 694 per Patterson J which suggests otherwise. Insofar as Kenneth Parker J in Colman v SSCLG may be interpreted as suggesting that such protection was no longer given by NPPF, I respectfully disagree with him. For it would be very odd indeed if the core principle at paragraph [17] of NPPF of "recognising the intrinsic beauty and character of the countryside" was to be taken as only applying to those areas with a designation. Undesignated areas - "ordinary countryside" as per Ouseley J in Stroud DC - may not justify the same level of protection, but NPPF, properly read, cannot be interpreted as removing it altogether. Of course if paragraph [49] applies (which it did not here) then the situation may be very different in NPPF terms.
*[50] Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission…There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.' (*emphasis added*).*

214. Accordingly, the fact that no witness or party at this inquiry argued for any special 'valued' status by reference to paragraph 109 does not mean that the Secretary of State cannot or should not give weight to the protection of the countryside at these sites and to the adopted and development plan policies that seek to achieve this, nor that as a matter of law he cannot treat the physical attributes of the sites as favouring their protection. It is simply a subjective question of judgment for the Secretary of State in the particular case what value to place on the sites.

215. This also accords with the GLVIA3 (para 5.26) which advise that the fact that a landscape is not designated 'does not mean that it does not have any value. This is particularly true in the UK where in recent years relevant national planning policy and advice has generally discouraged local designations unless it can be shown that other approaches would be inadequate. The European Landscape Convention promotes the need to take account of all landscapes with less emphasis on the special and more recognition that ordinary landscapes also have their value'.

The emerging BNLP

216. The emerging BNLP can be given significant weight as it has progressed to examination stage. It properly seeks to meet the identified OAHN with an

additional 10% margin in a strategic way in collaboration with other Essex authorities.

Spatial strategy

217. This is again based upon a hierarchy of place. Part 1 policies SP2 and SP3 which set out the spatial strategy and the number of homes to be planned for across north Essex and in the Council area are summarised above (paragraph 34).

218. The way in which the quantum of new homes to be provided in Braintree District is to be apportioned is explained by Ms Jarvis (paragraphs 2.29-2.53, HPPC2). The order of focus of new development is the town of Braintree, new planned garden communities, then Witham, then the KSVs in the A12 corridor, then other settlements. The principle of garden communities is fully consistent with national policy (e.g. Framework paragraph 52).

219. An allocation of land for 285 homes (2% of the total) is made at the Comprehensive Redevelopment Area (CRA) in Hatfield Peverel by draft Policy LPP31.

220. The District's population is about 150,000 (paragraph 3.3, CD16.3 set C). The populations of Witham and Hatfield Peverel were 25,353 and 4,500 in 2011 (paragraph 2.44, HPPC2). Hatfield Peverel therefore has around 3% of the District's population. Given that about 3,650 (25%) of the new homes in the District are to be located in the 2 new garden communities, it is evident that the emerging BNLP envisages Hatfield Peverel accommodating the planned housing growth in scale with its share of the population. Development significantly in excess of the 285 homes allocated in the draft plan would not be in keeping with the spatial strategy for distribution of housing.

221. Furthermore, Policy LPP17 makes clear that 'Sites suitable for more than 10 homes are allocated on the Proposals Map and are set out in Appendix 3', and no other site outside the CRA is allocated in or adjacent to Hatfield Peverel. Paragraph 6.63 of the supporting text makes explicit what is already implicit, that '<u>All</u> sites suitable for delivering ten or more homes are allocated for development on the Proposals Map' (emphasis added). This indicates that the spatial strategy does not envisage either the Stone Path Drive site or the Gleneagles site being suitable for large-scale housing development. The unsubstantiated assertions made in cross-examination by Mr Tucker that the boundaries have not been reviewed and considered is flatly contradicted by paragraph 5.17 of the supporting text in Section 2 to the emerging plan, which states:

> *Development boundaries within this document have been set in accordance with the Development Boundary Review Methodology which can be found in the evidence base.*

222. This is evidently linked to the assessment of constraints. Paragraph 5.7 of Section 2 of the emerging BNLP supporting text explains that 'Development <u>may</u> be considered sustainable <u>within</u> a KSV, <u>subject to the specific constraints and opportunities of that village</u>' (emphasis added).

223. One such constraint is the surrounding countryside and local character. It is not envisaged that there should be built development outside of the settlement boundaries, nor ribbon development along the A12. That is seen at Policy LPP1,

the full text of which is given at paragraph 35 above. For reasons explained above, it is perfectly consistent with the Framework to have such a general policy that built development is considered not to be appropriate in the countryside, so long as it is always applied in individual cases with the particular characteristics of a particular site in mind.

224. Another constraint is local infrastructure, services and facilities including roads, healthcare and schools. Draft Policy SP 5 states that development 'must be supported by provision of infrastructure, services and facilities that are identified to meet the needs arising from new development', including sufficient school places in the form of expanded or new schools.

225. For reasons already alluded to above in relation to the 'Liverpool method' and the adopted plan, the spatial strategy in the emerging local plan seeks to advance planning objectives underlying the Framework. It should be given significant weight and provides comfort that the District's OAHN will be met sustainably without the Inquiry schemes coming forward and encroaching on the countryside setting of Hatfield Peverel.

The emerging NDP

226. Mr Renow's evidence has set out in detail why the NDP is supported by written national policy and the political commitments made by the present Secretary of State.

Emerging stage and status of the NDP

227. The NDP can be given significant weight insofar as it indicates the concerns and aspirations of the local community and their vision for the village of Hatfield Peverel.

228. The NDP can be given at least as much weight, if not more weight, as it was given by Inspector Parker in connection with the 80 dwelling appeal, as it has now progressed to examination.

229. Whilst it is accepted that there are likely to be modifications to the drafting of the NDP before it is put to referendum, in particular to ensure that it allocates no less development than the emerging BNLP, the Secretary of State can be confident that a plan containing the relevant restrictive policies directly in issue at this Inquiry (Policies HPE6 and HPE1) in materially the same form will be passed.

230. The Regulation 14 consultation indicated extremely high (89%) support for the vision and objectives of the draft NDP, support between 77% and 92% for each of the individual draft policies (HPPC1, Appendix MR 18). The survey in September 2017, with 570 respondents, indicated 96% approval of the draft plan at that stage (HPPC1, Appendix MR26). Subject to the question of legal compliance with the 'basic conditions', the Secretary of State can be confident that the NDP would pass a referendum and proceed to adoption.

Basic conditions

231. Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990, as modified by section 38C(5) of the Planning and Compulsory Purchase Act 2004, requires the examiner to consider the following:

i) whether the draft plan 'meets the basic conditions' (defined at sub-paragraph (2));

ii) whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and

iii) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and

iv) whether the draft plan is compatible with 'the Convention rights', as defined by the Human Rights Act 1998.

232. There can be no suggestion that the NDP is incompatible with anyone's human rights, and there has been no suggestion that the referendum area should be wider than the parish.

233. The Examiner is not considering whether the neighbourhood plan is 'sound' (the test in section 20(5) of the 2004 Act for local plans), and the tests of paragraph 182 of the NPPF do not apply. In other words, unless the strategic environmental assessment procedure applies, the Examiner does not have to consider whether a draft policy is the 'most appropriate strategy' compared against alternatives, nor is it for her to judge whether it is supported by a 'proportionate evidence base' (paragraph 13, *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin). The 'basic conditions' only require consideration whether it is 'appropriate' to make the plan having regard to national policy and guidance, whether it is in general conformity with the adopted plan; whether the making of the plan contributes to sustainable development, whether the making of the plan is compatible with EU obligations, and prescribed conditions are met. Regulation 32 of and paragraph 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 prescribe the condition that: '[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).'

HRA

234. As it is one of the prescribed 'basic conditions' that the plan should not be likely to have a significant effect on a protected European site and as the likelihood of such an effect is also an important, if not determinative, consideration to decide whether SEA is required, it made sense for HPPC to commission a re-screening examining possible effects on European protected sites before it reconsidered the broader question whether SEA was required.

235. As Mr Renow explained in his evidence (pages 12-13, HPPC1), Section 2 of the emerging BNLP which includes an allocation of 285 dwellings at the CRA as well as much larger quantities of other development, has been assessed for compliance with the Habitats Directive and found compliant. No issue is predicted to arise except in combination with other forthcoming district plans envisaged by Section 1.

236. The draft NDP would progress in advance of those other plans and would be for a much smaller quantum of development than the BNLP which proposed at least 14,320 dwellings as well as employment development and other development.

237. In *R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 at [13] Sales LJ ruled:

> *where a series of development projects is in contemplation, the strict precautionary approach required by the Habitats Directive will be complied with in relation to consideration of the first particular proposed development project if that project will not of itself have a detrimental impact on a protected site and there will be an appropriate opportunity to consider measures in relation to a later project which will mean that any possible in-combination effect from the two projects together will not arise (failing which, permission may have to be refused for the later project, when it is applied for: see the Smyth case, paras 87—102. In other words, so long as the relevant assessment of options has been carried out at the level of the relevant development plan (land use plan), as explained in Commission v United Kingdom [2005] ECR I-9017, it will be lawful when planning permission is sought for the first specific development project in the series for the relevant planning authority to assess that that project taken by itself will not have any relevant detrimental impact on the protected site (and then grant planning permission for it), even though it is possible that there might be future in-combination effects on the protected site if planning permission were later granted for the next project in the series.'*

This was based upon opinions of the Advocate General Kokott in the *Commission v United Kingdom* and *Waddenzee cases,* and the need to 'avoid sclerosis of the system' (Sales LJ at paragraphs 15-18).

238. This principle applies by analogy to plans as well as to projects. Where a draft plan (here the NDP) is the first in a possible series of plans that would be promoted separately by other authorities (here, the Local Plans of Braintree District and the other North Essex districts), it is sufficient to assess the draft plan in combination with other existing plans and permitted projects, without attempting to speculatively assess combined future effects of other plans. The impacts of those plans can be assessed when they come forward.

239. Furthermore, a habitats regulations screening assessment in July 2017 found no requirement even for 'appropriate assessment' before grant of planning permission for up to 145 homes at the Arla site (ID14).

240. In the light of the above, the Secretary of State can be confident that the requirements of the Habitats Directive will not prevent adoption of the NDP.

SEA

241. The Examiner's concern was that the SEA screening was done when the plan was at an earlier stage of development and premised on no allocation being made in the Draft NDP, when the Arla site was subsequently allocated by draft Policy HO6. If the allocation policy were dropped and allocations left entirely to the emerging local plan, it is unlikely that SEA would be required.

242. As regards SEA, article 3(2) of Directive 2001/42/EC only requires strategic assessment of plans that 'determine the use of small areas at local level and

minor modifications' to broader town and country planning plans if the Member States 'determine that they are likely to have significant environmental effects'.

243. Whether potential environmental effects are 'significant' is a matter of judgment for the planning authority, subject to review on grounds of reasonableness.

244. It is not anticipated that the NDP is likely to give rise to significant environmental effects, and no evidence has been presented at this Inquiry by any party proving that it would.

245. It is therefore anticipated that the Examiner and the Parish and District Councils would conclude that the NDP determines the use of small areas at local level (the parish) and that it is not likely to have significant environmental effects in combination with existing plans, programmes and projects. This is particularly the case given that the Arla site has already been granted permission for a greater number of homes than contemplated in the current Draft NDP, the project is on brownfield land and that project has been found not to be likely to have significant effects on a protected European site which is one of the important factors relevant to the assessment (ID14). If that is the eventual conclusion, no SEA would be required.

246. SEA has already been conducted for the emerging BNLP. Article 4 of the Directive expressly provides that 'Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).' Article 5(2) and (3) in turn state that where an environmental assessment report is required, the level of detail should take account of 'the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment', and the report may use 'information obtained at other levels of decision-making or through other Community legislation'. This is reflected in regulation 12(3) and (4) of the Environmental Assessment of Plans and Programmes Regulations 2004.

247. Even if it were considered that NDP does require SEA, then the sustainability appraisal could draw upon the work already carried out in that regard rather than duplicate it. Whilst some additional months would be required to assess the draft plan and the reasonable alternatives, Mr Renow's evidence was that this could be expected to have been completed by summer 2018. The requirements of the SEA Directive are not 'showstoppers'.

Evidence base for not allocating the Inquiry sites

248. It was suggested that the Parish Council should have sought to take a more proactive approach to maximise housing delivery and that the exercise was only aiming to allocate sites sufficient to provide 78 homes. However, that criticism does not impinge on the appropriateness of adopting the draft NDP. A neighbourhood plan does not have to make any site allocations. The written and oral evidence of Mr Renow was that HPPC would accept a pre-emptive 'future-proofing' modification of the text to bring the draft into line with the CRA in the

emerging Local Plan. Its policies would be superseded by specific conflicting policies in later development plan documents such as the emerging BNLP in any event.

249. An attack was made on the ranking assessment when determining which sites to allocate for development in the NDP (CD18.3 set C). It was put to Mr Renow that the exercise unfairly failed to expressly mention in the 'opportunities' column of the table the opportunities afforded by the Gleneagles site to provide housing. This was itself an unfair critique; it was a given, as the whole point of the exercise was to determine which of the sites to allocate for housing and one of the scoring criteria was the number of homes that could be accommodated.

250. In any case, sites HATF313, HATF630 and HATF608 which correspond to the CRA all scored more highly in their ranking than the Inquiry sites. The scoring system was one that was perfectly reasonable and lawful. The choice of policy objectives and the weight to attach to each was a matter for the judgment of the democratically elected Parish Council.

251. Lastly, the criticism was levelled that the site assessment was not considering these particular projects with mitigation measures. Such is almost always the case when engaging in forward planning of this nature and does not invalidate the assessment.

The evidence base for protected views

252. The NDP specifically designates views for protection and enhancement in order to protect the landscape setting of the village (Policy HPE6). It is evidence that the specified 'views and open spaces…are valued by the community and form part of the landscape character' (NDP 'objectives' p.32).

253. Extensive evidence was given by Mr Renow of the local engagement that the Parish Council undertook with the local community, including the survey, the 'walkabout' and photographic competition referred to in the supporting text to the policy, as well as public consultation. The reality is that the abovementioned engagement and evidence-gathering programme provided a sufficient evidence base.

254. DWH sought to suggest that the Parish Council had been disingenuously misrepresenting that View 5 in the table accompanying HPE6 had been identified in the Landscape Character Assessment of October 2015 (CD18.4 set C), and consequently that the policy lacked an evidence base. However, this line of attack was misconceived. The text of HPE6 makes very clear that it protected both views 'identified by the community (see pages 33-37) <u>and</u> the Hatfield Peverel Landscape Character Assessment' (emphasis added), and was not purporting to say that all the views were identified in the Landscape Character Assessment.

255. Although the Landscape Character Assessment (CD 18.4 set C) did identify 'key views' and photographs, these were selected to 'reflect the key characteristics of each area' (para 3.12) by an individual professional consultant as part of an exercise to characterise the area and make suggestions for its management. That exercise had not involved public consultation to ascertain the views of the community. Meanwhile, the residents' survey in October 2015 indicated that 'views towards Witham looking from Gleneagles Way' was selected

as one of the 3 views to 'be safeguarded if new development takes place in the parish' by 237 respondents (HPPC1, Appendix MR28). In those circumstances, it was perfectly proper to reflect the wishes of the community.

256. The Table at pages 34-35 of the NDP identifies the key features/physical attributes of the views, and any access by residents. It is not merely about popularity but rather the NDP explains the features of the views that are valued. Views 1 and 5 are attractive open vistas and it is readily understandable why the views are valued by the local community.

257. Criticisms were directed at the Parish Council's reviewer of the feedback from the workshop held in December 2016 (CD 18.6 set C). A comment was made by that individual that in respect of the view from Gleneagles Way (view 16 in that document) they were not personally sure if the view had value but people liked it, and so it had been retained.

258. Insofar as it was suggested for DWH that it was illegitimate for the draft NDP to reflect the views of the community, the whole point of neighbourhood plans is to 'reflect the… priorities of their communities' (Framework paragraph 1), giving 'communities direct power to develop a shared vision for their neighbourhood' (Framework paragraph 183) and to 'shape and direct sustainable development in their area' (Framework paragraph 185). Landscape value and the degree of attractiveness of any view is highly subjective and it is a matter that the Secretary of State will form his own view on, informed by this report, itself informed by the inspection of the site and surrounding area. Any argument that the personal opinions of a particular hired consultant or parish working-group volunteer are privileged over the views of the community reflected in a neighbourhood plan is to be deprecated.

259. It was also suggested that the response to the workshop is evidence that views were chosen merely to stymy development at those locations and not because of the value of the views. However, it is plain as can be that the reviewer in question in December 2016 was engaged in a whittling-down process determining which of the views identified by the community to retain as most valued and meriting protection, not introducing new views of their own. It was perfectly proper to choose to designate and protect only those valued views that might realistically be subject to development. Neighbourhood plans are supposed to be practical documents to shape and direct development. Mr Renow explained in his oral evidence and cross-examination how views identified by the public were then whittled down to retain the most locally valued views that required protection.

Coalescence and the propriety of policy HPE1

260. Mr Renow's evidence was that maintenance of the distinctive separate character of the village of Hatfield Peverel and prevention of coalescence were identified as objectives that were important to the local community (pages 24-26 HPPC1 and Appendix MR29).

261. Consistently with the purposes of neighbourhood plans, as alluded to in the Framework and the localism agenda, it was therefore entirely proper for this to be reflected in the Vision and in Objective 4 of the NDP and translated into draft policy HPE1.

262. DWH sought to contend that the green wedge policy was 'strategic' and trespassing on the remit of the emerging Local Plan. They argued that it amounted to a green belt which the PPG and the Framework stated should only be designated by a local plan at district level. They also argued that it was somehow inconsistent with the emerging BNLP because draft Policy LPP 72 ('Green Buffers') had not included a green buffer between Witham and Hatfield Peverel.

263. Those arguments are unsustainable. The Prevention of Coalescence Areas that would be designated by draft policy HPE1 in the NDP are small areas on the outskirts of a fairly small village within one parish, aimed purely at preventing intrusion into those wedges to retain separation between Hatfield Peverel and the nearby hamlet of Nounsley and expanding town of Witham. In no sense are they 'strategic' and nor can they credibly be contended to create a 'green belt'.

264. Just because the emerging Local Plan did not include a policy contained in the NDP, that does not mean there is an inconsistency; otherwise no NDP could ever contain a distinct policy. In fact, the additional green wedge is complementary rather than inconsistent.

265. Alan Massow, the Senior Policy Planner at the Council, had liaised with and advised HPPC in the NDP drafting process and had confirmed that the District did not designate a Green Buffer in the Local Plan on the understanding that one would be promoted by the NDP, a decision that it considered to be up to the Parish Council and to be consistent with the emerging BNLP (ID26). This was in full accordance with Framework paragraph 185 which states in terms: 'Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.'

Housing delivery

266. Any argument that an exception should be made to allow development conflicting with the statutory development plan on the basis that there is not currently a 5 year supply of housing land has to be premised on the scheme in question being delivered within 5 years, so as to meet that housing need.

267. It is therefore relevant not only what the level of OAHN is (and the extent of any shortfall) but also how likely it is that the housing in any particular scheme will actually be completed and occupied as a home within 5 years. The evidence in relation to delivery is addressed separately in respect of each scheme later.

Health, education and infrastructure/sustainability issues common to all 3 schemes

268. There would be conflict with Policy SP5 of the emerging BNLP ('Development must be supported by provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.'). Development whose needs are not served should not be considered acceptable in planning terms, and where planning obligations are inadequate to make the development acceptable, permission should be refused (Framework paragraph 176).

269. In both his written and oral evidence Mr Renow explained the existing situation in terms of the lack of employment opportunities for new residents within Hatfield Peverel (pages 26-27, HPPC1); the pressure on health facilities and their lack of space to physically expand (pages 27-28, HPPC1); the requirements for

additional school places (pages 29-33, HPPC1); the lack of a safe walking route to Witham along the A12 (pages 33-35, HPPC1); and pressures with regard to transport infrastructure and traffic (pages 36-38, HPPC1).

270. No suggestion was made by the applicants that it was safe for children to walk to Witham along the A12, with reliance being placed instead on potential travel by bus (paragraph 7.2.35, 1/POE).

271. As regards healthcare and the physical inability to extend the Sidney House surgery, the factual evidence of Mr Renow was not challenged or rebutted. The developments would generate additional occupiers who would require health services. There was no evidence that mere internal reconfiguration of the surgery would provide the required extra accommodation for an extra doctor; furthermore there is no indication that any such improvement to the Sidney House Surgery is planned or even practicable.

272. As regards current and projected school places, and the number of students generated by the developments, the numerical situation appears to be common ground (ID1.8).

273. The occupiers of the dwellings would require school places. There are currently 484 primary pupils on the roll of schools within Hatfield Peverel, which have a capacity of 525. The number without additional housing is predicted to fall slightly to 470 by 2021/22. The extant Former Arla Diary and Bury Lane permissions would generate an additional 58 primary school pupils between them (ID1.8, Appendix). This means that any of the Inquiry schemes would result in excess demand that could not be met by existing capacity.

274. Village schools' admissions policies give preference to village children if they become over-subscribed, but this is subject to sibling preference. It would also only apply to children newly entering the school and existing pupils would not be moved. This means that for many years, primary-age occupants of the Inquiry schemes would be required to travel further afield for schooling. This is contrary to the objectives in the Framework of minimising the need to travel and providing schools within walking distance of larger scale housing development (Framework paragraphs 34 and 38).

275. The corollary of that outbound travel phenomenon diminishing in scale would be a diminishing in-school choice for parents living outside the village and the requirement for children residing outside the village who otherwise would have attended the Hatfield Peverel schools having to be found school places elsewhere. As a result, the developments would generate a demand for additional school places whether for the children of occupiers or those children who otherwise would have been accommodated at the village schools. This requirement for additional educational provision is a negative externality of the developments to be weighed in the planning balance.

276. The cost of that externality would not be internalised by means of a Section 106 planning obligation. None was requested by Essex County Council in respect of the costs occasioned by these schemes because it was concerned that the CIL Regulations prohibit pooling of 5 or more contributions in respect of a particular project or type of infrastructure (CD21 set C). In fact, CIL regulation 123(3) prevents pooled planning obligations being relied upon as ‘a reason for granting planning permission’. This is not exactly the same as a prohibition upon pooling

such contributions, or against treating absence of such contributions as a reason for refusing permission. There is no CIL charging schedule in place either. As a result, the cost of putting in place the educational provision would be borne by the taxpayer.

277. Moreover, the additional travel costs in terms of bus transport would either fall to be borne by the local authority (to the extent that it is statutorily obliged or agrees as a matter of discretion to pay them) or by parents. This would be a particular burden for parents on low incomes.

278. Framework paragraph 72 states that 'The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities…local planning authorities should… give great weight to the need to create, expand or alter schools' (emphasis added). This principle is also reflected in Draft Policy SP5 of the emerging BNLP. The Secretary of State should attach great weight to the failure of these schemes to provide for the necessary school places and the impact on parental choice.

Summary of HPPC's case respecting the DWH scheme

Conflict with the spatial strategy

279. The development conflicts with the spatial strategy in the adopted and emerging development plans for the reasons set out above. That means there is a statutory presumption against granting permission by virtue of s.38(6) of the Planning and Compulsory Purchase Act 2004. Specifically, there is conflict with policies CS1, CS5, and RLP2 of the adopted plan; and draft policies LPP1 and LPP17 of the emerging BNLP. This conflict should be given great weight because the Framework expects the system to be genuinely plan-led.

Harm by reason of Coalescence

280. Draft anti-coalescence policy HPE1 of the NDP reflects the vision of the community for Hatfield Peverel. The conflict with this policy should be given significant weight given the current status of the NDP as a submitted examination draft for the reasons set out above.

281. Coalescence is a material consideration in this application. The development would result in expansion of the settlement of Hatfield Peverel to the east, narrowing the gap between it and the settlement of Witham (as substantially extended by the Wood End Farm, Lodge Farm and the development to the west of Maltings Lane (ID13) to approximately 1km, down from 1.4km. This would be a relatively small gap, which would be traversed in around 30 seconds travelling at 70mph on the A12.

282. DWH's witness, Mr Smith, stated that in his view the key consideration was whether there would remain a perception of leaving one place and entering another. However, that test could be met even within an urban area. Although there would remain some fields between Witham and Hatfield Peverel, the settlements would begin to feel uncomfortably close and the rural village character of Hatfield Peverel would be eroded as the net effect of the Gleneagles Way development and the new development on the edge of Witham would be that it came to feel more like a southern extension of Witham.

283. In his oral evidence, Mr Smith accepted that there would be clear inter-visibility between the permitted and as-yet-unbuilt development at Witham north of the A12 and the development at the Gleneagles site, particularly from upper floors. The only way to prevent this and screen views would be to significantly strengthen the planting along the eastern edge of the application site to a height of 9m or more, as was indeed proposed. That would fundamentally and detrimentally change the character of the locality by blocking broad open views out across what remained of the countryside. The line of vegetation would only serve as a marker for the built development behind, adding a prominent and abrupt edge to what had been filtered views in to the houses from the footpath

Landscape, character and visual harm

284. The development would fundamentally obstruct and mar the pleasant views out across open countryside enjoyed from The Street outside D's Café Diner, (ID13 photographs, Mr Renow's viewpoint 1 for this site), the 3 culs-de-sac of Wentworth Close, Birkdale Rise and Ferndown Way (ID13 viewpoints 2-7), and Gleneagles Way (ID13 viewpoint 8), which make a positive contribution to the character of the area.

285. Although the view protected by the NDP policy HPE6 is not from the same place as the view identified as characteristic by the Local Landscape Character Assessment of October 2015 (CD18.4, set C) which was not based on consultation of residents, that document did highlight the physical attributes of this landscape character area as including large and geometric fields under arable cultivation, with 'broad open views possible across open farmland' which it recommended should 'be safeguarded'. For the reasons explained above, the conflict with draft policy HPE6 by reason of loss of the 'key feature' of 'open arable farmland' should be given significant weight.

286. The Essex Landscape Character Assessment (ELCAA) (pages 94-95, CD14.5, set B) noted that potential residential expansion of settlements…'would be conspicuous on the surrounding rural landscape' and recommended that any development be 'small-scale'. As explained above, the emerging BNLP allocated all the sites considered suitable for development of more than 10 dwellings, which indicates that development on this scale was rightly judged inappropriate at this location.

287. Currently, the estate off Gleneagles Way has a spacious, open and rural character by reason of the view out across open countryside. Its village character would become more suburban.

288. The character of the application site itself would fundamentally and detrimentally change as the open countryside was lost and replaced by a housing estate.

289. These views out from the village are experienced by pedestrians, very low-speed traffic, and residents of the houses who are moderate and highly sensitive receptors for the purpose of the GLVIA3.

290. These views are more highly valued by the community than the views in from the surrounding footpath as they are more frequently experienced.

291. There would additionally be harm to views from Footpath 40. The views towards the village are already filtered to a degree from this footpath and the

most attractive views from it are to the south and east. Nevertheless, there will undoubtedly be harm to views from Footpath 40 looking towards the village to the west- the worst of which have not been accurately shown in a montage and the users of the footpath will be high-susceptibility receptors as advised by the GVLIA3 passages previously cited.

292. The tall boundary screening would create a strong sense of enclosure, which would be much stronger than that which currently exists and would undermine the character of the area. Rather than integrating the development, the planting would simply block it off from the countryside that currently forms an intrinsic part of the setting of the settlement edge. The future residents of the estate, and the residents of the Gleneagles estate, would be prevented from enjoying the views of the surrounding countryside setting.

293. These changes would harm the character of the area.

294. There are conflicts with Policy RLP80 in that the development would harm the distinctive landscape features of the area and would not integrate successfully into the local landscape. There is also related conflict with Policy CS8 in that it fails to enhance the character of the landscape and results in loss of best and most versatile agricultural land; this point is elaborated upon below.

Evidence regarding delivery

295. The question of delivery was raised before the opening of the Inquiry in the second pre-inquiry note (INSP2). The only evidence regarding delivery was given orally by Mr Dixon in evidence. It amounted to a statement that DWH are a housebuilder with the intention to develop the site, an assertion that had the application not been called in, they would have submitted a reserved matters application already and an assertion that 'the likelihood is' that the development would be completed within the 5 years. No details as to DWH's track record were given. This is a slender basis indeed for the Secretary of State to give extra weight to provision of housing as a benefit on the strength of any claimed shortage of 5YHLS.

Unsustainability/ demand for services

296. The development would generate demand for and increased pressure on local public services in conflict with policy as explained above.

297. In relation to schools, the development would generate an estimated 36 additional primary pupils (ID1.8).

298. The healthcare contribution of £378.54 per dwelling (SAV56, schedule 8) would not actually address the problem of insufficient staff for the reasons referred to above.

Loss of BMV agricultural land

299. DWH's own evidence discloses that this site is best and most versatile agricultural land, although no details as to its quality are given. The site area is 5.2Ha (SAV2, application form). The loss of this land to agriculture is material, particularly in combination with the other consented and planned green-field development in the area (including the emerging BNLP allocations) and conflicts with CS Policy CS8 with Framework paragraph 112.

5YHLS/weight attaching to provision of housing

300. HPPC's case is that on the correct approach, there is no shortfall in 5YHLS for the reasons set out above. Even if that be wrong, the shortfall does not justify departure from the development plan. The specific development plan policies and the physical and policy harms referred to (including conflict with the Framework) significantly and demonstrably outweigh the benefits of providing 120 dwellings at this location.

Conclusion of HPPC case to the Inquiry

301. For the reasons set out above, the 3 schemes should be refused planning permission; the GDL 140 dwelling and the DWH 120 dwelling applications should be refused and the GDL appeal dismissed.

The Case for Stone Path Meadow Residents Group on policy and housing land supply

Introduction

302. There are three parts to the case for SPMRG. First, identifying conflict with the Development Plan; second, the application of Limbs 1 and 2 under the fourth bullet point of Framework paragraph 14; and third, a consideration of the planning balance. Only extracts from the first two parts are of relevance to the determination of this application.

303. In very brief summary, SPMRG submit that with respect to part one, there is a conflict with development plan in respect of seven separate policies only some of which are relevant.

304. With respect to part 2, SPMRG submit that there is a five year housing land supply and that as such the fourth bullet point does not, in fact, apply.

Part one

305. SPMRG submits that the evidence presented at the Inquiry demonstrates that there is significant conflict with the following adopted development plan policies:

   i) Policy RLP2: Town Development Boundaries and Village Envelopes;

   ii) Policy CS5: in relation to the countryside and development outside village envelopes;

Development Boundaries: RLP2 and CS5

306. Both GDL application schemes (and by extension this application scheme) clearly fall outside the adopted development boundaries, and it was accepted by Mr Lee for GDL that both proposals would therefore breach policies RLP2 and CS5 (this is also the position of DWH). Significant weight should be given to these breaches. The relevant policy in the emerging BNLP is LPP1 the wording of which is set out above (paragraph 35).

307. Ms Jarvis was asked in cross-examination about the date when development boundaries were last reviewed. It is submitted that, in the context of this District and this site, this is irrelevant. It is apparent from the emerging Local Plan that the Council's spatial strategy, as discussed by Ms Jarvis in her written and oral evidence, is focused on significant development in other areas of the District and, in particular, on a number of Garden Villages. It is plain from BNLP Inset Map 36

that the development boundaries of Hatfield Peverel are intended to remain exactly the same in relation to this site as they are in the adopted development plan documents. The current intention of the Council as seen through the emerging Local Plan therefore clearly demonstrates that the development boundaries are appropriate in their current location.

308. It is acknowledged that the RLP2 and CS5 date from before the introduction of the Framework and therefore must be judged against Framework paragraph 215. In the very recent appeal decision (CD.32.10 set C, paragraph 39), on the same policies under consideration here, the Inspector discussed Policy CS5:

> *I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. <u>This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215</u>.* (emphasis added).

309. Contrary to suggestions made at Inquiry that this Inspector had erred in her analysis , she has clearly identified that it was open to her to attach "due weight… according to [its] degree of consistency with this framework" to CS5 as set out in Framework paragraph 215. It is submitted that the Inspector found that the policy was highly consistent with the Framework, focusing in particular on Framework paragraph 55 and therefore determined that, given its closeness to the Framework, she could accordingly give it greater weight than if it had been inconsistent with the Framework. In accordance with the well-rehearsed principles set out in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) in relation to how to read an Inspector's decision letter, it is therefore submitted that the Inspector's analysis is sound, based on an accurate understanding of the Framework and should be adopted here.

310. It is therefore submitted that significant weight should be attributed to the breaches of RLP2 and CS5 that would occur should either proposal be granted planning permission. As set out below when considering the tilted balance, emerging policy LPP1 would also be breached.

Part two:

311. This second part addresses the two limbs of the fourth bullet point of Framework paragraph 14: the "tilted balance" in Limb 1 and the "unweighted balance" to be applied to the identified heritage harm in Limb 2.

312. First it is necessary to consider whether the proposals fall within the fourth bullet point at all - is the development plan "absent, silent or [are] relevant policies out of date" - before considering the restrictive heritage policies under Limb 2, followed by the tilted balance under Limb 1, in the event that the Secretary of State disagrees with the first two conclusions.

313. Only the general points relating to 5YHLS set out below are relevant to the determination of this application.

Five Year Land Supply

314. As per the table of the parties' agreed positions (ID1.13), it is SPMRG's case that the Council can demonstrate a 5YLS, such that Framework paragraph 49 does not apply and "relevant policies for the supply of housing" are "up to date", such that there is no access to the tilted balance on this ground.

315. SPMRG's position on the disputed elements of the 5YLS calculation is as set out in Mr Leaf's adopted proof of evidence (RG5) and as per the discussion at Inquiry.

The Liverpool approach

316. The appropriate approach to take in addressing the backlog is the Liverpool approach, spreading the backlog of 1,660 dwellings out over the remaining plan period.

317. As explained by Mrs Hutchinson on behalf of the Council, the Liverpool approach forms the basis of the emerging Local Plan which is currently at examination. SPMRG submits that to adopt the Sedgefield method would be to undermine this approach taken by the Council after considerable consultation and work and, consequently, would be inappropriate in a plan-led system.

318. Paragraph 35 of the PPG provides that undersupply should be addressed "where possible" during the first five years of a plan. SPMRG submit that, here, it is not "possible". Adopting the Sedgefield method plus 5% produces an annual requirement of 1,100 dwellings or 1,258 dwellings with 20%: these targets are far in excess of anything achieved by the Council going back as far as 2001 and it is therefore extremely unlikely that the Council would be able to achieve these targets. There is therefore no practical purpose to adopting this approach: it is simply not possible for the Council to meet these requirements given their historic performance. Similarly, Mrs Hutchinson notes in her first proof that it is unrealistic to expect that the scale of increase in delivery required could be achieved straight away (paragraph 4.16, BDC1).

319. The significant increase in housing requirement from the Core Strategy figure of 272 dwellings per annum to an OAHN figure of 716 also indicates that the Liverpool approach is appropriate. This sudden upsurge in the annual requirement is another reason why it is not possible for the Council to address the existing backlog in the next five years.

320. It is also highly relevant that the Council is bringing forward new Garden Communities in its area as set out in policies SP2 and SP7 of the BNLP, Section 2. The Council has thus deliberately planned its anticipated housing delivery over the Plan Period as a stepped housing trajectory based on the delivery of a strategic site, as opposed to a "standard annualised requirement". The latest 5YLS Statement predicts that 40,000 new homes in North Essex will be delivered by these Garden Communities. This also suggests that the Liverpool approach is appropriate, given the way in which the Council is planning its approach to housing delivery over the whole plan period.

321. SPMRG notes that Planning Inspectors have adopted the Sedgefield approach in the recent decisions at Coggeshall (paragraph 14 to 15, CD32.2 set C), Steeple Bumpstead (paragraph 9, CD32.10 set C). In the first place, the BNLP has now been submitted for examination since these decisions, which is a significant step

forward in terms of the certainty of the Council's approach to Garden Villages (although plainly the Plan has yet to make it through examination). Secondly, neither Inspector's analysis addresses the points raised above in respect of whether it is possible for the Council to make up the backlog in the first five years.

5% or 20% Buffer

322. As submitted at Inquiry, SPMRG's case is that the appropriate target against which the Council's record of delivery should be measured for the purposes of applying either a 5% or 20% buffer is the requirement that was in place at the time. SPMRG therefore agrees with the Council's closing submissions on this point.

323. Further support is provided for this use of contemporary targets for measuring delivery by the two planning decisions submitted by SPMRG on the first day of the Inquiry.

324. The first is the Navigator L decision, dated 20th January 2015 (ID44). Here the Council had "oversupplied" against local plan figures from 2006-2014, but had undersupplied against a SHMA figure dating from April 2011. The Council argued that it should have its policy "oversupply" deducted from the requirement figure going forward over the next five years, on the grounds that it could not have known about the SHMA figure until 2014, so the requirement should not be calculated using that figure. The Inspector rejected that argument, noting that "I fully accept that during 2011-2014 the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here." In footnote 8 to this paragraph, the Inspector goes on to say that the Council's being unable to meet a need of which it was not aware "might be relevant in other circumstances, such as where the point at issue relates to where there has been "persistent under-delivery" for the purposes of the NPPF-buffer". The issue he was deciding was different but he clearly took the view that the Council should be measured in "persistent under-delivery" terms against the targets which it knew it was aiming for.

325. The second decision is Land North of Cranleigh Road, dated 14th August 2017 (ID43). Here, the Council had a low pre-Framework Core Strategy housing target, on which it sought to rely for establishing a forward requirement (unlike the Council here). The Inspector disagreed and found that the forward requirement should be calculated using much more recent and much higher OAHN figures, even though these were not yet tested or adopted in a development plan document.

326. The developer also argued that "persistent under-delivery" should also be measured against these new figures from 2011, the date from which the requirement was calculated. This argument was rejected by the Inspector, referencing the Navigator decision, on the grounds that "in the period up until 2014 when the then PUSH SHMA identified a OAHN the LPA could not have been expected to meet a need that it was not aware of. On this basis, allowing for peaks and troughs, significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified."

327. Both of these decisions provide support for adopting the targets in place at the time when determining whether the Council has persistently under-delivered. It is plain that there is no under delivery in the present case.

Supply

328. As set out in Mr Leaf's letter (ID21), SPMRG submits that the Council has underestimated its supply by 461 dwellings (including the Sorrell's Field at 50 dwellings), such that there ought to be a 5YLS of 5.35 years using the Liverpool method plus 5%. Individual treatment of these sites is set out in Mr Leaf's letter and is not repeated here.

329. SPMRG has identified these sites on an application of the principles in Framework paragraph 47 and footnote 11 of the Framework and paragraphs 35-9 of *St Modwen Developments Ltd v SSCLG and others* [2016] EWHC 968 (Admin) (CD31.18, set C). It is submitted that it is plain that these sites fall within the definition of "deliverable", which does not require a site either to be allocated or to have planning permission.

330. SPMRG makes the following submissions in response to the Statement of Common Ground between GDL, DWH and the Council (ID39).

331. SPMRG maintains that the identified sites can be considered to be "available now": the fact that steps need to be taken before the site can be developed does not prevent the site from being available any more than GDL's need to sell the site to a housing developer prevents Stone Path Meadow from being available.

332. The figure for Sorrell's Field was adjusted down from 52 dwellings to 50 on the understanding that the application was being revised down to 50 units.

333. Contrary to the penultimate paragraph of the SOCG, the Gimsons site (WITC 421) is included in the housing trajectory appended to the letter to Priti Patel MP, headed "Copy of full housing trajectory including draft allocations re query". The entry is on the last page, showing 70 dwellings over the next five years and noting that "Planning application expected to be submitted Autumn 2017 by Bellway Homes".

334. Should the Secretary of State find that there is a 5YLS deficit, contrary to the above submissions, this deficit should be given limited weight for the reasons set out in Mr Leaf's adopted proof and applying the principles in the case of *Phides Estates (Overseas) Limited v SSCLG [2015]* EWHC 827 (Admin) (CD31.10 set C) as set out in the Statement of Case (at paragraphs 103-108 and not repeated here).

The Case for Braintree District Council

Introduction

335. The background to this inquiry is set out in the Procedural Matters at the beginning of this report. The case set out addresses all three schemes before the Secretary of State unless otherwise stated.

336. As was made clear in Opening, the Council's position to this inquiry is that there is no sufficient basis to refuse planning permission for these schemes, notwithstanding that they are in conflict with the adopted development plan. It stands by the assessments that its officers made of the schemes. It recognises

that had the two larger schemes not been called in, it is likely that they would have planning permission by now. It has not sought to challenge the developers' core case that, respectively, their schemes merit planning permission.

337. Equally it is of course primarily for those developers to persuade the Secretary of State that their schemes are worthy of planning permission, and the Council has not, in that same context, sought to attack the case mounted against the schemes by SPMRG and HPPC, even where those parties have been critical of the Council's approach. That does not mean, of course, that the Council accepts those criticisms are well-founded - they are not - but stems from a recognition that the purpose of this Inquiry is to consider the case for granting planning permission for each of the schemes.

338. In that same context, the Council will not descend into the detail of many of the disputes which will govern the ultimate outcome of this process; not because the Council does not have a view on them, but because it recognises that additional submissions from the Council on those points, beyond those made by the party advancing a particular position, are unlikely to assist. Accordingly, the Council’s case is relatively brief. It does, however, touch on some of the controversial issues where the Council has taken a particular position on them which may not be mirrored by the relevant other party. The first is in respect of housing land supply.

Housing Land Supply

339. A key element of the Council's conclusions on the ultimate acceptability of these schemes - all of which are contrary to the adopted development plan - is that it could not then and cannot now demonstrate a 5-year supply of housing land. Efforts were made 'behind the scenes' to reach an agreed position with the two appellants as to housing land supply (including the suggestion of agreeing a 'range') but that did not bear fruit.

340. The Council was pleased to agree a position in respect of OAHN but in the light of Mr Spry's eventual position, remain surprised that further agreement could not be reached. Broadly we accept the Inspector’s characterisation of the position when summarising the round table discussion, that it is unlikely that there would be a materially different effect on weight whether there was a c.3.3-year (GDL/DWH high water-mark) or c.3.9-year (Council's best case) deficit. In either scenario, the deficit is considerable and weighs in favour of granting permission for more housing.

341. Nonetheless GDL/DWH maintained that the true position was the lower end of that range, for reasons the Council do not accept are valid. As such a number of points arise for further comment.

342. Before moving to the specific controversies, it is important to be absolutely clear about the Council's approach to its BNLP. It would not have submitted its draft Plan for examination if it was not confident about its soundness. It is not inconsistent with that confidence to recognise that until the examination process has been carried out and expert consideration given to the contents, some uncertainty remains. Confidence in the plan's soundness does not exclude a pragmatic view of the reliance that can be placed on its draft provisions in the development management context until such time as they are confirmed.

343. Indeed such an approach accords with national policy in the Framework, which at paragraph 216 advises that weight should be afforded to emerging policy according to various factors, all of which are referable to the inherent uncertainty about the contents of draft plans until they are adopted.

344. A good example is the inclusion of draft allocations for housing on sites which under the existing adopted plan - which retains its statutory primacy - would be contrary to the development plan. The Gimsons site - identified by SPMRG in this case as one draft allocation that should be included in the five-year supply - makes the point neatly. While the emerging plan allocates it for housing development, the adopted plan has it as a Visually Important Space under Policy RLP4, meaning it is inappropriate for housing. Until such time as the draft allocation supercedes the present development plan status, it cannot be considered 'deliverable'. Of course, there is the additional irony that Priti Patel MP, in whose office Mr Leaf works, has objected to the draft allocation of the Gimsons site in the emerging plan and yet here (by extension) argues that it should be treated as a deliverable site for housing.

345. This general approach is relevant to the Council's position in two respects. First, in terms of the Liverpool/Sedgefield dichotomy in dealing with the shortfall since 2013 and, second, in terms of the additional sites that SPMRG sought to promote as being deliverable in their letter of 12 December 2017 (ID21). The Council turns next to the specific components of the supply debate.

OAHN

346. There is no challenge in this inquiry to the Council's position that its OAHN is 716 dwellings per annum. That figure has been derived from the latest household projections (in accordance with the PPG), and uplifted by 15% to account for 'market signals' (essentially past unmet need). That means that the ultimate figure of 716 dpa specifically accounts for unmet need in past years, in the way the PPG requires.

347. The figure is one of the key elements of the first Section of the emerging plan, which will be considered at the EiP in January 2018. All parties will be likely to wish to make submissions on the outcome of that EiP on the OAHN, and its ramifications (if any) for the matters before this Inquiry if they remain undetermined at that point.

Shortfall

348. The quantum of the shortfall against the OAHN of 716 (effectively unmet need) since 2013 is uncontroversial, but the period over which it is sought to be 'recovered' is not. GDL/DWH argue that it should be recovered in the next five years, relying on the PPG, which suggests that this 'Sedgefield' approach is appropriate unless it is unachievable. The Rule 6 parties contend for the shortfall to be recovered over the entire plan period, the so-called 'Liverpool' approach.

349. The Council will contend at the forthcoming EiP into its emerging plan that the examining Inspector should accept, for the purposes of the soundness of the emerging plan, the 'Liverpool' approach. This is in large part because that same plan contains an overall strategy (shared with its partner authorities) of seeking to meet future growth in Braintree (and beyond) by creating new Garden Communities and allocating larger housing sites, which can better respond to the

requirements for new infrastructure to support housing development, a strategy which the Council considers accords with government policy and is a sound approach to meeting future growth needs.

350. That same strategy means, however, that some of the new land for housing will not come forward until the middle of the plan period (and indeed beyond). If it is confirmed by the EiP as a sound strategy, it will provide ample justification for the Liverpool approach. The Council hopes it will be so confirmed. However, it has argued in three recent s.78 appeals that it provides that justification now, even as a draft strategy, and in each case has failed to persuade the Inspector of that. The failure in each case has been broadly on the basis that until there is greater certainty about the emerging plan, the Sedgefield approach should be preferred. That appears to be rooted in Framework paragraph 216.

351. On that basis, and for essentially pragmatic reasons, the Council's position to this Inquiry has been that it accepts that until its strategy is confirmed, it is likely to remain the case that the Sedgefield approach to making up the shortfall is appropriate for development management decisions. It recognises the clear steer in the Framework and PPG towards meeting needs, and doing so for the next five 5 years in particular. It has had regard - entirely properly - to the conclusions on this very issue reached by three recent s.78 appeal Inspectors. Its key justification for the Liverpool approach depends on a strategy within a plan that is still emerging and has yet to be tested. Its approach here is pragmatic but also sound and sensible, and there is no inconsistency with its approach to the emerging local plan.

352. It is also consistent with its position of relying on the other conclusions of those three Inspectors, in respect of (for example) the weight to be attached to policies of the development plan. It is generally unattractive to seek to rely only on those parts of a recent decision that suit one's case, while ignoring other elements which do not. The Council does not fall into this trap.

Buffer

353. This debate was essentially reduced, via the round table session, to a binary disagreement about whether one treats the OAHN of 716 dpa as being the 'appropriate target' from 2013, or only from the time when it became a target at all (i.e. in 2016). Mr Spry says you should 'backdate' it to 2013, Mrs Hutchinson says not.

354. The Council adopts the Inspector’s characterisation of Mr Spry's approach as illogical. Unlike the consideration of the shortfall since 2013, this exercise is not one of quantifying unmet need. It is specifically considering how likely it is that the planned supply will be met, using past performance against applicable targets as an indicator of likely future performance. This is clear because the purpose of including a 20% buffer (where there has been 'persistent under-delivery') is 'in order to provide a realistic prospect of achieving the planned supply' (see Framework paragraph 47). A local authority which has persistently, as it were, fired its arrows wide of the target must be moved closer to the target in order to improve its chances of hitting that target in future.

355. It thus follows that the nature of this exercise is considering past performance, not in terms of meeting actual needs but in terms of meeting planned targets. It is not about being 'unfair' to anyone - that was Mr Spry's straw man - but about

the nature of the exercise. The advocates for GDL/DWH were quite correct to say this has nothing to do with 'punishing' anyone and should be carried out in an entirely dispassionate way. It also explains why it is not helpful here to consider whether past targets were themselves likely to be lower than actual needs. The question is how often Braintree's arrows hit the target, not whether those targets ought to have been different. Nothing in the *Cotswold* judgment (ID1.15) indicates otherwise.

356. The simple fact is that 716 was not in any sense a 'target' for this Council prior to 2016 and it makes no sense in this context to consider its performance in hitting a 'target' that it was not aiming for; that would say precisely nothing about the likelihood of 'achieving the planned supply' in the future. The usefulness of the exercise relies upon identifying what the target in fact was at the time. It was not 716 until 2016.

357. For those reasons a 5% buffer is appropriate. Mrs Hutchinson's evidence makes clear that Braintree has not persistently under-delivered.

Supply

358. There is (now) an immaterial difference, some 68 units, between GDL/DWH and the Council on the quantum of supply.

359. Of more materiality is the SPMRG position that ten further sites should have been included in the supply as set out in Mr Leaf's letter of 12 December (ID21). The question of whether those sites should be included in the supply is the subject of a SOCG between GDL/DWH and the Council (ID37), both as a matter of principle and on a site-by-site basis. The Council does not repeat, but does rely upon, those points here.

360. There is ample justification for the position taken by the Council in respect of those sites, as accepted by GDL/DWH. In short and in general terms the draft allocations may only attract limited weight until the emerging plan within which they appear has progressed further along its journey to adoption. Looking at the sites individually results in the conclusion in each case that they are not yet to be considered 'deliverable' for development management purposes.

361. It is also clear that these sites only make a material difference to the position if the position of the Rule 6 parties (contrary to the case presented by the Council and GDL/DWH) that the Liverpool approach should be adopted now is correct.

Conclusion - housing land supply

362. The above points lead to the conclusion that the Council is correct to say that it cannot yet demonstrate a five-year supply of housing land. Insofar as it matters, the position is that it can demonstrate something in the region of 3.9 years, at least until its emerging plan attracts greater weight. That means that the proposals fall to be determined having regard to the 'tilted balance' in Framework paragraph 14. There is, therefore, justification for not applying the restrictive policies of the development plan 'with full rigour'; and the delivery of housing attracts greater weight in favour of the proposals than it might if there was a five year supply.

The approach to the development plan

363. These proposals are all contrary to the adopted development plan. The controversy revolves around how that conflict should be treated within the context of the Framework and the statutory test.

364. GDL/DWH and the Council agree that the ultimate outcome of that exercise is that planning permission should be granted for all three schemes. However, there is some divergence in the way in which the parties arrive at that conclusion. On that basis it may assist to have the Council's position set out clearly.

365. The proper approach to the development plan, where there is no five year supply of housing land, has been considered a number of times recently by Inspectors on s.78 appeals in Braintree District Council. The Council respectfully adopts the reasoning of Inspectors Hill and Gregory in the Coggeshall (CD32.2 set C) and Steeple Bumpstead (CD32.10 set C) Inquiries (respectively), and the consistent decision of Inspector Fagan at Finchingfield (CD32.4 set C). It is of note that both GDL, and its counsel here, appeared at Steeple Bumpstead and advanced the same argument there as here in respect of restrictive policy CS5, and it was roundly rejected. There does not appear to have been any real recognition of that in their position to this inquiry.

366. In short:

i) There is a sound basis in principle for reducing the weight to be applied to restrictive policies of the development plan on account of the lack of a five year supply of housing land;

ii) The quantum of that reduction depends on a number of factors, including the extent of the shortfall, the purpose of the policy, and the consistency of the policy with the Framework;

iii) There is no sound basis for reducing the weight to be attached to restrictive policies on account of their age alone (paragraph 40 iii F6f); and

iv) In terms of consistency with the Framework, a nuanced approach is required by Framework paragraph 215 which calls for due weight to be attached depending on the degree of consistency with the Framework (paragraph 52, *Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459).

367. Saved policy RLP2 can be afforded limited weight because it is restrictive of housing and the District has a shortfall in housing land supply. The boundaries on which it relies were set with reference to housing needs for a period that has expired. This is the same conclusion reached by Inspector Fagan in the Finchingfield decision (CD32.4 set C, paragraph 10).

368. Although Saved policy RLP80 is not criteria based and applies a generalised approach in protecting landscape features and habitats, it is generally in conformity with the Framework and the Council maintains that it should be given considerable weight.

369. CS policy CS1 is a 'policy for the supply of housing' and is out of date by virtue of Framework paragraph 49. Insofar as there is a breach of its terms it attracts

limited weight as found by, for example, the Finchingfield Inspector (CD32.4 set C, paragraph 10).

370. By contrast, CS policy CS5 attracts more than the 'very limited weight' argued for by Mr Lee (for GDL) and the 'limited weight' argued for by Mr Dixon (for DWH). For the reasons set out by Inspectors Hill (CD32.2 set C, paragraph 59), Gregory (CD32.10 set C, paragraphs 39 & 65) and Fagan (CD32.4 set C, paragraph 59), policy CS5 should be afforded more than moderate, but not full, weight. It is consistent with the Framework core principle concerned with protecting the countryside from harm. There is some justification for a reduction in weight on account of the lack of a five year supply but no justification for that reduction to be as great as argued for by GDL/DWH here. This has been confirmed three times in s.78 appeal Inquiries since July 2017. It may be that Mr Dixon's evidence is in line with this, following clarification in his evidence in chief that it is the precise position of the boundaries, rather than the protective element, that attracts reduced weight.

371. GDL is correct to say that the Framework provides for a hierarchy of protection; at the top are designated landscapes, then below those come 'valued landscapes' and then the residual category of landscapes within which the Stone Path Drive site sits. It does not follow, however, that those at the bottom of this hierarchy get no protection. The hierarchy simply requires that they attract a lesser degree of protection than might categories above them in the hierarchy. In the Finchingfield and Steeple Bumpstead decisions, both of which concerned 'valued landscapes', it was held that Framework paragraph 109 was a 'footnote 9 policy' indicating that development should be restricted, providing an additional level of protection by disengaging the 'tilted balance'. That alone is sufficient to satisfy the hierarchy argument. Policy CS5 permits this hierarchy of protection to be respected.

372. Lastly, the emerging NDP. This is not yet part of the development plan and attracts only limited weight on that basis. It does not provide any sufficient basis for refusing any of the schemes. In particular, the debate about the wording of policy HPE1 (whether it is or is not restrictive of all - or all large - housing development in the countryside, and thus its consistency with the Framework) is precisely the kind of debate that will be resolved when the NDP is examined. It is an excellent example of why only limited weight attaches to plans at this stage of their development.

373. It would be remiss not to mention the Alan Massow e-mail (ID26). The position vis-à-vis the draft Green Gap between Hatfield Peverel and Witham is a draft policy in an emerging neighbourhood plan, which has some way to go before it is made and becomes part of the development plan. As Mr Massow's e-mail suggests, and as Mrs Hutchinson clarified in her evidence, the District Council considers that the question of whether there should be a green gap in this location to be a non-strategic one and for that reason it is not included as a draft policy in its emerging plan.

374. The question of whether a green gap in this location should be part of the development plan is left to the neighbourhood level, which is entirely proper. This Inquiry is not the place to examine either the emerging local plan or the emerging neighbourhood plan. The debate is sidestepped by acknowledging that the weight to be attributed to the terms of the emerging draft neighbourhood

plan - including the draft Green Gap policy - is limited, pursuant to Framework paragraph 216.

The planning balance

375. In each case, on the above basis, a balance must be carried out using the 'tilted balance' contained within Framework paragraph 14. A finding that such an exercise points to the proposal being sustainable development (i.e. the harms not outweighing the benefits) will be a weighty material consideration pointing towards a grant of permission notwithstanding the conflict with the development plan. That is, essentially, the conclusion that the Council reached in respect of all three schemes. It is the conclusion the Council suggests should be recommended to the Secretary of State.

376. The crucial benefit here, in each case, is the delivery of much-needed housing in a situation of deficit. Given that the deficit is, on any view, more than a year's worth of housing at this stage, and is unlikely to be eliminated until such time as the new local plan is adopted, the weight to be afforded to that benefit is substantial and is not outweighed by the harms, which are relatively limited.

Conclusion

377. The conclusions reached by the Officer's Reports in respect of each scheme are sound and should in effect be confirmed.

The Case for Interested Persons

378. A total of six people made presentations to the Inquiry and answered questions from Mr Tucker. All responded positively to my request for a written statement and these are listed in Annex A. Mr Webb and Mr Hutton gave their statements by way of a PowerPoint presentation, copies of which are included in the documents. Thanks are due to the Council officers for making the necessary equipment available. What follows is a summary of the main points made by each speaker. The full submissions are available to read.

379. **John Webb** is a resident of the Gleneagles Way estate. His evidence focused on the traffic implications arising from the proposed development. He noted that Gleneagles Way is already a cul-de-sac development with a single point of access to the wider highway network. That single point of access would remain; it would however serve triple the number of dwellings if the proposal went ahead.

380. The junction of Gleneagles Way and The Street is inherently dangerous as it requires turning into (to exit the estate) or across (to return home) the off-slip from the A12. Traffic leaves the A12 at speed and has only a short distance to slow to 30mph. He put the distance from the 30mph sign to the junction at some 60m.

381. Local people did not accept the reported results from the speed survey carried out and submitted by DWH. HPPC commissioned another. He included the outcome figures and argued that using the average speeds as DWH had completely distorts the true picture. In fact, the new survey shows that 45% of the vehicles going past the junction do so at speeds in excess of 30mph. Proposed improvements to the visibility splay miss the point entirely. It is the design of the off slip that makes speed difficult to judge combined with the failure to enforce speed restrictions that cause the danger. (*Inspector note: DWH were*

not aware of this additional survey data until Mr Webb presented it. Document ID20 is its response).

382. **Michael Hutton** has been resident in the Gleneagles Estate for some 23 years. His presentation contained a number of annotated images. These showed the effect that new developments on the edge of Witham such as Lodge Farm and Woodend Farm were already having on the distance between Witham and Hatfield Peverel. The application scheme would reduce this separation distance further to just under 1km from just over 2km before these developments took place.

383. The application site is beyond the village boundary and previous planning applications have been refused. Photographs of views (which appear several times in the evidence) illustrate views across the application site.

384. The NDP already includes a comprehensive development area which is well-placed in relation to the main line station.

385. **Lesley Moxhay** has been a local resident for 34 years. She spoke about the ecology of the area. She suggested that the field margins provided a rich habitat while the land itself was Grade 2 and therefore best and most versatile agricultural land. Building on it was therefore contrary to Framework paragraphs 111 and 112.

386. In summary, her evidence is that the human activity that will be introduced into the area will have an adverse impact on the many protected species on or near to the site such as bats, badgers, grass snakes and slow worms. Furthermore, the measures put forward and agreed by the Council in mitigation of potential impacts on the Blackwater Estuary Natura 2000 site will be wholly inadequate and potentially counter-productive for local wildlife. The cumulative effect on the ecosystem from all of the developments planned in Hatfield Peverel should be given great weight in the planning process.

387. A resident of Woodham Drive whose property abuts the south western tip of the site, **Ron Elliston** made a number of points all of which are raised by HPPC or others. In summary, these include:

a. That the site is not allocated in any development plan and lies beyond the settlement boundary;
b. The site is best and most versatile agricultural land;
c. Previous applications have been refused and this one is opposed by the local MP, County Councillor and District Councillor;
d. The green wedge between Hatfield Peverel and Witham will be further eroded;
e. The A12 is a source of noise and exhaust emissions which the acoustic barrier proposed will not mitigate even though it will have a landscape impact;
f. Similar traffic safety concerns to those expressed by Mr Webb;
g. Local schools and the surgery are already at capacity with more pressure to come from planned development;
h. Few employment opportunities with the closure of Arla dairy resulting in increased commuting.

388. In a supplementary statement (ID11a), Mr Elliston challenged the proposed provision of a new crossing point on Maldon Road near to the junction with The Street on the basis that it did not and could not comply with current guidance.

389. **Andy Simmonds** has lived in the village for 36 years. His statement was essentially a criticism of the way that the Council had dealt with the application.

390. **Kenneth Earney** spoke with respect to the effect on habitats, the lack of allocation in the development plan, the pressure on local schools and health facilities and traffic; he made similar points to other speakers.

Written Representations

391. At application stage the Council received 94 objections with some residents and households submitting multiple representations. The main material and non-material reasons for objection are summarised in the report to Committee (SAV38). The main headings under which they are grouped are principle of development; layout, design and appearance; landscape and ecology; highways; living conditions; and other matters. Most, if not all, of these issues have been raised by either or both HPPC and the interested persons in their evidence to the Inquiry.

392. A further seven representations were received by the Planning Inspectorate. These generally refer to matters raised in the initial objections to the scheme. Two are from Mr Webb and Mr Elliston and make the same or similar points as recorded above.

Conditions and Obligations

393. These were discussed at a round table session on the final sitting day of the Inquiry.

Conditions

394. Various drafts of the conditions that might be imposed if the Secretary of State decides to grant planning permission were submitted. The wording and need for each was discussed and a consolidated set helpfully provided by the Council following the discussion (ID53). In considering the conditions to recommend to the Secretary of State I have had regard to the advice in the relevant section of the PPG. The conditions that are recommended are set out in Annex C and the following references are to the conditions there.

395. Conditions 1 to 4 inclusive are standard outline planning permission conditions which define the reserved matters that will be subject of further approval. DWH explained that the Statement of Landscape Principles, (ID46) should be read alongside the parameters plan (SAV4) and the design and access statement (SAV7) in order to appreciate the approach the developer will take to mitigating the limited landscape harms caused by the development [107]. However, neither the Council nor DWH suggested that these should be subject to a condition and I consider to do so would go beyond what is normally specified at outline planning permission stage. No doubt the Council will nevertheless have regard to both when considering the reserved matters applications.

396. Condition 2 sets 2 years as the period within which the reserved matters applications must be submitted for approval to ensure that the eventual developer of the land brings forward housing in good time.

397. Condition 5 secures the access arrangements which are for approval now. It also secures a number of improvements to the crossing points and footways in the general vicinity of Gleneagles Way, The Street and A12 overbridge. Included among these is the new zebra crossing on Maldon Road proposed as part of ID1.5 and shown on Drawing 45604-P-SK207. Having walked the area in the afternoon I consider that an additional controlled crossing point is necessary to achieve a safe route to the bus stop for those wishing to travel by bus to Witham and further afield. This is especially important given the expectation that both primary and secondary pupils may have to travel in that direction to secure a school place.

398. Conditions 6 and 7 work together to control the ridge heights of the dwellings on those boundaries of the developable area that affect views of the settlement edge from the countryside. The height specified is that upon which the LVIA is based. The restriction is necessary to integrate the current settlement edge into the setting of the village.

399. Conditions 8 and 9 are necessary to ensure that any air quality issues arising from the proximity of the site to the A12 are addressed in the interests of the health and well-being of the future residents. Condition 10 is necessary to protect wildlife during construction and condition 11 is required to ensure that in bringing forward the reserved matters applications the scheme is landscaped in accordance with the parameters set out and maintained thereafter as specified.

400. In order to ensure that disturbance to the existing residents in the area is minimised as far as is practicable while the development takes place conditions 12 and 13 should be imposed to control the management and operation of the site and the hours during which work can take place and materials can be moved on and off site. The requirement for details of any piling to be approved (condition 15) arises for the same reason.

401. A number of schemes are required before development begins to ensure that any issues not already identified are explored and addressed as appropriate. These include conditions 16 (archaeology), 17 to 19 (surface water drainage) and 20 (foul water drainage). Condition 21 is similar in that it requires the measures to be put in place to protect all the identified existing trees and hedges that are to be retained to be approved prior to construction. I have removed the phrase 'to the complete satisfaction of the local planning authority' from the suggested condition 21 as this is an uncertain specification and therefore unenforceable. It would not therefore meet the tests on the PPG.

402. There are a number of conditions that are required to protect the nature conservation interest of the site and surrounding area. These include no clearance of trees and hedges during the defined nesting season (condition 23), the provision of nest and roost sites as the development becomes occupied (condition 24) and reviews of already submitted surveys prior to the submission of reserved matters (condition 25) or if the development is delayed or suspended such that circumstances might have changed (condition 26). Condition 14 (external lighting) is required primarily to mitigate any disturbance that may be caused by light pollution to roosting and foraging bats. It is my understanding of

the discussion that this is its purpose. It is not intended to provide detailed control over the lighting that individual occupiers might wish to provide for, say, security. It is more to address the lighting of public spaces that will be provided as part of reserved matters applications.

403. Condition 28 is necessary in the interests of promoting sustainable modes of travel. The achievement of a high quality development where people will wish to live will be enhanced by the undergrounding of existing overhead power lines and that will be secured by condition 29.

404. A number of conditions were subject of debate and disagreement in some cases.

405. Condition 22 secures the important provision of space for the necessary materials recycling bins in order to facilitate the more sustainable management of waste materials by the local collection authority.

406. During the discussion of that condition it was suggested that its scope be widened to include the provision of other infrastructure such as high speed broadband. While there was a consensus that this would be desirable, its provision was not in the control of the developer. A condition of that nature would therefore be unenforceable and so would not meet the tests set out in the PPG.

407. While there is no dispute that the condition is required to protect the health of future residents living close to the A12 there is a disagreement about the timing of the submission of details. I agree with the Council that the details need to be approved before reserved matters are submitted rather than together with them. The approved details may well influence the layout if not the appearance and to risk a refusal which meant a review of an already submitted reserved matters application seems to run counter to the objective of expedited housing delivery. It seems though unwise to restrict by condition the mitigation to the boundary even if that is what is ultimately approved. Suggested condition 27 therefore represents compromise wording of the two suggestions put forward.

408. Two other conditions were suggested by the Council and these are included within Annex C as conditions 30 and 31. They are set out there in italics as, in my view, neither is required. The suggested wording is nevertheless included should the Secretary of State take a different view.

409. Condition 30 is a standard materials condition of the type commonly imposed where this is either unclear at application stage or the local planning authority wishes to exercise further control over the matter. However, in this case 'appearance' is a reserved matter. It seems to me that the materials to be used are fundamental to the appearance of the buildings and I fail to understand why this important matter cannot be addressed then.

410. The Council explained that condition 31 is required to ensure that, initially, each plot is provided with some means of enclosure. The condition is not intended to remove the rights available under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. That may not be the intention but I consider that it would be the effect. No evidence was put forward to justify such a restriction which the PPG advises

should only be imposed where circumstances require. Those circumstances do not exist here in my judgement.

411. A third condition suggested by the Council related to car parking standards. It was very specific in its requirements and referred to the Essex Parking Standards Design and Good Practice 2009 as the source. During the discussion it was argued that this condition was unnecessary as the reserved matters applications would be determined in accordance with the development plan policy and any supplementary planning document applicable at the time. I agree and do not suggest this condition be imposed.

412. A fourth suggested condition would have required a number of highway works and improvements to bus stops. It seems to me that the former are already secured by condition 5 while the latter relate not to this development but to those proposed at Stone Path Meadow which are the subject of separate reports. The condition is therefore not required in this case.

413. Finally, the Council suggested a condition requiring the submission for approval of a landscape and ecological management plan. From the body of the condition and the non-exhaustive list of matters it should cover it seems to me that it would duplicate a number of other landscape and ecological conditions that are already suggested to the Secretary of State. It is therefore unnecessary in my view.

Obligations

414. A planning obligation in the form of an agreement between the Council, ECC, the landowners and the developer has been submitted (ID59). It is signed by all parties and dated and is explicitly made pursuant to s106 of the principal Act with the obligations entered into being enforceable by the Council and ECC. The commencement date is defined as being when a material operation for the purposes of s56 of the Act is carried out.

415. The obligations are set out in 11 schedules. These make provision either in the form of financial contributions or other mechanisms for outdoor sport (Schedule 1), allotments (Schedule 2), community building (Schedule 3), highway works (Schedule 4) open space (Schedule 5), affordable housing (Schedule 6), education (Schedule 7), healthcare (Schedule 8), Blackwater Estuary mitigation contribution (Schedule 9), public rights of way contribution (Schedule 10) and housing phasing and landscape strategy (Schedule 11)

416. The Council has submitted a statement of compliance with the CIL Regulations (ID29) setting out the policy justification for each of the obligations provided.

417. In my judgement each of the obligations is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development proposed. In my judgement each obligation meets the requirements of CIL Regulation 122 and Framework paragraph 204.

Conclusions

418. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion or inference is based.

Policies in the Framework on delivering a wide choice of high quality homes

419. This is the first reason for the application being called in by the Secretary of State [4]. Little evidence was given about this.

420. Schedule 6 of the s106 obligation (ID59) will secure the provision of a substantial number of affordable homes within the development proposed. A mix of market and affordable housing would be delivered on-site and the policy set out in Framework paragraph 50, bullet 3 would therefore be delivered.

421. All of the other elements that go towards delivering the requirements for good design set out in Framework section 7 will be subject of the reserved matters applications that would need to be submitted. The Statement of Landscape Principles (ID46) sets an important context for the development and the Design and Access Statement (SAV4) also establishes some important principles that will no doubt guide the Council's development management process at reserved matters stage although no condition was suggested in this regard [395].

422. There is no evidence to suggest that the application site which is being promoted by a national housebuilder will not provide a range of high quality homes.

The extent to which the proposed development is consistent with the development plan for the area

423. This is the second reason given by the Secretary of State for the call-in [4]. In addressing this I shall also deal with the third reason, namely 'Any other matters the Inspector considers relevant'. These were set out in my first pre-Inquiry note (INSP1) and have been developed in the light of the written and oral evidence given. They encompass what, in my view, are the main considerations upon which the decision should be based.

424. However, before considering the application scheme against the policies of the adopted development plan I shall address the weight that I consider should be given to the emerging BNLP and NDP.

425. Turning first to the BNLP, the SOCG between DWH and the Council records that the weight to be given to the emerging plan policies should be determined in accordance with Framework paragraph 216 (paragraph 6.12, SOCG 4). That is different to the Council's agreement with GDL that limited weight should be given to the BNLP as a whole (paragraph 3.3.10 SOCG1). In closing submissions the Council considers the weight that should be attached to individual policies rather than the plan as a whole [363 to 374].

426. DWH reached the same initial agreement with HPPC (paragraph 6.12 SOCG 5). In closing submissions HPPC has revised its position and argues that the emerging BNLP can be given significant weight as it has progressed to examination stage [216]. That however is only one of the three considerations in Framework paragraph 216 that have to be taken into account.

427. The BNLP is subject to a considerable number of representations that it is unsound. For example, in an extensive representation (CD33.1 set C) GDL argues that policies SP1, SP3, SP5, SP7, SP8, SP9, SP10, LPP 1, LPP 18, LPP 19, LPP 22, LPP 37, LPP 49 and LPP 72 are unsound. Of these, only policy LPP 1 is a

relevant policy. No criticism is made by GDL of the others (such as SP 2 and LPP 71) referred to above [36 and 37].

428. The stage reached remains as set out above [33]. That is an advanced stage in the process to adoption but it is, nevertheless, the first stage at which independent scrutiny of the plan takes place. The Council is best placed to know the full extent of the challenge to the plan and its individual policies and thus the number and nature of the unresolved objections to them. The degree of consistency with the policies in the Framework must therefore be viewed in that context. Taking these three components of Framework paragraph 216 into account, I see no reason to take a different view to that which the Council took in the SOCG with GDL that only limited weight should be given to the BNLP.

429. The weight that should be given to the NDP is a matter of legal dispute between DWH [121 to 130] and HPPC [227 to 247]. I am not legally qualified to resolve that dispute and the Secretary of State may need to take his own legal advice to do so if he considers it necessary.

430. In my view, the position is actually quite straightforward. The NDP has been submitted for examination [39]. The exchange between the examiner and HPPC set out there seems to me conclusive. The examiner's first letter (Appendix MR24, HPPC1) is quite explicit that 'as it stands….the NDP fails to meet the Basic Conditions…'. Her second letter (Appendix MR25) declines to continue the examination because '…the issues raised are sufficiently substantive…' that to do so would risk abortive and unnecessary costs to the Council.

431. Both GDL (CD33.2 set C) and DWH (SAV50 and SAV52) have objected to the submission version of the NDP. Among the policies objected to are HPE1, HPE2, HPE6 and HPE8. Given the nature of the additional work to be done, the uncertainty over the timescale in which it will be completed and the effect that the outcome of that work and indeed the examination itself may have on the form of the NDP put to a referendum I consider that, in line with the guidance in Framework paragraph 216, very limited weight can be given to the NDP at this stage. I do not consider that the late information provided by HPPC [10] alters that conclusion. Although HPPC says the required work has now been done, Natural England's comments have not been made available; the outcome of the meeting with the Council to discuss the way forward is similarly unknown; and the views of the examiner about all of this are unknown in any event.

Would the proposal be in accordance with the spatial strategy?

432. The CS spatial strategy is set out in policy CS1 [29]. It promotes development in the KSVs and Hatfield Peverel is so categorised. The emerging BNLP does not alter the spatial strategy in that regard and identifies the A12/Great Eastern Mainline corridor as a location for future development [36]; Hatfield Peverel lies within that corridor.

433. As I explain a little later in this report I agree with GDL, DWH and the Council that the Council cannot show a 5YHLS. Framework paragraph 49 says that in those circumstances relevant policies for the supply of housing should not be considered up to date. Policy CS1 is clearly such a policy.

434. Whether it is the whole of the policy including the spatial strategy or just that part of the policy that sets the housing requirement that should be considered

out of date was the subject of post Inquiry sessions correspondence (INSP4 and ID54 to ID56).

435. Taking those views into account it is my judgement that, although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight. The Council is having to address a substantially increased OAHN in the emerging BNLP. How it is doing so is set out in the evidence base (ID33). This confirms that the Settlement Fringes Evaluation (SFE) is part of the evidence base used to develop the strategy. That confirms that to meet the OAHN '…development will need to be accommodated on the periphery of the main towns and larger settlements…' (paragraph 1.4, CD14.4 set B) with Hatfield Peverel being identified as one of the nine settlements studied. Furthermore, ID33 explains why both the 'new settlement only' and 'constrained growth' options were rejected.

436. It seems to me therefore very likely that any strategy coming forward through the BNLP will include development at the KSVs, especially where these are within the A12/Great Eastern Mainline corridor that is identified as a location for future development.

437. I therefore conclude that the development proposed would be in accordance with the spatial strategy. There is no evidence to support the contention by HPPC that development in any settlement needs to be 'proportionate' [186]. Nevertheless, HPPC is correct in my judgement to argue that the spatial strategy does not, of itself, dictate that the boundary in this part of Hatfield Peverel needs to be altered [214 and 215] but that is a different point that relates to policy CS5 which I turn to now.

Would the proposal conflict with policies RLP2 and CS5?

438. These two development plan policies are summarised at [26] and [30] respectively with the precise wording of policy CS5 set out. They are worded differently but their effect is the same. Both establish that outside the defined development boundaries of settlements, countryside policies will apply. Policy CS5 goes further explaining that development will be strictly controlled to uses appropriate to the countryside.

439. It is a matter of fact that the application site adjoins, but is nevertheless beyond, the development boundary of Hatfield Peverel. The proposal is therefore in conflict with the development plan in this regard, a fact acknowledged by DWH (paragraphs 6.12 and 6.34 DWH1). The point in issue is the weight that should be given to this conflict in the overall planning balance.

440. There are two aspects to this. First, whether the policy is inconsistent with the Framework; that argument applies only in respect of policy CS5 [142 to 146]. Second, whether the development boundaries that are critical to the application of the policies are out of date because they are based on out of date housing requirements. They have not been subject to review for many years [112 and 113].

441. Dealing first with consistency with the Framework, policy CS5 has three components. The subject of the policy is (of relevance to this appeal) development outside village envelopes. The 'action' of the policy is to strictly control that development to uses appropriate to the countryside. The purpose is

'to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside'.

442. The policy does not, in my view, apply blanket protection to the countryside. It makes clear that uses appropriate to the countryside would be permitted. The policy itself and its supporting text do not explain what those uses might be but it is difficult to imagine that a substantial village expansion housing development would fall into that category. Some guidance is however given elsewhere in the CS (at paragraph 4.24) in the discussion of 'The Countryside'. Some of the uses there (for example, development necessary to support traditional land-based activities such as agriculture and forestry) are not dissimilar to one of those listed in Framework paragraph 55 (the first bullet).

443. One of the core planning principles set out in Framework paragraph 17 requires local planning authorities in both plan-making and decision-taking to recognise the intrinsic character and beauty of the countryside. To my mind a policy that seeks to 'protect and enhance', as policy CS5 does, is not seriously out of kilter with that core principle.

444. Although drafted in advance of the publication of the Framework I therefore do not consider policy CS5 to be inconsistent with it. As the Council notes when arguing that more than moderate but not full weight should be afforded to this policy [370] three previous Inspectors have considered the same policy in relation to appeal proposals submitted by GDL in the District (CDs 32.2, 32,4 and 32.10 all in set C). My conclusion with respect to this aspect of the policy is consistent with each of theirs.

445. Turning to the development boundaries point, there is no evidence before this Inquiry of any review of the development boundaries as part of the preparation of the BNLP [113]. While the methodology for doing so has been approved by Council members (Appendix PJ3, HPPC2), there is no evidence that the review has actually taken place. However, DWH contends [90] and the Council accepts [362] that a 5YHLS cannot be shown. For reasons that I will discuss later, that is also my conclusion. If then the development boundaries are rigidly applied through the operation of both policies they would restrict the supply of housing and frustrate the aim of Framework paragraph 47. The court has held that in those circumstances the weight that can be afforded to them is much reduced [117]. That is also the view of the Council and the reason for it with respect to policy RLP2 [367] and, by inference, policy CS5 [370].

446. That was also the view taken by the three Inspectors in the decisions referred to above [370]. I see no reason to take a different view given that circumstances are more or less unchanged. Therefore, while there is a conflict with the adopted development plan policies, overall those policies can attract only moderate weight when it comes to the overall planning balance.

447. For completeness, the wording of BNLP policy LPP 1 is set out above [35]. It is not materially different from policy CS5. For the reasons set out above [425 to 428] the weight that can be given to that policy is limited.

The effect of the development on the landscape character of the area and the visual impact that the development would have

Landscape character

448. In my view, it is necessary to take into account the way in which Hatfield Peverel has developed. The historic maps in Mr Handcock's evidence (Appendix A2, 3/APP) shows how Hatfield Peverel has evolved from a linear settlement focused on The Street, shown as the Roman Road on the 1874 map and part of the route linking London with Colchester. By 1955 the land between Church Road and Maldon Road to the south of The Street had begun to be developed as had land to the north of The Street between it and the railway. This pattern continued to 1980 as more and more edge-of-settlement fields and allotments became housing developments. The 1978-80 map shows the Gleneagles Way and Woodham Drive cul-de-sac developments extending the village into the countryside to the east beyond Maldon Road. By 2002, (the next map in the sequence provided) what is now the Stone Path Drive development had breached the Church Road boundary and taken the village onto yet more former allotments on its western flank.

449. Under cross examination by Ms Scott of the case for GDL Mr Holliday confirmed his view that as a result of this pattern of development the character of Hatfield Peverel had changed over the last 50 years or so from a linear settlement to a nucleated form and that the development proposed by GDL would simply continue that pattern and, by inference, be in keeping with what is now the character of the settlement. He rejected Ms Scott's suggestion that the Stone Path Drive development would be a complete departure from the settlement pattern. His view was that each time housing development has taken place on the edge of the village a field has been lost but there has been no further change to the character of the village; the GDL development proposed would be no different.

450. Mr Smith was not present when Mr Holliday gave this evidence. I summarised that evidence as being that the character of Hatfield Peverel was that of a fair-sized settlement in a rural setting and that, while the GDL development would extend the village into the countryside, that fundamental relationship between the village and its setting would not be altered. I asked Mr Smith if he agreed with Mr Holliday's assessment and whether it applied equally to the DWH development. Mr Smith agreed with Mr Holliday's assessment and confirmed that it was relevant to the consideration of the DWH application. In a further answer Mr Smith confirmed his view that the village had evolved over time through edge-of-settlement accretions of similar scale to each of the proposals before the Inquiry. Each would therefore simply continue that evolution.

451. This assessment is supported by Braintree Historic Environment Characterisation Project 2010 (CD28.1 set C). This report has been produced to assist ECC and the Council in the production of their development plans. It studies the historic landscape character, archaeological character and historic urban character and weaves the three strands together to establish the historic environment character. Discussing the Hatfield Peverel area (HLCA 13) it notes the historically dispersed settlement pattern with Hatfield Peverel being the only <u>nucleated</u> settlement of any size (emphasis added). The post-1950s boundary

loss '...can be described as moderate, however the overall grain of the historic landscape is still clearly visible.'

452. Furthermore, there are a number of studies that have had an assessment of the landscape capacity of various areas of land around the settlement edge to absorb further development as their broad purpose.

453. CD14.1 set B focuses on eight key settlements in the District. Its purpose is to assess the sensitivity and capacity around those settlements to accommodate new development. The application site lies within a study area (HP4) to the east of the settlement and to both sides of the A12.

454. From the analysis set out in summary form in Table 4.1 of the document it is clear that of the four study areas encircling the village this was the one that had the highest capacity to accommodate change without significant effects on landscape character. Contributory points in reaching this conclusion include the lack of distinctiveness along the settlement edge; the moderate contribution to the setting of eastern Hatfield Peverel and the wider landscape because of the enclosure provided by landform and peripheral vegetation; and the influence of the A12 which 'cuts through' the area and introduces movement and noise within the landscape thus reducing its overall sensitivity to change.

455. The Landscape Partnership prepared CD14.4 set B for the Council. This followed and built upon the earlier Chris Blandford Associates document (CD14.1 set B) and has the same broad objective for Hatfield Peverel but at a finer grain of analysis. As Mr Smith notes (paragraphs 83 and 84 DWH3), it did not investigate area HP4 further since this had already been found to have a higher overall potential to accommodate development than the other three study areas (paragraph 2.2, CD14.4 set B).

456. The Landscape Partnership also prepared the Hatfield Peverel Landscape Character Assessment for HPPC (CD28.3 set C). Its purpose is to assist 'the village' in commenting on development proposals coming forward and to support the emerging NDP. One of the aims is to provide an assessment of the landscape character and sensitivity of it around the village building on work undertaken at district level (paragraph 1.4). The application site is within local landscape character area 4 (Wickham Bishops Road – Upper valley slopes with pits/reservoirs). This area is less extensive than study area HP4 being confined to the south of the A12 although it does extend to include a small area of land further to the south east.

457. This study does not assess the capacity of the area to accommodate development. Rather, it sets out a general commentary about the characteristics of the landscape and some landscape guidelines which, on a fair reading, appear to assume development taking place to facilitate them.

458. Of relevance from the general commentary are the sharp transition between the existing residential fringes reflected in the linear garden boundary line of Gleneagles Way and Woodham Drive and the farmland beyond and the broad open views that are possible across the open arable farmland that characterises the area. Guidelines include tree belt planting along the northern boundary to provide a visual break to the A12, enhancement of the ecological value of the area through hedgerow retention and enhancement and safeguarding of open views across arable farmland towards the steep ridge at Wickham Bishops.

459. In my view the above document review demonstrates that the Council has been considering the potential for further edge-of-settlement development at Hatfield Peverel in accordance with the emerging or adopted spatial strategy since at least 2007. Indeed, as set out above [435] this was an explicit purpose of the SFE which states that such development was '...inevitable...' if the OAHN was to be met (paragraph 1.4 CD14.4 set B). The application site would extend the Gleneagles Way cul-de-sac development into what is the next field to the east and, moreover, into a modest part of a larger area that several studies have confirmed has the landscape character capacity to accommodate it subject to development guidelines being met. The Statement of Landscape Principles (ID46) demonstrates that those guidelines can be met. While not subject to a condition [421] it will be for the Council to take these into account at reserved matters stage; this is the expectation of the applicant [107].

460. That is not to say that the development would not have an adverse effect on landscape character. The submitted LVIA acknowledges this (Table D4 SAV16). These effects would however be limited to the loss of the gently sloping landform which would be replaced by a housing estate. That has both a physical effect in that a landscape feature would be lost and aesthetic/ perceptual effects all of which would be negative. They would nevertheless be very localised and largely contained to the site itself, particularly given the mitigation measures that would be put in place. At a wider regional and county level the loss of a small (in context) arable field would have a negligible effect on landscape character.

Visual impact

461. It seems to me that although the landscape character effects and visual impacts that the development would have are not clearly distinguished from one another, this is the nub of the HPPC case on this consideration [284 to 294].

462. During my visit to the area I walked all of the routes that I was invited to [1]. These are shown on HP 003A in the LVIA (SAV16) and on HP/EJS/01 (Appendix 2 DWH4) and allowed a complete circuit of the application site on public land.

463. The application site itself is an open arable field that is devoid of any feature of significance. Its value, in my judgement, is that it enables views across it. Those views will be interrupted by the development but the effect of that varies greatly depending on the viewpoint.

464. Views to the east in the direction of Witham across the site to the farmland beyond are available from a very limited number of places. Walking through the Gleneagles estate it is only possible to see between the houses to the application site when passing the entrances to the three culs-de-sac. Photograph 8 (ID13) shows the type of view that would be available; it is a glimpse only.

465. Photographs 2 and 4 (ID13) and viewpoint 9 (HP 012 SAV16) show views that are representative of those available towards or at the end of each cul-de-sac. They are not representative of the view obtained by people passing through the estate on foot, cycle or in a vehicle or by the vast majority of residents in their homes. Viewpoint 9A (HP 012 SAV16) appears to represent that view but it would only be available to those living at the very end of a cul-de-sac; that would be about six properties. Photographs 3, 5, 6 and 7 (ID13) may represent the view from the gardens of the properties at the ends of each cul-de-sac but, as they do not seem to have been taken from public land, I cannot be sure.

466. What is beyond dispute is that each of these views would be replaced by a view of housing. DWH correctly assess this effect to be 'major' and 'negative' at all assessment dates (Table E3 SAV16).

467. From all other viewpoints on public paths generally to the north, east and south of the application site the proposed development would not be the dominant feature in the view in my judgement.

468. It is only along a short length of the footpath adjacent to the A12 and the off-slip to the village that the application site adjoins a public path. At this point the development would be largely screened by existing planting as shown by representative viewpoint 10 (HP 013 SAV16).

469. From the other representative viewpoints 1, 2, 4, 5, 6, 7 and 8 (respectively HP004A & B, HP 005, HP 007, HP 08A & B, HP 009, HP010 and HP010 SAV16) one view is to the settlement edge of Gleneagles Way and Woodham Drive across the intervening farmland which would remain undisturbed. At points that view is in any event screened by existing planting as the SAV16 photographs show.

470. That is however only one view. As HP003A & B (SAV16) show, viewpoints 1, 4 and 5 are along a footpath that runs parallel to the application site but is separated from it by a further field. While the settlement edge is visible if the walker turns to look that way, turning the other way or looking in the direction of travel would give a view across open countryside. That is also the case from viewpoints 5, 6 and 7. Indeed, travelling north east is moving away from the application site which would be increasingly to the rear and thus not really in the normal view.

471. No evidence was given about the extent to which these paths are actually used. At the time of my site visit a woman was exercising a dog from the path running parallel to the application site and two lads were riding what looked like a trials bike across the fields around the point where the path turns south west towards the village. It is not clear to me how well used the path would be since the end-point is the path alongside the A12; an unpleasant walking experience in my view.

472. Photomontages have been produced to show how the development might look from certain viewpoints after the mitigation planting has become established (HP004A & B, HP008A & B). Taking those and my own observations into account, I consider the applicant's assessment that the visual effects from all these representative viewpoints would ultimately be minor/moderate at worst is fair.

Conclusion

473. There would be a localised adverse effect on the character of the landscape which DWH acknowledge [460]. That harm must, however, be seen in context.

474. Several studies have considered the capacity of the settlement-edge landscape to accommodate the additional development that would be 'inevitable' if the OAHN is to be delivered. The application site is part of an area that independent landscape professionals consider capable of accommodating that development subject to guidelines to mitigate the effects being put in place. At least one of those studies has been prepared for HPPC [456 and 457]; no alternative LVIA has been put in evidence by HPPC.

475. The application site is an arable field with no distinctive features. There is no reason in my view why the landscape principles set out in ID46 could not be achieved at reserved matters stage. While a new settlement edge would be created as a result of extending the existing residential edge the width of a field further into the countryside, all existing boundary trees and hedgerows would be retained and enhanced as appropriate. To the extent that these are distinctive landscape features there would be no detrimental impact upon them. As the new planting matures over time the development would, in my judgement, be successfully integrated into what is a settlement-edge landscape.

476. There would therefore be no conflict with the landscape elements of policy RLP 80.

477. It is only the third paragraph of policy CS8 that is relevant to this consideration. It is clear from the submitted LVIA and the evidence presented to the Inquiry that the applicant has had regard to the character of the landscape and its sensitivity to change. That is what the policy requires and that part is therefore satisfied. Whether the development would enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment is a matter of judgement. Appendix 5 of the CS confirms that it is the 2007 study (CD14.1 set B) that is being referred to. In detail, that has been developed or superseded by later studies. In my view, the development would enhance the settlement edge as it appears as a feature in the landscape and thus this part of the policy would be complied with too.

478. Neither of these policies deals explicitly with the visual impact of proposed developments although these are the only two development plan policies that are referred to by HPPC as being breached in respect of this overall consideration [294]. I have found that there would be harm caused by the development with respect to visual impact although that would be limited to the occupiers of the properties along the three culs-de-sac off Gleneagles Way and, even then, mainly to those living at the end of each.

479. To the extent that weight can be attached to the policies of the emerging NDP [431] there would be conflict with policy HPE6 in this regard. However, in addition to the general point concerning progress on the NDP there are specific concerns about the evidence base that underpins the views to be protected and enhanced under policy HPE6 [101 to 103]. Mr Graham addresses this [252 to 259] but in my judgement there is some strength to Mr Tucker's case that this policy has been developed to frustrate development coming forward on the settlement edge [103]. This is nevertheless a matter properly for resolution through the NDP examination and, in any event, the impact and thus the conflict would be limited to a small number of adjoining residents and to users of certain footpaths pending the mitigation planting maturing. While this harm needs to be weighed in the overall balance, it attracts very limited weight in my view.

The effect of the development on community infrastructure

Education facilities

480. The concern relates only to primary school places and has been something of a moving feast as ECC, as education authority, has come to appreciate the full impact of planned and speculative development in Hatfield Peverel and the changing position over time with respect to school rolls (series of letters in CD21

set C). In my view, the SOCG (ID1.8) does not take things much further although the letter dated 1 September 2017 to Priti Patel MP from the ECC chief executive attached to it does. So does the helpful report from EFM that was prepared for GDL/DWH in response to my pre-Inquiry note (INSP1) and is appended to the proof of Mr Dixon (Appendix 8, DWH2).

481. The EFM report explains that estimating the numbers likely to be demanding a place at any particular school in future years is an inexact science. It is compounded, in the author's view, by the inherent contradiction between the duty placed upon education authorities to promote choice and variety of schools on the one hand and the Framework paragraph 38 requirement to locate, where practical, primary schools within walking distance of most properties on the other hand (report paragraph 27). The position in Hatfield Peverel is further complicated as the Council does not have a CIL charging schedule in place.

482. The letter is slightly opaque but, as I understand it, any one of the four residential developments listed in the letter could, in isolation, be accommodated without the need for additional primary school capacity. As two of the potential developments are allocated in the BNLP and the other two are this application scheme and whichever of the schemes put forward by GDL that is implemented (both cannot be), it is unlikely that only one scheme in isolation will come forward. Depending on the decisions made by the Secretary of State, all four could come forward.

483. Both the letter and the EFM report say that in that circumstance it is necessary to look more closely at where the children attending the Braintree Group 10 schools (Hatfield Peverel Infant, St Andrew's Junior and Terling CE Primary) actually live. It appears that some 35% live in the priority admissions areas of other schools but choose to be educated at one of those three named schools.

484. Given that the education authority has a duty to secure sufficient school places (and there is no evidence that it will not do so) the assumption is that this issue will resolve itself over time through the operation of the admissions policy. In short, in-catchment applications will always trump out-of-catchment applications (report paragraph 42) and, while no pupils will be displaced, over time more and more pupils in the Braintree Group 10 schools will come from Hatfield Peverel if that is their choice.

485. In evidence in chief Mr Dixon confirmed that his position on this matter did not differ from that of Mr Lee for GDL whose evidence he had heard. Mr Tucker further sets out the position in his closing submissions [131 and 132]. Mr Lee's position can perhaps be summarised best by his answer to my question when he confirmed that had ECC asked for a contribution to primary school provision it would have been paid. There is therefore no resistance from either GDL or DWH to addressing the issue. Although Mr Graham believes that ECC may have misdirected itself in respect of CIL Regulation 123(3) [276] the fact remains that its understanding of the pooling restriction prevented it from seeking any contributions from the applicant.

486. Nevertheless, while the situation settles down, and there is no indication as to how long that may take, Mr Lee accepted during cross examination by Ms Scott for SPMRG that there would be a short term impact which neither developer would be able to mitigate. That impact is most likely to manifest itself through additional journeys to school, either by bus or private car. In my judgement it is

very unlikely that any pupils would walk to schools in Witham. The walk is by the A12 and unpleasant in my view and likely to be perceived as dangerous even if, in fact, it is not.

Health facilities

487. On this topic too DWH effectively adopts the position of GDL since, once again, in evidence in chief Mr Dixon confirmed that his position did not differ from that of Mr Lee. The consultation response from NHS England is not available but its contents are summarised in the report to Committee (SAV38). The consultation responses by NHS England to the GDL schemes have been submitted in evidence and have the 'feel' of a template letter (CD3.16 set A and CD4.11 set B). At paragraph 5.1 of the response to the 80 dwelling scheme it says that the development would give rise to a need for improvements to capacity by way of 'extension, refurbishment or reconfiguration at the Laurels surgery'. The terms used in the definition of the 'healthcare contribution' in the s106 Obligation [415] are 'extension or reconfiguration of the Sydney House surgery'.

488. It is clear in my view that the impact of the development and the contribution sought to mitigate it is established purely in terms of the need for additional floor space generated. Unchallenged evidence was given by Mr Renow to the effect that Sydney House could not be physically expanded [272]. GDL's response, which has been adopted by DWH, was that capacity can be increased without necessarily having to physically expand the building and could be achieved by, for example, internal alterations.

489. However, a letter from the Practice Manager is somewhat confusing as to what is meant by 'capacity' (CD20.1 set C). One reading is that it is the number of medical staff available that is the issue, not the physical space available. Not only is the concern expressed that the contribution would not be spent by NHS England at that surgery (clearly wrong given the terms of the Obligation) but that it was not recurrent funding. That is suggestive of the concern locally not being one of space constraints.

Conclusion

490. CS policy CS11 says, in essence, that the Council will work with partners, service delivery organisations and developers to provide required infrastructure services and facilities in a variety of functional and service areas that include education and health. Provision is to be funded through among other things, planning obligations and CIL. In the absence of the latter, the Council is reliant in this case on planning obligations.

491. The evidence suggests that there may be some short term harm in terms of additional journeys to schools while a new equilibrium is established in the primary education sector. It may well be that what appear to be current capacity issues at the surgery may be exacerbated if, as HPPC contend (and SPMRG made the same point), the surgery cannot be physically expanded and that is, as NHS England would appear to believe, actually the issue.

492. However, having identified those concerns it must be acknowledged that DWH has obligated to make all the contributions that have been requested to mitigate any effect from the application scheme. In my view, a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Whether the development would erode the gap between Hatfield Peverel and Witham

493. Coalescence of settlements is not a matter that is addressed by any adopted development plan policy. It is addressed by emerging BNLP policy LPP 72 [38] and emerging NDP policy HPE1 [41]. Strictly therefore, this matter has 'material planning consideration' status.

494. The straightforward answer to the question is 'yes' because, as a matter of fact, the development proposed would extend the built development of the village into the open countryside between the two settlements by the width of a field. As a matter of fact there would therefore be a conflict with emerging NDP policy HPE1 as the application site is within the area designated as a green wedge.

495. The key issue that this policy is drafted to address is to prevent the encroachment <u>of</u> the nearest town, Witham and the merging of Hatfield Peverel and Nounsley to protect the uniqueness and separation of <u>these</u> settlements (page 24 CD16.3 set C) (emphasis added). The objectives are to prevent coalescence between Hatfield Peverel and each of the others.

496. However, it is again a matter of fact that Witham is being extended on its southern/south eastern boundary as a result of planned development. Development of the town is therefore eroding the gap. BNLP policy LPP 71 does propose a green buffer for Witham but not between Witham and Hatfield Peverel (CD16.2 set C). As a matter of policy therefore it would appear that the Council does not agree with HPPC that this is a matter of concern that should be addressed through the development plan. I give very little weight to the views of an officer of the Council in this respect [99, 373 and 374].

497. The key issue that policy HPE1 is drafted to address emerged from the October 2015 Residents Survey (paragraph 9.2 HPPC1) with the outcome being shown graphically in Appendix MR29 (HPPC1). In my view there is a significant issue with the way the question that prompted this outcome is framed and the response rate is therefore hardly a surprise.

498. There is a further issue in my view with the extent of the green wedge identified. It falls far short of the NDP Designated Area Boundary (page 5 CD16.3 set C) and, in fact, leaves most of the area between Hatfield Peverel and Witham unprotected by the policy. That can be contrasted with the green wedge between Hatfield Peverel and Nounsley which seems to include almost the whole of the gap. If confirmed in the NDP as now drafted and illustrated on the map, it is not clear to me how the policy will achieve the retention of the kind of gap that HPPC considered to be required to maintain adequate separation [281].

499. However, both of these points will be for the appointed examiner if she considers them to be material.

500. In that context, I have already noted that this policy is subject to objection [431]. The weight that can be given to the policy is again a matter of dispute between DWH [94 to 100] and HPPC [260 to 265]. My view on the weight that can be given to the NDP and therefore the 'in principle' conflict with policy HPE1 is set out above [431]; it is very limited weight (also broadly the view of the Council [374]) but it remains a material consideration.

501. Mr Smith addressed this issue by reference to what have become known as the Eastleigh principles (section 5 DWH3). His analysis was not subject to substantive challenge [104]. My note simply records an agreement by Mr Smith that physically the gap would be eroded slightly and a further answer on the sense of leaving a place in which he disagreed with Mr Graham's example of moving within the urban area of London but nevertheless leaving one distinctive area and arriving in another.

502. In my judgement the A12 is a very significant factor in the sense of leaving Hatfield Peverel and arriving in Witham. I do not believe that it is possible to walk between the two on the shorter route without travelling alongside the A12 for some distance. The quickest route by road both ways requires travel actually along the A12 albeit for a short distance. Therefore in my judgement the A12 would remain a very significant physical and psychological barrier between the two settlements and would continue to give a sense of separation even if the actual separation was less than it is now.

503. Furthermore, there is no inter-visibility between the two settlements because of the intervening ridge (sections 5.3 and 5.8 DWH3). This can be seen on HP/EJS/03 (Appendix 2 DWH4) and is, as I saw for myself, even clearer on the ground.

504. In my judgement, the loss of the field to residential development would have no perceptible effect on the effective gap between Hatfield Peverel and Witham. That was also the view of the Council when considering the application (page 87 SAV38).

Loss of best and most versatile agricultural land

505. Although Mr Dixon confirmed in evidence that no invasive survey had been undertaken to establish the agricultural land classification of the application site he was content to proceed on the basis that is was grade 2 and thus best and most versatile agricultural land. This was because '…in North Essex you don't bother to look because it all is.'

506. That, in essence, was the advice given by the Council's officers in the report to members on the application (page 85 SAV38).

507. The relevant part of policy CS8 simply states that development should protect the best and most versatile agricultural land; the application proposal would not do so. Mr Dixon considers that this part of the policy is inconsistent with Framework paragraph 112 (paragraph 6.45 DWH1) and that would also appear to be the view of the Council officers as they quote the Framework paragraph in full before reminding Members that since most of this part of Essex is land of that quality the loss of the application site to development would not be a sufficient basis for resisting the application.

508. Whether or not the application proposal amounts to significant development of agricultural land is a matter for debate since the term 'significant' in this context is not defined in the Framework. However, what does seem clear is that if development is to take place in accordance with the spatial strategy to direct future development to the A12/Great Eastern Mainline corridor (among other places), there would be little opportunity to use areas of poorer quality

agricultural land since it is not widely present. In my judgement, the application would not conflict with Framework paragraph 112.

509. In my judgement policy CS8 is inconsistent with the Framework in this respect since it does not permit the more considered analysis inherent in the Framework to be undertaken. Applying Framework paragraph 215, I consider limited weight should be given to the conflict with policy CS8.

Conclusion - The extent to which the proposed development is consistent with the development plan for the area

510. I have concluded that the development would accord with the spatial strategy [437]; would not conflict with policy RLP 80 [476] or policy CS8 [477]; and would not conflict with policy CS11 [492]. There would be some visual impact from the development [478]. However, the harm would be limited and very localised in effect. Moreover, this matter does not appear to be subject of a relevant adopted development plan policy. With respect to best and most versatile agricultural land take I do not consider there to be any conflict with Framework paragraph 112 which has greater weight than CS policy CS8 which is inconsistent with its provisions [508 and 509]

511. The sole conflict that I have identified with the development plan is that with policies RLP 2 and CS5. The conflict arises because the application site lies adjacent to but beyond the development boundary of the village. For the reasons set out the weight that should be attributed to this conflict is moderate [438 to 446].

Five year housing land supply

Background

512. For the purposes of the Inquiry there is no challenge to the Council's assessed OAHN of 716 dwellings per annum [64]. The requirement side of the equation is therefore accepted and the focus of the debate is on the extent to which that requirement can be met over the five year period by the supply of specific deliverable sites.

513. Again, for the purposes of this Inquiry only, the Council accepts the 'Sedgefield' method to deal with the shortfall [351 and 352]. It does not agree with GDL/DWH that there has been persistent past under delivery of housing and does not therefore agree that a 20% buffer should be applied [353 to 357]. On supply there is an immaterial difference between the Council and GDL/DWH of 68 dwellings [358].

514. The final and agreed position is that there would be a 3.4 years' supply (GDL/DWH – Sedgefield+20%) or 3.9 years' (Council – Sedgefield+5%) (Appendix 3 ID37). It was agreed during the Inquiry when I summarised my understanding of the position that this was not close enough to 5 years for the Secretary of State to give anything other than substantial weight to the shortfall. However, as it was not possible on even the most favourable assumptions to get below 3 years, GDL/DWH accepted the implications of the Written Ministerial Statement on Neighbourhood Planning if the NDP passed a referendum before the Secretary of State determined the application.

515. In those circumstances it is not necessary to resolve the small difference between the Council and GDL/DWH.

516. HPPC [170] and SPMRG do not agree with this and suggest that there is a 5YHLS. They contend that the 'Liverpool' approach should be used to deal with the shortfall and that the buffer should be 5%. However, as is clear from the SOCG (Appendix 3, ID 37) that alone is not enough to show a 5YHLS. It also requires most, if not all, of the additional supply sites first mentioned by SPMRG during the round table discussion and then confirmed in writing (ID21) to be 'deliverable' within the meaning of Framework footnote 11.

Supply of deliverable sites

517. Except for Mr Tucker's criticism of Mr Graham's specific interpretation of *St Modwen* regarding the term 'realistic' [61], it appears to be agreed between the parties that whether a site is deliverable or not is determined by the ordinary and everyday meaning of the words in Framework footnote 11 and not on the planning status of the site in question. It is in that context that GDL/DWH/the Council have reviewed and commented upon (ID 37) the sites put forward by SPMRG (ID21). ID37 is dated 21 December 2017, the final day of the Inquiry sessions. Ms Scott's first and only opportunity to respond was through her closing submissions although what she says [332 and 333] is, in fact, taken into account in ID37.

518. Appendix 1 to ID37 sets out in detail the positions of both GDL/DWH and the Council in respect of each site. None has planning permission and only three are subject of planning applications. A number are subject of objections and until these are resolved through the BNLP examination they must be considered uncertain notwithstanding their allocation in the draft BNLP. Furthermore, some are owned or part owned by the Council. The mechanism by which they will be developed has yet to be confirmed by the Council and they cannot be considered as available now.

519. Ms Scott puts the additional sites suggested by SPMRG as adding a further 461 dwellings to the supply [328]. In only challenging ID37 in respect of two sites (Sorrell's Field and Gimsons), it must be assumed that SPMRG accept the case made on the others. Even if the SPMRG response to ID37 is agreed, GDL/DWH/the Council say that it adds only about 25 units net to the supply. They further contend that this additional supply makes no material difference to the 5YHLS position.

520. In my view that must be correct. However, the extent of the shortfall below 5 years may still be material and it is therefore necessary to consider the next most significant factor which is whether 'Sedgefield' or 'Liverpool' is the appropriate approach to take to dealing with the shortfall.

Sedgefield or Liverpool?

521. The shortfall arises because the OAHN has been applied, as it should be, from the start of the plan period in 2013 but the plan itself, the strategy and the allocations to deliver it are not yet approved and planned delivery is thus delayed. I appreciate that some of the developments that may come forward as a result of the adoption of the submitted BNLP may do so towards the latter part of the period. That may well be an argument for the Liverpool approach and is

likely to be put by the Council to the examining Inspector. However, that is all for the future and the shortfall exists now. Although Ms Scott argues that the BNLP is now far more advanced than when Inspectors Hill and Gregory considered their respective appeals [321], in practice that is not so as she implicitly acknowledges ('although plainly the Plan has yet to make it through examination').

522. The PPG is quite clear that Sedgefield should be preferred unless there are sound reasons for not doing so. The case made by SPMRG that the Council is simply not able to deliver housing in the numbers required following the Sedgefield approach [318] is attractive at first sight. However, there is no analysis as to why that has not been the case in the past (is it lack of market demand, lack of available sites, lack of planning permissions being granted against a former development plan requirement?) so the past is not necessarily a guide to the future performance. In any event, even an under-shoot would still make up some of the shortfall.

523. The approach advocated by HPPC [159 to 164] makes the plan strategy point referred to above and, referring to *Bloor Homes* (ID61), argues that it is a matter of judgement for the decision taker.

524. In my judgement there has been no material change in circumstances since my colleagues determined the Coggeshall and Steeple Bumpstead appeals. They both concluded that Sedgefield was the appropriate approach to adopt and this has influenced the Council's acceptance of that for the purposes of this Inquiry [350]. There is no cogent evidence before this Inquiry to take a different view.

Conclusion

525. As Mr Tucker put it [84], in order for HPPC and SPMRG to get the 5YHLS 'over the line' all the stars must align. The evidence shows that when the assessed supply of deliverable sites is taken into account and the Sedgefield approach is applied it makes no material difference whether it is 5% or 20% that is applied as the buffer. On either, the best that can be achieved is still less than 4 years' supply.

Framework Paragraphs 49, 14 and the 'tilted balance'

526. In the circumstances that I have just found Framework paragraph 49 is clear that relevant policies for the supply of housing should not be considered up to date. In turn, that means Framework paragraph 14 is engaged. Planning permission should be granted unless either of the limbs of Framework paragraph bullet 4 indicates that the tilted balance should be dis-applied.

527. It is not part of HPPC's case as I understand it that there is any conflict with a policy in either the development plan or the Framework that can be construed as falling within the scope of Framework footnote 9. The tilted balance is not therefore dis-applied by virtue of the second limb of Framework paragraph 14 bullet 4.

528. Turning now to the first limb, the harms that I have identified are set out above [510 and 511] with the conflict with development plan polices identified where appropriate. The totality of the harm or adverse impacts is limited and localised and restricted to visual impact and an 'in principle' conflict with the two development boundary policies. The benefits are set out by Mr Dixon under the

'economic', 'social' and 'environmental' headings found in Framework paragraph 7 (section 8 DWH1). In fairness, Mrs Jarvis for HPPC acknowledges many of these benefits and confirms that appropriate weight should be given to many, including significant weight to the provision of market and affordable housing and economic benefits (paragraphs 6.33 to 6.38 HPPC2). In my judgement that is correct. The limited adverse impacts of the proposal are some distance from significantly and demonstrably outweighing those benefits. Accordingly, I do not consider the first limb dis-applies the tilted balance either.

529. To conclude on this consideration, the tilted balance set out in Framework paragraph 14 applies in this case and is a material consideration that should be given substantial weight in the planning balance.

The planning balance

The development plan

530. The application proposal would conflict with the policies of the development plan. The application site is beyond the development boundary of Hatfield Peverel and it is not a use appropriate to the countryside. There is a conflict therefore with policies RLP 2 and CS5 which attracts moderate weight in the balance [511]. I do not consider there to be any other conflict with the development plan.

531. The application should therefore be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there are a significant number of material considerations to take into account.

Material considerations against the development

Visual impact

532. In my understanding, the effect on landscape character and visual impact are two separate, but related, issues although they are usually considered in a single LVIA. My conclusion on landscape character is part of my assessment of the development against the policies of the development plan.

533. In relation to visual impact, I conclude that there would be some harm caused [478 to 479]. However, that would be limited, affecting very few residential occupiers and users of certain public paths only pending the maturing of mitigation planting. Although I agree with DWH's categorisation of the scale of adverse effect, the harm caused is limited and localised. Given my conclusions on the weight that should be given to the emerging NDP [431] any conflict with emerging policy HPE6 on this consideration can only be given very limited weight, particularly as this is a policy that is subject to objection from GDL and possibly others although there is no evidence about that.

Material considerations in favour of the development

Tilted balance

534. I have concluded that the Council cannot show a 5YHLS [525]. Moreover, at less than 4 years' supply, the shortfall is of some significance. In these circumstances Framework paragraph 14 is engaged by virtue of Framework paragraph 49. There is no reason why the tilted balance should be dis-applied [527 and 528] and I consider that it should attract substantial weight [529].

Housing delivery

535. There is no reason to suppose that the proposal would not deliver a high quality development that includes a mix of market and affordable housing [420 and 422].

536. Mr Graham has raised a concern about housing delivery [295]. What he says accords with my note of Mr Dixon's evidence in chief which Mr Tucker draws upon [135]. This is a dispute between the parties with little firm evidence before the Inquiry to allow a resolution. However, Framework footnote 11 is clear that sites with planning permission (which, as not excluded, must include outline planning permission) should be considered deliverable unless there is clear evidence (examples are set out) to the contrary. In this case at this point in time there is no such evidence. It must be assumed therefore that the whole site could be developed within five years. It is also noteworthy in this context that suggested condition 2 reduces to two years the period within which the reserved matters applications must be submitted. There is no reason therefore not to afford some weight to the delivery of housing over the five year period.

Spatial strategy

537. Notwithstanding any conflict with the development plan arising from the position of the village development boundary, the application proposal would accord with the longstanding and continuing spatial strategy for the area [437]. That attracts some weight in the balance.

Economic, social and environmental benefits

538. These are the three dimensions of sustainable development set out in Framework paragraph 7. The applicant's assessment of each is set out by Mr Dixon (section 8, DWH1).

539. Although not quantified, a range of positive economic benefits are claimed which include an enlarged labour force of economically active residents; extra household spending in the local area and thus improved viability and vitality of local services and facilities; direct support for additional employment in the local area arising from that additional demand; investment in construction and support for construction jobs; New Homes Bonus for local investment; and increased council tax revenues.

540. While it is reasonable to assume that 120 homes will generate additional spending power, there is no evidence in my view to support the contention that this will be spent to the benefit of local businesses and services. However, there is nothing in the Framework to suggest that the economic benefit of a development must be enjoyed by the area in which the development is located to meet this objective. I therefore consider that some weight should be attributed to this set of benefits.

541. I have already accounted for the delivery of a mix of affordable and market housing in the planning balance. The other social benefits claimed are social infrastructure and transport.

542. Under social infrastructure the applicant includes provisions to mitigate the impact of the development on community facilities. First, I do not believe that providing mitigation of a harm that would be caused can be counted as a benefit;

at best it has a neutral effect in the balance. Second, in this case, I do not consider the harm to education and health infrastructure will be mitigated [491]. Nevertheless, I do not consider that there can be a conflict with the development plan policy since DWH has obligated to provide all the contributions sought by the service providers [492].

543. Also included under this heading is the provision of safe access routes to the application site. I accept that some of these measures will be of wider benefit but they arise principally to mitigate what the applicant sees as a potential harm arising from the development taking place.

544. I therefore conclude that very little weight should be attributed to the social benefits claimed.

545. Most of the paragraphs set out under the environmental benefits heading by the applicant in fact explain how the proposal would accord with the policies of the development plan. Such considerations do not amount to benefits in my view.

546. Also claimed are new tree and hedge planting and the creation of additional ecological habitat. I note that in reporting to members on the application, Council officers recognised the potential to add to the ecological value of the site (page 89 SAV38). However, most of the required schemes still need to be worked up and approved [402]. I therefore afford limited weight to this benefit.

Conclusion

547. In my view the conflict with the development plan, which attracts moderate weight applying Framework paragraph 216, and the single material consideration that weighs in favour of determining the application in accordance with it are significantly outweighed by those that indicate it should be determined other than in accordance with the development plan. In my judgement the application represents sustainable development as defined in the Framework and planning permission should be granted.

Recommendation

File Ref: APP/Z1510/V/17/3180729

548. I recommend that planning permission be granted subject to conditions.

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon of Counsel	Instructed by Ian Hunt Legal Services Braintree District Council
He called	
Alison Hutchinson BA MRTPI	Partner, Hutchinsons Planning & Development Consultants

FOR THE APPELLANT:

Paul Tucker QC and Philip Robson of Counsel	Instructed by Jonathan Dixon BA MA MRTPI Associate Director Savills (UK) Ltd
They called	
Matthew Spry BSc (Hons), DipTP (Dist) MRTPI MIED FRSA	Senior Director Nathaniel Lichfield and Partners
Jeremy Smith BA CMLI	Director SLR Consulting Limited
Jonathan Dixon BA MA MRTPI	Associate Director Savills (UK) Ltd

FOR HATFIELD PEVEREL PARISH COUNCIL:

David Graham of Counsel	Instructed by direct access
He called	
Mike Renow	Parish Councillor
Philppa Jarvis BSc DipTP(Hons) MRTPI	Principal PJPC Ltd (Planning Consultancy)

INTERESTED PERSONS:

Andy Simmonds	Local resident
Kenneth Earney	Local resident
Ron Elliston	Local resident
Lesley Moxhay	Local resident
Michael Hutton	Local resident
John Webb	Local resident

Annex A

CORE DOCUMENTS

Set A: Appeal Ref: APP/Z1510/W/16/3162004

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Impact Appraisal
1.7 Transport Assessment
1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Assessment
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological Desk Based Assessment
1.16 Heritage Assessment
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Impact Report
1.21 Sustainability Report
1.22 Framework Plan Rev H 09.08.16
1.23 Education and Heritage response 25.08.16
1.24 Bat and GCN survey 05.10.16
1.25 Iceni Heritage letter 07.10.16

CD2 Correspondence with Local Planning Authority

2.1 Email with minutes of pre-ap meeting 29.03.16
2.2 Pre-ap response letter from BDC 08.04.16
2.3 Email from GDL to BDC requesting pre-ap response 11.05.16
2.4 Email and letter from GDl to BDC 11.05.16
2.5 Email exchange re conference call 08.06.16
2.6 Email from BDC re Chris Paggi contact 10.06.16
2.7 Email from Chris Paggi re POS 17.06.16
2.8 Email from GDL to BDC re POS 21.06.16
2.9 Email exchange re additional land 30.06.16
2.10 Email exchange re education meeting 30.06.16
2.11 Email exchange re site visit 05.07.16
2.12 Email from GDL to BDC re response to additional land request 12.07.16
2.13 Email from GDL to BDC re officer support 12.07.16
2.14 Email from GDl to BDC re submission of 2nd application 13.07.16
2.15 Email and letter from BDC re additional land 21.07.16
2.16 Email from BDC to GDL re education 01.08.16
2.17 Email from GDL to BDC re amendment to Framework (footpath) 12.08.16

2.18 Email from BDC to GDL re legal agreement 23.08.16
2.19 Letter from GDL to BDC re legal agreement/conditions 23.08.16
2.20 Email from GDL to BDC re legal agreement/heritage 24.08.16
2.21 Email from GDL to BDC re education 25.08.16
2.22 Email from BDC to GDL re legal agreement 25.08.16
2.23 Email from GDL to BDC re feedback from Conservation Officer 07.09.16
2.24 Email from BDC to GDL re financial contributions 09.09.16
2.25 Email from GDL to BDC re photos of the site from Hatfield Place 13.09.16
2.26 Email from BDC to GDL re HoTs/conditions 20.09.16
2.27 Email from GDL to BDC re legal costs 21.09.16
2.28 Email from BDC to GDL re HoTs 23.09.16
2.29 Email from BDC to GDL re TRO 27.09.16
2.30 Email from BDC to GDL re highways 05.10.16
2.31 Email from BDC to GDL re survey work 05.10.16

CD3 Consultation Responses

3.1 Anglian Water - 24.08.16
3.2 BDC - Environmental Health
3.3 BDC - Landscape - 05.09.16
3.4 ECC - Archaeology 11.04.16
3.5 ECC - Drainage 18.04.16
3.6 ECC - Education 1 - 20.04.16
3.7 ECC - Education 2 - 30.08.16
3.8 ECC - Heritage 1 - 24.05.16
3.9 ECC - Heritage 2 - 06.09.16
3.10 ECC- Highways 12.05.16
3.11 Hatfield Peverel Parish Council 12.05.16
3.12 Highways England 25.05.16
3.13 Highways England 21.06.16
3.14 Historic England 16.08.16
3.15 Housing Research and Development 27.04.16
3.16 NHS England 19.04.16
3.17 PRoW 15.04.16

CD4 Validation Letter

4.1 Validation letter from Braintree District Council dated 30.03.16

CD5 Committee report and Decision Notice

5.1 Committee Report
5.2 Decision Notice

Set B: Appeal Ref: APP/Z1510/V/17/3180725

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Appraisal
1.7 Transport Assessment

1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Analysis
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological DBA
1.16 Heritage Statement
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Report
1.21 Sustainability Report
1.22 SUDS checklist

CD2 Additional reports submitted after validation
2.1 Ecology Response to RSPB comments 14.12.16
2.2 Additional Heritage Statement to respond to HE 13.01.17
2.3 Rebuttal letter to HE comments 09.03.17

CD3 Correspondence with Local Planning Authority
3.1 Notice to Owners
3.2 EIA screening letter
3.3 Update and recommendation
3.4 RSPB objection
3.5 Letter to case officer
3.6 Landscaping photos
3.7 Bird mitigation land
3.8 Ecology matters
3.9 Ecology matters - Wistaston decision
3.10 Heads of Terms
3.11 Single storey buildings around perimetre
3.12 Timing of Reserved Matters application
3.13 Heads of Terms
3.14 Blue land managament
3.15 Response to RSPB objection
3.16 Ecologist qualifications
3.17 Overall recommentation
3.18 On agenda
3.19 Education contribution
3.20 HRA matters
3.21 Maintenance of blue land
3.22 Farmland bird surveys and contributions
3.23 Interim breeding bird surveys

CD4 Consultation Responses
4.1 Essex County Council Specialist Archaeological Advice
4.2 Essex County Council SUDS
4.3 Braintree District Council Environmental Health
4.4 Parish Council
4.5a Historic England
4.5b Historic England

4.6 Essex County Council Education Statement
4.7 Essex County Council Historic Buildings Consultant
4.8a Highways England
4.8b Highways England
4.8c Highways Recommendation
4.9 Essex County Council Economic Growth and Development
4.10a RSPB Response to applicants ecologist
4.10b RSPB
4.11 NHS Statement
4.12 Essex County Council Highways
4.13 Essex County Council Ecologist
4.14 Briantree District Council Wynne-Williams Landcape Review
4.15 Shaun Taylor Landscape Services
4.16 Natural England
4.17 Anglian Water
4.18 Police
4.19 Braintree District Council Ecology
4.20 Essex County Council Flooding and Water update
4.21 Essex Field Club
4.22 Archaeology Place Services
4.23 Braintree District Council Environmental Health

CD5 Third Party Representations

5.1 Mr Mark Scofield
5.2 Ms Allison Hinkley
5.3 MP Priti Patel
5.4 Mrs Diana Wallace
5.5 Mr Paul Hawkins
5.6 Mrs Linda Shaw
5.7 Mr John Dinnen
5.8 Mrs Amanda Millard
5.9 Mrs Angela Peart
5.10a Mr Peter Harvey
5.10b Mr Peter Harvey
5.10c Mr Peter Harvey
5.11 Mr Kenneth Earney
5.12a Mr Mark East
5.12b Mr Mark East
5.13 Mrs S.J.Freeman
5.14 Miss Marine Page
5.15 Mr Philip Swart
5.16 Mrs Susan Farrell
5.17 Ron and Marel Elliston
5.18 Mr M Fleury
5.19 Mrs Rita Hocking
5.20 Mr Tom Bedford
5.21 Mrs Helen Sadler
5.22 Mr B.Knight
5.23 Ms Serena Grimes
5.24 Andy and Stephanie McGuire
5.25 Mr Nicholas Carey
5.26 Mrs Greta Taylor

5.27 Residents Group
5.28 Mr K. Kearns
5.29 Mrs Margaret Freeman
5.30 Kenneth and Jackie Earney
5.31 Mr Kevin Dale
5.32 Mr Robert Shales
5.33a Ms Janis Palfreman
5.33b Ms Janis Palfreman
5.34 Mrs Diane Wallace
5.35 Mrs Faye Churchill
5.36 Mr Derek Jones
5.37 Mrs Janet Jones
5.38 Miss Grace Clemo
5.39 Mrs Valerie Bliss
5.40 Mr Bryan Hale
5.41 Mr Les Priestley
5.42 Ade
5.43 Ms Janice Robinson
5.44 Mr James Knights
5.45 Mr Guy Bosworth
5.46 Rachel and Liam Bone
5.47 Mr Robert Anstee
5.48 Mr Lee Vandyke
5.49 Frank Diane Flynn
5.50 Mrs Stella Miller
5.51 Dr Judith Abbott
5.52 Mr Mitchell Cooke
5.53 Ms Jane Russell
5.54 Mrs Lesley Naish
5.55 Mr John Wallace
5.56 Mr Peter Naish
5.57 Mr Tim Steele
5.58 Ms Irene Lindsell
5.59 Mr and Mrs Edwards
5.60 Kathleen and Albert Evans
5.61 Mr Paul Harris
5.62 Mr Mark Nowers
5.63 Mr Ian May
5.64 Ms Ann Ford
5.65 Ms Alexandra Harris
5.66 Mr Nick Harris
5.67 Lynsey and Rob Deans
5.68 Ms Theresa Brewster
5.69 Ms Sue Pienaar
5.70 Ms Karen Devlin
5.71 Mr Peter Devlin
5.72 Ms Catherine Devlin
5.73 Ms Lisa Hanikee
5.74 Mr Timothy Barber
5.75 Mr Martin Gibbs
5.76 S.Warrant
5.77 Mr David Bull

5.78 Mr Sean Osborne
5.79 Mr Richard Parker
5.80 Miss Joanna Burch
5.81 Mr Colin Moore
5.82 Mr Chris Earwicker
5.83 Mrs Kate Bryant
5.84 Mrs Gillian Jones
5.85 S.Warrant
5.86 Ms Rita Hocking
5.87 Mrs Karen Williams
5.88 Mr Philip Hawkins
5.89 Ms Jane Hawkins
5.90 T Davis
5.91 J.C.Roche
5.92 Mr Keith Wright
5.93 Mr Peter Haldane
5.94 Mr John Campbell
5.95 Ruth Ramm
5.96 No Name
5.97 Ms Deborah Fraser
5.98 Ms Lindsay Gilligan
5.99 Mr Michael Renow
5.100 Mr Neil Ruston
5.101 Mr Vincent Hawkins
5.102 Mr Trevor Wilson
5.103 Mr Sebastian Gwyn-Williams
5.104 Mr Darryl Day
5.105 Mrs Ann Walker
5.106 Mr Richard Butler
5.107 Mrs Angela Lapwood
5.108 Mrs Teresa O'Riodan
5.109 Mrs Elise Gwyn-Williams
5.110 Mr Daniel McDermott
5.111 Mr Richard Windibank
5.112 Mrs J.Buckmaster
5.113 Mrs J P Wright
5.114 Carole and Howard Cochrane
5.115 Chistine C Lingwood
5.116 D.R.Wallis
5.117 Mrs Jean Ashby
5.118 Mrs Lesley Wild
5.119 Mr Paul Hanikene
5.120 Mr George Boyd Ratcliff
5.121 Mrs Helen Peter
5.122 Mr Mark East
5.123 Graham and Jean Lightfoot
5.124 Mr Roderick Pudney
5.125 Mr Stephen Mitchell
5.126 Mrs L.Wild
5.127 Mr and Mrs David Warburton
5.128 Ms Marian Headland
5.129 Mrs Chris Marks

5.130 Mrs Carole Allen
5.131 Mrs Amanda Bright
5.132 Mrs Joe Quieros
5.133 Mr Richard Quieros
5.134 Mrs Joanne Melly
5.135 Mrs Claire Harris
5.136 Miss Natasha Wilcock
5.137 Mr Ted Munt
5.138 Mr Neil Ekins
5.139 Margaret and Robert Parry
5.140 Mr Neville Oldfield
5.141 Ms Joanne Middleton
5.142 Ms Steph Gunn
5.143 H.J.Lane
5.144 Mrs M.Blake
5.145 Mr I and Mrs J Jolly
5.146 Derek and Jan Newell
5.147 Henryk Podlesny
5.148 Lorraine Podlesny
5.149 Glenn Blake
5.150 Mr Paul Wallace
5.151 Stone Path Residents Group
5.152 Mr David Bebb
5.153 Mrs Jo Bull
5.154 Mr David Groves
5.155 No Name
5.156 No Name
5.157 Julie Gammie
5.158 No Name
5.159 Mrs Ann Westhersby
5.160 C Merritt
5.161 Mr Tony French
5.161 Mrs Elsie Filby
5.163 Mr Charles William Joiner
5.164 Michele Lewars
5.165 Mr Andrew Jackson
5.166 Mrs Julia East
5.167 A.W.Mabbits
5.168 No name
5.169 Mr Paul Thorogood
5.170 No name
5.171 Jane and Eddie Cook
5.172 Richard Foulds
5.173 Mrs M.E.Gratze
5.174 S.Hughes
5.175 No Name
5.176 No Name
5.177 No Name
5.178 Alan J Evans
5.179 Ron and Marel Elliston
5.180 Elizabeth Pryke
5.181 Suzanne Evans

5.182 Mr Mark Schofield
5.183 Sonya Foulds
5.184 Daniel Power
5.185 Daniel Power
5.186 Miss Susan Nye
5.187 Philippa Moody
5.188 Moira and Steve Hagon
5.189 Kevin and Sue Aves
5.190 Allison Hinkley
5.191 Mr Peter Fox
5.192 Mrs Elizabeth Simmonds
5.193 Mr Mark Bayley
5.194 Mr Andy Simmonds
5.195 Mr Stephen Armson-Smith
5.196 Miss Charlotte Greaves
5.197 Mrs Jodi Earwicker
5.198 Mrs Vivian Cooke
5.199 Mrs Victoria Wren
5.200 Mrs Natacha Murphy

CD6 Committee Report
6.1 Committee Report
6.2 Committee Meeting Minutes

CD7 Habitats Regulations Assessment
7.1 HRA Screening Report
7.2 NE response in respect of HRA

CD8 Draft Legal Agreement
8.1 Engrossed legal agreement

CD9 Appeal decisions
9.1 Walden Road, Thaxted
9.2 Chapel Lane, Wymondham

CD10 Braintree District Local Development Framework Core Strategy
10.1 Core Strategy Policies

CD11 Braintree District Local Plan Review
11.1 Extracts of Policies

CD12 Braintree District Council Draft Local Plan
12.1 Current status of draft local plan
12.2 New policy numbers for publicaton of draft local plan
12.3 Publication draft Local Plan part 1
12.4 Publication draft Local Plan part 2

CD13 Supplementary Planning Guidance/Documents
13.1 Essex Design Guide
13.2 External Artificial Lighting 2009
13.3 Open Space contributions 2017
13.4 Open Space contributions effective 01.04.16
13.5 Open Space Action Plan
13.6 Open Space SPD Nov 2009

13.7 Parking Standards
13.8 Affordable Housing SPD

CD14 Other Guidance
14.1 2007 Landscape Character Assessment
14.2 E40 Landscape Character Assessment preface 2006
14.3 E40 Landscape Character Assessment intro 2006
14.4 Settlement Fringes Landscape Area Evaluatoin 2015
14.5 Landscape Character Assessment

CD15 Draft Hatfield peverel Neighbourhood Plan 2015-2033
15.1 Reg 14 version of NHP (Superseded)
15.2 Pre-examination version HP NHP

Set C: Appeal Ref: APP/Z1510/V/17/3180725, APP/Z1510/V/17/3180729 & APP/Z1510/W/16/3162004

CD16 Policy
CD16.1 Emerging Local Plan Part 1
CD16.2 Emerging Local Plan Part 2
CD16.3 Emerging HP Neighbourhood Plan

Parish Council Documentation

CD17 Housing documents
CD17.1 Neighbourhood Area Housing Requirement Study
CD17.2 Slipping through the loophole
CD17.3 Government response online petition
CD17.4 BDC draft five year supply table at 30/09/17

CD18 Neighbourhood Plan Background Documents
CD18.1 Basic Conditions Statement
CD18.2 Consultation Statement
CD18.3 HP Site Assessment 2017
CD18.4 HP LLCA Oct 2015
CD18.5 Character Assessment HP
CD18.6 Workshop for important views
CD18.7 NPD Support results
CD18.8 Residents survey Oct 2015
CD18.9 Residents survey results Oct 2015
CD18.10 Business survey Sept 15
CD18.11 Business survey results Sept 15
CD18.12 RCCE HN report Feb 2015
CD18.13 Estate agents survey March 2015
CD18.14 BDC letter to PC re SEA screening
CD18.15 HP NP SEA screening report 2016
CD18.16 BD economic dev prospectus 2013-2026
CD18.17 Minutes 08/12/14
CD18.18 Minutes 26/01/15
CD18.19 Minutes 30/03/15
CD18.20 Minutes 21/03/16
CD18.21 Minutes 16/08/16
CD18.22 Minutes 27/02/17
CD18.23 Minutes 25/09/17

CD19 Stone Path Drive (SP) Correspondence 80 & 140

CD19.1	PC email to BDC 12.05.16
CD19.2	PC letter to BDC 24/11/16
CD19.3	PC presentation 28/03/17
CD19.4	PC email to BDC 30.05.16
CD19.5	PC letter to BDC 04/04/17
CD19.6	BDC letter to PC 19/04/17
CD19.7	Extract PC minutes 24/04/16 - 17/08/16
CD19.8	MP letter to PC 21/04/17
CD19.9	Extract PC Minutes 16/11/16
CD19.10	Extract minutes BDC 11/10/16
CD19.11	Development boundary 80 & 140

CD20 SP - Health

CD20.1	HP Surgery Letter 31/08
CD20.2	Surgeries constraints
CD20.3	Extract village Healthcare Cllr Bebb
CD20.4	Letter to PINS surgery_ Schools 25/09/17

CD21 SP - Education

CD21.1	ECC letter 12.01.17 SPM
CD21.2	ECC letter 15.0617 Arla
CD21.3	ECC letter 11.0117 GE
CD21.4	ECC emails 21&22.1216 GE
CD21.5	ECC letter 27.07.17 Bury Farm
CD21.6	ECC letter 10.08.17 Sorrells

CD22 SP - Road infrastructure

CD22.1	HE A12 Widening Intro
CD22.2	Existing traffic capacity and journey times
CD22.3	Extracts HE A12 Widening Options
CD22.4	Environmental Constraints Plan
CD22.5	Ecology impact A12
CD22.6	Bus stops

CD23 Gleneagles Way (GE) correspondence

CD23.1	PC letter to BDC 11.01.17
CD23.2	PC presentation 25.04.17
CD23.3	PC letter to BDC 11.05.17
CD23.4	MP letter to PC 11.05.17
CD23.5	BDC letter to PC 01.06.17
CD23.6	MP letter to PC 02.06.17
CD23.7	Extract minutes 11.01.17
CD23.8	List of 3rd Party reps
CD23.9	Comments from residents (combined)

CD24 Gleneagles Way (GE) documents

CD24.1	PC letter to BDC 30.11.15

CD24.2	Extract minutes 25.11.15
CD24.3	CMTE report 26.04.16
CD24.4	Decision Notice 26.04.16
CD24.5	Extract minutes BDC 26.04.16
CD24.5	Location Plan

Gladman documentation

CD25 Stone Path Drive Plans for determination

CD25.1	Revised Framework Plan (80)
CD25.2	Tree retention plan (80)
CD25.3	Access Plan for both schemes
CD25.4	Email re access plans
CD25.5	Tree retention plan (140)

CD26 Ecology

CD26.1	Breeding bird survey report - 2nd application
CD26.2	Stonepath Bird Survey (Paul Hawkins) Jan 17

CD27 Heritage

CD27.1	Conservation principles
CD27.2	HE Managing Significance
CD27.3	HE The setting of Heritage Assets
CD27.4	Correspondence between Iceini ECC and HE
CD27.5	Heritage Statement - Additional information

CD28 Landscape

CD28.1	Braintree HEC extracts
CD28.2	Essex LCA extracts
CD28.3	HP LLCA
CD28.4	NCA 86 extracts

CD29 HLS/OAN

CD29.1	PPG - Housing and Economic development
CD29.2	PPG - Housing and Economic Land availability assessments
CD29.3	OAN Study Nov 2016 Update, Peter Brett Associates
CD29.4	SHMA Update December 2015
CD29.5	BDC: 5 Year Supply Statement as at 30 June 2017
CD29.6	BDC: 5 Year Supply Housing Trajectory as at 30 June 2017
CD29.7	BDC: 5 Year Supply Statement as at 30 September 2017
CD29.8	BDC: 5 Year Supply Housing Trajectory as at 30 September 2017
CD29.9	BCD Authority Monitoring Review 2015/2016 (AMR, May 2017)
CD29.10	Planning for the right homes in the right places – Consultation Proposals (Sep 2017)
CD29.11	Housing White Paper (February 2017)
CD29.12	Planned and Deliver (Lichfields, 2017)
CD29.13	Start to Finish (Lichfields, 2016)
CD29.14	A long-run model of housing affordability, University of Reading
CD29.15	OBR Working Paper No. 6 – Forecasting House Prices (2014)
CD29.16	Review of Housing Supply, Delivering Stability: Securing our Future Housing Needs' (March 2004), Kate Barker
CD29.17	Developing a target range for the supply of new homes across England' (October 2007), NHPAU
CD29.18	Housebuilding, demographic change and affordability as outcomes

of local planning decisions; exploring interactions using a sub-regional model of housing markets in England' (2 October 2014) in Planning 2015

CD29.19 Business West: Wider Bristol Housing Market Area Strategic Housing Assessment 2015: Commentary by Bramley

CD29.20 Building more homes' 1st Report of Session 2016–17 (15 July 2016)

CD29.21 The Redfern Review into the decline of home ownership' (16 November 2016)

CD29.22 Forecasting UK house prices and home ownership' (November 2016) Oxford Economics

CD29.23 OBR March 2017 Economic outlook accompanying tables and charts – Chart 3.21 on house prices

CD29.24 Planning Application (ref. 15/01319/OUT) Transport Assessment & Framework Travel Plan, September 2017 (ref. VN30215), Vectos

CD29.25 Application of proposed formula for assessing housing need DCLG, 14 September 2017

CD29.26 East Hampshire Local Plan Inspector's Report (April 2014)

CD29.27 Eastleigh Local Plan Inspector's Report (2015)

CD29.28 House of Lords Select Committee on Building more homes

CD29.29 OAHN Study Nov 2016 Update

CD29.30 Bramley and Watkins report on Housebuilding

CD30 Planning

CD30.1 Committee transcript

CD30.2 Local plan sub committee 25.05.16

CD30.3 Examiner procedural matters letter

CD30.4 PPG determining a planning application (prematurity)

CD30.5 HP Independent examination correspondence 20.09.17

CD31 Planning Judgements

CD31.1 *BDW & Wainhomes Vs CWAC* 2014

CD31.2 *Suffolk Coastal* Supreme Court Judgment -2017

CD31.3 *Telford and Wrekin v SoS for CLG* - 2016

CD31.4 *Palmer v Hertfordshire Council* - 2016

CD31.5 *Forest of Dean & SoS for CLG & Gladman* - 2016

CD31.6 *Colman & SoS for CLG & NDDC & RWE Npower Renewables Ltd* – 2013

CD31.7 *SODC & SoS for CLG and Cemex Properties UK Ltd (Crowell Road)* 2016

CD31.8 *Barwood Strategic Land II LP & East Staffs & SoS for CLG* 2017

CD31.9 *Lee Vs FSS & Swale BC* 2003

CD31.10 *Phides Estates Ltd & SoS for CLG & Shepway DC & Plumstead* – 2015

CD31.11 *St Albans City and District Council v (1) Hunston Properties Ltd and (2) SoS for CLG* - 2013

CD31.12 *(1) Gallagher Homes Ltd and (2) Lioncourt Homes Ltd v Solihull MBC* - 2014

CD31.13 *West Berkshire District Council v SoS for CLG & HDD Burghfield Common Ltd*

CD31.14 *Satnam Millennium Limited and Warrington Borough Council* 2015
CD31.15 *Kings Lynn and West Norfolk Borough Council v SoS for CLG* 2015
CD31.16 *Wainhomes and SoS for CLG* 2013
CD31.17 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2016
CD32.18 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2017
CD31.19 *Chelmsford City Council v SoS for CLG* 2016
CD31.20 *Stroud DC v SoS for CLG* 2015

CD32 Appeal Decisions

CD32.1 Land at Blean Common, Blean Appeal Ref: APP/J2210/W/16/3156397
CD32.2 Land at West Street, Coggeshall, CO6 1NS, Appeal Ref: APP/Z1510/W/16/3160474
CD32.3 Land east of Crowell Road, Chinnor, Appeal Ref: APP/Q3115/W/14/3001839
CD32.4 Land of Wethersfield Road, Finchingfield Appeal ref. APP/Z1510/W17/3172575
CD32.5 Land north of Pulley Lane and Newland Lane, Newland, Appeal ref APP/H1840/A/13/2199426
CD32.6 Land off Stone Path Drive, Hatfield Peverel, Appeal Ref: APP/Z1510/W/16/3162004
CD32.7 Land off Western Road, Silver End, Appeal Ref: APP/Z1510/W/16/3146968
CD32.8 Land off Plantation Road, Boreham, Essex CM3 3EA Appeal Ref: APP/W1525/W/15/3049361
CD32.9 Land at Southwell Road, Farnsfield, Nottinghamshire Appeal Ref: APP/B3030/W/15/3006252
CD32.10 Land off Finchingfield Road, Steeple Bumpstead ref. APP/Z1510/W/17/3173352
CD32.11 Land to the south of Dalton Heights, Seaham, Appeal Ref: APP/X1355/W/16/3165490
CD32.12 Longbank Farm, Ormesby, Middlesbrough, TS7 9EF Appeal Ref: APP/V0728/W/15/3018546
CD32.13 Land at Flatts Lane, Normanby Appeal Ref: APP/V0728/W/16/3158336

CD33 Representations made by Gladman

CD33.1 Representations to the Braintree Local Plan (Reg 19) July 2017
CD33.2 Representations on the HP NHP (Reg 16) July 2017

Documents submitted by David Wilson Homes Eastern

(Where a number in the sequence is missing the document is already listed elsewhere in this Annex)

Application drawings and documents

SAV1 Cover Letter
SAV2 Application Form
SAV3 Location Plan
SAV4 Parameters Plan

SAV5 Access Plan

Supporting drawings and documents

SAV6 Planning Statement
SAV7 Design and Access Statement
SAV8 Affordable Housing Statement
SAV9 Air Quality Assessment
SAV10 Archaeological Desk-Based Assessment
SAV11 Design Review
SAV12 Draft S106 Heads of Terms
SAV13 Extended Phase 1 Habitat Survey & HSI Assessment
SAV14 Pre-Planning Assessment Report (Incl.: 15/12/16 letter from RJIE to DWH & Proposed Foul Sewerage Plan)
SAV15 Objective Assessment of Housing Need
SAV16 Landscape and Visual Impact Assessment (2 parts)
SAV17 Great Crested Newt eDNA Results
SAV18 Noise Impact Assessment
SAV19 Phase One Desk Study Report (4 parts)
SAV20 Reptile Survey and Badger Walkover Survey
SAV21 Site-Specific Flood Risk Assessment Report (4 parts)
SAV22 Statement of Community Engagement
SAV23 Sustainability Statement
SAV24 Topographical Survey
SAV25 Transport Assessment (4 parts)
SAV26 Tree Survey & Constraints Plan & Schedule
SAV27 Utilities Report
SAV28 Letter to landowners dated 20/12/16 enclosing Article 13 Notice.

Post submission relevant correspondence

SAV29 Email from BDC (Neil Jones) to DWH (Sean Marten) on 01/03/17 @ 11:15 re noise and air quality attaching: Consultation response from BDC EHO (unknown date).
SAV30 Letter from Savills (Jonathan Dixon) to BDC (Neil Jones) dated 21/03/17 re noise and air quality, enclosing:
Technical Memo re noise (24 Acoustics) dated 21/03/17; and
Technical Letter re air quality (MLM) dated 17/03/17.
SAV31 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 29/03/17 @ 17:13 re Committee date.
SAV32 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 30/03/17 @ 12:27 re S106.
SAV33 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 10/04/17 @ 08:51 re air quality.
SAV34 Email from Savills (Jonathan Dixon) to BDC (Neil Jones) on 11/04/17 @ 15:58 re air quality.
SAV35 Email from Savills (Jonathan Dixon) to BDC (Neil Jones) on 11/04/17 @ 17:35 re air quality.
SAV36 Email from BDC (Neil Jones) to Savills (Jonathan Dixon) on 21/04/17 @ 16:25 re air quality & HRA Screening attaching: Consultation response from BDC EHO dated 13/04/17.

Documents referenced in Jonathan Dixon proof

SAV37 Letter from BDC to DWH c/o Savills (Jonathan Dixon) dated 20/12/16 acknowledging receipt of the application.

SAV38	Report to BDC Planning Committee Meeting on 25/04/17 re application, plus Appendix and Addendum.
SAV39	Minutes to BDC Planning Committee Meeting on 25/04/17 re application (see pages 5-9).
SAV40	Letter from DCLG (Dave Moseley) to BDC (Tessa Lambert) dated 11/05/17 re potential call-in.
SAV41	Email from BDC (Neil Jones) to Savills (Jonathan Dixon) & DWH (Sean Marten) on 31/05/17 @ 08:50 re potential call-in.
SAV42	Letter from DCLG (Dave Moseley) to DWH c/o Savills (Jonathan Dixon) dated 12/07/17 confirming call-in.
SAV44	Extracts from Reg. 18 Braintree Local Plan 'Draft Document for Consultation' dated 27/06/16 re housing requirement of 845 dpa (see page 30).
SAV45	Extracts from East of England Plan dated May 2008 re housing requirement of 290 dpa (see page 30).
SAV46	Reg 22 Notice of Submission of Braintree Local Plan dated 09/10/17.
SAV47	Evidence (from BDC website) that Hatfield Peverel Neighbourhood Plan (NDP) has been submitted for Examination.
SAV50	Letter from Savills (Jonathan Dixon) to HPPC dated 30/09/16 setting out representations on behalf of DWH to Reg. 14 NDP consultation.
SAV51	Report to BDC Local Plan Sub-Committee on 05/10/16 setting out representations to Reg. 14 NDP consultation (see reps to draft NDP Policy HPE 1 on p13).
SAV52	Letter from Savills (Jonathan Dixon) to HPPC dated 17/07/17 setting out representations on behalf of DWH to Reg. 16 NDP consultation. (NB Subject line incorrectly refers to Reg. 14.)
SAV55	Letter from Natural England to BDC (Neil Jones) dated 26/10/17 re no objection (or need for HRA).
SAV56	Draft s106 Agreement
SAV59	Braintree Pre Submission Site Allocations and Development Management Plan (as amended by further changes) dated September 2014.

Statements of Common Ground

SOCG4	David Wilson Homes Eastern and Braintree DC
SOCG5	David Wilson Homes eastern and Hatfield Peverel PC

Proofs of Evidence

David Wilson Homes Eastern

DWH1	Jonathan Dixon Proof (Planning)
DWH2	Jonathan Dixon Appendices
DWH3	Jeremy Smith Proof (Landscape)
DWH4	Jeremy Smith Appendices
4/POE	Matthew Spry Proof and Appendices (Housing Land Supply)

Braintree District Council

BDC1	Alison Hutchinson Proof

BDC1a Alison Hutchinson Appendices
BDC4 Alison Hutchinson Rebuttal Proof

Hatfield Peverel Parish Council

HPPC1 Mike Renow Proof and Appendices
HPPC2 Philippa Jarvis Proof and Appendices

Gladman Developments Limited (where relevant)

3/APP Laurie Handcock Appendices

Documents submitted during the Inquiry by the parties

ID1.1 *Lee v First Secretary of State and Swale BC* [2003] EWHC 2139 (Admin) (GDL)
ID1.2 *Arun DC v Secretary of State for Communities and Local Govnt and Green Lodge Homes LLP* [2013] EWHC 190 (Admin) (GDL)
ID1.3 What is Neighbourhood Planning? PPG extract (GDL)
ID1.4 Cumulative Air Quality Impact Assessment (GDL & DWH)
ID1.5 Transport/Highways Note in response to Inspector's pre-Inquiry note No. 1 (GDL & DWH)
ID1.6a 7015-L-106 rev B Green Infrastructure Strategy for 80 dw scheme (GDL)
ID1.6b 7015-L-108 rev C Green Infrastructure Strategy for 140 dw scheme (GDL)

ID1.7 Plans omitted from CD14.4 set B (GDL)
ID1.8 Statement of Common Ground Education (GDL & DWH)
ID1.9 Secretary of State Appeal decision APP/D3830/A/12/2189451RD (GDL)
ID1.10 Council decision on land adjacent to Walnut Tree Cottage, The Street, Hatfield Peverel (GDL)
ID1.11 Updated table showing past supply against housing requirement 2001/2-2017/18 (GDL & DWH)
ID1.12 Reworked Table 6.1 as requested by Inspector on 7 December 2017 (GDL & DWH)
ID1.13 Update post exchange of proofs re 5 year housing land supply at 30/9/17 (GDL & DWH)
ID1.14 Schedule of supply table for round table discussion (GDL & DWH)
ID1.15 *Cotswold DC v Secretary of State for Communities and Local Govnt and others* [2013] EWHC 3719 (Admin) (GDL)
ID1.16 Supplementary Unilateral Undertaking (GDL)
ID2 Opening statement (GDL)
ID3 Opening statement (DWH)
ID4 Opening statement (Council)
ID5 Opening statement (HPPC)
ID6 Opening statement (SPMRG)
ID7 Note on housing land supply (Council)
ID8 Statement by John Webb (interested person)
ID9 Presentation by Michael Hutton (interested person)
ID10 Statement by Lesley Moxhay (interested person)
ID11 Statement by Ron Elliston (interested person)

ID11a	Further Statement by Ron Elliston (interested person)
ID12	Statement by Kenneth Earney (interested person)
ID13	Viewpoints and photographs (HPPC)
ID14a	Council HRA Screening Report Arla Dairy Site (HPPC)
ID14b	Natural England consultation response on above (HPPC)
ID15	Suggested conditions for the 80 dw and 140 dw schemes (GDL)
ID16	Email from Sue Hooton to Council dated 12 December 2017 (GDL)
ID17	Draft agreement under s106 (DWH)
ID18	Suggested conditions for Gleneagles Way scheme (DWH)
ID19	Consultation comment by Essex County Council on Hatfield Peverel Neighbourhood Plan (DWH)
ID20	Briefing Note: clarification of presentation provided by Mr John Webb (GDL & DWH)
ID21	Note on additional five year land supply sites (SPMRG)
ID22	Now ID11a
ID23	Statement by Andy Simmonds (interested person)
ID24	Not used
ID25	Secretary of State Appeal decision APP/P1425/W/16/3145053 (HPPC)
ID26	Email thread between Diane Wallace and Alan Massow re green wedge policy in neighbourhood plan (HPPC)
ID27	Extract from Chapter 7 of the Lewes Local Plan (HPPC)
ID28	Statement of compliance with CIL Regulations re: Gladman schemes (Council)
ID29	Statement of compliance with CIL Regulations re: David Wilson Homes scheme (Council)
ID30	Conserving and enhancing the historic environment: PPG extract (GDL)
ID31	Letter dated 12 December 2017 from Cala Homes (GDL)
ID32	Email from Linden Homes dated 15 December 2017 (GDL)
ID33	Spatial Strategy Formation (Council)
ID34	Call in conditions comparison (DWH)
ID35	Not used
ID36	Not used
ID37	Statement of Common Ground: joint position on additional housing land supply sites (Council, GDL & DWH)
ID39	Viewpoints and Photographs (HPPC)
ID40	Article re: housing at Towerlands park Bocking (SPMRG)
ID41	Consultation notification re: housing at Church Road, Great Yeldham (SPMRG)
ID42	Letter from the Council to Priti Patel MP dated 29 November 2017 re: five year housing land supply (SPMRG)
ID43	Appeal decision APP/A1720/W/16/3156344 Portchester, Fareham, Hampshire (SPMRG)
ID44	Appeal decision APP/A1720/A/14/2220031 Lower Swanick, Hampshire (SPMRG)
ID45	Report to Cabinet dated 27 November 2017 re: proposed disposal of land to provide access to residential development site off Maldon Road, Witham (SPMRG)
ID46	Land east of Gleneagles Way: Statement of Landscape Principles (DWH)

ID47	Closing submissions (Council)
ID48	Closing submissions (HPPC)
ID49	Closing submissions (SPMRG)
ID50	Closing submissions (DWH)
ID51	Closing submissions (GDL)
ID52	Historic Environment Good Practice Advice in Planning Note 3 (GDL)
ID53	Consolidated suggested conditions post Inquiry round table session (the Council)
ID54	Response to INSP4 (GDL)
ID55	Response to INSP4 (DWH)
ID56	Response to INSP4 (HPPC)
ID57a	Completed planning obligation for 80 dwelling scheme (GDL)
ID57b	Addendum to planning obligation for 80 dwelling scheme (GDL)
ID58	Completed planning obligation for 140 dwelling scheme (GDL)
ID59	Completed planning obligation for 120 dwelling scheme (DWH)
ID60	Letter dated 29 January 2018 re progress on the NDP (HPPC)
ID61	*Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) (BDC)
ID62	*Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459) (BDC)
ID63	*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) (SPMRG)
ID64	*Steer v SSCLG* [2017] EWHC 1456 (SPMRG)
ID65	*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22 (HPPC)
ID66	*R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 (HPPC)
ID67	*R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin) (HPPC)
ID68	*Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) (HPPC)
ID69	*R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567) (HPPC)
ID70	*South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173 (HPPC)
ID71	*Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (HPPC)

Inspector Documents

INSP1	Pre-Inquiry Note no. 1 dated 8 November 2017
INSP2	Pre-Inquiry Note no. 2 dated 5 December 2017
INSP3	Email to parties dated 7 December 2017
INSP4	Post Inquiry sessions note dated 18 January 2018

Annex B

Abbreviations

5YHLS	5 year housing land supply
BNLP	Braintree New Local Plan
CRA	Comprehensive Redevelopment Area
CS	Braintree District Core Strategy
DWH	David Wilson Homes Eastern
ECC	Essex County Council
ELCAA	Essex Landscape Character Area Assessment
Framework	National Planning Policy Framework
GDL	Gladman Developments Ltd
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
HPPC	Hatfield Peverel Parish Council
HRA	Habitats Regulation Assessment
KSV	Key Service Village
LCA	Landscape Character Area
LLCA	Local Landscape Character Assessment for Hatfield Peverel
LPR	Braintree District Local Plan Review
LVIA	landscape and visual impact assessment
NCCA	National Character Area Assessment
NDP	Hatfield Peverel Neighbourhood Development Plan
PPG	Planning Practice Guidance
PROW	Public Right of Way
OAHN	objectively assessed housing need
SEA	Strategic Environmental Assessment
SFE	Settlement Fringes Evaluation
SOCG	Statement of Common Ground
SPMRG	Stone Path Meadow Residents' Group

Annex C

Suggested Conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 120 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the approved plans listed below:
Approved Plans:

Location Plan:	1296/01 FINAL
Access Details:	45604-P-SK205

5) Prior to first occupation of the development hereby permitted the provision of the following works shall have been completed, details of which shall have been submitted to and approved in writing by the local planning authority prior to implementation:
   - The access to the application site shown in principle on drawing 45604-P-SK205
   - The cycle/pedestrian access between Gleneagles Way and Glebefield Road as shown in principle on Drawing 45604-P-SK200
   - Improved no entry signage at the end of the A12 southbound off-slip for drivers on The Street, plus improved speed limit signs and road markings for drivers leaving the A12 as show in principle on Drawing 45604-P-SK202
   - Improvements to the visibility splay from Gleneagles Way towards the A12 southbound off-slip shown on Drawing 45604-P-SK20 to include trimming/removal of vegetation/trees, relocation/replacement of signs/street furniture/lamp column(s), regrading/hardening of highway land.
   - A footway and (A12) road signage improvements at The Street/A12 north bound on-slip junction as shown in principle on Drawing 45604-P-SK201.
   - Improvements to the (A12) road signage, kerb alignment and road markings at The Street/Maldon Road as shown in principle on Drawing 45604-P-SK201.
   - The provision of dropped kerbs and associated works where the footway from Hatfield Peverel to Witham crosses the A12 northbound on-slip to the south of the Petrol Filling Station (former Lynfield Motors site), Hatfield Road, Witham.
   - The provision of a zebra crossing on B1019 Maldon Road in the approximate position shown on Drawing 45604-P-SK207

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

   The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Together with any submission of reserved matters, details of sound insulation measures must be submitted to and approved in writing by the local planning authority. The details must demonstrate that internal noise levels do not exceed 35 dB LAeq 16 hour in living rooms during the daytime (07:00 - 23:00) and also do not exceed 30 dB LAeq 8 hour in bedrooms during the night-time period (23:00 - 07:00) as set out in BS 8233: 2014. In addition, the details must demonstrate that maximum night-time noise levels in bedrooms should not exceed 42 dB LAmax more than 10 to 15 times per night. The development must be carried out in accordance with the approved details.

9) Together with any submission of reserved matters, details of the proposed boundary mitigation (noise barrier) must be submitted to and approved in writing by the local planning authority. The details must demonstrate that external noise levels will not exceed 55 dB LAeq 16 hour in any of the private residential gardens. The development must be carried out in accordance with the approved details.

10) Prior to the commencement of development hereby permitted, a wildlife protection plan shall be submitted and approved by the local planning authority identifying appropriate measures for the safeguarding of protected species and their habitats within that Phase. The plan shall include:

    i) an appropriate scale plan showing protection zones where any construction activities are restricted and where protective measures will be installed or implemented;

    ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;

    iii) details of how development work will be planned to mitigate potential impacts on protected species, as informed by the project ecologist;

    iv) a person responsible for:

        a) compliance with legal consents relating to nature conservation;

        b) compliance with planning conditions relating to nature conservation;

        c) installation of physical protection measures during construction;

        d) implementation of sensitive working practices during construction;

e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and

f) provision of training and information about the importance of "Wildlife Protection Zones" to all construction personnel on site.

All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

11) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

12) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

13) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

14) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

- show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

15) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. . This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Limiting discharge rate to 1.25l/s/ha;

- Providing sufficient storage to manage the 1 in 100 year + 40% climate change storm event on site with no flooding of the formal drainage system during the 1 in 30 year event. Provide sufficient storage so that no flooding will occur during the 1 in 30 year event in the case of pump failure;

- Provide adequate treatment across all elements of the development.

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.

21) As part of the submission of the first reserved matters application as detailed within Condition 1, an Arboricultural Method Statement (AMS) shall be submitted and approved in writing by the local planning authority. The AMS will include a Detailed Tree Protection Plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (to include frequency of visits; and key works which will need to be monitored) and how they will record their monitoring and supervision of the site.

    The development shall be carried out in accordance with the approved details.

    Following each site inspection during the construction period the Project Arboricultural Consultant shall submit a short report to the local planning authority.

    The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities within that Phase of the development and shall remain in place until after the completion of the development.

    The local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the

presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) Prior to submission of the first application for Reserved Matters pursuant to this planning permission an updated survey of the application site will have been carried out by a suitably qualified and experienced ecologist to investigate the potential presence on the application site of badgers, bats, reptiles and Great Crested Newts.

Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority for approval as part of the first application for Reserved Matters pursuant to this planning permission.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) Prior to the submission of the first reserved matters application, details must be submitted to demonstrate that ambient concentrations of nitrogen dioxide will not exceed the UK annual mean objective concentration of 40µg/m3 at any residential property location within the development.

28) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residents' Travel Information Pack for sustainable transport, approved by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

29) Prior to the first occupation of the development hereby permitted the overhead electricity cables crossing the site east /west shall be diverted underground.

30) No above ground development shall commence in the relevant phase of the development until a schedule and samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.

31) Prior to first occupation of the relevant phase of the development, details of all gates / fences / walls or other means of enclosure within the relevant phase of the development shall be submitted to and approved in writing by the local planning authority. The details shall include position, design,

height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the relevant plot.

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Ministry of Housing, Communities & Local Government

Our ref: APP/Z1510/V/17/3180725

Mr Christien Lee
Senior Planner
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton
CW12 1LB

8 July 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY GLADMAN DEVELOPMENTS LIMITED
LAND OFF STONE PATH DRIVE, HATFIELD PEVEREL, ESSEX CM3 2LG
APPLICATION REF: 16/01813/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry between 12 December 2017 and 30 January 2018 into your application for outline planning permission for up to 140 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water mitigation and attenuation, site access off Stone Path Drive with associated ancillary works, in accordance with application ref: 16/01813/OUT, dated 28 October 2016.

2. On 12 July 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application be approved.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to grant outline planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. On 21 June 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the judgment of the Court of Justice of the European Union

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(CJEU) in Case C-323/17 People Over Wind and Sweetman v Coillte Teoranta on the correct application of the Habitats Directive 92/43/EEC.

6. On 1 August 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the new National Planning Policy Framework, published on 24 July 2018.

7. On 2 October 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the revised guidance on how councils should assess their housing need, which was published on 13 September 2018, and on new household projections for England published by the Office of National Statistics on 20 September 2018.

8. On 5 March 2019, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the following documentation:

    - Written Ministerial Statement (WMS) on housing and planning issued on 19 February 2019
    - 2018 Housing Delivery Test measurement data published on 19 February 2019
    - The Government's response to the technical consultation on updates to national planning policy and guidance, dealing with the calculation of Local Housing Need and other matters, including the People Over Wind and Sweetman v Coillte Teoranta issue, published 19 February 2019.
    - Revised National Planning Policy Framework, published on 19 February 2019.
    - Updated guidance for council's on how to assess their housing needs (document).
    - Braintree District Council's latest (at that time) published 5 year supply statement, January 2019 (see also paragraphs 40 to 47 of this Decision Letter).
    - Latest position statement with regard to the emerging Hatfield Peverel Neighbourhood Plan, and weight to be attached to that.
    - Three recent planning casework decisions (brought to the Secretary of State's attention by the Stone Path Meadow Residents Group - SPMRG).

9. A list of representations received in response to these letters is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

10. In addition, a number of representations were received following the close of the inquiry. These raised a variety of issues, and are dealt with under the considerations of main issues below. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is also at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

12. In this case the development plan consists of the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR31-40.

13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

14. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

15. The emerging plan comprises the Braintree New Local Plan (BNLP) and the Hatfield Peverel Neighbourhood Development Plan (NDP). The Secretary of State considers that the emerging BNLP policies of most relevance to this case include those set out in IR42-46 and the emerging NDP policies of most relevance are HPE2, HPE6 and HPE8, described at IR49-50.

16. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

17. At the time of the Inquiry the examination hearings into part 1 of the BNLP were due to commence in January 2018, with Part 2 to follow at a later date. The Secretary of State notes that on 8 June 2018, the Inspector for the emerging Local Plan wrote to the three local planning authority areas covered by the Part 1 Examination, setting out his views as to the further steps he considered necessary in order for the Section 1 Plan to be made sound and legally-compliant, and seeking views on options to pursue these matters. A joint response from the three authorities dated 19 October proposed suspending the Examination until February 2019, with a view to sitting again in June. In the light of these letters, and for the reasons given in IR733 to 736, the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLP.

18. The Secretary of State notes that while some progress has been made with regard to the NDP since the close of the Inquiry, the further examination of the NDP has not yet concluded. For the above reasons, and for the reasons given in IR737-739, the

Secretary of State agrees with the Inspector that very limited weight can be given to the NDP at this stage.

Main issues

Policies in the Framework on delivering a wide choice of high quality homes

19. For the reasons given in IR729 and 730, the Secretary of State agrees with the inspector that the policy set out in Framework paragraph 62 would be delivered, and that the Green Infrastructure Plan and Design and Access Statement set important context and establish important principles at this outline application stage.

The extent to which the proposed development is consistent with the development plan for the area

20. For the reasons given in IR740 to 745, the Secretary of State agrees with the Inspector that although, as a policy for the supply of housing, policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight, and he considers that a moderate weighting is appropriate. The Secretary of State further agrees with the inspector for the reasons in IR743 to 745, that the application proposals would be in accordance with the spatial strategy. For the reasons given in IR746-754, the Secretary of State further agrees with the Inspector that there is a conflict with adopted development plan policies RLP2 and CS5, concerning development outside of defined boundaries of settlements, where countryside policies will apply. The Secretary of State further agrees with the inspector that the conflict with policies RLP2 and CS5 should attract moderate weight when it comes to the overall planning balance, given that they would act to restrict the supply of housing and frustrate the aim of Framework paragraph 59. He notes that the local planning authority in their representation of 22 October 2018 share his view as to the weight to be attached to policies RLP2 and CS5 at this time.

The effect of the development on the landscape character of the area and the visual impact that the development would have

21. The Secretary of State agrees with the Inspector's view in IR756 that it is necessary to take into account the context of the application site**,** and notes the historic pattern of growth described in IR756 and 757. For the reasons given in IR758 to IR767 the Secretary of State agrees with the Inspector at IR768 that the studies presented set an important context for an assessment of the effect of the development proposed on the character of the landscape, and that none of the studies suggest that suitably designed development could not be accommodated.

22. For the reasons given in IR769 to 779, the Secretary of State agrees with the Inspector that he sees no reason to disagree with the applicant's assessment of the effect on landscape character - 'negligible' at both years 1 and 10 at national, county and District level, and 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10 on very local landscape character.

23. In terms of visual impact, for the reasons given in IR780 to 788, the Secretary of State agrees with the Inspector's assessments of the impact of the development on views

across the site to the landscape beyond and views back towards the settlement edge from distance.

24. For the reasons given in IR789 to 792, the Secretary of State agrees with the Inspector that the development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape, and enhance the settlement edge as it appears as a feature in the landscape. He finds no conflict with the landscape elements of policy RLP 80, or of the third paragraph of policy CS8.

25. For the reasons given in IR793, the Secretary of State agrees with the Inspector that while harm in relation to visual impact has been identified, this can only attract limited weight. In particular, he agrees with the Inspector's view on the very limited weight to be attached to policy HPE6 of the emerging NDP concerning protected views, given concerns around the evidence base supporting that policy as well as the more general point around progress on that plan.

The effect of the development on the enjoyment of users of the public right of way crossing the application site

26. For the reasons given in IR794 to 800, the Secretary of State agrees with the Inspector that the experience of walkers along the relatively short length of PROW would be harmed by the development proposed, and, like the Inspector in IR881, he attaches limited weight to this harm.

The effect that the development would have on the significance of designated heritage assets

27. For the reasons given in IR802 to 806, the Secretary of State agrees with the Inspector that policy RLP100 does not apply in relation to this development. He also agrees with the Inspector that policy CS9 does not meet the requirements generally of Framework section 16 and paragraph 196 in particular, concerning the assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits. He agrees with the Inspector that this consideration should therefore be assessed against policies in the Framework.

28. With regard to Hatfield Place, the Secretary of State notes the Inspector's review of the evidence presented in IR807 to 814. He agrees with the Inspector, for the reasons given in IR815 to 828 that the evidence of Mr Handcock for the applicant should be preferred and that the development proposed would not harm the significance of Hatfield Place. In respect of the William B, the Secretary of State agrees with the Inspector for the reasons given in IR829 to 833 that the application would not cause any harm to the significance of the William B.

The effect of the development on community infrastructure

Education

29. The Secretary of State notes that by virtue of his decision on this case and on the proposal at land East of Gleneagles Way, Hatfield Peverel, that the four residential developments listed in the letter attached to the Education Statement of Common Ground (Inquiry Document ID1.8) are now being taken forward. There is therefore be a need for additional primary school capacity. While the issue will resolve itself over time through

the operation of the admissions policy, there would be a short term impact which is most likely to manifest itself through additional journeys to school, either by bus or private car.

Health

30. The Secretary of State notes the Inspector's summary of evidence submitted on health matters at IR843 to 845, and has considered the subsequent closure of the Sydney House and Laurels surgeries to new registrations.

31. The Secretary of State remains of the view, for the reasons set out by the Inspector in IR846 to 848, that in terms of both health and education, the Applicant has entered into planning obligations to make all the contributions that have been requested to mitigate any effect from the application, and that a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Other matters

32. For the reasons given in IR849 to 852, the Secretary of State agrees with the Inspector that there is no policy conflict with respect to best and most versatile agricultural land, and no evidence to justify a finding of conflict with the development plan on transport and highway matters and air quality.

33. On ecology matters, for the reasons given in IR853 to 857, the Secretary of State agrees with the Inspector that although there is potential for the survey area to support breeding and foraging farmland bird species, the restricted range of habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. While post-inquiry representations, referred to the presence of lapwings on the application site, given his findings on the site set out above, these representations do not alter the Secretary of State's view on the site overall.

34. Other post-inquiry representations referred to cancellation of a bus route that served Hatfield Peverel, and air quality near the "blue land". The Secretary of State has considered each of these, but remains of the view that Hatfield Peverel still demonstrates good public transport links, and that the inquiry appropriately addressed air quality issues.

Appropriate Assessment

35. Following the reference back to parties exercise described in paragraph 5 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this application and presented to the inquiry is no longer legally sound.

36. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an Appropriate Assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Annex C. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

37. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where a plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

Five year housing land supply

38. The Secretary of State has considered the Inspector's findings as regards housing land supply at IR835-848. However, following the publication of the revised Framework, guidance on the calculation of local housing need, and revised household forecasts, he has set out his own conclusions below.

39. Paragraph 73 of the Framework indicates that in the circumstances of this case, local housing need should be applied. The Secretary of State has therefore calculated the local housing need figure based on the methodology published alongside the revised Framework of February 2019.

40. On 11 April 2019, the local authority published an Addendum to their Monitoring Report, and a 5 Year Supply Site Trajectory. This reflected the Housing Delivery Test 2018 data published in February 2019; new affordability ratios published by the Office for National Statistics on 28 March 2019, and additional information relating to supply of sites.

41. In summary, the Addendum set out a 5 year land supply position for the authority of 5.29 years. While the version of the monitoring statement on which the Secretary of State referred back to parties was published on 15 January 2019, given the minor change in the authority's assessment from 5.42 years supply to 5.29 years, and given his conclusions below, the Secretary of State did not consider it necessary to further refer back to parties on this issue.

42. The Secretary of State has reviewed the material published on 11 April 2019, and has also considered the representations of parties made on this issue in response to his letter of 5 March 2019 and subsequent emails recirculating representations that had been received.

43. Planning Practice Guidance states that in principle an authority will need to be able to demonstrate a 5 year land supply at any point to deal with applications and appeals, unless it is choosing to confirm its 5 year land supply, in which case it need demonstrate it only once per year. *Paragraph: 038 Reference ID: 3-038-20180913*

44. In this case, the authority has not chosen to confirm its 5 year land supply. Paragraph 74 of the National Planning Policy Framework sets out that this can only be carried out through a recently adopted plan (defined in footnote 38 of the Framework) or subsequent annual position statement. In the circumstances, the Secretary of State has therefore considered the latest evidence before him.

45. Having reviewed the housing trajectory published on 11 April 2019, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more and sites without planning permission, does not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site

within five years. He has therefore removed 10 sites from the housing trajectory, these are identified at Annex D to this letter.

46. The Secretary of State considers that, bearing this definition in mind, the authority are able to demonstrate between 4.15 years supply.

47. The Secretary of State has therefore concluded that the authority is unable to demonstrate a 5 year housing land supply. Given this finding, and the objective of significantly boosting the supply of new homes, he attaches great weight to the provision of housing.

Planning conditions

48. The Secretary of State has given consideration to the Inspector's analysis at IR706-720, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions as recommended by the Inspector comply with the policy tests set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

49. Having had regard to the Inspector's analysis at IR721-724, the planning obligation dated 17 May 2017 and the addendum to that dated 20 January 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR724 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

50. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application. Having had regard to the Inspector's analysis at IR721-724, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

51. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policies RLP 2 and CS5 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

52. The Secretary of State has concluded that the authority is not able to demonstrate a 5-year supply of housing land, therefore the presumption in favour of sustainable development applies because of the effect of paragraph 177 of the Framework (as set out in paragraph 37 of this letter).

53. The Secretary of State considers that the housing benefits of the proposal carry great weight, and the economic benefits in terms of jobs and increased expenditure carry moderate weight. He attaches moderate weight to the enhanced biodiversity arising from the new boundary planting.

54. The Secretary of State considers that the conflict with the adopted development plan policies attract moderate weight, and that harm caused in relation to visual impact is limited, as is the harm to users of Footpath 43. He further concludes that only very limited weight can be attached to conflict with policy HPE6 of the emerging NDP.

55. Overall, the Secretary of State concludes that there are material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that planning permission should be granted.

Formal decision

56. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to the conditions set out in Annex B of this decision letter for up to 140 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water mitigation and attenuation, site access off Stone Path Drive with associated ancillary works, in accordance with application ref: 16/01813/OUT, dated 28 October 2016.

57. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

59. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period

60. A copy of this letter has been sent to Braintree District Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

General representations

Party	Date
Mr East	14 and 26 March, 23 May and 7 September 2018
Rt Hon Priti Patel MP, encl correspondence from Mr East and Mr Elliston	15 March 2018
Mr Kearns	22 March, 18 April and 5 June 2018
Cllr Derrick	6 April 2018
Mr Simmonds	6 June 2018
Rt Hon Priti Patel MP	2 October 2018
Hatfield Peverel Parish Council	12 November 2018
Stone Path Meadow Residents Group (SPMRG)	1 and 17 February 2019

Representations received in response to the Secretary of State's reference back letter of 21 June 2018

Party	Date
Hatfield Peverel Parish Council	6 August (x3) and 14 August 2018
Stone Path Meadow Residents Group (SPMRG)	7 August (x3) 2018
Gladmans	15 August 2018

Representations received in response to the Secretary of State's reference back letter of 1 August 2018

Party	Date
Hatfield Peverel Parish Council	29 August (x2) and 5 September 2018
Stone Path Meadow Residents Group (SPMRG)	15 August 2018
Gladmans	15 and 28 August 2018
Savills	15 August (x2) 2018

Representations received in response to the Secretary of State's reference back letter of 2 October 2018

Party	Date
Hatfield Peverel Parish Council	10 and 22 October 2018
Gladmans	11 and 19 October 2018
Stone Path Meadow Residents Group (SPMRG)	10 and 18 October (x2) 2018
Braintree District Council	22 October 2018

Representations received in response to the Secretary of State's reference back letter of 5 March 2019

Party	Date
Hatfield Peverel Parish Council	25 March, 2 and 18 April 2019
Gladmans	26 March, 1 and 3 April 2019
Stone Path Meadow Residents Group (SPMRG)	21 March, 1 and 17 April 2019
Braintree District Council	26 March 2019

Annex B – Schedule of Conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 140 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the illustrative Development Framework Plan 3015-L-101 Rev H.
Approved Plans:

Location Plan:	7015-L-100 Rev A
Access Details:	A095687-SK01 Rev C
Green Infrastructure Plan	7015-L-108 Rev C

5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

   Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres. The outermost line of dwellings located on the western periphery of the developable area and on the northern periphery of the developable area where it abuts undeveloped countryside, shall not exceed one storey in height or have a maximum ridge height of more than 6.5 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

   The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.

9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the

development is completed. The Biodiversity Management Plan shall be in accordance with the recommendations set out in the submitted Ecological Appraisal Report (FCPR Ltd, September 2016) and its Appendices. The development shall be implemented in accordance with the approved Management Plan.

10) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

11) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

12) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

13) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

- show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

14) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Discharge to ground;

- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;

- Provide sufficient treatment for all elements of the development. Treatment should be demonstrated to be in line with the guidance within the CIRIA SUDs Manual C753.

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

    The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.

21) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev D) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

    No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

    No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points have been submitted to and approved in writing by the local

planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within three years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

    Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

28) Development shall not be commenced until details of the following have been submitted to and approved in writing by the local planning authority:

- a scheme of mitigation/compensation works, including a method statement, to minimise the adverse effects of the development on roosting bat species which could be affected by the proposed development in accordance with the applicant's Ecology Appraisal completed by FPCR Environment and Design Ltd and dated September 2016;

- a programme of timings for the works referred to above.

Mitigation/compensation works shall be carried out in accordance with the scheme and programme approved in accordance with the above.

29) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.

30) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

31) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.

32) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

Annex C – Screening and Appropriate Assessment

RECORD OF THE SCREENING ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED) FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Project Title and Location: Called-In planning application No. APP/Z1510/V/17/3180725 Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

Project description:- outline planning permission for up to 140 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water mitigation and attenuation, site access off Stone Path Drive with associated ancillary works. All matters reserved with the exception of site access.. (Planning Application Ref: 16/01813/OUT, dated 28 October 2016.)

Completion Date: November 2018

Project description – further information

1. The project site and surroundings are described at paragraphs 22 – 30 of the Inspector's report arising from a public inquiry held into this application between 12 December 2017 and 30 January 2018. The project proposal is described at paragraphs 52 – 54 of that report, in the planning application documentation and in the Environmental Statement. A copy of the Inspector's report is attached to this assessment.

Competent authority

2. The above project, having been called-in by the Secretary of State for Housing, Communities and Local Government, is to be determined by him using his powers under section 77 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

Part 1 - Screening

3. A screening assessment provided to the Inquiry took account of mitigation measures at the screening stage and concluded that no Appropriate Assessment was required. A judgment in the Court of Justice of the European Union (CJEU) in *People Over Wind and Sweetman* and *Coillte Teoranta* (12 April 2018) means this assessment is no longer legally sound.

4. It will now fall to the Secretary of State to take a screening decision for this application, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

Screening Assessment

Relevant documentation

5. The Secretary of State has taken into account the document "Information for Habitats Regulations Assessment" dated June 2018, ref: 7446.IHRA.16-01813-OUT.vf ("IHRA"). In this Screening, all references to sections, unless otherwise stated, are to that document. He has also taken into account comments made by parties to whom this document was circulated on 12 July 2018, namely the local planning authority, Rule 6 parties to the Inquiry, and the agent of the developer in the case heard at the same Inquiry, Ref: APP/Z1510/V/17/3180729: Land east of Gleneagles Way, Hatfield Peverel, CM3 2JT.

6. The Secretary of State notes and agrees with sections 1 to 4 of IHRA, which set out relevant background and context, the legislative and policy background, factual information about the Special Area of Conservation (SAC), Special Protection Area (SPA) and RAMSAR site and its relation to the application site, and the conservation status of the SAC, SPA and RAMSAR site.

Consideration and Conclusions

7. In screening the proposals before him, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.

8. The conservation objectives for the Essex Estuaries Special Area of Conservation are:

   Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
   - **The extent and distribution of qualifying natural habitats**
   - **The structure and function (including typical species) of qualifying natural habitats, and**
   - **The supporting processes on which qualifying natural habitats rely**

9. The conservation objectives for the Blackwater Estuary (Mid-Essex Coast Phase 4) Special Protection Area are:

   Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;
   - **The extent and distribution of the habitats of the qualifying features**
   - **The structure and function of the habitats of the qualifying features**
   - **The supporting processes on which the habitats of the qualifying features rely**
   - **The population of each of the qualifying features, and,**
   - **The distribution of the qualifying features within the site.**

10. The Secretary of State agrees with the approach set out in section 5.8 of IHRA that given that the reasons for classification as an SPA and designation as a Ramsar Site are essentially similar, it is reasonable to consider the potential for impacts upon these designations as one rather than undertake a separate assessment for each.

11. For the reasons given in section 5.9 of IHRA, the Secretary of State finds there would be no significant direct effects from lighting, air quality or noise impacts during the construction or operational phases of the development proposals.

12. For the reasons given in sections 5.10 to 5.13 of IHRA, the Secretary of State concludes that the Application Site does not represent land which could be classed as important 'supporting habitat' for the Blackwater estuary SPA / RAMSAR site.

13. The Secretary of State has paid close regard to IHRA sections 5.16 to 5.40, and to the views of interested parties.

14. He concludes that, for the reasons given in sections 5.16 to 5.25 and sections 5.34 to 5.40, there would be no likely significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts. The Secretary of State notes that in respect of hydrological impacts, the Stone Path Meadow Residents Group (SPMRG), at paragraphs 31 to 33 of their response consider that it would be improper to rule out risk of pollution to the coastal zone. He considers that construction and management of hydrological impacts are covered by proposed conditions 4, 17, 18 and 19, and that this gives sufficient certainty that any likely impacts will be de minimis in nature.

15. In terms of disturbance effect, the Secretary of State considers that the distance from the designated sites means that regular visits from new residents would be unlikely, and that the public open space provided as an integral element of the proposals, together with links to the existing public right of way would provide opportunities for informal recreation for both new and existing residents. He therefore concludes that the proposals are not likely to have a significant effect on the interest features of the SAC, SPA, or RAMSAR site, when considered in isolation.

16. The Secretary of State does however find, for the reasons given in 5.26 to 5.33, that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.

17. The Secretary of State has considered the issues raised by SMPRG at paragraph 20 of their response, and of Hatfield Peverel Parish Council at paragraph 11.e of their response, concerning the activities to be considered in this assessment, and whether a median or worst-case estimate should form the basis of estimates of impact. He has found potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, through walking, dog walking and informal recreation, when considered in combination with other plans and projects.

18. The Secretary of State recognises that other activities such as windsurfing, canoeing and water-skiing are capable of causing harm. However, the prevalence of take-up of these activities is much less than that of recreational walking or dog-walking, and people will travel further than the recognised Zone of Influence (ZOI) to undertake such activities. He does not therefore recognise the application proposal as contributing to these activities to any significant extent, either alone or in-combination. He has also borne in mind that the

emerging Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for these sites does cover this type of disturbance.

19. The Secretary of State also disagrees that a worst-case scenario should be used for the purposes of this assessment. The test at this screening stage is one of a likely significant effect. In the Secretary of State's opinion, this test requires estimating the most likely impact based on available evidence, rather than the worst potential impact.

Overall conclusions

20. The Secretary of State has concluded that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.

21. In light of that conclusion the Secretary of State has considered the position of the Stone Path Meadow Residents Group that if harm cannot be excluded at the Screening stage (without suggested mitigation) then the applications should be refused. He disagrees with this position, and considers that, in these circumstances, in light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment.

22. As the competent authority in this case, he has gone on to carry out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

23. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects, and has determined that an Appropriate Assessment is required.

24. In accordance with the *People Over Wind and Sweetman* and *Coillte Teoranta* ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the site. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

Relevant documentation

25. The Secretary of State has had regard to the previously mentioned document "Information for Habitats Regulations Assessment" dated June 2018, ref: 7446.IHRA.16-01813-OUT.vf "IHRA", and the responses received thereto following reference back to parties. In addition, he has also had regard to documents considered at the Public Inquiry, as set out in Annex A of the Inspector's report, in particular Core Documents Sets B and C and "Documents submitted during the Inquiry by the parties".

26. The Secretary of State's appropriate assessment has not simply relied on and adopted the above information and responses to it. Rather, the Secretary of State has considered the relevant information independently, and reached his own conclusions. He has also sought the views of Natural England as the appropriate nature conservation body on a draft of this assessment, which are summarised at paragraph(s) 41-42 of this Appropriate Assessment.

Consideration

27. At the prior screening stage, the Secretary of State has already concluded that the application proposals would not be likely to have a significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts.

28. In respect of disturbance effects, the Secretary of State has considered the proposed measures to avoid / mitigate the potential for significant impact on the SAC, SPA and RAMSAR site.

29. For the reasons given in sections 6.4 to 6.11 he concludes that the provision of open space represents a suitable measure which will alleviate both existing and potential increased recreation at the SPA / RAMSAR site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure.

30. For the reasons given in sections 6.12 and 6.13, the Secretary of State considers that the provision of information to support the use of the local footpath network will serve to encourage new residents to utilise the existing public rights of way in the vicinity, and support the diversion of visitors away from the designated sites.

31. The Secretary of State further agrees that, for the reasons given in sections 6.14 and 6.15, the financial contribution towards visitor monitoring surveys at the Blackwater Estuary will help to identify any management measures which may be necessary to mitigate and manage for potential impacts at the designated site. He has paid close attention to the case made by Hatfield Peverel Parish Council in their response, in which they cite Case C-142/16 Commission v Germany contending that monitoring is not mitigation.

32. The Secretary of State notes that in paragraph 37 of the report of Case C-142/16, that the impact assessment proposing the mitigation measure in question did not contain definitive data regarding its effectiveness, and merely stated that its effectiveness could only be confirmed following several years of monitoring.

33. The Secretary of State has considered the precise wording of the signed and dated S106 Agreement provided to the Inquiry, which was the subject of discussion at a round table session on the final sitting day of the Inquiry. The Blackwater Estuary Mitigation Contribution Purposes are defined as being used towards:

> "…the provision of visitor management measures (which may include surveys) to raise awareness of the effects of visitor disturbance at the Blackwater Estuary SPA/RAMSAR site"

34. The Secretary of State considers that this envisages that the contribution could be used towards other measures, and has taken into account the note on the RAMS update provided by SPMRG in their response which states at paragraph 4.4.3 that the three most common forms of generic mitigation are: habitat creation, education and communication, all of which would seem to be allowable under the wording of the S106 Agreement. He therefore concludes that in this case, there is sufficient certainty that a robust mitigation will be provided if required.

35. For the reasons given in sections 6.18 to 6.22, the Secretary of State concludes that the application proposal would not have any potential significant in-combination effects on the Essex Estuaries SAC and Blackwater Estuary SPA / RAMSAR site. In addition to alternative sites in Hatfield Peverel (land east of Gleneagles Way, and the Arla dairy site, in combination effects can be felt more widely.

36. The Secretary of State has therefore paid close attention to the emerging RAMS mentioned by several parties in relation to this issue. RAMS is a joint initiative between 11 Essex authorities to identify the recreational impacts new homes will have on the international and nationally protected sites along the Essex Coast.

37. A Monitoring Strategy will monitor recreational impacts at each of the protected sites, the delivery of mitigation projects, the amount of financial contributions collected and spent for each financial year. This will provide transparency and ensure that the RAMS is being delivered effectively. It will also provide the basis for future reviews of the Strategy.

38. The Secretary of State notes that the proposed mitigation for this scheme is compliant with the emerging RAMS strategy. He agrees with the assessment of the impact of the potential effects on the integrity of the European / international designated sites as set out in Table 7. For the reasons given in sections 6.29 to 6.32, he concludes that the

application proposals would not adversely effect the integrity of the Essex Estuaries SAC and Blackwater Estuary SPA / RAMSAR site when the development proposals are considered, either alone or in combination with other plans or projects.

Natural England's advice

39. Natural England have advised, consistent with their previous comments that a financial contribution towards 'offsite' mitigation measures at the Blackwater Estuary would be required. The mitigation measures that will be funded are consistent with the aims and aspirations of the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

40. Provided the contribution is fully secured, Natural England agree that the proposal would not have an adverse effect on the integrity (AEOI) of the Essex Estuaries SAC and Blackwater SPA and Ramsar site, either when considered alone or in combination with other plans or projects.

Procedural Issues

41. The Secretary of State has considered the point raised by SPMRG at paragraph 23 of their representation that article 6(3) of the Habitats Directive could require public consultation. He concludes that in the circumstances of this case, which has involved a Public Inquiry, and a reference back to interested parties on this issue, that it would not be appropriate to seek a further public consultation.

42. At paragraphs 24 and 30 of their response, SPMRG refer to the emerging Braintree District Local plan, and the emerging Hatfield Peverel Neighbourhood Development Plan. This matter is considered in the Decision Letter to which this Appropriate Assessment is attached, where the Secretary of State attaches little weight to the policies of these plans.

43. Issues relating to Braintree District Council's 5 Year land Supply position, and to the presumption in favour of sustainable development are not matters for this Appropriate Assessment, and are dealt with in the Secretary of State's Decision Letter.

Consideration and Conclusions

44. Having concluded that the proposal will not adversely affect the integrity of the SAC / SPA / RAMSAR site, and having given careful consideration to the advice of Natural England, the Secretary of State has considered how the proposed mitigation / avoidance measures needed to ensure the acceptability of the proposal are to be secured should the application be granted.

45. The provision of public open space, and the financial contribution to the management of the Blackwater Estuary are both secured via the signed and dated Section 106 agreement of 18 January 2018 (Schedules 5 and 12).

46. The provision of information to support the use of the local footpath network Is secured in Schedule 11 of the same S106 Agreement.

47. Accordingly, the Secretary of State is satisfied that if the application were granted outline planning permission, the mitigation and avoidance measures he has deemed necessary to make the application proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

48. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Annex D - Sites removed from housing trajectory published on 11 April 2019

Local Plan Site reference	Planning Application reference	Name and address of site
GOSF 251	BTE/17/0610/OUT BTE/18/2007/FUL	Land South of The Limes Gosfield
GGHR 283 HASA 293	BTE/17/0575/OUT BTE/18/1749/FUL	Land east of Sudbury Road Halstead
	BTE/16/0569/OUT	Land NE of Inworth Rd Feering
KELV 335	BTE/17/0418/OUT	Station Field, Land west of Kelvedon Station Station Road (Monks Farm) Kelvedon
RIDG 359	BTE/17/1325/OUT BTE/19/0635/FUL	SE side Ashen Rd, at junction with Tilbury Rd Ridgewell
EARC 225	BTE/15/1580/OUT	Land rear of Halstead Road Earls Colne
WIS 10X	BTE/14/1528/OUT	Former Bowls Club and Land At Old Ivy Chimneys Hatfield Road Witham
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Land north of Conrad Road Witham
WIS 09	BTE/12/1071	Land south of Maltings Lane Witham
BOS6H	BTE/15/1319	Land West of Panfield Lane

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 20 March 2018

THE TOWN AND COUNTRY PLANNING ACT 1990

BRAINTREE DISTRICT COUNCIL

APPLICATION BY

GLADMAN DEVELOPMENTS LIMITED

Inquiry Held on 12 December 2017

Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

File Ref(s): APP/Z1510/V/17/3180725

File Ref: APP/Z1510/V/17/3180725
Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on [date].
- The application is made by Gladman Developments Limited to Braintree District Council.
- The application Ref 16/01813/OUT is dated 28 October 2016.
- The development proposed is outline planning permission for up to 140 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water mitigation and attenuation, site access off Stone Path Drive with associated ancillary works. All matters reserved with the exception of site access.

Summary of Recommendation: The application be approved.

Procedural Matters

Matters common to all three schemes considered at the Inquiry

1. The Inquiry opened on 12 December 2017 and sat for eight days. I carried out an accompanied site visit on 3 January 2018 and also an unaccompanied tour of the surrounding area which included viewpoints to which I was directed by the parties. Closing submissions were made in writing in sequence during January. The Inquiry was closed in writing on 30 January 2018 following receipt of all outstanding documents including obligations entered into under s106 of the principal Act.

2. Three schemes were considered at the Inquiry; the application listed in the summary details above; an outline application in the same terms but for up to 80 dwellings at the same address and submitted by the same applicant Gladman Developments Ltd (GDL) (ref: APP/Z1510/W/16/3162004); and an outline application for the erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel submitted by David Wilson Homes Eastern (DWH) (ref: APP/Z1510/V/17/3180729).

3. In each case all matters except access are reserved for future determination.

4. The two applications were called in for determination by the Secretary of State on 12 July 2017. In each case the reason given was that he wished to be informed about:
   i) Policies in the National Planning Policy Framework (Framework) on delivering a wide choice of high quality homes;
   ii) The extent to which the proposed development is consistent with the development plan for the area; and
   iii) Any other matters the Inspector considers relevant.

5. The appeal was recovered for determination by the Secretary of State on 12 October 2017. In this case the reason given for the direction under s79 of the principal Act was that, having called in application 16/01813/OUT (file ref: APP/Z1510/V/17/3180725) which affects the same site, the Secretary of State wishes to re-determine the appeal himself so that he can consider both proposals at the same time. The appeal was therefore recovered because of the particular circumstances.

6. No pre-Inquiry meeting was held. Instead, I issued two pre-Inquiry notes on 8 November 2017 (INSP1) and 5 December 2017 (INSP2) and a further email dated 7 December 2017 relating specifically to housing land supply issues (INSP3).

7. In response to these notes three documents were produced on behalf of both GDL and DWH. These are Cumulative Air Quality Impact Assessment (ID1.4), a Transport/Highways Note (ID1.5) and a Statement of Common Ground (SOCG) with Essex County Council (ECC) on education issues (ID1.8). A further Briefing Note: Clarification of Presentation Provided by Mr John Webb (ID20) was produced following the submissions from interested persons on the first day of the Inquiry.

8. Some evidence was common to all three schemes. This included that on housing land supply which was heard, at the parties' request, by way of a round table discussion. Much of the policy evidence was also common to all three schemes.

9. After the close of the Inquiry sessions GDL drew attention to the publication of Historic Environment Good Practice Advice in Planning Note 3 (ID52) which superseded the earlier version referred to at the Inquiry. Mr Handcock provided a short note on what he viewed as the implications of the updated guidance. The views of the other parties were invited in a post-Inquiry sessions note (INSP4). The comments made have been taken into account.

10. In the same note I sought clarification of the submissions made in respect of Core Strategy policy CS1. In short, I asked whether it was the whole policy that should be considered to be out of date or just that part of it relating to housing numbers and, depending on the answer to that, whether the spatial strategy embedded in the policy could still be considered current if the settlement boundaries predicated upon out of date housing supply numbers could not. Again the clarifications provided have been taken into account.

11. In a further response before the close of the Inquiry the Parish Council advised that a Habitats Regulation Assessment Screening Report was submitted to Natural England on 18 December 2017 and, further, that Natural England's comments were received by the Council on 25 January 2018. Although those comments have not been made available to the Inquiry, the Parish Council states '…at face value the comments appear positive enabling the Neighbourhood Development Plan to progress.' It further advises that a meeting has been arranged for 5 February with the Council to discuss the way forward and '…to agree how to expedite the Plan.'

12. GDL co-ordinated the core documents listed in Annex A. Although there are three sets, one for each GDL scheme and another for the conjoined Inquiry, all three sets are listed in each report since reference was made throughout to all three sets. Stone Path Meadow Residents' Group (SPMRG) prepared its own core documents. Those that are not included in the GDL prepared sets are listed separately in the two reports for the GDL schemes. The documents listed as being submitted during the Inquiry relate to all three schemes. It is perhaps worth noting that only a very small proportion of the very large number of documents was referred to in the written and oral evidence.

Matters specific to this application

13. Before the Inquiry the Planning Inspectorate agreed to the requests made by Hatfield Peverel Parish Council (HPPC) and SPMRG to be made Rule 6 (6) parties.

14. The application was supported by a suite of documents which are listed in CD1.1 to CD1.22 and CD2.1 to CD2.3 in set B. Prior to the Inquiry opening GDL submitted a Soils and Agricultural Quality report (1/POE, Appendix 1).

15. GDL has prepared and submitted a SOCG with each of the Council, HPPC and SPMRG (SOCG1, SOCG2 and SOCG 4 respectively). Each follows the same format. Among the matters that are agreed are the relevant policies of the adopted and emerging development plan, the application site and its surroundings, the application proposal and the position on a wide range of issues that are listed. Although the precise terms of the agreement is different with each party, each agrees that the Council cannot currently demonstrate a five year supply of housing land.

16. The only matter on which GDL and the Council disagree is the level of harm which would be caused to the significance of nearby heritage assets as a result of changes to their setting.

17. Matters on which GDL and HPPC disagree include:
    a. The weight that should be given to the conflict with the spatial strategy of the adopted and emerging development plans;
    b. The extent of the harm that would be caused to: the rural character and landscape setting of the village; the enjoyment of the public when using the public right of way across the site; the heritage assets and their setting within the wider landscape as experienced by the local community and the weight that should be given to this;
    c. Whether the provision of the Blue Land should weigh in favour of the development as a benefit rather than be considered as mitigation amenity land;
    d. The weight to be given to the emerging Hatfield Peverel Neighbourhood Development Plan (NDP);
    e. Whether the appeal site is sustainable;
    f. Whether development of greenfield sites at Hatfield Peverel is necessary for the Council to meet its objectively assessed housing need (OAHN);
    g. The weight to be given to the benefits and the harms associated with the scheme in the planning balance.

18. GDL and SPMRG disagree on 11 matters which can be grouped and summarised as follows:
    a. Whether the 'Liverpool' or the 'Sedgefield' method should be used to spread any backlog in housing provision over the remainder of the plan period and, partly as a consequence, the extent of the shortfall in five year housing land supply;
    b. Whether Core Strategy policies CS5 and CS8 are restrictive policies within the meaning of Framework paragraph 14, footnote 9 and thus whether or not the tilted balance is automatically engaged;

c. The effect upon local education infrastructure and whether or not this is satisfactorily mitigated;
d. That the development of greenfield sites is inevitable for the Council to meet its housing requirement over both the five year and full plan periods;
e. The agricultural land quality and the implications of its loss in policy terms;
f. Whether Hatfield Peverel is one of the more sustainable locations in the District and whether the site is sustainably located in relation to the services and facilities in the village;
g. The degree of harm caused in respect of heritage, landscape, flood risk, highways and ecology and the weight that should be afforded to any harm;
h. The weight that should be afforded to policies in the adopted and emerging development plans and the quantum of the benefits associated with the proposal in the overall planning balance.

19. An Obligation (ID58) was entered into between GDL, the Council and other parties and submitted prior to the close of the Inquiry.

20. Although proofs of evidence were submitted by SPMRG as listed in Annex A, oral evidence was given only by Mrs Freeman, Mr East and Mr Dale in respect of landscape. There were a number of reasons for this but the main one was that much of the evidence duplicated that of Mr Renow who gave his evidence first. Ms Scott very fairly decided not to take up Inquiry time unnecessarily. In addition, Mr Kearns was unable to attend the Inquiry. Although in the event not called to give the evidence, his proof was adopted by Mr David Leaf who works in the office of The Rt Hon Priti Patel MP.

21. The Council issued a formal screening opinion under the Environmental Impact Assessment Regulations on 28 November 2016 (CD3.2 set B). In short, the conclusion was that an environmental impact assessment would not be required. The Secretary of State came to the same view having considered the scheme both on its own and in combination with others.

The Site and Surroundings

22. The site comprises some 6.35 ha of agricultural land and is located on the western edge of Hatfield Peverel some 10km north east of Chelmsford and about 12km south of Braintree.

23. The site is formed of several agricultural fields delineated by hedgerow boundaries. The site also includes an additional area of land in the field to the west which is proposed for a SUDS attenuation basin and associated buried pipework. The topography of the site rises gently from the south west to north east.

24. The site is bounded by existing residential development beyond Stone Path Drive/Church Road to the north and north east, by open countryside to the west and south and by woodland and large individual dwellings beyond Crabb's Hill to the south east.

25. The application also includes an associated area of 'blue land' measuring some 3.54ha in extent which is to be used as public open space as mitigation against any potential recreational impact upon European designated ecological sites. The blue land adjoins the red line boundary along its northern and western boundaries. To the west of the blue land lie the grounds of Hatfield Place, to the north a small pasture and to the east the existing residential development off Stone Path Drive/Church Road.

26. A public right of way crosses the site from east to west some 30m south of the northern boundary of the site. The path connects Church Road to the east with The Street to the north of the site boundary.

27. The site is located approximately 600m from the centre of the village which has a wide range of services and facilities including various stores, four public houses, a primary school (infant and junior), a GP surgery, dental surgery, pharmacy, library, two churches, post office, village hall and recreation ground.

28. Hatfield Peverel has good public transport links to larger employment centres including London, Chelmsford and Colchester. The closest bus stop to the development site lies about 350m to the north west on The Street opposite the William Boosey restaurant. The bus stop is currently served by some four buses an hour to Witham and Chelmsford during the daytime from Monday to Saturday and two buses an hour to Colchester. There are also six buses a day, Monday to Saturday, to Maldon.

29. The railway station is to the north of the village about 700m north east of the site. There is a service to London Liverpool Street via Chelmsford which operates approximately hourly with a journey time of about 45 minutes. A similar frequency service runs to Ipswich (45 minutes) via Colchester (25 minutes). At peak times there is more than one train per hour to London.

30. The main A12 runs just to the north of the village with limited movement junctions to either side of it which, nevertheless, together allow full access to and egress from the A12 in both directions.

Planning Policy

Adopted development plan

31. The adopted development plan for the area includes the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. Included in SOCG1 is a lengthy list of what are termed policies relevant to the application. Included in CD11.1, set B and CD10.1, set B are those policies and the supporting text that are of particular relevance to the determination of this application.

The LPR

32. Policy RLP 2 states that new development will be confined to the areas within town development boundaries and village envelopes. Outside these areas countryside policies will apply although exceptions may be made for affordable housing schemes which comply with LPR policy RLP 6. Such considerations do not apply in this case. Policy RLP 3 sets out a number of criteria that all residential development within development boundaries and village envelopes must meet.

33. RLP 80 addresses landscape features and habitats. In essence it requires applicants to assess the impact of a proposed development on wildlife and distinctive landscape features and for proposals in mitigation of any impacts to be put forward. Development that would not integrate successfully into the local landscape will not be permitted.

34. Policy RLP 100 is listed as a relevant policy and has been referred to in evidence. However, although the title of the policy implies that development within the setting of a listed building is within the scope of the policy, read carefully it is clear that the policy is directed only at development that directly affects the listed structure. That is not the case here.

35. Other LPR policies listed in the SOCG are in a form designed to ensure that the technical requirements of statutory and other consultees are given policy force. The wording is generally in the form of not allowing development unless required measures are secured.

The CS

36. Policy CS1 sets out the housing provision that will be made over the period 2009 to 2026. It also sets out where those new dwellings will be located. These include Key Service Villages; Hatfield Peverel is such a village. Policy CS2 sets out the requirement for developments to provide affordable housing with the target percentage being determined by the location of the proposed development. A target of 40% applies on sites in rural areas.

37. The precise wording of policy CS5 is as follows:

> *Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.*

38. The natural environment and biodiversity is addressed by policy CS8. This is a policy that covers almost two sides of A4. The gist however is that developers are required to have regard to, or to take account of, the impact of the proposed development on a wide range of factors. Of relevance to this proposal are the protection and enhancement of the natural environment in the widest sense, the protection of the best and most versatile agricultural land, the character of the landscape and its sensitivity to change and the minimisation of exposure to flood risk.

39. Policy CS9 is in many respects a general design principles policy. However, the first bullet requires new development to respect and respond to the local context where development affects the setting of historic or important buildings.

40. A good provision of high quality and accessible green space including accessible natural green space to meet, among other things, amenity needs is secured by policy CS10. Policy CS11 sets out, in essence, that development contributions towards necessary infrastructure services and facilities will be secured through, among other things, planning obligations.

Emerging development plan

Braintree New Local Plan (BNLP)

41. The BNLP was submitted to the Secretary of State in October 2017. The examination has therefore commenced. It is in two parts. Part 1 (CD12.3 set B) plans strategically across three local planning authority areas. At the time of the Inquiry the examination hearings were due to commence in January 2018. Part 2 (CD12.4 set B) relates to the Council area only. Hearing dates have yet to be arranged. There are a substantial number of representations raising fundamental issues with both parts of the BNLP. Those made by GDL are at CD33.1, set C.

42. Although in Part 1 policy SP 2 continues a spatial strategy for North Essex that seeks to accommodate development within or adjoining settlements according to their scale, sustainability and role; it also proposes three new garden communities one of which would be to the west of Braintree. Policy SP 3 sets out housing needs which for Braintree are 14,320 dwellings over the period 2013 to 2033 on the basis of an OAHN of 716 dwellings per annum.

43. Turning to part 2, the broad spatial strategy for the Council area is to concentrate development on the town of Braintree, planned new garden communities, Witham and the A12/Great Eastern Mainline corridor and Halstead. Hatfield Peverel lies within the A12/Great Eastern Mainline corridor and is identified as a Key Service Village (KSV). Policy LPP 1 states:

    Within development boundaries, development will be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material adverse detriment to the existing character and historic interest of the settlement.
    Development outside development boundaries will be strictly controlled to uses appropriate to the countryside to protect the intrinsic character and beauty of the countryside.

44. Policy LPP 31 proposes a comprehensive redevelopment area on land between the A12 and the Great Eastern Main Line. This comprises four areas; the former Arla Dairy site; Sorrell's Field; Bury Farm; and a smaller site to the rear of Station Road. Among the list of things that the development will be expected to provide are financial contributions to early years and childcare provision, contributions towards primary and secondary education facilities and contributions to other community facilities including health provision as required by the NHS.

45. Policy LPP 60 deals with heritage assets and their settings. It follows closely the wording of LPR policy RLP 100. It adds however a final paragraph which states that the Council will seek to preserve or enhance the immediate settings of heritage assets by appropriate control over development, design and use of adjoining land.

46. Landscape character and features are subject to policy LPP 71. This requires, in broad summary, applications for development to demonstrate an understanding of the landscape character of the area and show how the development proposed would fit in. Development that would not successfully integrate into the local landscape will not be permitted.

Hatfield Peverel Neighbourhood Development Plan (NDP)

47. The NDP (CD15.2, set B) has been submitted for examination and the examiner appointed. At Appendices MR23 to MR 25 of Mr Renow's proof (HPPC1) is the exchange of letters between the examiner and HPPC. On 5 September 2017 the examiner set out the two 'important' matters about which she had 'serious concerns in respect of the progress of the examination and the (HP) NDP meeting the statutory Basic Conditions' (MR23). Having considered the reply dated 13 September 2017 from HPPC (MR24), she wrote again on 20 September declining to continue the examination while the necessary additional work was undertaken (MR25). The reason given was '…the issues raised are sufficiently substantive that I feel to do so runs the risk of undertaking work that could later be found to be abortive and incur unnecessary costs to the local authority.'

48. The NDP is subject to unresolved objections including those from GDL (CD33.2, set C) and DWH (SAV50 and SAV52).

49. The retention of existing trees, hedgerows and habitats, the mitigation of their loss and the retention of natural boundary treatments and the provision of new areas through new development is the subject of policy HPE2. The protection of the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment is achieved through policy HPE6.

50. Policy HPE8 addresses heritage. In essence this requires an appropriate assessment of the significance of any heritage asset including the contribution made by its setting when development is proposed. How the development could conserve and enhance the asset should be explained.

Relevant Planning History

51. An outline planning application for the development of 29 starter homes was withdrawn in July 2005. An outline application for the erection of 19 no. 2 bed houses, 8 no. 2 bed flats and 16 no. 1 bed flats as affordable housing was refused planning permission in February 2006. In October 2016 the outline application for up to 80 dwellings that was also considered at this Inquiry was refused planning permission.

The Proposals

52. The application is submitted in outline with all matters except access reserved for future determination. Up to 140 dwellings are proposed to be built with up to 40% being provided as affordable housing. The pedestrian and vehicular access to the site would be from Stone Path Drive.

53. The application was accompanied by a Design and Access statement (CD1.5, set B) which indicated how the development might be brought forward. A Framework Plan (CD1.3, set B) was also submitted which, although for illustrative purposes only and not therefore for approval, shows some important features such as a detention basin, a proposed play area and, in quite considerable detail, structural landscaping. This embraces the existing public right of way (FP43) as it passes through the developable area and shows this being retained on the southern edge of an area of proposed public open space to be laid out between the new development and the existing Stone Path Drive. It

also shows hatched blue an area of land denoted as other land under the control of the applicant generally to the north and west of the developable area.

54. The Framework Plan was, in effect, superseded by the Green Infrastructure Strategy drawing (ID1.6b). This was submitted as part of a bundle of documents introduced by GDL at the start of the Inquiry. This shows essentially the same features although it now identifies the other land under the control of the applicant as the Blue Land to be offered as public open space.

The cases put by the parties

55. Although three separate developments were being considered at the Inquiry that was not, in the main, how the evidence was presented and tested. This was inevitable and the most efficient use of Inquiry time as there was a significant degree of commonality in, for example, the evidence given on policy and housing land supply topics. As the issues raised by the 80 dwelling and the 140 dwelling schemes are not materially different the closing submissions of GDL, HPPC, SPMRG and the Council do not really differentiate between them. The cases made are therefore set out in full.

56. DWH are not directly concerned with this application. However, Mr Tucker's case on housing land supply, an aspect of his case on important views and the case made on the emerging NDP is adopted and relied upon by GDL. Those parts of his closing submissions are therefore recorded below.

57. Closing submissions were submitted in the same sequence as they would have been presented at the Inquiry. The usual convention whereby the scheme promoter hears the cases against the proposal before making its case was thus observed. As will be seen, both Mr Tucker and Ms Osmund-Smith respond to points made by other advocates.

58. It is fair to say that both are quite critical of the way in which some arguments have been put by Mr Graham for HPPC and, to a much lesser extent, Ms Scott for SPMRG. In short, the criticisms are that the case has been developed, if not actually changed, from that trailed in the statement of case; evidence from witnesses has been misrepresented and concessions in cross examination ignored; and evidence rather than argument given.

59. I believe there is some substance to all of those criticisms and I have had regard to that in coming to my conclusions. While I have recorded the flavour of the criticisms in presenting the cases set out, the exact, sometimes robust, phrasing used has not been included. Each closing submission is nevertheless listed and available to read in full.

The case for David Wilson Homes Eastern

Introduction

60. The land use issues raised against the DWH scheme are comparatively modest and are accepted by the Council not to be sufficient to outweigh the benefits of the scheme.

61. It was stated in opening that this is a comparatively straightforward proposal. In reality nothing which has been presented over the course of the Inquiry changes that position.

62. It is agreed with the Council that there is a significant deficit against the required 5 Year Land Supply (5YHLS) and there therefore is an immediate need for additional housing, which will necessarily have to include land that is presently undeveloped.

63. It is agreed that there is an immediate need for additional affordable housing.

64. There is no statutory consultee who has objected to the application scheme.

65. The only policy objections (albeit not raised by the Council) relating to the DWH proposals relate to:
    i) breach of 'in principle' countryside policies which are based upon settlement boundaries which are agreed by the HPPC's planning witness to be out of date; and
    ii) breach of policies in respect of a draft and flawed NDP which can only be afforded the most limited weight;

66. Requested contributions to infrastructure etc. are provided for in full in the s106 obligation.

67. The application site is located in a sustainable location (in this respect DWH acknowledges and adopts the case made by GDL) and relates well to the settlement of Hatfield Peverel which it is agreed will need to accommodate additional growth.

5 year housing land supply

68. Framework paragraph 47 directs that local planning authorities must identify and update a "supply of specific deliverable sites" to provide 5 years' worth of housing against their housing requirements. Deliverable is defined in footnote 11:

    To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular, that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

69. In *St Modwen Developments Ltd v SOSCLG* [2017] EWCA Civ 1643 (paragraph 38, CD32.18 set C) the approach that should be taken to assessing whether a site is "deliverable" in the context of the footnote 11 definition is confirmed. Properly understood the judgment does no more than reiterate the ordinary and natural meaning of the words of the footnote. It does not, as Mr Graham sought to argue, reduce the threshold for assessing yield from deliverable sites. In that case the Appellant was contending that only those sites with planning permission should be considered to be deliverable. Self-evidently, whether or not a site is counted into the exercise as "deliverable" is only the first step of the exercise - the crucial issue in this case is what comprises the likely yield of the deliverable sites. Doubtless this important distinction will be clear to the Secretary of State.

70. It appears from his closing submissions that Mr Graham has misinterpreted this important judgment. In response to HPPC's closing submissions, (paragraph 5, ID48) there is no judicial authority that "deliverable" means, as Mr Graham submits, 'non-fanciful'. The judgment of Lindblom LJ is clear that "deliverable" in the context of Framework paragraph 47 is defined solely by footnote 11. Mr Graham's submission in this regard is simply wrong.

71. To the minimum requirement to demonstrate a 5YHLS must be added a buffer of 5% or 20% depending upon whether there has "been a record of persistent under delivery". The courts have clarified what is meant by "persistent under delivery" in *Cotswold DC v SOSCLG* [2013] EWHC 3719 (paragraph 47, ID1.15). Essentially, whether under delivery has been persistent is a matter of planning judgment, considering a reasonable period of time for analysis and against a justifiable housing requirement which can include consideration of what is proposed in an adopted plan and evidence of need. Addressed below is why it is considered that a 20% buffer is appropriate.

72. The starting point for the numerical calculation of the 5YHLS is to identify an appropriate requirement against which to judge the available supply of deliverable sites. In this case the requirement of the adopted CS is based upon a hopelessly out of date figure derived from the "policy on" content of the long defunct Regional Spatial Strategy. In those circumstances it is agreed with all parties that it is appropriate to identify the OAHN based upon the most up to date evidence, without any policy adjustment.

73. What figure comprises the OAHN will be a matter of intense debate at the forthcoming examination in public of the emerging BNLP, to which there is intense dispute. That debate will take place in January 2018. However, given that the decisions of the Secretary of State will be made after this debate has taken place GDL/DWH in this Inquiry have taken the pragmatic decision not to use the Inquiry as a dry run for those arguments, but rather to accept for the purposes of the Inquiry that the Council's figure is the correct one. Should compelling evidence arise to support a contrary position prior to the decision of the Secretary of State then that will be drawn to his attention in advance of that decision.

74. Thus, for the purposes of the Inquiry, Mr Spry adopts the Council's estimated OAHN of 716 dpa derived from the evidence base from the emerging BNLP. There is no disagreement between any of the parties to this Inquiry that this approach is reasonable and thus, this is the appropriate starting point.

75. The disagreement between the parties relates to the following areas:
    i) Liverpool or Sedgefield approach for addressing the shortfall:- The applicants and the Council have agreed, again for the purpose of this Inquiry, that the correct approach is Sedgefield. It is noted that the Council is pursuing the Liverpool methodology at their Local Plan examination, however it properly accepts, that without specific support from the examining Inspector, it could not reasonably support such an approach for the purpose of this Inquiry;
    ii) 5% or 20% buffer;
    iii) The supply of deliverable sites - There is a dispute between SPMRG and the GDL/DWH on the sites that should be considered to be deliverable and therefore included in the supply with SPMRG arguing

for the inclusion of draft local plan allocations. That position is expressly rejected by the Council which does not consider that those sites should be afforded sufficient weight to be included, given the stage in the process and the degree of unresolved controversy which relates to them. There is then the more important debate about the likely yield from a handful of disputed sites as between the Council and Mr Spry. This disagreement on yield on those sites is essentially one of judgment based upon agreed facts and is covered in detail in ID1.14 where the difference between the parties is reduced to a yield of 68 dwellings.

76. HPPC lead no evidence on the point. The submissions made in closing on which sites should be included must therefore be given no weight.

Liverpool v Sedgefield

77. The only parties advocating for a "Liverpool" approach - ie spreading the shortfall over the whole of the local plan period - are the Rule 6 parties. The Council has agreed that this is not the correct method for calculating the 5YHLS position for this Inquiry, whilst arguing for that position through the BNLP examination. Its reasoning is robust - until the examining Inspector endorses a different approach then based upon recent appeal decisions, the "preferred" approach of Planning Practice Guidance (PPG) of the Sedgfield methodology is to be preferred.

78. Notably there was no discernibly logical argument put forward by either of the Rule 6 parties to support a contrary case for the use of Liverpool. The best that was offered was that the Liverpool methodology would be appropriate because when looking back at the record of under delivery it is claimed that the Council cannot meet its requirement in the short term and therefore Liverpool should be used - repeated in the SPMRG closing (paragraph 86(ii), ID49). With the greatest of respect, this is not sound planning. Not only is it in conflict with guidance to the contrary in PPG, but also it has serious social consequences, given that the shortfall in delivery is not one which arises over the next 15 years but rather it exists right now, at the start of the 5 year period under consideration. Not to do so now means deferring the meeting of needs - which is the antithesis of the tone and content of Framework paragraph 47.

79. The argument is that it is simply not possible to deliver the undersupply in the first 5 years. It is accepted the PPG says that the undersupply should be addressed within 5 years "where possible". However, self-evidently the correct approach to this guidance is to start from a position that it is possible and only change that view where it is shown to be impossible. An impossibility cannot be proven through previous undersupply - the very problem the buffer seeks to address. An impossibility might be proven in cases where the LPA's area is highly constrained e.g. AONB, Green Belt, other designations, or where there is clear market evidence of saturated demand. However, it is strongly submitted that "not possible" is a high bar and one which is not close to being met in this case.

80. The illogic in respect of the DWH site is even more striking since it argues that a site should not be released to a national housebuilder in a sustainable location because there are concerns about the ability of the market to deliver.

81. Thus, if a local planning authority cannot meet its housing requirement, the answer is to release more sites, not to accept that past under delivery represents the benchmark for future delivery and to thereby leave more families without a home.

82. The reality of the Rule 6 parties' position is clear from the SOCG on Additional Housing Supply Sites (ID37). This shows that they need to convince the Secretary of State in respect of all of their points in order to demonstrate a marginal excess against the 5YHLS - i.e. it is only on their flawed analysis of the additional sites together with the use of the Liverpool method and with only a 5% buffer that they can mathematically demonstrate a marginal excess over the 5YHLS. If nothing else this evidences just how dire the position on 5YHLS is in this District. If objectors have to argue for a swathe of implausible assumptions and can still only just show a mathematical exceedance then the clear reality of the land supply position is Braintree falls significantly below what is needed. If there was any doubt to the contrary then no doubt the Council would not have readily conceded the absence of a 5YHLS a matter of weeks before the start of the BNLP examination hearings.

83. In her written evidence, Mrs Jarvis for HPPC attempted to make a somewhat curious secondary argument that even if there was a need for additional housing then development should be distributed evenly within the hierarchy of settlements at the tier within which Hatfield Peverel falls (paragraph 2.15, HPPC2) However, in cross examination that point was rapidly abandoned.

84. First, she accepted that the table within the adopted CS is a minimum figure and therefore one can conclude that the table does not form a basis for a mathematical exercise in allocating the shortfall of housing within the hierarchy. Second, when she was carefully taken through the emerging BNLP she readily accepted that it contained significant changes to the adopted strategy of housing distribution - most obviously in its dependence upon the new Garden Communities - but crucially given the enhanced role of Hatfield Peverel as part of the A12 corridor of growth. With all due respect to Mrs Jarvis her point went nowhere and it certainly does not support the proposition that she intended that the DWH proposals are out of scale with the settlement, let alone the more radical distribution point made at paragraph 2.15 of her proof.

85. In conclusion, DWH, supported by the Council, strongly submit that the Sedgefield approach must be preferred for this Inquiry. The social dimension of sustainable development must require the shortfall to be delivered within the 5 years - to do otherwise is simply to put off the requirement to boost significantly the supply of housing and results in a failure to meet the requirements of those who want to own a home in this part of the country.

The Buffer - 20% or 5%

86. The Council argues for a 5% buffer, GDL/DWH for 20%. The evidential basis for the debate is the update (ID1.11) to table 5.1 in Mr Spry's proof of evidence (4/POE). This updated the completions figures for the early part of the period. The updated table shows:
    i) The Council has not met annual requirement figure since 2011/12;
    ii) There has been persistent and significant under-delivery between 2012-2017;

iii) There is under-delivery against current half year (April to Sept 2017);

iv) In combination, there has been under-delivery of housing against the requirement of:

- 458 - 16.5 yrs
- 1,002 - 10.5 yrs
- 1,448 - 9.5 yrs

87. This table compellingly illustrates the inescapable conclusion that there has been persistent under deliver of housing in Braintree. Against this, the Council's unconvincing contention was to argue that it was "unfair" to judge them against an OAHN of 716 from 2013 when the figure was only introduced in November 2016. Rather it was argued that the lower Structure Plan figure should be used. However, the Council will have been well aware that an increased OAHN was likely given the household projections figures (detailed in the updated table 5.1) which were consistently in excess of the Structure Plan figure.

88. It is also clear that the Council was aware of the likely increase in OAHN as evidenced in the minutes of the Council's meeting on 30 June 2014 (1/POE, Appendix 2). Under agenda item 23 the Council decided to withdraw the site allocation Development Management Development Plan Document. One of the points noted by the Council was that the Framework would impact on the housing need figures derived from the CS and that under a Framework compliant methodology, those numbers would go up. It is disingenuous by the Council to now say at this Inquiry that they were not aware of the housing numbers going up; plainly they were aware of this from at least 30 June 2014. Therefore not only is it sound planning to backdate the OAHN to 2013, but the Council were also well aware of the requirement to increase their housing figures.

89. The Council's approach is wholly unconvincing. Not only would it be to "reward" tardy plan making but it means judging under-delivery against the wrong metric. The intention of the buffer is not one of "punishing" a local authority which would then bring in concepts of fairness. Rather it is an objective exercise to determine whether or not there is a need to increase the well of sites from which the development industry can draw in order to achieve the OAHN. In this case it is now known that the target of the adopted plan was substantially below what it ought to have been in order to meet the agreed OAHN and that delivery was also well below the OAHN. It is therefore known that delivery was persistently below what it should have been and more importantly there is no suggestion that the lower Structure P target was somehow constraining delivery.

90. The Framework, published in 2012, could not be clearer at Framework paragraph 215: local planning authorities had a period of 12 months to bring policies into line with the Framework and after this date, the weight to be given to any pre-Framework policy would depend on the consistency with it. This includes, as it must, pre- Framework housing requirement figures, such as those used by the Council taken from the now-revoked East of England Plan. The Council ought to have updated their housing requirement in this 12-month period and done so in a way that reflects Framework paragraph 159 which establishes that this should meet "household and population projections" (the figures for which are included in Mr Spry's updated table 5.1 and would have been known to the Council at the time). They could have done so in a Framework compliant way with a partial

review. They did not do this and still have not done this. The only Framework compliant way is therefore to back date the OAHN requirement to 2013/14.

91. The Council argue in their closing (paragraph 23 to 24, ID47) that the OAHN figure from 2013/14 was not the "target" at the time as that figure only became known in 2016. Target is the wrong word; it is about meeting housing need. The Framework is clear. Framework paragraph 47 bullet point 2 requires local planning authorities to identify sites to meet their "housing requirements", that means the need at the time. It does not mean the need as it was last identified. To adopt such an approach could result in years of need being unmet simply because a Council has not carried out the necessary work to assess the actual housing need in its area. Mr Cannon's approach would be another reward to the sluggish authority and must be rejected. Mr Spry's must be preferred as an approach that supports the Government's clear objective of boosting the supply of housing by assessing need as it actually is, not as it once was.

92. The appeal decisions cited by SPMRG on this point (paragraphs 90 – 92, ID49) are not on point. The first decision (ID44) was in the context of an authority that had over supplied for an 8 year period. Plainly this Council is a long way from this having undersupplied over a number of years. The second decision (ID43) is also in the context of an authority that had over supplied. The arguments of DWH on this point should be preferred.

Conclusions on 5YHLS

93. If the Secretary of State accepts that the correct approach to calculating the land supply position in Braintree is Sedgefield/20%, then the supply is 3.3 years against the Council's OAHN figure. It is only if the Secretary of State concludes that all the stars have aligned and that the correct approach is Liverpool/5% with the additional sites put forward by the Rule 6 parties, that the Council could crawl over the line and show a 5YHLS - 5.38 years. It is GDL/DWHs' submissions that such a conclusion, given the weakness of the argument and absence of supporting evidence, grossly over-stretches the elastic potential of planning judgment.

94. Should the Secretary of State conclude that the correct approach is Sedgefield/20% (or indeed Sedgefield/5, or Liverpool 5/20), then the Council cannot demonstrate a 5YHLS and there is a serious deficit against the minimum policy requirement of Government such that there is an immediate need to redress that deficit. Moreover relevant policy consequences kick in.

95. In the absence of a 5YHLS, Framework paragraph 49 says that "relevant policies for the supply of housing" are not to be considered up to date. The Supreme Court in *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37 concluded that decision makers should adopt a narrow approach to identifying which policies should be considered as "relevant policies for the supply of housing" (paragraph 57, CD31.2 set C). However, this may not be the point of the exercise (paragraph 59):

> *The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with*

housing provision, or because of the over-restrictive nature of other non-housing policies.

96. The approach is endorsed at paragraph 83:

If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.

97. The weight to be given to particular policies in the adopted and emerging local plans is addressed in due course. However, the point that must be taken from *Suffolk Coastal* is that where it is environmental (or other) policies that have resulted in the failure to demonstrate a 5YHLS, then those policies are as susceptible to having their weight reduced in the balance as those policies that fall within the definition of "relevant policies for the supply of housing".

98. HPPC's closing submissions on the ratio of *Suffolk Coastal* must be rejected (paragraph 36 and 37, ID48). The Supreme Court is not removing the s38(6) test, that is at the heart of decision making. It is a judgment about the weight to be given to policies where the plan is absent, silent or out of date. Mr Graham's approach of dismissing Framework paragraph 14 as "no more than guidance" rather than crucially important national policy which should be afforded substantial weight, is an invitation to the decision maker to fall into serious error.

99. Overall therefore it is firmly submitted:
    i) there is plainly a substantial deficit as against the minimum requirement to demonstrate a 5YHLS;
    ii) the effect of that is that Framework paragraph 49 is engaged;
    iii) that alone is sufficient to warrant engaging the presumption in Framework paragraph 14;
    iv) it is agreed that there is no immediate prospect of the emerging BNLP being adopted and therefore the only means by which the deficit can be addressed is through the grant of planning permissions in sustainable locations; and
    v) substantial weight should be afforded to the provision of general market housing which contributes to meeting that deficit.

Landscape issues

An Important View?

100. Policy HPE 6 in the NDP (CD16.3 set C) seeks to:

protect the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment (2015). Any proposed development, or alterations to an area within these views must ensure their key features can continue to be enjoyed including distant buildings, areas of landscape and open agricultural countryside.

101. There are a whole host of reasons why this policy should be given very little, if any, weight in the final planning balance:

i) As Mrs Jarvis accepted, it is not consistent with policy LPP72 in the BNLP.

ii) In 2015, the Landscape Partnership carried out a Local Landscape Character Assessment for Hatfield Peverel (LLCA) (CD18.4 set C) that forms a fundamental part of the evidence base for the Neighbourhood Plan. The DWH site is within LLCA 4 (page 23 CD18.4). This independent study produced by landscape experts, identifies the key views within the LLCA as shown on the plan on page 23. The blue arrow pointing northeast goes along the public right of way which runs approx. 200m south of the site save for a very thin sliver of land to the extreme south of the site proper which it is intended will provide a landscaped link to the footpath network. When that is compared with the key views that have been included in the NDP (page 33, CD16.3, set C), what is immediately striking is that the view within the proximity of the application site identified by the independent experts is not the one carried forward into viewpoint 5 in the NDP. The experts, undertaking an approach with a recognisable methodology, identify the views out from the start of the public right of way which runs along the southern/eastern boundary of the site and which will be covered by public open space in the application, that view will be entirely unaffected by the appeal proposals. The NDP, at viewpoint 5, dismisses this and instead promotes a view from the end of a residential cul-de-sac, with no entrance to a public right of way that looks directly across the development site.

The reasons given for this change by Mr Renow in cross examination were that these views were voted for by local people and are considered to be the views deserving of policy protection within the NDP. Although Mr Renow did fairly accept that VP5 in the NDP is clearly inconsistent with the LLCA. More fairly still, he accepted that this was not a proper basis to plan protected views. Therefore HPPC's own evidence given by the person who claims to be at the heart of the neighbourhood planning process, is that the view protected in the NDP has no proper evidential basis. Instead, as Mr Smith made clear in his evidence, the view along the public right of way, that does have landscape value, will have any impacts upon it mitigated through boundary planting and the provision of public open space.

iii) The Workshop for Important Views document (CD 18.6 set C) which sets out the analysis that supposedly led to the inclusion of viewpoint 5 in the NDP as an important view, exposes the reality of the selection. This document, at page 6, where the potential views within LLCA 4 were considered, states as follows with regard to the view across the application site that eventually became important view 5 in the NDP - "*Key features - line of tall trees, flat field, hedgerows and trees*", but perhaps most revealing "*Value to the community* **-** *<u>not sure if this area has any value but the residents like the view</u>*" (emphasis added). The true purpose of the identification of the important views is finally revealed when examining why some of the sites were removed from the NDP. The view of the River Ter (CD18.6 set C, page 2, row 6), that one might consider to be a quintessential view, was removed as it is "*Not subject to planning*". Likewise that the view over St. Andrews

Church was removed despite being the "*Historic core of the settlement*". Thus, if the view in the NDP has any claim to be an important one then it is in the teeth of the evidence and based upon the fact that an unknown number of people seem to "like it". As put in cross examination, it is difficult to escape the inference that those promoting the NDP have sought to promote not the important view recommended by an expert but an unimportant view in order to make a case opposing the DWH site.

iv) Mr Renow sought to criticise the DWH assessment for not having taken account of the views of the community. A landscape character assessment undertaken by a professional landscape architect is intended to convey the objective judgment of the "assessor" and therefore is very rarely materially influenced by the views of the public, unless representations raise an objectively justifiable concern which had not been previously considered. The point is that it is a professional piece of work, which follows recognised guidance, not an informal local referendum on popularity of views. Indeed, when the Neighbourhood Plan team did attempt to take the view of locals as to which views were "important" it did so in a haphazard and inconsistent way which deviated from its purported evidence base. However even on that approach it is of note that the view from Gleneagles Way (proposed to be protected in the NDP) came 4th out of 5 proposed views. So even on his own argument, it does not suggest that even the local community find the view particularly important.

v) The final piece of evidence exposing the real intentions of the NDP is set out at CD18.3, set C - Hatfield Peverel Site Assessment 2017. The application site is considered at page 8. It identifies no beneficial opportunities at the site, despite those drafting this document in 2017 being aware of this application to develop the site. Mr Renow accepted in cross-examination that the non-preferred sites were marked in this document with no opportunities in contrast with the preferred sites. It is in short an admitted exercise in advocacy and not evidence worthy of the name. Mr Renow reasonably made the above concession and it must be given significant weight. Paragraph 99 of the HPPC closing submissions which row back from this concession on this point can be afforded no weight at all.

vi) HPPC note in their closing submissions that policy HPE6 deals with views 'identified by the community and the Hatfield Peverel Landscape Character Assessment'. Those are the words in the policy, but so far as relevant to the appeal site those words are flatly contradicted by the evidence base (see above). Indeed Mr Renow properly accepted in cross examination that the choice of views was only based upon community views - a process with no recognised methodology.

The emerging NP

102. The reality is that the NDP, insofar as it addresses landscape issues, is a partial document. It is not a balanced piece of planning analysis that looks to meet housing need and protect landscapes meriting protection. The motivation appears to have been in part to stymy development in Hatfield Peverel other than on the Arla Dairy site. Consequently, the landscape policies within the NDP should be given very limited, if any, weight. They lack any balanced and

considered evidence base and are subject to detailed and robust objection. Additionally, as will be addressed in more detail below, the NDP is some considerable way from being made and is best described as being "stalled" with no immediate hope of being restarted.

Planning

103. DWH's planning case is set out in the proof of evidence from Mr Jonathan Dixon (DWH1), which was subject to only the most limited of challenges.

104. As stated in opening, the site is not in or adjacent to any heritage or landscape related designations and there are no technical reasons put forward to warrant the withholding of consent. The landscape objections put forward by HPPC have been addressed above and do not come close to providing a sound policy and legal basis for withholding consent, let alone comprising a basis to displace the presumption in favour of sustainable development.

105. The relevant policy issues in adopted and emerging local plans are limited to policies of minimum housing provision within the settlement hierarchy (CS1); general protection for the countryside (CS5); emerging policies on development boundaries (LPP 1); and policies in the NDP that have already been considered.

106. Dealing firstly with CS1. As Mrs Jarvis rightly accepted, this policy is presumed to be out of date as a result of the failure to show a 5YHLS. Therefore, it will carry reduced weight in the overall planning balance. However, it is also out of date and therefore of reduced weight, for several other reasons.

107. Had plan preparation proceeded properly, then the settlement boundaries, which were first established in the mid 1990s, would have been reviewed many years ago. However, there is nothing before the Inquiry to suggest that the settlement boundaries in the District have ever been subject to a comprehensive review (as opposed to merely amending settlement boundaries to accommodate strategic allocations), let alone in Hatfield Peverel. On the evidence it appears highly likely, therefore, that twenty year old boundaries have simply been rolled forward from an old (and a now-withdrawn) plan. Without an evidence base to support the policy, it is not enough to simply point at the words on the page and cry refuse - it must have an evidence base.

108. Mrs Jarvis suggested that the emerging BNLP part 2 (CD16.2 set C) had been based upon a review of the boundaries. However, she was only able to provide a short report which appears to have been provided at an early stage of plan preparation to identify what principles would be applied to a future review (HPPC2, Appendix PJ3). It emphatically does not record or detail that any such review has taken place. When Mrs Jarvis was pressed, she readily conceded in cross examination, that she had not been able to identify any documentation to support the proposition that the boundaries in the District have been reviewed as part of the emerging BNLP process. It is plain from the evidence of all the planning witnesses, including HPPC, that Mr Dixon's approach to the out of datedness of settlement boundaries is manifest.

109. What is clear is that the Council readily accepts that in order to meet its immediate needs that greenfield land will need to be released.

110. Hatfield Peverel is a KSV within the adopted and emerging plans. Far from being preclusive of growth, that designation explicitly anticipates that the

settlement can accommodate growth. Indeed in the emerging BNLP the settlements on the A12 corridor (including Hatfield Peverel) are identified as being a particular focus for growth - a point noted by HPPC in their closing submission (paragraph 70 ID48). Mrs Jarvis readily accepted that Hatfield Peverel could accommodate additional growth. However her point appeared to be that the development of the appeal site would lead to excessive growth. However the yardstick against which she sought to judge whether that was excessive related to a plan whose period has expired and relating to a table of indicative distribution of growth which is explicitly a minimum. When pressed, she accepted that there was no policy limitation which is breached by the grant of planning permission. Certainly it is untenable to contend that the grant of planning permission in this case would comprise disproportionate growth for Hatfield Peverel.

111. Given the considerable under supply, it is essential that further land comes forward for development in Hatfield Peverel to meet the unmet need. Given the very limited objections to this site (both in substance and number), the DWH site is well placed to help the Council get closer to delivering its housing requirement.

112. Turning now to Policy CS5, this comprises a general blanket countryside protection policy. Mrs Jarvis rightly accepted that the weight to be given to this policy must be interpreted with regard to its consistency with the Framework. This policy imposes a blanket ban upon development in the countryside, which is not included in the Framework. Mrs Jarvis sought to place reliance upon Framework paragraph 17 which sets out the overarching principles. Eventually she conceded that the word "strictly" in CS5 went beyond what is included in the Framework. This policy should be given much reduced weight as it is inconsistent with the Framework and, recalling Lord Gill in *Suffolk Coastal*, such overly restrictive policies that result in less than 5YHLS must be given reduced weight or they would be frustrating the objectives of the Framework (CD31.2 set C).

113. The Council seek to argue that policy CS5 should attract moderate weight because that is what other Inspectors have concluded and it complies with Framework paragraph 17 by recognising the intrinsic character and beauty of the countryside. That submission on Framework paragraph 17 is flawed for the reasons above. Previous Inspectors' conclusions are persuasive but they are not binding, given the strength of argument that this policy carries limited weight the Inspector and ultimately the Secretary of State can, and should, come to a different conclusion.

114. Turning to the emerging BNLP (CD 16.2 set C). This directs substantial growth to the garden villages, however Mrs Jarvis accepted that the emerging plan was still subject to a lot of objections. Despite this (and remembering the terms of Framework paragraph 216) Mrs Jarvis inexplicably concluded that the BNLP should carry "fairly significant" weight as it was compliant with the Framework. It is not entirely clear what is meant by "fairly significant weight".

115. This is particularly inexplicable as she accepted that the substantial controversy still attached to the BNLP would reduce the weight that could be attached and she finally concluded that the Inspector should "be cautious" about the weight to be attached to the plan. It seems that this conclusion is well founded and accords with the careful analysis of Mr Dixon. Mrs Jarvis agreed

with Mr Dixon that the BNLP was not in a position to solve the immediate problems with the 5YHLS and that it will not solve it in the next 18 months. It was further accepted that the plan would not be adopted soon - "It has some way to go". All of these points of agreement support the position of the applicant, as put forward by Mr Dixon, that the BNLP should be given significantly reduced weight.

116. Finally, on the NDP. Despite the misguided optimism of Mr Renow, this is a very long way from being made.

117. Since the NDP proposes to allocate land and does so in a way which is inconsistent with both the adopted and emerging LP (Mr Renow cross examination), then it will need a Strategic Environmental Assessment (SEA) to be carried out. Such an exercise has not been undertaken and as Mr Renow accepted (cross examination), no steps have been taken to complete one. Indeed at times he appeared not to understand what an SEA was. The simple and undeniable fact is that if the NDP wants to allocate sites it must complete an SEA unless it is merely parasitic upon an adopted local plan (which it plainly is not). It does not remotely depend on the outcome of a Habitats Regulation Assessment (HRA) screening assessment as Mr Graham submits (para 84 ID48) which is an important but parallel legal process. The point made by SPMRG (paragraph 122 ID49) should also be rejected. Whilst the lack of the SEA might not directly affect landscape or protected views, it manifestly affects the ability of the plan to move (lawfully) to the next stage. If it cannot move forward in the process, then the weight to all policies in the plan cannot increase. Notwithstanding this, there are the other concerns with landscape and protected view policy in the NDP already explained. Mr Graham is simply wrong on this point.

118. Mr Renow's explanation as to why an SEA was not needed was because the Council has completed a HRA in respect of the planning application upon the Arla site, ie the site that the NDP proposes to allocate. This exercise was undertaken, as is required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010, because a development is proposed on the site for 145 units. To suggest that this HRA would displace the need for an SEA to allocate the site in the NDP is a fundamental misunderstanding of what is required for the NDP to allocate a site in a lawful manner. An HRA for a specific proposal is not an SEA for an allocation in a plan. If the NDP proceeds on the basis advocated by Mr Renow, it will be unlawful.

119. SAV49 is a letter from the independent examiner of the NDP. As of the letter date, 20 September 2017, it was anticipated by the neighbourhood group, as expressed to the examiner, that the SEA and HRA Screening Report would be available within 3 - 4 weeks - i.e. around mid-October 2017. No such reports have been prepared, nor is there any clear indication as to whether they ever will be (*note: this submission was written before HPPC notified the parties that the document had in fact been submitted to Natural England [11]*).

120. The basic conditions against which a neighbourhood plan is to be judged include compliance with European requirement and conformity with the adopted development plan. There is very clear authority that whilst there is nothing wrong with a neighbourhood plan being prepared to be consistent with both the emerging and the adopted development plan, it is against the adopted plan that

the neighbourhood plan should be tested (paragraph 82 CD31.1 set C). Thus, the NDP cannot avoid meeting the obligation for a development plan which contains allocations as a plan or project to be subject to an SEA simply because it follows the lead of the emerging BNLP. Nor can it simply piggy-back on the back of the SEA for the emerging BNLP since that relates to a different plan with different considerations which will not be adopted until mid 2018 at the earliest.

121. Mr Renow accepted in cross examination that there may be a substantive problem with the SEA, but despite this, he considers that the NDP will be made well before the BNLP is adopted, at the latest June 2018. If that was the case then it would be the source of an allocation which has been untested by an SEA, and inconsistent with the adopted local plan. One reason for this is that CS policy CS4 requires the retention of existing employment sites. Paragraph 6.2 of the CS makes it clear that this also relates to KSVs. A housing allocation is plainly inconsistent with CS4. To allocate a housing site on the Arla site in advance of the emerging BNLP being adopted with such an allocation within it, and without an SEA would plainly not meet the basic conditions for a neighbourhood plan required by law.

122. In any event, it seems highly unlikely that the NDP could be lawfully made by June 2018 as a matter of simple practicalities. If the NDP seeks to allocate sites and proceeds to do so without an appropriate SEA, then it will be unlawful. Of course it could avoid any such problems by not allocating any sites or by waiting to progress further until after the BNLP is adopted, which would thereby abrogate the need for an SEA. If the NDP were modified so that it does not allocate any sites then it would still be fundamentally flawed because of the evidential issues with HPE1 and HPE 6. However if those flaws were also addressed (by deleting HPE1 and removing viewpoint 5 then such an adopted plan would not benefit from the protection of the Written Ministerial Statement on Neighbourhood Planning.

123. Moreover, just promoting the proposed allocation of the Arla Dairy site in the NDP is out of step with the BNLP (policy LLP 31) that identifies the Arla Dairy site for "mixed use of up to 200 dwellings". The NDP has far from a smooth flight path to landing. Indeed, to borrow Mrs Jarvis's words, it is a "hiccupped" plan that has various stages still to complete. She went further and said that she could not be sure whether the NDP was compliant with the Framework.

124. The argument put forward to support the argument for HPPC that the NDP should carry significant weight was because it had the support of the local community, as shown through the poll carried out by the Neighbourhood Plan group. This is wholly unsupportable in planning terms. The informal poll is not a referendum and weight does not depend simply upon popularity. It is also not an official stage in the development of the NDP. The weight to be given to the NDP must be in accordance with the requirements of Framework paragraph216. It is plain that Mr Renow's view of how weight is to be ascribed to a neighbourhood plan has absolutely no support in national policy or guidance.

125. The conclusion on the NDP is that the policies that are relevant should only be given very limited weight for the reasons above. Therefore, whilst HPPC seeks to argue that the development is in breach of policies HPE1 and HPE 6, the weight to be afforded to such conflict with policy is substantially reduced.

The Case for Gladman Developments Ltd

Introduction

126. The closing submissions for GDL follow and consider the issues set out in INSP1. With respect to the issues of 5YHLS and the NDP GDL adopts the submissions of DWH. These are set out above in paragraphs 68 to 99 inclusive and in paragraphs 116 to 125 inclusive respectively and are not repeated here.

The effect of the development on the character and appearance of the area

127. The site is located on the south western edge of Hatfield Peverel and adjoins the residential development of the village at Stone Path Drive. The existing development provides an "abrupt edge" to the village and has a notable influence on the character of the site.

128. That is not just an observation by GDL, in fact three other expert landscape opinions exist in respect of the site and all find that development can be, or can potentially be accommodated there. They represent a consensus of opinion and there is no other expert landscape evidence before the Inquiry to cast doubt on those opinions. They are addressed now.

The Landscape Partnership Studies, CD14.4 set B, and CD28.3 set C

129. These two studies do different things. The first study, in June 2015 was a Settlement Fringes Evaluation (SFE) for the Council to help determine which parts of the area could absorb new development "with appropriate mitigation measures and minimal impact on the landscape"; (paragraph1.6, CD14.4 set B).

130. The second is the Local Landscape Character Assessment (LCA) (CD28.3 set C) for HPPC. The project brief is outlined at para.1.4 and explains the assessment is to assist the emerging NDP, to provide an assessment of landscape sensitivity and a set of guidelines to information opportunities for locating future green infrastructure and landscape enhancements.

131. It was not assessing capacity of individual parcels for new development in the same way as the SFE, and does not, and could not determine the acceptability of the application site for development.

132. The methodology of the SFE explains that a mixture of desk based and field study work was undertaken to identify broad parcels of land and then to drill down within the large units to identify even smaller parcels for assessment. It did apply a scoring system, but supported that with extensive commentary on the basis that no absolute conclusions could be drawn from the relevant scores. It is not "bizarre" as suggested by the HPPC (paragraph 144 ID48).

133. The parcels were then assessed on a 5-point scale from low landscape capacity to high landscape capacity.

134. The application site sits within Landscape Setting Area HP2, and broadly aligns with Parcel 2c (page 16 and associated plans), albeit not all of the parcel is proposed to be developed.

135. The overall capacity is medium, and the text on the parcel (paragraphs 4.20-4.21) explains that "the existing edge to the settlement is relatively abrupt and the houses have limited containment in local views, with boundaries to properties

formed by an inconsistent mix of fencing and fragmented vegetation." The analysis also identifies that "there is good scope to provide mitigation to proposed development that is in keeping with the landscape pattern."

136. The SFE concludes that there is "an opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to development fringes. Public footpath routes should be protected with the opportunity to incorporate open space into potential extension to residential areas."

137. The appraisal form acknowledges the open views across the fields, as well as glimpses of more extensive views across the river valley to the south-west. Along with the views from adjacent residential properties, the study plainly did not regard those views as prohibitive of built development.

138. HPPC seeks to distance itself from the SFE on the basis that it was done without consulting the local community (paragraph 144, ID48). However, the same applies to the studies HPPC does rely on - the criticism is not at all persuasive. Further, the author of the Study, the Landscape Partnership produced the LLCA for the Parish Council, a document on which it relies and which did not conduct a public consultation exercise either.

The Council's Assessment

139. The Council's own landscape officer upon reviewing the information submitted by GDL and the only LVIA carried out in respect of the proposals for this site, (CD4.15 set B) concluded that:

> *the proposed development if designed within a suitable stetting could provide a more attractive settlement edge than the open and unsympathetic vistas currently on offer from the available viewpoints.*

Independent Advice

140. The Council also approached Wyn-Williams Associates Ltd to provide independent landscape advice and a Report (CD4.14 set B) was produced. The Report assessed the existing context, the County and District Landscape Character Assessments and the two Capacity Assessments. The Report concluded:

i) the site is not a valued landscape, despite being valued by local people. (paragraph 14)

ii) the development would fit comfortably against the built-up edge of Hatfield Peverel and would strengthen the landscape at the fringe of the settlement (paragraph 15) ; and

iii) there would be adverse impacts on the very local level which is a visual impact rather than a character impact. There would not be landscape harm (either character or visual) of sufficient magnitude to refuse the development on landscape grounds (paragraph 18).

141. There is no other LVIA before the Inquiry upon which weight can be placed. The evidence put forward by the Rule 6 parties does not include the sort of comprehensive transparent assessment required in line with GLVIA3.

Landscape Character Assessments (LCA)

142. The wider landscape character assessments make the following points:
   i) CD28.2 set C is the County wide study which explains at page 51 that the sensitivity level of the Central Essex Farmlands to small urban extensions is 'low'. That arises because of the moderate intervisibility of the landscape and the "possible opportunities to improve some existing visually poor urban edges."
   ii) CD14.5 set B is the District Character Assessment. Under the heading 'Sensitivities to Change', it concludes "Overall, this character area has low to-moderate sensitivity to change."

143. The analysis is therefore consistent, from the broad to the specific, that the site has capacity to accommodate change.

144. SPMRG seek to establish a conflict with the District LCA (CD14.5 set B) on the basis that the guidelines are for small scale development that respond to the historic settlement pattern. Mr Holliday confirmed that small scale can mean different things in different places- but that in terms of the village as a whole and in landscape and visual terms the proposals are of an acceptable scale. The study itself does not define "small scale" and given the vast area covered by the LCA - in the context of up-to-date housing needs - such a requirement may be regarded as out of date.

145. SPMRG submissions also suggest that Mr Holliday agreed in cross examination that the proposals would not respond to the historic settlement pattern (paragraph 32, ID49). GDL's contemporaneous note of the exchange is as follows:

Question The historic settlement pattern is moving north and east of Church Road – it is quite a tight settlement ?

Answer I think my characterisation of it would be - it is historically a linear settlement along The Street and over the last 50 years, a larger settlement with larger areas of development – it is more nucleated than linear. And this scheme would be a continuation of this pattern

Question This is a south westerly thrust – a complete departure from the historic settlement pattern?

Answer No, the village has grown, and each time, development will have taken place within fields – it's expanded in different directions on the edges, and this is no different to that.

146. The submission that the proposals conflict with the historic settlement pattern is rejected.

147. HPPC in cross examination of Mr Holliday relied on the Chris Blandford Study (CD14.1 set B) that assessed a large area 'HP2' which includes the application site, and a <u>significant</u> amount of other land south, west, and east; (Fig HP0). The assessment of Area HP2 concludes that the landscape character sensitivity Is 'Medium to high', with 'Medium' Visual sensitivity and 'Medium to high' Landscape value. The Landscape Capacity for the whole parcel is "Low to medium."

148. However Mr Holliday explained that the study is the outlier. It is out of date and has been superseded by the later Landscape Partnership work. The Blandford Study is now 10 years old and was carried out under the predecessor guidance to GLVIA3. Moreover, the document itself at section 5 'Conclusions', explains that 'levels of landscape capacity may not be uniform across any one landscape setting area' and that even areas with "low to medium, or even low, landscape capacity may contain locations that are suitable in landscape and visual terms, for limited development." A site specific analysis is obviously required and that is what is done in both the SFE (CD14.4 set B) and through GDL's LVIA work.

149. Mrs Jarvis does not agree with the level of harm identified by GDL, but does not provide an assessment of her own and nor has HPPC sought expert landscape advice on this particular site. Mrs Jarvis does not set out of the sort of reasoned and transparent judgements that are expected by GLVIA3, that consider value, susceptibility to change, magnitude of change and, finally, overall effects at years 0 and year 10.

150. While adopting the conclusions of Inspector Parker in the quashed decision, Mrs Jarvis also disagrees with the parts of the decision she does not like and which do not suit her case. For example, Mrs Jarvis seeks to rely on the conclusion that the proposals would be unacceptable in terms of their impact on the character and appearance of the area, but rejects the Inspector's conclusions that:

> *In this case, the proposal would result in substantial harm to the character and appearance of the area, moderate harm to the landscape including as seen from the PROW (FP43)…* (paragraph 56 CD32.6 set C)

151. Mrs Jarvis takes issue with the "moderate" impact on the footpath in particular (paragraph 5.23, HPPC2), but that is because she had not undertaken the correct assessment that needs to be carried out to understand visual effects objectively. Yes, there will be a change to the relatively short 230m route as it passes through the site, but the route is already influenced by housing development and, outside of the developable area, will change very little. The value of the route is "medium". It is not a route through valued landscape, not nationally promoted and does not take in any recognized viewpoints (save for the emerging NDP discussed below). Effectively, the route is from one road to another. There will be additional new planting that will soften the impact over time, as well as new recreational opportunities around and to the west of the site.

152. SPMRG in its Closing Submissions commends the findings of Inspector Parker that there would be a moderate adverse effect on the PROW and its users and also moderate landscape harm; (paragraph 38, ID49). The assessment is not very different from that provided by GDL; (CD1.6 set B Appendix B), save that the impact on the site and immediate context is minor/moderate at 10 years post completion. Inspector Parker accepted that there would be a moderate overall impact on the footpath in line with GDL's evidence (CD1.6 set A)

153. Mrs Jarvis and Mr Dale seek to rely on the fact that the land in which the site falls was previously designated as an area of special landscape value. However, Mrs Jarvis agreed in cross examination that we do not know the basis upon which the land was designated and we do not have the evidence base (if any) that

supported the designation. We do not know the criteria that were applied in respect of different parcels, but we do know it applied to very large areas across the whole district.

154. It is not something the Council gives weight to and was replaced with CS policy CS8. The approach of Inspector Hill in the Coggeshall Inquiry is commended;

> *The Council drew attention to the fact that this area was formerly designated as an area of Special Landscape Value. However, that designation is no longer in force (it being dropped in 2011 with the adoption of the Core Strategy) and so I do not attach weight to it* (paragraph 40, CD32.2 set C)

Special Views in the Neighbourhood Plan

155. The view from Church Road over the site has been identified as an important view in the emerging NDP (page 33, CD16.3 set C).

156. The evidence base that sits behind that is to be found (in part) at CD 18.6 set C and includes feedback from a workshop in December, following a photographic competition of views around the village. The feedback document warns that "views are subjective and may be coloured by the imminent threat of loss." That is relevant in respect of the proposals in relation to this site because both applications for the 80 dwelling and larger 140 dwelling schemes were before the Council at this time this document was produced.

157. The relevant view is viewpoint 7, labelled as "Crabbs Hill, Stonepath Drive & Land behind the William B." That is not the same as the view that eventually made it into the NDP from Church Road. In fact, it reflects the view from the Character Area Assessment (CD28.3 set C) looking west across the site, rather than out to the south and the south west. There are further anomalies; the Key Features of the view are listed as Hatfield Place and the William B, but those are not visible from the Crabbs Hill access and cannot be seen from the footpath through the developable area until the walker passes through the gap in the hedge into the fields adjacent to the A12.

158. Long distance views to the River Ter valley and the Baddow Ridge are not mentioned at all, either as a key feature or something of value to the community. That is to be contrasted with sites 1 and 4, which do make reference to the high quality views of the Chelmer Vale, Danbury - Little Baddow Ridge, and the River Ter Valley.

159. What is also curious about the document is that the evidence base is supposed to identify important views. On closer inspection, it is plain that the point of it is to act as a block on development because many of the views regarded as important by the community are removed because they are not likely to be developed in the plan period or are well outside of the development boundary. Accordingly, far from being an assessment of "special views", the evidence base is geared up to protecting only those views that might be expected to be impacted by new development; for example Views Near Termitt's Farm and St Andrews Church.

160. By the time the viewpoint made it into the NDP, it became a view from Church Road looking across the Meadow. That does not accord with the view in the

Landscape Partnership Document (CD28.3 set C) and is also different to the description given in the evidence base which seems to reflect the Landscape Partnership view - 'Crabbs Hill - Stonepath Drive & Land behind the William B'. In the NDP, Hatfield Place is mentioned in the Key Features but it is not visible at all from that location behind belts of tree and hedgerow planting. The distant views are listed now as a key feature and the same is true for viewpoints 2 and 3, both of which are on footpaths to the south of the settlement. It is curious that the view is not taken from the footpath through the site since the existing view is a view over at least some private land, which could be planted by the landowner to screen the relevant view.

161. Looking at the plan on page 33 of the NDP, it is clear that important views have been identified around the village in every direction. Mr Renow agreed that if the views were to act as a block on development, then policy HPE6would be very restrictive of new housing. The policy however is not entirely restrictive of new development. The second part explains that proposed new development or alteration must ensure the key features of the views can continue to be enjoyed. Arguably the policy is met in this case:

i) The proposals will not obscure views to Hatfield Place. By opening up the blue land more views will be available to people using the site for recreation purposes;

ii) The distant views to the south from the footpath 43 are not the only views to the Ter Valley and Baddow Ridge; they can be achieved from the blue land and also viewpoints 2 and 3 in the NDP. Mr Dale explained that the view from viewpoint 3 is "exceptional".

iii) The meadow and mature trees and hedgerows will be retained on site. There will be the new open space to the north of the developable area, and the blue land to the west which remain open and more accessible than previously.

162. In any event, the policy is part of a plan that is yet to be made. Further, to the extent that it seeks "protection" "preservation and enhancement", it sets a threshold for almost the entire landscape around the village that is not reflected in national policy for ordinary countryside. It is subject to objections, not least by GDL (CD33.2 set C), and is yet to be examined. Accordingly, even if there is conflict, little weight can attach to it.

163. Further, GDL supports and adopts DWH Closing Submissions at paragraph 102 above which are not repeated here.

164. In this instance the site:

i) is not out of the ordinary and is not considered to be a valued landscape. No one has made the case that it has any demonstrable physical features that take the site out of the ordinary, as per the guidelines in *Stroud* (paragraph13-18, CD 31.20 set C);

i) is not of unusual scenic quality;

ii) is affected by the adjacent mid-late 20th century settlement edge which diminishes its sensitivity to new development;

iii) does not contain any rare or unusual landscape features ;

iv) is not designated in any way for its landscape beauty or any other reason;

v) has some public access, but more would be provided over the blue land as part of the proposals;

vi) is not designated for its ecological value ;

vii) is not wild and has varying tranquility ;

viii) has landscape components that are commonplace and the boundary hedgerows and trees that have some value will be retained.

165. Mrs Jarvis agreed in cross examination that so far as the site is concerned, it attracts the lowest level of protection commensurate with its status in accordance with Framework paragraph113 - it is neither a valued landscape nor one that is internationally, nationally or locally designated.

The LVIA

166. Although neither has provided their own, both SPMRG and HPPC query the overall judgments arrived at in the LVIA. However, it is unclear as to which specific judgements within the LVIA, i.e. sensitivity, value or magnitude of effect, are disagreed with. There is a repeated assertion that the effects of the proposals could not be anything other than "major" but the approach demonstrates a fundamental misunderstanding of the process of assessing landscape and visual impacts which involves determining the sensitivity of the landscape receptor or visual receptor (through a combination of value and susceptibility to change) and the magnitude of change on the receptor.

167. SPMRG compounds the confusion in its Closing Submissions (ID49). Despite appearing to accept Inspector Parker's findings of moderate adverse at paragraph 38, "Major Adverse" is concluded at paragraph 36. It is unclear where the assessment comes from or how it has been arrived at. It is not in SPMRG's evidence before the Inquiry.

168. Further, a whole series of comments are made on the impact of the scheme on the wider character areas. The approach fundamentally misunderstands that overall effect is a product of the combination of sensitivity, susceptibility and the magnitude of change. Moreover, to suggest that Mr Holliday has left out of account an assessment of "this specific part of Essex" (paragraph 23 ID49) ignores vast swathes of Mr Holliday's evidence on the site and its landscape context. SPMRG’s submission seeks to establish conflict with the wider character area; (paragraph 26) but the recital of key characteristics and overall character is partial and unhelpful. Such studies are not tick boxes, or even guidelines for new development - they simply provide a starting point for a site specific assessment as has been carried out in this case and to indicate what might be important and why.

169. The approach to landscape cannot be subjective. If it was and the views of local people provided an entire assessment on value of the landscape and views, then sites on the edge of settlements would never be built. That is because all people value the landscape in which they live and move around every day. New development will often curtail views; Stone Path Drive - the development that is home to the SPMRG - would have had a similar effect when it was built in the 1970s. It would have affected and curtailed the views of existing residents and people who enjoyed the allotments on which the new houses were built.

170. It is not uncommon for people to object to new development close to where they live for reasons that can broadly be described as visual and landscape objections. If that objection was to be avoided, there would be either lots of ribbon development to avoid encroaching on the views of others, or isolated countryside development where there was no one to object to the impacts. Neither consequence is desirable.

171. SPMRG's Closing Submission says the view from the footpath through site is "unrivalled anywhere else in the Parish." That might be so to Mr Dale; to people living elsewhere in Hatfield Peverel, the view they get from their homes, drive or street will probably hold the same value. On HPPC's evidence base for example, the view from Stonepath Drive was not voted as the top view from the village (HPPC1 Appendix MR28). In fact Mr Dale explained that viewpoint 3, towards the River Ter from Nounsley, is "exceptional".

172. The approach of HPPC and SPMRG in respect of the footpath fails to acknowledge that in terms of sensitivity there are differences, sometimes subtle and sometimes stark, between different footpaths and different views in different areas. The calibration of sensitivity is important. In this instance:

i) The footpath is short - it does not provide a walk out into the open countryside but rather from one road to another and along the edge of existing development;

ii) The footpath is not part of a long distance or promoted walk. It is used as a dog walking route by many but is not the sort of the place, as Mr Holliday explained, that people would travel to in order to experience;

iii) There are no promoted views from the footpath. The emerging view from the NDP and the weight to be given to that is dealt with elsewhere;

iv) The highest sensitivity landscapes are those that are valued for the purpose of Framework paragraph 109 and/or those which are designated internationally or nationally for their landscape quality. The highest sensitivity footpaths and views are those that people will travel to go and see and walk. It is in those places that development will have the most significant impact and when understood in that context, the effects identified by GDL in this instance are entirely reasonable and appropriate.

173. HPPC's Closing Submission describe Mr Holliday's approach to the footpath as "misleading and inappropriate;" (paragraph 138 ID48). The criticism is entirely rejected. It would be completely inappropriate to judge the experience of a route - which is the assessment being carried out and the LVIA says as much - on the basis of one viewpoint. The approach taken is conventional and entirely in accordance with GLVIA3. Moreover, it is remarkable that HPPC should seek to criticize Mr Holliday's assessment in that way and then seek to rely on the conclusions of Inspector Parker (paragraph 142 ID48) who accepted GDL's assessment of harm on that very issue.

174. In short, there is no other evidence before the Inquiry to doubt the conclusions of the LVIA which do not assert no harm, but put the harm in a proper context through the use of appropriate and transparent methodology. The significant long term effects identified for the both schemes (CDs 1.6 set A, and 1.6 set B):

i) Minor / Moderate Adverse effects on the site and immediate context;
ii) Moderate Adverse Impacts on the users of the PROW 43 within the site; and
iii) Moderate Adverse effects on residential receptors on Stone Path Drive albeit it is accepted that there is no right to a view and so the weight to be given to that harm is accordingly very limited.

Conclusions

175. In conclusion, the site is regarded as being capable of absorbing new, well designed residential development. In the long term, the development proposals will be well contained within the localised landscape area and will deliver benefits through implementation of robust green infrastructure on the site. The new planting and open spaces will provide recreational opportunities, mitigate the visual impact of the proposals and filter longer distance views to the development. The proposals will also provide a better more sensitive edge to the village than that which presently exists.

176. In terms of visual impacts there will be some moderate adverse effects arising from the scheme in respect of those receptors that would be in very close proximity to the new development. Perhaps most importantly are users of the footpath within the site - the experience would change most noticeably along its length as it passes through the eastern field of new built development, but built development is not uncharacteristic of the route; the houses on Stone Path Drive are presently open to view and are unmitigated. The route does not offer a walk in an isolated rural setting.

177. There will be a loss of some views to the south from that footpath, but new views will be available on the blue land to the west of the new housing. It is intended that members of the public will have full access over that land which will be secured as public open space. Further, those new views will allow walkers to experience the River Ter Valley landscape that provide the primary setting to Hatfield Place. The proposals comply with policies RLP80 and CS8.

The effect on heritage assets

Introduction

178. Two assets are relevant in respect of the proposals; Hatfield Place and the William Boosey Pub, known as The William B. Mr Handcock has carried out a careful analysis of the potential for harm to those assets and concludes that there will be no harm. That assessment uses and applies Historic England's own guidance on the Setting of Heritage Assets (CD27.3 set C) and the staged approach to analysis set out therein.

179. There is no other assessment that has applied the same rigorous and policy compliant approach to the assessment of the assets. That is important because assessments such as this must take place within an objective framework to be meaningful. It is absolutely essential that where development in the setting of heritage assets is at issue the contribution of that setting to the significance of the asset is properly understood so that an accurate assessment of the effect of change can be made. It is not enough to say that development will be seen from an asset and there will therefore be harm - visual connectivity is not the exclusive consideration and nor can it be determinative of harm.

180. In respect of the 80 scheme, there is consensus that there will be no heritage harm - that is the view shared by the County, District and Parish Councils. Moreover, while Historic England requested further information in respect of that scheme, it did not positively identify harm. SPMRG's position is less clear, albeit the closing submissions on behalf of the group do not allege harm to the William B. Public House from the 80 dwelling scheme (paragraph 65 ID49) and the harm is reduced from "moderate to high" in respect of Hatfield Place, to "low to moderate" for the smaller scheme. In identifying harm to Hatfield Place from the smaller proposals, SPMRG, which has not submitted a Heritage Assessment for either scheme, is the outlier.

181. Oddly, in his Closing Submissions on behalf of HPPC Mr Graham - who confirms (paragraph 151 ID48) that HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme (and Mrs Jarvis confirmed no harm in cross examination) - makes the point that the view to the south from NDP viewpoint 1 (to the eastern edge of the site) would be blocked with the implication that it gives rise to heritage harm. However, the effect arises with both the 80 dwelling and the 140 dwelling schemes. Given HPPC does not regard the 80 dwelling scheme as harmful, that specific impact, on HPPC's case, cannot amount to harm.

182. The harm arising from the 140 dwelling scheme so far as the Parish, County and District Councils and Historic England are concerned must only arise from the additional development in the south west of the site.

The assessment of impacts

183. The assessment of heritage effects through a change in setting requires an understanding of the significance of the assets and the role that setting plays in that significance. Once that is established, the role of the part of the setting that will be occupied by development in the significance of the asset must also be understood because setting is not a heritage asset (paragraph 9, CD27.3 set C) and not all setting makes an equal contribution to the significance of an asset, or at all. Moreover, change in the setting of a heritage asset does not automatically give rise to adverse effects; (Framework glossary). Inter-visibility between the asset and the proposals may be a matter of fact, but it does not necessarily lead to harm. If that were so, no assessment would be required.

184. The Framework glossary also defines ‘Significance’ for the purpose of heritage policy as:

> *The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.*

185. There are conceivably assets where setting will make a very significant contribution to significance, such as in the case of battlefields for example. In other cases such as here, the core significance of assets will lie elsewhere and setting may be a secondary contributor to significance. For Hatfield Place, its core significance lies in the quality of its built fabric, as a fine example of a small Palladian house of the late eighteenth century, including its external detailing and arrangement and internal plan form and in its connection with individuals of local and national interest in their own right, principally John Johnson and John Tyrell,

but also William Walford and George Sherrin. None of those elements will be harmed by the proposals.

186. The core significance of the former Crown Public House, now the William B, lies predominantly in:

i) The age and quality of its historic fabric, with evidence of its fifteenth century form remaining legible alongside high quality sixteenth century alterations;

ii) Its relative rarity and for its aesthetic value, both internally and externally, as a remaining example of a pleasing vernacular building of a great age; and

iii) Its legible, long-standing historic use as a coaching Inn, related closely to The Street as an important historic route from London to East Anglia.

187. Setting does make a contribution to both assets but in a lesser way. The most important part of the setting for Hatfield Place is its immediate pleasure grounds allowing views into the Ter Valley to the South and to the Danbury Ridge. The land to the southeast has been deliberately screened. In respect of the William B, its most important spatial relationship is with this historic thoroughfare, The Street; the proposed development site does not make any meaningful contribution to its significance.

Hatfield Place

188. Mr Handcock explained that the starting point of his assessment was to assume that the agricultural fields within the red and blue land made a contribution to significance. It is obvious Historic England have done the same thing, but as Mr Handcock made clear, it is the analysis of the contribution that the land makes to significance of the assets that is the relevant and necessary assessment to understand the impact of new development on the significance of the assets. The start point cannot therefore be the end point and it is the analysis in between that is lacking in Historic England's consultation response dated 6th February 2017 (CD27.4 set C).

189. It is acknowledged that Historic England have constraints in terms of resources and the time available to respond to applications such as this. No criticism is made of Historic England for not carrying out its own assessment in line with its guidance. However, Historic England's response (CD27.4 set C) is heavily focused on views, which cannot be determinative of harm to significance, and fails to explain why the appeal/application site fields "greatly contribute to the significance of the listed building." The response says that the fields provide an open, tranquil and rural setting to Hatfield Place but it does not go the stage further that it needs to, which is to say why that is important to the heritage significance of the building.

190. Historic England also says that the separation between the building and the village contributes to its significance suggesting that the distance between the House and the settlement was a deliberate display of wealth. However, no evidence is produced to demonstrate that is the case or why the existing separation that would remain would be inadequate. GDL disagrees with Historic England's position for the following reasons:

i) While the presence of agricultural land around the House does allow its separation from Hatfield Peverel to be read on the ground, it does not rely on this land for its significance;

ii) Hatfield Place was not, as part of its raison d'être, associated with large landholdings, nor was it developed with rural isolation in mind;

iii) It was built directly adjacent to an important, turnpiked road and another, slightly larger house and estate (Crix) and just outside a reasonably sized settlement;

iv) Essentially, Mr Handcock explained, the House was squeezed between Crix and within close proximity of the village of Hatfield Peverel. The William B existed before Hatfield Place and is in very close proximity to it. Hatfield Place was not a 'country house' within the usual meaning of the word;

v) In any event, in respect of the 80 dwelling scheme, built development will come no closer to Hatfield Place than it already is. There will be no reduction of separation if that is important; and

vi) suitable separation will be retained with the 140 dwelling scheme such that the asset's separation from surrounding development will remain when appreciated from the public footpath and The Street and when read more broadly. Development will not encroach on the pleasure grounds of Hatfield Place.

191. Fundamental to the understanding of the significance of Hatfield Place is that this is a residence the occupants of which have always valued privacy. Far from exploiting a relationship with the land to achieve views over it, the occupiers of Hatfield Place have always valued privacy from and visual disunity with that land - even when it was within their control.

192. That stands in stark contrast to the immediate pleasure grounds and the land to the south and west of the House. It is only in those directions that longer distance views are available and indeed encouraged through intentionally sparse planting. Accordingly, the land that contributes most to significance is that within the immediate Pleasure Grounds, allowing the open views south towards the Danbury Ridge. Glimpsed, screened views towards and from Hatfield Place to the site clearly make a limited contribution towards significance.

193. The contention is supported by GPA3 'The Setting of Heritage Assets' (CD27.3C) which addresses views and settings at page 3. It lists at paragraph 3 the sorts of views that could be considered to contribute more to an understanding of significance of assets. The glimpsed and incidental views through the trees to the application site from Hatfield Place are not those sorts of views.

194. There will be glimpsed views of the 140 dwelling scheme and not significant inter-visibility as suggested by HPPC (paragraph 175 ID48). However, seeing development does not equate to harm. There will be even less of an impact in summer when Hatfield Place's only boundary is in full leaf and, in time, so too would be the site boundary. There will also be views from the House itself but Mr Handcock, who has been and looked out of the windows, explained that the angle is such that it is necessary to look obliquely to see it. The House was not built to overlook the proposed development land in question and the views are plainly not significant.

195. It is peculiar that Historic England in its response considers that "the presence of vegetation should not be a determining factor in terms of impact." It may not be determinative, but it is certainly important. First, the boundary planting to Hatfield Place is historic and has always been in situ, as Mr Handcock explains, to filter views to the east and promote the privacy of the immediate pleasure grounds. Secondly, Historic England's own guidance, expressly provides for the assessment of tree cover and vegetation when considering both how and to what degree settings make a contribution to the significance of the heritage asset and in assessing the effect of the proposed development (pages 9-11 CD27.3 set C). Importantly, paragraph 29 of the guidance also confirms that screening may also be relevant to mitigation.

196. Historic England appears therefore to have had little regard to its own guidance in formulating the response. No one is proposing that the boundary treatment at Hatfield Place should change and, indeed, significant additional planting is proposed that will provide screening to the new housing from Hatfield Place.

197. However, visual connection is not the only way in which the site may contribute to significance and Mr Handcock has assessed the spatial and experiential contribution of the site to the significance of the building (paragraph 5.50, 3/POE). He has not simply focused on the narrow approach of intervisibility which was the complaint in *Steer v SSCLG* [2017] EWHC 1456 (Admin), alighted upon by SPMRG (paragraph 54 ID49).

198. There was a great deal of cross examination by both HPPC and SPMRG about the potential for there to be some communal value associated with Hatfield Place that would be harmed by the proposals. Mr Handcock explained that he had considered communal value but concluded that it did not make a significant material contribution to the significance of Hatfield Place. It has not really been articulated what the communal value, if it exists, actually is. Communal value derives from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory (paragraph 54, CD27.1 set C). Mr Handcock explained the sorts of assets Historic England has in mind when looking at communal significance as a potentially important consideration with regards to significance; Brixton Market is an example, which is listed because of its historic and cultural importance to the Caribbean Community as a whole

199. In this instance, Mr Handcock confirmed that he does not assess Hatfield Place as having communal value albeit he recognised the association between the building and County-level figures; that would remain unchanged by the development. On behalf of SPMRG Mrs Freeman made the case that the footpath has communal value. The footpath however is not a heritage asset and neither is it proposed to change the route of the footpath. To the extent that residents of Hatfield Peverel are able to meet on the footpath (both inside and outside of the area for built development) and discuss the history of the village, that opportunity will still remain post development. Further new houses would not obscure any views to Hatfield Place that are presently available from the footpath.

200. Hatfield Place is not visible from the footpath as it runs through the east of the site as will have been seen on the site visit. The experience that is important to Mrs Freeman, articulated in SPMRG's Closing Submissions (paragraph45 ID49),

will remain; Hatfield Place does not emerge from behind the trees on the footpath until the walker has left the area of built development on either proposed scheme. That experience will therefore remain the same.

201. Insofar as it is alleged that Mr Handcock should have consulted with local residents about the scheme:

i) Mr Handcock did not assess that the building had or could have any communal value that would be adversely impacted by the scheme and thus it was not necessary to consult further with local residents;

ii) Such an exercise would be impractical and disproportionate in respect of every heritage asset assessed and would not be done unless there was a good reason to do it; and

iii) Mr Handcock has seen the various objections to the proposals and has read the heritage evidence of SPMRG. He confirmed that it does not change his conclusions as to the effects of the scheme on communal value, or at all.

202. It was put to him in cross examination that the new development would harm the tranquility of Hatfield Place but he confirmed that there is not a great deal of tranquility at Hatfield Place generally as a result of the A12. Tranquility is not fundamental to the significance of Hatfield Place and neither would the existing situation be fundamentally changed by the development.

203. SPMRG regard it as highly important that the land has remained undeveloped (paragraph 50 ID49). It is said that whether that was deliberate or fortuitous "is not relevant". It plainly is relevant. If it had been the intention of the owners to keep the land open for some special reason, or to create a designed view, then that may contribute to the understanding of the asset and its historic relationship with the land in question. That is not the case here.

204. Mr Handcock explains the chronology of the relationship between Hatfield Place and the site from paragraph 5.27 (3/POE) and detailed in his appendices at A2 (4/POE).

205. The earliest maps of 1777 and 1805 shows that the site "Ponds", as it was known, was at that time part of a scattered rural settlement rather than being in rural isolation. Mr Handcock explained in cross examination that where the decision was taken by the cartographer to show curtilage on the maps - and that was not a decision taken lightly - it would indicate a physical and visual boundary between the site and Hatfield Place as early as 1777.

206. The idea that large grounds should surround the house, as with other landholdings such as Boreham House nearby, was never part of the conception of Hatfield Place. Rather it has always had distinct boundaries drawn tightly to the north and east which have been strengthened over time to retain privacy and shut out wider views north and east;

207. In 1841, the tithe Map excerpt A2.3 shows the pattern of screening along the eastern boundary of Hatfield Place that has remained to this day;

208. At that time, part of the application site for the 140 dwelling scheme was within the ownership of William Walford in common with Hatfield Place, but all of the land to be developed for housing as part of the 80 dwelling scheme was in

the ownership of Peter Wright. There was therefore a limited relationship between the site and Hatfield Place;

209. By 1917 (A2.5) the house was marketed for sale by the Tyrell family and had grown to encompass a lot of 40 acres. This covered the whole of the site and the open land to its south. Crucially however, this land was offered as a plot either together with the House and Pleasure Grounds or separately. This land was in an agricultural use and mostly lay fallow at the time of the sale.

210. Mrs Freeman sought to suggest that the conditions of sale (F21.e) demonstrate a desire of the owner of Hatfield Place to retain control over the adjacent land. It does no such thing - it simply provides that custody of the documents for Lot 2 (including part of the proposals site) would remain with the purchaser of Hatfield Place (Lot 1) until requested by the purchaser of Lot 2. No element of control of the use of the land was to be retained at all. Mrs Freeman accepted that it could have been by way of restrictive covenant for example.

211. Thereafter, Mr Handcock explains that much of the landholding to the east and west of Hatfield Place was leased to Lord Rayleigh's Farms and held by that firm between 1932 and 1957.

212. The site was again offered for sale separately in 1956 (A2.6), demonstrating once more the willingness of the then owners to part with control of the land.

213. In terms of the historic relationship between Hatfield Place and the appeal site, it is correct that, at times, some of the land has been in one ownership but it has not been consistent and at various points the owners of Hatfield Place have attempted to sell land encompassing the proposals site separately from the house and have leased it to different landowners. A disjointed picture emerges that suggests a regular transference of land (both in terms of ownership and tenancy), much of it under the overall control of Peter Wright. The House and the proposals site are now in entirely separate ownership and the link, such as it was, has been completely severed.

214. SPMRG suggested in cross examination of Mr Handcock that the views back towards the House from the south were important to the significance of Hatfield Place. He fundamentally disagreed that the views back to the House share the same significance as the view looking out. The views back are incidental and not views over which the owners of Hatfield Place have any control. They are at some significant distance and the fundamental character of the view - Hatfield Place within an immediate tree setting - would continue to be appreciated with the new development. Mr Handcock confirmed that the ability to see more of the village in the view would not erode the sense of separation between the House and village and would not harm the sense of Hatfield Place as a separate entity in its own pleasure grounds .

William B

215. Historic England's consultation response concludes that although there is no particular historic connection between the William B and the application site, the proposals would "erode even further the rural setting of the William Boosey to the east, with views becoming more urban in nature rather than rural. The existing setting of the William Boosey PH will therefore be harmed."

216. However:

i) The assessment is not about whether the setting will be harmed, but how change in the setting affects the significance of the asset. It is surprising that Historic England conflates the two concepts, despite its own clear guidance as to how the assessment should be carried out;

ii) Historic England say nothing about what the site contributes to the significance of the William B or why a change in the setting will adversely effect the significance of the asset and the ability to appreciate the William B.

217. In views from behind the William B in the direction of the appeal site, there is already a presence of modern built development (CD27.5 set C, viewpoint 1). The wider rural landscape to the south of Hatfield Peverel towards the Ter Valley which is beyond the tree line is neither obvious nor important. The views are enclosed by existing housing development and new homes will have an extremely limited impact on the view.

218. Further, the William B's significance relates primarily to its fabric, its aesthetic qualities and its lengthy use as a coaching inn. The building's setting relates almost entirely to The Street as the thoroughfare towards which it is oriented and which has always been the source of its income. Neither area for development have been identified as having any historic or functional relationship with this asset and makes no material contribution towards its significance as a village-edge coaching inn, partially of a fifteenth century date. It is therefore concluded that the scheme, largely screened and viewed within the context of existing housing, would not generate an impact on the asset's significance.

Level of Harm

219. None of Historic England, SPMRG or HPPC identify in evidence where the level of harm lies on the less than substantial harm scale. SPMRG has done that within its closing submissions (paragraphs 64 and 65 ID49), but on the basis (it can only be assumed) of Miss Scott's own assessment. That is beyond the remit of counsel and does not remedy the absence of a full and proper assessment of the impact of the schemes on heritage assets.

220. The level of harm is important because the category of ‘less than substantial harm’ covers all levels of harm from negligible to something just below substantial harm. The calibration is important when it comes to weighing the public benefits pursuant to Framework paragraph 134. That is not an exercise that has properly been carried out by anyone other than the Council, who on the advice of Essex County Council (CD27.4 set C) place the harm at the lower end of the spectrum, and Mr Lee, who provides a 'precautionary balance' on the basis of the Council's identified harm having regard to the statutory duty to have special regard to the desirability of preserving the setting of heritage assets. Both exercises demonstrate that the public benefits of the scheme outweigh the limited harm. The same conclusion was arrived at in both the Coggeshall (CD32.2 set C) and Silver End (CD32.7 set C) appeals in this District.

221. It is acknowledged that Historic England is the statutory consultee and that as confirmed in *Steer,* cited by both HPPC and SPMRG, decision takers are entitled to give great weight to Historic England's view. However, as always, weight is a matter for the decision taker and the decision taker is also entitled to disagree providing that cogent and compelling reasons for doing so are provided. It is

submitted that there are good reasons for departing from the view of Historic England in this instance:

i) Historic England has not carried out a detailed assessment. That is not a criticism of it but it does go to the weight that can be given to their assessment as opposed to Mr Handcock who has carried out a detailed heritage impact assessment and presented as a credible and knowledgeable witness at the Inquiry;

ii) The views of Historic England have not been subject to cross examination. They did not appear at the Inquiry. Again, no criticism is made but the evidence they produce in contrast to Mr Handcock's is untested. It is obvious from the preceding analysis that some of the views expressed in the consultation response do not withstand scrutiny and/or require further exploration;

iii) Historic England has not identified why and to what extent it disagrees with the assessment provided by GDL. Mr Handcock is rightly disgruntled that having provided a thorough assessment and addendum Historic England appears to have had little regard to the substance of his assessment, concentrating apparently upon a visual analysis of the impact of the scheme. It is too simplistic an approach that fails to grapple with the concept of heritage significance. It is the narrow focus that was rejected by Mrs Justice Lang at paragraph 61 in the *Steer* case.

222. GDL agrees that if harm were to be found in respect of either listed building, then s66 would be engaged and great weight would need to be given to the conservation of the asset. GDL does not disagree with the High Court decision (*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22) cited in HPPC's Closing Submission (paragraph 179 ID48). It is important however to have regard in this instance - where the harm is less than substantial -to the recent Court of Appeal case of *Palmer v Herefordshire CC*, [2016] EWCA Civ 106 [CD31.4 set C] in which the Court indicated that when according 'great weight' to such harm (as per the wording of Framework paragraph 132) the degree of harm remains highly relevant.

223. The court agreed in that case that "the duty to accord 'considerable weight' to the desirability of avoiding harm does not means that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight." (paragraph 34).

Whether the development site is best and most versatile agricultural land and the policy implications if it is

224. Following the conclusions of the previous Inspector (Parker) in respect of the 80 dwelling proposal (CD32.6 set C), GDL commissioned an independent consultant to undertake an invasive survey of the site. This report was circulated to all parties to the Inquiry and Mr Lee included it in his evidence (1/APP, Appendix 1). The report concludes that the site consists purely of subgrade 3b agricultural land. As such the site is not formed of best and most versatile agricultural land. It is clear that the proposals comply with policy CS8 in respect of protecting best and most versatile agricultural land.

225. SPMRG do not return to the issue in its Closing Submissions which is unsurprising given Mr Dale's concessions in cross examination. HPPC now

however decide to allege a policy conflict, despite neither of its witnesses taking the point. Having raised the issue in oral evidence, Mrs Jarvis was cross-examined on the basis that the appeal site is not best and most versatile agricultural land to which she agreed. She also agreed that the site was "poorer quality land" for the purpose of Framework paragraph 112. Framework paragraphs 110 and 111 do not treat the loss of non- best and most versatile agricultural land as harmful unless the loss is 'necessary' as asserted by HPPC in closing (paragraph 159 ID48). The submission is just wrong.

Effect on Biodiversity

226. Overall, the schemes would have a significant net benefit for biodiversity. Significant enhancements are proposed and through sensitive design, the site is capable of assimilating new development successfully while maintaining and enhancing the ecological status of the site and connectivity to the wider landscape.

227. It is acknowledged that there is potential for the survey area (land encompassing both schemes and associated green space) to support breeding and foraging farmland bird species. However given the small size of the area, the restricted range of habitats present and the changeable arable management regime, it is considered that the survey area is only likely to support these species in low numbers and on an intermittent basis.

228. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark. Moreover, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnock, starling and house sparrow.

229. Once established, green infrastructure proposals such as tree planting, grassland within public open space and the attenuation pond will increase the diversity of available habitats that are present on-site. Favourable management of these habitats over the long-term will ensure that the site continues to provide benefits for a wide range of species that are known to occur in the local area.

230. Mr East spoke on behalf of SPMRG against the scheme and concluded that the scheme would be harmful to ecological interests on site. He relies on surveys undertaken by others and confirms that he is not an ecologist. No formal ecology or bird surveys in accordance with published guidance or criteria have been undertaken by SPMRG to contradict the assessments submitted on behalf of GDL (CDs 1.9 set A, 1.24 set A, 1.9 set B, 3.23 set B and 26.2 set C).

231. The following are further submissions in relation to the evidence of Mr East and ecology matters generally.

232. Mr East accepted that achieving net gains in biodiversity where possible is supported by the Framework and is to be regarded as a good thing, but he has not taken any of the benefits into account when commenting on the scheme. Mr East confirmed that he does not see how it is possible to conclude a net benefit in biodiversity terms when changing an agricultural field into built development. That narrow and frankly wrong view has coloured his opinion and is not borne out in the evidence.

233. Mr East accepted that the County Council's Principal Ecologist is content with the scheme and the mitigation measures offered (ID16). The email confirms that should permission be granted, there can be confidence that the section 40 biodiversity duty under the Natural Environment and Rural Communities (NERC) Act 2006 has been met.

234. Mr East confirmed that he commissioned a Bird Survey Report from Mr Hawkins (F7b). However, the Report does not accord with any formal bird survey criteria, was taken over just one day, does not conform to any set or described methodology, recorded birds both off and on site without describing the context of the site at all and recommended that a Breeding Bird Survey be done. Multiple surveys are necessary however given that one survey may either not pick up all the birds present on site or give the impression of a better bird assemblage than there really is.

235. A Breeding Bird Survey has now been done (CD26.1 set C) and in all cases but two, found that the impact would be locally beneficial in the mid to long term. In the case of Linnet and Skylark the impacts are judged to be locally adverse and negligible respectively. However, neither of those species is considered to be nesting on site and, as Dr Mansfield explained, the site provides only an inconsistent resource with low habitat suitability.

236. Overall, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnock, starling and house sparrow.

237. Mr East also provided lists of evidence from Mr Thurgood (RG1, Appendix 1) and Highways England (F18e). In respect of the first, it is self confessedly a list produced for pleasure and amusement and not for scientific survey. It takes in an area much wider that the site. It was also taken over a period of 15/16 years and provides little information on the context of the area or what the birds were doing on site.

238. The Highways England email urges caution in the use of the information provided and plainly provides a list of many species that could not possibly be seen on site. Mr East has transposed his view of the area covered onto a plan (RG1, Appendix 2) but has not sought to verify this with Highways England. There is no evidence that any of the surveys were taken on site and again crucial information is lacking which means that no conclusions at all can be drawn from that study in relation to the proposals site.

239. Mr East agreed that he would urge the Inspector to exercise caution when reviewing the surveys, given their limitations.

240. Mr East also raises a question about the use of a butane cannon interfering with the surveys. Dr Mansfield confirmed that if cannons were used during the hours that ornithologists were on site to carry out the survey, it would be recorded as a limitation. None were firing when any of the surveys were taken. One was recorded on the 3rd May 2017 which was when (as Dr Mansfield explained) a general habitats survey was being taken to validate the result of the earlier survey.

241. Dr Mansfield explained in evidence that while long lists of species are interesting, they do not provide context. The context of any site and the type

and quality of habitats it provides to a range of species is fundamental in understanding the impact of the proposals. Dr Mansfield confirmed that there was nothing in the evidence submitted by SPMRG that would change her conclusions on the type and number of species present on site and impacts of the scheme on them.

242. It can safely be concluded that the proposals do not lead to unacceptable effects on biodiversity. There will in fact be net gains for both flora and fauna as a result of the green infrastructure proposals through the creation of new habitats for a diverse range of species.

243. It is said that the provision of additional planting on the blue land cannot of itself amount to a benefit because it is provided as mitigation. However, the simple fact here is that the provision of significant new planting and the provision of habitats is a significant improvement in biodiversity terms over the baseline as it presently exists. They are benefits that flow from these particular schemes and are benefits that would not be realised without the development of the proposals site for housing. The proposals comply with policies RLP80, RLP84 and CS8.

The effect of the development on the community and social infrastructure of Hatfield Peverel.

244. There is no evidence that Hatfield Peverel is anything other than a sustainable location for new housing growth. There are a range of services, facilities, clubs and activities that could accommodate new residents and to which new population within the village would contribute.

245. Mr Renow seeks to suggest that the village lacks the services and facilities to accommodate new development (paragraph 10 HPPC1). However, he includes at Appendix MR5 a list of clubs, organisations and businesses that exist within the village -they demonstrate the wealth of services and facilities that are available - with Mr Renow confirming that some clubs are so popular, they have had to find other venues outside of the village. Hatfield Peverel is a thriving settlement.

246. What Appendix MR5 confirms is that there are a range of social opportunities for new residents as well as a number of services and facilities that will cater for day to day living. Those include convenience stores that would provide for top up shopping, as well as hairdressers, beauticians, garages, a library, dry cleaner, florists and a number of restaurants, to name just a few. There is also the school and the surgery. Mr Renow accepted that all of those business give rise to employment opportunities for people working in the village.

247. Mr Renow's point was that, over time, employment opportunities in the village have reduced. However, despite that, there are no allocations within the emerging NDP for an employment site and the one allocation for housing (the Arla site) does not require a mix of uses to come forward. Mr Renow accepted there were good links for commuters from the village to travel to work either by train or bus and thus residents of Hatfield Peverel can access employment centres in a sustainable way without having to rely on the private car.

248. He also accepted the train service begins around 5am in the morning, with trains to London and runs until after midnight. He accepted that the train station is within walking distance of the site and that other nearby towns and job

opportunities can be accessed by sustainable transport modes. Mr Renow accepted that people would not have to commute by car if they were leaving the village to find work.

249. Where there are identified capacity constraints, such as with the medical practice, all the schemes before the Inquiry are providing a contribution to mitigate its impact.

250. In respect of education, Essex County Council - as the Education Authority - has decided not to seek a contribution towards primary education. That is a matter for the Authority having regard to its own infrastructure planning and the constraints imposed by law. If a contribution had been requested it would be paid but it is not for GDL to make contributions that are:

i) not asked for; and

ii) which might put the Education Authority in difficulty in terms of pooling contributions in future.

251. Moreover, without a specific request to be spent on a particular school or schools a contribution could only ever be generally to "education" to avoid pooling constraints and contributing to schools that would not be able to use the money. Such a contribution is unlikely to meet the statutory or policy tests because there is no way of showing that such a contribution would be directly related to the particular scheme for determination.

252. A SOCG has been agreed with the Education Authority confirming the position (ID1.8). There can be no doubt that there will be sufficient school spaces for children living in the new houses in line with the County Council's statutory duty to secure sufficiency and diversity of provision for its area.

253. First, Essex County Council has a statutory duty to secure sufficient school places for the children in the area. How it does that is entirely within its control and remit. There is no evidence that its position in respect of the schemes at this Inquiry would result in an additional burden on the tax payer as asserted by HPPC (paragraph 127 ID48).

254. Second, Essex County Council must be content that it can meet the duty without contributions from these proposals. If it would not, it would object to the schemes on the basis that the impact, which was not mitigated, was unacceptable. The Council may then have decided to identify an insurmountable policy conflict; it has not.

255. Third, Essex County Council accepts there is not presently capacity within the school at Hatfield Peverel to accept children from all of the proposed developments but also makes the point that 35% of children presently attending a Braintree Group 10 school live in the priority admission for other areas. Those are children that are having to travel to Hatfield Peverel (by whatever means) on a daily basis. That is their parents' choice and they are shouldering exactly the burden that HPPC complains about (paragraph 128 ID48). Eventually, the children from Hatfield Peverel who have priority because of proximity to the school and who want to attend there will displace those children back to their own priority areas.

256. Fundamentally, where children go to school is a far more nuanced question than proximity. It will depend on factors such as parental choice and

convenience, how good the local school is and a whole host of other reasons that no formula could account for.

257. Mr Renow accepted that there were safe walking routes to and from the proposed developments and the school at Hatfield Peverel. In respect of the schools at Witham it is possible for them to be accessed by bus. There is a footpath to Witham but it is acknowledged that is along the dual carriageway and that most parents would regard it as undesirable.

258. There is complaint that the Surgery in the village is also under pressure and would have difficulty accepting new patients. A letter has been referred to from Beverly Jones, Practice Manager, voicing concerns that the money provided by way of s106 may not benefit the two surgeries (F29b).

259. However, that is precisely the way the obligations in these matters are drafted. They mirror the request by the NHS for money to be paid to Sidney House Surgery to provide increased capacity. If it cannot be extended the money can be used in other ways - for example, to refurbish, or to reconfigure the surgery. It is not necessary to extend a building to improve capacity and enhance the way it is used. The specificity of the contribution addresses directly the concerns of the Practice Manager that the money might be spent elsewhere.

260. There can be no allegation that GDL is not providing all that has been asked for by the statutory consultee. Both SPMRG and HPPC submit that the money cannot usefully be applied to Sidney House. However, the NHS is clearly best placed to determine the capacity of its own resources and must be confident that the money is both required and can be usefully applied at Sidney House.

261. Further evidence was given that the surgery had applied to close the list to new patients. That request was refused and thus the deciding body must be of the view that the Practice is not operating at capacity. Further, if the list is closed, people will have to go elsewhere. It is difficult to see how that gives rise to harm - it is not a facility that most would need to access on a daily basis and public transport links to nearby settlements are so good that people could access doctors by sustainable transport modes, or as part of linked journeys.

262. Further contributions are provided in respect of:

i) outdoor sport
ii) allotments
iii) affordable housing
iv) education - early years
v) ecology
vi) upgrading of bus stops on The Street (£40,000)
vii) Blackwater Estuary Mitigation Contribution (£15,000)

Transport, Air Quality and Protected Lanes

263. The Closing Submission for HPPC and SPMRG appear to abandon the points made by those parties in relation to transport, air quality and protected lanes and no harm is said. A summary of the position is set out below for clarity.

264. The transport assessment submitted with the 140 dwelling application (pages 35-37, CD1.7 set B) demonstrates that the proposals are at worst likely to

generate 78 additional vehicle movements in the AM peak and that of these, 52 of the outbound vehicles would be expected to turn left out of Stone Path Drive onto Church Road northbound based on current traffic distribution behaviour.

265. This would leave a maximum of 4 vehicles in the AM peak hour which would be expected to turn right onto Church Road southbound. Even if all of these vehicles were to turn right onto Crabbs Hill towards the protected lane at Sportman's Lane, this would work out as one additional vehicle every 12 minutes. The trip generation would be even less in respect of the 80 dwelling scheme.

266. It also means that 26 vehicles - or less than 1 every two minutes - will turn right on Church Road towards the B1019 Maldon Road/The Street junction. The impact of the development proposals on that junction was not raised as an issue by the Council or the Highway Authority but the cumulative assessment by Martin Doughty demonstrates that the impacts of the proposals before this Inquiry would be acceptable either individually or cumulatively.

267. The Air Quality assessment submitted with the larger Scheme (CD1.13 set B) found that the development would not lead to an unacceptable risk from air pollution. The same is true in combination with the Gleneagles Way scheme, with the cumulative air quality impact on local air quality being considered to be "negligible" (ID1.4).

268. George Boyd Ratcliff on behalf of SPMRG appends a number of Reports to his proof (RG8) that are said to go to the issue of transport impact and Air Quality. Mr Boyd Ratcliff was not called to give evidence as matters were considered to be dealt with already but the documents he appends to his proof are worth a mention. Appendices H1 and H2 demonstrate that both the Council and Essex County Council - both of which have commented on the transport implications of the proposals - are fully aware of the nature of traffic leaving Maldon and entering into the B1019/The Street junction at Hatfield Peverel. The information is not new (it dates back to 2014) and was within the knowledge of both the Council and Essex County Council when determining the proposals before this Inquiry to be acceptable.

269. No transport assessment has been submitted by either HPPC or SPMRG to demonstrate that the impacts of the schemes in highways terms would be unacceptable and it is not alleged that the impacts of either or either scheme in combination with the DWH proposal would be severe within the meaning of Framework paragraph 32.

270. The Air Quality Annual Status Report (August 2016) (Appendix 3) is now of some age and is superseded by the site specific assessments provided to the Inquiry. Nonetheless, the Report needs to be treated with some caution given that the relevant data for Hatfield Peverel (page 26) which shows a NO2 concentration level of 46 µg/m3 is not the NO2 level at the receptor, which is the relevant level, and is 30.9 µg/m3. The Report therefore concludes that the monitoring is not identifying any exceedances of the air quality objectives (page 10).

271. No Air Quality Report has been submitted by SPMRG to demonstrate that the impacts of the schemes, either individually or together, would be unacceptable.

272. For the reasons set out above there is no conflict with policy CS11.

Planning policies and approach to the planning balance

273. It is trite to say that the determination of these applications begins with s38(6) of the 2004 Act. That is the statutory starting point and whatever impacts the Framework may have, it is never more than a material consideration. It is however an important material consideration against which the relevant development plan policies will have to be assessed.

274. Equally important, because it is the second part of the statutory test, is to consider all the material considerations that relate to the scheme - the benefits and disbenefits - and to consider whether any policy conflict is outweighed. In this instance, it is acknowledged that there is a conflict with RLP policy RLP 2 and CS5, because this site is outside of the settlement boundary. It is not a proposed allocation and does not meet with the exceptions set out in those policies. However, the conflict can be given little weight for the reasons explained below.

275. Where a local planning authority cannot demonstrate a 5YHLS Framework paragraph 49 operates to render relevant policies for the supply of housing out of date. However, the Supreme Court in *Suffolk Coastal* has recognised that it is Framework paragraph 14 and not Framework paragraph 49 that provides the context for decision taking and if there is not a 5YHLS it matters not whether the failure is as a result of "policies for the supply of housing" or other policies (paragraph 59 CD31.2 set C).

276. If there is not a 5YHLS then the categorisation of the policy is "inappropriate and unnecessary" (paragraph 65); Framework paragraph 14 applies in any event. Thus, the Court accepted the Inspector (in the *Richborough* case) had been entitled, as a matter of planning judgement, to reduce the weight given to the development plan's restrictive policies protecting the open countryside and the green gap to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements;" (paragraph 63).

277. Even where Councils can demonstrate a 5YHLS it does not mean the policies are automatically up-to-date or that proposals that are otherwise acceptable should be refused. Development plan policies will have to be assessed for consistency against the Framework as part of the Framework paragraph 215 exercise. The *Daventry* case cited by the Council in closing makes clear that the policies should be assessed against the totality of the Framework to ascertain consistency. Relevant policies may also be out of date for other reasons; because the plan is time expired or because there have been changes in local circumstances or significant changes in planning policy or guidance; (*Daventry*, paragraph 40 and *Suffolk Coastal*, paragraph 55).

278. The following are all relevant when considering the weight to be given to extant development plan policies in this matter:

   i) The policies here were conceived in a policy environment that sought to protect the countryside for its own sake. The position of the Framework is to "recognise" the intrinsic beauty of the countryside, and to protect valued landscapes (Framework paragraph 109). The level of protection is to be commensurate to the particular interest (Framework paragraph113). The point is taken up by Lang J in the High Court decision *Telford and Wrekin v SSCLG* (paragraph 47, CD31.3 set C):

> *In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational.*

ii) The present national policy context is radically different and promotes a boost in housing land supply. The previous CS target was 273 dwellings per annum. The up to date OAHN is 716 dpa. That is a significant increase that cannot be accommodated within the policy constraints of the existing development plan;

iii) The Council agrees the development plan is not founded on an up-to-date and robust housing requirement as required by Framework paragraph 47. It is proposing a new requirement advanced through the emerging BNLP. The figure is significantly higher than the previous requirement. It will require a step change in housing delivery in order to meet it;

iv) To meet the housing need, the Council is proposing to allocate significant land beyond the settlement boundaries and granting permission on greenfield sites for development beyond the settlement boundaries. That, if nothing else, demonstrates that the boundaries have served their purpose and are out of date.

v) The policies are therefore inconsistent with the key Framework objective of 'providing the supply of housing required to meet the needs of present and future generations' (see *Daventry*)

279. Importantly, Framework paragraph 12 stresses the importance of having an up-to-date plan. It is regarded as "highly desirable". Framework paragraph 17 explains that plans should be kept up-to-date so that they "provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency."

Policy CS1

280. GDL does not accept the position advanced by HPPC that there is a conflict with this policy. GDL has seen the submissions of DWH on this matter (paragraphs 106 to 111 inclusive above) and adopts the arguments there set out.

Policy CS5

281. It is not GDL's case that policy CS5, or indeed the need to recognise the intrinsic beauty of the countryside can be forgotten about because CS5 is based on out of date boundaries and there is not a 5YHLS. The impact of the scheme on the landscape is an important consideration in this appeal, but CS5 requires all schemes in all open countryside to satisfy a threshold that the Framework requires only in relation to valued landscapes - to "protect and enhance". It is that threshold - a fundamental component of the policy - and what it is seeking to achieve that is inconsistent with the Framework and was exactly the point that was addressed in *Telford and Wrekin* (CD31.3 set C).

282. Mrs Jarvis alleged that the policy was consistent with the aims of the Framework paragraph 17(7) but also agreed in cross examination both that the relevant bullet point of Framework paragraph 17 does not set an absolute threshold for all development and that there is no general duty to enhance the countryside. It will be clear that the part of Framework paragraph 17 relied on provides a broad overarching principle which is to be implemented by more detailed policies within the Framework. It is relevant in that respect that Framework paragraph 6 does not include paragraph 17 within the definition of "sustainable development".

283. Moreover, that particular bullet point directly correlates to Framework Chapter 11 and paragraph 109 where what is required to be enhanced and protected are valued landscapes - not ordinary countryside.

284. Further, the observance of development boundaries is absolutely integral to the policy. If that part of the policy is removed as it must be given the out datedness of the boundary (the Council does not apply rigid boundaries – paragraph 59, CD32.2 set C), it no longer makes any sense. There is no criterion against which to measure the acceptability of development such as those before the Inquiry other than whether it is the right or wrong side of the boundary.

285. The weight to be given to CS5 is of course a matter of planning judgement for the decision-taker but regard should be had to the reasoning in *Telford and Wrekin*. HPPC on *Cawrey Ltd v SSCLG* [2016] EWHC 1198 in response (paragraph 51 ID48). However, the submission also omits a key part of the very paragraph it relies on that makes clear the important distinction in that case - that the Inspector had found the Council could demonstrate a 5YHLS. That finding had a direct bearing on the Judge's findings at paragraph 50 which are reproduced in full below:

> *Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission. If reliance is then placed on NPPF, one must remember always what Lindblom LJ has said in Suffolk Coastal about its status. <u>It is not suggested in this case that this is one where the NPPF paragraph [14] test applies, which given the Inspector's findings on the</u>*

> *effect on the landscape, and the fact that HBBC is the Borough, and Ratby the settlement, where the policies considered in Bloor applied, is unsurprising. Nor is it suggested that he should have applied NPPF [49] given his findings on housing land. There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990. (*emphasis added*)*

Policy RLP2

286. GDL agrees with the Council that policy RLP2 can attract only limited weight for the reasons set out in its submissions (paragraph 35 ID47). Both HPPC and SPMRG rely on the policy but do not engage with the weight to be given to it. It is clearly out of date and incapable of delivering housing to meet the needs of the population now.

Heritage policies

287. The policies in the development plan are out of date in respect of heritage. They do not provide for the weighing of benefits as against the harm - the approach adopted by the Framework - and thus set the threshold too high in respect of the development proposals. That applies in respect of both RLP 100 and CS9. It should be noted that while RLP 100 is referred to by SPMRG it is not relevant to this scheme. Read *prima facie*, the policy appears only to apply to development involving internal or external alterations, extensions and partial demolitions to a listed building or structure (including any structures defined as having equivalent status due to being situated within its curtilage) and changes of use. None of those are proposed. However, if it is does apply - the points below are relevant.

288. *Colman* is a case in which policies relating to heritage assets that failed to reflect the policy approach of the Framework were regarded as being inconsistent with the Framework and thus out of date. As is the case here, the policies (paragraphs 25 and 26 CD31.6 set C), required that the historic buildings and their settings be preserved. There was no balancing exercise against the public benefits provided for in the policies. The Judge's observations were as follows:

> *29.The NPPF also applies a threshold of "substantial harm" and provides different tests where the impact of a development is above or below that threshold. Harm or loss can be allowed where there is clear and convincing justification (paragraph 132). Substantial harm should be exceptional (paragraph 132) but can be allowed where it can be demonstrated either that it is "necessary to achieve substantial public benefits that outweigh that harm" or where certain criteria apply (paragraph 133). Where there is less than substantial harm, the "harm should be weighed against the public benefits of the proposal" (paragraph 134).*
>
> *31. It is clear from the foregoing that, unlike the highly restrictive relevant development plan policies, the NPPF takes a far more balanced approach, allowing an analysis of the significance or, where appropriate, of the substantiality of harm to the identified cultural interests, and a weighing of the*

identified harm against the actual benefits that could be expected to result from the benefits...?

289. It is right, as Lindblom J (as he then was) said in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 that Kenneth Parker J's Judgment in *Colman* is not authority for the proposition that every development plan policy restricting development will be incompatible with the Framework, and thus out of date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. Plainly not all policies in the Framework themselves contain such a balance. But in the particular example of heritage policies, the Framework takes a specific approach and requires that the public benefits of the proposals are weighed against the harm which is a more permissive approach than the development plan in this instance. There is therefore an inconsistency and if the Framework is to operate in the way it intends, it would be frustrated by the strict application of heritage policies within a development plan that allows for no harm at all, as is the case here.

290. The approach of the Inspector in the Silver End Inquiry (paragraph 94, CD32.7 set C) in this District is commended to the Inspector and Secretary of State.

Policies RLP 80 and CS8

291. These two policies are broadly consistent with the Framework and for the following reasons the proposals comply with them.

292. Ecological Appraisals (CD1.9, set A&B) and Arboricultural Assessments (CD1.10, set A&B) have been undertaken to support the applications. They confirm that existing important boundary hedgerow features will be retained as part of the development, with the exception of small sections of hedgerows required for access which will need to be removed. Any loss will be more than mitigated for by additional planting and would not result in any significant harm in landscape terms.

293. Mr Holliday's evidence is clear that the development would successfully integrate into the local landscape. The design proposals allow for the retention of existing landscape features which includes boundary hedgerows with some trees. These features will be incorporated into Green Infrastructure enhancements to include additional infill hedge planting, tree planting and the creation of a water body within an area of grassland which will therefore enhance the overall Green Infrastructure and help to integrate the scheme into the local landscape. Planting will consist of native tree species with shrub species chosen to provide benefits to local wildlife in the form of berries and foraging habitat.

294. The additional land adjacent to the site will be offered as public open space to be managed in perpetuity in its current state which will protect the existing grassland and mature hedgerows currently within this area of land. The proposals are not therefore considered to be detrimental to the landscape features of the site and the proposed Green Infrastructure will effectively mitigate ecological effects. Details of exact planting types and species mixes will be addressed at reserved matters and the proposal does therefore comply with this policy.

295. Ecological mitigation against any impact upon protected species is detailed in the submitted Ecological Appraisal (CD1.9, set A&B) and subsequent Breeding

Bird survey report (CD26.1, set C). Any such mitigation can be secured by condition/obligation.

The emerging development plans

296. The compliance of the schemes with the policies of the emerging BNLP and NDP is dealt with by Mr Lee (section 9, 1/POE). However, it is agreed between GDL and the Council that only limited weight can attach to the emerging plans at this stage due to the fact that both plans are at a relatively early stage in the process. In light of Framework paragraph 216 the position of Mrs Jarvis for HPPC that the BNLP should attract "fairly significant weight" is entirely inexplicable and in conflict with the "moderate weight" in her proof (paragraph 2.29 HPPC2).

297. As set out at paragraph 126 above GDL adopts the submissions made by DWH with respect to the weight to be given to the NDP. Those submissions are not repeated here.

298. It is worth perhaps however, summarising two particular policies of the emerging NDP. The first is policy HO1 that requires development should come forward for no more than 30 houses. The policy itself conflicts with the Council's aims for the comprehensive redevelopment area which Mr Renow accepted is likely to require modification of the NDP.

299. Moreover:

i) There does not appear to be an evidence base to support the apparently arbitrary maximum figure of 30 dwellings proposed in this policy;

ii) Such a policy does not accord with the emerging BNLP which identifies Hatfield Peverel as a Key Service Village which has the ability to host a considerable amount of residential development; indeed, the emerging BNLP currently proposes that sites which will provide 285 dwellings are allocated; and

iii) The limit on the number of dwellings on a single development would not prevent, theoretically, a series of separate schemes for 30 dwellings being brought forward the cumulative impact of which would be identical to that of, for example, a single large development of 140 dwellings.

iv) There is fierce opposition to policy HPE6. The means by which the views were selected is questionable and the evidence base is controversial - it has been addressed in other parts of these submissions. The examiner will have to give very careful consideration to whether a policy which seeks protection of important views in almost every direction from and to the settlement meets the basic conditions.

Silence

300. It is GDL's case that the development plan is silent in relation to the location of sites necessary to meet the CS housing requirement following the abandonment of the Site Allocations DPD. GDL relies on *South Oxfordshire* (CD31.7 set C). However, it is not necessary for the plan to be "silent" to trigger Framework paragraph 14; it is simply another route there. Framework paragraph 14 is

triggered here because there is not a 5YHLS and the plan is out of date in any event.

301. HPPC raise the case of *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (paragraph 29 ID48) but do not explain that paragraphs 97, 101 and 103 of the Judgment endorse the *South Oxfordshire* Judgment. The distinctions relied on at ID48 paragraph 32 and the comparison with Green Wedge policy at paragraph 33 is erroneous.

Framework Footnote 9

302. It is only in respect of heritage policies that Framework footnote 9 is potentially triggered. The Council's position is that there is some heritage harm, but when the considerable public benefits associated with the 140 dwelling scheme are weighed against that harm pursuant to Framework paragraph 134, the benefits clearly outweigh the harm. Thus the Framework paragraph 14 tilted balance is engaged in the final planning balance. The Council does not identify harm from the 80 dwelling scheme. Either way therefore, the schemes benefit from the tilted balance at Framework paragraph 14 in the overall planning balance. GDL agrees with the process set out by the Council (paragraph 41 ID47) if some harm to Hatfield Place is found to arise from the proposals.

303. If harm was identified :

i) A balancing exercise weighted in favour of the heritage asset should be undertaken. The harm to the asset(s) should be weighed against the public benefits of the scheme, including the provision of market and affordable housing, the net gains in biodiversity and the economic benefits that would arise;

ii) If the harm to the asset(s) were outweighed then the tilted balance would be re-engaged and permission should be granted unless the totality of the harm significantly and demonstrably outweighed the totality of the benefits. The harm to heritage assets of course features in the overall planning balance, as do all of the benefits. There is therefore no double counting.

304. The approach is endorsed in *Forest of Dean* (paragraph 37, CD31.5 set C).

Restrictive Policies

305. Paragraph 37 of HPPC's Closing Submissions (ID48) is confusing. If it is suggested, as was argued at the Inquiry, that any policy with the potential to restrict development should be regarded as a restrictive policy for the purpose of footnote 9 of the Framework (i.e. policy CS5), the argument is rejected. No other party to the Inquiry supports it. It would mean that in almost all cases proposals were deprived of the benefit of the tilted balance at Framework paragraph 14, which cannot have been the intention.

306. The tilted balance is engaged in this case. Unless the heritage harm outweighs the public benefits of the scheme then, contrary to what Mr Graham suggests in that paragraph, if permission is to be refused, the Secretary of State will have to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The need for Housing

307. Whether the supply is one side of the 5YHLS threshold or the other is not an end to the matter; case law makes it clear that the extent of the deficit is a relevant material consideration in the determination of appeals/applications such as this. It provides the context both in which relevant development plan policies should be judged and how the harm should be viewed because the simple fact of the matter is this; for too long, we have not built enough houses; see Housing White Paper (CD29.11 set C). That is not just a statement of academic interest, but one of real consequence that this Government is at pains to grapple with.

308. It means that homes are becoming increasingly expensive and home ownership is unlikely to become a reality for many. It means that people are forced to live in shared accommodation or with their parents for longer than is desirable. It means that many in need of affordable housing do not have access to adequate housing and, in some cases, no housing at all. It is unsurprising that the Secretary of State, now the Secretary of State for Housing, Communities and Local Government, regards the issue as fundamentally important so that everyone involved in politics and the housing industry has a moral duty to tackle it head on.

309. It is the reason why Framework paragraph 14 tilts the balance in favour of permission and explains that some harm may have to be accepted in the pursuit of sustainable development and that permission should only be refused where the adverse impacts of the scheme significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The Government is not committed to making home ownership a reality for the sake of it - there are real and tangible social and economic benefits that flow from the provision of new housing.

Need for Affordable housing

310. There is an acute need for affordable housing in Braintree District. The Council's affordable housing delivery over the last 4 years (2013 - 2017) stands at just 398 affordable dwellings. The identified affordable housing need for the emerging Plan period (2013 - 33) is 212 dpa- so there is already an accumulated shortfall of 450 affordable dwellings. In this instance the vast majority, if not all, of the dwellings would be built out and occupied within five years (paragraph 8.2.24, 1/POE)

Delivery from this site

311. HPPC takes a point about delivery of the site given that GDL is a land promoter and not a developer (paragraphs 152 -156, ID48). With respect, it is a bad point. GDL is a commercial entity which, as Mr Lee explained in evidence, foots the bill for the application and the appeal and only recovers those costs when the land is sold to a developer. That is not just a powerful incentive to procure the sale of the site as quickly as possible post planning permission, but also demonstrates that GDL, with extensive experience of land promotion and sale up and down the country (having secured permission for over 15,000 homes) must have confidence that the site will be bought and developed. Logic dictates that GDL would not go to the expense of promoting a site it could not sell.

312. Contrary to HPPC's submissions at paragraph 153, the issue was not addressed for the first time in Mr Lee's oral evidence. Paragraphs 10.5.2-10.5.5 of Mr Lee's proof explains the position. Further, the suggestion that a housebuilder would then acquire the site (paragraph 156 ID48) and do nothing with it when there is a time-limited permission is incomprehensible and not supported by any evidence whatsoever. Housebuilders invest millions of pounds acquiring sites and would not play fast and loose with an extant planning permission for some speculative future gain.

Conditions, Unilateral Undertaking and Green Infrastructure plan

313. Conditions and the obligation were discussed at the Inquiry. Financial contributions and other obligations have been provided to satisfy the District and County Councils that the impacts of the development can be effectively mitigated. The changes proposed by the Rule 6 parties have been taken into account and changes made where the requests were appropriate. No wording was provided by either Rule 6 party to GDL after the close of the Inquiry sitting days but both GDL and the Council agree the obligations are CIL compliant and ensure that the proposals are not unacceptable in planning terms.

314. Unfortunately, the changes could not include any of those proposed by SPMRG in relation to the blue land. The Parish Council has indicated a willingness to take on the management of that land if permission if granted but it is not within the power of GDL to designate the area for its ecological value such as it presently is.

315. Green Infrastructure Plan (ID1.6b) was provided at the Inquiry to provide confidence that the scheme will come forward as anticipated to provide a high quality development.

Planning Balance

316. Hatfield Peverel is identified as being one of the more sustainable locations within the District in the adopted and emerging plan. It is a KSV which on page 31 the CS explains are "large villages with a good level of services, including primary schools, primary health care facilities, convenience shopping facilities, local employment, frequent public transport to higher order settlements and easy access by public transport to secondary schools".

317. The application proposals are in full accordance with the spatial strategy of the existing plan as well as the emerging BNLP which directs growth to Hatfield Peverel as a KSV situated on the A12/Great Eastern Mainline corridor (paragraph3.3, CD16.1 set C).

318. The application proposals constitute sustainable development and will contribute to enhancing the vitality of Hatfield Peverel and the surrounding area. The proposals will deliver new homes of the right type, at the right place and at the right time to support the Council's growth aspirations in line with their adopted and emerging spatial strategy. The development accords with these principles in the Framework.

319. The benefits of the scheme are vast and cover all three dimensions of sustainable development. In terms of economic benefits they include, but are not limited to, millions of pounds of spend on the construction of the site and household expenditure of new residents that would amount to millions of pounds annually.

320. The social dimension of sustainability would be fulfilled not just by the provision of market housing but also affordable housing for which the need is acute. It cannot sensibly be argued that the weight to be given to those benefits is anything other than significant. Further, there are benefits to the sustainability of the settlement and the new green infrastructure and play area will be available for use not just by residents of the new development but existing residents too.

321. The scheme provides environmental benefits through proposed green infrastructure and planting. There is potential for site-wide biodiversity gains through new hedgerow tree planting and the SUDS pond which will strengthen habitat linkages across the site and into the wider area.

322. When completed, the scheme will be an attractive built environment that can be successfully assimilated into its environmental and landscape context. It will be a place where people want to live.

323. SPMRG make a point that where mitigation is provided as part of the scheme that cannot amount to a benefit. That is conceptually and factually wrong; there is no reason why something cannot be both. Mr Lee gave the example of the bus stop real time information that will be provided as part of the scheme. Yes, it mitigates an impact related to the scheme, but it will not be used exclusively by residents of the proposals. Other residents of Hatfield Peverel will receive the benefit.

324. SPMRG argues that the benefits that could arise from the proposals could be achieved with housing development elsewhere. The argument is sometimes called the "generic benefits" argument and is misconceived. They are benefits that attach to this scheme and the scheme is not being promoted as an alternative to housing elsewhere. There is a national housing crisis and the benefits of new housing development are not being realised as they should be.

325. In respect of a similar complaint elsewhere Inspector Felgate in the Blean decision (CD32.1 set C) stated:

> *The Council acknowledges these as benefits, and does not challenge the figures, but sees them as modest in scale, and argues that they should carry limited weight. To my mind this seems a somewhat grudging response. The NPPF makes it clear that building a strong, responsive and competitive economy is a key element of sustainable development, and that housebuilding is to be seen as an important contributor to this aim. On this basis, I see no reason not to give significant weight to the economic benefits.*

Summary of benefits

326. For the 140 dwelling scheme these are:

i) Market housing

ii) The provision of 40% affordable housing (up to 56 dwellings)

iii) The proposals provide a considerable amount of open space (totalling 5.59ha), including areas of amenity open space, a locally equipped area of play, structural planting, and an extensive green infrastructure network (including perimeter footpaths) It is agreed that the scheme provides an opportunity for net gains in biodiversity.

iv) An investment in construction of circa £ 13.6 million.

v) Around 119 FTE construction jobs per annum on average throughout the construction period and an additional 130 FTE indirect jobs in associated industries. (CD1.20B)

vi) Up to 140 residential dwellings which could be home to 336 residents, 160 of which will be expected to be economically active.

vii) Annual household expenditure of £ 3.9m supporting up to 14 jobs.

viii) The implementation of the agreed scheme of off site highways works on Stone Path Drive (including signing and double yellow lines) will help to address an existing concern of local residents regarding the use of Stone Path Drive by commuters using the train station.

ix) Improvements to bus stops on The Street to include shelters and Real Time Information.

x) Enhancements to the PROW connecting the site with The Street

xi) Biodiversity enhancements in line with NPPF Chapter 11

327. It is accepted that there will be some harm arising from the development - that is almost inevitable when open countryside is built on - but that does not make the proposals unacceptable, particularly when the Council is relying on such sites to come forward to ensure its housing land supply meets the housing needs going forward. The harm is in respect of landscape and the acknowledged policy conflict with policies CS5, and RLP2 of the development plan.

Conclusion

328. In conclusion it is abundantly clear that there is only a very limited impact to be weighed against a number of very significant benefits. Chief among them, but certainly not exclusively, is the provision of market and affordable housing. There are however many and wide ranging benefits in all three dimensions of sustainability. The development and the people that live there will have the potential to contribute to Hatfield Peverel and enhance the village in a number of ways. They will become active members of the community and contribute to existing services and facilities and perhaps stimulate the provision of new ones. The site is entirely suitable to accommodate residential development, in principle and of this scale; there is no good reason upon which to resist the grant of planning permission on the site.

329. Accordingly, GDL invites the Inspector to recommend that the application be approved and the Secretary of State grant planning permission, subject to appropriate conditions and the terms of the s106 Agreement.

The Case for Hatfield Peverel Parish Council

330. The three schemes each conflict with the statutory development plan and so the starting-point is that they should be refused permission. In essence, the decisions on the three schemes will come down to whether the potential supply of housing should be given priority over the policy objectives of directing growth to other locations within development boundaries and at higher-order settlements in order to protect the environment (including the character of the settlement and historic assets), avoid excessive pressure on local facilities and infrastructure, and reduce the need to travel. This is a question of weight, which may depend on the extent to which any shortfall in 5 year housing land supply is

identified, and on the Secretary of State's confidence that the proposed housing would be delivered on site within the 5 years.

5 year housing land supply: the four step approach

Step 1: quantify the deliverable sites

331. The Secretary of State will need to ask for the purpose of applying the Framework whether there is any shortfall in terms of 'supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements' (that is, the OAHN) and the extent of any shortfall (Framework paragraph 47, second bullet, emphasis added). This is a matter of planning judgment in terms of assessing whether a particular site is 'deliverable', and the capacity of a particular site to take a given quantity of housing, but it is otherwise a straightforward quantification exercise.

332. The policy test whether housing land is to be included in the 5YHLS is merely whether there is a 'realistic' - that is, non-fanciful - prospect of housing delivery (*St Modwen v SSCLG* [2017] EWCA Civ 1643 paragraphs 35-39, CD32.18 set C). A site does not have to be allocated in any plan, let alone be granted permission, in order to be included in the 5YHLS. Its delivery does not have to be a certainty, nor even more likely than not; the policy requires that it be 'realistic'.

333. Just because a site is outside development boundaries of the current plan does not mean it should be treated as having an unrealistic prospect of development where the planning authority has allocated it in an emerging plan and is currently of the view that it is a suitable and available site, viable and achievable within 5 years for the purpose of footnote 11 of the Framework, so has included it in its 5YHLS trajectory. In the Council's closing submissions, they give the example of the Gimsons site, and assert that "[u]ntil such time as the draft allocation supersedes the present development plan status, it cannot be considered 'deliverable'."

334. This statement demonstrates that the Council has taken and continues to take a legally erroneous approach to counting sites within its 5YHLS for the purpose of Framework paragraph 47. What the Council has done is to treat sites not allocated in the current plan as *ipso facto* incapable of being considered suitable, and has not included a single one in its land supply monitoring figures for the next 5 years. It is elementary that the adopted development plan is the starting-point but it does not predetermine the outcome of any planning application where there are good reasons for determining it otherwise than in accordance with that plan. If it were, this Inquiry would have been unnecessary. The Council cannot rationally treat sites as suitable for housing for the purpose of its forward planning but at the same time automatically treat them as unsuitable when determining actual applications just because the emerging plan has not been adopted.

335. Of course there might be other circumstances where a site allocated in an emerging plan would only become realistic for delivery in the 5 years if the plan was adopted (such as a site requiring planned infrastructure and/or a new settlement to be in existence first, if that new infrastructure or settlement would not otherwise come forward in time). No such circumstances apply here; the new settlements proposed in the emerging local plan are not proposed to come forward in the first 5 years of the plan, and are not relied upon in the early part

of the housing trajectory. This is the advice in the PPG which states "If there are no significant constraints (eg. infrastructure) to overcome such as infrastructure [sic] sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe." (Paragraph: 031 Reference ID: 3-031-20140306).

336. On this analysis, it was wrong to exclude the sites that the Council is satisfied are soundly evidenced for inclusion in the trajectory showing the 'expected rate of housing delivery' for the purpose of promoting its local plan.

337. On that basis, the Secretary of State is entitled to rely on the sites counted in the housing trajectory appended to the Council's letter to the Rt Hon Priti Patel dated 29 November 2017 (ID42). On that basis, there is no, or no material, shortfall for the purpose of Framework paragraph 47. The trajectory table shows delivery in the first 5 years of the plan period as (501 + 577 + 1128 + 1443 + 1329), which is 4978 dwellings. Taking OAHN of 716, multiplying by 1.05 to allow for the 5% buffer gives 751.8 (say 752) dwellings per year), this gives 6.62 years' supply. If the Liverpool approach to adding backlog is adopted ((716 + 107) x 1.05), the annual requirement would need to be 864 which gives 5.76 years' supply (taking the OAHN figures from Alison Hutchinson's proof, (BDC1, table 1 on p.11). If the Sedgefield approach is adopted ((716 + 332) x 1.05 using Ms Hutchinson's figures) an annual requirement of 1,100 and 4.52yrs' supply is the outcome. The text of the letter to Ms Patel quotes figures of 6.24yrs and 4.9 yrs respectively, but the workings for arriving at those are not indicated.

338. Furthermore, the housing land supply position is improving and may have improved further by the time the Secretary of State issues a decision. For example, Mrs Hutchinson's Proof, (BDC1 table 2, page 12) shows improvement from 3.91 to 3.97yrs on the Liverpool approach and 3.1 to 3.9 years on the Sedgefield approach between 31 March 2017 and 30 September 2017, adopting the Council's approach of excluding the emerging allocations.

339. It is appreciated that the prospect of delivery of housing on one or more of the sites before this Inquiry may also be relevant to the determination of these schemes, if - contrary to HPPC's submissions that these sites are not suitable - the Framework footnote 11 requirements were thought to be met and it were considered that housing on one or both was realistically likely to be delivered within 5 years (whether or not by virtue of these applications). Some addition to the supply might need to be made for that by the Secretary of State depending upon how each appeal or application is to be determined, when determining the others.

Step 2: take the OAHN

340. There was uncontested evidence at this Inquiry that the extent of OAHN is 716 dwellings annually.

Step 3: decision as to whether to add to the requirement to allow for past shortfall and over what period to expect this to be made up

341. At the Inquiry there was a debate about whether an addition should be made to the housing requirement to make up for previous shortfalls using either the Liverpool or the Sedgefield methods.

342. This exercise is essentially a policy judgment for the decision-maker which, importantly, is not prescribed by Framework paragraph 47. As Lindblom J noted in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (paragraph 108, ID61) upholding a decision to apply a Liverpool approach:

> *Neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF. In my view the inspector was free to come to his own judgment on this question.*

343. Framework paragraph 47 does not say to add previous years' shortfalls to the current OAHN to arrive at an annual requirement figure. This may be of significance when applying Framework paragraph 49 and determining whether the second bullet of the decision-taking limb of Framework paragraph 14 should apply.

344. The closest is the advice in the PPG section dealing with plan-making rather than decision-taking, which says, "Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate." This guidance is consistent with the plan-led system, and does not dictate whether to add to a current years' annual requirement when taking a particular decision to make up for previous shortfalls, nor dictate a method for doing so.

345. If an allowance to make up for past shortfalls is to be added, the Liverpool method is appropriate here because the emerging local plan contains a strategy shared with partner Essex authorities to accommodate growth in new garden communities and large allocated sites, which can better respond to the requirements for new infrastructure, and will come forward later in the plan period. The evidence of the Council's professional planner Ms Hutchinson was that in her judgment the Liverpool approach was amply justified, but that the Council felt constrained not to advocate such an approach until the examination of its emerging local plan as it had lost other appeals.

346. However, HPPC considers this to be over-timid and inappropriate. The spatial strategy of the emerging BNLP would be undermined if development in less sustainable locations was permitted with the intention to meet a short-term need, to the detriment of what the Council properly consider to be the best long-term plan for the District. At this Inquiry there was no evidence led to contest the soundness of the Council's overall approach in its emerging BNLP. Indeed, Mr Lee sought to argue consistency with it, albeit on the selective basis that some growth was proposed for Hatfield Peverel whilst downplaying the fact that the Stone Path Drive site was located in the countryside for the purpose of the emerging plan (paragraph 13.3.6,1/POE). Although no party would contend that the emerging plan should be treated as if it were already the adopted development plan, the Secretary of State is fully entitled to give weight to it and to apply the Liverpool approach to these applications and appeal.

Step 4: add buffer

347. The Framework paragraph 47 provides guidance that an adjustment should be made to the OAHN by the addition of either a 5% or a 20% buffer. This requires a different form of judgment to be made about whether the record of the local planning authority is one of 'persistent under-delivery'.

348. A buffer of 5% is the default for ensuring choice and competition in the market for land. A buffer of 20% should be added 'to provide a realistic prospect of achieving the planned supply' where there is a record of 'persistent under-delivery' (Framework paragraph 47). The point is to make an allowance for proven persistent failures of delivery, to correct for over-optimism about meeting planned-for targets or requirements and to build in a margin for failure to deliver the targets currently planned for.

349. There is no further or different purpose (other than also ensuring choice and competition in the market) for the 20% buffer suggested by the Framework. It is not specified to apply by reference to a particular level of accumulated current shortfall, and is not designed to hasten the delivery of units in response to a particular urgency of need. The purpose of the buffer is not to correct for a particular shortfall, but to address the problem of over-optimism. Any accumulated shortfall in delivery against what is now understood to be the OAHN is reflected automatically in the figure for current housing need.

350. It would be quite wrong to test 'under-delivery' anachronistically against requirements that were not known at the time. HPPC respectfully adopt the archery analogy given by Mr Cannon (paragraphs 22-23, ID47). There is no record of persistent under-delivery here.

351. Even if there were a record of persistent under-delivery, the Framework is only guidance and the purpose of applying the higher 20% buffer is to ensure 'a realistic prospect of achieving the planned supply'. The Secretary of State is entitled to assume that sites in the Council's housing trajectory are 'realistic' (HPPC has not given evidence of its own on suitability and deliverability other than on specific comprehensive development area sites at Hatfield Peverel) and can be counted on as indicating the expected rate of housing delivery.

Summary

352. Adopting the correct *St Modwen* approach to the meaning of 'deliverable sites', the Liverpool method for apportioning past under-delivery and a 5% buffer, there is no shortfall and the Council has a healthy 5.76 years' housing land supply on the latest figures. Even if one were able to demonstrate that some of the allocated sites were not realistic prospects, one would still have a 5 year supply on the Liverpool approach if there were land sufficient for 4,320, so there is a built-in healthy margin for error.

353. Whilst HPPC do not consider adopting the Sedgefield method to be appropriate, if we include the emerging allocations and a 5% buffer, there would be 4.52 years' supply, even on that basis, which is a very modest shortfall in the context of a rapidly improving supply position.

Policy issues in respect of all schemes

Framework paragraph 14 and its application-updatedness

354. The question of 'updatedness' does not depend on chronological age in itself (Framework paragraph 211) but on changes in circumstances and/or planning policy.

355. By virtue of Framework paragraph 49, shortfall in 5YHLS would usually be treated as a factor indicating policies for the supply of housing were 'out of date', hence the materiality of the 5YHLS question.

356. The term 'policies for the supply of housing' has a narrow meaning, but as the Framework is only guidance it is not appropriate to embark on a legalistic exercise of classifying policies (paragraph 59, CD31.2 set C). Whether policies for the supply of housing (or indeed other policies) are out of date does not determine the weight to be given to them, which remains a matter for the decision-maker (paragraphs 29, 55 to 56 CD32.2 set C).

Framework paragraph 14 and its application-silence

357. Mr Lee –but not Mr Dixon- sought to argue that the development plan was 'silent' in relation to these appeals, because "the Development Plan is now silent in respect of where development should be located outside of the strategic areas identified on the Core Strategy Proposals Map" (paragraphs 6.4.3 to 6.4.4 1/POE).

358. Mr Lee's argument cannot be sustained here. In *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 at [100]-[101], Holgate J rejected as a 'fallacy' the analogous argument that 'first, the inspector had to consider whether the plan was "silent on a particular issue" and second, that issue was where land to provide for a shortfall of 6,823 square metres of B8 floorspace should be located'. The learned judge ruled:

> *Neither paragraph 14 of the NPPF nor SD1 of the RTVLP [the local plan at issue] enable a party simply to select one of the "issues" relevant to the outcome of a planning application or appeal, so that it may be claimed that the plan is "silent" on that particular issue. Instead, the proper question for the decision-maker is whether there is a sufficient policy content in the plan taken as a whole to enable the planning application to be determined as a matter of principle…*
> *… In the Bloor Homes case Lindblom J explicitly stated, at para 59, that the fact that allocations have yet to be put in place in a development plan (in that case for housing), does not mean that the development plan is "silent".'*

359. The policies in the adopted Braintree Core Strategy, taken as a whole, indicate that permission should be refused because the strategy places both the Gleneagles and Stone Path Drive sites outside the village boundary in the countryside and directs growth to brownfield sites and infills within the village. Furthermore, there are emerging plan policies at an advanced stage which maintain both the Stone Path Drive and the Gleneagles sites outside the village boundary, and specifically protect the sites (particularly emerging NDP policies HPE6 on landscape setting and HE1 on coalescence).

360. Mr Lee referred to *South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173, but that case needs to be considered on its peculiar facts. There, a core strategy stated that at least 1154 dwellings would be allocated in certain larger villages including Chinnor, but no allocations had been made. The inspector had regard to the fact that the emerging local plan was at a very early options stage, and there was not even a draft emerging neighbourhood plan to give direction. It was in those circumstances that the Inspector concluded there was a 'policy vacuum on the issue of site allocations in

the larger villages' (judgment at paragraphs 43 and 48, citing decision letters). The judge ruled that:

> '*91 …the question for the decision maker is…(1) does this development plan contain a body of policy relevant to the proposal being considered; and (2) is that body of policy sufficient to enable the development to be judged acceptable or unacceptable in principle? The first question involves an identification of the policies in question, and their correct interpretation; the second involves the exercise of planning judgment on the practical effect of that body of policy on the making of the decision in issue.*
>
> *92….It follows also from the fact that the decision maker must make a planning judgment that… what matters is not simply whether the plan contains a policy which can be looked at to determine the question posed in Bloor at [50] and repeated in the last sentence of my [91] above: for its sufficiency at the time the decision is being made is an essential issue, and that involves the making of a qualitative planning judgment. I emphasise that the judgment to be made is at the time of the decision. A Development Plan may not have been "silent" when adopted, but has become so.*
>
> *93… In the case of this Development Plan, the mechanism by which its housing requirement figures were intended to be translated into actual allocations was the DPD, which SODC had since abandoned. The question "how much housing does the Development Plan intend should be allocated in the period x to y" is not the same question as "where does the Plan say that that housing could or should be built?" In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.'*

The judge concluded:

> *97 'This was a case where it was her planning judgment that it was the answer to the second question above which mattered… Thus, she found that there was effective silence on the critical issue. That was a planning judgment which she was entitled to form.*
> *98 Her conclusion…is a planning judgment that was open to her'*

361. Although in the case before this Inquiry, the initially envisaged site allocations document to follow the CS did not proceed to adoption, there are important distinctions from the situation in the Oxfordshire case. CS policy CS1 states that the dwellings 'will be located…On previously developed land and infill sites in the Key Service Villages and other villages'. Furthermore, unlike the South Oxfordshire case where the development boundaries and countryside protection policies were merely contained in a previous saved plan pre-dating the core strategy, CS5 states as set out above (paragraph 37).

362. This gives a further clear steer that large housing developments in the countryside are not in accordance with the CS. Thus, Braintree's adopted plan is not, in its policies, silent about where it expects the growth to take place. The policies do not require the Site Allocations DPD before being able to say whether in principle development in green open countryside adjacent to Hatfield Peverel is encouraged: the answer is a clear 'no'. By way of further distinction, there are

submitted examination drafts of the emerging BNLP, and emerging NDP. Furthermore, the question of how much development is intended in Hatfield Peverel matters as well as where that development is located.

363. In this regard, the situation here is more akin to that in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754, where the site lay within a 'green wedge' designated by a policy in the core strategy and the High Court upheld the decision that the plan was not 'silent' even though the core strategy had contemplated that a future site allocations DPD would review that boundary (see judgment at paragraphs 29, 30, 36 and 51-58).

364. The unsustainability of any argument that the development plan is silent is perhaps demonstrated by the subsequent length of Mr Lee's proof where he sets out and considers the relevant policies, and by his eventual acknowledgement (paragraph 13.2.2, 1/POE) that "Having tested the proposals against the material policies contained within the Braintree development plan I accept that the appeal proposals conflict with the Plan'. Notwithstanding his subsequent oral equivocation over this point during his cross-examination, that acknowledgement in the Proof was rightly made.

Framework paragraph 14 and its application-'Specific policies in this framework'

365. 'Specific policies in this framework' means policies that, applied here, indicate in the judgment of the decision-taker that permission should be refused. Such policies may include relevant development plan policies within the framework of the Framework.

366. The second bullet-point in the decision-taking limb of Framework paragraph 14 is no more than guidance and only applies where a development plan is absent, silent or out-of-date. It does not displace the statutory presumption in favour of determining applications in accordance with the development plan so that proposals conflicting with the plan should be refused unless material considerations indicate otherwise (Framework paragraph 12). It has to be read consistently with that presumption. Where, although the plan may be generally or in some particular respects (e.g. in its policies in relation to the supply of housing) out-of-date so as to engage Framework paragraph 14, that does not determine the weight to be given to particular development plan policies. Over-legalistic interpretation of the Framework, drawing fine, unintended distinctions, is to be deprecated. These principles are clear from *Suffolk Coastal* (paragraphs 14, 21, 23, 54-56, 74 and 85 CD32.2 set C).

367. At Framework paragraph 154 it is emphasised that 'Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where'. A decision-maker is fully entitled to conclude that specific policies within the Framework -such as for protection of countryside and favouring greenfield over brownfield development- indicate that permission is to be refused without having always to conclude that benefits are 'significantly and demonstrably' outweighed by harms.

The adopted development plan

The spatial strategy

368. The CS is based on a 'hierarchy of place' (paragraphs 2.4-2.14, HPPC2) focusing growth at settlements higher up the hierarchy. In that context, at policy

CS1 it identifies a minimum requirement of 600 homes for the period 2009 to 2026 at the six KSVs. The number of dwellings to be provided in these Inquiry schemes (up to 260 across the two Inquiry sites), in combination with the development permitted since 2009 in Hatfield Peverel, would greatly exceed a proportionate distribution across the villages. The proportions are relevant as well as the numbers: six KSVs are to take 12% of the homes between them (paragraphs 2.15-2.18, HPPC2).

369. Policy CS 1 further states:

These dwellings will be located (as set out in table CS1):
On previously developed land and infill sites in the Key Service Villages and other villages.

370. This means that the growth is being directed within the village, and to previously developed land, rather than to greenfield sites outside the village such as those at issue at this Inquiry.

371. The supporting text to the CS (para 9.11) noted that sites would be allocated in a subsequent DPD, and stated, 'There will also be sites, which are not yet identified in the Housing Supply Trajectory or Table 6, which could come forward through minor extensions to town or village development boundaries in the Site Allocations DPD', but this text was not part of the policy and does not cut down or qualify the policy to direct growth outside the settlement boundaries (paragraph 16, *R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567).

372. In that context, policy CS5 is an intrinsic part of the spatial strategy (paragraphs 2.19 to 2.25, HPPC2). It should be given full or substantial weight for the reasons explained by Ms Jarvis in her Proof and later in these submissions. Saved Policies RLP2 and RLP3 are not merely hangovers but are reflected in the CS.

373. Accordingly, there is a conflict between the spatial strategy of the adopted local plan and the principle of the Inquiry schemes. The strategy has been based on sound planning principles and is consistent with the objectives in the Framework paragraphs 17, 34, 37, 38, 70, 110-111, 112 of being genuinely plan-led, minimising the need to travel, focusing development in locations that are or can be made sustainable, preferring land of lesser environmental value and previously developed land over green field land, taking account of the different roles and character of different areas, protecting the intrinsic character and beauty of the countryside, minimising adverse effects on the local and natural environment, undertaking significant development on agricultural land only when necessary, and planning for the location of housing, economic uses and community facilities and services in an integrated way.

374. Hatfield Peverel is a fairly small village with 1815 households in 2011. It has a limited range of services and little employment potential, having lost employment with loss of the Arla Dairy. For weekly or big-ticket item shopping, employment and indoor leisure facilities, it is already necessary to travel outside the village. The village can only sustainably accommodate housing growth in proportion to its role in the settlement hierarchy.

Boundaries and review

375. Mr Tucker suggested in cross-examination that the Hatfield Peverel settlement boundaries in the current and emerging local plans were merely holdovers from previous plans and that their maintenance had not been reviewed. This is not a submission supported by the evidence.

376. Both the adopted CS and the emerging BNLP have been subject to sustainability appraisal and the latter exercise specifically considered the question of retention of boundaries, assessing this as environmentally positive to landscapes and townscapes, service centre vitality, sustainable travel, climate change and accessibility compared to relying on the Framework alone; and the question of new allocations was considered (PoE/Jarvis pages 17-20 and paragraph 2.40 and Appendix PJ2, HPPC2). Spatial Strategy Formulation [ID33] refers to review criteria, options, KSVs, countryside and draft allocations. The adopted CS was found sound by the Secretary of State.

377. It is right that the policy was not to alter the boundaries to take the Inquiry sites within the village envelope of Hatfield Peverel. Strategic policy choices were taken to retain the settlement boundaries, subject to specific allocations and to creating new urban areas or extensions, and to focus growth elsewhere. These were legitimate policy choices.

378. Whilst HPPC accepts that the Secretary of State is entitled to consider provision of housing to be a material consideration weighing against applying the development plan at the Inquiry sites, there are no grounds to give less weight to the adopted or emerging development plan just because successive plans have retained the Hatfield Peverel boundary south of the A12.

Policies for the protection of the countryside

379. The suggestion by GDL that the adopted countryside policies and policy CS5 in particular are inconsistent with the Framework is wrong. Two further assertions are also misconceived. First, that the Framework draws a distinction between valued landscapes and the countryside such that 'ordinary' countryside is not subject to general protection. Second, that because the countryside and emerging NDP green wedge policies do not have built-in exceptions for beneficial housing development made them inconsistent with the Framework.

380. The Framework comprises general policy guidance. It is not a statute and must not be read like a statute. In contrast to statutes, which must be obeyed unless there is an express exception, it is an intrinsic feature of policies and guidance that they may be departed from for good reasons, where material considerations indicate otherwise. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) at paragraphs 43 and 45, Gilbart J cited Lindblom LJ's judgment in *Suffolk Coastal*:

> *The NPPF is a policy document. It ought not to be treated as if it had the force of statute… It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense."*

> *… Before Suffolk Coastal it had been striking that NPPF, a policy document, could sometimes have been approached as if it were a statute, and as importantly, as if it did away with the importance of a decision maker taking a properly nuanced decision in the round, having regard to the development plan (and its statutory significance) and to all material considerations. In particular, I would emphasise this passage in Lindblom LJ's judgment at [42]-[43], which restates the role of a policy document, and just as importantly how it is to be interpreted and applied. NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it.'*

381. In *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 at paragraphs 175 and 186, Lindblom J (as he then was) considered the argument that a 'green wedge' policy was inconsistent with the Framework if it restricted all house-building without an exception for a positive cost-benefit analysis, rejecting 'the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the Framework, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal'.

382. Mr Lee cited the case of *Telford and Wrekin BC v SSCLG* [2016] EWHC 3073 (Admin) (CD31.3 set C), where Lang J declined to quash a decision by a planning inspector that a policy which sought to 'strictly control' development in the countryside 'is not up-to-date and in conformity with the more recent planning policy context established by the Framework, where there is no blanket protection of the open countryside and where there is a requirement to boost significantly the supply of housing,' such that he would give it 'less than full weight'. The *Cawrey* judgment was not cited. Lang J stated at paragraph 47,

> *In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. <u>The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF</u>, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational.* (emphasis added).

383. At its highest, the *Telford* case was therefore decided on the basis that the weight to give to various principles within the Framework pulling in different directions (supply of housing and other principles versus protecting intrinsic character and beauty) was a matter of planning judgment that Lang J would not interfere with. It is not automatically inconsistent with the Framework, as a matter of law, to have a general policy to protect the countryside by restricting

the development that is presumed to be appropriate there. This judgment does not require the Secretary of State to follow the Telford inspector's approach to weight as a matter of planning judgment, which remains a matter for the decision-maker even if a policy is judged to be out of date (per *Suffolk Coastal* cited above).

384. Whether a policy is judged to be inconsistent with the Framework is a matter of planning judgment depending upon the weight to attach to different passages of the document, so long as the wording of the Framework is understood correctly. Clearly, the actual character and attractiveness of particular countryside will be relevant to the weight to place on a policy protecting the countryside, and the merits of making an exception in the particular case. Policies cannot just be applied mechanistically for the sake of it in a 'blanket' way, without regard to features of particular sites. But that is a straw man argument, because HPPC are not contending for such an approach here.

385. HPPC commend the approach taken by the Secretary of State in his decision regarding Land East of Ditchling Road, Wivelsfield, East Sussex (ID25). The relevant part of the decision concerned the question whether a materially indistinguishable general policy to protect the countryside ('CT1') outside development boundaries was inconsistent with the NPPF. In the decision letter, (para 15), the Secretary of State concluded, 'for the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision'. The Inspector had concluded as follows:

> *[IR 327] With respect to the adopted plan, there is conflict only with one policy, CT1, of the Local Plan, but this leads to an overall conclusion that the proposal is not in accordance with the development plan as a whole.*
>
> *[IR 328] The defined Planning Boundaries as the means through which policy CT1 operates are related to development requirements that no longer apply, with an end date for these of 2011. While policy CT1 gives blanket protection to countryside, the NPPF directs specific protection to valued landscapes. Nevertheless, a core planning principle of the NPPF includes recognising the intrinsic character and beauty of the countryside. Policy CT1 is expressed as the 'key countryside policy' in the Local Plan. The proposal would involve the incursion of development on a greenfield area of countryside. Taking into account also the finding above that a five-year housing land supply is demonstrated, I consider that policy CT1 is not out-of-date for the purposes of paragraph 14 of the NPPF, and that the conflict with it should be given significant weight in the decision'.*

386. It should be noted that unlike Wivelsfield, where the countryside boundaries were merely in a saved out of date policy in a time-expired plan, in this case they are a tool utilised by policy CS5 in the adopted CS which has an end date of 2026.

387. HPPC readily acknowledges that Wivelsfield was a case where there was a 5YHLS and that the weight to give to such a policy may depend on whether there is a 5YHLS, but that is a different point to the question whether it is inherently inconsistent with the Framework, and therefore always to be given low weight by

virtue of Framework paragraph 215 regardless of the housing land supply. The clear decision in Wivelsfield (DL para 15) was that there is no such inconsistency. That is a planning judgment which is right and should be followed here.

388. HPPC also draws the Secretary of State's attention to the Finchingfield decision where the Inspector considered CS policy CS5 and likewise determined that it was consistent with the Framework for the purpose of Framework paragraph 215:

> *I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215.'*(paragraph39, CD32.10 set C).

Paragraph 109 and value to attach to a given area of countryside

389. Mr Lee in particular was anxious to argue that Framework paragraph 109 did not apply and that this would mean less weight should be given to the policies protecting the countryside (paragraphs 7.1.14 and 8.2.43-48, 1/POE).

390. Paragraph 109 is merely providing sensible general guidance that 'The planning system should contribute to and enhance the natural and local environment by among other things, protecting and enhancing valued landscapes, geological conservation interests and soils'.

391. The countryside is itself a type of landscape. The value to place on protection of any particular part of the countryside is ultimately entirely a matter for the Secretary of State's planning judgment, depending upon the advice in this report concerning the appreciation of the site and its features or attributes. If the Secretary of State considers the current landscape valuable at a particular spot, it is likely to be desirable, other things being equal, to preserve and enhance it. That is all paragraph 109 is getting at.

392. It would be quite inappropriate to treat paragraph 109 like a statute establishing a special category apart of 'valued' landscapes that has to be closely defined and given special status, and implying that the remainder of the countryside is not worth protecting or enhancing generally. That would be quite against the spirit of the Framework and would be just the kind of legalistic exercise that was deprecated in the *Suffolk Coastal* case by the Court of Appeal and Supreme Court.

393. The only cases to consider Framework paragraph 109 in light of argument about its meaning have stressed that a decision-maker must have regard to demonstrable physical attributes and not merely popularity. For instance, in *Stroud DC v SSCLG* [2015] EWHC 488 (CD31.20 set C), where Ouseley J stated:

> *[13] It is important to understand what the issue at the Inquiry actually was. It was not primarily about the definition of valued landscape but about the evidential basis upon which this land could be concluded to have demonstrable physical attributes. Nonetheless, it is contended that the Inspector erred in*

paragraph 18 because he appears to have equiparated valued landscape with designated landscape. There is no question but that this land has no landscape designation….The Inspector, if he had concluded, however, that designation was the same as valued landscape, would have fallen into error. The NPPF is clear: that designation is used when designation is meant and valued is used when valued is meant and the two words are not the same.

[14] The next question is whether the Inspector did in fact make the error attributed to him. There is some scope for debate, particularly in the light of the last two sentences of paragraph 18. But in the end I am satisfied that the Inspector did not make that error. In particular, the key passage is in the third sentence of paragraph 18, in which he said that the site to be valued had to show some demonstrable physical attribute rather than just popularity. If he had regarded designation as the start and finish of the debate that sentence simply would not have appeared….

[16] …The closing submissions of Miss Wigley referred to a number of features and it is helpful just to pick those up here. The views of the site from the AONB were carefully considered by the Inspector. There can be no doubt but that those aspects were dealt with and he did not regard those as making the land a valued piece of landscape. That is a conclusion to which he was entitled to come.'

394. What *Stroud* did not do was hold that Framework paragraph 109 creates a rigid category or implies that protection of countryside not within that category was not desirable for the purposes of the Framework.

395. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198, Gilbart J ruled:

[49] NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that paragraph [109] may recognise that some has a value worthy of designation for the quality of its landscape does not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in Stroud DC v SSCLG [2015] EWHC 488 per Ouseley J or in Cheshire East BC v SSCLG [2016] EWHC 694 per Patterson J which suggests otherwise. Insofar as Kenneth Parker J in Colman v SSCLG may be interpreted as suggesting that such protection was no longer given by NPPF, I respectfully disagree with him. For it would be very odd indeed if the core principle at paragraph [17] of NPPF of "recognising the intrinsic beauty and character of the countryside" was to be taken as only applying to those areas with a designation. Undesignated areas - "ordinary countryside" as per Ouseley J in Stroud DC - may not justify the same level of protection, but NPPF, properly read, cannot be interpreted as removing it altogether. Of course if paragraph [49] applies (which it did not here) then the situation may be very different in NPPF terms.
[50] Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a

*judgment that material considerations justify the grant of permission…There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.' (*emphasis added*).*

396. Accordingly, the fact that no witness or party at this inquiry argued for any special 'valued' status by reference to paragraph 109 does not mean that the Secretary of State cannot or should not give weight to the protection of the countryside at these sites and to the adopted and development plan policies that seek to achieve this, nor that as a matter of law he cannot treat the physical attributes of the sites as favouring their protection. It is simply a subjective question of judgment for the Secretary of State in the particular case what value to place on the sites.

397. This also accords with the Guidelines on Landscape and Visual Impact Assessment (para 5.26) which advise that the fact that a landscape is not designated 'does not mean that it does not have any value. This is particularly true in the UK where in recent years relevant national planning policy and advice has generally discouraged local designations unless it can be shown that other approaches would be inadequate. The European Landscape Convention promotes the need to take account of all landscapes with less emphasis on the special and more recognition that ordinary landscapes also have their value'.

The emerging BNLP

398. The emerging BNLP can be given significant weight as it has progressed to examination stage. It properly seeks to meet the identified OAHN with an additional 10% margin in a strategic way in collaboration with other Essex authorities.

Spatial strategy

399. This is again based upon a hierarchy of place. Part 1 policies SP2 and SP3 which set out the spatial strategy and the number of homes to be planned for across north Essex and in the Council area are summarised above (paragraphs 42 and 43).

400. The way in which the quantum of new homes to be provided in Braintree District is to be apportioned is explained by Ms Jarvis (paragraphs 2.29-2.53, HPPC2). The order of focus of new development is the town of Braintree, new planned garden communities, then Witham, then the KSVs in the A12 corridor, then other settlements. The principle of garden communities is fully consistent with national policy (e.g. Framework paragraph 52).

401. An allocation of land for 285 homes (2% of the total) is made at the Comprehensive Redevelopment Area (CRA) in Hatfield Peverel by draft Policy LPP31.

402. The District's population is about 150,000 (paragraph 3.3, CD16.3 set C). The populations of Witham and Hatfield Peverel were 25,353 and 4,500 in 2011 (paragraph 2.44, HPPC2). Hatfield Peverel therefore has around 3% of the District's population. Given that about 3,650 (25%) of the new homes in the District are to be located in the 2 new garden communities, it is evident that the emerging BNLP envisages Hatfield Peverel accommodating the planned housing

growth in scale with its share of the population. Development significantly in excess of the 285 homes allocated in the draft plan would not be in keeping with the spatial strategy for distribution of housing.

403. Furthermore, Policy LPP17 makes clear that 'Sites suitable for more than 10 homes are allocated on the Proposals Map and are set out in Appendix 3', and no other site outside the CRA is allocated in or adjacent to Hatfield Peverel. Paragraph 6.63 of the supporting text makes explicit what is already implicit, that 'All sites suitable for delivering ten or more homes are allocated for development on the Proposals Map' (emphasis added). This indicates that the spatial strategy does not envisage either the Stone Path Drive site or the Gleneagles site being suitable for large-scale housing development. The unsubstantiated assertions made in cross-examination by Mr Tucker that the boundaries have not been reviewed and considered is flatly contradicted by paragraph 5.17 of the supporting text in Section 2 to the emerging plan, which states:

> *Development boundaries within this document have been set in accordance with the Development Boundary Review Methodology which can be found in the evidence base.*

404. This is evidently linked to the assessment of constraints. Paragraph 5.7 of Section 2 of the emerging BNLP supporting text explains that 'Development may be considered sustainable within a KSV, subject to the specific constraints and opportunities of that village' (emphasis added).

405. One such constraint is the surrounding countryside and local character. It is not envisaged that there should be built development outside of the settlement boundaries, nor ribbon development along the A12. That is seen at Policy LPP1, the full text of which is given at paragraph 43 above. For reasons explained above, it is perfectly consistent with the Framework to have such a general policy that built development is considered not to be appropriate in the countryside, so long as it is always applied in individual cases with the particular characteristics of a particular site in mind.

406. Another constraint is local infrastructure, services and facilities including roads, healthcare and schools. Draft Policy SP 5 states that development 'must be supported by provision of infrastructure, services and facilities that are identified to meet the needs arising from new development', including sufficient school places in the form of expanded or new schools.

407. For reasons already alluded to above in relation to the 'Liverpool method' and the adopted plan, the spatial strategy in the emerging local plan seeks to advance planning objectives underlying the Framework. It should be given significant weight and provides comfort that the District's OAHN will be met sustainably without the Inquiry schemes coming forward and encroaching on the countryside setting of Hatfield Peverel.

The emerging NDP

408. Mr Renow's evidence has set out in detail why the NDP is supported by written national policy and the political commitments made by the present Secretary of State.

Emerging stage and status of the NDP

409. The NDP can be given significant weight insofar as it indicates the concerns and aspirations of the local community and their vision for the village of Hatfield Peverel.

410. The NDP can be given at least as much weight, if not more weight, as it was given by Inspector Parker in connection with the 80 dwelling appeal, as it has now progressed to examination.

411. Whilst it is accepted that there are likely to be modifications to the drafting of the NDP before it is put to referendum, in particular to ensure that it allocates no less development than the emerging BNLP, the Secretary of State can be confident that a plan containing the relevant restrictive policies directly in issue at this Inquiry (Policies HPE6 and HPE1) in materially the same form will be passed.

412. The Regulation 14 consultation indicated extremely high (89%) support for the vision and objectives of the draft NDP, support between 77% and 92% for each of the individual draft policies (HPPC1, Appendix MR 18). The survey in September 2017, with 570 respondents, indicated 96% approval of the draft plan at that stage (HPPC1, Appendix MR26). Subject to the question of legal compliance with the 'basic conditions', the Secretary of State can be confident that the NDP would pass a referendum and proceed to adoption.

Basic conditions

413. Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990, as modified by section 38C(5) of the Planning and Compulsory Purchase Act 2004, requires the examiner to consider the following:

i) whether the draft plan 'meets the basic conditions' (defined at sub-paragraph (2));

ii) whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and

iii) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and

iv) whether the draft plan is compatible with 'the Convention rights', as defined by the Human Rights Act 1998.

414. There can be no suggestion that the NDP is incompatible with anyone's human rights, and there has been no suggestion that the referendum area should be wider than the parish.

415. The Examiner is not considering whether the neighbourhood plan is 'sound' (the test in section 20(5) of the 2004 Act for local plans), and the tests of paragraph 182 of the NPPF do not apply. In other words, unless the strategic environmental assessment procedure applies, the Examiner does not have to consider whether a draft policy is the 'most appropriate strategy' compared against alternatives, nor is it for her to judge whether it is supported by a 'proportionate evidence base' (paragraph 13, *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin). The 'basic conditions' only require consideration whether it is 'appropriate' to make the plan having regard to national policy and guidance, whether it is in general conformity with the adopted plan; whether the making of the plan contributes to sustainable development,

whether the making of the plan is compatible with EU obligations, and prescribed conditions are met. Regulation 32 of and paragraph 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 prescribe the condition that: '[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).'

HRA

416. As it is one of the prescribed 'basic conditions' that the plan should not be likely to have a significant effect on a protected European site and as the likelihood of such an effect is also an important, if not determinative, consideration to decide whether SEA is required, it made sense for HPPC to commission a re-screening examining possible effects on European protected sites before it reconsidered the broader question whether SEA was required.

417. As Mr Renow explained in his evidence (pages 12-13, HPPC1), Section 2 of the emerging BNLP which includes an allocation of 285 dwellings at the CRA as well as much larger quantities of other development, has been assessed for compliance with the Habitats Directive and found compliant. No issue is predicted to arise except in combination with other forthcoming district plans envisaged by Section 1.

418. The draft NDP would progress in advance of those other plans and would be for a much smaller quantum of development than the BNLP which proposed at least 14,320 dwellings as well as employment development and other development.

419. In *R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 at [13] Sales LJ ruled:

> *where a series of development projects is in contemplation, the strict precautionary approach required by the Habitats Directive will be complied with in relation to consideration of the first particular proposed development project if that project will not of itself have a detrimental impact on a protected site and there will be an appropriate opportunity to consider measures in relation to a later project which will mean that any possible in-combination effect from the two projects together will not arise (failing which, permission may have to be refused for the later project, when it is applied for: see the Smyth case, paras 87—102. In other words, so long as the relevant assessment of options has been carried out at the level of the relevant development plan (land use plan), as explained in Commission v United Kingdom [2005] ECR I-9017, it will be lawful when planning permission is sought for the first specific development project in the series for the relevant planning authority to assess that that project taken by itself will not have any relevant detrimental impact on the protected site (and then grant planning permission for it), even though it is possible that there might be future in-combination effects on the protected site if planning permission were later granted for the next project in the series.'*

This was based upon opinions of the Advocate General Kokott in the *Commission v United Kingdom* and *Waddenzee cases,* and the need to 'avoid sclerosis of the system' (Sales LJ at paragraphs 15-18).

420. This principle applies by analogy to plans as well as to projects. Where a draft plan (here the NDP) is the first in a possible series of plans that would be promoted separately by other authorities (here, the Local Plans of Braintree District and the other North Essex districts), it is sufficient to assess the draft plan in combination with other existing plans and permitted projects, without attempting to speculatively assess combined future effects of other plans. The impacts of those plans can be assessed when they come forward.

421. Furthermore, a habitats regulations screening assessment in July 2017 found no requirement even for 'appropriate assessment' before grant of planning permission for up to 145 homes at the Arla site (ID14).

422. In the light of the above, the Secretary of State can be confident that the requirements of the Habitats Directive will not prevent adoption of the NDP.

SEA

423. The Examiner's concern was that the SEA screening was done when the plan was at an earlier stage of development and premised on no allocation being made in the Draft NDP, when the Arla site was subsequently allocated by draft Policy HO6. If the allocation policy were dropped and allocations left entirely to the emerging local plan, it is unlikely that SEA would be required.

424. As regards SEA, article 3(2) of Directive 2001/42/EC only requires strategic assessment of plans that 'determine the use of small areas at local level and minor modifications' to broader town and country planning plans if the Member States 'determine that they are likely to have significant environmental effects'.

425. Whether potential environmental effects are 'significant' is a matter of judgment for the planning authority, subject to review on grounds of reasonableness.

426. It is not anticipated that the NDP is likely to give rise to significant environmental effects, and no evidence has been presented at this Inquiry by any party proving that it would.

427. It is therefore anticipated that the Examiner and the Parish and District Councils would conclude that the NDP determines the use of small areas at local level (the parish) and that it is not likely to have significant environmental effects in combination with existing plans, programmes and projects. This is particularly the case given that the Arla site has already been granted permission for a greater number of homes than contemplated in the current Draft NDP, the project is on brownfield land and that project has been found not to be likely to have significant effects on a protected European site which is one of the important factors relevant to the assessment (ID14). If that is the eventual conclusion, no SEA would be required.

428. SEA has already been conducted for the emerging BNLP. Article 4 of the Directive expressly provides that 'Where plans and programmes form part of a

hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).' Article 5(2) and (3) in turn state that where an environmental assessment report is required, the level of detail should take account of 'the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment', and the report may use 'information obtained at other levels of decision-making or through other Community legislation'. This is reflected in regulation 12(3) and (4) of the Environmental Assessment of Plans and Programmes Regulations 2004.

429. Even if it were considered that NDP does require SEA, then the sustainability appraisal could draw upon the work already carried out in that regard rather than duplicate it. Whilst some additional months would be required to assess the draft plan and the reasonable alternatives, Mr Renow's evidence was that this could be expected to have been completed by summer 2018. The requirements of the SEA Directive are not 'showstoppers'.

Evidence base for not allocating the Inquiry sites

430. It was suggested that the Parish Council should have sought to take a more proactive approach to maximise housing delivery and that the exercise was only aiming to allocate sites sufficient to provide 78 homes. However, that criticism does not impinge on the appropriateness of adopting the draft NDP. A neighbourhood plan does not have to make any site allocations. The written and oral evidence of Mr Renow was that HPPC would accept a pre-emptive 'future-proofing' modification of the text to bring the draft into line with the CRA in the emerging Local Plan. Its policies would be superseded by specific conflicting policies in later development plan documents such as the emerging BNLP in any event.

431. An attack was made on the ranking assessment when determining which sites to allocate for development in the NDP (CD18.3 set C). It was put to Mr Renow that the exercise unfairly failed to expressly mention in the 'opportunities' column of the table the opportunities afforded by the Gleneagles site to provide housing. This was itself an unfair critique; it was a given, as the whole point of the exercise was to determine which of the sites to allocate for housing and one of the scoring criteria was the number of homes that could be accommodated.

432. In any case, sites HATF313, HATF630 and HATF608 which correspond to the CRA all scored more highly in their ranking than the Inquiry sites. The scoring system was one that was perfectly reasonable and lawful. The choice of policy objectives and the weight to attach to each was a matter for the judgment of the democratically elected Parish Council.

433. Lastly, the criticism was levelled that the site assessment was not considering these particular projects with mitigation measures. Such is almost always the case when engaging in forward planning of this nature and does not invalidate the assessment.

The evidence base for protected views

434. The NDP specifically designates views for protection and enhancement in order to protect the landscape setting of the village (Policy HPE6). It is evidence that the specified 'views and open spaces…are valued by the community and form part of the landscape character' (NDP 'objectives' p.32).

435. Extensive evidence was given by Mr Renow of the local engagement that the Parish Council undertook with the local community, including the survey, the 'walkabout' and photographic competition referred to in the supporting text to the policy, as well as public consultation. The reality is that the abovementioned engagement and evidence-gathering programme provided a sufficient evidence base.

436. DWH sought to suggest that the Parish Council had been disingenuously misrepresenting that View 5 in the table accompanying HPE6 had been identified in the Landscape Character Assessment of October 2015 (CD18.4 set C), and consequently that the policy lacked an evidence base. However, this line of attack was misconceived. The text of HPE6 makes very clear that it protected both views 'identified by the community (see pages 33-37) <u>and</u> the Hatfield Peverel Landscape Character Assessment' (emphasis added), and was not purporting to say that all the views were identified in the Landscape Character Assessment.

437. Although the Landscape Character Assessment (CD 18.4 set C) did identify 'key views' and photographs, these were selected to 'reflect the key characteristics of each area' (para 3.12) by an individual professional consultant as part of an exercise to characterise the area and make suggestions for its management. That exercise had not involved public consultation to ascertain the views of the community. Meanwhile, the residents' survey in October 2015 indicated that 'views towards Witham looking from Gleneagles Way' was selected as one of the 3 views to 'be safeguarded if new development takes place in the parish' by 237 respondents (HPPC1, Appendix MR28). In those circumstances, it was perfectly proper to reflect the wishes of the community.

438. The Table at pages 34-35 of the NDP identifies the key features/physical attributes of the views, and any access by residents. It is not merely about popularity but rather the NDP explains the features of the views that are valued. Views 1 and 5 are attractive open vistas and it is readily understandable why the views are valued by the local community.

439. Criticisms were directed at the Parish Council's reviewer of the feedback from the workshop held in December 2016 (CD 18.6 set C). A comment was made by that individual that in respect of the view from Gleneagles Way (view 16 in that document) they were not personally sure if the view had value but people liked it, and so it had been retained.

440. Insofar as it was suggested for DWH that it was illegitimate for the draft NDP to reflect the views of the community, the whole point of neighbourhood plans is to 'reflect the… priorities of their communities' (Framework paragraph 1), giving 'communities direct power to develop a shared vision for their neighbourhood' (Framework paragraph 183) and to 'shape and direct sustainable development in their area' (Framework paragraph 185). Landscape value and the degree of attractiveness of any view is highly subjective and it is a matter that the

Secretary of State will form his own view on, informed by this report, itself informed by the inspection of the site and surrounding area. Any argument that the personal opinions of a particular hired consultant or parish working-group volunteer are privileged over the views of the community reflected in a neighbourhood plan is to be deprecated.

441. It was also suggested that the response to the workshop is evidence that views were chosen merely to stymie development at those locations and not because of the value of the views. However, it is plain as can be that the reviewer in question in December 2016 was engaged in a whittling-down process determining which of the views identified by the community to retain as most valued and meriting protection, not introducing new views of their own. It was perfectly proper to choose to designate and protect only those valued views that might realistically be subject to development. Neighbourhood plans are supposed to be practical documents to shape and direct development. Mr Renow explained in his oral evidence and cross-examination how views identified by the public were then whittled down to retain the most locally valued views that required protection.

Coalescence and the propriety of policy HPE1

442. This point is relevant only to the Gleneagles site and is not therefore set out in full.

Housing delivery

443. Any argument that an exception should be made to allow development conflicting with the statutory development plan on the basis that there is not currently a 5 year supply of housing land has to be premised on the scheme in question being delivered within 5 years, so as to meet that housing need.

444. It is therefore relevant not only what the level of OAHN is (and the extent of any shortfall) but also how likely it is that the housing in any particular scheme will actually be completed and occupied as a home within 5 years. The evidence in relation to delivery is addressed separately in respect of each scheme later.

Health, education and infrastructure/sustainability issues common to all 3 schemes

445. There would be conflict with Policy SP5 of the emerging BNLP ('Development must be supported by provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.'). Development whose needs are not served should not be considered acceptable in planning terms, and where planning obligations are inadequate to make the development acceptable, permission should be refused (Framework paragraph 176).

446. In both his written and oral evidence Mr Renow explained the existing situation in terms of the lack of employment opportunities for new residents within Hatfield Peverel (pages 26-27, HPPC1); the pressure on health facilities and their lack of space to physically expand (pages 27-28, HPPC1); the requirements for additional school places (pages 29-33, HPPC1); the lack of a safe walking route to Witham along the A12 (pages 33-35, HPPC1); and pressures with regard to transport infrastructure and traffic (pages 36-38, HPPC1).

447. No suggestion was made by the applicants that it was safe for children to walk to Witham along the A12, with reliance being placed instead on potential travel by bus (paragraph 7.2.35, 1/POE).

448. As regards healthcare and the physical inability to extend the Sidney House surgery, the factual evidence of Mr Renow was not challenged or rebutted. The developments would generate additional occupiers who would require health services. There was no evidence that mere internal reconfiguration of the surgery would provide the required extra accommodation for an extra doctor; furthermore there is no indication that any such improvement to the Sidney House Surgery is planned or even practicable.

449. As regards current and projected school places, and the number of students generated by the developments, the numerical situation appears to be common ground (ID1.8).

450. The occupiers of the dwellings would require school places. There are currently 484 primary pupils on the roll of schools within Hatfield Peverel, which have a capacity of 525. The number without additional housing is predicted to fall slightly to 470 by 2021/22. The extant Former Arla Diary and Bury Lane permissions would generate an additional 58 primary school pupils between them (ID1.8, Appendix). This means that any of the Inquiry schemes would result in excess demand that could not be met by existing capacity.

451. Village schools' admissions policies give preference to village children if they become over-subscribed, but this is subject to sibling preference. It would also only apply to children newly entering the school and existing pupils would not be moved. This means that for many years, primary-age occupants of the Inquiry schemes would be required to travel further afield for schooling. This is contrary to the objectives in the Framework of minimising the need to travel and providing schools within walking distance of larger scale housing development (Framework paragraphs 34 and 38).

452. The corollary of that outbound travel phenomenon diminishing in scale would be a diminishing in-school choice for parents living outside the village and the requirement for children residing outside the village who otherwise would have attended the Hatfield Peverel schools having to be found school places elsewhere. As a result, the developments would generate a demand for additional school places whether for the children of occupiers or those children who otherwise would have been accommodated at the village schools. This requirement for additional educational provision is a negative externality of the developments to be weighed in the planning balance.

453. The cost of that externality would not be internalised by means of a Section 106 planning obligation. None was requested by Essex County Council in respect of the costs occasioned by these schemes because it was concerned that the CIL Regulations prohibit pooling of 5 or more contributions in respect of a particular project or type of infrastructure (CD21 set C). In fact, CIL regulation 123(3) prevents pooled planning obligations being relied upon as ‘a reason for granting planning permission’. This is not exactly the same as a prohibition upon pooling such contributions, or against treating absence of such contributions as a reason for refusing permission. There is no CIL charging schedule in place either. As a result, the cost of putting in place the educational provision would be borne by the taxpayer.

454. Moreover, the additional travel costs in terms of bus transport would either fall to be borne by the local authority (to the extent that it is statutorily obliged or agrees as a matter of discretion to pay them) or by parents. This would be a particular burden for parents on low incomes.

455. Framework paragraph 72 states that 'The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities…local planning authorities should… give great weight to the need to create, expand or alter schools' (emphasis added). This principle is also reflected in Draft Policy SP5 of the emerging BNLP. The Secretary of State should attach great weight to the failure of these schemes to provide for the necessary school places and the impact on parental choice.

Summary of HPPC's case respecting the 80 dwelling scheme

This is set out here as HPPC rely on this in large measure as the case against the 140 dwelling scheme

Conflict with the spatial strategy

456. The development conflicts with the spatial strategy in the adopted and emerging development plans for the reasons set out above. That means there is a statutory presumption against granting permission by virtue of s38(6) of the Planning and Compulsory Purchase Act 2004. Specifically, there is conflict with policies CS1, CS5, and RLP2 of the adopted plan and draft policies LPP1 and LPP17 of the emerging Local Plan. This conflict should be given great weight.

Landscape and visual harm/harm to the character and appearance of the area

457. The scheme would result in harm to the distinctive character of Hatfield Peverel at the countryside edge. The character of the open field/meadow would be irreversibly harmed by its replacement with a housing estate.

458. The development would almost totally block and ruin the highly attractive unspoilt open view from Viewpoint 1 shown in the table accompanying draft NDP Policy HPE6 and illustrated for instance by Mr Renow's photographs (ID13). This would conflict with emerging NDP policy HPE6.

459. The view is enjoyed by people whom the Guidelines for Landscape and Visual Impact Assessment 3rd Edition, (paragraph 6.33) indicate are most susceptible to change, namely residents at home (along Stone Path Drive), 'people, whether residents or visitors, engaged in outdoor recreation including use of public rights of way, whose attention or interest is likely to be focused on the landscape and on particular views' (pedestrians along Stone Path Drive, walkers along Footpath 43); 'visitors to heritage assets… where views of the surroundings are an important contributor to the experience' (visitors to Hatfield Place); and 'communities where views contribute to the landscape setting enjoyed by residents in the area' (Hatfield Peverel) (paragraph 5.10, HPPC2).

460. The view stretches across the Ter valley- an unusual feature in this part of Essex - to the Baddow Ridge beyond. The table in the NDP describes the key features of the view: 'foreground is a meadow with mature trees and hedgerow, with a distant view over the Ter Valley towards the Little Baddow Glacial Ridge (rising to the highest point in Essex)'.

461. Furthermore, it would block that open view to the south for persons travelling through the housing estate along the well-used Footpath 43.

462. The GLVIA3 advice (para 5.32) that in making the assessment of landscape value, it is important where possible to draw on information and opinions from consultees, including local people. The community values the view, which is why it was designated in the emerging NDP, as already explained. As GLVIA3 advises (paras 6.37 and 6.44), effects on people who are particularly sensitive to changes in views and visual amenity and large-scale changes which introduce new, non-characteristic or discordant or intrusive elements into the view are more likely to be significant.

463. According even to GDL's own original LVIA assessment criteria this qualifies as a 'major' adverse impact (paragraph 2.23, CD 1.6 set A):

> *Major: An effect that will fundamentally change and be in direct contrast to the existing landscape or views.*

It should be noted that by the time Mr Holliday had come to produce his Proof of Evidence for this Inquiry, he had produced, at Appendix 3, a different set of definitions which was entirely circular (major being defined as ‘a major landscape or visual effect’). That set of definitions included the following definition for ‘high magnitude’ change which clearly applies: ‘The proposal will result in a large and immediately apparent change in the view, being a dominant and new and/ or incongruous feature in the landscape.’

464. Mr Holliday conceded that this harm to the view was an adverse effect, but he had not assessed it as a 'major' effect on the basis that he had looked at the whole route of Footpath 43 (including 'blue land' to the west where there was not currently an open view because of enclosure by trees and hedgerows and the view back to the north), and had, in effect, 'averaged out' the change to the view at Viewpoint 1 across the whole length of the footpath. That was a misleading and inappropriate approach. Travellers' eyes would naturally be drawn to the south, and they would naturally most appreciate the most enjoyable and distinctive open views. The expansive, picturesque open view across the valley from Footpath 43 would be lost precisely at the points where it could be enjoyed.

465. Mr Holliday sought to downplay the attractiveness of the view and the rural character of the site by reference to the homes at the edge of the settlement which were characterised as 'defining' the site and as being unsightly or untidy.

466. Currently, the homes along Stone Path Drive are either bungalows or 2 storey, and are set back some distance from the application site on relatively flat land, such that their built form appears low and unobtrusive in views from Viewpoint 1 and along the footpath. It would be wrong to treat them as in any sense 'defining' or dominating the pastoral character of the meadow site. The current relatively open, low-rise interface with the surrounding countryside is locally distinctive (uncharacteristic of the wider landscape – CD18.4, set C referenced at paragraph 5.13 HPPC2)) and would be lost. The higher-rise development up to 2 storeys on the application site would result in a suburbanisation of the edge-of-rural character and feel of Stone Path Drive, which currently has views out across the open land.

467. The suburbanising effect would result not just from the visual effects but also the noise, traffic and activity on the estate and on the 'blue land' as it became used for general recreation. This location is a relatively tranquil spot both in terms of peaceful views across the valley and in terms of noise, certainly compared to the northern part of the village along the railway and A12. The peaceful and rural qualities of the valley landscape were rightly identified by the Local Landscape Character Assessment of October 2015 (character area 2 section, CD28.3, set C).

468. In this regard, Inspector Parker was right to identify harm by reason of visual jarring, detrimental change to the fundamental character of the field, erosion of the distinctive landscape of the area, and loss of the tranquil farmland scene both visually and aurally (paragraphs 19, 26 and 27, CD5.1 set A).

469. There would also be visual harm by virtue of the intrusion of built development into the views towards the village from the south, such as for those travelling up the road named Crab's Hill.

470. Some reliance was placed by Mr Holliday on the Braintree District Settlement Fringes Study (CD 14.4 set B). However, this was done without consulting the community, on the basis of lumping the 'blue land' in with the 'red-line' area and adopting a highly subjective scoring system that made some bizarre assumptions (for instance, ignoring views out and looking only at views in, assigning points for 'complexity', and weighting vegetation (a transient feature) as a 'primary' feature which is supposed to be permanent.

471. Mr Holliday suggested that the proposed planting would mitigate the visual harm. In fact, insofar as the loss of open views constituted the harm this would only be exacerbated by planting and certainly would not be remedied. Thickened screening would create a very different and less attractive feel; rather than settling and integrating the built development gently into the countryside, it would create an apparent sharp edge defined by the planting. It would block future residents of and visitors to the housing estate from enjoying the open views of the countryside setting, as well as existing residents along Stone Path Drive.

472. Retention of existing hedgerows and field boundaries, and planting of a small new area of meadow at the entrance to the site, would not make up for the fundamental harm caused by loss of the meadow to residential development.

473. There would be conflict with LPR Policy RLP80. This requires that development 'should not be detrimental to the distinctive landscape features and habitats of the area such as trees, hedges, woodlands, grasslands, ponds and rivers. Development that would not successfully integrate into the local landscape will not be permitted.' Plainly, there would be detriment by reason of loss of open grassland and the development would not integrate into the existing local landscape. Emerging Policy LPP71 is expressed in similar terms.

474. There would be conflict with CS policy CS8 which says, so far as relevant:

> *where development is permitted it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment… The natural environment of the District… will be protected from adverse effects.*

475. There would be conflict with Framework objectives to recognise the intrinsic character and beauty of the countryside (Framework paragraph 17) to conserve and enhance the natural environment, promote local character and distinctiveness (Framework paragraphs 60 and 131) and to protect areas relatively undisturbed by noise and are prized for their recreational and amenity value (Framework paragraph 123).

476. The visual and landscape harm, and policy conflict, should be given great weight.

Heritage harm

477. HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme.

Evidence regarding delivery

478. GDL were put on notice (paragraphs 29 and 40, INSP2) before the Inquiry opened regarding reservations about delivery within 5 years on the Inquiry sites. The Note says that 'This is especially the case with the GDL site as this is one step removed from a housebuilder having an interest.' This issue was of course critical to GDL's case from the outset, which rested on a putative shortfall in 5YHLS.

479. Only in Mr Lee's evidence-in-chief did GDL provide any evidence addressing this critical issue. His evidence was that GDL makes its money when the landowner sells the site (with permission secured by GDL) to a housebuilder. In terms of 'track record', Mr Lee was unable to provide any evidence as to the proportion of units delivered within 5 years of permission, stating that the firm had not been sufficiently long-established and he could only give figures relating to commencement of development and erection of the first home which he said took an average of 18 months. No records were produced to substantiate this claim in order that the Secretary of State could examine the predictive value of the record in predicting future likelihood of delivery on this site.

480. Mr Lee provided a one-line e-mail from a Mr Church of Linden Homes dated 15 December 2017 (ID32) stating, 'Further to our recent discussion…I confirm that should you be successful with your planning application then Linden Homes would be interested in acquiring the site'. Even on its face, the e-mail could provide no certainty even that Linden Homes would bid for the land, let alone shed light on the likelihood of actual delivery. The author of the e-mail and its recipient a Mr Alex Cox were not tendered for cross-examination. It was entirely unclear what discussions and leading questions had been asked or inducements offered or exchanged for this message. No weight or reliance can be placed on it.

481. Mr Lee also produced a letter dated 12 December 2017 to Mr Alex Cox from a Mr Reeves of Cala Homes (ID31). This claimed to be a letter 'in support of the above application which it is understood understand has been called-in by the Secretary of State'. It stated that Cala had 'expressed to the Landowner an interest in the acquisition of the site' and asserted that 'we would look to implement the consent and build out the development as a priority to ensure the immediate delivery of housing'. Even taken at face value, there could be no certainty that Cala would bid, let alone make the highest bid and be sold the site.

Once again, the authors were not tendered for cross-examination, and the document was submitted too late for HPPC to investigate Cala Homes' track record or circumstances to provide a rebuttal. As such no weight can safely be placed on this letter.

482. In reality, it could well be the case that a patient developer wished to acquire the site and wait to commence development, or indeed submit further alternative planning applications, in the expectation that land values or house prices would increase, or planning policy would become less restrictive. In a rising market, there could well be an incentive to delay.

Unsustainability/ demand for services

483. As regards medical services, the occupiers would generate demand for primary care that could not be met within the village. The issues identified by Mr Renow relating to unsustainability, namely insufficient medical staff on site to cope with patient numbers and insufficient accommodation for such additional staff, could not be addressed by the £26,340 offered in the Unilateral Undertaking of 17 May 2017 for refurbishment, extension or reconfiguration of the surgery since, for reasons he explained, it would not be possible to physically extend the surgery. There was no evidence provided on behalf of GDL to the effect that refurbishment or reconfiguration achievable with this sum would resolve the issues and meet the extra demand placed on the service by occupiers of the 80 dwellings. This extra strain on services would conflict with the objectives of ensuring healthy, inclusive communities with sufficient healthcare facilities to meet demand (Framework paragraphs 7, 17 final bullet, 69, 156, 162, 171).

484. There would be further stress placed on schools for the reasons set out previously. In this case, the development has been assessed as generating an assumed 24 primary pupils, and Essex County Council originally requested a financial contribution of £293,232 to meet this additional demand (CD3.6 set A), in addition to provision of a safe walking route to Witham. The request was withdrawn not because the issue of school places and transport costs had gone away, but purely because of the perceived strictures of the CIL regulations. For the reasons set out above, great weight should be given to this planning harm.

Loss of agricultural land

485. Although not best and most versatile agricultural land, the development would still entail significant loss of greenfield agricultural land which the Framework treats as undesirable unless the loss is 'necessary' (Framework paragraphs 110, 111 and second sentence of Framework paragraph 112). The developable area would be about 2.73ha plus areas of proposed planting and 'detention basin' in a red line area of approximately 4.57Ha. This is harm that should be weighed in the planning balance.

5YHLS/weight attaching to provision of housing

486. HPPC's case is that on the correct approach, there is no shortfall in 5YHLS for the reasons set out above. Even if that be wrong, the shortfall does not justify departure from the development plan. The specific development plan policies and the physical and policy harms referred to (including conflict with the Framework) significantly and demonstrably outweigh the benefits of providing 80 dwellings at this location.

Summary of HPPC's case respecting the 140 dwelling scheme

Conflict with the spatial strategy

487. The development conflicts with the spatial strategy in the adopted and emerging development plans for the reasons set out above. That means there is a statutory presumption against granting permission by virtue of s.38(6) of the Planning and Compulsory Purchase Act 2004. Specifically, there is conflict with policies CS1, CS5, and RLP2 of the adopted plan; and draft policies LPP1 and LPP17 of the emerging BNLP. This conflict should be given great weight.

Landscape and visual harm

488. The same points made as regards visual and landscape harm caused by the 80 dwelling scheme apply to the140 scheme, but the harm is greater in some respects.

489. The impact on views from Viewpoint 1 as proposed to be designated in the NDP would be at least as severe.

490. The built development would cover a greater land area and would appear correspondingly more intrusive in views into the village from the south and east. The suburbanising effect on the red-line area, the Stone Path Drive area and the 'blue land' would be felt more greatly because there would be a greater volume of built development with activity, noise and traffic from a significantly greater number of people. As such, the disturbance of the relatively tranquil character would only be greater.

Heritage harm

491. HPPC rely upon the Historic England guidance and consultation responses. The 140 dwelling scheme would cause harm to the setting of Grade II* listed Hatfield Place.

492. A 'decision-maker should give the views of statutory consultees … "great" or "considerable" weight. A departure from those views requires 'cogent and compelling reasons' (*Steer v SSCLG* [2017] EWHC 1456 (Admin) at paragraph 52). The decision-maker is entitled to rely on the expertise of the statutory consultee and the presumption of regularity and should be very slow to conclude, without cogent evidence, that they have failed to do their job or overlooked some material factor.

493. Historic England was sent the assessment and analysis of GDLs heritage consultant Mr Handcock. His opinion was that there was 'negligible or non-visibility' with deliberate screening planting to the east of the house; and that as the countryside between the house and the village was relatively narrow in diameter, it did not form part of a designed parkland setting; and as the house was facing away from the village over the valley towards the attractive views to the Baddow Ridge, the loss of that countryside would not harm the significance of the asset.

494. Historic England expressly referred to Mr Handcock's assessment. They disagreed with it and gave cogent reasons for their own expert view. Rather than acknowledge that Historic England had simply reached a different professional opinion to his own- one that was eminently reasonable- Mr Handcock

described them early in his cross examination as 'hysterical', insisted in correspondence that they had not read his submission to them and advised the local planning authority in correspondence to unlawfully 'disregard' their consultation response:

> *it is the opinion of Iceni Heritage that Braintree District Council should disregard Historic England's advice in this case, given that it fails to take into account the detailed assessment undertaken in relation to this Site and additional information provided.* (CD27.4 set C)

It was also falsely and misleadingly argued in cross examination at the Inquiry that Historic England had not conducted a site visit 'because they can't go out and do their own assessment'. (*Note: in her closing submissions for GDL Ms Osmund-Smith confirmed that the suggestion that Historic England had not visited the site was her error and that she was corrected by Mr Handcock-see footnote 17 ID51)*

495. Historic England's thoughts were set out clearly in a letter dated 6 February 2017 (CD27.4 set C), which was informed by the materials submitted (including photo-montages) and 'Historic England's own site visit'. In summary:

i) There was inter-visibility, both outwards from ground level within the grounds of Hatfield Place and from upper storey windows of Hatfield Place and 'some relatively clear views…from within the proposed development in particular the north western section';

ii) The retention of the 'essentially rural setting' to Hatfield Place despite the development of modern Hatfield Peverel 'contributes greatly to its significance and helps to appreciate its heritage values in relatively unspoilt surroundings', in particular 'by providing an open, tranquil and rural setting';

iii) The degree of separation from the settlement did, in their view, 'make a strong contribution to the historic understanding of the building, as its clear separation from the main body of the village along with its spacious grounds illustrate a deliberate display of the wealth and status of the historic owners';

iv) There would be 'encroachment of suburban development in to the setting' resulting in harm to significance 'because the ability to experience and appreciate the heritage values of the buildings would be diminished by the proximity of modern development, lack of separation, erosion of views and the associated noise lighting and movement';

v) As a Grade II* listed building, conservation of the asset should be given 'even greater weight' than a typical designated asset.

496. Historic England's opinion was fully consistent with and reinforced by the documentary evidence provided by Mr Handcock and the relevant guidance.

497. In terms of the guidance, Conservation Principles, Policies and Guidance reminds us that 'some aesthetic values are not substantially the product of formal design, but develop more or less fortuitously over time' (paragraph 51 CD27.1 set C). This applies to the countryside setting of Hatfield Place, which was present at the time of construction of the house with approximately the same pre-eighteenth and eighteenth-nineteenth century enclosure pattern/field

boundaries (Figure HP1, CD14.1 set B and the 1841 Tithe Map, albeit with some internal subdivisions, 3/APP) and appears to have remained largely unchanged ever since.

498. The Guidance also reminds us that when manging heritage assets it is important for the community and people with an interest to express their view of the heritage values to reach a balanced view, in order to draw up a statement of significance that so far as possible is agreed (paragraphs 66-7, 72, 82, CD27.1 set C). Mr Handcock's evidence does not purport to ascertain local communal views or the communal value of the asset, which is relevant to the evidence of SPMRG's witnesses.

499. This area of countryside contributes to significance and the appreciation of significance in terms of evidencing its historic functional link to the house. As a country house owned by a member of the gentry, the lifestyle of the owners and upkeep of the property was funded by rental income from the estates. In 1841, much of the application site was in the same ownership as Hatfield Place, and the whole Site was by 1917.

500. The Setting of Heritage Assets (CD 27.3 set C) was published in 2015 and is up-to-date. It advises that:

i) *setting is about perceptual and associational attributes, as well as physical elements* (this applies to access by means of the Footpath, the loss of views and aesthetic harm).

ii) *appreciating setting is not dependent on the numbers of visitors, and that the importance of quiet and tranquillity, or remoteness of access, should not be downplayed as aspects of setting* (p.4, para 9, 3rd bullet). Just because the heritage asset is privately owned, that does not reduce the importance of preserving the tranquillity and separation.

iii) '*[s]ettings of heritage assets which closely resemble the setting in which the asset was constructed are likely to contribute to significance'* (p.4, para 9, 2nd bullet). This applies to the fortuitously preserved countryside at the application site.

501. Historical change; land use; noise; 'dynamism and activity'; views to, from, across and including the asset; sense of enclosure, seclusion or privacy are mentioned as particularly relevant factors when assessing how and to what degree settings make a contribution to significance (page 9, CD27.3 set C). Page 11 of the guidance notes that of particular relevance when assessing the effect of development are: competition with or distraction from the asset; proximity; views; introduction of movement or activity; noise; lighting effects and 'light spill'; changes to public access; changes to land use; and the degree of reversibility or permanence of the changes.

502. Mr Handcock's observations about screening and designed 'trompe l'oeil' view to give the illusion of an extensive park actually undermined his conclusions. The whole purpose of having built a country house, deliberately designed to face towards what appeared to be unspoilt extensive countryside and screened from the village, was -as he said himself in cross examination- to create an illusion of seclusion in extensive tranquil space. A view of a built-up area and a feeling of being immediately adjacent to the settlement was evidently considered undesirable. It is evident from this set-up that it must have been important to

the designers and owners to feel separate from the settlement. The relatively small degree of separation did not make the intervening countryside less important; to the contrary the limited extent of the country estate means that maintaining it would have been the more precious to those wishing to cultivate an illusion of country splendour.

503. It is clear that there would be significant inter-visibility not just at ground level but in terms of upper storeys of the new dwellings. The development would be visible from the house and from the grounds to the south of Hatfield Place (Figure 4 viewpoints 3A and 3b CD27.5 set C), detracting from the sense of seclusion and from the designed view, at least to some extent and particularly in winter. There would clearly also be 'suburbanisation' in terms of lighting from windows, street lights and vehicles; as well as noise and activity. This noise and activity would extend to the 'blue land' which would be opened up to recreational activity including dog-walking and games- and not only by the residents of 140 new houses but also by the inhabitants at large of the village and their visitors. The footpath would also carry increased traffic as the residents at the western side of the development would take the shortest and most pleasant route to the bus stops on The Street.

504. The suburbanising effect was not a matter addressed in the reasons of Inspector Parker in his consideration of 80 dwelling scheme heritage impacts, and in HPPC's submission it is particularly important here in relation to the 140 dwelling scheme with its greater proximity to the heritage asset and scale.

505. Furthermore, the expansive view to the south from NDP Viewpoint 1 and Footpath 43 (the same view that Hatfield Place was designed to face) would be blocked for visitors approaching or leaving via the Footpath, which would diminish their experience and appreciation of the architectural layout, as well as their experience of the original separation from the village.

506. These changes would be for all practical purposes irreversible and permanent.

507. Accordingly, there would be some heritage harm albeit 'less than substantial' for the purposes of the Framework. This harm must be given 'considerable importance and weight' and just because the harm is 'less than substantial' does not mean that what harm there is should be given anything other than the considerable importance and weight that the statutory presumption in s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires. '*[A] finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering'* (paragraph 48 to 51, *R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22).

508. In HPPC's submission, a determination whether this statutory presumption against grant is overcome must be considered having regard to the overall ('net') public benefit (if any) of the scheme. It is impermissible to artificially set aside the other planning harms and consider the harm to heritage justified by the

planning benefits in isolation. These points were made in opening submissions for HPPC (paragraphs 25-31, ID5).

509. The heritage harm would conflict with adopted Policy CS9 which aims at 'protection and enhancement of the historic environment' and emerging policies HPE8 and LPP60. These policies reflect the statutory test and should be applied with full weight. In this context The Secretary of State is referred to the Steeple Bumpstead decision on Policy CS9 (paragraph 29, CD32.10 set C) and to the *Bloor Home*s decision cited above which held that failure to contain a built-in balancing-test exception does not mean a policy is inconsistent with the Framework

Evidence regarding delivery

510. The same points apply on this as set out in respect to the 80 dwelling scheme.

Unsustainability/demand for services

511. Again, the same points are made as for the 80 dwelling scheme. However, the extent of additional unmitigated/ unmet demand for and strain on public services would be higher owing to the greater number of dwellings. The £378.51 per dwelling offered in Schedule 8 of the s.106 Agreement for 'extension refurbishment or reconfiguration of the Sidney House Surgery' would not resolve the staff shortages and there was no evidence that it would secure the additional capacity required.

512. The development would generate an estimated 42 primary school pupils (page 5 ID1.8). Essex County Council would have sought £513,156 at April 2016 costs in respect of primary places, were it not for its perceived constraints under the CIL Regulations.

Loss of agricultural land

513. Again, there would be significant loss of greenfield agricultural land which the NPPF treats as undesirable unless the loss is 'necessary' (paras 110, 111 and second sentence of para 112). The harm would be greater than for the G80 scheme as the developable area would increase up to about 4.3 hectares, and the 'red line' site area would increase to 6.35Ha. This is harm that should be weighed in the planning balance.

5YHLS/weight attaching to provision of housing

514. HPPC's case is that on the correct approach, there is no shortfall in 5YHLS for the reasons set out above. Even if that be wrong, the shortfall does not justify departure from the development plan and provision of 140 homes does not overcome the strong presumption against grant that applies by virtue of s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Further or alternatively, the specific development plan policies and the physical and policy harms referred to (including conflict with the Framework and in particular Framework paragraphs 132 and 134) significantly and demonstrably outweigh the benefits of providing 140 dwellings at this location.

515. For completeness, it is acknowledged that the 'blue land' would provide recreational benefits for the village beyond just the application site, but that is not a significant factor in the overall balance.

Conclusion of HPPC case to the Inquiry

516. For the reasons set out above, the 3 schemes should be refused planning permission; the GDL 140 dwelling and the DWH 120 dwelling applications should be refused and the GDL appeal dismissed.

The Case for Stone Path Meadow Residents Group

Introduction

517. There are three parts to the case for SPMRG. First, identifying conflict with the Development Plan; second, the application of Limbs 1 and 2 under the fourth bullet point of Framework paragraph 14; and third, a consideration of the planning balance.

518. In very brief summary, SPMRG submit that with respect to part one, there is a conflict with development plan in respect of seven separate policies.

519. With respect to part 2, SPMRG submit that there is a five year housing land supply and that as such the fourth bullet point does not, in fact, apply. Should it be found that nevertheless it does, SPMRG consider that the operation of Framework paragraph 134 indicates that development should be restricted applying Framework footnote 9 (SPMRG accepts that this is the only relevant restrictive policy that falls to be considered). In the event that the Secretary of State does not agree with that analysis, SPMRG considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole in respect of both the 80 and the 140 schemes.

520. Under part 3 SPMRG submit that the planning balance weighs against both schemes in the light of the identified harms and the weight that ought to be given to the benefits identified.

521. Each of these points is now developed in further detail.

Part one

522. SPMRG submits that the evidence presented at the Inquiry demonstrates that there is significant conflict with the following adopted development plan policies:
   i) Policy RLP2: Town Development Boundaries and Village Envelopes;
   ii) Policy RLP80: Landscape Features and Habitats;
   iii) Policy RLP100: Alterations and Extensions and Changes of Use to Listed Buildings, and their settings;
   iv) Policy CS5: in relation to the countryside and development outside village envelopes;
   v) Policy CS8: the character of the landscape and its sensitivity to change; the enhancement of the natural environment and maximising opportunities for creation of new green infrastructure;
   vi) Policy CS9: regarding the built and historic Environment and the preservation of the setting of Grade II* Listed buildings;
   vii) Policy CS11: in relation to infrastructure and facilities.

523. These breaches militate strongly against the grant of planning permission.

Development Boundaries: RLP2 and CS5

524. Both application schemes clearly fall outside the adopted development boundaries, and it was accepted by Mr Lee for GDL that both proposals would therefore breach policies RLP2 and CS5. Significant weight should be given to these breaches. The relevant policy in the emerging BNLP is LPP1 the wording of which is set out above (paragraph 43).

525. Ms Jarvis was asked in cross-examination about the date when development boundaries were last reviewed. It is submitted that, in the context of this District and this site, this is irrelevant. It is apparent from the emerging Local Plan that the Council's spatial strategy, as discussed by Ms Jarvis in her written and oral evidence, is focused on significant development in other areas of the District and, in particular, on a number of Garden Villages. It is plain from BNLP Inset Map 36 that the development boundaries of Hatfield Peverel are intended to remain exactly the same in relation to this site as they are in the adopted development plan documents. The current intention of the Council as seen through the emerging Local Plan therefore clearly demonstrates that the development boundaries are appropriate in their current location.

526. It is acknowledged that the RLP2 and CS5 date from before the introduction of the Framework and therefore must be judged against Framework paragraph 215. In the very recent appeal decision (CD.32.10 set C, paragraph 39), on the same policies under consideration here, the Inspector discussed Policy CS5:

> *I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. <u>This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215</u>.* (emphasis added).

527. Contrary to suggestions made at Inquiry that this Inspector had erred in her analysis , she has clearly identified that it was open to her to attach "due weight… according to [its] degree of consistency with this framework" to CS5 as set out in Framework paragraph 215. It is submitted that the Inspector found that the policy was highly consistent with the Framework, focusing in particular on Framework paragraph 55 and therefore determined that, given its closeness to the Framework, she could accordingly give it greater weight than if it had been inconsistent with the Framework. In accordance with the well-rehearsed principles set out in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) in relation to how to read an Inspector's decision letter, it is therefore submitted that the Inspector's analysis is sound, based on an accurate understanding of the Framework and should be adopted here.

528. It is therefore submitted that significant weight should be attributed to the breaches of RLP2 and CS5 that would occur should either proposal be granted planning permission. As set out below when considering the tilted balance, emerging policy LPP1 would also be breached.

Landscape and Visual Impact: Policies RLP80 and CS8

529. SPMRG submits that both schemes would breach policies RLP80 and CS8, which should be given significant weight. In particular, RLP80 provides that "development that would not successfully integrate into the local landscape will not be permitted"; CS8 provides that "development must have regard to the character of the landscape and its sensitivity to change and where development is permitted it will need to enhance the locally distinctive character of the landscape…". SPMRG submits that it is plain that neither scheme (despite the Green Infrastructure plans (ID16a and ID16b) submitted at Inquiry) would comply with these policies.

530. The relevant BNLP policy is LPP71, which provides that "Development which would not successfully integrate into the local landscape will not be permitted". The Hatfield Peverel NDP emerging policy HPE6 "seeks to protect the landscape setting of the village through preservation and enhancement of views identified by the community and the [HPLCA]… Any proposed development… must ensure their key features can continue to be enjoyed, including distant buildings, areas of landscape and open agricultural area." These policies would also be engaged, as referenced below in the consideration of the tilted balance.

531. It is SPMRG's case that either scheme would result in a significant and unacceptable impact on the intrinsically rural and open character of the site, destroying the much-valued south-western rural fringe of the village. There would be a departure from the historic settlement pattern of Hatfield Peverel in this thrust into open and undeveloped countryside, a loss of farmland and a significant erosion of "the peaceful and rural qualities of the valley landscape [which] provide a green corridor" identified in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). These factors, coupled with the loss of much valued views and the intrusion of the site into views across the valley towards Hatfield Peverel, combine to result in unacceptable harm to the landscape character of the site.

532. As described by Mr Dale in his oral and written evidence, the landscape of and views from Stone Path Meadow (particularly from the corner of Church Road and Stone Path Drive) are highly valued and cherished by local residents: the views across Stone Path Drive from the corner of Church Road and from the footpath are "unrivalled anywhere else in the Parish". He described how, when walking along the footpath alongside Stone Path Drive, "the eyes are always drawn to the open vista", to the distant views across the Chelmer vale and the Ter valley and towards Baddow Ridge. Whilst Stone Path Drive is physically present for footpath users and those moving along Stone Path Drive itself, "that is not where the eyes are drawn, and you would forgive that edge anything for the views that it gives".

533. Mr Dale's evidence also addressed the loss of the views from Church Road and the footpath in the context of breaching the emerging policy in NDP policy HPE6 (as did Cllr Renow on behalf of HPPC), referred to below in relation to the tilted balance.

534. In terms of the schemes' impact on the rural setting of the village, it was suggested on behalf of GDL that, although Hatfield Peverel would expand into open countryside as a result of the development, the new housing estate would remain surrounded by countryside on three sides, such that Hatfield Peverel's rural setting would be retained. Mr Dale's evidence in chief on this point was that

from the point of view of Stone Path Drive, the rural setting would be "destroyed" through the loss of the open views and the presence of housing. From within the new housing estate, Mr Dale noted that residents "would not see the tranquil views; those views would be gone". Finally, he described how the site would be visible in views across the valley and noted that the village's rural setting would be damaged by the intrusion of urban development into the countryside.

535. So from an aerial and cartographic viewpoint, Hatfield Peverel would retain a rural setting, as neither scheme would mean physical coalescence with any other urban development. However, SPMRG submits that this is essentially irrelevant: the point is that the current rural setting of the village is open and visible. At present, one has views out from this fringe of Hatfield Peverel and, looking back towards the village, one can just make out the edge of Church Road and Stone Path Drive in views from across the valley, as noted in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). On both schemes, the housing and the significant amount of proposed planting around the edges of the development - expressly included to shield the housing from view - would mean that neither current nor future residents of the housing estate would be able to see the rural setting of the village. Further, as described by Mr Dale, the slope of the site and the relative flatness of Hatfield Peverel mean that either scheme would be visible from views across the valley to a greater extent that at present, detrimentally impacting on the rural setting of the village.

536. In terms of mitigating the impact on the site, Mr Dale reasonably agreed that the proposed planting and landscaping at the northern edge of the site adjoining Stone Path Drive might improve the views from the site towards Stone Path Drive. However, he maintained that this would not make the price of development worth paying: "to take away our panoramic vista across the valley and replace it with a small suburban park with trees would not be a major step forwards".

537. In terms of the Blue Land which would be available to residents and the public, Mr Dale noted that the majority of the Blue Land is next to the A12: it "lies in less tranquil settings up near the A12, with constant road noise and with no window onto the valley landscape." He suggested that, in landscape and visual impact terms, the Blue Land was "no mitigation" for the losses that would be suffered. In particular, he explained that this was because the Blue Land is some ten metres lower into the valley than the northern edge of the site such that, although one could still see the River Ter and the views are pleasant, these views are no mitigation for the loss of the views from the top of the site.

538. Mr Holliday gave landscape and visual impact evidence on behalf of GDL. Mr Holliday's evidence discusses five landscape character assessments ranging from a national level down to site level: the National Character Area assessment (CD28.4 set C), the Essex Landscape Character Assessment (CD.28.2 set C), the Braintree Landscape Character Assessment (CD 14.5 set B), the Hatfield Peverel Local Landscape Character Assessment (CD.28.3 set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B).

539. It should be noted that Mr Holliday was content to pick up on the small details of the illustrative masterplans and Green Infrastructure Plans - such as the retention of existing individual hedges onsite - and point to these as positive evidence of the schemes' compliance with these larger landscape character

assessments. His written evidence, however, failed to assess and he was reluctant to agree in his oral evidence that there were other, broader aspects of these character assessments which would be breached or detrimentally impacted upon by either scheme.

540. In relation to the National Character Area Assessment ("NCAA"), Mr Holliday noted that the schemes' provision of "new planting and… conserving trees and hedges" meant that the schemes chimed positively with the NCAA (at 2/POE paragraph 6.2). He then found that the development of the site "would have a negligible effect on the wider character area at this broad geographic scale" (at 2/POE paragraph 6.3).

541. Of course, Mr Holliday is correct to say that a 4.57ha or a 6.35ha site would not alter the county of Essex. He did not, however, mention any ways in which the schemes might negatively impact on this specific part of Essex.

542. The NCAA gives a number of Key Characteristics for this Character Area, which include "agricultural landscape [which] is predominantly arable with a wooded appearance… Field patterns are irregular despite rationalisation" and "A strong network of public rights of way provides access to the area's archetypal lowland English countryside" (cited in Mr Holliday's proof at 2/POE paragraph 3.23). Stone Path Meadow is a perfect example in miniature of these key characteristics of Essex and therefore, it is submitted, makes a strong contribution to the character of the surrounding area as classic Essex countryside. This contribution would be destroyed by development of the site with the loss of arable landscape, the loss of the irregular field pattern through housing and the loss of the footpath's rural setting. Yet, despite Mr Holliday's having identified specific ways in which the schemes would positively chime with the NCAA, he did not identify or choose to take into account the ways in which the character of the site, as relevantly described by the NCAA, would be negatively impacted.

543. The Essex Landscape Character Area Assessment (ELCAA, CD.28.2 set C) describes the character area containing Stone Path Meadow as the "Central Essex Farmlands" character area. Mr Holliday again picks up on the substantial proposed planting around the development as assisting with the key landscape sensitivity of "moderate inter-visibility of the landscape" identified by the ELCAA (2/POE paragraph 6.5). He then assesses that developing the site would result in a "negligible effect" on the Central Essex Farmlands character area.

544. Whilst this is true at a Character Area level, Mr Holliday again omits to assess how this particular bit of the Central Essex Farmlands would be impacted upon. The Key Characteristics of this area include:

> *<u>Key Characteristics</u>:*
> *Irregular field pattern of mainly medium sized arable fields, marked by sinuous hedges and ditches.*
> *Mostly tranquil character away from major roads…*
> *<u>Overall Character</u>:*
> *The Central Essex Farmlands is an extensive area of gently undulating arable farmland bisected by the Chelmer Valley. Irregular fields are enclosed by thick but intermittent hedgerows…*
> *Away from the A120, A130, A12, M11 road corridors… large parts of the area have a tranquil character, embracing tracts of fairly secluded countryside*

545. Again, SPMRG submits that the description fits Stone Path Meadow exactly and that the site currently makes a very strong contribution to these aspects of this area around the edge of Hatfield Peverel as an area of Central Essex Farmland. Again, SPMRG submits that the development of this site for housing would destroy that contribution and that therefore there would be a significant impact on this portion of the character area described in this assessment. Indeed, Mr Holliday accepted in cross-examination that, insofar as there would be a loss of farmland through developing the site for housing, that was "obvious".

546. The Braintree Landscape Character Assessment (CD14.5 set B) describes the area as "gently undulating landscape (which) is fairly densely populated… Surrounding the settlements, pastoral fields tend to be small to medium with their boundaries delineated by gappy and fragmented hedgerows" (page 93). The Suggested Landscape Planning Guidance recommends that planners "ensure that any new development is small-scale, responding to historic settlement patterns, landscape setting…" (page 95).

547. Mr Holliday notes that the area has a "low to moderate sensitivity to change overall" (2/POE paragraph 6.10) and that the Suggested Land Management Guidelines recommend conserving and enhancing the hedgerow pattern. He again identifies that the schemes include green infrastructure proposals, which he describes as "these benefits", but the effects of "these benefits" will be contained within a localised area, such that the impact on this character area is negligible.

548. In the first place, SPMRG submit that the benefit of retaining the hedges onsite can only be minimal where they are either contained within a housing development (as can be seen on the Green Infrastructure plan for the 140 scheme), or where they merely form the perimeter for the development. This is because, it is submitted, the hedges are mentioned in the landscape character assessments under discussion in the context of rural arable farmland, of fields divided and subdivided by hedge structure: the loss of that context of the open arable fields makes the mere retention of the hedges somewhat pointless.

549. Secondly, SPMRG again suggest that Mr Holliday has not included in his analysis other aspects of the schemes which do not comply with the Suggested Landscape Guidelines, namely the "small-scale" development or "responding to historic settlement patterns". A development of 80 or 140 houses would be a significant expansion in Hatfield Peverel, a village of 1,815 households. It should also be borne in mind that the emerging NDP policy HO1 provides that "development on unallocated sites should be for small numbers of houses of up to 30 dwellings".

550. Moreover, as suggested to Mr Holliday in cross-examination, developing Stone Path Meadow for housing would not respond to the historic settlement pattern. This is visible in the series of maps dating from 1777 which are appended to Mr Handcock's proof of evidence (3/APP Appendix A2). It is submitted that it is clear from these maps that the historic development pattern of the settlement was to fill out a linear settlement along the Street, heading north and east of Church Road and coalescing in a relatively tight knot around a centre focused on the Street, north of Church Road and around the Strutton Memorial Ground. The development of the significant Stone Path Meadow site would constitute, it is submitted, a departure from that pattern, as well as detrimental impact on the landscape character of the site and its surrounding area.

551. Again, SPMRG submit that, contrary to Mr Holliday's assessment of the impact of the site's development on this character area as "negligible", there would be a significant and detrimental impact on this portion of the landscape character area, as described in the Braintree Landscape Character Assessment.

552. In terms of the site-specific assessments (Hatfield Peverel Local Land Character Assessment (CD28.3, set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B), Mr Holliday considers that there would be a medium/high magnitude of change "given the adjacent settlement context of the site" (2/POE paragraph 6.17). It is submitted that the fact that Stone Path Meadow forms the rural setting to Hatfield Peverel does not lessen the magnitude of change on the site from its proper classification as "high"; indeed, if anything, it should increase the significance of this change. Further, it is submitted that Mr Holliday's characterisation of the site as "a relatively small area of agricultural land… characterised by the existing open settlement edge" overstates the matter. Stone Path Drive is formed of low, modest houses, set back beyond a road and pavement and partially screened by trees and hedges on the edge of Stone Path Meadow and by the properties' own hedges. It is submitted that a far greater influence on the character of the site is the rural nature of the land surrounding three sides of it and the rolling views visible from the footpath.

553. Mr Holliday's assessment is that the landscape effect upon the local landscape character of the site and surrounding area would be Moderate Adverse" at Year 1 and "Minor/Moderate Adverse" at Year 10 (2/POE paragraph 6.18). In cross-examination, Mr Holliday agreed that the appropriate comparison for identifying the impact is between what the site looks like "now" and at Year 1, and between the site "now" and at Year 10: it is not a question of becoming accustomed to the development or "time easing the pain". He also explained that his reason for judging that the impact reduces to Minor/Moderate is the "settling in" effect as the planting infrastructure matures and the colours of the buildings "settle down".

554. In the first place, SPMRG submits, however, that the appropriate landscape impact would be "Major Adverse", for the reasons set out above about the scale and nature of the impact that development would cause. Secondly, it is submitted that the mere growth of plants and the mellowing of buildings is not sufficient for a comparison between the site as it is now and the site at Year 10 to have decreased in magnitude as suggested by Mr Holliday: there would be an undeniable magnitude of change caused by this development which cannot justify a conclusion of reducing "Moderate Adverse" to "Minor/Moderate Adverse". It is therefore submitted that the impact would remain at "Major Adverse" for Year 1 and Year 10.

555. SPMRG therefore submits that there would be a much greater impact on the landscape character of the area and this specific site, as described by these assessments, than Mr Holliday allows in his analysis.

556. Inspector Parker took the correct approach to assessing landscape character impact in his Decision Letter of 24th July 2017 (CD32.6 set C), particularly paragraphs 19 and 25-27:

> *"19. The proposed scheme would see the complete redevelopment of the appeal site. Its intrinsically rural farmland character, abutting the established*

settlement, would therefore be altered into a purposely laid out housing development. The result would be a development that would visually jar with the existing settlement given that the field forms a distinct separation between the built-up areas of the settlement to the north and east and the countryside lying to the south and west of the appeal site. Whilst I note that various landscaping schemes could be employed to reduce this impact, given that only one side of the site is currently bounded by any significant built form, the fundamental character of this agricultural field, and its contribution to the intrinsic beauty of the countryside, would detrimentally change.
25. Returning to character and appearance more widely, my concerns are further reinforced when one considers the Landscape and Visual Impact Assessment (LVIA) submitted by the appellant, which found that the proposal would result in a 'minor-moderate adverse' effect, and that there would specifically be a long term 'moderate effect' on users of the PROW (FP43). There is an existing mature landscape structure along many of the boundaries to the site which provides an element of containment for any development within the field.
26. Nevertheless, the landscape harm here would be through the erosion of the distinctive landscape of the area, including the loss of the tranquil farmland scene. The Local Landscape Character Assessment undertaken by Landscape Partnership in October 2015 found that 'the peaceful and rural qualities of the valley landscape provides a green corridor'. From this, the Parish Council developed emerging Policy HPE6 of the NP, which seeks to 'protect the landscape setting of the village through the preservation and enhancement of views…any proposed development…must ensure key features can continue to be enjoyed including…open agricultural countryside'.
27. The sense of tranquillity both visually and aurally - which is important in the settlement owing to the noise and bustle created by the A12 - would be detrimentally eroded, with the open footpath bounded on one side by a large housing estate. In this respect, I concur with the findings of the LVIA which identified a moderate adverse effect on the PROW and its users. For similar reasons, I also find that the proposal would result in moderate harm in landscape terms."

557. This approach is commended to the Secretary of State. SPMRG note that the Secretary of State did not agree that this particular element of Inspector Parker's decision was flawed and so, whilst the decision itself was quashed in its entirety, SPMRG do not accept that this aspect of his analysis is wrong in law or policy. The Secretary of State could (and SPMRG submit that he should) lawfully come to the same conclusion as Inspector Parker in respect of landscape harm.

558. SPMRG therefore submit that policies RLP80 and CS8 would be breached, in that there would be unacceptable landscape character impact and the development would not integrate into the landscape. Further, these breaches should be given significant weight. Emerging policy LPP71 would also be breached, which is relevant when considering the tilted balance below.

Heritage: Policies RLP100 and CS9

559. SPMRG's case is that policies RLP100 and CS9 are engaged and would be breached if development were to be permitted. In respect of CS9 this would be because there would be a failure to "protect[] and enhance[…] the historic environment in order to respect and respond to the local context, especially in

the District's historic villages, where development affects the setting of historic or important buildings…". In respect of RLP100, the breach would be because there would be a failure to "preserve and enhance the settings of listed buildings by appropriate control over the development, design and use of adjoining land".

560. In this context SPMRG note that in determining the Steeple Bumpstead appeal, the Inspector said:

> *"…although RLP100 mostly refers to alterations, extensions and changes of use to listed buildings, it does include reference to their settings. It specifies that the Council will preserve and enhance the settings of listed buildings by appropriate control over development design and use of adjoining land. It is therefore relevant" (*paragraph 29, CD32.10 set C*)*

561. LPP60 in the emerging Local Plan, Section 2 similarly provides that the Council will seek "to preserve and enhance the immediate settings of heritage assets by appropriate control over the development, design and use of adjoining land". Emerging policy HPE8 in the NDP requires "respect the [heritage asset(s) in the Parish] … and to ensure that no harm comes to them as a result of their plans. This will include the setting of the asset." These emerging policies would be breached in the same way as RLP100 and CS9 above.

Hatfield Place

562. As explained by Mrs Freeman in her written and oral evidence, Hatfield Place is of great significance to the residents of Hatfield Peverel and locals in the area: this significance draws heavily on Stone Path Meadow as part of the setting of Hatfield Place. Her evidence addressed the longstanding historic and social links between Stone Path Meadow and Hatfield Place, and particularly the ancient link between the two provided by the footpath, Public Right of Way (PROW) 43, as first marked on the Tithe Map of 1841 (F21c). She explained how these historic and social links find their expression in local lore and stories told by residents and locals about Stone Path Meadow, the owners of Hatfield Place and events that took place on Stone Path Meadow.

563. Mrs Freeman described in detail the experience of walking along PROW 43 towards the asset and the building anticipation as one journeys along the footpath, waiting for Hatfield Place to emerge amongst the trees, the "jewel in the crown of Hatfield Peverel", as she called it. It is submitted that this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance.

564. The historic maps appended to Mr Handcock's evidence (3/APP) also provided proof of longstanding links of ownership between Hatfield Place and Stone Path Meadow. As discussed with Mr Handcock in cross-examination, much of the site for both the 80 scheme and the 140 scheme was in the ownership of Hatfield Place for significant periods since the construction of the house in the late 1700s. The evidence also suggests that Stone Path Meadow has been in use as agricultural land for most of that period.

565. Mr Handcock agreed that there were functional and economic links between Stone Path Meadow and Hatfield Place, notwithstanding the fact that the land had never been included as part of the house's ceremonial formal pleasure gardens. Hatfield Place may not have been, as explained in detail by Mr Handcock, a

"country house" set in acres of parkland like Boreham House, nor was Stone Path Meadow part of Hatfield Place's pleasure gardens or crafted views: Stone Path Meadow was therefore not significant in understanding that particular aspect of Hatfield Place. Nevertheless, it is submitted that it is not appropriate to ignore any other types or manifestations of significance that the setting of Hatfield Place might make to the asset. SPMRG therefore submits, contrary to Mr Handcock's assessment, that these more practical links between land and house - of ownership, economic and functional reliance - are of value in understanding Hatfield Place's heritage significance and place in the landscape.

566. A further contribution of Stone Path Meadow to the significance and understanding of Hatfield Place is its intrinsically rural, open nature. In the first place, as noted by Historic England, this open, undeveloped space contributes to the physical division between Hatfield Peverel and Hatfield Place and, consequently, to an appropriate understanding of Hatfield Place as a separate residence of greater wealth, social status and significance from houses in Hatfield Peverel (CD4.5b set B and CD27.4 set C).

567. Again, notwithstanding Mr Handcock's assessment of Hatfield Place as an "edge of settlement" residence which is within the experiential orbit of Hatfield Peverel, it is clear from an examination of the historic maps provided (3/APP Appendix A2) that Hatfield Place has always been demonstrably and clearly separate from the village itself, from the 1777 map to the most recent OS map of 2002. Whilst the land to the north of the Street has been heavily developed in the centuries since Hatfield Place's construction, it is obvious from these maps the land to its east and south has remained undeveloped, save for the sole incursion into that open space of allotments, followed by the anomalous development of Stone Path Drive. This, in Mrs Freeman's words, is a "neat and discrete development that nestles unobtrusively in the landscape" and, it is submitted, most unlike the present applications, which jut out strongly into historically undeveloped countryside.

568. Further, the fact that Stone Path Meadow, the "Blue Land" and the land which became Stone Path Drive, has been in the ownership of Hatfield Place for much of the house's history and yet remained undeveloped (until the late 1980s in the case of Stone Path Drive) strongly suggests that this separation from the village was preserved by the owners of Hatfield Place. SPMRG submits that it is plain that Stone Path Meadow makes a significant contribution to the significance of Hatfield Place in this regard.

569. Secondly, it is submitted that the mere fact that the land has remained undeveloped and in agricultural use ever since the house's construction is of significance. Historic England's "Setting of Heritage Assets" guidance notes that where part of an asset's setting remains as it was when the asset was constructed, this can create significance (page 4 onwards, CD27.3 set C). Further, whether this is a deliberate preservation or is simply "fortuitous" is not relevant: it is the fact that the land has remained as it has always been which is of importance. It is submitted that, here, the fact that Stone Path Meadow has never been developed and remains in its historic agricultural use means that, as part of the setting of Hatfield Place, it contributes to the significance of that asset. This land provides a fast-narrowing window onto the surroundings of Hatfield Place as they have always been. Even if the land had never been owned by Hatfield Place, therefore, it is submitted that this would be significant to its

setting. The fact that the land has been owned by Hatfield Place, and that it contributed to the financial maintenance of Hatfield Place through its functional, agricultural links with the house, only increase that contribution of significance.

570. Thirdly, it is submitted that the contribution made by Stone Path Meadow to the significance of the asset has increased over the 20th century, with the rapid advance of modernity on Hatfield Place. It is acknowledged in the Historic England guidance that the contribution made by setting to an asset may change over time (page 2, CD27.3 set C). As Hatfield Peverel has expanded over the centuries, as development to the north of the Street and along Church Road has intensified and, particularly, once Stone Path Drive was built, there has been an inevitable build-up of pressure on the remaining undeveloped rural land surrounding Hatfield Place, protecting it from the encroaches of suburbia and modernity. Stone Path Meadow plays a vital role in relieving that pressure, ensuring that Hatfield Place remains aloof from Hatfield Peverel, and providing a source of tranquillity in strong contrast to the A12 road to the immediate north.

571. It is SPMRG's case that the links and contributions described above between Stone Path Meadow and Hatfield Place mean that Stone Path Meadow contributes heavily to the significance of Hatfield Place as a Grade II* Listed Building - both in terms of when it was built and in its modern context. It therefore follows inevitably that the development of the site for housing (whether under the 80 or the 140 scheme) and the intrinsic destruction of its open, rural nature would result in the destruction of those links and the consequential damage to the significance of Hatfield Place.

572. In terms of the mitigation offered by GDL, as explained by Mrs Freeman in her evidence, the mere preservation of the footpath route through a housing development would not prevent a severely detrimental impact on the experience of journeying along the footpath. Further, it is submitted that the new planting proposed will not mitigate in any way the kind of impacts described above.

573. The recent case of *Steer v SSCLG* [2017] EWHC 1456 is of relevance to a proper assessment of Mrs Freeman's evidence on the experiential significance of the site to Hatfield Place. In this case, the High Court held that an inspector had erred by failing to consider that the existence of a historical, social and economic connection between a Grade 1 listed asset and agricultural land between 550m and 850m outside the boundary of its Park could bring that land within the setting of the heritage asset and could contribute to its significance. In particular, the Court considered at [69] that "the Inspector adopted an artificially narrow approach to the issue of setting which treated visual connection as essential and determinative".

574. SPMRG therefore submits that the contribution of Stone Path Meadow described by Mrs Freeman to the significance of Hatfield Place, and in particular the experiential element of that contribution, is sufficient to base a finding of heritage harm, even if no visual links could be identified between the site and the asset.

575. Further and in addition to the impact on Hatfield Place already set out above, there would be also a visual impact on Hatfield Place in that there would be clear inter-visibility between the site and the asset during the winter and early spring months when there are no leaves on the trees, and potential co-visibility of both schemes throughout the year.

576. It is clear from photographs provided at Mr Handcock's 3/APP, Appendix A.4, CD 27.5, set C and Mrs Freeman's proof that during the winter months, when the trees bordering Hatfield Place have lost their leaves, there is clear inter-visibility between the sites of both the 80 scheme and the 140 scheme and the heritage asset. Mr Handcock agreed in respect of his photograph from the point marked as A.4.11 (Appendix A4) that there is inter-visibility between the 80 scheme and the asset, and that even one-storey buildings would be visible from Hatfield Place, particularly from the higher-level windows.

577. Further, the photographs at F28B clearly demonstrate, as Mrs Freeman explained, the "extent of the intrusion and encroachment into the setting of Hatfield Place" that the 140 scheme would represent. This greater degree of inter-visibility of the 140 scheme is supported by the photo montages provided by Iceni Heritage at Viewpoints 3A and 3B of Figure 4, which make it plain that the development would be visible from the grounds of Hatfield Place (CD27.5 set C). SPMRG does not accept Mr Handcock's characterisation of this as "heavily filtered and difficult to appreciate" (3/POE paragraph 5.48) and submits that the inter-visibility would be far more significant than this, as the Inspector will have seen on his site visit.

578. It is submitted that inter-visibility of suburban development would impact detrimentally on the significance of Hatfield Place by visually undermining the separation between village and house and introducing a discordant element of modernity detracting from the pleasant and rural setting of Hatfield Place to its south and southwest. Historic England also noted in its letter of 6th February 2017 (CD4.5b set B) that this inter-visibility would detract from Hatfield Place's significance.

579. SPMRG note that Historic England is a statutory consultee and "a decision-maker should give the views of statutory consultees… 'great' or 'considerable' weight. A departure from those views requires 'cogent and compelling reasons'" (*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) at 72). The views expressed in Historic England's letters of 6th February 2017 should therefore be given significant weight.

580. In terms of co-visibility, SPMRG relies on the photograph taken by Mr John Warrant from PROW90-13 to the south-west of Hatfield Place (page 7, RG2). It was Mrs Freeman's evidence that both the 140 scheme and the 80 scheme would be visible from this point (she pointed out that "no one has yet invented an invisible house"). This evidence was not challenged by Mr Handcock (although he disagreed with the significance to be attributed to co-visibility).

581. As Mr Handcock explained in cross-examination, in this photograph Hatfield Place has a commanding position of its views across the valley and "appreciating it topographically in this way creates the impression that it has greater isolation from the village than is actually the case". Further Mr Handcock's own analysis of Hatfield Place's significance draws heavily on the views of its immediate pleasure grounds and the way in which longer views across the valley to its south and south-west have been designed to create an impression that the house has a far larger landholding than is the case. It is submitted that views back along the same axis also contribute to an understanding of Hatfield Place's significance and separation from the village.

582. It is therefore submitted that co-visibility of the development with Hatfield Place from this viewpoint would detract from the significance of Hatfield Place: it would represent a significant visual incursion into the setting of Hatfield Place and significant dilution of its separation from Hatfield Peverel.

583. It is therefore submitted that harm would be caused to Hatfield Place by either scheme: this harm would be "less than substantial" and Framework 134 would apply. On the spectrum of harm within the “less than substantial” category the 140 scheme harm would be moderate to high while that of the 80 scheme would be low to moderate given its reduced incursion into the setting of Hatfield Place and reduced visual impact compared with the 140 scheme.

William B. Public House

584. SPMRG submits that "less than substantial" harm, on the low end of the spectrum, would also be caused to the William B. Public House by the 140 scheme, as identified by Historic England in its letter of 6th February 2017.

585. As Mrs Freeman explained in examination in chief, the William B. is part of the journey along the footpath from Stone Path Meadow, thereby linking the asset with the site (albeit to a lesser degree than with Hatfield Place). Further, as with Hatfield Place, it is plain from the historic mapping evidence that the land to the south of the William B has always been undeveloped; as with Hatfield Place therefore, it is submitted that this aspect of the William B's setting contributes to its significance through the very fact of its enduring nature as undeveloped rural land.

586. Inter-visibility between the asset and the 140 scheme is established by Viewpoint 2B, Figure 3 in the Iceni's Heritage Statement - Additional Information (CD27.5 set C). This image demonstrates the gradual enclosure and suburbanisation of views from the rear of the William B. Whilst acknowledging the asset's nature as a roadside inn, with tight economic links to The Street, nevertheless it is submitted that this change to the setting of the William B does constitute harm to the asset. This was also Historic England's view, on which SPMRG rely:

> *this building has always enjoyed a semi-rural setting, enjoying views of open countryside to the rear and side. Whilst views of the existing village do exist, the cumulative impact of this proposal will be to erode even further the rural setting of the William B to the east, with views becoming more urban in nature rather than rural. The existing setting of the William Boosey PH will therefore be harmed.*

587. SPMRG submits that the connection identified by Mrs Freeman between Stone Path Meadow and the William B along the footpath, coupled with the inter-visibility identified by the Iceni Heritage photo montages, means that "less than substantial" harm, albeit on the low end of the scale, would be caused to the setting of the William B pub by the 140 scheme.

Conclusions on Heritage Policies

588. Policies RLP100 and CS9 would therefore be breached should planning permission be granted for either development, given the harm that would be caused to heritage assets by development of a part of their rural setting. The

breach would be more significant in terms of the 140 scheme, given that the William B. would be affected as well as Hatfield Place.

589. In terms of the weight to be given to those breaches, SPMRG submit that the weight should be significant. In the very recent planning appeal in Land off Finchingfield Road, Steeple Bumpstead (paragraph 29, CD.32.10 set C), an Inspector addressed the same policy context and the same policies in discussing the impact that a residential development would have on the setting of a Grade I listed church. The Inspector found that:

> *CS Policy 9 and saved LP policies RLP 90… and RLP 100 all seek to conserve local features of architectural, historic and landscape importance, including the setting of listed buildings… Whilst these policies do not contain the balancing requirement of the Framework contained in paragraph 134 they reflect the statutory test and therefore, unlike my colleague in the Silver End case, I consider that they should be afforded considerable weight.*

590. Policies RLP100 and CS9 are therefore both relevant and would be breached by both development proposals. These breaches should be given considerable weight, as they were in the recent Land off Finchingfield Road case. Emerging Policies LPP60 and HPE8 would also be breached, which is of relevance to the tilted balance analysis.

Infrastructure: Policy CS11

591. Policy CS11 relates to the Council's duty to ensure that "infrastructure services and facilities required to provide for the future needs of the community… are delivered in a timely, efficient and effective manner". Emerging NDP policy FI3 regarding "Education and Health Infrastructure" is also engaged: it provides that the "loss or degradation of education or healthcare services will be resisted", which is relevant given that the capacity of Hatfield Peverel's current educational and health facilities would be exceeded by either the 80 or the 140 scheme.

592. Cllr Renow gave evidence on behalf of HPPC in respect of the impact on infrastructure and community services, in particular on health services, education and traffic. As explained above (paragraph 20) Mr Boyd Ratcliff, Cllr Lewis and Cllr Bebb were not called to give oral evidence. It was made clear, however, that SPMRG continues to rely on their written evidence, although untested in cross-examination.

593. In respect of the impact on Hatfield Peverel's schools, the reasons why Essex County Council has not asked GDL for the original significant contributions to primary school places mentioned in its initial correspondence were made clear at Inquiry (CD 3.6 & CD3.7 set A, CD4.6 & CD4.9 set B). Mr Lee accepted in cross-examination that there was nothing in the Education Statement of Common Ground (ID8) to suggest that Essex County Council no longer needed the money or would not seek a contribution if able to. He also accepted that the cumulative impact of the four development sites mentioned in the letter to Priti Patel MP (Appendix to ID8) would mean that there would be an estimated 81 children for whom there would be no school places in Hatfield Peverel.

594. Evidence emerged at Inquiry that there are no concrete local plans for expanding education capacity in the area. The Lodge Farm school discussed by Cllr Renow and Mr Lee is clearly at a very early stage and, in any event, is clearly

intended to provide capacity for that development and the other significant development taking place in Witham: relying on such putative projects to mitigate the impact on Hatfield Peverel is speculative at best.

595. It was suggested to Mr Lee in cross-examination that, given there would be a cumulative impact as a result of the Stone Path Meadow schemes and that GDL was not making any financial contribution to ease the situation, it would be more accurate and credible to acknowledge that either scheme would contribute to a negative impact on education provision which should be weighed in the planning balance, even if GDL was unable to mitigate that impact. He agreed that there would be a "short term impact" on Hatfield Peverel schools, although he suggested that Hatfield Peverel-based pupils could attend unidentified schools in Witham (notwithstanding his own point that 35% of children in Hatfield Peverel schools live in other areas such as Witham), and agreed that this fact should be weighed in the planning balance (although he only suggested it should be given limited weight).

596. SPMRG submit that it is clear that, cumulatively, the 80 scheme or the 140 scheme would exceed the capacity of Hatfield Peverel's schools and this would constitute a planning harm, as per the evidence of Cllr Renow and the written evidence of Cllr Louis (on behalf of SPMRG). This impact engages CS11, as it is clear that the necessary facilities for the children of Hatfield Peverel are not being planned for in an efficient and timely manner. Mr Lee suggested that because Essex County Council and the Council have "worked with" GDL and will work with other developers in respect of other proposals, there is no conflict with CS11 overall. SPMRG does not accept this: part of the cumulative impact on education provision springs from this development, so the failure of this development to contribute in any way to ease the situation must mean that there is conflict with CS11.

597. In respect of the impact to local GP services, Cllr Renow's evidence was clear that there is no physical capacity to expand at either the Laurels or Sydney House practices: they are "landlocked". SPMRG's case is that the financial contribution of £52,992 will do nothing to ease the actual and significant problems experienced by the Hatfield Peverel services: namely, lack of funding, lack of staff and patient numbers which exceed suggested safe practice. Cllr Bebb's written evidence and the Practice Manager's letter (CD20.1 set C) make clear the deeply felt frustrations and concerns of both the community and the medical staff.

598. Again, SPMRG submit that although GDL are paying the contribution requested, given that this will not address the actual issues, a negative impact will nevertheless result from either the 80 scheme or the 140 scheme which constitutes a planning harm and engages CS11. It does not matter that GDL are unable to do anything further to mitigate the issue: there is still a negative impact and it would be wrong to ignore it and the residents' deep concerns.

599. SPMRG therefore submit that CS11 is engaged and breached: community services will be negatively impacted by further development in the village and the actual impact is not being effectively mitigated. In the alternative, should these impacts on community services not be found to constitute a breach of CS11, they should be considered as standalone considerations in the planning balance (as accepted by Mr Lee in respect of the impact to education services).

Conclusions on Development Plan Policies

600. SPMRG therefore submit that both proposals breach the adopted development plan and the seven specific policies identified above. These policies should be given their full weight as adopted development plan policies on a proper application of Framework paragraph 215.

Part two:

601. This second part addresses the two limbs of the fourth bullet point of Framework paragraph 14: the "tilted balance" in Limb 1 and the "unweighted balance" to be applied to the identified heritage harm in Limb 2.

602. First it is necessary to consider whether the proposals fall within the fourth bullet point at all - is the development plan "absent, silent or [are] relevant policies out of date" - before considering the restrictive heritage policies under Limb 2, followed by the tilted balance under Limb 1, in the event that the Secretary of State disagrees with the first two conclusions.

Does the Fourth Bullet Point Apply?

Five Year Land Supply

603. As per the table of the parties' agreed positions (ID1.13), it is SPMRG's case that the Council can demonstrate a 5YLS, such that Framework paragraph 49 does not apply and "relevant policies for the supply of housing" are "up to date", such that there is no access to the tilted balance on this ground.

604. SPMRG's position on the disputed elements of the 5YLS calculation is as set out in Mr Leaf's adopted proof of evidence (RG5) and as per the discussion at Inquiry.

The Liverpool approach

605. The appropriate approach to take in addressing the backlog is the Liverpool approach, spreading the backlog of 1,660 dwellings out over the remaining plan period.

606. As explained by Mrs Hutchinson on behalf of the Council, the Liverpool approach forms the basis of the emerging Local Plan which is currently at examination. SPMRG submits that to adopt the Sedgefield method would be to undermine this approach taken by the Council after considerable consultation and work and, consequently, would be inappropriate in a plan-led system.

607. Paragraph 35 of the PPG provides that undersupply should be addressed "where possible" during the first five years of a plan. SPMRG submit that, here, it is not "possible". Adopting the Sedgefield method plus 5% produces an annual requirement of 1,100 dwellings or 1,258 dwellings with 20%: these targets are far in excess of anything achieved by the Council going back as far as 2001 and it is therefore extremely unlikely that the Council would be able to achieve these targets. There is therefore no practical purpose to adopting this approach: it is simply not possible for the Council to meet these requirements given their historic performance. Similarly, Mrs Hutchinson notes in her first proof that it is unrealistic to expect that the scale of increase in delivery required could be achieved straight away (paragraph 4.16, BDC1).

608. The significant increase in housing requirement from the Core Strategy figure of 272 dwellings per annum to an OAHN figure of 716 also indicates that the Liverpool approach is appropriate. This sudden upsurge in the annual requirement is another reason why it is not possible for the Council to address the existing backlog in the next five years.

609. It is also highly relevant that the Council is bringing forward new Garden Communities in its area as set out in policies SP2 and SP7 of the BNLP, Section 2. The Council has thus deliberately planned its anticipated housing delivery over the Plan Period as a stepped housing trajectory based on the delivery of a strategic site, as opposed to a "standard annualised requirement". The latest 5YLS Statement predicts that 40,000 new homes in North Essex will be delivered by these Garden Communities. This also suggests that the Liverpool approach is appropriate, given the way in which the Council is planning its approach to housing delivery over the whole plan period.

610. SPMRG notes that Planning Inspectors have adopted the Sedgefield approach in the recent decisions at Coggeshall (paragraph 14 to 15, CD32.2 set C), Steeple Bumpstead (paragraph 9, CD32.10 set C). In the first place, the BNLP has now been submitted for examination since these decisions, which is a significant step forward in terms of the certainty of the Council's approach to Garden Villages (although plainly the Plan has yet to make it through examination). Secondly, neither Inspector's analysis addresses the points raised above in respect of whether it is possible for the Council to make up the backlog in the first five years.

5% or 20% Buffer

611. As submitted at Inquiry, SPMRG's case is that the appropriate target against which the Council's record of delivery should be measured for the purposes of applying either a 5% or 20% buffer is the requirement that was in place at the time. SPMRG therefore agrees with the Council's closing submissions on this point.

612. Further support is provided for this use of contemporary targets for measuring delivery by the two planning decisions submitted by SPMRG on the first day of the Inquiry.

613. The first is the Navigator L decision, dated 20th January 2015 (ID44). Here the Council had "oversupplied" against local plan figures from 2006-2014, but had undersupplied against a SHMA figure dating from April 2011. The Council argued that it should have its policy "oversupply" deducted from the requirement figure going forward over the next five years, on the grounds that it could not have known about the SHMA figure until 2014, so the requirement should not be calculated using that figure. The Inspector rejected that argument, noting that "I fully accept that during 2011-2014 the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here." In footnote 8 to this paragraph, the Inspector goes on to say that the Council's being unable to meet a need of which it was not aware "might be relevant in other circumstances, such as where the point at issue relates to where there has been "persistent under-delivery" for the purposes of the NPPF-buffer". The issue he was deciding was different but he clearly took the view that the Council should be measured in "persistent under-delivery" terms against the targets which it knew it was aiming for.

614. The second decision is Land North of Cranleigh Road, dated 14th August 2017 (ID43). Here, the Council had a low pre-Framework Core Strategy housing target, on which it sought to rely for establishing a forward requirement (unlike the Council here). The Inspector disagreed and found that the forward requirement should be calculated using much more recent and much higher OAHN figures, even though these were not yet tested or adopted in a development plan document.

615. The developer also argued that "persistent under-delivery" should also be measured against these new figures from 2011, the date from which the requirement was calculated. This argument was rejected by the Inspector, referencing the Navigator decision, on the grounds that "in the period up until 2014 when the then PUSH SHMA identified a OAHN the LPA could not have been expected to meet a need that it was not aware of. On this basis, allowing for peaks and troughs, significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified."

616. Both of these decisions provide support for adopting the targets in place at the time when determining whether the Council has persistently under-delivered. It is plain that there is no under delivery in the present case.

Supply

617. As set out in Mr Leaf's letter (ID21), SPMRG submits that the Council has underestimated its supply by 461 dwellings (including the Sorrell's Field at 50 dwellings), such that there ought to be a 5YLS of 5.35 years using the Liverpool method plus 5%. Individual treatment of these sites is set out in Mr Leaf's letter and is not repeated here.

618. SPMRG has identified these sites on an application of the principles in Framework paragraph 47 and footnote 11 of the Framework and paragraphs 35-9 of *St Modwen Developments Ltd v SSCLG and others* [2016] EWHC 968 (Admin) (CD31.18, set C). It is submitted that it is plain that these sites fall within the definition of "deliverable", which does not require a site either to be allocated or to have planning permission.

619. SPMRG makes the following submissions in response to the Statement of Common Ground between GDL, DWH and the Council (ID39).

620. SPMRG maintains that the identified sites can be considered to be "available now": the fact that steps need to be taken before the site can be developed does not prevent the site from being available any more than GDL's need to sell the site to a housing developer prevents Stone Path Meadow from being available.

621. The figure for Sorrells Field was adjusted down from 52 dwellings to 50 on the understanding that the application was being revised down to 50 units.

622. Contrary to the penultimate paragraph of the SOCG, the Gimsons site (WITC 421) is included in the housing trajectory appended to the letter to Priti Patel MP, headed "Copy of full housing trajectory including draft allocations re query". The entry is on the last page, showing 70 dwellings over the next five years and noting that "Planning application expected to be submitted Autumn 2017 by Bellway Homes".

623. Should the Secretary of State find that there is a 5YLS deficit, contrary to the above submissions, this deficit should be given limited weight for the reasons set out in Mr Leaf's adopted proof and applying the principles in the case of *Phides Estates (Overseas) Limited v SSCLG [2015]* EWHC 827 (Admin) (CD31.10 set C) as set out in the Statement of Case (at paragraphs 103-108 and not repeated here).

Is the Core Strategy and Local Plan Review otherwise out of date, absent or silent?

624. GDL have suggested that the adopted development plan is silent because of the lack of a Site Allocations Development Plan Document: it is suggested that this means that the development plan is silent on where to locate development outside the strategic areas.

625. SPMRG disagrees that the development plan is either "silent" or "absent" for the purposes of Framework paragraph 14. The relevant question is whether there are adopted policies which enable a decision-maker to determine whether or not to grant permission, as per the test set out in *Bloor Homes East Midlands Ltd v SSCLG & Or* [2014] EWHC 754. The Court held that:

> *50. …I do not think a plan can be regarded as "silent" if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle.*
> *51. A plan may or may not be "silent" if it does not allocate the particular site in question for a particular use, whether on its own or as part of a larger area, or if it does not contain policy designed to guide or limit or prevent development of one kind or another on that site or in that location. In Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 , para 18 Lord Reed JSC observed that the development plan is "a carefully crafted and considered statement of policy", whose purpose is to show how the local planning authority will approach its decisions on proposals for development unless there is a good reason not to do so. This is an essential principle of the plan-led system.*

626. It is submitted that the CS and the LPR plainly contain numerous policies which show how the Council will approach a decision on a proposal for development on Stone Path Meadow. It is submitted that it is irrelevant, therefore, that there is no adopted Site Allocations Policy document allocating land for development. Further, SPMRG note that, even if such a document existed in adopted form, it would not include this site for allocation, as set out in detail in the Statement of Case (paragraphs 83-86).

627. Further, in the light of *Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146 (F6f), it is submitted that the development plan policies' relative age is irrelevant to their weight in the planning balance, given their overall consistency with the Framework.

628. SPMRG therefore submits that the development plan is neither out-of-date in the relevant sense, nor absent nor silent in respect of policies relevant to this site.

Limb 2 of Framework paragraph 14: Restrictive Footnote 9 Policies

629. As set out under 'Heritage' above, SPMRG submit that the 140 scheme would cause moderate to high harm which is "less than substantial" under Framework paragraph 134 to Hatfield Place and low levels of "less than substantial" harm to the William B. The 80 scheme would also cause moderate to high levels of "less than substantial" harm to Hatfield Place.

630. Applying the appropriate unweighted balance under Limb 2 of Framework paragraph 14 in respect of restricted policies, it is submitted that the heritage harm caused by either the 140 and the 80 scheme is not outweighed by the benefits of the relevant scheme when the heritage harm is given the appropriate "considerable importance and weight" under the duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding the desirability of preserving the settings of listed buildings (paragraph 38, CD31.5 set C).

631. Further, Framework paragraph 132 makes it clear that "As heritage assets are irreplaceable, any harm of loss should require clear and convincing justification". SPMRG submits that none of the public benefits of either the 140 or the 80 scheme provide the necessary justification for harming Hatfield Place, highly valued by residents, or the William B (in respect of the 140 scheme alone).

632. In terms of the weight to be given to the benefit of housing: on SPMRG's primary case there is a 5YLS surplus, such that the weight that can be given to the provision of housing is limited. Even if there is a 5YLS deficit, the provision of either 80 or 140 dwellings should nevertheless be given no more than moderate weight in the circumstances of this particular District and the steps being taken by the Council to remedy the deficit, as set out above. Moreover, as submitted in Opening (paragraphs 10 to 11, ID6), the significant amount of development planned for Hatfield Peverel must reduce the weight that can be given to this proposal. The provision of housing alone cannot outweigh the permanent harm to irreplaceable heritage assets.

633. In terms of the economic benefits of construction jobs and residents' spend cited by GDL, it is submitted that such results would flow from any housing development and do not provide specific justification for the proposed development on this site.

634. Regarding the Blue Land public open space, SPMRG does not accept that this is as significant a benefit or as effective a piece of mitigation in terms of landscape and visual impact, heritage, ecological or biodiversity matters as has been suggested. In the first place, the Blue Land is clearly inferior in landscaping and visual terms to Stone Path Meadow: the views from the southern portion of the Blue Land (near the detention basin) are inferior to those from the top of Stone Path Meadow and non-existent from the Blue Land adjacent to The Street. The Blue Land adjacent to The Street is markedly less tranquil than the site itself, which undermines suggestions that this land would be suitable ecological mitigation and also the value to be derived from this land in landscape character terms and in its use by the public.

635. In heritage terms, as discussed with Mr Handcock in cross examination, it is submitted that preserving the Blue Land as open space is an empty gesture as mitigation for the heritage harms, given that development on the Blue Land

would have such a noticeable impact on the setting of Hatfield Place and the William B that it is not likely to be developed on heritage grounds.

636. In terms of the Blue Land's improving the ecology and biodiversity of the area, it is not accepted by SPMRG that any wildlife benefits will be realised: the Blue Land is to be heavily used by dog walkers and members of the public; much of the Blue Land is located very close to The Street and the A12; and there will be a significant increase in human presence and disturbance caused by the housing development, as per the evidence of Mr East in examination in chief and cross-examination.

637. Finally, it was suggested that the Blue Land could be ploughed up at any moment, such that ensuring its continuation as meadowland constitutes a benefit. This alleged risk, however, is pure speculation. Mr East's unchallenged evidence was that the land has not been ploughed at any point over the last two decades and does not seem likely to be ploughed up given its size and difficult access points. SPMRG also notes Inspector Parker's conclusion in respect of the Blue Land offered with the original 80 scheme: "as this land is sought to mitigate an impact arising from the development, it cannot be considered to also be a benefit" (paragraph 47, CD32.6 set C). If any weight at all to be attributed to the public benefits of the Blue Land, it clearly must be no more than very limited.

638. Similarly in respect of the children's play area and wider biodiversity benefits from increased planting, these are benefits commonly attached to housing developments, provide no specific justification for this harm and, in any event, must be balanced against the inevitable loss of open greenfield agricultural land. The alleged wider social benefits of additional residents in Hatfield Peverel must also be balanced against the impact on community services and infrastructure set out above. Finally, the minor and cosmetic benefits offered such as bus stop improvements, allotments and sporting facilities contributions do not constitute benefits capable of providing "clear and convincing justification" for causing irreversible heritage harms.

639. There is nothing special or specific whatsoever about developing Stone Path Meadow or these generic benefits that might flow from that development which warrants the harm described above to the highly valued heritage assets of Hatfield Place or the William B. The Finchingfield Inspector reached similar conclusions in that case (paragraphs 36 to 38, CD32.4 set C).

640. In respect of the 80 scheme, it is clear that moderate to high "less than substantial" heritage harm to the designated heritage asset of Hatfield Place is not outweighed by the scheme's public benefits; similarly the 140 scheme's public benefits (even allowing for the increased number of dwellings) do not outweigh the harm caused to Hatfield Place or the low "less than substantial" harm to the William B.

641. On a proper application of Framework paragraph 134 therefore, Limb 2 of Framework paragraph 14 indicates that development should be restricted. Consequently, the presumption in favour of sustainable development is not available to either application through this route.

642. Should the Secretary of State disagree with this assessment, it would be necessary to apply the first Limb, or "the tilted balance", as is set out below.

Limb 1: the Tilted Balance:

643. Should the Secretary of State find, contrary to SPMRG's case, that the harm caused to the listed buildings is outweighed by the public benefits of the scheme, it is nevertheless submitted that the adverse impacts of granting either scheme permission outweigh the benefits of that scheme when judged against the policies of the Framework as a whole.

644. Even if these proposals are considered only in the context of the "tilted balance", this does no more and no less than apply a presumption in favour of sustainable development - defined in the Framework as consistency with the Framework itself.

645. As recognised by Lord Carnwath in the *Suffolk Coastal* decision, "The Framework itself …is no more than "guidance" and as such a "material consideration" …It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme" (paragraph 21, CD31.2 set C).

646. The benefits of the scheme have already been assessed in respect of the Limb 2 unweighted balance. The concerns raised above in relation to the conflict with development plan policies must therefore still be given significant weight in the assessment of the suitability of either of the proposed schemes.

647. In terms of the adverse impacts "assessed against the policies in this Framework taken as a whole", the harm in terms of the impact on heritage assets (which retains its "considerable weight" under the s.66 duty), the moderate landscape character and visual impact harm and the impact on local infrastructure have been set out above.

648. An additional, further source of harm is that caused by breaches of the emerging policies on development boundaries, heritage, landscape and visual impact, infrastructure and design of new developments in the NDP and BNLP Section 2 set out above; specifically policies HPE6, HPE8, F13, HO1, LPP 1, LPP 71 and LPP 60. Framework paragraph 216 provides that decision-takers may give weight to the policies in emerging plans according to the stage of preparation, the extent of unresolved objections and the degree of consistency between the emerging plan and NPPF policies.

649. SPMRG submits that moderate weight should be attributed to the breaches of emerging policies in the BNLP and the NDP. Significant amounts of work and consultation have been done on both plans - which have both been submitted for examination - and the policies are consistent with the Framework, as per the evidence of Ms Jarvis. SPMRG does not accept that the additional work suggested by the Examiner into the NDP warrants a conclusion that no or very limited weight can be given to the plan. First, as set out in HPPC's opening submissions, no substantive findings have been made on the NDP's ability to meet the basic conditions by Mrs O'Rourke (ID5). Secondly, any additional SEA or HRA work that needs to be done in respect of the Arla Dairy allocation will have no impact whatsoever on the policies relied on by SPMRG (in respect of landscape character, views, heritage, infrastructure or limits on unallocated housing developments).

650. To permit development on Stone Path Meadow in contravention of these emerging policies would constitute a planning harm in the context of a plan-led system, given the weight that may be attributed to these policies under Framework paragraph 216.

651. Taking these sources of harm together, it is submitted that they must significantly and demonstrably outweigh the benefits put forwards by GDL in respect of either the 80 or the 140 scheme, looking at the Framework as a whole. The Framework does place significant emphasis on the need for housing, but this cannot constitute a silver bullet here given the scope and breadth of harm that would be caused by these proposals to a village which is already accommodating a significant amount of development.

Part 3: The Planning Balance

652. It is plain from the above submissions that, on SPMRG's primary case, the planning balance tips firmly against both applications given the harm identified from the breaches of seven separate adopted development plan policies, the harm caused to heritage assets, the presence of a 5YLS, the weight to be given to emerging BNLP and NDP policies and the limited weight to be afforded to the generic benefits offered by the proposals.

653. As previously submitted in the Statement of Case, there are no other material considerations sufficient to justify a decision other than in accordance with the adopted development plan, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004.

Conclusions

654. As set out in Opening, the residents who live in Hatfield Peverel attach real significance to this site. As was made abundantly clear throughout the Inquiry, they deeply care about the views, the wildlife, the landscape and the heritage connected with Stone Path Meadow and the surrounding area. They are also deeply concerned about the impact that this development will have on services in Hatfield Peverel and the local area: these cares and concerns are genuine and should be listened to.

655. It was also obvious throughout the Inquiry that localism is alive and well in Hatfield Peverel: the residents have clearly placed their trust in the principles of localism through their sustained and significant engagement with the emerging NDP. The development of this site would wholly undermine that engagement and the views and values expressed in the NDP.

656. SPMRG closes these submissions by repeating that these proposals are contrary to both adopted and emerging development plan policies; the Council has a 5YLS and the site is much loved and valued. Stone Path Meadow should be preserved for future generations to cherish. Neither proposal is acceptable in planning terms and the appeal in respect of the 80 scheme should be refused and the application in respect of the 140 scheme should be rejected.

The Case for Braintree District Council

Introduction

657. The background to this inquiry is set out in the Procedural Matters at the beginning of this report. The case set out addresses all three schemes before the Secretary of State unless otherwise stated.

658. As was made clear in Opening, the Council's position to this inquiry is that there is no sufficient basis to refuse planning permission for these schemes, notwithstanding that they are in conflict with the adopted development plan. It stands by the assessments that its officers made of the schemes. It recognises that had the two larger schemes not been called in, it is likely that they would have planning permission by now. It has not sought to challenge the developers' core case that, respectively, their schemes merit planning permission.

659. Equally it is of course primarily for those developers to persuade the Secretary of State that their schemes are worthy of planning permission, and the Council has not, in that same context, sought to attack the case mounted against the schemes by SPMRG and HPPC, even where those parties have been critical of the Council's approach. That does not mean, of course, that the Council accepts those criticisms are well-founded - they are not - but stems from a recognition that the purpose of this Inquiry is to consider the case for granting planning permission for each of the schemes.

660. In that same context, the Council will not descend into the detail of many of the disputes which will govern the ultimate outcome of this process; not because the Council does not have a view on them, but because it recognises that additional submissions from the Council on those points, beyond those made by the party advancing a particular position, are unlikely to assist. Accordingly, the Council’s case is relatively brief. It does, however, touch on some of the controversial issues where the Council has taken a particular position on them which may not be mirrored by the relevant other party. The first is in respect of housing land supply.

Housing Land Supply

661. A key element of the Council's conclusions on the ultimate acceptability of these schemes - all of which are contrary to the adopted development plan - is that it could not then and cannot now demonstrate a 5-year supply of housing land. Efforts were made 'behind the scenes' to reach an agreed position with the two appellants as to housing land supply (including the suggestion of agreeing a 'range') but that did not bear fruit.

662. The Council was pleased to agree a position in respect of OAHN but in the light of Mr Spry's eventual position, remain surprised that further agreement could not be reached. Broadly we accept the Inspector’s characterisation of the position when summarising the round table discussion, that it is unlikely that there would be a materially different effect on weight whether there was a c.3.3-year (GDL/DWH high water-mark) or c.3.9-year (Council's best case) deficit. In either scenario, the deficit is considerable and weighs in favour of granting permission for more housing.

663. Nonetheless GDL/DWH maintained that the true position was the lower end of that range, for reasons the Council do not accept are valid. As such a number of points arise for further comment.

664. Before moving to the specific controversies, it is important to be absolutely clear about the Council's approach to its BNLP. It would not have submitted its draft Plan for examination if it was not confident about its soundness. It is not inconsistent with that confidence to recognise that until the examination process has been carried out and expert consideration given to the contents, some uncertainty remains. Confidence in the plan's soundness does not exclude a pragmatic view of the reliance that can be placed on its draft provisions in the development management context until such time as they are confirmed.

665. Indeed such an approach accords with national policy in the Framework, which at paragraph 216 advises that weight should be afforded to emerging policy according to various factors, all of which are referable to the inherent uncertainty about the contents of draft plans until they are adopted.

666. A good example is the inclusion of draft allocations for housing on sites which under the existing adopted plan - which retains its statutory primacy - would be contrary to the development plan. The Gimsons site - identified by SPMRG in this case as one draft allocation that should be included in the five-year supply - makes the point neatly. While the emerging plan allocates it for housing development, the adopted plan has it as a Visually Important Space under Policy RLP4, meaning it is inappropriate for housing. Until such time as the draft allocation supercedes the present development plan status, it cannot be considered 'deliverable'. Of course, there is the additional irony that Priti Patel MP, in whose office Mr Leaf works, has objected to the draft allocation of the Gimsons site in the emerging plan and yet here (by extension) argues that it should be treated as a deliverable site for housing.

667. This general approach is relevant to the Council's position in two respects. First, in terms of the Liverpool/Sedgefield dichotomy in dealing with the shortfall since 2013 and, second, in terms of the additional sites that SPMRG sought to promote as being deliverable in their letter of 12 December 2017 (ID21). The Council turns next to the specific components of the supply debate.

OAHN

668. There is no challenge in this inquiry to the Council's position that its OAHN is 716 dwellings per annum. That figure has been derived from the latest household projections (in accordance with the PPG), and uplifted by 15% to account for 'market signals' (essentially past unmet need). That means that the ultimate figure of 716 dpa specifically accounts for unmet need in past years, in the way the PPG requires.

669. The figure is one of the key elements of the first Section of the emerging plan, which will be considered at the EiP in January 2018. All parties will be likely to wish to make submissions on the outcome of that EiP on the OAHN, and its ramifications (if any) for the matters before this Inquiry if they remain undetermined at that point.

Shortfall

670. The quantum of the shortfall against the OAHN of 716 (effectively unmet need) since 2013 is uncontroversial, but the period over which it is sought to be 'recovered' is not. GDL/DWH argue that it should be recovered in the next five years, relying on the PPG, which suggests that this 'Sedgefield' approach is appropriate unless it is unachievable. The Rule 6 parties contend for the shortfall to be recovered over the entire plan period, the so-called 'Liverpool' approach.

671. The Council will contend at the forthcoming EiP into its emerging plan that the examining Inspector should accept, for the purposes of the soundness of the emerging plan, the 'Liverpool' approach. This is in large part because that same plan contains an overall strategy (shared with its partner authorities) of seeking to meet future growth in Braintree (and beyond) by creating new Garden Communities and allocating larger housing sites, which can better respond to the requirements for new infrastructure to support housing development, a strategy which the Council considers accords with government policy and is a sound approach to meeting future growth needs.

672. That same strategy means, however, that some of the new land for housing will not come forward until the middle of the plan period (and indeed beyond). If it is confirmed by the EiP as a sound strategy, it will provide ample justification for the Liverpool approach. The Council hopes it will be so confirmed. However, it has argued in three recent s.78 appeals that it provides that justification now, even as a draft strategy, and in each case has failed to persuade the Inspector of that. The failure in each case has been broadly on the basis that until there is greater certainty about the emerging plan, the Sedgefield approach should be preferred. That appears to be rooted in Framework paragraph 216.

673. On that basis, and for essentially pragmatic reasons, the Council's position to this Inquiry has been that it accepts that until its strategy is confirmed, it is likely to remain the case that the Sedgefield approach to making up the shortfall is appropriate for development management decisions. It recognises the clear steer in the Framework and PPG towards meeting needs, and doing so for the next five 5 years in particular. It has had regard - entirely properly - to the conclusions on this very issue reached by three recent s.78 appeal Inspectors. Its key justification for the Liverpool approach depends on a strategy within a plan that is still emerging and has yet to be tested. Its approach here is pragmatic but also sound and sensible, and there is no inconsistency with its approach to the emerging local plan.

674. It is also consistent with its position of relying on the other conclusions of those three Inspectors, in respect of (for example) the weight to be attached to policies of the development plan. It is generally unattractive to seek to rely only on those parts of a recent decision that suit one's case, while ignoring other elements which do not. The Council does not fall into this trap.

Buffer

675. This debate was essentially reduced, via the round table session, to a binary disagreement about whether one treats the OAHN of 716 dpa as being the 'appropriate target' from 2013, or only from the time when it became a target at all (i.e. in 2016). Mr Spry says you should 'backdate' it to 2013, Mrs Hutchinson says not.

676. The Council adopts the Inspector's characterisation of Mr Spry's approach as illogical. Unlike the consideration of the shortfall since 2013, this exercise is not one of quantifying unmet need. It is specifically considering how likely it is that the planned supply will be met, using past performance against applicable targets as an indicator of likely future performance. This is clear because the purpose of including a 20% buffer (where there has been 'persistent under-delivery') is 'in order to provide a realistic prospect of achieving the planned supply' (see Framework paragraph 47). A local authority which has persistently, as it were, fired its arrows wide of the target must be moved closer to the target in order to improve its chances of hitting that target in future.

677. It thus follows that the nature of this exercise is considering past performance, not in terms of meeting actual needs but in terms of meeting planned targets. It is not about being 'unfair' to anyone - that was Mr Spry's straw man - but about the nature of the exercise. The advocates for GDL/DWH were quite correct to say this has nothing to do with 'punishing' anyone and should be carried out in an entirely dispassionate way. It also explains why it is not helpful here to consider whether past targets were themselves likely to be lower than actual needs. The question is how often Braintree's arrows hit the target, not whether those targets ought to have been different. Nothing in the *Cotswold* judgment (ID1.15) indicates otherwise.

678. The simple fact is that 716 was not in any sense a 'target' for this Council prior to 2016 and it makes no sense in this context to consider its performance in hitting a 'target' that it was not aiming for; that would say precisely nothing about the likelihood of 'achieving the planned supply' in the future. The usefulness of the exercise relies upon identifying what the target in fact was at the time. It was not 716 until 2016.

679. For those reasons a 5% buffer is appropriate. Mrs Hutchinson's evidence makes clear that Braintree has not persistently under-delivered.

Supply

680. There is (now) an immaterial difference, some 68 units, between GDL/DWH and the Council on the quantum of supply.

681. Of more materiality is the SPMRG position that ten further sites should have been included in the supply as set out in Mr Leaf's letter of 12 December (ID21). The question of whether those sites should be included in the supply is the subject of a SOCG between GDL/DWH and the Council (ID37), both as a matter of principle and on a site-by-site basis. The Council does not repeat, but does rely upon, those points here.

682. There is ample justification for the position taken by the Council in respect of those sites, as accepted by GDL/DWH. In short and in general terms the draft allocations may only attract limited weight until the emerging plan within which they appear has progressed further along its journey to adoption. Looking at the sites individually results in the conclusion in each case that they are not yet to be considered 'deliverable' for development management purposes.

683. It is also clear that these sites only make a material difference to the position if the position of the Rule 6 parties (contrary to the case presented by the Council and GDL/DWH) that the Liverpool approach should be adopted now is correct.

Conclusion - housing land supply

684. The above points lead to the conclusion that the Council is correct to say that it cannot yet demonstrate a five-year supply of housing land. Insofar as it matters, the position is that it can demonstrate something in the region of 3.9 years, at least until its emerging plan attracts greater weight. That means that the proposals fall to be determined having regard to the 'tilted balance' in Framework paragraph 14. There is, therefore, justification for not applying the restrictive policies of the development plan 'with full rigour'; and the delivery of housing attracts greater weight in favour of the proposals than it might if there was a five year supply.

The approach to the development plan

685. These proposals are all contrary to the adopted development plan. The controversy revolves around how that conflict should be treated within the context of the Framework and the statutory test.

686. GDL/DWH and the Council agree that the ultimate outcome of that exercise is that planning permission should be granted for all three schemes. However, there is some divergence in the way in which the parties arrive at that conclusion. On that basis it may assist to have the Council's position set out clearly.

687. The proper approach to the development plan, where there is no five year supply of housing land, has been considered a number of times recently by Inspectors on s.78 appeals in Braintree District Council. The Council respectfully adopts the reasoning of Inspectors Hill and Gregory in the Coggeshall (CD32.2 set C) and Steeple Bumpstead (CD32.10 set C) Inquiries (respectively), and the consistent decision of Inspector Fagan at Finchingfield (CD32.4 set C). It is of note that both GDL, and its counsel here, appeared at Steeple Bumpstead and advanced the same argument there as here in respect of restrictive policy CS5, and it was roundly rejected. There does not appear to have been any real recognition of that in their position to this inquiry.

688. In short:

i) There is a sound basis in principle for reducing the weight to be applied to restrictive policies of the development plan on account of the lack of a five year supply of housing land;

ii) The quantum of that reduction depends on a number of factors, including the extent of the shortfall, the purpose of the policy, and the consistency of the policy with the Framework;

iii) There is no sound basis for reducing the weight to be attached to restrictive policies on account of their age alone (paragraph 40 iii F6f); and

iv) In terms of consistency with the Framework, a nuanced approach is required by Framework paragraph 215 which calls for due weight to be attached depending on the degree of consistency with the Framework (paragraph 52, *Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459).

689. Saved policy RLP2 can be afforded limited weight because it is restrictive of housing and the District has a shortfall in housing land supply. The boundaries

on which it relies were set with reference to housing needs for a period that has expired. This is the same conclusion reached by Inspector Fagan in the Finchingfield decision (CD32.4 set C, paragraph 10).

690. Although Saved policy RLP80 is not criteria based and applies a generalised approach in protecting landscape features and habitats, it is generally in conformity with the Framework and the Council maintains that it should be given considerable weight.

691. CS policy CS1 is a 'policy for the supply of housing' and is out of date by virtue of Framework paragraph 49. Insofar as there is a breach of its terms it attracts limited weight as found by, for example, the Finchingfield Inspector (CD32.4 set C, paragraph 10).

692. By contrast, CS policy CS5 attracts more than the 'very limited weight' argued for by Mr Lee (for GDL) and the 'limited weight' argued for by Mr Dixon (for DWH). For the reasons set out by Inspectors Hill (CD32.2 set C, paragraph 59), Gregory (CD32.10 set C, paragraphs 39 & 65) and Fagan (CD32.4 set C, paragraph 59), policy CS5 should be afforded more than moderate, but not full, weight. It is consistent with the Framework core principle concerned with protecting the countryside from harm. There is some justification for a reduction in weight on account of the lack of a five year supply but no justification for that reduction to be as great as argued for by GDL/DWH here. This has been confirmed three times in s.78 appeal Inquiries since July 2017. It may be that Mr Dixon's evidence is in line with this, following clarification in his evidence in chief that it is the precise position of the boundaries, rather than the protective element, that attracts reduced weight.

693. GDL is correct to say that the Framework provides for a hierarchy of protection; at the top are designated landscapes, then below those come 'valued landscapes' and then the residual category of landscapes within which the Stone Path Drive site sits. It does not follow, however, that those at the bottom of this hierarchy get no protection. The hierarchy simply requires that they attract a lesser degree of protection than might categories above them in the hierarchy. In the Finchingfield and Steeple Bumpstead decisions, both of which concerned 'valued landscapes', it was held that Framework paragraph 109 was a 'footnote 9 policy' indicating that development should be restricted, providing an additional level of protection by disengaging the 'tilted balance'. That alone is sufficient to satisfy the hierarchy argument. Policy CS5 permits this hierarchy of protection to be respected.

694. In terms of heritage policies - only relevant to the GDL 140-unit scheme because that is the only scheme for which any heritage harm is alleged by the Council - there is no basis for reducing the weight to the conflict with policy CS9 (and/or policy RLP100) on account of inconsistency with the Framework (the only basis on which any reduced weight is alleged by Mr Lee). The absence of the 'balancing exercise' is not by itself sufficient to render the policy inconsistent with the Framework - see *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) - and in any event the Council has applied it as if that balancing test was incorporated. This policy should attract considerable weight. This was the conclusion reached in the Coggeshall (at paragraph 92), Steeple Bumpstead (at paragraph 29), and Finchingfield (at paragraph 33) decisions.

695. That said, it is the Council's case that because there is some 'less than substantial harm' caused by the GDL 140-unit scheme to the two heritage assets, the 'balancing exercise' of weighing that harm (to which considerable weight should be afforded) against the public benefits of the scheme must be carried out. In this case those benefits are considerable. Most importantly is the substantial contribution of needed new housing to contribute to the District's supply, helping it to meet its needs arising in the next five years. The outcome of this balancing exercise does not require refusal of the scheme. The 'tilted balance' in Framework paragraph 14 is therefore engaged. There is no impermissible 'double counting' of either harms or benefits in this approach which is, in any event, effectively prescribed by recent case law. Both the benefits and the heritage harm are re-weighed in this overall balance, notwithstanding that they have already been weighed against one another in the Framework paragraph 134 balance.

696. Lastly, the emerging NDP. This is not yet part of the development plan and attracts only limited weight on that basis. It does not provide any sufficient basis for refusing any of the schemes. In particular, the debate about the wording of policy HPE1 (whether it is or is not restrictive of all - or all large - housing development in the countryside, and thus its consistency with the Framework) is precisely the kind of debate that will be resolved when the NDP is examined. It is an excellent example of why only limited weight attaches to plans at this stage of their development.

697. It would be remiss not to mention the Alan Massow e-mail (ID26). The position vis-à-vis the draft Green Gap between Hatfield Peverel and Witham is a draft policy in an emerging neighbourhood plan, which has some way to go before it is made and becomes part of the development plan. As Mr Massow's e-mail suggests, and as Mrs Hutchinson clarified in her evidence, the District Council considers that the question of whether there should be a green gap in this location to be a non-strategic one and for that reason it is not included as a draft policy in its emerging plan.

698. The question of whether a green gap in this location should be part of the development plan is left to the neighbourhood level, which is entirely proper. This Inquiry is not the place to examine either the emerging local plan or the emerging neighbourhood plan. The debate is sidestepped by acknowledging that the weight to be attributed to the terms of the emerging draft neighbourhood plan - including the draft Green Gap policy - is limited, pursuant to Framework paragraph 216.

The planning balance

699. In each case, on the above basis, a balance must be carried out using the 'tilted balance' contained within Framework paragraph 14. A finding that such an exercise points to the proposal being sustainable development (i.e. the harms not outweighing the benefits) will be a weighty material consideration pointing towards a grant of permission notwithstanding the conflict with the development plan. That is, essentially, the conclusion that the Council reached in respect of all three schemes. It is the conclusion the Council suggests should be recommended to the Secretary of State.

700. The crucial benefit here, in each case, is the delivery of much-needed housing in a situation of deficit. Given that the deficit is, on any view, more than a year's

worth of housing at this stage, and is unlikely to be eliminated until such time as the new local plan is adopted, the weight to be afforded to that benefit is substantial and is not outweighed by the harms, which are relatively limited.

Conclusion

701. The conclusions reached by the Officer's Reports in respect of each scheme are sound and should in effect be confirmed.

The Case for the Interested Person

702. **Kenneth Earney** spoke in relation to the footpath crossing the site and asked whether the historic line of the path would be preserved and if the stones would be lifted and set into the new pathway. With respect to the effect on habitats, the lack of allocation in the development plan, the pressure on local schools and health facilities and traffic he made similar points to other speakers who made representations in respect of the DWH Gleneagles Way scheme only.

Written Representations

703. At application stage the Council received objections from 165 residential addresses with more than one representation from some. These are provided as CD5.1 to CD5.200 inclusive within set B. The main material and non-material reasons for objection are summarised in the report to Committee (CD6.1, set B). The main headings under which they are grouped are infrastructure in the area to sustain further development; highway/access problems; impact on wildlife/ecology/landscape; alternative sites; heritage impact; and general points. Most, if not all, of these issues have been raised by either or both HPPC and SPMRG in their evidence to the Inquiry.

704. A further nine representations were received by the Planning Inspectorate. These generally refer to both this scheme and the smaller scheme on the same site that is subject of a separate report. No new issues are raised.

Conditions and Obligations

705. These were discussed at a round table session on the final sitting day of the Inquiry.

Conditions

706. Various drafts of the conditions that might be imposed if the Secretary of State decides to grant planning permission were submitted. The wording and need for each was discussed and a consolidated set helpfully provided by the Council following the discussion (ID53). In considering the conditions to recommend to the Secretary of State I have had regard to the advice in the relevant section of the PPG. The conditions that are recommended are set out in Annex C and the following references are to the conditions there.

707. Conditions 1 to 5 inclusive are standard outline planning permission conditions which define the reserved matters that will be subject of further approval and ensure that these will be considered in the context of the green infrastructure plan and the development framework plan both of which have had an important influence on the assessment of the development in LVIA terms and which set out various mitigation measures.

708. Condition 2 sets 2 years as the period within which the reserved matters applications must be submitted for approval to ensure that the eventual developer of the land brings forward housing in good time. Condition 5 secures the access arrangements which are for approval now.

709. Conditions 6 and 7 work together to control the ridge heights of the dwellings on those boundaries of the developable area that affect views of the settlement edge from the countryside and from Hatfield Place. The restriction is necessary to integrate the current abrupt settlement edge into the setting of the village.

710. Conditions 8, 9 and 10 are required to ensure that in bringing forward the reserved matters applications the amenity of the future residents is protected and the development is landscaped in accordance with the parameters set out and is maintained thereafter as specified.

711. In order to ensure that disturbance to the existing residents in the area is minimised as far as is practicable while the development takes place conditions 11 and 12 should be imposed to control the management and operation of the site and the hours during which work can take place and materials can be moved on and off site. The requirement for details of any piling to be approved (condition 14) arises for the same reason.

712. A number of schemes are required before development begins to ensure that any issues not already identified are explored and addressed as appropriate. These include conditions 15 (contamination), 16 (archaeology), 17 to 19 (surface water drainage) and 20 (foul water drainage). Condition 21 is similar in that it requires the measures to be put in place to protect all the identified existing trees and hedges that are to be retained to be approved prior to construction. I have removed the phrase 'to the complete satisfaction of the local planning authority' from the suggested condition 21 as this is an uncertain specification and therefore unenforceable. It would not therefore meet the tests in the PPG.

713. There are a number of conditions that are required to protect the nature conservation interest of the site and surrounding area. These include no clearance of trees and hedges during the defined nesting season (condition 23), the provision of nest and roost sites as the development becomes occupied (condition 24) and a number of reviews of already submitted surveys if the development is delayed or suspended such that circumstances might have changed (conditions 25, 26 and 27). Condition 28 (specific details required) and condition 13 (external lighting) are required primarily to mitigate any disturbance that may be caused to roosting and foraging bats from light pollution. It is my understanding of the discussion around condition 13 that this is its purpose. It is not intended to provide detailed control over the lighting that individual occupiers might wish to provide for, say, security. It is more to address the lighting of public spaces that will be provided as part of reserved matters applications.

714. Conditions 29 to 32 secure a number of highway/transport matters that are designed to secure sustainable transport measures (conditions 29 and 30) or address highway safety issues that may otherwise arise from the development (condition 32). While the matters addressed by conditions 29 and 30 are also the subject of schedules in the planning obligation, advice in the PPG is that where possible conditions should be imposed. Condition 31 is a requirement of the highway authority and will, as I understand it, secure an upgrade of the

surface of the PROW to allow, among other things, surface water drainage appropriate to a path running through a residential area.

715. Finally, condition 22 secures the important provision of space for the necessary materials recycling bins in order to facilitate the more sustainable management of waste materials by the local collection authority.

716. During the discussion of that condition it was suggested that its scope be widened to include the provision of other infrastructure such as high speed broadband. While there was a consensus that this would be desirable, its provision was not in the control of the developer. A condition of that nature would therefore be unenforceable and so would not meet the tests set out in the PPG.

717. Two other conditions were suggested by the Council and these are included within Annex C as conditions 33 and 34. They are set out there in italics as, in my view, neither is required. The suggested wording is nevertheless included should the Secretary of State take a different view.

718. Condition 33 is a standard materials condition of the type commonly imposed where this is either unclear at application stage or the local planning authority wishes to exercise further control over the matter. However, in this case 'appearance' is a reserved matter. It seems to me that the materials to be used are fundamental to the appearance of the buildings and I fail to understand why this important matter cannot be addressed then.

719. The Council explained that condition 34 is required to ensure that, initially, each plot is provided with some means of enclosure. The condition is not intended to remove the rights available under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. That may not be the intention but I consider that it would be the effect. No evidence was put forward to justify such a restriction which the PPG advises should only be imposed where circumstances require. Those circumstances do not exist here in my judgement.

720. A third condition suggested by the Council related to car parking standards. It was very specific in its requirements and referred to the Essex Parking Standards Design and Good Practice 2009 as the source. During the discussion it was argued that this condition was unnecessary as the reserved matters applications would be determined in accordance with the development plan policy and any supplementary planning document applicable at the time. I agree and do not suggest this condition be imposed.

Obligations

721. A planning obligation in the form of an agreement between the Council, ECC, the landowners and GDL has been submitted (ID58). It is signed by all parties and dated and is explicitly made pursuant to s106 of the principal Act with the obligations entered into being enforceable by the Council and ECC. The commencement date is defined as being when a material operation for the purposes of s56 of the Act is carried out.

722. The obligations are set out in 12 schedules. These make provision either in the form of financial contributions or other mechanisms for outdoor sport (Schedule 2), allotments (Schedule 3), community land (Schedule 4), open space

(Schedule 5), affordable housing (Schedule 6), education (Schedule 7), healthcare (Schedule 8), ecological mitigation (Schedule 9), highways (Schedule 10), residents' information pack (Schedule 11) and Blackwater Estuary mitigation contribution (Schedule 12). Schedule 1 is procedural and relates to the date by which the housing phasing and landscape strategy must be submitted.

723. The Council has submitted a statement of compliance with the CIL Regulations (ID28) setting out the policy justification for each of the obligations provided.

724. In my judgement each of the obligations is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development proposed. In my judgement each obligation meets the requirements of CIL Regulation 122 and Framework paragraph 204.

725. Having said that, the Secretary of State will note that the provisions of Schedules 10 and 11 are also the subject of conditions 29 and 32 and 30 respectively. As these matters are also covered by condition, as the PPG advises they should be if possible, it may be appropriate to attribute limited weight to them in deciding whether or not to grant planning permission.

726. During the discussion SPMRG and, to a lesser extent, HPPC put forward a number of other matters which the local community would wish to see included in the agreement. Ms Osmund-Smith explains GDL's position on this [313 and 314] and I agree with her analysis.

Conclusions

727. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion or inference is based.

Policies in the Framework on delivering a wide choice of high quality homes

728. This is the first reason for the application being called in by the Secretary of State [4]. Save for one element, this was not really addressed by any party in the evidence.

729. Schedule 6 of the s106 obligation entered into by GDL and the Council (ID58) will secure the provision of a substantial number of affordable homes within the development proposed. A mix of market and affordable housing would be delivered on-site and the policy set out in Framework paragraph 50, bullet 3 would therefore be delivered.

730. All of the other elements that go towards delivering the requirements for good design set out in Framework section 7 will be subject of the reserved matters applications that would need to be submitted. The Green Infrastructure Plan (ID1.6b) sets an important context for the development and is therefore secured by condition 4. The Design and Access Statement (CD1.5 set B) also establishes some important principles that will no doubt guide the Council's development management process at reserved matters stage. Although the evidence before the Inquiry is at that conceptual level there is no reason to believe that Ms Osmund-Smith's confidence [315] is misplaced.

The extent to which the proposed development is consistent with the development plan for the area

731. This is the second reason given by the Secretary of State for the call-in [4]. In addressing this I shall also deal with the third reason, namely 'Any other matters the Inspector considers relevant'. These were set out in my first pre-Inquiry note (INSP1) and have been developed in the light of the written and oral evidence given. They encompass what, in my view, are the main considerations upon which the decision should be based.

732. However, before considering the application scheme against the policies of the adopted development plan I shall address the weight that I consider should be given to the emerging BNLP and NDP.

733. Turning first to the BNLP, the SOCG between GDL and HPPC records that the weight to be given to the emerging plan policies should be determined in accordance with Framework paragraph 216 (paragraph 4.3.9, SOCG 2). In closing submissions HPPC has revised its position and argues that the emerging BNLP can be given significant weight as it has progressed to examination stage [398]. That however is only one of the three considerations in Framework paragraph 216 that have to be taken into account.

734. The SOCG between GDL and SPMRG simply says that the appropriate weight should be given to the BNLP (paragraph 3.3.8, SOCG 4). That too has been refined by SPMRG in closing submissions to a position that moderate weight should be attributed to the breaches of emerging policies in the BNLP [649].

735. GDL and the Council agree that only limited weight should be given to the BNLP (paragraph 3.3.10, SOCG 1). That position had not changed by the close of the Inquiry [296]. In an extensive representation (CD33.1 set C) GDL argues that policies SP1, SP3, SP5, SP7, SP8, SP9, SP10, LPP 1, LPP 18, LPP 19, LPP 22, LPP 37, LPP 49 and LPP 72 are unsound. Of these, only policy LPP 1 is a relevant policy. No criticism is made by GDL of the others (SP 2, LPP 31, LPP 60 and LPP 71) referred to above [42 to 46].

736. The stage reached remains as set out above [41]. That is an advanced stage in the process to adoption but it is, nevertheless, the first stage at which independent scrutiny of the plan takes place. The Council is best placed to know the full extent of the challenge to the plan and its individual policies and thus the number and nature of the unresolved objections to them. The degree of consistency with the policies in the Framework must therefore be viewed in that context. Taking these three components of Framework paragraph 216 into account, I see no reason to take a different view to the Council that only limited weight should be given to the BNLP.

737. The weight that should be given to the NDP is a matter of legal dispute between DWH [116 to 125] and GDL (adopting the DWH position [126]) and HPPC [408 to 429]. I am not legally qualified to resolve that dispute and the Secretary of State may need to take his own legal advice to do so if he considers it necessary.

738. In my view, the position is actually quite straightforward. The NDP has been submitted for examination [47]. The exchange between the examiner and HPPC set out there seems to me conclusive. The examiner's first letter (Appendix

MR24, HPPC1) is quite explicit that 'as it stands….the NDP fails to meet the Basic Conditions…'. Her second letter (Appendix MR25) declines to continue the examination because '…the issues raised are sufficiently substantive…' that to do so would risk abortive and unnecessary costs to the Council.

739. Both GDL and DWH have objected to the submission version of the NDP (CD33.2 set C and SAV50 and SAV52 respectively). Among the policies objected to are HPE1, HPE2, HPE6 and HPE8 [49 to 50]. Given the nature of the additional work to be done, the uncertainty over the timescale in which it will be completed and the effect that the outcome of that work and indeed the examination itself may have on the form of the NDP put to a referendum I consider that, in line with the guidance in Framework paragraph 216, very limited weight can be given to the NDP at this stage. In my view, the information provided by HPPC after the Inquiry sessions had ended and closing submissions made [11] does not alter that position. Although HPPC says the required work has now been done, Natural England's comments have not been made available; the outcome of the meeting with the Council to discuss the way forward is similarly unknown; and the views of the examiner about all of this are unknown in any event.

Would the proposal be in accordance with the spatial strategy?

740. The CS spatial strategy is set out in policy CS1 [36]. It promotes development in the KSVs and Hatfield Peverel is so categorised. The emerging BNLP does not alter the spatial strategy in that regard and identifies the A12/Great Eastern Mainline corridor as a location for future development [43]; Hatfield Peverel lies within that corridor.

741. As I explain a little later in this report I agree with GDL, DWH and the Council that the Council cannot show a 5YHLS. Framework paragraph 49 says that in those circumstances relevant policies for the supply of housing should not be considered up to date. Policy CS1 is clearly such a policy.

742. Whether it is the whole of the policy including the spatial strategy or just that part of the policy that sets the housing requirement that should be considered out of date was the subject of post Inquiry sessions correspondence (INSP4 and ID54 to ID56).

743. Taking those views into account it is my judgement that, although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight. The Council is having to address a substantially increased OAHN in the emerging BNLP. How it is doing so is set out in the evidence base (ID33). This confirms that the SFE is part of the evidence base used to develop the strategy. That confirms that to meet the OAHN '…development will need to be accommodated on the periphery of the main towns and larger settlements…' (paragraph 1.4, CD14.4 set B) with Hatfield Peverel being identified as one of the nine settlements studied. Furthermore, ID33 explains why both the 'new settlement only' and 'constrained growth' options were rejected.

744. It seems to me therefore very likely that any strategy coming forward through the BNLP will include development at the KSVs, especially where these are within the A12/Great Eastern Mainline corridor that is identified as a location for future development.

745. I therefore agree with GDL that the development proposed would be in accordance with the spatial strategy [318]. There is no evidence to support the contention by HPPC that development in any settlement needs to be 'proportionate' [368]. Nevertheless, HPPC is correct in my judgement to argue that the spatial strategy does not, of itself, dictate that the boundary in this part of Hatfield Peverel needs to be altered [372 and 373] but that is a different point that relates to policy CS5 which I turn to now.

Would the proposal conflict with policies RLP2 and CS5?

746. These two development plan policies are summarised at [32] and [37] respectively with the precise wording of policy CS5 set out. They are worded differently but their effect is the same. Both establish that outside the defined development boundaries of settlements, countryside policies will apply. Policy CS5 goes further explaining that development will be strictly controlled to uses appropriate to the countryside.

747. It is a matter of fact that the application site adjoins, but is nevertheless beyond, the development boundary of Hatfield Peverel. The proposal is therefore in conflict with the development plan in this regard, a fact acknowledged by GDL [274 and 327]. The point in issue is the weight that should be given to this conflict in the overall planning balance.

748. There are two aspects to this. First, whether the policy is inconsistent with the Framework; that argument applies only in respect of policy CS5 [281 to 286]. Second, whether the development boundaries that are critical to the application of the policies are out of date because they are based on out of date housing requirements. They have not been subject to review for many years [107, 108 and 278].

749. Dealing first with consistency with the Framework, policy CS5 has three components. The subject of the policy is (of relevance to this application) development outside village envelopes. The 'action' of the policy is to strictly control that development to uses appropriate to the countryside. The purpose is 'to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside'.

750. The policy does not, in my view, apply blanket protection to the countryside. It makes clear that uses appropriate to the countryside would be permitted. The policy itself and its supporting text do not explain what those uses might be but it is difficult to imagine that a substantial village expansion housing development would fall into that category. Some guidance is however given elsewhere in the CS (at paragraph 4.24) in the discussion of 'The Countryside'. Some of the uses there (for example, development necessary to support traditional land-based activities such as agriculture and forestry) are not dissimilar to one of those listed in Framework paragraph 55 (the first bullet). Some development in the countryside is therefore permitted which would not be the case if blanket protection was being applied.

751. One of the core planning principles set out in Framework paragraph 17 requires local planning authorities in both plan-making and decision-taking to recognise the intrinsic character and beauty of the countryside. To my mind a policy that seeks to 'protect and enhance', as policy CS5 does, is not seriously out of kilter with that core principle.

752. Although drafted in advance of the publication of the Framework I therefore do not consider policy CS5 to be inconsistent with it. As the Council notes when arguing that more than moderate but not full weight should be afforded to this policy [692] three previous Inspectors have considered the same policy in relation to other appeal proposals submitted by GDL in the District (CDs 32.2, 32,4 and 32.10 all in set C). My conclusion with respect to this aspect of the policy is consistent with each of theirs.

753. Turning to the development boundaries point, there is no evidence before this Inquiry of any review of the development boundaries as part of the preparation of the BNLP [108]. While the methodology for doing so has been approved by Council members (Appendix PJ3, HPPC2), there is no evidence that the review has actually taken place. However, GDL contends (by virtue of adopting the case of DWH [126]) and the Council accepts [684] that a 5YHLS cannot be shown. For reasons that I will discuss later, that is also my conclusion. If then the development boundaries are rigidly applied through the operation of both policies they would restrict the supply of housing and frustrate the aim of Framework paragraph 47. The court has held that in those circumstances the weight that can be afforded to them is much reduced [112]. That is also the view of the Council and the reason for it with respect to policy RLP2 [689] and, by inference, policy CS5 [692].

754. That was also the view taken by the three Inspectors in the decisions referred to above [752]. I see no reason to take a different view given that circumstances are more or less unchanged. Therefore, while there is a conflict with the adopted development plan policies, overall those policies can attract only moderate weight when it comes to the overall planning balance.

755. For completeness, the wording of BNLP policy LPP 1 is set out above [43]. It is not materially different from policy CS5. For the reasons set out above [733 to 736] the weight that can be given to that policy is limited.

The effect of the development on the landscape character of the area and the visual impact that the development would have

Context-landscape character

756. In my view, it is necessary to take into account the context of the application site which lies on the edge of the settlement. The historic maps in Mr Handcock's evidence (Appendix A2, 3/APP) shows how Hatfield Peverel has evolved from a linear settlement focused on The Street, shown as the Roman Road on the 1874 map and part of the route linking London with Colchester. By 1955 the land between Church Road and Maldon Road to the south of The Street had begun to be developed as had land to the north of The Street between it and the railway. This pattern continued to 1980 as more and more edge-of-settlement fields and allotments became housing developments until, by 2002, (the next map in the sequence provided) what is now the Stone Path Drive development had breached the Church Road boundary and taken the village onto yet more former allotments on its western flank.

757. Ms Osmund-Smith sets out GDL's note of an exchange between Mr Holliday and Ms Scott [145]. My note is not materially different. He confirmed his view that the character of Hatfield Peverel had changed over the last 50 years or so from a linear settlement to a nucleated form and that the development proposed

would simply continue that pattern and, by inference, be in keeping with what is now the character of the settlement. He rejected Ms Scott's suggestion that the Stone Path Drive development would be a complete departure from the settlement pattern. His view was that each time housing development has taken place on the edge of the village a field has been lost but there has been no further change to the character of the village; the development proposed would be no different.

758. This assessment is supported by Braintree Historic Environment Characterisation Project 2010 (CD28.1 set C). This report has been produced to assist ECC and the Council in the production of their development plans. It studies the historic landscape character, archaeological character and historic urban character and weaves the three strands together to establish the historic environment character. Discussing the Hatfield Peverel area (HLCA 13) it notes the historically dispersed settlement pattern with Hatfield Peverel being the only nucleated settlement of any size (emphasis added). The post-1950s boundary loss '…can be described as moderate, however the overall grain of the historic landscape is still clearly visible.'

759. Furthermore, there are a number of studies that have had an assessment of the landscape capacity of various areas of land around the settlement edge to absorb further development as their broad purpose.

760. CD14.1 set B focuses on eight key settlements in the District. Its purpose is to assess the sensitivity and capacity around those settlements to accommodate new development. The application site lies within a much larger study area (HP2) to the west and south of the settlement.

761. The conclusion drawn for this broad area was that its landscape capacity to absorb development was low to medium (Table 4.1). Notwithstanding this general finding it noted that a certain amount of appropriately located and well-designed development may be acceptable even in a moderately sensitive and highly valued landscape. However, potential opportunities for accommodating new built development around Hatfield Peverel were considered to be limited (paragraph 4.5). It further stated a view that any necessary residential and employment development opportunities would need to be informed by more detailed studies and were likely to be along the eastern edges of the settlement or along the western edge but north of the A12 (paragraph 4.5). This document does not therefore provide a great deal of support for the development proposed although I note the applicant's view that it is out of date, not being based on GLVIA3 [148].

762. The Landscape Partnership prepared CD14.4 set B for the Council. This followed and built upon the earlier Chris Blandford Associates document (CD14.1 set B) and has the same broad objective for Hatfield Peverel but at a finer grain of analysis. The application site is substantially the same as study area 2c. Arguably, it is a more detailed study of the type envisaged in CD14.1.

763. This parcel is assessed as having a medium landscape capacity to accommodate residential or commercial development. At this finer grain therefore the capacity of the landscape to accommodate development is considered to be slightly higher. Of the 23 parcels studied only one had a higher capacity rating and all but five others had a lower capacity. In context therefore if development areas were to be sought around Hatfield Peverel (which the

spatial strategy suggests might be the case), it could be said that this would be one of the first to be looked to.

764. In detail, the relatively abrupt settlement edge is remarked upon (paragraph 4.20) while '…the good scope to provide mitigation to proposed development that is in keeping with the existing landscape pattern' is noted (paragraph 4.21). In the same paragraph it is suggested that development should be aligned with existing residential development areas to the north east of the parcel and comments upon the opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to the development fringes. These comments and others including the need to both protect public footpath routes and take the opportunity to incorporate open space into extensions to residential areas are set out in 'guidelines for development and mitigation measures' for this parcel later in the report.

765. The Landscape Partnership also prepared the Hatfield Peverel Landscape Character Assessment for HPPC (CD28.3 set C). Its purpose is to assist 'the village' in commenting on development proposals coming forward and to support the emerging NDP. One of the aims is to provide an assessment of the landscape character and sensitivity of it around the village building on work undertaken at district level (paragraph 1.4). The application site is within local landscape character area 2 – river Ter south – which is much more extensive than area 2c in the CD14.4 study.

766. This study does not assess the capacity of the area to accommodate development. Rather, it sets out a general commentary about the characteristics of the landscape and some landscape guidelines which, on a fair reading, appear to assume development taking place to facilitate them.

767. Of relevance from the general commentary are the slopes that fall gently from Stone Path Drive in the north; the absence of vegetation to the Stone Path Drive development providing an uncharacteristic open edge between the village and the adjacent countryside; public access from Church Road to Hatfield Place; and views in and around the area being limited to those from footpaths and unenclosed sections of roads such as the open field boundary to the south of Stone Path Drive.

768. In my judgement, these studies establish an important context for an assessment of the effect of the development proposed on the character of the landscape. The study that is closest to the application site in terms of area (CD14.4, set B) is the most positive about the capacity of the local landscape to accommodate development subject, of course, to the suggested guidelines being followed. However, none of the other studies suggest that suitably designed development could not be accommodated.

The effect on landscape character

769. The application site is an area of agricultural land bounded by hedgerows and trees for the most part. However, along its boundary with Stone Path Drive it is largely open with the most visible feature being the chain link fence. Although there is a PROW across the land, several notices around the site boundaries make it perfectly clear that it is private land. Apart from enabling the public to walk through the site between Church Road and The Street the application site has no other recreational value. At the time of my site inspection a dog was

running free in what would become the area of public open space between the built development and the Stone Path Drive boundary. In exercising the dog the owner of the animal may, or may not, have been doing so with the permission of the landowner or, indeed, may have been the landowner. There is however no evidence that such activity is generally encouraged or even allowed.

770. The principal characteristic of the application site that is found elsewhere in the county (CD28.2 set C) and in the Farmland Plateau Landscapes - Boreham Farmland Plateau Landscape Character Area (CD14.5 set B) is the fact that it is a medium sized arable field marked by hedgerows, banks and ditches.

771. In my judgement, the application site has no particular landscape features of note. Its value is its openness as it is this that allows the views of the far more attractive landscape beyond to be appreciated. Having regard to the *Stroud* judgement (paragraphs 15 to 18, CD31.20 set C) the application site cannot be considered a valued landscape for the purposes of Framework paragraph 109 although it can be and clearly is valued by the local community. In coming to this view I have taken the 'subjective question of judgement' approach commended by Mr Graham [396].

772. Having considered the evidence of SPMRG and Mr Dale in particular I am not convinced that the local community values the site itself for its landscape quality in any event. Careful reading of Ms Scott's presentation of Mr Dale's written and oral evidence shows that it is the effect on the views across the site that is of most concern, not the effect on the landscape character of the site itself [532 to 534]. In his evidence Mr Dale emphasises that it is '…the longer or more distant view across the Chelmer vale that makes the landscape setting of <u>the site</u> significant to our community – unrivalled anywhere else in the parish'(RG3) (emphasis added). The development proposed would have no effect on that landscape setting since, as described by Mr Dale, the site does not form part of it.

773. Early in his cross examination by Ms Scott, Mr Holliday helpfully described GLVIA3 as an objective framework within which subjective judgements can be made. The applicant's LVIA has been prepared 'based upon' (paragraph 5.2, 2/POE) GLVIA3. As part of that framework a matrix is commonly used to assess the overall effect of a proposal in landscape character and visual impact terms. The terminology used for each element in the matrix (value, susceptibility to change, etc.) is defined (Appendix A, CD1.6 set B). Ultimately however the term chosen to reflect both the baseline position and the effect of the proposal upon it is a subjective judgement. It is unsurprising therefore that the applicant and the local community take a different view about the precise terms that should be used for both.

774. The LVIA takes into account the green infrastructure plan proposals (ID1.6b). These include a new woodland copse and woodland edge on the southern boundary of the site, native hedgerow planting on the western boundary of the developable area, meadow grassland in the blue land to the north and west of the developable area and amenity/mown grassland and individual trees in the frontage open space area adjoining Stone Path Drive.

775. Self-evidently the development proposed would replace an area of agricultural landscape with a housing estate. Applying GLVIA3 analysis the applicant assesses the effect of the proposal at national, county and District level as

'negligible' at both years 1 and 10 (paragraphs 6.3, 6.7 and 6.11 respectively 2/POE). Given the imperceptible impact that the removal of this small parcel of a wide-spread landscape type would have at this spatial level that judgement must be right.

776. The proposals would create, in effect, a new settlement edge for this part of the village. That new edge would be set the depth of the appeal field further to the south. This new edge would be planted and, in landscape terms, would address and integrate the slightly abrupt urban edge as the various guidelines discussed above suggest should be achieved taking advantage of any development that takes place [764 to 767]. At paragraph 6.18 (2/POE) Mr Holliday judges the landscape effect on the very local landscape character as 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10.

777. Having regard to the definition of terms in the submitted LVIA (Appendix A, CD1. 6 set B) it would be possible to argue that the 'moderate' assessment at year 1 should be 'major'. However, since either would lead to some harm (which is acknowledged [174]) little is to be gained from pursuing and resolving this point, in my judgement.

778. Neither SPMRG nor HPPC has produced its own LVIA. Instead, both relied upon their cross examination of Mr Holliday to develop their case on landscape grounds. The Council officers assessed the application and commissioned independent advice [139 and 140].

779. On the totality of the evidence before me and on the basis of my visit to the site and the surrounding area, I see no reason to disagree with the applicant's assessment of the effect on landscape character.

The visual impact that the development would have

780. There are two aspects to this consideration; views across the site to the landscape beyond and views back towards the settlement edge from distance. Both aspects have been illustrated by photographs taken from representative viewpoints. The so-called photomontage (F16b) introduced by SPMRG has not been produced by the generally accepted methodology for such images and has not therefore been taken into account. The general point being illustrated is nevertheless appreciated.

781. Looking at the views across the site first, residents of the properties on Stone Path Drive and Church Road who have either a direct or an oblique view from their properties will experience a complete change to their view. Initially it will be of the new dwellings; later this view will be filtered as the planting on the edge of the development and within gardens begins to mature. Although the applicant puts the number of properties affected at no more than 20 or so (paragraph 7.2, 2/POE) it is nevertheless correct in my judgement to describe the impact as 'moderate/major adverse' at year 1 and 'moderate adverse' at year 10. It is not possible in my judgement to mitigate this effect in any meaningful way.

782. The view across the site to the south from both Stone Path Drive (looking across the chain link fence) and from footpath 43 as it crosses from Church Road to the point where it meets the edge of the Stone Path Drive development especially is that to the Baddow Ridge which Mr Dale explained is of particular

value to the local community [772]. This view would also be replaced from these viewpoints by a view of the development. Again, I believe Mr Holliday is correct to categorise the effects as 'moderate/major adverse' at year 1 and 'moderate adverse' at year 10.

783. To some extent, this effect might be mitigated through the provision of the surfaced footpath around the edges of the development from where the view could still be obtained. On the southern edge the land is slightly lower however which would have an impact on a like-for-like replacement of the view. Of more concern would be the strength of the proposed woodland edge. The intention of this is to give effect to the guidelines referred to above [776]. A consequence of that however would be to block or at best filter any views available to the south. A careful balance would therefore need to be struck between these two potentially incompatible aims at reserved matters stage.

784. Although not strictly mitigation since it is unrelated to the development itself, I saw that a similar view to the south is also available from elsewhere on the southern edge of the village and, in particular, from footpath 90-7 which runs south from Church Road across the Ter valley to Mowden Hall Lane.

785. Other views across the site are available from The Street where footpath 43 meets it; from footpath 43 itself as it passes through what would become the blue land; from the William B car park; and, for pedestrians and other road users, from the highways immediately adjoining the site. In most cases, direct views across what would be the development in year 1 and the development filtered by structural framework landscaping as it matures in year 10 are limited to gaps, such as gateways, in the boundary and hedgerow planting that otherwise screens the view even in the winter months when I conducted my site visit. In addition such views are often transitory.

786. Generally, the effect from these viewpoints is assessed by Mr Holliday as 'minor/moderate adverse' at year 1 and 'minor adverse' at year 10; I consider that judgement fair.

787. Dealing briefly with the views back towards the settlement edge, these are very much influenced by the distance over which they are gained. Although the view on the ground is much clearer than that shown in the photographs (2/APP) it is nevertheless quite difficult to pick out the settlement edge from any of viewpoints 5, 6 and 10 to 14 (Figure 6, 2/APP). As can be seen from that Figure, woodland intervenes between the viewpoint and the settlement in some views. Indeed the photograph from viewpoint 14 is taken at one of the very few spots along that footpath where there is a gap in the planting alongside it.

788. The development would simply move the settlement edge slightly (at the distances involved) closer. The extent to which built development would be perceived would depend on the nature of the structural planting approved at reserved matters. In my judgement the change would generally be imperceptible and the effects at either year 1 or year 10 negligible. There is the potential to soften the existing abrupt edge hereabouts and, to that limited extent, there would be an enhancement of the settlement edge.

Conclusion

789. An adverse effect equates, in my view, to harm. GDL acknowledge that [174]. That harm has to be seen in context however.

790. A small parcel of countryside landscape that has no distinctive features and therefore no inherent quality that is out of the ordinary would be replaced by a residential settlement-edge landscape. Some of the studies discussed anticipate such a change and suggest guidelines that, if followed, would integrate that development into the local landscape.

791. In my judgement the green infrastructure plan that would be subject to a condition (suggested condition 4) to ensure that the broad principles are carried through at reserved matters stage follows the guidelines established by the various landscape studies discussed above [759 to 768]. The development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape. It has been designed to retain existing features and proposes additional landscaping including planting of native species of trees and other flora to maintain and enhance these features (emphasis added). There would therefore be no conflict with the landscape elements of policy RLP 80.

792. It is only the third paragraph of policy CS8 that is relevant to this consideration. It is clear from the submitted LVIA and the evidence presented to the Inquiry that the applicant has had regard to the character of the landscape and its sensitivity to change. That is what the policy requires and that part is therefore satisfied. Whether the development would enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment is a matter of judgement. Appendix 5 of the CS confirms that it is the 2007 study (CD14.1 set B) that is being referred to. That is regarded as being out of date by GDL [761] and, in detail, has been developed or superseded by later studies. In my view, the development would enhance the settlement edge as it appears as a feature in the landscape and thus this part of the policy would be complied with too.

793. Neither of these policies explicitly deal with the visual impact of proposed developments although these are the only two development plan policies that are referred to by the parties as being breached in respect of this overall consideration [see for example 529]. I have found that there would be harm caused by the development with respect to visual impact. To the extent that weight can be attached to the policies of the emerging NDP [739] there would be conflict with policy HPE6 in this regard. However, in addition to the general point concerning progress on the NDP there are specific concerns about the evidence base that underpins the views to be protected and enhanced under policy HPE6 [155 to 162]. Mr Graham addresses this but mainly in the context of the DWH development [434 to 441]. This is a matter properly for resolution through the NDP examination and, in any event, the impact and thus the conflict would be limited to a small number of adjoining residents and to users of footpath 43 over a length of some 230m only [151]. While this harm needs to be weighed in the overall balance, it attracts limited weight in my view.

The effect of the development on the enjoyment of users of the public right of way crossing the application site

794. Although this is strictly an 'other material consideration' I shall address it here as it flows directly from the previous discussion and, to a degree, is relevant to the following discussion of heritage.

795. This consideration has been addressed by the parties principally from the perspective of the views across the landscape that footpath users enjoy. While that is part of the experience and has been addressed above [782 and 785] there are, in my view, other ways in which the experience of users of the path would change as a direct result of the development.

796. At present, the footpath is along a worn grass track through the fields. In places but off the track as now marked by usage what may be remnants of the stone path can be seen. To one side there are views of the Stone Path Drive development while to the other are views across the countryside. Even though it was very windy on the day of my site inspection, the sound of both traffic on the A12 and trains on the main line could be clearly heard above the sound of the wind. To describe the area as tranquil overstates it in my view. Nevertheless, on any measure the experience is one of a walk, albeit fairly short, through the countryside between two roads.

797. That would fundamentally change in my view. Although the path would be retained on its current line, from the Church Road end the first 200m or so would have an area of public open space to one side and housing to the other. While both the new housing and the existing development on Stone Path Drive would eventually be screened to a degree by the proposed planting, in my view the walk would be perceived as one that passes through a housing estate.

798. That perception would be reinforced by the presence of the proposed play area near Church Road, the surfacing of the path itself to accord with the Highway Authority's requirements [714] and the use that may be made of what would be an area of mown amenity grassland.

799. Moving further along towards The Street the path would pass through what is proposed as the blue land. While this would be maintained as meadow grassland, GDL envisage this becoming a significant recreational resource for the village as a whole [for example, 177]. The nature of the use would therefore alter and the current experience would change.

800. Although clearly a matter of judgement, I consider that the experience of walkers along this relatively short length of PROW would be harmed by the development proposed.

The effect that the development would have on the significance of designated heritage assets

Introduction

801. Before turning to the substance of this consideration it is helpful first to review the development plan policies that SPMRG and HPPC consider relevant and then to briefly consider the nature of the evidence presented. The heritage assets affected are then identified.

802. Dealing first with policy, Ms Osmund-Smith does not consider that policy RLP 100 can apply [287]. Neither do I [34] or Inspector Hill in the Coggeshall appeal decision (paragraph 91, CD32.2 set C). However, other Inspectors have taken a different view [560 and 589]. In addition to the Steeple Bumpstead appeal decision referred to by Ms Scott, Inspector Fagan took the view that, although poorly worded, it was relevant (paragraph 31, CD32.4 set C). Inspector Prentis (Silver End) also took the view that listed buildings and their settings were protected by the policy although for other reasons he felt it was inconsistent with the Framework (paragraph 63, CD32.7 set C).

803. Policy CS9 was written before the Framework was published. Its wording is somewhat cumbersome in my view and CS paragraph 8.21 does not assist. Even assuming Ms Scott's understanding of the meaning is correct [559], the policy is some distance from the requirements generally of Framework section 12 and of Framework paragraph 134 in particular. These require an assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits.

804. The way that policy should be interpreted is ultimately a matter for the court and the Secretary of State may wish to seek his own legal advice on the interpretation of these two policies. I however shall assess this consideration against the policies in Framework section 12 which post-dates both development plans.

805. Turning now to evidence, Mrs Jarvis confirms that HPPC does not offer any expert evidence on heritage matters (paragraph 5.38, HPPC2). Instead it emphasises the findings of Historic England. To the extent that it pursues a heritage case at all that is also the position as I understand it of the Council [694]. Only GDL and SPMRG give expert evidence.

806. The two heritage assets in issue are Hatfield Place and what is now known as the William B. Both are grade II* Listed Buildings.

Hatfield Place

807. The List Entry Summary is provided by Mrs Freeman (Appendix (vi), RG2). The description of Hatfield Place given by Ms Osmund-Smith [185] is drawn from the submitted Heritage Statement (CD1.16, set B). It is similarly described by Essex Place Services in its letter dated 9 December 2016 (within CD27.4, set C). This notes that it is the substantial architectural merit of the building itself, its associations with John Johnson, Colonel John Tyrell and George Sherrin and the consequent historic significance in relation to important historic associations in the county of Essex that cause it to be listed at grade II*. The house is in private ownership and is not open to the public.

808. It is not in dispute between the parties that the above represents the core significance of the heritage asset. Nor is it in dispute that the application site is within its setting. What is in dispute is the contribution that the application site as part of the setting makes to the significance of the heritage asset.

809. Mrs Freeman gives substantial and clearly well-researched evidence about Hatfield Place and the people and events associated with it. In particular she describes the lore associated with Hatfield Place and the importance of footpath 43 as a place where people can experience the various heritage buildings and

exchange stories about the past events. This is reflected by Ms Scott in her submissions [562 and 563]. However, almost of all this evidence in my view goes to the significance of Hatfield Place to those in the village for whom it is of interest. It says very little about the contribution of the application site, as opposed to the footpath that passes through it, to the significance of Hatfield Place as a heritage asset.

810. What I cannot find either in her written evidence or my notes of her evidence in chief and cross examination is the attribution implied by Ms Scott to Mrs Freeman ('this significance draws heavily on Stone Path Meadow as part of the setting of Hatfield Place' [562]). As Ms Scott acknowledges, the statement 'this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance' [563] is her submission and inference from the evidence rather than the evidence that Mrs Freeman gave.

811. In any event, I do not consider that the communal experience described would be affected by the development proposed. As I was able to confirm during my site inspection, it was not until I had passed through what would be the developed area before the footpath bears north west that, even in winter, I was able to see Hatfield Place. That was also the evidence of Mrs Freeman [563] who said in cross examination by Ms Osmund-Smith that when walking through the red land (the developable area) anticipation was already forming looking at the Methodist church and the Marconi tower. Although the experience reached a crescendo in what would be the blue land as Hatfield Place came into view, the build-up was in the red land.

812. I fail to see why that experience should change as a result of the development. While I have already found that the experience of the short journey along the footpath through the developed area would alter [797] no evidence was given to explain why the anticipation of a building that cannot be seen at that point should be reduced or otherwise affected.

813. There may even be the opportunity to enhance that anticipation as a result of the development. It may be that during the archaeological works required by suggested condition 16 the historic flag stones are found. It may be appropriate for them to be lifted and set into the new pathway as Mr Earney suggested [702]. That will be for future review. Although not discussed at the Inquiry, it seems to me that there would also be scope for some interpretive material to be provided along the footpath within the development. This could help new residents appreciate the history of the area and would remove the chance element of meeting someone on the path with whom to discuss these things. That however would be a matter for the Council and the ultimate developer.

814. Turning to other points in Mrs Freeman's evidence, there appears to be only one event taking place in Stone Path Meadow that can be directly related to Hatfield Place. That is the gymkhana which was held in 1930 (F21h). My note of Mrs Freeman's evidence in chief is that the two-day pageant that was held in 1924 and which ended with a torchlight procession along footpath 43 (F21c) was held in Hatfield Place, not Stone Path Meadow. Mrs Freeman agreed in cross examination that the conveyance (F21e) did not indicate retained control over the land (the application site); it merely denoted control over documents [210]. Finally, much of what Mrs Freeman says about the contribution of the application

site to the significance of the heritage asset draws on the letters from Historic England.

815. Turning to those letters and those from Essex Place Services, both consider that the development would cause harm to the significance of Hatfield Place [Historic England 6 February 2017; Essex Place Services 9 December 2016, CD27.4 set C). Historic England does not quantify the level of harm. Essex Place Services puts the harm at the lower end of the 'less than substantial harm' spectrum. HPPC assesses the level as 'less than substantial' [507] as does SPMRG (although Ms Osmund-Smith considers this to be Ms Scott's evidence rather than that of her witness [219]) and the Council [695]. These conclusions place the assessment of this consideration for Hatfield Place within the scope of Framework paragraph 134.

816. GDL's primary case is that there would be no harm at all to the significance of the heritage asset and I shall come to that shortly. However, anticipating that the Secretary of State may conclude that there is less than substantial harm, irrespective of any recommendation in this report, a precautionary balance has been undertaken by Mr Lee [220]. What GDL regard as the benefits of the proposal is set out [326].

817. Having regard to the clarification in the PPG as to 'what is meant by the term public benefits?' I consider that all of these are capable of being so characterised. Some, such as the provision of both market and affordable housing are very much in accordance with Government policy and go to the heart of the social role set out in Framework paragraph 7; they should be afforded great weight. Others, such as highway works to Stone Path Drive to address an issue that causes inconvenience rather than a highway safety concern attract considerably less weight in my judgement. However, in my judgement the totality of the public benefits in this case outweigh the harm to the heritage asset that has been identified and, as such, there is no conflict with Framework paragraph 134 in respect of Hatfield Place. I do not believe Mr Graham's understanding of the way this balance should be stuck [508] is a correct interpretation of the words in Framework paragraph 134.

818. In coming to this conclusion I have had regard to s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that special regard shall be given to the desirability of preserving the building or its setting when considering whether or not to grant planning permission. The court has also held that in context 'preserving' means 'doing no harm'. However, the Court of Appeal (CD31.4 set C) has also held that the level of the harm must be taken into account. Any harm, however slight, does not have to outweigh any benefit [222]. I have followed that approach in coming to my conclusion.

819. Returning to GDL's primary case, Essex Place Services and Historic England have relied on the same evidence as Mr Handcock. They disagree about the way that evidence should be interpreted. Only Mr Handcock's evidence was tested at the Inquiry; it therefore carries more weight.

820. In his proof (paragraphs 5.18 to 5.23, 3/POE) Mr Handcock explains that he has followed Historic England's best practice guidance (CD27.1 set C) in undertaking his assessment. It would be unreasonable in my view to presume other than that Historic England had done the same.

821. Historic England will have seen the submitted Heritage Statement (CD1.16 set B), all the correspondence within CD27.4, set C except the letter from Iceni dated 9 March 2017 and the additional statement supplied (CD27.5 set C) prior to formulating its February 2017 response. The reasons for coming to the view that there would be harm to the significance of the heritage asset are set out in two paragraphs.

822. First, it is stated that the application site fields '…greatly contribute to the significance…by providing an open tranquil and rural setting to the south and west of Hatfield Place. Furthermore, the degree of separation between (the house) and the rest of…Hatfield Peverel does make a strong contribution to the historic understanding of the building as its clear separation from the main body of the village along with its spacious grounds illustrate a deliberate display of the wealth and status of the historic owners.'

823. Second, it says that the encroachment of suburban development into the setting would diminish the ability '…to experience the heritage values of the building….by the proximity of modern development, lack of separation, erosion of views and the associated noise, lighting and movement.'

824. It is not clear whether or not Essex Place Services had seen the exchange of letters between Iceni and Historic England. Nevertheless, Essex Place Services also concludes that the setting of the house is partially defined by its isolated nature in so far as it is distinctly and deliberately separated from the village. The separation makes a contribution to the historic understanding of the building since its setting within large grounds is an intentional display of the wealth and significance of the owner. The sense of separation is also important to the way that the building is experienced. The visibility of the proposed development from within the grounds and, it is assumed, the upper floors of the house, would affect this separation although that would be less apparent in Spring and Summer when the intervening vegetation is in full leaf. It should be noted however that Essex Place Services does not consider that there is any formal association between Hatfield Place and the application site, '…as the strong tree boundary which runs along the eastern edge of the access track and grounds of the house would seem to be evident on the 1st Edition OS map.'

825. Why GDL disagrees with this analysis is summarised by Ms Osmund-Smith [190].

826. In short, based on his experience of assessing the type of mapped and documentary evidence available, which he said was excellent, Mr Handcock comes to the view that Hatfield Place was a gentry residence, not a country house, whose owners valued their privacy. In his view, the strong planting on the boundary referred to by Essex Place Services is evidence of this. It is also evidence of the proximate pleasure grounds being the most important part of the setting along with the orientation of the building which allows extensive views to the south over land not owned by the residents of Hatfield Place. He does not consider that separation from the village was of importance and the proximity of other buildings such as Crix is evidence of this. Furthermore, there is little clear evidence of any functional relationship between the application site and the house in the sense that the land was used or controlled in any way to achieve and maintain the separation claimed by Historic England. In summary, his evidence is that the application site makes very little contribution to the

significance of Hatfield Place as a heritage asset and, as such, the development will have no impact on that significance.

827. This difference between the applicant, Historic England and Essex Place Services is difficult to resolve, primarily because neither of the latter explains why they disagree with the views of Mr Handcock which were clear to both when they formulated their consultation responses to the application. As far as can be told from their responses they have simply not engaged with his arguments at all and have looked at the matter in fairly simplistic terms, emphasising the extent to which there would be inter visibility between the application site and the heritage asset.

828. Mr Handcock was robustly questioned by both Mr Graham and Ms Scott. In my view, his evidence on Hatfield Place was not undermined at all. I consider that his evidence should be preferred to that of Historic England and Essex Place Services. I therefore conclude that the development proposed would not harm the significance of Hatfield Place.

The William B

829. The former Crown Public House is a 15th Century coaching inn that has been altered in the 16th, 18th and 19th Centuries (Appendix (v), RG2). Its significance derives from physical fabric and architectural features noted in the Listing. Its functional and economic association is with The Street which it fronts onto [187].

830. Essex Place Services observe that while there may be limited inter visibility between the application site and the William B there is no particular historic association between the two and thus no harm to the setting of the listed building (letter dated 9 December 2016, CD27.4 set C).

831. Historic England makes the same basic observation as Essex Place Services. However, the conclusion drawn from the same observation is that the setting would be harmed because '…as an Inn on the edge of the village….this building has always enjoyed a semi-rural setting enjoying views of open countryside to the rear and the side.' Since the proposal would erode even further the rural setting with views becoming more urban in nature, Historic England is of the view that the existing setting would be harmed (letter dated 6 February 2017, CD27.4 set C). SPMRG make a similar case and relies on the view of Historic England [584 to 587].

832. It seems to me that Historic England and, by extension, SPMRG have not applied the correct test. As is clear from the Glossary to the Framework where significance for heritage policy is defined, whatever the effect on the setting might be, in the absence of any analysis of the setting to the significance of the heritage asset, that effect is not relevant. Neither Historic England nor SPMRG explain why undeveloped land to the rear of the William B makes any contribution to its significance as a heritage asset. In my judgement of the evidence presented, there is none.

833. The application would therefore not cause any harm to the significance of the William B.

834. Should the Secretary of State prefer the view of Historic England he should note that it did not quantify the level of harm. SPMRG does, putting it no higher than at the lower end of the 'less than substantial' scale [587]. For the reasons

set out above [817 and 818], I believe that such a level of harm would be more than outweighed by the public benefits of the scheme and that there would be no conflict with Framework paragraph 134.

Conclusion

835. For the reasons set out under this consideration I do not consider that the application proposal would conflict with Framework paragraph 134 or policy CS9, insofar as it is relevant.

The effect of the development on community infrastructure

Education facilities

836. The concern relates only to primary school places and has been something of a moving feast as ECC, as education authority, has come to appreciate the full impact of planned and speculative development in Hatfield Peverel and the changing position over time with respect to school rolls (series of letters in CD21 set C). In my view, the SOCG (ID1.8) does not take things much further although the letter dated 1 September 2017 to Priti Patel MP from the ECC chief executive attached to it does. So does the helpful report from EFM that was prepared for GDL/DWH in response to my pre-Inquiry note (INSP1) and appended to the proof of Mr Lee (Appendix 4, 1/APP).

837. The EFM report explains that estimating the numbers likely to be demanding a place at any particular school in future years is an inexact science. It is compounded, in the author's view, by the inherent contradiction between the duty placed upon education authorities to promote choice and variety of schools on the one hand and the Framework paragraph 38 requirement to locate, where practical, primary schools within walking distance of most properties on the other hand (report paragraph 27). The position in Hatfield Peverel is further complicated as the Council does not have a CIL charging schedule in place.

838. The letter is slightly opaque but, as I understand it, any one of the four residential developments listed in the letter could, in isolation, be accommodated without the need for additional primary school capacity. As two of the potential developments are allocated in the BNLP and the other two are this application and that submitted by DWH, it is unlikely that only one scheme in isolation will come forward. Depending on the decisions made by the Secretary of State, all four could come forward.

839. Both the letter and the EFM report say that in that circumstance it is necessary to look more closely at where the children attending the Braintree Group 10 schools (Hatfield Peverel Infant, St Andrew's Junior and Terling CE Primary) actually live. It appears that some 35% live in the priority admissions areas of other schools but chose to be educated at one of those three named schools.

840. Given that the education authority has a duty to secure sufficient school places (and there is no evidence that it will not do so) the assumption is that this issue will resolve itself over time through the operation of the admissions policy. In short, in-catchment applications will always trump out-of-catchment applications (report paragraph 42) and, while no pupils will be displaced, over time more and more pupils in the Braintree Group 10 schools will come from Hatfield Peverel if that is their choice.

841. GDL's response to this is set out above [250 to 257]. It can perhaps be summarised by Mr Lee's answer to my question when he confirmed that had ECC asked for a contribution to primary school provision it would have been paid. There is therefore no resistance from GDL to addressing the issue. Although Mr Graham believes that ECC may have misdirected itself in respect of CIL Regulation 123(3) [453] the fact remains that its understanding of the pooling restriction prevented it from seeking any contributions from the applicant.

842. Nevertheless, while the situation settles down, and there is no indication as to how long that may take, Mr Lee accepted that there would be a short term impact which GDL was unable to mitigate [595]. That is most likely to manifest itself through additional journeys to school, either by bus or private car. In my judgement it is very unlikely that any pupils would walk to schools in Witham. The walk is by the A12 and unpleasant in my view and likely to be perceived as dangerous even if, in fact, it is not.

Health facilities

843. The consultation response by NHS England (CD4.11 set B) has the 'feel' of a template letter (see also CD3.16 set A). At paragraph 5.2 of the response it says that the development would give rise to a need for improvements to capacity by way of 'extension, refurbishment or reconfiguration at Sydney House Surgery, including its main surgery, the Laurels'. Those are the terms used in the definition of the 'healthcare contribution purposes' in Schedule 8 of the s106 Obligation (ID58) although it can only be spent at Sydney House. Clause 3.4 of the Schedule ensures that the return of any unspent monies can be requested after five years.

844. It is clear in my view that the impact of the development and the contribution sought to mitigate it is established purely in terms of the need for additional floor space generated. Unchallenged evidence was given by Mr Renow to the effect that Sydney House could not be physically expanded [448]. GDL respond to this by saying that the capacity can be increased without necessarily having to physically expand the building by, for example, internal alterations [259].

845. However, a letter from the Practice Manager is somewhat confusing as to what is meant by 'capacity' (CD20.1 set C). One reading is that it is the number of medical staff available that is the issue, not the physical space available. Not only is the concern expressed that the contribution would not be spent by NHS England at that surgery (rightly rebutted by Ms Osmund-Smith given the terms of the Obligation) but that it was not recurrent funding. That is suggestive of the concern locally not being one of space constraints.

Conclusion

846. CS policy CS11 says, in essence, that the Council will work with partners, service delivery organisations and developers to provide required infrastructure services and facilities in a variety of functional and service areas that include education and health. Provision is to be funded through among other things, planning obligations and CIL. In the absence of the latter, the Council is reliant in this case on planning obligations.

847. The evidence suggests that there may be some short term harm in terms of additional journeys to schools while a new equilibrium is established in the

primary education sector. It may well be that what appear to be current capacity issues at the surgery may be exacerbated if, as HPPC and SPMRG contend, the surgery cannot be expanded and that is, as NHS England would appear to believe, actually the issue.

848. However, having identified those concerns it must be acknowledged that GDL has obligated to make all the contributions that have been requested to mitigate any effect from the application. In my view, a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Other topic areas

849. There are a number of topics on which GDL disagrees with HPPC and SPMRG respectively [17 and 18].

850. The treatment by Inspector Parker of the best and most versatile agricultural land issue was the ground of challenge on which the Secretary of State conceded in relation to the appeal decision in respect of the 80 dwelling scheme. In order to address the issue further GDL commissioned a site specific study, the report of which was submitted in evidence (Appendix 1, 1/APP). This confirms that the application site is not best and most versatile agricultural land and SPMRG did not pursue this point of disagreement [224]. The point taken for the first time during oral evidence from Mrs Jarvis is wrong [225]. There is therefore no policy conflict with respect to best and most versatile agricultural land.

851. The position with respect to transport and highway matters and air quality is, to my mind, very fairly set out by Ms Osmund-Smith in her closing submissions [263 to 272]. In short, GDL has submitted a number of documents at application stage (within CD1 set B) and these have been assessed by the relevant statutory and other consultees. These have been supplemented by GDL/DWH with further reports addressing cumulative air quality (ID1.4) and transport/highway (ID1.5) issues in response to the first pre-Inquiry note (INSP1) which followed on from my review of the evidence submitted by that time.

852. Neither HPPC nor SPMRG challenged this supplementary evidence or, in the event, took issue with the submitted studies. The SOCG between GDL and the Council (SOCG1) confirms that there are no matters on either issue that cannot be resolved by conditions. There is therefore no evidence before the Inquiry to justify a finding of conflict with the development plan.

853. Finally, ecology. This has been the subject of application submission studies (CD1.9 set B), further submissions in response to queries raised by consultees (CDs 3.7 to 3.9, 3.15, 3.22 and 3.23 set B and CD26.1 set C) and evidence to this Inquiry (5/POE). After a lengthy consideration in the officers' report which set out the views of the Council's landscape officer and the County Council's ecologist, the Council Committee was advised that there was no valid technical ecology reason for recommending refusal of the application (CD6.1 set B).

854. Dr Mansfield gave detailed evidence about the ecology of the site and particularly about the way the various studies required to understand it had been carried out in accordance with current best practice and guidance. The outcomes are summarised above [227 to 229]. In short, although there is potential for the survey area (land encompassing both GDL schemes and associated blue land) to support breeding and foraging farmland bird species, the restricted range of

habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark.

855. Mr East for SPMRG seemed unable to accept these results. Throughout his cross examination he sought to cast doubt on the evidence of GDL and the views of the County Council ecologist. He is not an ecologist [230] but he nevertheless set the brief for the surveys that he commissioned and then interpreted the results. Dr Mansfield explained why all the surveys relied upon by Mr East did not follow best practice [241] and should therefore be treated with caution. She also dealt with the matter of the butane cannon [240] that Mr East felt had undermined the applicant's surveys. In my judgement Mr East has no evidential basis to challenge the applicant's substantial evidence.

856. In her closing submissions on ecology Ms Scott raises only a concern about the ability of the Blue Land to improve the ecology and biodiversity of the area when it will be subject to considerable recreational use by people and pets. That in my view goes to the weight that can be attributed to the benefits claimed in the overall planning balance. The Secretary of State will wish to note in this context the County Council ecologist's assurance with respect to the section 40 biodiversity duty [233].

857. I therefore see no evidence to disagree with GDL's conclusion regarding compliance with development plan policies RLP 80, RLP 84 and CS8.

Conclusion - The extent to which the proposed development is consistent with the development plan for the area

858. I have concluded that the development would accord with the spatial strategy [745]; would not conflict with policy RLP 80 [791] or policy CS8 [792]; and would not conflict with policy CS11 [848]. There would be some visual impact from the development [793] and some harm also to the amenity of users of the PROW [800]. However, in each case the harm would be limited and very localised in effect. Moreover, neither matter appears to be subject of a relevant adopted development plan policy. On heritage matters, should the Secretary of State prefer the advice of Historic England, I consider that the harm identified to both Hatfield Place [818] and the William B [834] would be 'less than substantial' and would be outweighed by the public benefits. There would therefore be no conflict with Framework paragraph 134. My conclusion on the evidence is that there would be no harm to the significance of either heritage asset in any event [828 and 833]. There would be no conflict with any other development plan policy on material matters [857].

859. The sole conflict that I have identified with the development plan is that with policies RLP 2 and CS5. The conflict arises because the application site lies adjacent to but beyond the development boundary of the village. For the reasons set out the weight that should be attributed to this conflict is moderate [746 to 755].

Five year housing land supply

Background

860. For the purposes of the Inquiry there is no challenge to the Council's assessed OAHN of 716 dwellings per annum [73]. The requirement side of the equation is therefore accepted and the focus of the debate is on the extent to which that requirement can be met over the five year period by the supply of specific deliverable sites.

861. Again, for the purposes of this Inquiry only, the Council accepts the 'Sedgefield' method to deal with the shortfall [673 and 674]. It does not agree with GDL/DWH that there has been persistent past under delivery of housing and does not therefore agree that a 20% buffer should be applied [675 to 679]. On supply there is an immaterial difference between the Council and GDL/DWH of 68 dwellings [680].

862. The final and agreed position is that there would be a 3.4 years' supply (GDL/DWH – Sedgefield+20%) or 3.9 years' (Council – Sedgefield+5%) (Appendix 3 ID37). It was agreed during the Inquiry when I summarised my understanding of the position that this was not close enough to 5 years for the Secretary of State to give anything other than substantial weight to the shortfall. However, as it was not possible on even the most favourable assumptions to get below 3 years, GDL/DWH accepted the implications of the Written Ministerial Statement on Neighbourhood Planning if the NDP passed a referendum before the Secretary of State determined the application.

863. In those circumstances it is not necessary to resolve the small difference between the Council and GDL/DWH.

864. HPPC [352] and SPMRG do not agree with this and suggest that there is a 5YHLS. They contend that the 'Liverpool' approach should be used to deal with the shortfall and that the buffer should be 5%. However, as is clear from the SOCG (Appendix 3, ID37) that alone is not enough to show a 5YHLS. It also requires most, if not all, of the additional supply sites first mentioned by SPMRG during the round table discussion and then confirmed in writing (ID21) to be 'deliverable' within the meaning of Framework footnote 11.

Supply of deliverable sites

865. Except for Mr Tucker's criticism of Mr Graham's specific interpretation of *St Modwen* regarding the term 'realistic' [69], it appears to be agreed between the parties that whether a site is deliverable or not is determined by the ordinary and everyday meaning of the words in Framework footnote 11 and not on the planning status of the site in question. It is in that context that GDL/DWH/the Council have reviewed and commented upon (ID 37) the sites put forward by SPMRG (ID21). ID37 is dated 21 December 2017, the final day of the Inquiry sessions. Ms Scott's first and only opportunity to respond was through her closing submissions although what she says [621 and 622] is, in fact, taken into account in ID37.

866. Appendix 1 to ID37 sets out in detail the positions of both GDL/DWH and the Council in respect of each site. None has planning permission and only three are subject of planning applications. A number are subject of objections and until these are resolved through the BNLP examination they must be considered

uncertain notwithstanding their allocation in the draft BNLP. Furthermore, some are owned or part owned by the Council. The mechanism by which they will be developed has yet to be confirmed by the Council and they cannot be considered as available now.

867. Ms Scott puts the additional sites suggested by SPMRG as adding a further 461 dwellings to the supply [617]. In only challenging ID37 in respect of two sites (Sorrell's Field and Gimsons), it must be assumed that SPMRG accept the case made on the others. Even if the SPMRG response to ID37 is agreed, GDL/DWH/the Council say that it adds only about 25 units net to the supply. They further contend that this additional supply makes no material difference to the 5YHLS position.

868. In my view that must be correct. However, the extent of the shortfall below 5 years may still be material and it is therefore necessary to consider the next most significant factor which is whether 'Sedgefield' or 'Liverpool' is the appropriate approach to take to dealing with the shortfall.

Sedgefield or Liverpool?

869. The shortfall arises because the OAHN has been applied, as it should be, from the start of the plan period in 2013 but the plan itself, the strategy and the allocations to deliver it are not yet approved and planned delivery is thus delayed. I appreciate that some of the developments that may come forward as a result of the adoption of the submitted BNLP may do so towards the latter part of the period. That may well be an argument for the Liverpool approach and is likely to be put by the Council to the examining Inspector. However, that is all for the future and the shortfall exists now. Although Ms Scott argues that the BNLP is now far more advanced than when Inspectors Hill and Gregory considered their respective appeals [610], in practice that is not so as she implicitly acknowledges ('although plainly the Plan has yet to make it through examination').

870. The PPG is quite clear that Sedgefield should be preferred unless there are sound reasons for not doing so. The case made by SPMRG that the Council is simply not able to deliver housing in the numbers required following the Sedgefield approach [607] is attractive at first sight. However, there is no analysis as to why that has not been the case in the past (is it lack of market demand, lack of available sites, lack of planning permissions being granted against a former development plan requirement?) so the past is not necessarily a guide to the future performance. In any event, even an under-shoot would still make up some of the shortfall.

871. The approach advocated by HPPC [341 to 346] makes the plan strategy point referred to above and, referring to *Bloor Homes* (ID61), argues that it is a matter of judgement for the decision taker.

872. In my judgement there has been no material change in circumstances since my colleagues determined the Coggeshall and Steeple Bumpstead appeals. They both concluded that Sedgefield was the appropriate approach to adopt and this has influenced the Council's acceptance of that for the purposes of this Inquiry [672]. There is no cogent evidence before this Inquiry to take a different view.

Conclusion

873. As Mr Tucker put it [93], in order for HPPC and SPMRG to get the 5YHLS 'over the line' all the stars must align. The evidence shows that when the assessed supply of deliverable sites is taken into account and the Sedgefield approach is applied it makes no material difference whether it is 5% or 20% that is applied as the buffer. On either, the best that can be achieved is still less than 4 years' supply.

Framework Paragraphs 49, 14 and the 'tilted balance'

874. In the circumstances that I have just found Framework paragraph 49 is clear that relevant policies for the supply of housing should not be considered up to date. In turn, that means Framework paragraph 14 is engaged. Planning permission should be granted unless either of the limbs of Framework paragraph bullet 4 indicates that the tilted balance should be dis-applied.

875. Dealing with the second limb first, footnote 9 sets out a non-exhaustive list of specific policies in the Framework which indicate that development should be restricted. By the close of the Inquiry sessions Ms Scott explicitly stated that the only relevant policy which SPMRG considers falls into that category in this case is Framework paragraph 134 [519]. I have concluded that there is no conflict with this policy, first, because in my view there is no harm to the significance of either heritage asset and, second, in the event that the Secretary of State accepts the advice of Historic England, the less than substantial harm would be outweighed by the public benefits [817, 818, 828, 832 to 834]. In coming to that view I have had regard to the s66(1) duty. The tilted balance should not therefore be dis-applied by virtue of the second limb.

876. As I understand Mr Graham's case for HPPC it is not argued that the tilted balance should be dis-applied on the basis of the second limb.

877. Turning now to the first limb, the harms that I have identified are set out above [858 and 859] with the conflict with development plan polices identified where appropriate. The totality of the harm or adverse impacts is limited and localised and restricted to a very small number of aspects. The benefits in terms of housing numbers and tenure mix are considerable and there are other benefits across a range of Framework policies [326]. In my judgement, the limited adverse impacts of the proposal are some distance from significantly and demonstrably outweighing those benefits. Accordingly, I do not consider the first limb dis-applies the tilted balance either.

878. To conclude on this consideration, the tilted balance set out in Framework paragraph 14 applies in this case and is a material consideration that should be given substantial weight in the planning balance.

The planning balance

The development plan

879. The application proposal would conflict with the policies of the development plan. The application site is beyond the development boundary of Hatfield Peverel and it is not a use appropriate to the countryside. There is a conflict therefore with policies RLP 2 and CS5 [859]. I do not consider there to be any other conflict with the development plan.

880. The application should therefore be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there are a significant number of material considerations to take into account.

Material considerations against the development

Footpath 43

881. In my view, the experience of users of this path will be harmed by the development [800], including the provision of the blue land and the public open space between Stone Path Drive and the northern boundary of the developable area. However, the path is not lengthy and does not form part of any promoted country walk [151]; it links two roads. I consider the weight to be attributed to this harm to be limited.

Visual impact

882. In my understanding, the effect on landscape character and visual impact are two separate, but related, issues although they are usually considered in a single LVIA. My conclusion on landscape character is part of my assessment of the development against the policies of the development plan.

883. In relation to visual impact, I conclude (as to be fair do GDL [176]) that there would be some harm caused [780 to 788]. However, that would be very localised, affecting very few residential occupiers and users of limited lengths of public highways over and above footpath 43. Although I agree with GDL's categorisation of the scale of adverse effect, the harm caused is limited. Given my conclusions on the weight that should be given to the emerging NDP [739] any conflict with emerging policy HPE6 on this consideration can be given very limited weight, particularly as this is a policy that is subject to objection from GDL and possibly others although there is no evidence about that.

Material considerations in favour of the development

884. These are set out by Ms Osmund-Smith above [316 to 325].

Tilted balance

885. I have concluded that the Council cannot show a 5YHLS [873]. Moreover, at less than 4 years' supply, the shortfall is of some significance. In these circumstances Framework paragraph 14 is engaged by virtue of Framework paragraph 49. There is no reason why the tilted balance should be dis-applied [875 and 877] and I consider that it should attract substantial weight [878].

Housing delivery

886. There is no reason to suppose that the proposal would not deliver a high quality development that includes a mix of market and affordable housing [729 and 730]. There is however a legitimate concern in my view about the rate of delivery within the first five year period.

887. The query was raised in my second pre-Inquiry note (INSP2) and arose from the evidence of Mr Spry and Mrs Hutchinson's rebuttal proof. She explained that one of the sites that Mr Spry sought to downgrade in terms of its contribution to the 5YHLS (Land South Of Oak Road, Halstead) was one where GDL had secured outline planning permission and then sold it to developers (Bloor Homes and

DWH) (paragraphs 2.63 to 2.68 BDC3). Although it was ultimately concluded that there should be no change to the Council's trajectory for this site, Mr Spry's analysis was that the delays caused by the two developers seeking separate reserved matters approvals meant, in his view, that full build-out in five years was optimistic (pages 8 and 9, Appendix 1, 4/POE).

888. As this shows, GDL do not build houses; they are a site-finding company whose business model is to secure outline planning permission and dispose of the land to a housebuilder as soon as possible thereafter [311]. Mr Lee explains that over the period during which GDL has been operating, outline planning permission has been secured for some 15,000 homes (section 10.5, 1/POE) but does not say how many dwellings have actually been delivered within the five years from permission being granted. In oral evidence he explained why this could not in fact be computed (essentially because GDL had not been operating long enough for a true figure to be available).

889. I give little weight to the two letters of intent (ID31 and ID32) since both post-date INSP2 and would appear to have been solicited specifically to address my query. Nevertheless, Framework footnote 11 is clear that sites with planning permission (which, as not excluded, must include outline planning permission) should be considered deliverable unless there is clear evidence (examples are set out) to the contrary. In this case at this point in time there is no such evidence. It must be assumed therefore that the whole site could be developed within five years. It is also noteworthy in this context that suggested condition 2 reduces to two years the period within which the reserved matters applications must be submitted. There is no reason therefore not to afford some weight to the delivery of housing over the five year period.

Spatial strategy

890. Notwithstanding any conflict with the development plan arising from the position of the village development boundary, the application proposal would accord with the longstanding and continuing spatial strategy for the area [745]. That attracts some weight in the balance.

Economic, social and environmental benefits

891. These are the three dimensions of sustainable development set out in Framework paragraph 7.

892. With regard to the economic role, there is nothing in the Framework to suggest that the economic benefit of a development must be enjoyed by the area in which the development is located to meet this objective. The financial contributions to the economy set out [326], which were not challenged as to the quantum, are therefore a benefit to which some weight should be attributed.

893. The social dimension is however locally focused since it is aimed at supporting strong, vibrant and healthy communities. The supply of housing already mentioned comes into this. The additional residents will also have the potential to contribute to the social activities of the village and to increase spending in and use of local shops and services. This may help to address the issues identified by Mr Renow whose evidence seemed to suggest that in some respects the village was in decline [245]. These aspects carry some weight too.

894. With respect to environmental matters, the enhanced biodiversity arising from the new boundary planting and the management of the existing boundaries for this purpose is a benefit to which weight must be attributed.

Material considerations which are neutral

895. The identification of the blue land is required to mitigate any adverse effects that there may be on the nearby Natura 2000 sites [25]. It is intended to have a recreational focus to provide an alternative to the Natura 2000 site for that purpose. Whether or not SPMRG is correct that a mitigation measure should not be considered a benefit [637], I believe the effect of its use will contribute to the adverse effect on the experience of those now using footpath 43. Any benefit is therefore offset by the harm caused. Similarly offset is any benefit from the enhancement of footpath 43 as it passes through the development site and any provision of open space and play area in the vicinity of the footpath.

896. In my view also the provision of enhancement to the nearby bus stops and the shelters and the implementation of minor traffic management measures to address what are largely existing conditions should attract so little weight as to be neutral.

Conclusion

897. In my view the conflict with the development plan, which attracts moderate weight applying Framework paragraph 216, and the material considerations that weigh in favour of determining the application in accordance with it are significantly outweighed by those that indicate it should be determined other than in accordance with the development plan. In my judgement the application represents sustainable development as defined in the Framework and planning permission should be granted.

Recommendation

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898. I recommend that planning permission be granted subject to conditions.

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon of Counsel	Instructed by Ian Hunt Legal Services Braintree District Council
He called	
Alison Hutchinson BA MRTPI	Partner, Hutchinsons Planning & Development Consultants

FOR THE APPELLANT:

Thea Osmund-Smith of Counsel	Instructed by Christien Lee, Senior Planner Gladman Developments Ltd
She called	
Matthew Spry BSc (Hons), DipTP (Dist) MRTPI MIED FRSA	Senior Director Nathaniel Lichfield and Partners
Dr Suzanne Mansfield BSc (Hons) PhD	Director FPCR Environment and Design Ltd
Laurie Handcock MA(Cantab) MSc IHBC	Director Heritage Team Iceni Projects
Gary Holliday BA MPhil LD CMLI	Director FPCR Environment and Design Ltd
Christien Lee BSc(Hons) MCD MRTPI	Senior Planner Gladman Developments Ltd

FOR HATFIELD PEVEREL PARISH COUNCIL:

David Graham of Counsel	Instructed by direct access
He called	
Mike Renow	Parish Councillor
Philppa Jarvis BSc DipTP(Hons) MRTPI	Principal PJPC Ltd (Planning Consultancy)

FOR THE STONE PATH MEADOW RESIDENTS GROUP:

Rosie Scott of Counsel	Instructed by Birketts Solicitors
She called	
Margaret Freeman MA (NUI) HDipEd (NUI)	Local resident giving evidence on heritage matters
Mark East	Local resident giving evidence on ecology

	matters
Kevin Dale	Local resident giving evidence on landscape matters and soils

Annex A

CORE DOCUMENTS

Set A: Appeal Ref: APP/Z1510/W/16/3162004

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Impact Appraisal
1.7 Transport Assessment
1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Assessment
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological Desk Based Assessment
1.16 Heritage Assessment
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Impact Report
1.21 Sustainability Report
1.22 Framework Plan Rev H 09.08.16
1.23 Education and Heritage response 25.08.16
1.24 Bat and GCN survey 05.10.16
1.25 Iceni Heritage letter 07.10.16

CD2 Correspondence with Local Planning Authority

2.1 Email with minutes of pre-ap meeting 29.03.16
2.2 Pre-ap response letter from BDC 08.04.16
2.3 Email from GDL to BDC requesting pre-ap response 11.05.16
2.4 Email and letter from GDl to BDC 11.05.16
2.5 Email exchange re conference call 08.06.16
2.6 Email from BDC re Chris Paggi contact 10.06.16
2.7 Email from Chris Paggi re POS 17.06.16
2.8 Email from GDL to BDC re POS 21.06.16
2.9 Email exchange re additional land 30.06.16
2.10 Email exchange re education meeting 30.06.16
2.11 Email exchange re site visit 05.07.16
2.12 Email from GDL to BDC re response to additional land request 12.07.16
2.13 Email from GDL to BDC re officer support 12.07.16
2.14 Email from GDl to BDC re submission of 2nd application 13.07.16
2.15 Email and letter from BDC re additional land 21.07.16
2.16 Email from BDC to GDL re education 01.08.16
2.17 Email from GDL to BDC re amendment to Framework (footpath) 12.08.16

2.18 Email from BDC to GDL re legal agreement 23.08.16
2.19 Letter from GDL to BDC re legal agreement/conditions 23.08.16
2.20 Email from GDL to BDC re legal agreement/heritage 24.08.16
2.21 Email from GDL to BDC re education 25.08.16
2.22 Email from BDC to GDL re legal agreement 25.08.16
2.23 Email from GDL to BDC re feedback from Conservation Officer 07.09.16
2.24 Email from BDC to GDL re financial contributions 09.09.16
2.25 Email from GDL to BDC re photos of the site from Hatfield Place 13.09.16
2.26 Email from BDC to GDL re HoTs/conditions 20.09.16
2.27 Email from GDL to BDC re legal costs 21.09.16
2.28 Email from BDC to GDL re HoTs 23.09.16
2.29 Email from BDC to GDL re TRO 27.09.16
2.30 Email from BDC to GDL re highways 05.10.16
2.31 Email from BDC to GDL re survey work 05.10.16

CD3 Consultation Responses

3.1 Anglian Water - 24.08.16
3.2 BDC - Environmental Health
3.3 BDC - Landscape - 05.09.16
3.4 ECC - Archaeology 11.04.16
3.5 ECC - Drainage 18.04.16
3.6 ECC - Education 1 - 20.04.16
3.7 ECC - Education 2 - 30.08.16
3.8 ECC - Heritage 1 - 24.05.16
3.9 ECC - Heritage 2 - 06.09.16
3.10 ECC- Highways 12.05.16
3.11 Hatfield Peverel Parish Council 12.05.16
3.12 Highways England 25.05.16
3.13 Highways England 21.06.16
3.14 Historic England 16.08.16
3.15 Housing Research and Development 27.04.16
3.16 NHS England 19.04.16
3.17 PRoW 15.04.16

CD4 Validation Letter

4.1 Validation letter from Braintree District Council dated 30.03.16

CD5 Committee report and Decision Notice

5.1 Committee Report
5.2 Decision Notice

Set B: Appeal Ref: APP/Z1510/V/17/3180725

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Appraisal
1.7 Transport Assessment

1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Analysis
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological DBA
1.16 Heritage Statement
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Report
1.21 Sustainability Report
1.22 SUDS checklist

CD2 Additional reports submitted after validation
2.1 Ecology Response to RSPB comments 14.12.16
2.2 Additional Heritage Statement to respond to HE 13.01.17
2.3 Rebuttal letter to HE comments 09.03.17

CD3 Correspondence with Local Planning Authority
3.1 Notice to Owners
3.2 EIA screening letter
3.3 Update and recommendation
3.4 RSPB objection
3.5 Letter to case officer
3.6 Landscaping photos
3.7 Bird mitigation land
3.8 Ecology matters
3.9 Ecology matters - Wistaston decision
3.10 Heads of Terms
3.11 Single storey buildings around perimetre
3.12 Timing of Reserved Matters application
3.13 Heads of Terms
3.14 Blue land managament
3.15 Response to RSPB objection
3.16 Ecologist qualifications
3.17 Overall recommentation
3.18 On agenda
3.19 Education contribution
3.20 HRA matters
3.21 Maintenance of blue land
3.22 Farmland bird surveys and contributions
3.23 Interim breeding bird surveys

CD4 Consultation Responses
4.1 Essex County Council Specialist Archaeological Advice
4.2 Essex County Council SUDS
4.3 Braintree District Council Environmental Health
4.4 Parish Council
4.5a Historic England
4.5b Historic England

4.6 Essex County Council Education Statement
4.7 Essex County Council Historic Buildings Consultant
4.8a Highways England
4.8b Highways England
4.8c Highways Recommendation
4.9 Essex County Council Economic Growth and Development
4.10a RSPB Response to applicants ecologist
4.10b RSPB
4.11 NHS Statement
4.12 Essex County Council Highways
4.13 Essex County Council Ecologist
4.14 Briantree District Council Wynne-Williams Landcape Review
4.15 Shaun Taylor Landscape Services
4.16 Natural England
4.17 Anglian Water
4.18 Police
4.19 Braintree District Council Ecology
4.20 Essex County Council Flooding and Water update
4.21 Essex Field Club
4.22 Archaeology Place Services
4.23 Braintree District Council Environmental Health

CD5 Third Party Representations

5.1 Mr Mark Scofield
5.2 Ms Allison Hinkley
5.3 MP Priti Patel
5.4 Mrs Diana Wallace
5.5 Mr Paul Hawkins
5.6 Mrs Linda Shaw
5.7 Mr John Dinnen
5.8 Mrs Amanda Millard
5.9 Mrs Angela Peart
5.10a Mr Peter Harvey
5.10b Mr Peter Harvey
5.10c Mr Peter Harvey
5.11 Mr Kenneth Earney
5.12a Mr Mark East
5.12b Mr Mark East
5.13 Mrs S.J.Freeman
5.14 Miss Marine Page
5.15 Mr Philip Swart
5.16 Mrs Susan Farrell
5.17 Ron and Marel Elliston
5.18 Mr M Fleury
5.19 Mrs Rita Hocking
5.20 Mr Tom Bedford
5.21 Mrs Helen Sadler
5.22 Mr B.Knight
5.23 Ms Serena Grimes
5.24 Andy and Stephanie McGuire
5.25 Mr Nicholas Carey
5.26 Mrs Greta Taylor

5.27 Residents Group
5.28 Mr K. Kearns
5.29 Mrs Margaret Freeman
5.30 Kenneth and Jackie Earney
5.31 Mr Kevin Dale
5.32 Mr Robert Shales
5.33a Ms Janis Palfreman
5.33b Ms Janis Palfreman
5.34 Mrs Diane Wallace
5.35 Mrs Faye Churchill
5.36 Mr Derek Jones
5.37 Mrs Janet Jones
5.38 Miss Grace Clemo
5.39 Mrs Valerie Bliss
5.40 Mr Bryan Hale
5.41 Mr Les Priestley
5.42 Ade
5.43 Ms Janice Robinson
5.44 Mr James Knights
5.45 Mr Guy Bosworth
5.46 Rachel and Liam Bone
5.47 Mr Robert Anstee
5.48 Mr Lee Vandyke
5.49 Frank Diane Flynn
5.50 Mrs Stella Miller
5.51 Dr Judith Abbott
5.52 Mr Mitchell Cooke
5.53 Ms Jane Russell
5.54 Mrs Lesley Naish
5.55 Mr John Wallace
5.56 Mr Peter Naish
5.57 Mr Tim Steele
5.58 Ms Irene Lindsell
5.59 Mr and Mrs Edwards
5.60 Kathleen and Albert Evans
5.61 Mr Paul Harris
5.62 Mr Mark Nowers
5.63 Mr Ian May
5.64 Ms Ann Ford
5.65 Ms Alexandra Harris
5.66 Mr Nick Harris
5.67 Lynsey and Rob Deans
5.68 Ms Theresa Brewster
5.69 Ms Sue Pienaar
5.70 Ms Karen Devlin
5.71 Mr Peter Devlin
5.72 Ms Catherine Devlin
5.73 Ms Lisa Hanikee
5.74 Mr Timothy Barber
5.75 Mr Martin Gibbs
5.76 S.Warrant
5.77 Mr David Bull

5.78 Mr Sean Osborne
5.79 Mr Richard Parker
5.80 Miss Joanna Burch
5.81 Mr Colin Moore
5.82 Mr Chris Earwicker
5.83 Mrs Kate Bryant
5.84 Mrs Gillian Jones
5.85 S.Warrant
5.86 Ms Rita Hocking
5.87 Mrs Karen Williams
5.88 Mr Philip Hawkins
5.89 Ms Jane Hawkins
5.90 T Davis
5.91 J.C.Roche
5.92 Mr Keith Wright
5.93 Mr Peter Haldane
5.94 Mr John Campbell
5.95 Ruth Ramm
5.96 No Name
5.97 Ms Deborah Fraser
5.98 Ms Lindsay Gilligan
5.99 Mr Michael Renow
5.100 Mr Neil Ruston
5.101 Mr Vincent Hawkins
5.102 Mr Trevor Wilson
5.103 Mr Sebastian Gwyn-Williams
5.104 Mr Darryl Day
5.105 Mrs Ann Walker
5.106 Mr Richard Butler
5.107 Mrs Angela Lapwood
5.108 Mrs Teresa O'Riodan
5.109 Mrs Elise Gwyn-Williams
5.110 Mr Daniel McDermott
5.111 Mr Richard Windibank
5.112 Mrs J.Buckmaster
5.113 Mrs J P Wright
5.114 Carole and Howard Cochrane
5.115 Chistine C Lingwood
5.116 D.R.Wallis
5.117 Mrs Jean Ashby
5.118 Mrs Lesley Wild
5.119 Mr Paul Hanikene
5.120 Mr George Boyd Ratcliff
5.121 Mrs Helen Peter
5.122 Mr Mark East
5.123 Graham and Jean Lightfoot
5.124 Mr Roderick Pudney
5.125 Mr Stephen Mitchell
5.126 Mrs L.Wild
5.127 Mr and Mrs David Warburton
5.128 Ms Marian Headland
5.129 Mrs Chris Marks

5.130 Mrs Carole Allen
5.131 Mrs Amanda Bright
5.132 Mrs Joe Quieros
5.133 Mr Richard Quieros
5.134 Mrs Joanne Melly
5.135 Mrs Claire Harris
5.136 Miss Natasha Wilcock
5.137 Mr Ted Munt
5.138 Mr Neil Ekins
5.139 Margaret and Robert Parry
5.140 Mr Neville Oldfield
5.141 Ms Joanne Middleton
5.142 Ms Steph Gunn
5.143 H.J.Lane
5.144 Mrs M.Blake
5.145 Mr I and Mrs J Jolly
5.146 Derek and Jan Newell
5.147 Henryk Podlesny
5.148 Lorraine Podlesny
5.149 Glenn Blake
5.150 Mr Paul Wallace
5.151 Stone Path Residents Group
5.152 Mr David Bebb
5.153 Mrs Jo Bull
5.154 Mr David Groves
5.155 No Name
5.156 No Name
5.157 Julie Gammie
5.158 No Name
5.159 Mrs Ann Westhersby
5.160 C Merritt
5.161 Mr Tony French
5.161 Mrs Elsie Filby
5.163 Mr Charles William Joiner
5.164 Michele Lewars
5.165 Mr Andrew Jackson
5.166 Mrs Julia East
5.167 A.W.Mabbits
5.168 No name
5.169 Mr Paul Thorogood
5.170 No name
5.171 Jane and Eddie Cook
5.172 Richard Foulds
5.173 Mrs M.E.Gratze
5.174 S.Hughes
5.175 No Name
5.176 No Name
5.177 No Name
5.178 Alan J Evans
5.179 Ron and Marel Elliston
5.180 Elizabeth Pryke
5.181 Suzanne Evans

5.182 Mr Mark Schofield
5.183 Sonya Foulds
5.184 Daniel Power
5.185 Daniel Power
5.186 Miss Susan Nye
5.187 Philippa Moody
5.188 Moira and Steve Hagon
5.189 Kevin and Sue Aves
5.190 Allison Hinkley
5.191 Mr Peter Fox
5.192 Mrs Elizabeth Simmonds
5.193 Mr Mark Bayley
5.194 Mr Andy Simmonds
5.195 Mr Stephen Armson-Smith
5.196 Miss Charlotte Greaves
5.197 Mrs Jodi Earwicker
5.198 Mrs Vivian Cooke
5.199 Mrs Victoria Wren
5.200 Mrs Natacha Murphy

CD6 Committee Report
6.1 Committee Report
6.2 Committee Meeting Minutes

CD7 Habitats Regulations Assessment
7.1 HRA Screening Report
7.2 NE response in respect of HRA

CD8 Draft Legal Agreement
8.1 Engrossed legal agreement

CD9 Appeal decisions
9.1 Walden Road, Thaxted
9.2 Chapel Lane, Wymondham

CD10 Braintree District Local Development Framework Core Strategy
10.1 Core Strategy Policies

CD11 Braintree District Local Plan Review
11.1 Extracts of Policies

CD12 Braintree District Council Draft Local Plan
12.1 Current status of draft local plan
12.2 New policy numbers for publicaton of draft local plan
12.3 Publication draft Local Plan part 1
12.4 Publication draft Local Plan part 2

CD13 Supplementary Planning Guidance/Documents
13.1 Essex Design Guide
13.2 External Artificial Lighting 2009
13.3 Open Space contributions 2017
13.4 Open Space contributions effective 01.04.16
13.5 Open Space Action Plan
13.6 Open Space SPD Nov 2009

13.7 Parking Standards
13.8 Affordable Housing SPD

CD14 Other Guidance
14.1 2007 Landscape Character Assessment
14.2 E40 Landscape Character Assessment preface 2006
14.3 E40 Landscape Character Assessment intro 2006
14.4 Settlement Fringes Landscape Area Evaluation 2015
14.5 Landscape Character Assessment

CD15 Draft Hatfield Peverel Neighbourhood Plan 2015-2033
15.1 Reg 14 version of NHP (Superseded)
15.2 Pre-examination version HP NHP

Set C: Appeal Ref: APP/Z1510/V/17/3180725, APP/Z1510/V/17/3180729 & APP/Z1510/W/16/3162004

CD16 Policy
CD16.1 Emerging Local Plan Part 1
CD16.2 Emerging Local Plan Part 2
CD16.3 Emerging HP Neighbourhood Plan

Parish Council Documentation

CD17 Housing documents
CD17.1 Neighbourhood Area Housing Requirement Study
CD17.2 Slipping through the loophole
CD17.3 Government response online petition
CD17.4 BDC draft five year supply table at 30/09/17

CD18 Neighbourhood Plan Background Documents
CD18.1 Basic Conditions Statement
CD18.2 Consultation Statement
CD18.3 HP Site Assessment 2017
CD18.4 HP LLCA Oct 2015
CD18.5 Character Assessment HP
CD18.6 Workshop for important views
CD18.7 NPD Support results
CD18.8 Residents survey Oct 2015
CD18.9 Residents survey results Oct 2015
CD18.10 Business survey Sept 15
CD18.11 Business survey results Sept 15
CD18.12 RCCE HN report Feb 2015
CD18.13 Estate agents survey March 2015
CD18.14 BDC letter to PC re SEA screening
CD18.15 HP NP SEA screening report 2016
CD18.16 BD economic dev prospectus 2013-2026
CD18.17 Minutes 08/12/14
CD18.18 Minutes 26/01/15
CD18.19 Minutes 30/03/15
CD18.20 Minutes 21/03/16
CD18.21 Minutes 16/08/16
CD18.22 Minutes 27/02/17
CD18.23 Minutes 25/09/17

CD19 Stone Path Drive (SP) Correspondence 80 & 140

CD19.1	PC email to BDC 12.05.16
CD19.2	PC letter to BDC 24/11/16
CD19.3	PC presentation 28/03/17
CD19.4	PC email to BDC 30.05.16
CD19.5	PC letter to BDC 04/04/17
CD19.6	BDC letter to PC 19/04/17
CD19.7	Extract PC minutes 24/04/16 - 17/08/16
CD19.8	MP letter to PC 21/04/17
CD19.9	Extract PC Minutes 16/11/16
CD19.10	Extract minutes BDC 11/10/16
CD19.11	Development boundary 80 & 140

CD20 SP - Health

CD20.1	HP Surgery Letter 31/08
CD20.2	Surgeries constraints
CD20.3	Extract village Healthcare Cllr Bebb
CD20.4	Letter to PINS surgery_ Schools 25/09/17

CD21 SP - Education

CD21.1	ECC letter 12.01.17 SPM
CD21.2	ECC letter 15.0617 Arla
CD21.3	ECC letter 11.0117 GE
CD21.4	ECC emails 21&22.1216 GE
CD21.5	ECC letter 27.07.17 Bury Farm
CD21.6	ECC letter 10.08.17 Sorrells

CD22 SP - Road infrastructure

CD22.1	HE A12 Widening Intro
CD22.2	Existing traffic capacity and journey times
CD22.3	Extracts HE A12 Widening Options
CD22.4	Environmental Constraints Plan
CD22.5	Ecology impact A12
CD22.6	Bus stops

CD23 Gleneagles Way (GE) correspondence

CD23.1	PC letter to BDC 11.01.17
CD23.2	PC presentation 25.04.17
CD23.3	PC letter to BDC 11.05.17
CD23.4	MP letter to PC 11.05.17
CD23.5	BDC letter to PC 01.06.17
CD23.6	MP letter to PC 02.06.17
CD23.7	Extract minutes 11.01.17
CD23.8	List of 3rd Party reps
CD23.9	Comments from residents (combined)

CD24 Gleneagles Way (GE) documents

CD24.1	PC letter to BDC 30.11.15

CD24.2 Extract minutes 25.11.15
CD24.3 CMTE report 26.04.16
CD24.4 Decision Notice 26.04.16
CD24.5 Extract minutes BDC 26.04.16
CD24.5 Location Plan

Gladman documentation

CD25 Stone Path Drive Plans for determination
CD25.1 Revised Framework Plan (80)
CD25.2 Tree retention plan (80)
CD25.3 Access Plan for both schemes
CD25.4 Email re access plans
CD25.5 Tree retention plan (140)

CD26 Ecology
CD26.1 Breeding bird survey report - 2nd application
CD26.2 Stonepath Bird Survey (Paul Hawkins) Jan 17

CD27 Heritage
CD27.1 Conservation principles
CD27.2 HE Managing Significance
CD27.3 HE The setting of Heritage Assets
CD27.4 Correspondence between Iceini ECC and HE
CD27.5 Heritage Statement - Additional information

CD28 Landscape
CD28.1 Braintree HEC extracts
CD28.2 Essex LCA extracts
CD28.3 HP LLCA
CD28.4 NCA 86 extracts

CD29 HLS/OAN
CD29.1 PPG - Housing and Economic development
CD29.2 PPG - Housing and Economic Land availability assessments
CD29.3 OAN Study Nov 2016 Update, Peter Brett Associates
CD29.4 SHMA Update December 2015
CD29.5 BDC: 5 Year Supply Statement as at 30 June 2017
CD29.6 BDC: 5 Year Supply Housing Trajectory as at 30 June 2017
CD29.7 BDC: 5 Year Supply Statement as at 30 September 2017
CD29.8 BDC: 5 Year Supply Housing Trajectory as at 30 September 2017
CD29.9 BCD Authority Monitoring Review 2015/2016 (AMR, May 2017)
CD29.10 Planning for the right homes in the right places – Consultation Proposals (Sep 2017)
CD29.11 Housing White Paper (February 2017)
CD29.12 Planned and Deliver (Lichfields, 2017)
CD29.13 Start to Finish (Lichfields, 2016)
CD29.14 A long-run model of housing affordability, University of Reading
CD29.15 OBR Working Paper No. 6 – Forecasting House Prices (2014)
CD29.16 Review of Housing Supply, Delivering Stability: Securing our Future Housing Needs' (March 2004), Kate Barker
CD29.17 Developing a target range for the supply of new homes across England' (October 2007), NHPAU
CD29.18 Housebuilding, demographic change and affordability as outcomes

of local planning decisions; exploring interactions using a sub-regional model of housing markets in England' (2 October 2014) in Planning 2015

CD29.19 Business West: Wider Bristol Housing Market Area Strategic Housing Assessment 2015: Commentary by Bramley

CD29.20 Building more homes' 1st Report of Session 2016–17 (15 July 2016)

CD29.21 The Redfern Review into the decline of home ownership' (16 November 2016)

CD29.22 Forecasting UK house prices and home ownership' (November 2016) Oxford Economics

CD29.23 OBR March 2017 Economic outlook accompanying tables and charts – Chart 3.21 on house prices

CD29.24 Planning Application (ref. 15/01319/OUT) Transport Assessment & Framework Travel Plan, September 2017 (ref. VN30215), Vectos

CD29.25 Application of proposed formula for assessing housing need DCLG, 14 September 2017

CD29.26 East Hampshire Local Plan Inspector's Report (April 2014)

CD29.27 Eastleigh Local Plan Inspector's Report (2015)

CD29.28 House of Lords Select Committee on Building more homes

CD29.29 OAHN Study Nov 2016 Update

CD29.30 Bramley and Watkins report on Housebuilding

CD30 Planning

CD30.1 Committee transcript

CD30.2 Local plan sub committee 25.05.16

CD30.3 Examiner procedural matters letter

CD30.4 PPG determining a planning application (prematurity)

CD30.5 HP Independent examination correspondence 20.09.17

CD31 Planning Judgements

CD31.1 *BDW & Wainhomes Vs CWAC* 2014

CD31.2 *Suffolk Coastal* Supreme Court Judgment -2017

CD31.3 *Telford and Wrekin v SoS for CLG* - 2016

CD31.4 *Palmer v Hertfordshire Council* - 2016

CD31.5 *Forest of Dean & SoS for CLG & Gladman* - 2016

CD31.6 *Colman & SoS for CLG & NDDC & RWE Npower Renewables Ltd* – 2013

CD31.7 *SODC & SoS for CLG and Cemex Properties UK Ltd (Crowell Road)* 2016

CD31.8 *Barwood Strategic Land II LP & East Staffs & SoS for CLG* 2017

CD31.9 *Lee Vs FSS & Swale BC* 2003

CD31.10 *Phides Estates Ltd & SoS for CLG & Shepway DC & Plumstead* – 2015

CD31.11 *St Albans City and District Council v (1) Hunston Properties Ltd and (2) SoS for CLG* - 2013

CD31.12 *(1) Gallagher Homes Ltd and (2) Lioncourt Homes Ltd v Solihull MBC* - 2014

CD31.13 *West Berkshire District Council v SoS for CLG & HDD Burghfield Common Ltd*

CD31.14 *Satnam Millennium Limited and Warrington Borough Council* 2015
CD31.15 *Kings Lynn and West Norfolk Borough Council v SoS for CLG* 2015
CD31.16 *Wainhomes and SoS for CLG* 2013
CD31.17 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2016
CD32.18 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2017
CD31.19 *Chelmsford City Council v SoS for CLG* 2016
CD31.20 *Stroud DC v SoS for CLG* 2015

CD32 Appeal Decisions

CD32.1 Land at Blean Common, Blean Appeal Ref: APP/J2210/W/16/3156397
CD32.2 Land at West Street, Coggeshall, CO6 1NS, Appeal Ref: APP/Z1510/W/16/3160474
CD32.3 Land east of Crowell Road, Chinnor, Appeal Ref: APP/Q3115/W/14/3001839
CD32.4 Land of Wethersfield Road, Finchingfield Appeal ref. APP/Z1510/W17/3172575
CD32.5 Land north of Pulley Lane and Newland Lane, Newland, Appeal ref APP/H1840/A/13/2199426
CD32.6 Land off Stone Path Drive, Hatfield Peverel, Appeal Ref: APP/Z1510/W/16/3162004
CD32.7 Land off Western Road, Silver End, Appeal Ref: APP/Z1510/W/16/3146968
CD32.8 Land off Plantation Road, Boreham, Essex CM3 3EA Appeal Ref: APP/W1525/W/15/3049361
CD32.9 Land at Southwell Road, Farnsfield, Nottinghamshire Appeal Ref: APP/B3030/W/15/3006252
CD32.10 Land off Finchingfield Road, Steeple Bumpstead ref. APP/Z1510/W/17/3173352
CD32.11 Land to the south of Dalton Heights, Seaham, Appeal Ref: APP/X1355/W/16/3165490
CD32.12 Longbank Farm, Ormesby, Middlesbrough, TS7 9EF Appeal Ref: APP/V0728/W/15/3018546
CD32.13 Land at Flatts Lane, Normanby Appeal Ref: APP/V0728/W/16/3158336

CD33 Representations made by Gladman

CD33.1 Representations to the Braintree Local Plan (Reg 19) July 2017
CD33.2 Representations on the HP NHP (Reg 16) July 2017

Documents submitted by SPMRG

(Where a number in the sequence is missing the document is already listed elsewhere in this Annex)

F1 Main Statement by Stonepath Meadow Residents Group (SPMRG) submitted to initial hearing for APP/Z1510/W/16/3162004
F2a Letter from The Rt Hon Priti Patel to The Rt Hon Sajid Javid MP dated 30 March 2017
F2b Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree

	Council) dated 29 March 2017
F2c	Letter from Cllr Derrick Louis (Essex County Council) to The Rt Hon Sajid Javid MP dated 19 June 2017:
F2d	Letter from Hatfield Peverel Parish Council to Nicola Beach (Braintree Council) dated 3 April 2017
F2e	Letter from Kevin Dale to Cllr Graham Butland (Braintree Council) dated 23 May 2017
F2f	Letter from Cllr Graham Butland (Braintree Council) to Kevin Dale dated 31 May 2017
F2g	Letter from Hatfield Peverel Parish Council to The Rt Hon Sajid Javid MP dated 4 July 2017:
F2h	Letter from Lisa Miller (Hatfield Peverel Parish Council) to Nicola Beach (Braintree Council) dated 5 April 2017
F2i	Letter from Margaret Freeman (SPMRG) to The Rt Hon Sajid Javid MP dated 24 April 2017
F5e	Pre Referendum data
F5f	Letter from Kevin Dale (SPMRG) to Cllr Graham Butland (Braintree Council) dated 23 May 2017
F5g	Audio-typed account of Local Plan Sub Committee Meeting (Braintree Council) dated 11 July 2017
F6b	Notes from the Office of The Rt Hon Priti Patel MP
F6c	UKSC press summary
F6f	*Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146
F6g	*BDW Trading Ltd v Cheshire West & Chester Borough Council*, [2014] EWHC 1470 (Admin)
F6h	*Phides Estates (Overseas) Limited v SSCLG* [2015] EWHC 827 (Admin)
F7a	Key Facts Briefing for Councillors, Refuse the application for 16/01813/OUT, Stonepath Drive, Hatfield Peverel, issued without prejudice, March 2017
F7b	Appendix 1: Stonepath Bird Survey from 7th January 2017 by Paul Hawkins
F7c	Appendix 2: The Historical Significance of Landscape, Heritage and Public Footpath 43 on the site known locally as Stonepath Meadow, an essay written in good faith by Margaret Freeman
F7d	Letter from Mark East (SPMRG) to Cllr Mrs WD Scattergood, Chairman of the Planning Committee (Braintree Council)
F7e	Email reference from Mr Daniel Watkins (Ecology Consultancy) in respect of Mr Paul Hawkins dated 10 March 2017
F8b	Local Plan Map Publication Draft for Consultation, Braintree District Council, June 2017
F8c	General Comments
F9a	Environmental report: Annexe B – Baseline Information, Sustainability Appraisal and Strategic Environmental Assessment, Braintree District Site Allocations and Development Management Policies Plan, Place Services, Essex County Council, January 2013
F9b	Email from Emma Goodings (Braintree Council) to Mark East (SPMRG) commenting on housing targets for Hatfield Peverel dated 29 April 2016
F9c	General comments regarding report by Place Services (a) and email from Emma Goodings

F10a	Resolution passed by Essex County Council to call on the Secretary of State for Communities and Local Government to issue urgent statutory guidance which protects valued greenfield sites from predatory development
F10b	Freedom of Information request by Mark East (SPMRG) to Mike Gosling, Performance and Information Officer requesting information on housing need in the district and specifically Hatfield Peverel
F10c	Housing Needs Statistics in Hatfield Peverel by Housing SatNav, June 2015
F10d	Housing need and economic threat to the economy through speculative development, a study by SPMRG that could show how speculative development may not provide economic benefit and stability to the nation
F10e	Case Officer email re Bury Lane, Sorrells, 3rd Nov 2017
F11	Letter from the Planning Policy and Reform Correspondence Team, Department for Communities and Local Government to Mark East (SPMRG) dated 5 May 2017
F12a	Decision notice by Braintree Council in respect of 05/02313/OUT
F12b	Case officer's report in respect of 05/02313/OUT
F12c	Consultation documents in respect of 05/02313/OUT
F12d	Preapplication planning advice dated 12 March 2015
F12e	General comments by SPMRG regarding planning history
F12f	Residents representations in respect of 05/02313/OUT
F13	Maps showing Stonepath Meadow as being a Special Landscape Area
F14b	Landscape guidelines in respect of Stonepath Meadow
F14c	Landscape notes by SPMRG
F15a	A note by Kevin Dale to accompany the Hatfield Peverel Local Landscape Character Assessment
F15c	Map accompanying the Hatfield Peverel Local Landscape Character Assessment
F15d	General comments on landscape by Kevin Dale
F15e	Certificate of membership showing Kevin Dale's fellowship of the Geological Society
F16a	A second note to accompany the Local Landscape Character Assessment by Kevin Dale
F16b	Photomontage of Stonepath Meadow
F18c	Email from Steve Roe (Natural England) to Mark East (SPMRG) dated 25 January 2017
F18d	General ecology notes for Call in by SPMRG
F18e	A12 Ecology Findings
F20b	Map of Stonepath Meadow showing the proposed development boundaries of 16/00545/OUT and 16/01813/OUT
F21a	Heritage Statement submitted to the Appeal Hearing APP/Z1510/W/16/3162004
F21b	"Historic Footpath- Public Footpath 43" treatise submitted to the Appeal Hearing APP/ Z1510/W/16/3162004
F21c	"The Historical Significance of Landscape, Heritage and Public Footpath 43", an essay written in good faith by Margaret Freeman
F21d	Cover sheet of sale brochure for Hatfield Place (1917)
F21e	Clause 21 condition of sale in sale brochure for Hatfield Place

	(1917)
F21f	Academic qualifications of Margaret Freeman (nee McDermott)
F21g	Professional/voluntary experience of Margaret Freeman
F21h	Gymkhana notice 1930
F22	Letter from The Rt Hon Priti Patel MP to Mark East (SPMRG) dated 25 April 2017
F23a	Extract from Braintree District Local Plan Review, Inspector's Report Part 2 proposals map and inset map showing why Stonepath Meadow was not included in the existing local plan
F23b	Email sent by Kevin Kearns (SPMRG) in advance of the committee meeting to determine 16/01813/OUT dated March 2017
F23c	SPMRG's response to the appellant's Appendix 8 in the Appeal Statement of Case dated January 2017 (appeal reference: APP/Z1510/W/16/3162004)
F24e	Email from Gavin Jones, Chief Executive (Essex County Council) to The Rt Hon Priti Patel MP dated 1 September 2017
F24f	Letter from Sarah Cutting to Braintree District Council dated 10 August 2017
F26	Responsible Development in the Parish of Hatfield Peverel by SPMRG dated September 2016
F27	The Objective Argument for Site HATF314 dated May 2017
F28a	View from Hatfield Place before/after the proposed development for up to 140 houses
F28b	View from Stonepath Drive before/after the proposed development for up to 140 houses
F28c	Considerable local interest from the community in support of plan led development and opposition to speculative development on valued greenfield sites
F29b	Open letter from Beverley Jones (Sidney House/Laurels) dated 31 August 2017
F29d	Leaflet regarding Sidney House/Laurels Surgeries produced by the Patient Participation Group dated Autumn 2017
F30c	Housing Supply Calculations Table
F30d	Misc Documents
F31a	Letter from Ian Hunt (Braintree Council) to The Rt Hon Priti Patel MP dated 10 April 2017
F31b	Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree Council) dated 11 April 2017
F31c	Letter from The Rt Hon Priti Patel MP to The Rt Hon Sajid Javid (SSCLG) dated 13 April 2017
F32a	Opening submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32b	Ecology submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32c	Landscape submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32d	Traffic/Pollution submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32e	Heritage/Footpath submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32f	Hatfield Peverel Parish Council submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004

F32g	Early Years/Doctors/Schools/Highways submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32h	Closing submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32j	Rt Hon Priti Patel MP submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32k	Hatfield Peverel Neighbourhood Development Plan inc. Housing Needs Survey (2 documents)

Relevant Documents submitted by David Wilson Homes

SAV50	Letter from Savills (Jonathan Dixon) to HPPC dated 30/09/16 setting out representations on behalf of DWH to Reg. 14 NDP consultation
SAV52	Letter from Savills (Jonathan Dixon) to HPPC dated 17/07/17 setting out representations on behalf of DWH to Reg. 16 NDP consultation. (NB Subject line incorrectly refers to Reg. 14.)
SOCG4	Gladman Developments Ltd and Stone Path Meadow Residents Group

Statements of Common Ground

SOCG1	Gladman Developments Ltd and Braintree DC
SOCG2	Gladman Developments Ltd and Hatfield Peverel PC
SOCG4	Gladman Developments Ltd and Stone Path Meadow Residents Group

Proofs of Evidence

Gladman Developments Ltd

1/POE	Christien Lee Proof (Planning)
1/APP	Christien Lee Appendices
2/POE	Gary Holliday Proof (Landscape)
2/APP	Gary Holliday Appendices
3/POE	Laurie Handcock Proof (Heritage)
3/APP	Laurie Handcock Appendices
4/POE	Matthew Spry Proof and Appendices (Housing Land Supply)
5/POE	Dr Suzanne Mansfield Proof (Ecology)
5/APP	Dr Suzanne Mansfield Appendices

Braintree District Council

BDC1	Alison Hutchinson Proof
BDC1a	Alison Hutchinson Appendices
BDC3	Alison Hutchinson Rebuttal Proof

Hatfield Peverel Parish Council

HPPC1	Mike Renow Proof and Appendices
HPPC2	Philippa Jarvis Proof and Appendices

Stone Path Meadow Residents Group

RG1	Mark East Proof and Appendices (Ecology)
RG2	Margaret Freeman Proof and Appendices (Heritage)
RG3	Kevin Dale Proof (Landscape)
RG4	Kevin Dale Proof (Soils)
RG5	Kevin Kearns Proof and Appendices (Housing)
RG6	Derrick Louis Proof (Infrastructure: Education)
RG7	David Bebb Proof (Infrastructure: Health)
RG8	George Boyd Ratcliff Proof (Infrastructure: Traffic & Pollution)

Documents submitted during the Inquiry by the parties

ID1.1	*Lee v First Secretary of State and Swale BC* [2003] EWHC 2139 (Admin) (GDL)
ID1.2	*Arun DC v Secretary of State for Communities and Local Govnt and Green Lodge Homes LLP* [2013] EWHC 190 (Admin) (GDL)
ID1.3	What is Neighbourhood Planning? PPG extract (GDL)
ID1.4	Cumulative Air Quality Impact Assessment (GDL & DWH)
ID1.5	Transport/Highways Note in response to Inspector's pre-Inquiry note No. 1 (GDL & DWH)
ID1.6a	7015-L-106 rev B Green Infrastructure Strategy for 80 dw scheme (GDL)
ID1.6b	7015-L-108 rev C Green Infrastructure Strategy for 140 dw scheme (GDL)
ID1.7	Plans omitted from CD14.4 set B (GDL)
ID1.8	Statement of Common Ground Education (GDL & DWH)
ID1.9	Secretary of State Appeal decision APP/D3830/A/12/2189451RD (GDL)
ID1.10	Council decision on land adjacent to Walnut Tree Cottage, The Street, Hatfield Peverel (GDL)
ID1.11	Updated table showing past supply against housing requirement 2001/2-2017/18 (GDL & DWH)
ID1.12	Reworked Table 6.1 as requested by Inspector on 7 December 2017 (GDL & DWH)
ID1.13	Update post exchange of proofs re 5 year housing land supply at 30/9/17 (GDL & DWH)
ID1.14	Schedule of supply table for round table discussion (GDL & DWH)
ID1.15	*Cotswold DC v Secretary of State for Communities and Local Govnt and others* [2013] EWHC 3719 (Admin) (GDL)
ID1.16	Supplementary Unilateral Undertaking (GDL)
ID2	Opening statement (GDL)
ID3	Opening statement (DWH)
ID4	Opening statement (Council)
ID5	Opening statement (HPPC)
ID6	Opening statement (SPMRG)
ID7	Note on housing land supply (Council)
ID8	Statement by John Webb (interested person)
ID9	Presentation by Michael Hutton (interested person)
ID10	Statement by Lesley Moxhay (interested person)
ID11	Statement by Ron Elliston (interested person)
ID11a	Further Statement by Ron Elliston (interested person)
ID12	Statement by Kenneth Earney (interested person)

ID13	Viewpoints and photographs (HPPC)
ID14a	Council HRA Screening Report Arla Dairy Site (HPPC)
ID14b	Natural England consultation response on above (HPPC)
ID15	Suggested conditions for the 80 dw and 140 dw schemes (GDL)
ID16	Email from Sue Hooton to Council dated 12 December 2017 (GDL)
ID17	Draft agreement under s106 (DWH)
ID18	Suggested conditions for Gleneagles Way scheme (DWH)
ID19	Consultation comment by Essex County Council on Hatfield Peverel Neighbourhood Plan (DWH)
ID20	Briefing Note: clarification of presentation provided by Mr John Webb (GDL & DWH)
ID21	Note on additional five year land supply sites (SPMRG)
ID22	Now ID11a
ID23	Statement by Andy Simmonds (interested person)
ID24	Not used
ID25	Secretary of State Appeal decision APP/P1425/W/16/3145053 (HPPC)
ID26	Email thread between Diane Wallace and Alan Massow re green wedge policy in neighbourhood plan (HPPC)
ID27	Extract from Chapter 7 of the Lewes Local Plan (HPPC)
ID28	Statement of compliance with CIL Regulations re: Gladman schemes (Council)
ID29	Statement of compliance with CIL Regulations re: David Wilson Homes scheme (Council)
ID30	Conserving and enhancing the historic environment: PPG extract (GDL)
ID31	Letter dated 12 December 2017 from Cala Homes (GDL)
ID32	Email from Linden Homes dated 15 December 2017 (GDL)
ID33	Spatial Strategy Formation (Council)
ID34	Call in conditions comparison (DWH)
ID35	Not used
ID36	Not used
ID37	Statement of Common Ground: joint position on additional housing land supply sites (Council, GDL & DWH)
ID38	Not used
ID39	Viewpoints and Photographs (HPPC)
ID40	Article re: housing at Towerlands park Bocking (SPMRG)
ID41	Consultation notification re: housing at Church Road, Great Yeldham (SPMRG)
ID42	Letter from the Council to Priti Patel MP dated 29 November 2017 re: five year housing land supply (SPMRG)
ID43	Appeal decision APP/A1720/W/16/3156344 Portchester, Fareham, Hampshire (SPMRG)
ID44	Appeal decision APP/A1720/A/14/2220031 Lower Swanick, Hampshire (SPMRG)
ID45	Report to Cabinet dated 27 November 2017 re: proposed disposal of land to provide access to residential development site off Maldon Road, Witham (SPMRG)
ID46	Land east of Gleneagles Way: Statement of Landscape Principles (DWH)
ID47	Closing submissions (Council)
ID48	Closing submissions (HPPC)

ID49	Closing submissions (SPMRG)
ID50	Closing submissions (DWH)
ID51	Closing submissions (GDL)
ID52	Historic Environment Good Practice Advice in Planning Note 3 (GDL)
ID53	Consolidated suggested conditions post Inquiry round table session (the Council)
ID54	Response to INSP4 (GDL)
ID55	Response to INSP4 (DWH)
ID56	Response to INSP4 (HPPC)
ID57a	Completed planning obligation for 80 dwelling scheme (GDL)
ID57b	Addendum to planning obligation for 80 dwelling scheme (GDL)
ID58	Completed planning obligation for 140 dwelling scheme (GDL)
ID59	Completed planning obligation for 120 dwelling scheme (DWH)
ID60	Letter dated 29 January 2018 re progress on the NDP (HPPC)
ID61	*Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) (BDC)
ID62	*Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459) (BDC)
ID63	*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) (SPMRG)
ID64	*Steer v SSCLG* [2017] EWHC 1456 (SPMRG)
ID65	*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22 (HPPC)
ID66	*R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 (HPPC)
ID67	*R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin) (HPPC)
ID68	*Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) (HPPC)
ID69	*R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567) (HPPC)
ID70	*South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173 (HPPC)
ID71	*Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (HPPC)

Inspector Documents

INSP1	Pre-Inquiry Note no. 1 dated 8 November 2017
INSP2	Pre-Inquiry Note no. 2 dated 5 December 2017
INSP3	Email to parties dated 7 December 2017
INSP4	Post Inquiry sessions Note dated 18 January 2018

Annex B

Abbreviations

5YHLS	5 year housing land supply
BNLP	Braintree New Local Plan
CS	Braintree District Core Strategy
CRA	Comprehensive Redevelopment Area
DWH	David Wilson Homes Eastern
ECC	Essex County Council
ELCAA	Essex Landscape Character Area Assessment
Framework	National Planning Policy Framework
GDL	Gladman Developments Ltd
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
HPPC	Hatfield Peverel Parish Council
HRA	Habitats Regulation Assessment
KSV	Key Service Village
LCA	Landscape Character Area
LLCA	Local Landscape Character Assessment for Hatfield Peverel
LPR	Braintree District Local Plan Review
LVIA	landscape and visual impact assessment
NCCA	National Character Area Assessment
NDP	Hatfield Peverel Neighbourhood Development Plan
PPG	Planning Practice Guidance
PROW	Public Right of Way
OAHN	objectively assessed housing need
SEA	Strategic Environmental Assessment
SFE	Settlement Fringes Evaluation
SOCG	Statement of Common Ground
SPMRG	Stone Path Meadow Residents' Group

Annex C

Suggested Conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 140 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the illustrative Development Framework Plan 3015-L-101 Rev H.
Approved Plans:

Location Plan:	7015-L-100 Rev A
Access Details:	A095687-SK01 Rev C
Green Infrastructure Plan	7015-L-108 Rev C

5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

   Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres. The outermost line of dwellings located on the western periphery of the developable area and on the northern periphery of the developable area where it abuts undeveloped countryside, shall not exceed one storey in height or have a maximum ridge height of more than 6.5 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

   The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for

Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.

9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed. The Biodiversity Management Plan shall be in accordance with the recommendations set out in the submitted Ecological Appraisal Report (FCPR Ltd, September 2016) and its Appendices. The development shall be implemented in accordance with the approved Management Plan.

10) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

11) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

12) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

13) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

- show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

14) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the

local planning authority. The approved details shall be adhered to throughout the construction process.

15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.

The scheme shall include but not be limited to:

- Discharge to ground;

- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;

- Provide sufficient treatment for all elements of the development. Treatment should be demonstrated to be in line with the guidance within the CIRIA SUDs Manual C753.

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the local planning authority.

21) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev D) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved

in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within three years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior

to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

28) Development shall not be commenced until details of the following have been submitted to and approved in writing by the local planning authority:

- a scheme of mitigation/compensation works, including a method statement, to minimise the adverse effects of the development on roosting bat species which could be affected by the proposed development in accordance with the applicant's Ecology Appraisal completed by FPCR Environment and Design Ltd and dated September 2016;

- a programme of timings for the works referred to above.

Mitigation/compensation works shall be carried out in accordance with the scheme and programme approved in accordance with the above.

29) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.

30) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

31) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.

32) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

33) No above ground development shall commence in the relevant phase of the development until a schedule and samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.

34) Prior to first occupation of the relevant phase of the development, details of all gates / fences / walls or other means of enclosure within the relevant phase of the development shall be submitted to and approved in writing by the local planning authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the relevant plot.

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Ministry of Housing, Communities & Local Government

Our ref: APP/Z1510/W/16/3162004

Mr Christien Lee
Senior Planner
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton
CW12 1LB

8 July 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY GLADMAN DEVELOPMENTS LIMITED
LAND OFF STONE PATH DRIVE, HATFIELD PEVEREL, ESSEX CM3 2LG
APPLICATION REF: 16/00545/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry between 12 December 2017 and 30 January 2018 into your appeal against the decision of Braintree District Council to refuse your application for outline planning permission for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works, in accordance with application ref: 16/00545/OUT, dated 30 March 2016.

2. On 12 October 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

3. The Secretary of State initially issued his decision in respect of the above appeal by way of an Inspector decision dated 24 July 2017. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 13 September 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original hearing are set out in the 24 July 2017 decision letter.

Ministry of Housing, Communities & Local Government
Andrew Lynch, Decision Officer
Planning Casework Unit
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Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed.

5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant outline planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

6. As set out in IR17, the Secretary of State notes that the version of plans formally before him for approval are location plan (7015-L-04 rev B) and access plan (A095687-SK01 rev C). He agrees with the Inspector and parties that this technical alteration to the submitted application plans has no material bearing on the determination of the appeal, and he is satisfied that no interests have thereby been prejudiced.

7. On 21 June 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the judgment of the Court of Justice of the European Union (CJEU) in Case C-323/17 People Over Wind and Sweetman v Coillte Teoranta on the correct application of the Habitats Directive 92/43/EEC.

8. On 1 August 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the new National Planning Policy Framework, published on 24 July 2018.

9. On 2 October 2018, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the revised guidance on how councils should assess their housing need, which was published on 13 September 2018, and on new household projections for England published by the Office of National Statistics on 20 September 2018.

10. On 5 March 2019, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, on the following documentation:

    - Written Ministerial Statement (WMS) on housing and planning issued on 19 February 2019
    - 2018 Housing Delivery Test measurement data published on 19 February 2019
    - The Government's response to the technical consultation on updates to national planning policy and guidance, dealing with the calculation of Local Housing Need and other matters, including the People Over Wind and Sweetman v Coillte Teoranta issue, published 19 February 2019.
    - Revised National Planning Policy Framework, published on 19 February 2019.
    - Updated guidance for council's on how to assess their housing needs (document).
    - Braintree District Council's latest (at that time) published 5 year supply statement, January 2019(see also paragraphs 42 to 48 of this Decision Letter).

- Latest position statement with regard to the emerging Hatfield Peverel Neighbourhood Plan, and weight to be attached to that.

- Three recent planning casework decisions (brought to the Secretary of State's attention by the Stone Path Meadow Residents Group - SPMRG).

11. A list of representations received in response to these letters is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

12. In addition, a number of representations were received following the close of the inquiry. These raised a variety of issues, and are dealt with under the considerations of main issues below. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

13. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

14. In this case the development plan consists of the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR34-42.

15. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance"). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

16. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

17. The emerging plan comprises the Braintree New Local Plan (BNLP) and the Hatfield Peverel Neighbourhood Development Plan (NDP). The Secretary of State considers that the emerging BNLP policies of most relevance to this case include those set out in IR44-48 and the emerging NDP policies of most relevance are HPE2, HPE6 and HPE8, described at IR50-52.

18. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the

emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

19. At the time of the Inquiry the examination hearings into part 1 of the BNLP were due to commence in January 2018, with Part 2 to follow at a later date. The Secretary of State notes that on 8 June 2018 the Inspector for the emerging Local Plan wrote to the three local planning authority areas covered by the Part 1 Examination, setting out his views as to the further steps he considered necessary in order for the Section 1 Plan to be made sound and legally-compliant, and seeking views on options to pursue these matters. A joint response from the three authorities dated 19 October proposed suspending the Examination until February 2019, with a view to sitting again in June. In the light of these letters, and for the reasons given in IR709 to 712, the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLP.

20. The Secretary of State notes that while some progress has been made with regard to the NDP since the close of the Inquiry, the further examination of the NDP has not yet concluded. For the above reasons, and for the reasons given in IR714-715, the Secretary of State agrees with the Inspector that very limited weight can be given to the NDP at this stage.

Main issues

Policies in the Framework on delivering a wide choice of high quality homes

21. For the reasons given in IR704-706, the Secretary of State agrees with the inspector that the policy set out in Framework paragraph 62 would be delivered, and that the Green Infrastructure Plan and Design and Access Statement set important context and establish important principles at this outline application stage.

The extent to which the proposed development is consistent with the development plan for the area

22. For the reasons given in IR719-721, the Secretary of State agrees with the Inspector that although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight, and he considers that a moderate weighting is appropriate. The Secretary of State further agrees with the inspector for the reasons in IR719-721, that the appeal proposals would be in accordance with the spatial strategy. For the reasons given in IR722-730, the Secretary of State further agrees with the Inspector that there is a conflict with adopted development plan policies RLP2 and CS5, concerning development outside of defined boundaries of settlements, where countryside policies will apply. The Secretary of State further agrees with the inspector that the conflict with policies RLP2 and CS5 should attract moderate weight when it comes to the overall planning balance, given that they would act to restrict the supply of housing and frustrate the aim of Framework paragraph 59. He notes that the local planning authority in their representation of 22 October 2018 share his view as to the weight to be attached to policies RLP2 and CS5 at this time.

The effect of the development on the landscape character of the area and the visual impact that the development would have

23. The Secretary of State agrees with the Inspector's view in IR732 that it is necessary to take into account the context of the appeal site**,** and notes the historic pattern of growth described in IR 732 and IR733. For the reasons given in IR734 to IR743 the Secretary of State agrees with the Inspector at IR744 that the studies presented set an important

context for an assessment of the effect of the development proposed on the character of the landscape, and that none of the studies suggest that suitably designed development could not be accommodated.

24. For the reasons given in IR745 to IR755, the Secretary of State agrees with the Inspector that he sees no reason to disagree with the appellant's assessment of the effect on landscape character - 'negligible' at both years 1 and 10 at national, county and District level, and 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10 on very local landscape character.

25. In terms of visual impact, for the reasons given in IR756 to IR764, the Secretary of State agrees with the Inspector's assessments of the impact of the development on views across the site to the landscape beyond and views back towards the settlement edge from distance.

26. For the reasons given in IR765 to 768, the Secretary of State agrees with the Inspector that the development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape, and enhance the settlement edge as it appears as a feature in the landscape. He finds no conflict with the landscape elements of policy RLP 80, or of the third paragraph of policy CS8.

27. For the reasons given in IR769, the Secretary of State agrees with the Inspector that while harm in relation to visual impact has been identified, this can only attract limited weight. In particular, he agrees with the Inspector's view on the very limited weight to be attached to policy HPE6 of the emerging NDP concerning protected views, given concerns around the evidence base supporting that policy as well as the more general point around progress on that plan.

The effect of the development on the enjoyment of users of the public right of way crossing the appeal site

28. For the reasons given in IR770 to IR776, the Secretary of State agrees with the Inspector that the experience of walkers along the relatively short length of PROW would be harmed by the development proposed, and, like the Inspector in IR856, he attaches limited weight to this harm.

The effect that the development would have on the significance of designated heritage assets

29. For the reasons given in IR777 to IR780, the Secretary of State agrees with the Inspector that policy RLP100 does not apply in relation to this development. He also agrees with the Inspector that policy CS9 does not meet the requirements generally of Framework section 16 and paragraph 196 in particular, concerning the assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits. He agrees with the Inspector that this consideration should therefore be assessed against policies in the Framework.

30. With regard to Hatfield Place, the Secretary of State notes the Inspector's review of the evidence presented in IR783 to IR790. He agrees with the Inspector, for the reasons given in IR791 to IR804 that the evidence of Mr Handcock for the appellant should be preferred and that the development proposed would not harm the significance of Hatfield Place. In respect of the William B, the Secretary of State agrees with the Inspector's understanding in IR808, that there was no evidence before the Inquiry of

any harm to the significance of the William B. He notes the Inspector's precautionary approach of setting out his conclusions on the called-in application at IR808, but is content that this is not necessary for him to conclude on this appeal scheme.

The effect of the development on community infrastructure

Education

31. The Secretary of State notes that by virtue of his decision on this case and on the proposal at land East of Gleneagles Way, Hatfield Peverel, that the four residential developments listed in the letter attached to the Education Statement of Common Ground (Inquiry Document ID1.8) are now being taken forward. There is therefore a need for additional primary school capacity. While the issue will resolve itself over time through the operation of the admissions policy, there would be a short term impact which is most likely to manifest itself through additional journeys to school, either by bus or private car.

Health

32. The Secretary of State notes the Inspector's summary of evidence submitted on health matters at IR818 to IR820, and has considered the subsequent closure of the Sydney House and Laurels surgeries to new registrations.

33. The Secretary of State remains of the view, for the reasons set out by the Inspector in IR821 to IR823, that in terms of both health and education, the Appellant has entered into planning obligations to make all the contributions that have been requested to mitigate any effect from the appeal scheme, and that a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Other matters

34. For the reasons given in IR824 to IR827, the Secretary of State agrees with the Inspector that there is no policy conflict with respect to best and most versatile agricultural land, and no evidence to justify a finding of conflict with the development plan on transport and highway matters and air quality.

35. On ecology matters, for the reasons given in IR828 to IR832, the Secretary of State agrees with the Inspector that although there is potential for the survey area to support breeding and foraging farmland bird species, the restricted range of habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. While post-inquiry representations, referred to the presence of lapwings on the application site, given his findings on the site set out above, these representations do not alter his view on the site overall.

36. Other post-inquiry representations referred to cancellation of a bus route that served Hatfield Peverel, and air quality near the "blue land". The Secretary of State has considered each of these, but remains of the view that Hatfield Peverel still demonstrates good public transport links, and that the inquiry appropriately addressed air quality issues.

Appropriate Assessment

37. Following the reference back to parties exercise described in paragraph 7 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this application and presented to the inquiry is no longer legally sound.

38. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an Appropriate Assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Annex C. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

39. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where a plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the that the plan or project will not adversely affect the integrity of the habitats site.

Five year housing land supply

40. The Secretary of State has considered the Inspector's findings as regards housing land supply at IR860 -873. However, following the publication of the revised Framework, guidance on the calculation of local housing need, and revised household forecasts, he has set out his own conclusions below.

41. Paragraph 73 of the Framework indicates that in the circumstances of this case, local housing need should be applied. The Secretary of State has therefore calculated the local housing need figure based on the methodology published alongside the revised Framework of February 2019.

42. On 11 April 2019, the local authority published an Addendum to their Monitoring Report, and a 5 Year Supply Site Trajectory. This reflected the Housing Delivery Test 2018 data published in February 2019; new affordability ratios published by the Office for National Statistics on 28 March 2019, and additional information relating to supply of sites.

43. In summary, the Addendum set out a 5 year land supply position for the authority of 5.29 years. While the version of the monitoring statement on which the Secretary of State referred back to parties was published on 15 January 2019, given the minor change in the authority's assessment from 5.42 years supply to 5.29 years, and given his conclusions below, the Secretary of State did not consider it necessary to further refer back to parties on this issue.

44. The Secretary of State has reviewed the material published on 11 April 2019 and has also considered the representations of parties made on this issue in response to his letter of 5 March 2019 and subsequent emails recirculating representations that had been received.

45. Planning Practice Guidance states that in principle an authority will need to be able to demonstrate a 5 year land supply at any point to deal with applications and appeals, unless it is choosing to confirm its 5 year land supply, in which case it need demonstrate it only once per year. *Paragraph: 038 Reference ID: 3-038-20180913*

46. In this case, the authority has not chosen to confirm its 5 year land supply. Paragraph 74 of the National Planning Policy Framework sets out that this can only be carried out through a recently adopted plan (defined in footnote 38 of the Framework) or subsequent annual position statement. In the circumstances, the Secretary of State has therefore considered the latest evidence before him.

47. Having reviewed the housing trajectory published on 11 April 2019, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more and sites without planning permission, does not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site within five years. He has therefore removed 10 sites from the housing trajectory, these are listed at Annex D to this letter.

48. The Secretary of State considers that, bearing this definition in mind, the authority are able to demonstrate around 4.15 years supply.

49. The Secretary of State has therefore concluded that the authority is unable to demonstrate a 5 year housing land supply. Given this finding, and the objective of significantly boosting the supply of new homes, he attaches great weight to the provision of housing.

Planning conditions

50. The Secretary of State has given consideration to the Inspector's analysis at IR679-693, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions as recommended by the Inspector comply with the policy tests set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

51. Having had regard to the Inspector's analysis at IR694-696, the planning obligation dated 17 May 2017 and the addendum to that dated 20 January 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR697 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the new Framework.

52. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application. Having had regard to the Inspector's analysis at IR694-696, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

53. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies RLP 2 and CS5 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

54. The Secretary of State has concluded that the authority is not able to demonstrate a 5-year supply of housing land, and that the presumption in favour of sustainable development does apply because of the effect of paragraph 177 of the revised Framework (as set out in paragraph 39 above).

55. The Secretary of State considers that the housing benefits of the proposal carry great weight, and the economic benefits in terms of jobs and increased expenditure carry moderate weight. He attaches moderate weight to the enhanced biodiversity arising from the new boundary planting.

56. The Secretary of State considers that the conflict with the adopted development plan policies attract moderate weight, and that harm caused in relation to visual impact is limited, as is the harm to users of Footpath 43. He further concludes that only very limited weight can be attached to conflict with policy HPE6 of the emerging NDP.

57. Overall, the Secretary of State concludes that there are material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be allowed and planning permission granted.

Formal decision

58. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in Annex B of this decision letter for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works, in accordance with application ref: 16/00545/OUT, dated 30 March 2016

59. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

60. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

61. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period

62. A copy of this letter has been sent to Braintree District Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

General representations

Party	Date
Mr East	14 and 26 March, 23 May and 7 September 2018
Rt Hon Priti Patel MP, encl correspondence from Mr East and Mr Elliston	15 March 2018
Mr Kearns	22 March, 18 April and 5 June 2018
Cllr Derrick	6 April 2018
Mr Simmonds	6 June 2018 2018
Rt Hon Priti Patel MP	2 October 2018
Hatfield Peverel Parish Council	12 November2018
Stone Path Meadow Residents Group (SPMRG)	1 and 17 February 2019

Representations received in response to the Secretary of State's reference back letter of 21 June 2018

Party	Date
Hatfield Peverel Parish Council	6 August (x3) 2018
Stone Path Meadow Residents Group (SPMRG)	7 August (x3) 2018
Gladmans	15 August 2018

Representations received in response to the Secretary of State's reference back letter of 1 August 2018

Party	Date
Hatfield Peverel Parish Council	14 August, 29 August (x2) and 5 September 2018
Stone Path Meadow Residents Group (SPMRG)	15 August 2018
Gladmans	15 and 28 August 2018
Savills	15 August (x2) 2018

Representations received in response to the Secretary of State's reference back letter of 2 October 2018

Party	Date
Hatfield Peverel Parish Council	10 and 22 October 2018
Gladmans	11 and 19 October 2018
Stone Path Meadow Residents Group (SPMRG)	10 and 18 October (x2) 2018
Braintree District Council	22 October 2018

Representations received in response to the Secretary of State's reference back letter of 5 March 2019

Party	Date
Hatfield Peverel Parish Council	25 March, 2 and 18 April 2019
Gladmans	26 March, 1 and 3 April 2019
Stone Path Meadow Residents Group (SPMRG)	21 March, 1 and 17 April 2019
Braintree District Council	26 March 2019

Annex B Schedule of conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 80 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the illustrative Development Framework Plan 7015-L-02 rev J.
Approved Plans:

Location Plan:	7015-L-04 Rev B
Access Details:	A095687-SK01 Rev C
Green Infrastructure Plan	7015-L-06 Rev B

5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

   Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

   The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.

9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed. The development shall be implemented in accordance with the approved Management Plan.

10) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

11) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

12) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

13) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

- show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

14) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of

completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation. In particular the scheme shall provide for the following mitigation measures outlined in the Flood Risk Assessment:

i) Control all the surface water run-off generated within the development for all events up to and including the 1 in 100 year event plus 40% climate change.

ii) In the event of using attenuation SUDs (infiltration basin soakaway) as a means of controlling run-off from the development, the design criteria should be based on limiting the discharge (overflow after all infiltration) from the basin/pond to the 1 in 1 greenfield rate for all events up to and including the 1 in 100 plus 40% climate change.

iii) Run-off management within the site must prioritise the use of SUDs both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement.

iv) Provide evidence of water quality treatment from the development using the risk based approach as outlined in the CIRIA SUDs manual C753.

v) Provide a plan showing the final exceedance flow paths, these shall be away from any buildings.

vi) Provide details of the adoption and routine maintenance of the SUDs features including the maintenance of the outfall to the ditch downstream of the pond/basin.

The mitigation measures shall be implemented in accordance with timing/phasing arrangements embodied within the scheme

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

21) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev B) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 3 years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

28) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.

29) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

30) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.

31) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

Annex C Screening and Appropriate Assessment

RECORD OF THE SCREENING ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AS AMENDED FOR AN APPEAL UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Project Title and Location: Recovered planning appeal No. APP/Z1510/W/16/3162004 Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

Project description: outline planning permission for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works. All matters reserved with the exception of the site access. (Planning Application Ref: 16/00545/OUT, dated 30 March 2016.)

Completion Date: November 2018

Project description – further information

1. The project site and surroundings are described at paragraphs 24 – 32 of the Inspector's report arising from a public inquiry held into this application between 12 December 2017 and 30 January 2018. The project proposal is described at paragraphs 54 – 56 of that report, in the planning application documentation and in the Environmental Statement. A copy of the Inspector's report is attached to this assessment.

Competent authority

2. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

Part 1 - Screening

3. A screening assessment provided to the Inquiry took account of mitigation measures at the screening stage and concluded that no Appropriate Assessment was required. A judgment in the Court of Justice of the European Union (CJEU) in *People Over Wind and Sweetman* and *Coillte Teoranta* (12 April 2018) means this assessment is no longer legally sound.

4. It will now fall to the Secretary of State to take a screening decision for this appeal, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

Screening Assessment

Relevant documentation

5. The Secretary of state has taken into account the document "Information for Habitats Regulations Assessment" dated June 2018, ref: 7446.IHRA.16-00545-OUT.vf "IHRA 80". In this Screening, all references to sections, unless otherwise stated, are to that document. He has also taken into account comments made by parties to whom this document was circulated on 12 July 2018, namely the local planning authority, Rule 6 parties to the Inquiry, and the agent of the developer in the case heard at the same Inquiry, Ref: APP/Z1510/V/17/3180729: Land east of Gleneagles Way, Hatfield Peverel.

6. The Secretary of State notes and agrees with sections 1 to 4 of IHRA 80, which set out relevant background and context, the legislative and policy background, factual information about the Special Area of Conservation (SAC), Special Protection Area (SPA) and RAMSAR site and its relation to the appeal site, and the conservation status of the SAC, SPA and RAMSAR site.

Consideration and Conclusions

7. In screening the proposals before him, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.

8. The conservation objectives for the Essex Estuaries Special Area of Conservation are:

   Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
   - **The extent and distribution of qualifying natural habitats**
   - **The structure and function (including typical species) of qualifying natural habitats, and**
   - **The supporting processes on which qualifying natural habitats rely**

9. The conservation objectives for the Blackwater Estuary (Mid-Essex Coast Phase 4) Special Protection Area are:

   Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;
   - **The extent and distribution of the habitats of the qualifying features**
   - **The structure and function of the habitats of the qualifying features**
   - **The supporting processes on which the habitats of the qualifying features rely**
   - **The population of each of the qualifying features, and,**
   - **The distribution of the qualifying features within the site.**

10. The Secretary of State agrees with the approach set out in section 5.8 of IHRA 80 that given that the reasons for classification as an SPA and designation as a Ramsar Site are essentially similar, it is reasonable to consider the potential for impacts upon these designations as one rather than undertake a separate assessment for each.
11. For the reasons given in section 5.9 of IHRA 80, the Secretary of State finds there would be no significant direct effects from lighting, air quality or noise impacts during the construction or operational phases of the development proposals.
12. For the reasons given in sections 5.10 to 5.13 of IHRA 80, the Secretary of State concludes that the Appeal Site does not represent land which could be classed as important 'supporting habitat' for the Blackwater estuary SPA / RAMSAR site.
13. The Secretary of State has paid close regard to sections 5.16 to 5.40 of IHRA 80, and to the views of interested parties.
14. He concludes that, for the reasons given in sections 5.16 to 5.25 and sections 5.34 to 5.40 of IHRA 80, there would be no likely significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts. The Secretary of State notes that in respect of hydrological impacts, the Stone Path Meadow Residents Group (SPMRG), at paragraphs 31 to 33 of their response consider that it would be improper to rule out risk of pollution to the coastal zone. He has also considered that construction and management of hydrological impacts are covered by proposed conditions 4, 17, 18 and 19, and that this gives sufficient certainty that any likely impacts will be de minimis in nature.
15. In terms of disturbance effect, the Secretary of State considers that the distance from the designated sites means that regular visits from new residents would be unlikely, and that the public open space provided as an integral element of the proposals, together with links to the existing public right of way would provide opportunities for informal recreation for both new and existing residents. He therefore concludes that the proposals are not likely to have a significant effect on the interest features of the SAC, SPA, or RAMSAR site, when considered in isolation.
16. The Secretary of State does however find, for the reasons given in 5.26 to 5.33 of IHRA 80, that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects.
17. The Secretary of State has considered the issues raised by SMPRG at paragraph 20 of their response, and of Hatfield Peverel Parish Council at paragraph 11.e of their response, concerning the activities to be considered in this assessment, and whether a median or worst-case estimate should form the basis of estimates of impact. He has found potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, through walking, dog walking and informal recreation, when considered in combination with other plans and projects.
18. The Secretary of State recognises that other activities such as windsurfing, canoeing and water-skiing are capable of causing harm. However, the prevalence of take-up of these activities is much less than that of recreational walking or dog-walking, and people will travel further than the recognised Zone of Influence (ZOI) to undertake such activities. He does not therefore recognise the application proposal as contributing to these activities to any significant extent, either alone or in-combination. He has also borne in mind that the

emerging Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) for these sites does cover this type of disturbance.

19. The Secretary of State also disagrees that a worst-case scenario should be used for the purposes of this assessment. The test at this screening stage is one of a likely significant effect. In the Secretary of State's opinion, this test requires estimating the most likely impact based on available evidence, rather than the worst potential impact.

Overall conclusions

20. The Secretary of State has concluded that the proposal, in the absence of avoidance or mitigation measures, would have potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects

21. In light of that conclusion the Secretary of State has considered the position of the Stone Path Meadow Residents Group that if harm cannot be excluded at the Screening stage (without suggested mitigation) then the applications should be refused. He disagrees with this position, and considers that, in these circumstances, in light of the judgment of the CJEU mentioned above, the correct course of action is to undertake an Appropriate Assessment.

22. As the competent authority in this case, he has carried out such an assessment in Part 2 of this document.

Part 2 – Appropriate Assessment

23. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the SAC, SPA and RAMSAR site has been classified, when considered in combination with other plans and projects, and has determined that an Appropriate Assessment is required.

24. In accordance with the *People Over Wind and Sweetman* and *Coillte Teoranta* ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the site. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

Relevant documentation

25. The Secretary of State has had regard to the previously mentioned document "Information for Habitats Regulations Assessment" dated June 2018, ref: 7446.IHRA.16-00545-OUT.vf "IHRA 80", and the responses received thereto following reference back to parties. In addition, he has also had regard to documents considered at the Public Inquiry, as set out in Annex A of the Inspector's report, in particular Core Documents Sets A and C and "Documents submitted during the Inquiry by the parties".

26. The Secretary of State's appropriate assessment has not simply relied on and adopted the above information and responses to it. Rather, the Secretary of State has considered the relevant information independently, and reached his own conclusions. He has also sought the views of Natural England as the appropriate nature conservation body on a draft of this assessment, which are summarised at paragraphs 39-40 of this Appropriate Assessment.

Consideration

27. At the prior screening stage, the Secretary of State has already concluded that the appeal proposals would not be likely to have a significant effect on the SAC, SPA and RAMSAR site in respect of physical damage and degradation to habitats, or in respect of hydrological impacts.

28. In respect of disturbance effects, the Secretary of State has considered the proposed measures to avoid / mitigate the potential for significant impact on the SAC, SPA and RAMSAR site.

29. For the reasons given in sections 6.4 to 6.11 of IHRA 80 he concludes that the provision of open space represents a suitable measure which will alleviate both existing and potential increased recreation at the SPA / RAMSAR site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure.

30. For the reasons given in sections 6.12 and 6.13 of IHRA 80, the Secretary of State considers that the provision of information to support the use of the local footpath network will serve to encourage new residents to utilise the existing public rights of way in the vicinity, and support the diversion of visitors away from the designated sites.

31. The Secretary of State further agrees that, for the reasons given in sections 6.14 and 6.15 of IHRA 80, the financial contribution towards visitor monitoring surveys at the Blackwater Estuary will help to identify any management measures which may be necessary to mitigate and manage for potential impacts at the designated site. He has paid close attention to the case made by Hatfield Peverel Parish Council in their response, in which they cite Case C-142/16 Commission v Germany contending that monitoring is not mitigation.

32. The Secretary of State notes that in paragraph 37 of the report of Case C-142/16, that the impact assessment proposing the mitigation measure in question did not contain definitive data regarding its effectiveness, and merely stated that its effectiveness could only be confirmed following several years of monitoring.

33. The Secretary of State has considered the precise wording of the signed and dated S106 Agreement provided to the Inquiry, which was the subject of discussion at a round table session on the final sitting day of the Inquiry. The Blackwater Estuary Mitigation Contribution Purposes are defined as being used towards:

> "…the provision of visitor management measures (which may include surveys) to raise awareness of the effects of visitor disturbance at the Blackwater Estuary SPA/RAMSAR site"

34. The Secretary of State considers that this envisages that the contribution could be used towards other measures, and has taken into account the note on the RAMS update provided by SPMRG in their response which states at paragraph 4.4.3 that the three most common forms of generic mitigation are: habitat creation, education and communication, all of which would seem to be allowable under the wording of the S106 Agreement. He therefore concludes that in this case, there is sufficient certainty that a robust mitigation will be provided if required.

35. For the reasons given in sections 6.18 to 6.22 of IHRA 80, the Secretary of State concludes that the appeal proposal would not have any potential significant in-combination effects on the SAC / SPA / RAMSAR site. In addition to alternative sites in Hatfield Peverel, in combination effects can also be felt more widely.

36. The Secretary of State has therefore paid close attention to the emerging RAMS mentioned by several parties in relation to this issue. RAMS is a joint initiative between 11 Essex authorities to identify the recreational impacts new homes will have on the international and nationally protected sites along the Essex Coast.

37. A Monitoring Strategy will monitor recreational impacts at each of the protected sites, the delivery of mitigation projects, the amount of financial contributions collected and spent for each financial year. This will provide transparency and ensure that the RAMS is being delivered effectively. It will also provide the basis for future reviews of the Strategy.

38. The Secretary of State notes that the proposed mitigation for this scheme is compliant with the emerging RAMS strategy. He agrees with the assessment of the impact of the potential effects on the integrity of the European / international designated sites as set out in Table 7 of IHRA 80. For the reasons given in sections 6.29 to 6.32 of IHRA 80, he concludes that the appeal proposals would not adversely affect the integrity of the Essex

Estuaries SAC and Blackwater Estuary SPA / RAMSAR site when the development proposals are considered, either alone or in combination with other plans or projects.

Natural England's advice

39. Natural England have advised, consistent with their previous comments that a financial contribution towards 'offsite' mitigation measures at the Blackwater Estuary would be required. The mitigation measures that will be funded are consistent with the aims and aspirations of the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).

40. Provided the contribution is fully secured, Natural England agree that the proposal would not have an adverse effect on the integrity (AEOI) of the Essex Estuaries SAC and Blackwater SPA and Ramsar site, either when considered alone or in combination with other plans or projects.

Procedural Issues

41. The Secretary of State has considered the point raised by SPMRG at paragraph 23 of their representation that article 6(3) of the Habitats Directive could require public consultation. He concludes that in the circumstances of this case, which has involved a Public Inquiry, and a reference back to interested parties on this issue, that it would not be appropriate to seek a further public consultation.

42. At paragraphs 24 and 30 of their response, SPMRG refer to the emerging Braintree District Local plan, and the emerging Hatfield Peverel Neighbourhood Development Plan. This matter is considered in the Decision Letter to which this Appropriate Assessment is attached, where the Secretary of State attaches limited weight to the policies of these plans.

43. Issues relating to Braintree District Council's 5 Year land Supply position, and to the presumption in favour of sustainable development are not matters for this Appropriate Assessment, and are dealt with in the Secretary of State's Decision Letter.

Consideration and Conclusions

44. Having concluded that the proposal will not adversely affect the integrity of the SAC / SPA / RAMSAR site, and having given careful consideration to the advice of Natural England, the Secretary of State has considered how the proposed mitigation / avoidance measures needed to ensure the acceptability of the proposal are to be secured should the appeal be allowed.

45. The provision of public open space, and the financial contribution to the management of the Blackwater Estuary are both secured via the signed and dated Section 106 agreement of 18 January 2018 (Schedules 5 and 12).

46. The provision of information to support the use of the local footpath network is secured in Schedule 11 of the same S106 Agreement.

47. Accordingly, the Secretary of State is satisfied that if the appeal were allowed, the mitigation and avoidance measures he has deemed necessary to make the appeal proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed.

48. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.

Annex D - Sites removed from housing trajectory published on 11 April 2019

Local Plan Site reference	Planning Application reference	Name and address of site
GOSF 251	BTE/17/0610/OUT BTE/18/2007/FUL	Land South of The Limes Gosfield
GGHR 283 HASA 293	BTE/17/0575/OUT BTE/18/1749/FUL	Land east of Sudbury Road Halstead
	BTE/16/0569/OUT	Land NE of Inworth Rd Feering
KELV 335	BTE/17/0418/OUT	Station Field, Land west of Kelvedon Station Station Road (Monks Farm) Kelvedon
RIDG 359	BTE/17/1325/OUT BTE/19/0635/FUL	SE side Ashen Rd, at junction with Tilbury Rd Ridgewell
EARC 225	BTE/15/1580/OUT	Land rear of Halstead Road Earls Colne
WIS 10X	BTE/14/1528/OUT	Former Bowls Club And Land aAt Old Ivy Chimneys Hatfield Road Witham
WITN 426	BTE/15/1273 BTE/19/0026/FUL	Land north of Conrad Road Witham
WIS 09	BTE/12/1071	Land south of Maltings Lane Witham
BOS6H	BTE/15/1319	Land West of Panfield Lane

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 20 March 2018

THE TOWN AND COUNTRY PLANNING ACT 1990

BRAINTREE DISTRICT COUNCIL

APPEAL BY

GLADMAN DEVELOPMENTS LIMITED

Inquiry Held on 12 December 2017

Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

File Ref(s): APP/Z1510/W/16/3162004

File Ref: APP/Z1510/W/16/3162004
Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG

- 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 Gladman Developments Limited against the decision of Braintree District Council.
- The application Ref 16/00545/OUT, dated 30 March 2016, was refused by notice dated 25 October 2016.
- The development proposed is outline planning permission for up to 80 dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, primary vehicular access off Stone Path Drive, and associated ancillary works. All matters reserved with the exception of the site access.
- This report supersedes the appeal decision issued on 24 July 2017. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

Matters common to all three schemes considered at the Inquiry

1. The Inquiry opened on 12 December 2017 and sat for eight days at the Howard Hall, Bocking End, Braintree. On 3 January 2018 I carried out both an accompanied visit to the Stone Path Drive site and an unaccompanied tour of the surrounding area which included viewpoints to which I was directed by the parties. Closing submissions were made in writing in sequence during January. The Inquiry was closed in writing on 30 January 2018 following receipt of all outstanding documents including obligations entered into under s106 of the principal Act.

2. Three schemes were considered at the Inquiry; the appeal listed in the summary details above; an outline application in the same terms but for up to 140 dwellings at the same address and submitted by the same applicant, Gladman Developments Ltd (GDL) (ref: APP/Z1510/V/17/3180725); and an outline application for the erection of 120 dwellings, together with associated public open space, landscaping, highways and drainage infrastructure works on land east of Gleneagles Way, Hatfield Peverel submitted by David Wilson Homes Eastern (DWH) (ref: APP/Z1510/V/17/3180729).

3. In each case all matters except access are reserved for future determination.

4. The two applications were called in for determination by the Secretary of State on 12 July 2017. In each case the reason given was that he wished to be informed about:
   a. Policies in the National Planning Policy Framework (Framework) on delivering a wide choice of high quality homes;
   b. The extent to which the proposed development is consistent with the development plan for the area; and
   c. Any other matters the Inspector considers relevant.

5. The appeal was recovered for determination by the Secretary of State on 12 October 2017. In this case the reason given for the direction under s79 of the principal Act was that, having called in application 16/01813/OUT (file ref:

APP/Z1510/V/17/3180725) which affects the same site, the Secretary of State wishes to re-determine the appeal himself so that he can consider both proposals at the same time. The appeal was therefore recovered because of the particular circumstances.

6. No pre-Inquiry meeting was held. Instead, I issued two pre-Inquiry notes on 8 November 2017 (INSP1) and 5 December 2017 (INSP2) and a further email dated 7 December 2017 relating specifically to housing land supply issues (INSP3).

7. In response to these notes three documents were produced on behalf of both GDL and DWH. These are Cumulative Air Quality Impact Assessment (ID1.4), a Transport/Highways Note (ID1.5) and a Statement of Common Ground (SOCG) with Essex County Council (ECC) on education issues (ID1.8). A further Briefing Note: Clarification of Presentation Provided by Mr John Webb (ID20) was produced following the submissions from interested persons on the first day of the Inquiry.

8. Some evidence was common to all three schemes. This included that on housing land supply which was heard, at the parties' request, by way of a round table discussion. Much of the policy evidence was also common to all three schemes.

9. After the close of the Inquiry sessions GDL drew attention to the publication of Historic Environment Good Practice Advice in Planning Note 3 (ID52) which superseded the earlier version referred to at the Inquiry. Mr Handcock provided a short note on what he viewed as the implications of the updated guidance. The views of the other parties were invited in a post-Inquiry sessions note (INSP4). The comments made have been taken into account.

10. In the same note I sought clarification of the submissions made in respect of Core Strategy policy CS1. In short, I asked whether it was the whole policy that should be considered to be out of date or just that part of it relating to housing numbers and, depending on the answer to that, whether the spatial strategy embedded in the policy could still be considered current if the settlement boundaries predicated upon out of date housing supply numbers could not. Again the clarifications provided have been taken into account.

11. In a further response before the close of the Inquiry the Parish Council advised that a Habitats Regulation Assessment Screening Report was submitted to Natural England on 18 December 2017 and, further, that Natural England's comments were received by the Council on 25 January 2018. Although the comments have not been made available to the Inquiry, the Parish Council states '…at face value the comments appear positive enabling the Neighbourhood Development Plan to progress.' It further advises that a meeting has been arranged for 5 February with the Council to discuss the way forward and '…to agree how to expedite the Plan.'

12. GDL co-ordinated the core documents listed in Annex A. Although there are three sets, one for each GDL scheme and another for the conjoined Inquiry, all three sets are listed in each report since reference was made throughout to all three sets. Stone Path Meadow Residents' Group (SPMRG) prepared its own core documents. Those that are not included in the GDL prepared sets are listed separately in the two reports for the GDL schemes. The documents listed as being submitted during the Inquiry relate to all three schemes. It is perhaps

worth noting that only a very small proportion of the listed documents has been referred to in the written and oral evidence.

Matters specific to this appeal

13. The appeal decision dated 24 July 2017 (CD32.6 set C) was challenged pursuant to s288 of the principal Act on four grounds. In summary these were that the Inspector:
    a. Misunderstood the judgement in *Suffolk Coastal* (CD31.2 set C) when assessing the weight to be given to policy CS5 of the Core Strategy (CD10.1 set B) in the context of the housing land supply position;
    b. Erred in law by assessing the significance of the loss of Best and Most Versatile Agricultural Land by reference to the confines of the appeal site, contrary to the agreed position in the SOCG in the absence of discussion with the parties;
    c. Failed to take into account material considerations including the fact that the Council had resolved to grant planning permission for a development of 140 dwellings on the same site; and
    d. Gave opaque reasoning in respect of the weight, if any, given to market housing, affordable housing or both.

14. The Secretary of State conceded that the decision was unlawful and should be quashed on the basis of the second ground set out above. The Order of the court is set out in those terms. It also records that the claimant (GDL) believed that the Secretary of State should have conceded on all grounds cited. That was not agreed by the Secretary of State. The parties did however agree that in the light of the concession it was not necessary to proceed to a hearing. The court did not therefore consider argument in respect of the other three grounds cited.

15. Before the Inquiry the Planning Inspectorate agreed to the requests made by Hatfield Peverel Parish Council (HPPC) and Stone Path Meadow Residents' Group (SPMRG) to be made Rule 6 (6) parties.

16. The application was supported by a suite of documents which are listed in CD1.1 to CD1.25 in set A. Prior to the Inquiry opening GDL submitted a Soils and Agricultural Quality report (1/POE, Appendix 1) to provide further information about the matter which led to the Parker DL being quashed.

17. GDL also submitted a revised access plan (A095687-SK01 rev C), development framework plan (7015-L-02 rev J) and tree retention plan (7015-A-103 rev B) prior to the opening of the Inquiry. Through the determination process of the 140 dwelling scheme it became apparent that the highway authority no longer required the emergency access shown on the submitted application access plan. The revised access plan simply recognises this view with consequential changes being made to the other two plans. The parties confirmed that this technical alteration to the submitted application plans had no material bearing on the determination of the appeal. The plans formally before the Secretary of State for approval are therefore the location plan (7015-L-04 rev B) and the access plan (A095687-SK01 rev C).

18. GDL has prepared and submitted a SOCG with each of the Council, HPPC and SPMRG (SOCG1, SOCG2 and SOCG 3 respectively). Each follows the same format. Among the matters that are agreed are the relevant policies of the

adopted and emerging development plan, the application site and its surroundings, the application proposal and the position on a wide range of issues that are listed. Although the precise terms of the agreement is different with each party, each agrees that the Council cannot currently demonstrate a five year supply of housing land.

19. The only matter on which GDL and the Council disagree is the level of harm which would be caused to the significance of nearby heritage assets as a result of changes to their setting.

20. Matters on which GDL and HPPC disagree include:
    a. The weight that should be given to the conflict with the spatial strategy of the adopted and emerging development plans;
    b. The extent of the harm that would be caused to: the rural character and landscape setting of the village; the enjoyment of the public when using the public right of way across the site; the heritage assets and their setting within the wider landscape as experienced by the local community and the weight that should be given to this;
    c. Whether the provision of the Blue Land should weigh in favour of the development as a benefit rather than be considered as mitigation amenity land;
    d. The weight to be given to the emerging Hatfield Peverel Neighbourhood Development Plan (NDP);
    e. Whether the appeal site is sustainable;
    f. Whether development of greenfield sites at Hatfield Peverel is necessary for the Council to meet its objectively assessed housing need (OAHN);
    g. The weight to be given to the benefits and the harms associated with the scheme in the planning balance.

21. GDL and SPMRG disagree on 12 matters which can be grouped and summarised as follows:
    a. Whether the 'Liverpool' or the 'Sedgefield' method should be used to spread any backlog in housing provision over the remainder of the plan period and, partly as a consequence, the extent of the shortfall in five year housing land supply;
    b. Whether Core Strategy policies CS5 and CS8 are restrictive policies within the meaning of Framework paragraph 14, footnote 9 and thus whether or not the tilted balance is automatically engaged;
    c. Whether the EIA screening for the 140 dwelling scheme can apply equally in respect of the appeal scheme since more developments have now come forward in the village;
    d. The effect upon local education infrastructure and whether or not this is satisfactorily mitigated;
    e. That the development of greenfield sites is inevitable for the Council to meet its housing requirement over both the five year and full plan periods;
    f. The agricultural land quality and the implications of its loss in policy terms;

g. Whether Hatfield Peverel is one of the more sustainable locations in the District and whether the site is sustainably located in relation to the services and facilities in the village;

h. The degree of harm caused in respect of heritage, landscape, flood risk, highways and ecology and the weight that should be afforded to any harm;

i. The weight that should be afforded to policies in the adopted and emerging development plans and the quantum of the benefits associated with the proposal in the overall planning balance.

22. A Unilateral Undertaking (ID57a) was executed and submitted in respect of the first appeal against the Council's refusal of planning permission and an addendum to it (ID57b) was submitted before the close of the Inquiry.

23. Although proofs of evidence were submitted by SPMRG as listed in Annex A, oral evidence was given only by Mrs Freeman, Mr East and Mr Dale in respect of landscape. There were a number of reasons for this but the main one was that much of the evidence duplicated that of Mr Renow who gave his evidence first. Ms Scott very fairly decided not to take up Inquiry time unnecessarily. In addition, Mr Kearns was unable to attend the Inquiry. Although in the event not called to give the evidence, his proof was adopted by Mr David Leaf who works in the office of The Rt Hon Priti Patel MP.

The Site and Surroundings

24. The site comprises some 4.57ha of agricultural land and is located on the western edge of Hatfield Peverel some 10km north east of Chelmsford and about 12km south of Braintree.

25. The site is formed of a single agricultural field delineated by hedgerow boundaries. The site also includes an additional area of land in the field to the west which is proposed for a SUDS attenuation basin and associated buried pipework. The topography of the site rises gently from the south west to north east.

26. The site is bounded by existing residential development beyond Stone Path Drive/Church Road to the north and north east, by open countryside to the west and south and by woodland and large individual dwellings beyond Crabb's Hill to the south east.

27. The application also includes an associated area of 'blue land' measuring some 3.54ha in extent which is to be used as public open space as mitigation against any potential recreational impact upon European designated ecological sites. The blue land lies generally to the west of the developable area and to the north and west of an area of retained agricultural land. To the west of the blue land lie the grounds of Hatfield Place, to the north a small pasture and to the east the existing residential development off Stone Path Drive/Church Road.

28. A public right of way crosses the site from east to west some 30m south of the northern boundary of the site. The path connects Church Road to the east with The Street to the north of the site boundary.

29. The site is located approximately 600m from the centre of the village which has a wide range of services and facilities including various stores four public houses, a

primary school (infant and junior), a GP surgery, dental surgery, pharmacy, library, two churches, post office, village hall and recreation ground.

30. Hatfield Peverel has good public transport links to larger employment centres including London, Chelmsford and Colchester. The closest bus stop to the development site lies about 350m to the north west on The Street opposite the William Boosey restaurant. The bus stop is currently served by some four buses an hour to Witham and Chelmsford during the daytime from Monday to Saturday and two buses an hour to Colchester. There are also six buses a day, Monday to Saturday, to Maldon.

31. The railway station is to the north of the village about 700m north east of the site. There is a service to London Liverpool Street via Chelmsford which operates approximately hourly with a journey time of about 45 minutes. A similar frequency service runs to Ipswich (45 minutes) via Colchester (25 minutes). At peak times there is more than one train per hour to London.

32. The main A12 runs just to the north of the village with limited movement junctions to either side of it which, nevertheless, together allow full access to and egress from the A12 in both directions.

Planning Policy

Adopted development plan

33. The adopted development plan for the area includes the saved policies of the Braintree District Local Plan Review (LPR) adopted in 2005 and the Braintree District Core Strategy (CS), adopted in 2011. Included in SOCG1 is a lengthy list of what are termed policies relevant to the appeal. Included in CD11.1, set B and CD10.1, set B are those policies and the supporting text that are of particular relevance to the determination of this appeal.

The LPR

34. Policy RLP 2 states that new development will be confined to the areas within town development boundaries and village envelopes. Outside these areas countryside policies will apply although exceptions may be made for affordable housing schemes which comply with LPR policy RLP 6. Such considerations do not apply in this case. Policy RLP 3 sets out a number of criteria that all residential development within development boundaries and village envelopes must meet.

35. RLP 80 addresses landscape features and habitats. In essence it requires applicants to assess the impact of a proposed development on wildlife and distinctive landscape features and for proposals in mitigation of any impacts to be put forward. Development that would not integrate successfully into the local landscape will not be permitted.

36. Policy RLP 100 is listed as a relevant policy and has been referred to in evidence. However, although the title of the policy implies that development within the setting of a listed building is within the scope of the policy, read carefully it is clear that the policy is directed only at development that directly affects the listed structure. That is not the case here.

37. Other LPR policies listed in the SOCG are in a form designed to ensure that the technical requirements of statutory and other consultees are given policy force. The wording is generally in the form of not allowing development unless required measures are secured.

The CS

38. Policy CS1 sets out the housing provision that will be made over the period 2009 to 2026. It also sets out where those new dwellings will be located. These include Key Service Villages (KSV); Hatfield Peverel is such a village. Policy CS2 sets out the requirement for developments to provide affordable housing with the target percentage being determined by the location of the proposed development. A target of 40% applies on sites in rural areas.

39. The precise wording of policy CS5 is as follows:

> *Development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.*

40. The natural environment and biodiversity is addressed by policy CS8. This is a policy that covers almost two sides of A4. The gist however is that developers are required to have regard to, or to take account of, the impact of the proposed development on a wide range of factors. Of relevance to this proposal are the protection and enhancement of the natural environment in the widest sense, the protection of the best and most versatile agricultural land, the character of the landscape and its sensitivity to change and the minimisation of exposure to flood risk.

41. Policy CS9 is in many respects a general design principles policy. However, the first bullet requires new development to respect and respond to the local context where development affects the setting of historic or important buildings.

42. A good provision of high quality and accessible green space including accessible natural green space to meet, among other things, amenity needs is secured by policy CS10. Policy CS11 sets out, in essence, that development contributions towards necessary infrastructure services and facilities will be secured through, among other things, planning obligations.

Emerging development plan

Braintree New Local Plan (BNLP)

43. The BNLP was submitted to the Secretary of State in October 2017. The examination has therefore commenced. It is in two parts. Part 1 (CD12.3 set B) plans strategically across three local planning authority areas. At the time of the Inquiry the examination hearings were due to commence in January 2018. Part 2 (CD12.4 set B) relates to the Council area only. Hearing dates have yet to be arranged. There are a substantial number of representations raising fundamental issues with both parts of the BNLP. Those made by GDL are at CD33.1, set C.

44. Although in Part 1 policy SP 2 continues a spatial strategy for North Essex that seeks to accommodate development within or adjoining settlements according to their scale, sustainability and role, it also proposes three new garden

communities one of which would be to the west of Braintree. Policy SP 3 sets out housing needs which for Braintree are 14,320 dwellings over the period 2013 to 2033 on the basis of an OAHN of 716 dwellings per annum.

45. Turning to part 2, the broad spatial strategy for the Council area is to concentrate development on the town of Braintree, planned new garden communities, Witham and the A12/Great Eastern Mainline corridor and Halstead. Hatfield Peverel lies within the A12/Great Eastern Mainline corridor and is identified as a Key Service Village (KSV). Policy LPP 1 states:

> *Within development boundaries, development will be permitted where it satisfies amenity, design, environmental and highway criteria and where it can take place without material adverse detriment to the existing character and historic interest of the settlement.*
> *Development outside development boundaries will be strictly controlled to uses appropriate to the countryside to protect the intrinsic character and beauty of the countryside.*

46. Policy LPP 31 proposes a comprehensive redevelopment area on land between the A12 and the Great Eastern Main Line. This comprises four areas; the former Arla Dairy site; Sorrell's Field; Bury Farm; and a smaller site to the rear of Station Road. Among the list of things that the development will be expected to provide are financial contributions to early years and childcare provision, contributions towards primary and secondary education facilities and contributions to other community facilities including health provision as required by the NHS.

47. Policy LPP 60 deals with heritage assets and their settings. It follows closely the wording of LPR policy RLP 100. It adds however a final paragraph which states that the Council will seek to preserve or enhance the immediate settings of heritage assets by appropriate control over development, design and use of adjoining land.

48. Landscape character and features are subject to policy LPP 71. This requires, in broad summary, applications for development to demonstrate an understanding of the landscape character of the area and show how the development proposed would fit in. Development that would not successfully integrate into the local landscape will not be permitted.

Hatfield Peverel Neighbourhood Development Plan (NDP)

49. The NDP (CD15.2, set B) has been submitted for examination and the examiner appointed. At Appendices MR23 to MR 25 of Mr Renow's proof (HPPC1) is the exchange of letters between the examiner and HPPC. On 5 September 2017 the examiner set out the two 'important' matters about which she had 'serious concerns in respect of the progress of the examination and the (HP) NDP meeting the statutory Basic Conditions' (MR23). Having considered the reply dated 13 September 2017 from HPPC (MR24), she wrote again on 20 September declining to continue the examination while the necessary additional work was undertaken (MR25). The reason given was '…the issues raised are sufficiently substantive that I feel to do so runs the risk of undertaking work that could later be found to be abortive and incur unnecessary costs to the local authority.'

50. The NDP is subject to unresolved objections including those from GDL (CD33.2, set C) and DWH (SAV50 and SAV52).

51. The retention of existing trees, hedgerows and habitats, the mitigation of their loss and the retention of natural boundary treatments and the provision of new areas through new development is the subject of policy HPE2. The protection of the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment is achieved through policy HPE6.

52. Policy HPE8 addresses heritage. In essence this requires an appropriate assessment of the significance of any heritage asset including the contribution made by its setting when development is proposed. How the development could conserve and enhance the asset should be explained.

Relevant Planning History

53. An outline planning application for the development of 29 starter homes was withdrawn in July 2005. An outline application for the erection of 19 no. 2 bed houses, 8 no. 2 bed flats and 16 no. 1 bed flats as affordable housing was refused planning permission in February 2006.

The Proposals

54. The application is submitted in outline with all matters except access reserved for future determination. Up to 80 dwellings are proposed to be built with up to 40% being provided as affordable housing. The pedestrian and vehicular access to the site would be from Stone Path Drive.

55. The application was accompanied by a Design and Access statement (CD1.5, set A) which indicated how the development might be brought forward. A Framework Plan (CD1.3, set A) was also submitted which, although for illustrative purposes only and not therefore for approval, shows some important features such as a detention basin, a proposed play area and, in quite considerable detail, structural landscaping. This embraces the existing public right of way (FP43) as it passes through the developable area and shows this being retained on the southern edge of an area of proposed public open space to be laid out between the new development and the existing Stone Path Drive.

56. The Framework Plan was, in effect, superseded by the Green Infrastructure Strategy drawing (ID1.6a). This was submitted as part of a bundle of documents introduced by GDL at the start of the Inquiry. This shows essentially the same features although it also identifies the Blue Land broadly to the west of the developable area which is to be offered as public open space.

The cases put by the parties

57. Although three separate developments were being considered at the Inquiry, that was not, in the main, how the evidence was presented and tested. This was inevitable and the most efficient use of Inquiry time as there was a significant degree of commonality in, for example, the evidence given on policy and housing land supply topics. The issues raised by the 80 dwelling scheme and the 140 dwelling scheme are very similar. In the main the cases for GDL and SPMRG deal with both and are therefore set out in full except where the approach is slightly different, for example SPMRG's heritage case in respect of the William B public

house which relates only to the 140 dwelling scheme. The case for HPPC is presented in a slightly different manner and only that part relevant to this appeal is set out below.

58. DWH are not directly concerned with this appeal. However, Mr Tucker's case on housing land supply, an aspect of his case on important views and the case on the emerging NDP is adopted and relied upon by GDL. Those parts of his closing submissions are therefore recorded below.

59. Closing submissions were submitted in the same sequence as they would have been presented at the Inquiry. The usual convention whereby the scheme promoter hears the cases against the proposal before making its case was thus observed. As will be seen, both Mr Tucker and Ms Osmund-Smith respond to points made by other advocates.

60. It is fair to say that both are quite critical of the way in which some arguments have been put by Mr Graham for HPPC and, to a much lesser extent, Ms Scott for SPMRG. In short, the criticisms are that the case has been developed, if not actually changed, from that trailed in the statement of case; evidence from witnesses has been misrepresented and concessions in cross examination ignored; and evidence rather than argument given.

61. I believe there is some substance to all of those criticisms and I have had regard to that in coming to my conclusions. While I have recorded the flavour of the criticisms in presenting the cases set out, the exact, sometimes robust, phrasing used has not been included. Each closing submission is nevertheless listed and available to read in full.

The case for David Wilson Homes Eastern

Introduction

62. The land use issues raised against the DWH scheme are comparatively modest and are accepted by the Council not to be sufficient to outweigh the benefits of the scheme.

63. It was stated in opening that this is a comparatively straightforward proposal. In reality nothing which has been presented over the course of the Inquiry changes that position.

64. It is agreed with the Council that there is a significant deficit against the required 5 Year Land Supply (5YHLS) and there therefore is an immediate need for additional housing, which will necessarily have to include land that is presently undeveloped.

65. It is agreed that there is an immediate need for additional affordable housing.

66. There is no statutory consultee who has objected to the application scheme.

67. The only policy objections (albeit not raised by the Council) relating to the DWH proposals relate to:

    i) breach of 'in principle' countryside policies which are based upon settlement boundaries which are agreed by the HPPC's planning witness to be out of date; and

ii) breach of policies in respect of a draft and flawed NDP which can only be afforded the most limited weight;

68. Requested contributions to infrastructure etc. are provided for in full in the s106 obligation.

69. The appeal site is located in a sustainable location (in this respect DWH acknowledges and adopts the case made by GDL) and relates well to the settlement of Hatfield Peverel which it is agreed will need to accommodate additional growth.

5 year housing land supply

70. Framework paragraph 47 directs that local planning authorities must identify and update a "supply of specific deliverable sites" to provide 5 years' worth of housing against their housing requirements. Deliverable is defined in footnote 11:

> *To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular, that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.*

71. In *St Modwen Developments Ltd v SOSCLG* [2017] EWCA Civ 1643 (paragraph 38, CD32.18 set C) the approach that should be taken to assessing whether a site is "deliverable" in the context of the footnote 11 definition is confirmed. Properly understood the judgment does no more than reiterate the ordinary and natural meaning of the words of the footnote. It does not, as Mr Graham sought to argue, reduce the threshold for assessing yield from deliverable sites. In that case the Appellant was contending that only those sites with planning permission should be considered to be deliverable. Self-evidently, whether or not a site is counted into the exercise as "deliverable" is only the first step of the exercise - the crucial issue in this case is what comprises the likely yield of the deliverable sites. Doubtless this important distinction will be clear to the Secretary of State.

72. It appears from his closing submissions that Mr Graham has misinterpreted this important judgment. In response to HPPC's closing submissions, (paragraph 5, ID48) there is no judicial authority that "deliverable" means, as Mr Graham submits, 'non-fanciful'. The judgment of Lindblom LJ is clear that "deliverable" in the context of Framework paragraph 47 is defined solely by footnote 11. Mr Graham's submission in this regard is simply wrong.

73. To the minimum requirement to demonstrate a 5YHLS must be added a buffer of 5% or 20% depending upon whether there has "been a record of persistent under delivery". The courts have clarified what is meant by "persistent under delivery" in *Cotswold DC v SOSCLG* [2013] EWHC 3719 (paragraph 47, ID1.15). Essentially, whether under delivery has been persistent is a matter of planning judgment, considering a reasonable period of time for analysis and against a justifiable housing requirement which can include consideration of what is

proposed in an adopted plan and evidence of need. Addressed below is why it is considered that a 20% buffer is appropriate.

74. The starting point for the numerical calculation of the 5YHLS is to identify an appropriate requirement against which to judge the available supply of deliverable sites. In this case the requirement of the adopted CS is based upon a hopelessly out of date figure derived from the "policy on" content of the long defunct Regional Spatial Strategy. In those circumstances it is agreed with all parties that, it is appropriate to identify the OAHN based upon the most up to date evidence, without any policy adjustment.

75. What figure comprises the OAHN will be a matter of intense debate at the forthcoming examination in public of the emerging BNLP, to which there is intense dispute. That debate will take place in January 2018. However, given that the decisions of the Secretary of State will be made after this debate has taken place GDL/DWH in this Inquiry have taken the pragmatic decision not to use the Inquiry as a dry run for those arguments, but rather to accept for the purposes of the Inquiry that the Council's figure is the correct one. Should compelling evidence arise to support a contrary position prior to the decision of the Secretary of State then that will be drawn to his attention in advance of that decision.

76. Thus, for the purposes of the Inquiry, Mr Spry adopts the Council's estimated OAHN of 716 dpa derived from the evidence base from the emerging BNLP. There is no disagreement between any of the parties to this Inquiry that this approach is reasonable and thus, this is the appropriate starting point.

77. The disagreement between the parties relates to the following areas:
    i) Liverpool or Sedgefield approach for addressing the shortfall:- The applicants and the Council have agreed, again for the purpose of this Inquiry, that the correct approach is Sedgefield. It is noted that the Council is pursuing the Liverpool methodology at their Local Plan examination, however it properly accepts, that without specific support from the examining Inspector, it could not reasonably support such an approach for the purpose of this Inquiry;
    ii) 5% or 20% buffer;
    iii) The supply of deliverable sites - There is a dispute between SPMRG and the GDL/DWH on the sites that should be considered to be deliverable and therefore included in the supply with SPMRG arguing for the inclusion of draft local plan allocations. That position is expressly rejected by the Council which does not consider that those sites should be afforded sufficient weight to be included, given the stage in the process and the degree of unresolved controversy which relates to them. There is then the more important debate about the likely yield from a handful of disputed sites as between the Council and Mr Spry. This disagreement on yield on those sites is essentially one of judgment based upon agreed facts and is covered in detail in ID1.14 where the difference between the parties is reduced to a yield of 68 dwellings.

78. HPPC lead no evidence on the point. The submissions made in closing on which sites should be included must therefore be given no weight.

Liverpool v Sedgefield

79. The only parties advocating for a "Liverpool" approach - ie spreading the shortfall over the whole of the local plan period - are the Rule 6 parties. The Council has agreed that this is not the correct method for calculating the 5YHLS position for this Inquiry, whilst arguing for that position through the BNLP examination. Its reasoning is robust - until the examining Inspector endorses a different approach then based upon recent appeal decisions, the "preferred" approach of Planning Practice Guidance (PPG) of the Sedgfield methodology is to be preferred.

80. Notably there was no discernibly logical argument put forward by either of the Rule 6 parties to support a contrary case for the use of Liverpool. The best that was offered was that the Liverpool methodology would be appropriate because when looking back at the record of under delivery it is claimed that the Council cannot meet its requirement in the short term and therefore Liverpool should be used - repeated in the SPMRG closing (paragraph 86(ii), ID49). With the greatest of respect, this is not sound planning. Not only is it in conflict with guidance to the contrary in PPG, but also it has serious social consequences, given that the shortfall in delivery is not one which arises over the next 15 years but rather it exists right now, at the start of the 5 year period under consideration. Not to do so now means deferring the meeting of needs - which is the antithesis of the tone and content of Framework paragraph 47.

81. The argument is that it is simply not possible to deliver the undersupply in the first 5 years. It is accepted the PPG says that the undersupply should be addressed within 5 years "where possible". However, self-evidently the correct approach to this guidance is to start from a position that it is possible and only change that view where it is shown to be impossible. An impossibility cannot be proven through previous undersupply - the very problem the buffer seeks to address. An impossibility might be proven in cases where the LPA's area is highly constrained e.g. AONB, Green Belt, other designations, or where there is clear market evidence of saturated demand. However, it is strongly submitted that "not possible" is a high bar and one which is not close to being met in this case.

82. The illogic in respect of the DWH site is even more striking since it argues that a site should not be released to a national housebuilder in a sustainable location because there are concerns about the ability of the market to deliver.

83. Thus, if a local planning authority cannot meet its housing requirement, the answer is to release more sites, not to accept that past under delivery represents the benchmark for future delivery and to thereby leave more families without a home.

84. The reality of the Rule 6 parties' position is clear from the SOCG on Additional Housing Supply Sites (ID37). This shows that they need to convince the Secretary of State in respect of all of their points in order to demonstrate a marginal excess against the 5YHLS - i.e. it is only on their flawed analysis of the additional sites together with the use of the Liverpool method and with only a 5% buffer that they can mathematically demonstrate a marginal excess over the 5YHLS. If nothing else this evidences just how dire the position on 5YHLS is in this District. If objectors have to argue for a swathe of implausible assumptions and can still only just show a mathematical exceedance then the clear reality of the land supply position is Braintree falls significantly below what is needed. If

there was any doubt to the contrary then no doubt the Council would not have readily conceded the absence of a 5YHLS a matter of weeks before the start of the BNLP examination hearings.

85. In her written evidence, Mrs Jarvis for HPPC attempted to make a somewhat curious secondary argument that even if there was a need for additional housing then development should be distributed evenly within the hierarchy of settlements at the tier within which Hatfield Peverel falls (paragraph 2.15, HPPC2) However, in cross examination that point was rapidly abandoned.

86. First, she accepted that the table within the adopted CS is a minimum figure and therefore one can conclude that the table does not form a basis for a mathematical exercise in allocating the shortfall of housing within the hierarchy. Second, when she was carefully taken through the emerging BNLP she readily accepted that it contained significant changes to the adopted strategy of housing distribution - most obviously in its dependence upon the new Garden Communities - but crucially given the enhanced role of Hatfield Peverel as part of the A12 corridor of growth. With all due respect to Mrs Jarvis her point went nowhere and it certainly does not support the proposition that she intended that the DWH proposals are out of scale with the settlement, let alone the more radical distribution point made at paragraph 2.15 of her proof.

87. In conclusion, DWH, supported by the Council, strongly submit that the Sedgefield approach must be preferred for this Inquiry. The social dimension of sustainable development must require the shortfall to be delivered within the 5 years - to do otherwise is simply to put off the requirement to boost significantly the supply of housing and results in a failure to meet the requirements of those who want to own a home in this part of the country.

The Buffer - 20% or 5%

88. The Council argues for a 5% buffer, GDL/DWH for 20%. The evidential basis for the debate is the update (ID1.11) to table 5.1 in Mr Spry's proof of evidence (4/POE). This updated the completions figures for the early part of the period. The updated table shows:
    i) The Council has not met annual requirement figure since 2011/12;
    ii) There has been persistent and significant under-delivery between 2012-2017;
    iii) There is under-delivery against current half year (April to Sept 2017);
    iv) In combination, there has been under-delivery of housing against the requirement of:
        - 458 - 16.5 yrs
        - 1,002 - 10.5 yrs
        - 1,448 - 9.5 yrs

89. This table compellingly illustrates the inescapable conclusion that there has been persistent under deliver of housing in Braintree. Against this, the Council's unconvincing contention was to argue that it was "unfair" to judge them against an OAHN of 716 from 2013 when the figure was only introduced in November 2016. Rather it was argued that the lower Structure Plan figure should be used. However, the Council will have been well aware that an increased OAHN was

likely given the household projections figures (detailed in the updated table 5.1) which were consistently in excess of the Structure Plan figure.

90. It is also clear that the Council was aware of the likely increase in OAHN as evidenced in the minutes of the Council's meeting on 30 June 2014 (1/POE, Appendix 2). Under agenda item 23 the Council decided to withdraw the site allocation Development Management Development Plan Document. One of the points noted by the Council was that the Framework would impact on the housing need figures derived from the CS and that under a Framework compliant methodology, those numbers would go up. It is disingenuous by the Council to now say at this Inquiry that they were not aware of the housing numbers going up; plainly they were aware of this from at least 30 June 2014. Therefore not only is it sound planning to backdate the OAHN to 2013, but the Council were also well aware of the requirement to increase their housing figures.

91. The Council's approach is wholly unconvincing. Not only would it be to "reward" tardy plan making but it means judging under-delivery against the wrong metric. The intention of the buffer is not one of "punishing" a local authority which would then bring in concepts of fairness. Rather it is an objective exercise to determine whether or not there is a need to increase the well of sites from which the development industry can draw in order to achieve the OAHN. In this case it is now known that the target of the adopted plan was substantially below what it ought to have been in order to meet the agreed OAHN and that delivery was also well below the OAHN. It is therefore known that delivery was persistently below what it should have been and more importantly there is no suggestion that the lower Structure P target was somehow constraining delivery.

92. The Framework, published in 2012, could not be clearer at Framework paragraph 215: local planning authorities had a period of 12 months to bring policies into line with the Framework and after this date, the weight to be given to any pre-Framework policy would depend on the consistency with it. This includes, as it must, pre- Framework housing requirement figures, such as those used by the Council taken from the now-revoked East of England Plan. The Council ought to have updated their housing requirement in this 12-month period and done so in a way that reflects Framework paragraph 159 which establishes that this should meet "household and population projections" (the figures for which are included in Mr Spry's updated table 5.1 and would have been known to the Council at the time). They could have done so in a Framework compliant way with a partial review. They did not do this and still have not done this. The only Framework compliant way is therefore to back date the OAHN requirement to 2013/14.

93. The Council argue in their closing (paragraph 23 to 24, ID47) that the OAHN figure from 2013/14 was not the "target" at the time as that figure only became known in 2016. Target is the wrong word; it is about meeting housing need. The Framework is clear. Framework paragraph 47 bullet point 2 requires local planning authorities to identify sites to meet their "housing requirements", that means the need at the time. It does not mean the need as it was last identified. To adopt such an approach could result in years of need being unmet simply because a Council has not carried out the necessary work to assess the actual housing need in its area. Mr Cannon's approach would be another reward to the sluggish authority and must be rejected. Mr Spry's must be preferred as an approach that supports the Government's clear objective of boosting the supply of housing by assessing need as it actually is, not as it once was.

94. The appeal decisions cited by SPMRG on this point (paragraphs 90 – 92, ID49) are not on point. The first decision (ID44) was in the context of an authority that had over supplied for an 8 year period. Plainly this Council is a long way from this having undersupplied over a number of years. The second decision (ID43) is also in the context of an authority that had over supplied. The arguments of DWH on this point should be preferred.

Conclusions on 5YHLS

95. If the Secretary of State accepts that the correct approach to calculating the land supply position in Braintree is Sedgefield/20%, then the supply is 3.3 years against the Council's OAHN figure. It is only if the Secretary of State concludes that all the stars have aligned and that the correct approach is Liverpool/5% with the additional sites put forward by the Rule 6 parties, that the Council could crawl over the line and show a 5YHLS - 5.38 years. It is GDL/DWHs' submissions that such a conclusion, given the weakness of the argument and absence of supporting evidence, grossly over-stretches the elastic potential of planning judgment.

96. Should the Secretary of State conclude that the correct approach is Sedgefield/20% (or indeed Sedgefield/5, or Liverpool 5/20), then the Council cannot demonstrate a 5YHLS and there is a serious deficit against the minimum policy requirement of Government such that there is an immediate need to redress that deficit. Moreover relevant policy consequences kick in.

97. In the absence of a 5YHLS, Framework paragraph 49 says that "relevant policies for the supply of housing" are not to be considered up to date. The Supreme Court in *Suffolk Coastal DC v Hopkins Homes* [2017] UKSC 37 concluded that decision makers should adopt a narrow approach to identifying which policies should be considered as "relevant policies for the supply of housing" (paragraph 57, CD31.2 set C). However, this may not be the point of the exercise (paragraph 59):

> *The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies.*

98. The approach is endorsed at paragraph 83:

> *If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.*

99. The weight to be given to particular policies in the adopted and emerging local plans is addressed in due course. However, the point that must be taken from *Suffolk Coastal* is that where it is environmental (or other) policies that have resulted in the failure to demonstrate a 5YHLS, then those policies are as susceptible to having their weight reduced in the balance as those policies that fall within the definition of "relevant policies for the supply of housing".

100. HPPC's closing submissions on the ratio of *Suffolk Coastal* must be rejected (paragraph 36 and 37, ID48). The Supreme Court is not removing the s38(6) test, that is at the heart of decision making. It is a judgment about the weight to be given to policies where the plan is absent, silent or out of date. Mr Graham's approach of dismissing Framework paragraph 14 as "no more than guidance" rather than crucially important national policy which should be afforded substantial weight, is an invitation to the decision maker to fall into serious error.

101. Overall therefore it is firmly submitted:

i) there is plainly a substantial deficit as against the minimum requirement to demonstrate a 5YHLS;

ii) the effect of that is that Framework paragraph 49 is engaged;

iii) that alone is sufficient to warrant engaging the presumption in Framework paragraph 14;

iv) it is agreed that there is no immediate prospect of the emerging BNLP being adopted and therefore the only means by which the deficit can be addressed is through the grant of planning permissions in sustainable locations; and

v) substantial weight should be afforded to the provision of general market housing which contributes to meeting that deficit.

Landscape issues

An Important View?

102. Policy HPE 6 in the NDP (CD16.3 set C) seeks to:

> *protect the landscape setting of the village through the preservation and enhancement of views identified by the community and the Hatfield Peverel Landscape Character Assessment (2015). Any proposed development, or alterations to an area within these views must ensure their key features can continue to be enjoyed including distant buildings, areas of landscape and open agricultural countryside.*

103. There are a whole host of reasons why this policy should be given very little, if any, weight in the final planning balance:

i) As Mrs Jarvis accepted, it is not consistent with policy LPP72 in the BNLP.

ii) In 2015, the Landscape Partnership carried out a Local Landscape Character Assessment for Hatfield Peverel (LLCA) (CD18.4 set C) that forms a fundamental part of the evidence base for the Neighbourhood Plan. The DWH site is within LLCA 4 (page 23 CD18.4). This independent study produced by landscape experts, identifies the key views within the LLCA as shown on the plan on page 23. The blue arrow pointing northeast goes along the public right of way which runs approx. 200m south of the site save for a very thin sliver of land to the extreme south of the site proper which it is intended will provide a landscaped link to the footpath network. When that is compared with the key views that have been included in the NDP (page 33, CD16.3, set C), what is immediately striking is that the view within the proximity of the application site identified by the independent experts is not the one carried forward into viewpoint 5 in the NDP. The

experts, undertaking an approach with a recognisable methodology, identify the views out from the start of the public right of way which runs along the southern/eastern boundary of the site and which will be covered by public open space in the application, that view will be entirely unaffected by the appeal proposals. The NDP, at viewpoint 5, dismisses this and instead promotes a view from the end of a residential cul-de-sac, with no entrance to a public right of way that looks directly across the development site.

The reasons given for this change by Mr Renow in cross examination were that these views were voted for by local people and are considered to be the views deserving of policy protection within the NDP. Although Mr Renow did fairly accept that VP5 in the NDP is clearly inconsistent with the LLCA. More fairly still, he accepted that this was not a proper basis to plan protected views. Therefore HPPC's own evidence given by the person who claims to be at the heart of the neighbourhood planning process, is that the view protected in the NDP has no proper evidential basis. Instead, as Mr Smith made clear in his evidence, the view along the public right of way, that does have landscape value, will have any impacts upon it mitigated through boundary planting and the provision of public open space.

iii) The Workshop for Important Views document (CD 18.6 set C) which sets out the analysis that supposedly led to the inclusion of viewpoint 5 in the NDP as an important view, exposes the reality of the selection. This document, at page 6, where the potential views within LLCA 4 were considered, states as follows with regard to the view across the application site that eventually became important view 5 in the NDP - "*Key features - line of tall trees, flat field, hedgerows and trees*", but perhaps most revealing "*Value to the community* **-** *<u>not sure if this area has any value but the residents like the view</u>*" (emphasis added). The true purpose of the identification of the important views is finally revealed when examining why some of the sites were removed from the NDP. The view of the River Ter (CD18.6 set C, page 2, row 6), that one might consider to be a quintessential view, was removed as it is "*Not subject to planning*". Likewise that the view over St. Andrews Church was removed despite being the "*Historic core of the settlement*". Thus, if the view in the NDP has any claim to be an important one then it is in the teeth of the evidence and based upon the fact that an unknown number of people seem to "like it". As put in cross examination, it is difficult to escape the inference that those promoting the NDP have sought to promote not the important view recommended by an expert but an unimportant view in order to make a case opposing the DWH site.

iv) Mr Renow sought to criticise the DWH assessment for not having taken account of the views of the community. A landscape character assessment undertaken by a professional landscape architect is intended to convey the objective judgment of the "assessor" and therefore is very rarely materially influenced by the views of the public, unless representations raise an objectively justifiable concern which had not been previously considered. The point is that it is a professional piece of work, which follows recognised guidance, not an

informal local referendum on popularity of views. Indeed, when the Neighbourhood Plan team did attempt to take the view of locals as to which views were "important" it did so in a haphazard and inconsistent way which deviated from its purported evidence base. However even on that approach it is of note that the view from Gleneagles Way (proposed to be protected in the NDP) came 4th out of 5 proposed views. So even on his own argument, it does not suggest that even the local community find the view particularly important.

v) The final piece of evidence exposing the real intentions of the NDP is set out at CD18.3, set C - Hatfield Peverel Site Assessment 2017. The application site is considered at page 8. It identifies no beneficial opportunities at the site, despite those drafting this document in 2017 being aware of this application to develop the site. Mr Renow accepted in cross-examination that the non-preferred sites were marked in this document with no opportunities in contrast with the preferred sites. It is in short an admitted exercise in advocacy and not evidence worthy of the name. Mr Renow reasonably made the above concession and it must be given significant weight. Paragraph 99 of the HPPC closing submissions which row back from this concession on this point can be afforded no weight at all.

vi) HPPC note in their closing submissions that policy HPE6 deals with views 'identified by the community and the Hatfield Peverel Landscape Character Assessment'. Those are the words in the policy, but so far as relevant to the appeal site those words are flatly contradicted by the evidence base (see above). Indeed Mr Renow properly accepted in cross examination that the choice of views was only based upon community views - a process with no recognised methodology.

The emerging NP

104. The reality is that the NDP, insofar as it addresses landscape issues, is a partial document. It is not a balanced piece of planning analysis that looks to meet housing need and protect landscapes meriting protection. The motivation appears to have been in part to stymy development in Hatfield Peverel other than on the Arla Dairy site. Consequently, the landscape policies within the NDP should be given very limited, if any, weight. They lack any balanced and considered evidence base and are subject to detailed and robust objection. Additionally, as will be addressed in more detail below, the NDP is some considerable way from being made and is best described as being "stalled" with no immediate hope of being restarted.

Planning

105. DWH's planning case is set out in the proof of evidence from Mr Jonathan Dixon (DWH1), which was subject to only the most limited of challenges.

106. As stated in opening, the site is not in or adjacent to any heritage or landscape related designations and there are no technical reasons put forward to warrant the withholding of consent. The landscape objections put forward by HPPC have been addressed above and do not come close to providing a sound policy and legal basis for withholding consent, let alone comprising a basis to displace the presumption in favour of sustainable development.

107. The relevant policy issues in adopted and emerging local plans are limited to policies of minimum housing provision within the settlement hierarchy (CS1); general protection for the countryside (CS5); emerging policies on development boundaries (LPP 1); and policies in the NDP that have already been considered.

108. Dealing firstly with CS1. As Mrs Jarvis rightly accepted, this policy is presumed to be out of date as a result of the failure to show a 5YHLS. Therefore, it will carry reduced weight in the overall planning balance. However, it is also out of date and therefore of reduced weight, for several other reasons.

109. Had plan preparation proceeded properly, then the settlement boundaries, which were first established in the mid 1990s, would have been reviewed many years ago. However, there is nothing before the Inquiry to suggest that the settlement boundaries in the District have ever been subject to a comprehensive review (as opposed to merely amending settlement boundaries to accommodate strategic allocations), let alone in Hatfield Peverel. On the evidence it appears highly likely, therefore, that twenty year old boundaries have simply been rolled forward from an old (and a now-withdrawn) plan. Without an evidence base to support the policy, it is not enough to simply point at the words on the page and cry refuse - it must have an evidence base.

110. Mrs Jarvis suggested that the emerging BNLP part 2 (CD16.2 set C) had been based upon a review of the boundaries. However, she was only able to provide a short report which appears to have been provided at an early stage of plan preparation to identify what principles would be applied to a future review (HPPC2, Appendix PJ3). It emphatically does not record or detail that any such review has taken place. When Mrs Jarvis was pressed, she readily conceded in cross examination, that she had not been able to identify any documentation to support the proposition that the boundaries in the District have been reviewed as part of the emerging BNLP process. It is plain from the evidence of all the planning witnesses, including HPPC, that Mr Dixon's approach to the out of datedness of settlement boundaries is manifest.

111. What is clear is that the Council readily accepts that in order to meet its immediate needs that greenfield land will need to be released.

112. Hatfield Peverel is a KSV within the adopted and emerging plans. Far from being preclusive of growth, that designation explicitly anticipates that the settlement can accommodate growth. Indeed in the emerging BNLP the settlements on the A12 corridor (including Hatfield Peverel) are identified as being a particular focus for growth - a point noted by HPPC in their closing submission (paragraph 70 ID48). Mrs Jarvis readily accepted that Hatfield Peverel could accommodate additional growth. However her point appeared to be that the development of the appeal site would lead to excessive growth. However the yardstick against which she sought to judge whether that was excessive related to a plan whose period has expired and relating to a table of indicative distribution of growth which is explicitly a minimum. When pressed, she accepted that there was no policy limitation which is breached by the grant of planning permission. Certainly it is untenable to contend that the grant of planning permission in this case would comprise disproportionate growth for Hatfield Peverel.

113. Given the considerable under supply, it is essential that further land comes forward for development in Hatfield Peverel to meet the unmet need. Given the

very limited objections to this site (both in substance and number), the DWH site is well placed to help the Council get closer to delivering its housing requirement.

114. Turning now to Policy CS5, this comprises a general blanket countryside protection policy. Mrs Jarvis rightly accepted that the weight to be given to this policy must be interpreted with regard to its consistency with the Framework. This policy imposes a blanket ban upon development in the countryside, which is not included in the Framework. Mrs Jarvis sought to place reliance upon Framework paragraph 17 which sets out the overarching principles. Eventually she conceded that the word "strictly" in CS5 went beyond what is included in the Framework. This policy should be given much reduced weight as it is inconsistent with the Framework and, recalling Lord Gill in *Suffolk Coastal*, such overly restrictive policies that result in less than 5YHLS must be given reduced weight or they would be frustrating the objectives of the Framework (CD31.2 set C).

115. The Council seek to argue that policy CS5 should attract moderate weight because that is what other Inspectors have concluded and it complies with Framework paragraph 17 by recognising the intrinsic character and beauty of the countryside. That submission on Framework paragraph 17 is flawed for the reasons above. Previous Inspectors' conclusions are persuasive but they are not binding, given the strength of argument that this policy carries limited weight the Inspector and ultimately the Secretary of State can, and should, come to a different conclusion.

116. Turning to the emerging BNLP (CD 16.2 set C). This directs substantial growth to the garden villages, however Mrs Jarvis accepted that the emerging plan was still subject to a lot of objections. Despite this (and remembering the terms of Framework paragraph 216) Mrs Jarvis inexplicably concluded that the BNLP should carry "fairly significant" weight as it was compliant with the Framework. It is not entirely clear what is meant by "fairly significant weight".

117. This is particularly inexplicable as she accepted that the substantial controversy still attached to the BNLP would reduce the weight that could be attached and she finally concluded that the Inspector should "be cautious" about the weight to be attached to the plan. It seems that this conclusion is well founded and accords with the careful analysis of Mr Dixon. Mrs Jarvis agreed with Mr Dixon that the BNLP was not in a position to solve the immediate problems with the 5YHLS and that it will not solve it in the next 18 months. It was further accepted that the plan would not be adopted soon - "It has some way to go". All of these points of agreement support the position of the applicant, as put forward by Mr Dixon, that the BNLP should be given significantly reduced weight.

118. Finally, on the NDP. Despite the misguided optimism of Mr Renow, this is a very long way from being made:

119. Since the NDP proposes to allocate land and does so in a way which is inconsistent with both the adopted and emerging LP (Mr Renow cross examination), then it will need a Strategic Environmental Assessment (SEA) to be carried out. Such an exercise has not been undertaken and as Mr Renow accepted (cross examination), no steps have been taken to complete one. Indeed at times he appeared not to understand what an SEA was. The simple and undeniable fact is that if the NDP wants to allocate sites it must complete an

SEA unless it is merely parasitic upon an adopted local plan (which it plainly is not). It does not remotely depend on the outcome of a Habitats Regulation Assessment (HRA) screening assessment as Mr Graham submits (para 84 ID48) which is an important but parallel legal process. The point made by SPMRG (paragraph 122 ID49) should also be rejected. Whilst the lack of the SEA might not directly affect landscape or protected views, it manifestly affects the ability of the plan to move (lawfully) to the next stage. If it cannot move forward in the process, then the weight to all policies in the plan cannot increase. Notwithstanding this, there are the other concerns with landscape and protected view policy in the NDP already explained. Mr Graham is simply wrong on this point.

120. Mr Renow's explanation as to why an SEA was not needed was because the Council has completed a HRA in respect of the planning application upon the Arla site, ie the site that the NDP proposes to allocate. This exercise was undertaken, as is required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010, because a development is proposed on the site for 145 units. To suggest that this HRA would displace the need for an SEA to allocate the site in the NDP is a fundamental misunderstanding of what is required for the NDP to allocate a site in a lawful manner. An HRA for a specific proposal is not an SEA for an allocation in a plan. If the NDP proceeds on the basis advocated by Mr Renow, it will be unlawful.

121. SAV49 is a letter from the independent examiner of the NDP. As of the letter date, 20 September 2017, it was anticipated by the neighbourhood group, as expressed to the examiner, that the SEA and HRA Screening Report would be available within 3 - 4 weeks - i.e. around mid-October 2017. No such reports have been prepared, nor is there any clear indication as to whether they ever will be. (*note: this was written before HPPC notified the parties that the document had in fact been submitted to Natural England [11]*)

122. The basic conditions against which a neighbourhood plan is to be judged include compliance with European requirement and conformity with the adopted development plan. There is very clear authority that whilst there is nothing wrong with a neighbourhood plan being prepared to be consistent with both the emerging and the adopted development plan, it is against the adopted plan that the neighbourhood plan should be tested (paragraph 82 CD31.1 set C). Thus, the NDP cannot avoid meeting the obligation for a development plan which contains allocations as a plan or project to be subject to an SEA simply because it follows the lead of the emerging BNLP. Nor can it simply piggy-back on the back of the SEA for the emerging BNLP since that relates to a different plan with different considerations which will not be adopted until mid 2018 at the earliest.

123. Mr Renow accepted in cross examination that there may be a substantive problem with the SEA, but despite this, he considers that the NDP will be made well before the BNLP is adopted, at the latest June 2018. If that was the case then it would be the source of an allocation which has been untested by an SEA, and inconsistent with the adopted local plan. One reason for this is that CS policy CS4 requires the retention of existing employment sites. Paragraph 6.2 of the CS makes it clear that this also relates to KSVs. A housing allocation is plainly inconsistent with CS4. To allocate a housing site on the Arla site in advance of the emerging BNLP being adopted with such an allocation within it,

and without an SEA would plainly not meet the basic conditions for a neighbourhood plan required by law.

124. In any event, it seems highly unlikely that the NDP could be lawfully made by June 2018 as a matter of simple practicalities. If the NDP seeks to allocate sites and proceeds to do so without an appropriate SEA, then it will be unlawful. Of course it could avoid any such problems by not allocating any sites or by waiting to progress further until after the BNLP is adopted, which would thereby abrogate the need for an SEA. If the NDP were modified so that it does not allocate any sites then it would still be fundamentally flawed because of the evidential issues with HPE1 and HPE 6. However if those flaws were also addressed (by deleting HPE1 and removing viewpoint 5 then such an adopted plan would not benefit from the protection of the Written Ministerial Statement on Neighbourhood Planning.

125. Moreover, just promoting the proposed allocation of the Arla Dairy site in the NDP is out of step with the BNLP (policy LLP 31) that identifies the Arla Dairy site for "mixed use of up to 200 dwellings". The NDP has far from a smooth flight path to landing. Indeed, to borrow Mrs Jarvis's words, it is a "hiccupped" plan that has various stages still to complete. She went further and said that she could not be sure whether the NDP was compliant with the Framework.

126. The argument put forward to support the argument for HPPC that the NDP should carry significant weight was because it had the support of the local community, as shown through the poll carried out by the Neighbourhood Plan group. This is wholly unsupportable in planning terms. The informal poll is not a referendum and weight does not depend simply upon popularity. It is also not an official stage in the development of the NDP. The weight to be given to the NDP must be in accordance with the requirements of Framework paragraph216. It is plain that Mr Renow's view of how weight is to be ascribed to an neighbourhood plan has absolutely no support in national policy or guidance.

127. The conclusion on the NDP is that the policies that are relevant should only be given very limited weight for the reasons above. Therefore, whilst HPPC seeks to argue that the development is in breach of policies HPE1 and HPE 6, the weight to be afforded to such conflict with policy is substantially reduced.

The Case for Gladman Developments Ltd

Introduction

128. The closing submissions for GDL follow and consider the issues set out in INSP1. With respect to the issues of 5YHLS and the NDP GDL adopts the submissions of DWH. These are set out above in paragraphs 70 to 101 inclusive and in paragraphs 118 to 127 inclusive respectively and are not repeated here.

The effect of the development on the character and appearance of the area

129. The site is located on the south western edge of Hatfield Peverel and adjoins the residential development of the village at Stone Path Drive. The existing development provides an "abrupt edge" to the village and has a notable influence on the character of the site.

130. That is not just an observation by GDL, in fact three other expert landscape opinions exist in respect of the site and all find that development can be, or can

potentially be accommodated there. They represent a consensus of opinion and there is no other expert landscape evidence before the Inquiry to cast doubt on those opinions. They are addressed now.

The Landscape Partnership Studies, CD14.4 set B, and CD28.3 set C

131. These two studies do different things. The first study, in June 2015 was a Settlement Fringes Evaluation (SFE) for the Council to help determine which parts of the area could absorb new development "with appropriate mitigation measures and minimal impact on the landscape"; (paragraph1.6, CD14.4 set B).

132. The second is the Local Landscape Character Assessment (LCA) (CD28.3 set C) for HPPC. The project brief is outlined at para.1.4 and explains the assessment is to assist the emerging NDP, to provide an assessment of landscape sensitivity and a set of guidelines to information opportunities for locating future green infrastructure and landscape enhancements.

133. It was not assessing capacity of individual parcels for new development in the same way as the SFE, and does not, and could not determine the acceptability of the appeal site for development.

134. The methodology of the SFE explains that a mixture of desk based and field study work was undertaken to identify broad parcels of land and then to drill down within the large units to identify even smaller parcels for assessment. It did apply a scoring system, but supported that with extensive commentary on the basis that no absolute conclusions could be drawn from the relevant scores. It is not "bizarre" as suggested by the HPPC (paragraph 144 ID48).

135. The parcels were then assessed on a 5-point scale from low landscape capacity to high landscape capacity.

136. The appeal site sits within Landscape Setting Area HP2, and broadly aligns with Parcel 2c (page 16 and associated plans), albeit not all of the parcel is proposed to be developed.

137. The overall capacity is medium, and the text on the parcel (paragraphs 4.20-4.21) explains that "the existing edge to the settlement is relatively abrupt and the houses have limited containment in local views, with boundaries to properties formed by an inconsistent mix of fencing and fragmented vegetation." The analysis also identifies that "there is good scope to provide mitigation to proposed development that is in keeping with the landscape pattern."

138. The SFE concludes that there is "an opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to development fringes. Public footpath routes should be protected with the opportunity to incorporate open space into potential extension to residential areas."

139. The appraisal form acknowledges the open views across the fields, as well as glimpses of more extensive views across the river valley to the south-west. Along with the views from adjacent residential properties, the study plainly did not regard those views as prohibitive of built development.

140. HPPC seeks to distance itself from the SFE on the basis that it was done without consulting the local community (paragraph 144, ID48). However, the

same applies to the studies HPPC does rely on - the criticism is not at all persuasive. Further, the author of the Study, the Landscape Partnership produced the LLCA for the Parish Council, a document on which it relies and which did not conduct a public consultation exercise either.

The Council's Assessment

141. The Council's own landscape officer upon reviewing the information submitted by GDL and the only LVIA carried out in respect of the proposals for this site, (CD4.15 set B) concluded that:

> *the proposed development if designed within a suitable stetting could provide a more attractive settlement edge than the open and unsympathetic vistas currently on offer from the available viewpoints.*

Independent Advice

142. The Council also approached Wyn-Williams Associates Ltd to provide independent landscape advice and a Report (CD4.14 set B) was produced. The Report assessed the existing context, the County and District Landscape Character Assessments and the two Capacity Assessments. The Report concluded:

i) the site is not a valued landscape, despite being valued by local people. (paragraph 14)

ii) the development would fit comfortably against the built-up edge of Hatfield Peverel and would strengthen the landscape at the fringe of the settlement (paragraph 15) ; and

iii) there would be adverse impacts on the very local level which is a visual impact rather than a character impact. There would not be landscape harm (either character or visual) of sufficient magnitude to refuse the development on landscape grounds (paragraph 18).

143. There is no other LVIA before the Inquiry upon which weight can be placed. The evidence put forward by the Rule 6 parties does not include the sort of comprehensive transparent assessment required in line with GLVIA3.

Landscape Character Assessments (LCA)

144. The wider landscape character assessments make the following points:

i) CD28.2 set C is the County wide study which explains at page 51 that the sensitivity level of the Central Essex Farmlands to small urban extensions is 'low'. That arises because of the moderate intervisibility of the landscape and the "possible opportunities to improve some existing visually poor urban edges."

ii) CD14.5 set B is the District Character Assessment. Under the heading 'Sensitivities to Change', it concludes "Overall, this character area has low to-moderate sensitivity to change."

145. The analysis is therefore consistent, from the broad to the specific, that the site has capacity to accommodate change.

146. SPMRG seek to establish a conflict with the District LCA (CD14.5 set B) on the basis that the guidelines are for small scale development that respond to the historic settlement pattern. Mr Holliday confirmed that small scale can mean

different things in different places- but that in terms of the village as a whole and in landscape and visual terms the proposals are of an acceptable scale. The study itself does not define "small scale" and given the vast area covered by the LCA - in the context of up-to-date housing needs - such a requirement may be regarded as out of date.

147. SPMRG submissions also suggest that Mr Holliday agreed in cross examination that the proposals would not respond to the historic settlement pattern (paragraph 32, ID49). GDL's contemporaneous note of the exchange is as follows:

Question The historic settlement pattern is moving north and east of Church Road – it is quite a tight settlement ?

Answer I think my characterisation of it would be - it is historically a linear settlement along The Street and over the last 50 years, a larger settlement with larger areas of development – it is more nucleated than linear. And this scheme would be a continuation of this pattern

Question This is a south westerly thrust – a complete departure from the historic settlement pattern?

Answer No, the village has grown, and each time, development will have taken place within fields – it's expanded in different directions on the edges, and this is no different to that.

148. The submission that the proposals conflict with the historic settlement pattern is rejected.

149. HPPC in cross examination of Mr Holliday relied on the Chris Blandford Study (CD14.1 set B) that assessed a large area 'HP2' which includes the appeal / application site, and a <u>significant</u> amount of other land south, west, and east; (Fig HP0). The assessment of Area HP2 concludes that the landscape character sensitivity Is 'Medium to high', with 'Medium' Visual sensitivity and 'Medium to high' Landscape value. The Landscape Capacity for the whole parcel is "Low to medium."

150. However Mr Holliday explained that the study is the outlier. It is out of date and has been superseded by the later Landscape Partnership work. The Blandford Study is now 10 years old and was carried out under the predecessor guidance to GLVIA3. Moreover, the document itself at section 5 'Conclusions', explains that 'levels of landscape capacity may not be uniform across any one landscape setting area' and that even areas with "low to medium, or even low, landscape capacity may contain locations that are suitable in landscape and visual terms, for limited development." A site specific analysis is obviously required and that is what is done in both the SFE (CD14.4 set B) and through GDL's LVIA work.

151. Mrs Jarvis does not agree with the level of harm identified by GDL, but does not provide an assessment of her own and nor has HPPC sought expert landscape advice on this particular site. Mrs Jarvis does not set out of the sort of reasoned and transparent judgements that are expected by GLVIA3, that consider value,

susceptibility to change, magnitude of change and, finally, overall effects at years 0 and year 10.

152. While adopting the conclusions of Inspector Parker in the quashed decision, Mrs Jarvis also disagrees with the parts of the decision she does not like and which do not suit her case. For example, Mrs Jarvis seeks to rely on the conclusion that the proposals would be unacceptable in terms of their impact on the character and appearance of the area, but rejects the Inspector's conclusions that:

> *In this case, the proposal would result in substantial harm to the character and appearance of the area, moderate harm to the landscape including as seen from the PROW (FP43)…* (paragraph 56 CD32.6 set C)

153. Mrs Jarvis takes issue with the "moderate" impact on the footpath in particular (paragraph 5.23, HPPC2), but that is because she had not undertaken the correct assessment that needs to be carried out to understand visual effects objectively. Yes, there will be a change to the relatively short 230m route as it passes through the site, but the route is already influenced by housing development and, outside of the developable area, will change very little. The value of the route is "medium". It is not a route through valued landscape, not nationally promoted and does not take in any recognized viewpoints (save for the emerging NDP discussed below). Effectively, the route is from one road to another. There will be additional new planting that will soften the impact over time, as well as new recreational opportunities around and to the west of the site.

154. SPMRG in its Closing Submissions commends the findings of Inspector Parker that there would be a moderate adverse effect on the PROW and its users and also moderate landscape harm; (paragraph 38, ID49). The assessment is not very different from that provided by GDL; (CD1.6 set B Appendix B), save that the impact on the site and immediate context is minor/moderate at 10 years post completion. Inspector Parker accepted that there would be a moderate overall impact on the footpath in line with GDL's evidence (CD1.6 set A)

155. Mrs Jarvis and Mr Dale seek to rely on the fact that the land in which the site falls was previously designated as an area of special landscape value. However, Mrs Jarvis agreed in cross examination that we do not know the basis upon which the land was designated and we do not have the evidence base (if any) that supported the designation. We do not know the criteria that were applied in respect of different parcels, but we do know it applied to very large areas across the whole district.

156. It is not something the Council gives weight to and was replaced with CS policy CS8. The approach of Inspector Hill in the Coggeshall Inquiry is commended;

> *The Council drew attention to the fact that this area was formerly designated as an area of Special Landscape Value. However, that designation is no longer in force (it being dropped in 2011 with the adoption of the Core Strategy) and so I do not attach weight to it* (paragraph 40, CD32.2 set C)

Special Views in the Neighbourhood Plan

157. The view from Church Road over the site has been identified as an important view in the emerging NDP (page 33, CD16.3 set C).

158. The evidence base that sits behind that is to be found (in part) at CD 18.6 set C and includes feedback from a workshop in December, following a photographic competition of views around the village. The feedback document warns that "views are subjective and may be coloured by the imminent threat of loss." That is relevant in respect of the proposals in relation to this site because both applications for the 80 dwelling and larger 140 dwelling schemes were before the Council at this time this document was produced.

159. The relevant view is viewpoint 7, labelled as "Crabbs Hill, Stonepath Drive & Land behind the William B." That is not the same as the view that eventually made it into the NDP from Church Road. In fact, it reflects the view from the Character Area Assessment (CD28.3 set C) looking west across the site, rather than out to the south and the south west. There are further anomalies; the Key Features of the view are listed as Hatfield Place and the William B, but those are not visible from the Crabbs Hill access and cannot be seen from the footpath through the developable area until the walker passes through the gap in the hedge into the fields adjacent to the A12.

160. Long distance views to the River Ter valley and the Baddow Ridge are not mentioned at all, either as a key feature or something of value to the community. That is to be contrasted with sites 1 and 4, which do make reference to the high quality views of the Chelmer Vale, Danbury - Little Baddow Ridge, and the River Ter Valley.

161. What is also curious about the document is that the evidence base is supposed to identify important views. On closer inspection, it is plain that the point of it is to act as a block on development because many of the views regarded as important by the community are removed because they are not likely to be developed in the plan period or are well outside of the development boundary. Accordingly, far from being an assessment of "special views", the evidence base is geared up to protecting only those views that might be expected to be impacted by new development; for example Views Near Termitt's Farm and St Andrews Church.

162. By the time the viewpoint made it into the NDP, it became a view from Church Road looking across the Meadow. That does not accord with the view in the Landscape Partnership Document (CD28.3 set C) and is also different to the description given in the evidence base which seems to reflect the Landscape Partnership view - 'Crabbs Hill - Stonepath Drive & Land behind the William B'. In the NDP, Hatfield Place is mentioned in the Key Features but it is not visible at all from that location behind belts of tree and hedgerow planting. The distant views are listed now as a key feature and the same is true for viewpoints 2 and 3, both of which are on footpaths to the south of the settlement. It is curious that the view is not taken from the footpath through the site since the existing view is a view over at least some private land, which could be planted by the landowner to screen the relevant view.

163. Looking at the plan on page 33 of the NDP, it is clear that important views have been identified around the village in every direction. Mr Renow agreed that

if the views were to act as a block on development, then policy HPE6would be very restrictive of new housing. The policy however is not entirely restrictive of new development. The second part explains that proposed new development or alteration must ensure the key features of the views can continue to be enjoyed. Arguably the policy is met in this case:

i) The proposals will not obscure views to Hatfield Place. By opening up the blue land more views will be available to people using the site for recreation purposes;

ii) The distant views to the south from the footpath 43 are not the only views to the Ter Valley and Baddow Ridge; they can be achieved from the blue land and also viewpoints 2 and 3 in the NDP. Mr Dale explained that the view from viewpoint 3 is "exceptional".

iii) The meadow and mature trees and hedgerows will be retained on site. There will be the new open space to the north of the developable area, and the blue land to the west which remain open and more accessible than previously.

164. In any event, the policy is part of a plan that is yet to be made. Further, to the extent that it seeks "protection" "preservation and enhancement", it sets a threshold for almost the entire landscape around the village that is not reflected in national policy for ordinary countryside. It is subject to objections, not least by GDL (CD33.2 set C), and is yet to be examined. Accordingly, even if there is conflict, little weight can attach to it.

165. Further, GDL supports and adopts DWH Closing Submissions at paragraph 104 above which are not repeated here.

166. In this instance the site:

i) is not out of the ordinary and is not considered to be a valued landscape. No one has made the case that it has any demonstrable physical features that take the site out of the ordinary, as per the guidelines in *Stroud* (paragraph13-18, CD 31.20 set C);

ii) is not of unusual scenic quality;

iii) is affected by the adjacent mid-late 20th century settlement edge which diminishes its sensitivity to new development;

iv) does not contain any rare or unusual landscape features ;

v) is not designated in any way for its landscape beauty or any other reason;

vi) has some public access, but more would be provided over the blue land as part of the proposals;

vii) is not designated for its ecological value ;

viii) is not wild and has varying tranquility ;

ix) has landscape components that are commonplace and the boundary hedgerows and trees that have some value will be retained.

167. Mrs Jarvis agreed in cross examination that so far as the site is concerned, it attracts the lowest level of protection commensurate with its status in accordance with Framework paragraph113 - it is neither a valued landscape nor one that is internationally, nationally or locally designated.

The LVIA

168. Although neither has provided their own, both SPMRG and HPPC query the overall judgments arrived at in the LVIA. However, it is unclear as to which specific judgements within the LVIA, i.e. sensitivity, value or magnitude of effect, are disagreed with. There is a repeated assertion that the effects of the proposals could not be anything other than "major" but the approach demonstrates a fundamental misunderstanding of the process of assessing landscape and visual impacts which involves determining the sensitivity of the landscape receptor or visual receptor (through a combination of value and susceptibility to change) and the magnitude of change on the receptor.

169. SPMRG compounds the confusion in its Closing Submissions (ID49). Despite appearing to accept Inspector Parker's findings of moderate adverse at paragraph 38, "Major Adverse" is concluded at paragraph 36. It is unclear where the assessment comes from or how it has been arrived at. It is not in SPMRG's evidence before the Inquiry.

170. Further, a whole series of comments are made on the impact of the scheme on the wider character areas. The approach fundamentally misunderstands that overall effect is a product of the combination of sensitivity, susceptibility and the magnitude of change. Moreover, to suggest that Mr Holliday has left out of account an assessment of "this specific part of Essex" (paragraph 23 ID49) ignores vast swathes of Mr Holliday's evidence on the site and its landscape context. SPMRG's submission seeks to establish conflict with the wider character area; (paragraph 26) but the recital of key characteristics and overall character is partial and unhelpful. Such studies are not tick boxes, or even guidelines for new development - they simply provide a starting point for a site specific assessment as has been carried out in this case and to indicate what might be important and why.

171. The approach to landscape cannot be subjective. If it was and the views of local people provided an entire assessment on value of the landscape and views, then sites on the edge of settlements would never be built. That is because all people value the landscape in which they live and move around every day. New development will often curtail views; Stone Path Drive - the development that is home to the SPMRG - would have had a similar effect when it was built in the 1970s. It would have affected and curtailed the views of existing residents and people who enjoyed the allotments on which the new houses were built.

172. It is not uncommon for people to object to new development close to where they live for reasons that can broadly be described as visual and landscape objections. If that objection was to be avoided, there would be either lots of ribbon development to avoid encroaching on the views of others, or isolated countryside development where there was no one to object to the impacts. Neither consequence is desirable.

173. SPMRG's Closing Submission says the view from the footpath through site is "unrivalled anywhere else in the Parish." That might be so to Mr Dale; to people living elsewhere in Hatfield Peverel, the view they get from their homes, drive or street will probably hold the same value. On HPPC's evidence base for example, the view from Stonepath Drive was not voted as the top view from the village (HPPC1 Appendix MR28). In fact Mr Dale explained that viewpoint 3, towards the River Ter from Nounsley, is "exceptional".

174. The approach of HPPC and SPMRG in respect of the footpath fails to acknowledge that in terms of sensitivity there are differences, sometimes subtle and sometimes stark, between different footpaths and different views in different areas. The calibration of sensitivity is important. In this instance:

i) The footpath is short - it does not provide a walk out into the open countryside but rather from one road to another and along the edge of existing development;

ii) The footpath is not part of a long distance or promoted walk. It is used as a dog walking route by many but is not the sort of the place, as Mr Holliday explained, that people would travel to in order to experience;

iii) There are no promoted views from the footpath. The emerging view from the NDP and the weight to be given to that is dealt with elsewhere;

iv) The highest sensitivity landscapes are those that are valued for the purpose of Framework paragraph 109 and/or those which are designated internationally or nationally for their landscape quality. The highest sensitivity footpaths and views are those that people will travel to go and see and walk. It is in those places that development will have the most significant impact and when understood in that context, the effects identified by GDL in this instance are entirely reasonable and appropriate.

175. HPPC's Closing Submission describe Mr Holliday's approach to the footpath as "misleading and inappropriate;" (paragraph 138 ID48). The criticism is entirely rejected. It would be completely inappropriate to judge the experience of a route - which is the assessment being carried out and the LVIA says as much - on the basis of one viewpoint. The approach taken is conventional and entirely in accordance with GLVIA3. Moreover, it is remarkable that HPPC should seek to criticize Mr Holliday's assessment in that way and then seek to rely on the conclusions of Inspector Parker (paragraph 142 ID48) who accepted GDL's assessment of harm on that very issue.

176. In short, there is no other evidence before the Inquiry to doubt the conclusions of the LVIA which do not assert no harm, but put the harm in a proper context through the use of appropriate and transparent methodology. The significant long term effects identified for the both schemes (CDs 1.6 set A, and 1.6 set B):

i) Minor / Moderate Adverse effects on the site and immediate context;

ii) Moderate Adverse Impacts on the users of the PROW 43 within the site; and

iii) Moderate Adverse effects on residential receptors on Stone Path Drive albeit it is accepted that there is no right to a view and so the weight to be given to that harm is accordingly very limited.

Conclusions

177. In conclusion, the site is regarded as being capable of absorbing new, well designed residential development. In the long term, the development proposals will be well contained within the localised landscape area and will deliver benefits through implementation of robust green infrastructure on the site. The new planting and open spaces will provide recreational opportunities, mitigate the visual impact of the proposals and filter longer distance views to the

development. The proposals will also provide a better more sensitive edge to the village than that which presently exists.

178. In terms of visual impacts there will be some moderate adverse effects arising from the scheme in respect of those receptors that would be in very close proximity to the new development. Perhaps most importantly are users of the footpath within the site - the experience would change most noticeably along its length as it passes through the eastern field of new built development, but built development is not uncharacteristic of the route; the houses on Stone Path Drive are presently open to view and are unmitigated. The route does not offer a walk in an isolated rural setting.

179. There will be a loss of some views to the south from that footpath, but new views will be available on the blue land to the west of the new housing. It is intended that members of the public will have full access over that land which will be secured as public open space. Further, those new views will allow walkers to experience the River Ter Valley landscape that provide the primary setting to Hatfield Place. The proposals comply with policies RLP80 and CS8.

The effect on heritage assets

Introduction

180. Two assets are relevant in respect of the proposals; Hatfield Place and the William Boosey Pub, known as The William B. Mr Handcock has carried out a careful analysis of the potential for harm to those assets and concludes that there will be no harm. That assessment uses and applies Historic England's own guidance on the Setting of Heritage Assets (CD27.3 set C) and the staged approach to analysis set out therein.

181. There is no other assessment that has applied the same rigorous and policy compliant approach to the assessment of the assets. That is important because assessments such as this must take place within an objective framework to be meaningful. It is absolutely essential that where development in the setting of heritage assets is at issue the contribution of that setting to the significance of the asset is properly understood so that an accurate assessment of the effect of change can be made. It is not enough to say that development will be seen from an asset and there will therefore be harm - visual connectivity is not the exclusive consideration and nor can it be determinative of harm.

182. In respect of the 80 scheme, there is consensus that there will be no heritage harm - that is the view shared by the County, District and Parish Councils. Moreover, while Historic England requested further information in respect of that scheme, it did not positively identify harm. SPMRG's position is less clear, albeit the closing submissions on behalf of the group do not allege harm to the William B. Public House from the 80 dwelling scheme (paragraph 65 ID49) and the harm is reduced from "moderate to high" in respect of Hatfield Place, to "low to moderate" for the smaller scheme. In identifying harm to Hatfield Place from the smaller proposals, SPMRG, which has not submitted a Heritage Assessment for either scheme, is the outlier.

183. Oddly, in his Closing Submissions on behalf of HPPC Mr Graham - who confirms (paragraph 151 ID48) that HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme (and Mrs Jarvis

confirmed no harm in cross examination) - makes the point that the view to the south from NDP viewpoint 1 (to the eastern edge of the site) would be blocked with the implication that it gives rise to heritage harm. However, the effect arises with both the 80 dwelling and the 140 dwelling schemes. Given HPPC does not regard the 80 dwelling scheme as harmful, that specific impact, on HPPC's case, cannot amount to harm.

The assessment of impacts

184. The assessment of heritage effects through a change in setting requires an understanding of the significance of the assets and the role that setting plays in that significance. Once that is established, the role of the part of the setting that will be occupied by development in the significance of the asset must also be understood because setting is not a heritage asset (paragraph 9, CD27.3 set C) and not all setting makes an equal contribution to the significance of an asset, or at all. Moreover, change in the setting of a heritage asset does not automatically give rise to adverse effects; (Framework glossary). Inter-visibility between the asset and the proposals may be a matter of fact, but it does not necessarily lead to harm. If that were so, no assessment would be required.

185. The Framework glossary also defines 'Significance' for the purpose of heritage policy as:

> *The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.*

186. There are conceivably assets where setting will make a very significant contribution to significance, such as in the case of battlefields for example. In other cases such as here, the core significance of assets will lie elsewhere and setting may be a secondary contributor to significance. For Hatfield Place, its core significance lies in the quality of its built fabric, as a fine example of a small Palladian house of the late eighteenth century, including its external detailing and arrangement and internal plan form and in its connection with individuals of local and national interest in their own right, principally John Johnson and John Tyrell, but also William Walford and George Sherrin. None of those elements will be harmed by the proposals.

187. The core significance of the former Crown Public House, now the William B, lies predominantly in:

i) The age and quality of its historic fabric, with evidence of its fifteenth century form remaining legible alongside high quality sixteenth century alterations;

ii) Its relative rarity and for its aesthetic value, both internally and externally, as a remaining example of a pleasing vernacular building of a great age; and

iii) Its legible, long-standing historic use as a coaching Inn, related closely to The Street as an important historic route from London to East Anglia.

188. Setting does make a contribution to both assets but in a lesser way. The most important part of the setting for Hatfield Place is its immediate pleasure grounds

allowing views into the Ter Valley to the South and to the Danbury Ridge. The land to the southeast has been deliberately screened. In respect of the William B, its most important spatial relationship is with this historic thoroughfare, The Street; the proposed development site does not make any meaningful contribution to its significance.

Hatfield Place

189. Mr Handcock explained that the starting point of his assessment was to assume that the agricultural fields within the red and blue land made a contribution to significance. It is obvious Historic England have done the same thing, but as Mr Handcock made clear, it is the analysis of the contribution that the land makes to significance of the assets that is the relevant and necessary assessment to understand the impact of new development on the significance of the assets. The start point cannot therefore be the end point and it is the analysis in between that is lacking in Historic England's consultation response dated 6th February 2017 (CD27.4 set C).

190. It is acknowledged that Historic England have constraints in terms of resources and the time available to respond to applications such as this. No criticism is made of Historic England for not carrying out its own assessment in line with its guidance. However, Historic England's response (CD27.4 set C) is heavily focused on views, which cannot be determinative of harm to significance, and fails to explain why the appeal/application site fields "greatly contribute to the significance of the listed building." The response says that the fields provide an open, tranquil and rural setting to Hatfield Place but it does not go the stage further that it needs to, which is to say why that is important to the heritage significance of the building.

191. Historic England also says that the separation between the building and the village contributes to its significance suggesting that the distance between the House and the settlement was a deliberate display of wealth. However, no evidence is produced to demonstrate that is the case or why the existing separation that would remain would be inadequate. GDL disagrees with Historic England's position for the following reasons:

i) While the presence of agricultural land around the House does allow its separation from Hatfield Peverel to be read on the ground, it does not rely on this land for its significance;

ii) Hatfield Place was not, as part of its raison d'être, associated with large landholdings, nor was it developed with rural isolation in mind;

iii) It was built directly adjacent to an important, turnpiked road and another, slightly larger house and estate (Crix) and just outside a reasonably sized settlement;

iv) Essentially, Mr Handcock explained, the House was squeezed between Crix and within close proximity of the village of Hatfield Peverel. The William B existed before Hatfield Place and is in very close proximity to it. Hatfield Place was not a 'country house' within the usual meaning of the word;

v) In any event, in respect of the 80 dwelling scheme, built development will come no closer to Hatfield Place than it already is. There will be no reduction of separation if that is important; and

vi) Development will not encroach on the pleasure grounds of Hatfield Place.

192. Fundamental to the understanding of the significance of Hatfield Place is that this is a residence the occupants of which have always valued privacy. Far from exploiting a relationship with the land to achieve views over it, the occupiers of Hatfield Place have always valued privacy from and visual disunity with that land - even when it was within their control.

193. That stands in stark contrast to the immediate pleasure grounds and the land to the south and west of the House. It is only in those directions that longer distance views are available and indeed encouraged through intentionally sparse planting. Accordingly, the land that contributes most to significance is that within the immediate Pleasure Grounds, allowing the open views south towards the Danbury Ridge. Glimpsed, screened views towards and from Hatfield Place to the site clearly make a limited contribution towards significance.

194. The contention is supported by GPA3 'The Setting of Heritage Assets' (CD27.3C) which addresses views and settings at page 3. It lists at paragraph 3 the sorts of views that could be considered to contribute more to an understanding of significance of assets. The glimpsed and incidental views through the trees to the appeal site from Hatfield Place are not those sorts of views.

195. There will be glimpsed views of the 140 dwelling scheme and not significant inter-visibility as suggested by HPPC (paragraph 175 ID48). However, seeing development does not equate to harm. There will be even less of an impact in summer when Hatfield Place's only boundary is in full leaf and, in time, so too would be the site boundary. There will also be views from the House itself but Mr Handcock, who has been and looked out of the windows, explained that the angle is such that it is necessary to look obliquely to see it. The House was not built to overlook the proposed development land in question and the views are plainly not significant.

196. It is peculiar that Historic England in its response considers that "the presence of vegetation should not be a determining factor in terms of impact." It may not be determinative, but it is certainly important. First, the boundary planting to Hatfield Place is historic and has always been in situ, as Mr Handcock explains, to filter views to the east and promote the privacy of the immediate pleasure grounds. Secondly, Historic England's own guidance, expressly provides for the assessment of tree cover and vegetation when considering both how and to what degree settings make a contribution to the significance of the heritage asset and in assessing the effect of the proposed development (pages 9-11 CD27.3 set C). Importantly, paragraph 29 of the guidance also confirms that screening may also be relevant to mitigation.

197. Historic England appears therefore to have had little regard to its own guidance in formulating the response. No one is proposing that the boundary treatment at Hatfield Place should change and, indeed, significant additional planting is proposed that will provide screening to the new housing from Hatfield Place.

198. However, visual connection is not the only way in which the site may contribute to significance and Mr Handcock has assessed the spatial and

experiential contribution of the site to the significance of the building (paragraph 5.50, 3/POE). He has not simply focused on the narrow approach of intervisibility which was the complaint in *Steer v SSCLG* [2017] EWHC 1456 (Admin), alighted upon by SPMRG (paragraph 54 ID49).

199. There was a great deal of cross examination by both HPPC and SPMRG about the potential for there to be some communal value associated with Hatfield Place that would be harmed by the proposals. Mr Handcock explained that he had considered communal value but concluded that it did not make a significant material contribution to the significance of Hatfield Place. It has not really been articulated what the communal value, if it exists, actually is. Communal value derives from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory (paragraph 54, CD27.1 set C). Mr Handcock explained the sorts of assets Historic England has in mind when looking at communal significance as a potentially important consideration with regards to significance; Brixton Market is an example, which is listed because of its historic and cultural importance to the Caribbean Community as a whole

200. In this instance, Mr Handcock confirmed that he does not assess Hatfield Place as having communal value albeit he recognised the association between the building and County-level figures; that would remain unchanged by the development. On behalf of SPMRG Mrs Freeman made the case that the footpath has communal value. The footpath however is not a heritage asset and neither is it proposed to change the route of the footpath. To the extent that residents of Hatfield Peverel are able to meet on the footpath (both inside and outside of the area for built development) and discuss the history of the village, that opportunity will still remain post development. Further new houses would not obscure any views to Hatfield Place that are presently available from the footpath.

201. Hatfield Place is not visible from the footpath as it runs through the east of the site as will have been seen on the site visit. The experience that is important to Mrs Freeman, articulated in SPMRG's Closing Submissions (paragraph45 ID49), will remain; Hatfield Place does not emerge from behind the trees on the footpath until the walker has left the area of built development on either proposed scheme. That experience will therefore remain the same.

202. Insofar as it is alleged that Mr Handcock should have consulted with local residents about the scheme:

i) Mr Handcock did not assess that the building had or could have any communal value that would be adversely impacted by the scheme and thus it was not necessary to consult further with local residents;

ii) Such an exercise would be impractical and disproportionate in respect of every heritage asset assessed and would not be done unless there was a good reason to do it; and

iii) Mr Handcock has seen the various objections to the proposals and has read the heritage evidence of SPMRG. He confirmed that it does not change his conclusions as to the effects of the scheme on communal value, or at all.

203. It was put to him in cross examination that the new development would harm the tranquility of Hatfield Place but he confirmed that there is not a great deal of tranquility at Hatfield Place generally as a result of the A12. Tranquility is not

fundamental to the significance of Hatfield Place and neither would the existing situation be fundamentally changed by the development.

204. SPMRG regard it as highly important that the land has remained undeveloped (paragraph 50 ID49). It is said that whether that was deliberate or fortuitous "is not relevant". It plainly is relevant. If it had been the intention of the owners to keep the land open for some special reason, or to create a designed view, then that may contribute to the understanding of the asset and its historic relationship with the land in question. That is not the case here.

205. Mr Handcock explains the chronology of the relationship between Hatfield Place and the site from paragraph 5.27 (3/POE) and detailed in his appendices at A2 (4/POE).

206. The earliest maps of 1777 and 1805 shows that the site "Ponds", as it was known, was at that time part of a scattered rural settlement rather than being in rural isolation. Mr Handcock explained in cross examination that where the decision was taken by the cartographer to show curtilage on the maps - and that was not a decision taken lightly - it would indicate a physical and visual boundary between the site and Hatfield Place as early as 1777.

207. The idea that large grounds should surround the house, as with other landholdings such as Boreham House nearby, was never part of the conception of Hatfield Place. Rather it has always had distinct boundaries drawn tightly to the north and east which have been strengthened over time to retain privacy and shut out wider views north and east;

208. In 1841, the tithe Map excerpt A2.3 shows the pattern of screening along the eastern boundary of Hatfield Place that has remained to this day;

209. At that time, part of the application site for the 140 dwelling scheme was within the ownership of William Walford in common with Hatfield Place, but all of the land to be developed for housing as part of the 80 dwelling scheme was in the ownership of Peter Wright. There was therefore a limited relationship between the site and Hatfield Place;

210. By 1917 (A2.5) the house was marketed for sale by the Tyrell family and had grown to encompass a lot of 40 acres. This covered the whole of the site and the open land to its south. Crucially however, this land was offered as a plot either together with the House and Pleasure Grounds or separately. This land was in an agricultural use and mostly lay fallow at the time of the sale.

211. Mrs Freeman sought to suggest that the conditions of sale (F21.e) demonstrate a desire of the owner of Hatfield Place to retain control over the adjacent land. It does no such thing - it simply provides that custody of the documents for Lot 2 (including part of the proposals site) would remain with the purchaser of Hatfield Place (Lot 1) until requested by the purchaser of Lot 2. No element of control of the use of the land was to be retained at all. Mrs Freeman accepted that it could have been by way of restrictive covenant for example.

212. Thereafter, Mr Handcock explains that much of the landholding to the east and west of Hatfield Place was leased to Lord Rayleigh's Farms and held by that firm between 1932 and 1957.

213. The site was again offered for sale separately in 1956 (A2.6), demonstrating once more the willingness of the then owners to part with control of the land.

214. In terms of the historic relationship between Hatfield Place and the appeal site, it is correct that, at times, some of the land has been in one ownership but it has not been consistent and at various points the owners of Hatfield Place have attempted to sell land encompassing the proposals site separately from the house and have leased it to different landowners. A disjointed picture emerges that suggests a regular transference of land (both in terms of ownership and tenancy), much of it under the overall control of Peter Wright. The House and the proposals site are now in entirely separate ownership and the link, such as it was, has been completely severed.

215. SPMRG suggested in cross examination of Mr Handcock that the views back towards the House from the south were important to the significance of Hatfield Place. He fundamentally disagreed that the views back to the House share the same significance as the view looking out. The views back are incidental and not views over which the owners of Hatfield Place have any control. They are at some significant distance and the fundamental character of the view - Hatfield Place within an immediate tree setting - would continue to be appreciated with the new development. Mr Handcock confirmed that the ability to see more of the village in the view would not erode the sense of separation between the House and village and would not harm the sense of Hatfield Place as a separate entity in its own pleasure grounds.

William B

216. Historic England's consultation response concludes that although there is no particular historic connection between the William B and the appeal site, the proposals would "erode even further the rural setting of the William Boosey to the east, with views becoming more urban in nature rather than rural. The existing setting of the William Boosey PH will therefore be harmed."

217. However:

i) The assessment is not about whether the setting will be harmed, but how change in the setting affects the significance of the asset. It is surprising that Historic England conflates the two concepts, despite its own clear guidance as to how the assessment should be carried out;

ii) Historic England say nothing about what the site contributes to the significance of the William B or why a change in the setting will adversely effect the significance of the asset and the ability to appreciate the William B.

218. In views from behind the William B in the direction of the appeal site, there is already a presence of modern built development (CD27.5 set C, viewpoint 1). The wider rural landscape to the south of Hatfield Peverel towards the Ter Valley which is beyond the tree line is neither obvious nor important. The views are enclosed by existing housing development and new homes will have an extremely limited impact on the view.

219. Further, the William B's significance relates primarily to its fabric, its aesthetic qualities and its lengthy use as a coaching inn. The building's setting relates almost entirely to The Street as the thoroughfare towards which it is oriented and which has always been the source of its income. Neither area for development

have been identified as having any historic or functional relationship with this asset and makes no material contribution towards its significance as a village-edge coaching inn, partially of a fifteenth century date. It is therefore concluded that the scheme, largely screened and viewed within the context of existing housing, would not generate an impact on the asset's significance.

Level of Harm

220. None of Historic England, SPMRG or HPPC identify in evidence where the level of harm lies on the less than substantial harm scale. SPMRG has done that within its closing submissions (paragraphs 64 and 65 ID49), but on the basis (it can only be assumed) of Miss Scott's own assessment. That is beyond the remit of counsel and does not remedy the absence of a full and proper assessment of the impact of the schemes on heritage assets.

221. The level of harm is important because the category of 'less than substantial harm' covers all levels of harm from negligible to something just below substantial harm. The calibration is important when it comes to weighing the public benefits pursuant to Framework paragraph 134. That is not an exercise that has properly been carried out by anyone other than the Council, who on the advice of Essex County Council (CD27.4 set C) place the harm at the lower end of the spectrum, and Mr Lee, who provides a 'precautionary balance' on the basis of the Council's identified harm having regard to the statutory duty to have special regard to the desirability of preserving the setting of heritage assets. Both exercises demonstrate that the public benefits of the scheme outweigh the limited harm. The same conclusion was arrived at in both the Coggeshall (CD32.2 set C) and Silver End (CD32.7 set C) appeals in this District.

222. It is acknowledged that Historic England is the statutory consultee and that as confirmed in *Steer,* cited by both HPPC and SPMRG, decision takers are entitled to give great weight to Historic England's view. However, as always, weight is a matter for the decision taker and the decision taker is also entitled to disagree providing that cogent and compelling reasons for doing so are provided. It is submitted that there are good reasons for departing from the view of Historic England in this instance:

i) Historic England has not carried out a detailed assessment. That is not a criticism of it but it does go to the weight that can be given to their assessment as opposed to Mr Handcock who has carried out a detailed heritage impact assessment and presented as a credible and knowledgeable witness at the Inquiry;

ii) The views of Historic England have not been subject to cross examination. They did not appear at the Inquiry. Again, no criticism is made but the evidence they produce in contrast to Mr Handcock's is untested. It is obvious from the preceding analysis that some of the views expressed in the consultation response do not withstand scrutiny and/or require further exploration;

iii) Historic England has not identified why and to what extent it disagrees with the assessment provided by GDL. Mr Handcock is rightly disgruntled that having provided a thorough assessment and addendum Historic England appears to have had little regard to the substance of his assessment, concentrating apparently upon a visual analysis of the impact of the scheme. It is too simplistic an approach

that fails to grapple with the concept of heritage significance. It is the narrow focus that was rejected by Mrs Justice Lang at paragraph 61 in the *Steer* case.

223. GDL agrees that if harm were to be found in respect of either listed building, then s66 would be engaged and great weight would need to be given to the conservation of the asset. GDL does not disagree with the High Court decision (*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22) cited in HPPC's Closing Submission (paragraph 179 ID48). It is important however to have regard in this instance - where the harm is less than substantial -to the recent Court of Appeal case of *Palmer v Herefordshire CC*, [2016] EWCA Civ 106 (CD31.4 set C) in which the Court indicated that when according 'great weight' to such harm (as per the wording of Framework paragraph 132) the degree of harm remains highly relevant.

224. The court agreed in that case that "the duty to accord 'considerable weight' to the desirability of avoiding harm does not means that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight." (paragraph 34).

Whether the development site is best and most versatile agricultural land and the policy implications if it is

225. Following the conclusions of the previous Inspector (Parker) in respect of the proposal (CD32.6 set C), GDL commissioned an independent consultant to undertake an invasive survey of the site. This report was circulated to all parties to the Inquiry and Mr Lee included it in his evidence (1/APP, Appendix 1). The report concludes that the site consists purely of subgrade 3b agricultural land. As such the site is not formed of best and most versatile agricultural land. It is clear that the proposals comply with policy CS8 in respect of protecting best and most versatile agricultural land.

226. SPMRG do not return to the issue in its Closing Submissions which is unsurprising given Mr Dale's concessions in cross examination. HPPC now however decide to allege a policy conflict, despite neither of its witnesses taking the point. Having raised the issue in oral evidence, Mrs Jarvis was cross-examined on the basis that the appeal site is not best and most versatile agricultural land to which she agreed. She also agreed that the site was "poorer quality land" for the purpose of Framework paragraph 112. Framework paragraphs 110 and 111 do not treat the loss of non- best and most versatile agricultural land as harmful unless the loss is 'necessary' as asserted by HPPC in closing (paragraph 159 ID48). The submission is just wrong.

Effect on Biodiversity

227. Overall, the schemes would have a significant net benefit for biodiversity. Significant enhancements are proposed and through sensitive design, the site is capable of assimilating new development successfully while maintaining and enhancing the ecological status of the site and connectivity to the wider landscape.

228. It is acknowledged that there is potential for the survey area (land encompassing both schemes and associated green space) to support breeding and foraging farmland bird species. However given the small size of the area,

the restricted range of habitats present and the changeable arable management regime, it is considered that the survey area is only likely to support these species in low numbers and on an intermittent basis.

229. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark. Moreover, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnock, starling and house sparrow.

230. Once established, green infrastructure proposals such as tree planting, grassland within public open space and the attenuation pond will increase the diversity of available habitats that are present on-site. Favourable management of these habitats over the long-term will ensure that the site continues to provide benefits for a wide range of species that are known to occur in the local area.

231. Mr East spoke on behalf of SPMRG against the scheme and concluded that the scheme would be harmful to ecological interests on site. He relies on surveys undertaken by others and confirms that he is not an ecologist. No formal ecology or bird surveys in accordance with published guidance or criteria have been undertaken by SPMRG to contradict the assessments submitted on behalf of GDL (CDs 1.9 set A, 1.24 set A, 1.9 set B, 3.23 set B and 26.2 set C).

232. The following are further submissions in relation to the evidence of Mr East and ecology matters generally.

233. Mr East accepted that achieving net gains in biodiversity where possible is supported by the Framework and is to be regarded as a good thing, but he has not taken any of the benefits into account when commenting on the scheme. Mr East confirmed that he does not see how it is possible to conclude a net benefit in biodiversity terms when changing an agricultural field into built development. That narrow and frankly wrong view has coloured his opinion and is not borne out in the evidence.

234. Mr East accepted that the County Council's Principal Ecologist is content with the scheme and the mitigation measures offered (ID16). The email confirms that should permission be granted, there can be confidence that the section 40 biodiversity duty under the Natural Environment and Rural Communities (NERC) Act 2006 has been met.

235. Mr East confirmed that he commissioned a Bird Survey Report from Mr Hawkins (F7b). However, the Report does not accord with any formal bird survey criteria, was taken over just one day, does not conform to any set or described methodology, recorded birds both off and on site without describing the context of the site at all and recommended that a Breeding Bird Survey be done. Multiple surveys are necessary however given that one survey may either not pick up all the birds present on site or give the impression of a better bird assemblage than there really is.

236. A Breeding Bird Survey has now been done (CD26.1 set C) and in all cases but two, found that the impact would be locally beneficial in the mid to long term. In the case of Linnet and Skylark the impacts are judged to be locally adverse and negligible respectively. However, neither of those species is considered to be

nesting on site and, as Dr Mansfield explained, the site provides only an inconsistent resource with low habitat suitability.

237. Overall, the proposed development is expected to have long-term beneficial residual impacts upon all four of the 'most vulnerable' notable species recorded within the proposals site, i.e. song thrush, dunnock, starling and house sparrow.

238. Mr East also provided lists of evidence from Mr Thurgood (RG1, Appendix 1) and Highways England (F18e). In respect of the first, it is self confessedly a list produced for pleasure and amusement and not for scientific survey. It takes in an area much wider that the site. It was also taken over a period of 15/16 years and provides little information on the context of the area or what the birds were doing on site.

239. The Highways England email urges caution in the use of the information provided and plainly provides a list of many species that could not possibly be seen on site. Mr East has transposed his view of the area covered onto a plan (RG1, Appendix 2) but has not sought to verify this with Highways England. There is no evidence that any of the surveys were taken on site and again crucial information is lacking which means that no conclusions at all can be drawn from that study in relation to the proposals site.

240. Mr East agreed that he would urge the Inspector to exercise caution when reviewing the surveys, given their limitations.

241. Mr East also raises a question about the use of a butane cannon interfering with the surveys. Dr Mansfield confirmed that if cannons were used during the hours that ornithologists were on site to carry out the survey, it would be recorded as a limitation. None were firing when any of the surveys were taken. One was recorded on the 3rd May 2017 which was when (as Dr Mansfield explained) a general habitats survey was being taken to validate the result of the earlier survey.

242. Dr Mansfield explained in evidence that while long lists of species are interesting, they do not provide context. The context of any site and the type and quality of habitats it provides to a range of species is fundamental in understanding the impact of the proposals. Dr Mansfield confirmed that there was nothing in the evidence submitted by SPMRG that would change her conclusions on the type and number of species present on site and impacts of the scheme on them.

243. It can safely be concluded that the proposals do not lead to unacceptable effects on biodiversity. There will in fact be net gains for both flora and fauna as a result of the green infrastructure proposals through the creation of new habitats for a diverse range of species.

244. It is said that the provision of additional planting on the blue land cannot of itself amount to a benefit because it is provided as mitigation. However, the simple fact here is that the provision of significant new planting and the provision of habitats is a significant improvement in biodiversity terms over the baseline as it presently exists. They are benefits that flow from these particular schemes and are benefits that would not be realised without the development of the proposals site for housing. The proposals comply with policies RLP80, RLP84 and CS8.

The effect of the development on the community and social infrastructure of Hatfield Peverel, Air Quality and Highways

245. There is no evidence that Hatfield Peverel is anything other than a sustainable location for new housing growth. There are a range of services, facilities, clubs and activities that could accommodate new residents and to which new population within the village would contribute.

246. Mr Renow seeks to suggest that the village lacks the services and facilities to accommodate new development (paragraph 10 HPPC1). However, he includes at Appendix MR5 a list of clubs, organisations and businesses that exist within the village -they demonstrate the wealth of services and facilities that are available - with Mr Renow confirming that some clubs are so popular, they have had to find other venues outside of the village. Hatfield Peverel is a thriving settlement.

247. What Appendix MR5 confirms is that there are a range of social opportunities for new residents as well as a number of services and facilities that will cater for day to day living. Those include convenience stores that would provide for top up shopping, as well as hairdressers, beauticians, garages, a library, dry cleaner, florists and a number of restaurants, to name just a few. There is also the school and the surgery. Mr Renow accepted that all of those business give rise to employment opportunities for people working in the village.

248. Mr Renow's point was that, over time, employment opportunities in the village have reduced. However, despite that, there are no allocations within the emerging NDP for an employment site and the one allocation for housing (the Arla site) does not require a mix of uses to come forward. Mr Renow accepted there were good links for commuters from the village to travel to work either by train or bus and thus residents of Hatfield Peverel can access employment centres in a sustainable way without having to rely on the private car.

249. He also accepted the train service begins around 5am in the morning, with trains to London and runs until after midnight. He accepted that the train station is within walking distance of the site and that other nearby towns and job opportunities can be accessed by sustainable transport modes. Mr Renow accepted that people would not have to commute by car if they were leaving the village to find work.

250. Where there are identified capacity constraints, such as with the medical practice, all the schemes before the Inquiry are providing a contribution to mitigate its impact.

251. In respect of education, Essex County Council - as the Education Authority - has decided not to seek a contribution towards primary education. That is a matter for the Authority having regard to its own infrastructure planning and the constraints imposed by law. If a contribution had been requested it would be paid but it is not for GDL to make contributions that are:

i) not asked for; and

ii) which might put the Education Authority in difficulty in terms of pooling contributions in future.

252. Moreover, without a specific request to be spent on a particular school or schools a contribution could only ever be generally to "education" to avoid pooling constraints and contributing to schools that would not be able to use the

money. Such a contribution is unlikely to meet the statutory or policy tests because there is no way of showing that such a contribution would be directly related to the particular scheme for determination.

253. A SOCG has been agreed with the Education Authority confirming the position (ID1.8). There can be no doubt that there will be sufficient school spaces for children living in the new houses in line with the County Council's statutory duty to secure sufficiency and diversity of provision for its area.

254. First, Essex County Council has a statutory duty to secure sufficient school places for the children in the area. How it does that is entirely within its control and remit. There is no evidence that its position in respect of the schemes at this Inquiry would result in an additional burden on the tax payer as asserted by HPPC (paragraph 127 ID48).

255. Second, Essex County Council must be content that it can meet the duty without contributions from these proposals. If it would not, it would object to the schemes on the basis that the impact, which was not mitigated, was unacceptable. The Council may then have decided to identify an insurmountable policy conflict; it has not.

256. Third, Essex County Council accepts there is not presently capacity within the school at Hatfield Peverel to accept children from all of the proposed developments but also makes the point that 35% of children presently attending a Braintree Group 10 school live in the priority admission for other areas. Those are children that are having to travel to Hatfield Peverel (by whatever means) on a daily basis. That is their parents' choice and they are shouldering exactly the burden that HPPC complains about (paragraph 128 ID48). Eventually, the children from Hatfield Peverel who have priority because of proximity to the school and who want to attend there will displace those children back to their own priority areas.

257. Fundamentally, where children go to school is a far more nuanced question than proximity. It will depend on factors such as parental choice and convenience, how good the local school is and a whole host of other reasons that no formula could account for.

258. Mr Renow accepted that there were safe walking routes to and from the proposed developments and the school at Hatfield Peverel. In respect of the schools at Witham it is possible for them to be accessed by bus. There is a footpath to Witham but it is acknowledged that is along the dual carriageway and that most parents would regard it as undesirable.

259. There is complaint that the Surgery in the village is also under pressure and would have difficulty accepting new patients. A letter has been referred to from Beverly Jones, Practice Manager, voicing concerns that the money provided by way of s106 may not benefit the two surgeries (F29b).

260. However, that is precisely the way the obligations in these matters are drafted. They mirror the request by the NHS for money to be paid to Sidney House Surgery to provide increased capacity. If it cannot be extended the money can be used in other ways - for example, to refurbish, or to reconfigure the surgery. It is not necessary to extend a building to improve capacity and enhance the way

it is used. The specificity of the contribution addresses directly the concerns of the Practice Manager that the money might be spent elsewhere.

261. There can be no allegation that GDL is not providing all that has been asked for by the statutory consultee. Both SPMRG and HPPC submit that the money cannot usefully be applied to Sidney House. However, the NHS is clearly best placed to determine the capacity of its own resources and must be confident that the money is both required and can be usefully applied at Sidney House.

262. Further evidence was given that the surgery had applied to close the list to new patients. That request was refused and thus the deciding body must be of the view that the Practice is not operating at capacity. Further, if the list is closed, people will have to go elsewhere. It is difficult to see how that gives rise to harm - it is not a facility that most would need to access on a daily basis and public transport links to nearby settlements are so good that people could access doctors by sustainable transport modes, or as part of linked journeys.

263. Further contributions are provided in respect of:

i) outdoor sport
ii) allotments
iii) affordable housing
iv) education - early years
v) ecology
vi) upgrading of bus stops on The Street (£40,000)
vii) Blackwater Estuary Mitigation Contribution (£15,000)

Transport, Air Quality and Protected Lanes

264. The Closing Submission for HPPC and SPMRG appear to abandon the points made by those parties in relation to transport, air quality and protected lanes and no harm is said. A summary of the position is set out below for clarity.

265. The transport assessment submitted with the 140 dwelling application (pages 35-37, CD1.7 set B) demonstrates that the proposals are at worst likely to generate 78 additional vehicle movements in the AM peak and that of these, 52 of the outbound vehicles would be expected to turn left out of Stone Path Drive onto Church Road northbound based on current traffic distribution behaviour.

266. This would leave a maximum of 4 vehicles in the AM peak hour which would be expected to turn right onto Church Road southbound. Even if all of these vehicles were to turn right onto Crabbs Hill towards the protected lane at Sportman's Lane, this would work out as one additional vehicle every 12 minutes. The trip generation would be even less in respect of the 80 dwelling scheme.

267. It also means that 26 vehicles - or less than 1 every two minutes - will turn right on Church Road towards the B1019 Maldon Road/The Street junction. The impact of the development proposals on that junction was not raised as an issue by the Council or the Highway Authority but the cumulative assessment by Martin Doughty demonstrates that the impacts of the proposals before this Inquiry would be acceptable either individually or cumulatively.

268. The Air Quality assessment submitted with the larger Scheme (CD1.13 set B) found that the development would not lead to an unacceptable risk from air

pollution. The same is true in combination with the Gleneagles Way scheme, with the cumulative air quality impact on local air quality being considered to be "negligible" (ID1.4).

269. George Boyd Ratcliff on behalf of SPMRG appends a number of Reports to his proof (RG8) that are said to go to the issue of transport impact and Air Quality. Mr Boyd Ratcliff was not called to give evidence as matters were considered to be dealt with already but the documents he appends to his proof are worth a mention. Appendices H1 and H2 demonstrate that both the Council and Essex County Council - both of which have commented on the transport implications of the proposals - are fully aware of the nature of traffic leaving Maldon and entering into the B1019/The Street junction at Hatfield Peverel. The information is not new (it dates back to 2014) and was within the knowledge of both the Council and Essex County Council when determining the proposals before this Inquiry to be acceptable.

270. No transport assessment has been submitted by either HPPC or SPMRG to demonstrate that the impacts of the schemes in highways terms would be unacceptable and it is not alleged that the impacts of either or either scheme in combination with the DWH proposal would be severe within the meaning of Framework paragraph 32.

271. The Air Quality Annual Status Report (August 2016) (Appendix 3) is now of some age and is superseded by the site specific assessments provided to the Inquiry. Nonetheless, the Report needs to be treated with some caution given that the relevant data for Hatfield Peverel (page 26) which shows a NO2 concentration level of 46 µg/m3 is not the NO2 level at the receptor, which is the relevant level, and is 30.9 µg/m3. The Report therefore concludes that the monitoring is not identifying any exceedances of the air quality objectives (page 10).

272. No Air Quality Report has been submitted by SPMRG to demonstrate that the impacts of the schemes, either individually or together, would be unacceptable.

273. For the reasons set out above there is no conflict with policy CS11.

The quashed decision

274. Neither SPMRG nor HPPC address how the Inspector and the Secretary of State are to treat the quashed appeal decision (CD32.6 set C) despite seeking to rely on it in respect of those parts which suit their case. These submissions seek to provide assistance in that respect.

275. The quashed decision has been addressed in the evidence of the parties to the Inquiry but GDL do not seek to rely on the conclusions of Inspector Parker. The appeal is to be determined afresh and neither the Inspector nor the Secretary of State is bound by the judgements expressed in that decision. That is so whether or not circumstances have materially changed. The decision was quashed in its entirety and the relevant case law cited in GDL's response to the Inspector's first note (INSP1) and provided at the opening of Inquiry (ID1.1 & 1.2) confirms:

i) the previous appeal decision cannot be determinative or even indicative of how the planning judgements in respect of the schemes before this Inquiry should be reached. The decision was quashed in its entirety and is of no legal effect;

ii) the Inspector and Secretary of State are bound to consider the appeal afresh and are entitled to reach different judgements and conclusions on the evidence than those reached by the first Inspector.

276. There is case law that suggests it may be desirable to explain as part of the reasons for a second decision how the judgements differ (if at all) to the first decision taker's findings, but there is no potential difficulty with inconsistency if different judgements are arrived at as made clear in the case of *Arun District Council v Secretary of State for Communities and Local Government* [2013] EWHC 190 (Admin) because the previous decision has been quashed and is of no legal effect(paragraph 20 ID1.1).

277. It is not right to suggest that certain judgements that were not challenged or conceded as part of the process which led to the quashing (see paragraphs 13 and 14 above) remain intact. That very issue was also addressed in *Arun* at paragraph 19.

> *In my judgment, the statutory framework is that the role of the new Inspector is one of redetermination, not one of review. The second Inspector was correct in the statement of her role at paragraph 4 of her decision letter, which I have read above. I respectfully consider further that it would lead to potential confusion and complexity for Inspectors on remitted appeals if as a preliminary step they have to consider which part or parts of a quashed decision might or might not be capable of being revived as a material consideration in its own right. As a minor, but perhaps relevant, consideration any different approach might, as Mrs Townsend submits for the interested party, at least in some cases inhibit sensible settlement of a challenge, since a party might rather see a claim through for decision on appeal under section 288 if case findings which it had challenged in that very claim [as the Interested Party had sought to do here]) were to be taken as having survived the quashing.*

278. It is not therefore permissible to argue that certain parts of the decision that were not challenged (for whatever reason), should still attract weight in the determination of these proposals.

Planning policies and approach to the planning balance

279. It is trite to say that the determination of these applications begins with s38(6) of the 2004 Act. That is the statutory starting point and whatever impacts the Framework may have, it is never more than a material consideration. It is however an important material consideration against which the relevant development plan policies will have to be assessed.

280. Equally important, because it is the second part of the statutory test, is to consider all the material considerations that relate to the scheme - the benefits and disbenefits - and to consider whether any policy conflict is outweighed. In this instance, it is acknowledged that there is a conflict with RLP policy RLP 2 and CS5, because this site is outside of the settlement boundary. It is not a proposed allocation and does not meet with the exceptions set out in those policies. However, the conflict can be given little weight for the reasons explained below.

281. Where a local planning authority cannot demonstrate a 5YHLS Framework paragraph 49 operates to render relevant policies for the supply of housing out of date. However, the Supreme Court in *Suffolk Coastal* has recognised that it is

Framework paragraph 14 and not Framework paragraph 49 that provides the context for decision taking and if there is not a 5YHLS it matters not whether the failure is as a result of "policies for the supply of housing" or other policies (paragraph 59 CD31.2 set C).

282. If there is not a 5YHLS then the categorisation of the policy is "inappropriate and unnecessary" (paragraph 65); Framework paragraph 14 applies in any event. Thus, the Court accepted the Inspector (in the *Richborough* case) had been entitled, as a matter of planning judgement, to reduce the weight given to the development plan's restrictive policies protecting the open countryside and the green gap to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements;" (paragraph 63).

283. Even where Councils can demonstrate a 5YHLS it does not mean the policies are automatically up-to-date or that proposals that are otherwise acceptable should be refused. Development plan policies will have to be assessed for consistency against the Framework as part of the Framework paragraph 215 exercise. The *Daventry* case cited by the Council in closing makes clear that the policies should be assessed against the totality of the Framework to ascertain consistency. Relevant policies may also be out of date for other reasons; because the plan is time expired or because there have been changes in local circumstances or significant changes in planning policy or guidance; (*Daventry*, paragraph 40 and *Suffolk Coastal*, paragraph 55).

284. The following are all relevant when considering the weight to be given to extant development plan policies in this matter:

i) The policies here were conceived in a policy environment that sought to protect the countryside for its own sake. The position of the Framework is to "recognise" the intrinsic beauty of the countryside, and to protect valued landscapes (Framework paragraph 109). The level of protection is to be commensurate to the particular interest (Framework paragraph113). The point is taken up by Lang J in the High Court decision *Telford and Wrekin v SSCLG* (paragraph 47, CD31.3 set C):

> *In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational.*

ii) The present national policy context is radically different and promotes a boost in housing land supply. The previous CS target was 273 dwellings per annum. The up to date OAHN is 716 dpa. That is a significant increase that cannot be accommodated within the policy constraints of the existing development plan;

iii) The Council agrees the development plan is not founded on an up-to-date and robust housing requirement as required by Framework paragraph 47. It is proposing a new requirement advanced through the emerging BNLP. The figure is significantly higher than the previous requirement. It will require a step change in housing delivery in order to meet it;

iv) To meet the housing need, the Council is proposing to allocate significant land beyond the settlement boundaries and granting permission on greenfield sites for development beyond the settlement boundaries. That, if nothing else, demonstrates that the boundaries have served their purpose and are out of date.

v) The policies are therefore inconsistent with the key Framework objective of 'providing the supply of housing required to meet the needs of present and future generations' (see *Daventry*)

285. Importantly, Framework paragraph 12 stresses the importance of having an up-to-date plan. It is regarded as "highly desirable". Framework paragraph 17 explains that plans should be kept up-to-date so that they "provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency."

Policy CS1

286. GDL does not accept the position advanced by HPPC that there is a conflict with this policy. GDL has seen the submissions of DWH on this matter (paragraphs 108 to 113 inclusive above) and adopts the arguments there set out.

Policy CS5

287. It is not GDL's case that policy CS5, or indeed the need to recognise the intrinsic beauty of the countryside can be forgotten about because CS5 is based on out of date boundaries and there is not a 5YHLS. The impact of the scheme on the landscape is an important consideration in this appeal, but CS5 requires all schemes in all open countryside to satisfy a threshold that the Framework requires only in relation to valued landscapes - to "protect and enhance". It is that threshold - a fundamental component of the policy - and what it is seeking to achieve that is inconsistent with the Framework and was exactly the point that was addressed in *Telford and Wrekin* (CD31.3 set C).

288. Mrs Jarvis alleged that the policy was consistent with the aims of the Framework paragraph 17(7) but also agreed in cross examination both that the relevant bullet point of Framework paragraph 17 does not set an absolute threshold for all development and that there is no general duty to enhance the countryside. It will be clear that the part of Framework paragraph 17 relied on provides a broad overarching principle which is to be implemented by more detailed policies within the Framework. It is relevant in that respect that Framework paragraph 6 does not include paragraph 17 within the definition of "sustainable development".

289. Moreover, that particular bullet point directly correlates to Framework Chapter 11 and paragraph 109 where what is required to be enhanced and protected are valued landscapes - not ordinary countryside.

290. Further, the observance of development boundaries is absolutely integral to the policy. If that part of the policy is removed as it must be given the out datedness of the boundary (the Council does not apply rigid boundaries – paragraph 59, CD32.2 set C), it no longer makes any sense. There is no criterion against which to measure the acceptability of development such as those before the Inquiry other than whether it is the right or wrong side of the boundary.

291. The weight to be given to CS5 is of course a matter of planning judgement for the decision-taker but regard should be had to the reasoning in *Telford and Wrekin*. HPPC on *Cawrey Ltd v SSCLG* [2016] EWHC 1198 in response (paragraph 51 ID48). However, the submission also omits a key part of the very paragraph it relies on that makes clear the important distinction in that case - that the Inspector had found the Council could demonstrate a 5YHLS. That finding had a direct bearing on the Judge's findings at paragraph 50 which are reproduced in full below:

> *Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission. If reliance is then placed on NPPF, one must remember always what Lindblom LJ has said in Suffolk Coastal about its status. <u>It is not suggested in this case that this is one where the NPPF paragraph [14] test applies, which given the Inspector's findings on the effect on the landscape, and the fact that HBBC is the Borough, and Ratby the settlement, where the policies considered in Bloor applied, is unsurprising. Nor is it suggested that he should have applied NPPF [49] given his findings on housing land. There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990. (*</u>emphasis added*)*

Policy RLP2

292. GDL agrees with the Council that policy RLP2 can attract only limited weight for the reasons set out in its submissions (paragraph 35 ID47). Both HPPC and SPMRG rely on the policy but do not engage with the weight to be given to it. It is clearly out of date and incapable of delivering housing to meet the needs of the population now.

Heritage policies

293. The policies in the development plan are out of date in respect of heritage. They do not provide for the weighing of benefits as against the harm - the approach adopted by the Framework - and thus set the threshold too high in respect of the development proposals. That applies in respect of both RLP 100

and CS9. It should be noted that while RLP 100 is referred to by SPMRG it is not relevant to this scheme. Read *prima facie*, the policy appears only to apply to development involving internal or external alterations, extensions and partial demolitions to a listed building or structure (including any structures defined as having equivalent status due to being situated within its curtilage) and changes of use. None of those are proposed. However, if it is does apply - the points below are relevant.

294. *Colman* is a case in which policies relating to heritage assets that failed to reflect the policy approach of the Framework were regarded as being inconsistent with the Framework and thus out of date. As is the case here, the policies (paragraphs 25 and 26 CD31.6 set C), required that the historic buildings and their settings be preserved. There was no balancing exercise against the public benefits provided for in the policies. The Judge's observations were as follows:

> *29.The NPPF also applies a threshold of "substantial harm" and provides different tests where the impact of a development is above or below that threshold. Harm or loss can be allowed where there is clear and convincing justification (paragraph 132). Substantial harm should be exceptional (paragraph 132) but can be allowed where it can be demonstrated either that it is "necessary to achieve substantial public benefits that outweigh that harm" or where certain criteria apply (paragraph 133). Where there is less than substantial harm, the "harm should be weighed against the public benefits of the proposal" (paragraph 134).*
>
> *31. It is clear from the foregoing that, unlike the highly restrictive relevant development plan policies, the NPPF takes a far more balanced approach, allowing an analysis of the significance or, where appropriate, of the substantiality of harm to the identified cultural interests, and a weighing of the identified harm against the actual benefits that could be expected to result from the benefits...?*

295. It is right, as Lindblom J (as he then was) said in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 that Kenneth Parker J's Judgment in *Colman* is not authority for the proposition that every development plan policy restricting development will be incompatible with the Framework, and thus out of date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. Plainly not all policies in the Framework themselves contain such a balance. But in the particular example of heritage policies, the Framework takes a specific approach and requires that the public benefits of the proposals are weighed against the harm which is a more permissive approach than the development plan in this instance. There is therefore an inconsistency and if the Framework is to operate in the way it intends, it would be frustrated by the strict application of heritage policies within a development plan that allows for no harm at all, as is the case here.

296. The approach of the Inspector in the Silver End Inquiry (paragraph 94, CD32.7 set C) in this District is commended to the Inspector and Secretary of State.

Policies RLP 80 and CS8

297. These two policies are broadly consistent with the Framework and for the following reasons the proposals comply with them.

298. Ecological Appraisals (CD1.9, set A&B) and Arboricultural Assessments (CD1.10, set A&B) have been undertaken to support the applications. They confirm that existing important boundary hedgerow features will be retained as part of the development, with the exception of small sections of hedgerows required for access which will need to be removed. Any loss will be more than mitigated for by additional planting and would not result in any significant harm in landscape terms.

299. Mr Holliday's evidence is clear that the development would successfully integrate into the local landscape. The design proposals allow for the retention of existing landscape features which includes boundary hedgerows with some trees. These features will be incorporated into Green Infrastructure enhancements to include additional infill hedge planting, tree planting and the creation of a water body within an area of grassland which will therefore enhance the overall Green Infrastructure and help to integrate the scheme into the local landscape. Planting will consist of native tree species with shrub species chosen to provide benefits to local wildlife in the form of berries and foraging habitat.

300. The additional land adjacent to the site will be offered as public open space to be managed in perpetuity in its current state which will protect the existing grassland and mature hedgerows currently within this area of land. The proposals are not therefore considered to be detrimental to the landscape features of the site and the proposed Green Infrastructure will effectively mitigate ecological effects. Details of exact planting types and species mixes will be addressed at reserved matters and the proposal does therefore comply with this policy.

301. Ecological mitigation against any impact upon protected species is detailed in the submitted Ecological Appraisal (CD1.9, set A&B) and subsequent Breeding Bird survey report (CD26.1, set C). Any such mitigation can be secured by condition/obligation.

The emerging development plans

302. The compliance of the schemes with the policies of the emerging BNLP and NDP is dealt with by Mr Lee (section 9, 1/POE). However, it is agreed between GDL and the Council that only limited weight can attach to the emerging plans at this stage due to the fact that both plans are at a relatively early stage in the process. In light of Framework paragraph 216 the position of Mrs Jarvis for HPPC that the BNLP should attract “fairly signficant weight” is entirely inexplicable and in conflict with the “moderate weight” in her proof (paragraph 2.29 HPPC2).

303. As set out at paragraph 128 above GDL adopts the submissions made by DWH with respect to the weight to be given to the NDP. Those submissions are not repeated here.

304. It is worth perhaps however, summarising two particular policies of the emerging NDP. The first is policy HO1 that requires development should come forward for no more than 30 houses. The policy itself conflicts with the Council's aims for the comprehensive redevelopment area which Mr Renow accepted is likely to require modification of the NDP.

305. Moreover:

i) There does not appear to be an evidence base to support the apparently arbitrary maximum figure of 30 dwellings proposed in this policy;

ii) Such a policy does not accord with the emerging BNLP which identifies Hatfield Peverel as a Key Service Village which has the ability to host a considerable amount of residential development; indeed, the emerging BNLP currently proposes that sites which will provide 285 dwellings are allocated; and

iii) The limit on the number of dwellings on a single development would not prevent, theoretically, a series of separate schemes for 30 dwellings being brought forward the cumulative impact of which would be identical to that of, for example, a single large development of 140 dwellings.

iv) There is fierce opposition to policy HPE6. The means by which the views were selected is questionable and the evidence base is controversial - it has been addressed in other parts of these submissions. The examiner will have to give very careful consideration to whether a policy which seeks protection of important views in almost every direction from and to the settlement meets the basic conditions.

Silence

306. It is GDL's case that the development plan is silent in relation to the location of sites necessary to meet the CS housing requirement following the abandonment of the Site Allocations DPD. GDL relies on *South Oxfordshire* (CD31.7 set C). However, it is not necessary for the plan to be "silent" to trigger Framework paragraph 14; it is simply another route there. Framework paragraph 14 is triggered here because there is not a 5YHLS and the plan is out of date in any event.

307. HPPC raise the case of *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (paragraph 29 ID48) but do not explain that paragraphs 97, 101 and 103 of the Judgment endorse the *South Oxfordshire* Judgment. The distinctions relied on at ID48 paragraph 32 and the comparison with Green Wedge policy at paragraph 33 is erroneous.

Framework Footnote 9

308. It is only in respect of heritage policies that Framework footnote 9 is potentially triggered. The Council's position is that there is some heritage harm, but when the considerable public benefits associated with the 140 dwelling scheme are weighed against that harm pursuant to Framework paragraph 134, the benefits clearly outweigh the harm. Thus the Framework paragraph 14 tilted balance is engaged in the final planning balance. The Council does not identify harm from the 80 dwelling scheme. Either way therefore, the schemes benefit from the tilted balance at Framework paragraph 14 in the overall planning balance. GDL agrees with the process set out by the Council (paragraph 41 ID47) if some harm to Hatfield Place is found to arise from the proposals.

309. If harm was identified :

i) A balancing exercise weighted in favour of the heritage asset should be undertaken. The harm to the asset(s) should be weighed against the

public benefits of the scheme, including the provision of market and affordable housing, the net gains in biodiversity and the economic benefits that would arise;

ii) If the harm to the asset(s) were outweighed then the tilted balance would be re-engaged and permission should be granted unless the totality of the harm significantly and demonstrably outweighed the totality of the benefits. The harm to heritage assets of course features in the overall planning balance, as do all of the benefits. There is therefore no double counting.

310. The approach is endorsed in *Forest of Dean* (paragraph 37, CD31.5 set C).

Restrictive Policies

311. Paragraph 37 of HPPC's Closing Submissions (ID48) is confusing. If it is suggested, as was argued at the Inquiry, that any policy with the potential to restrict development should be regarded as a restrictive policy for the purpose of footnote 9 of the Framework (i.e. policy CS5), the argument is rejected. No other party to the Inquiry supports it. It would mean that in almost all cases proposals were deprived of the benefit of the tilted balance at Framework paragraph 14, which cannot have been the intention.

312. The tilted balance is engaged in this case. Unless the heritage harm outweighs the public benefits of the scheme then, contrary to what Mr Graham suggests in that paragraph, if permission is to be refused, the Secretary of State will have to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The need for Housing

313. Whether the supply is one side of the 5YHLS threshold or the other is not an end to the matter; case law makes it clear that the extent of the deficit is a relevant material consideration in the determination of appeals/applications such as this. It provides the context both in which relevant development plan policies should be judged and how the harm should be viewed because the simple fact of the matter is this; for too long, we have not built enough houses; see Housing White Paper (CD29.11 set C). That is not just a statement of academic interest, but one of real consequence that this Government is at pains to grapple with.

314. It means that homes are becoming increasingly expensive and home ownership is unlikely to become a reality for many. It means that people are forced to live in shared accommodation or with their parents for longer than is desirable. It means that many in need of affordable housing do not have access to adequate housing and, in some cases, no housing at all. It is unsurprising that the Secretary of State, now the Secretary of State for Housing, Communities and Local Government, regards the issue as fundamentally important so that everyone involved in politics and the housing industry has a moral duty to tackle it head on.

315. It is the reason why Framework paragraph 14 tilts the balance in favour of permission and explains that some harm may have to be accepted in the pursuit of sustainable development and that permission should only be refused where the adverse impacts of the scheme significantly and demonstrably outweigh the

benefits when assessed against the policies in the Framework taken as a whole. The Government is not committed to making home ownership a reality for the sake of it - there are real and tangible social and economic benefits that flow from the provision of new housing.

Need for Affordable housing

316. There is an acute need for affordable housing in Braintree District. The Council's affordable housing delivery over the last 4 years (2013 - 2017) stands at just 398 affordable dwellings. The identified affordable housing need for the emerging Plan period (2013 - 33) is 212 dpa- so there is already an accumulated shortfall of 450 affordable dwellings. In this instance the vast majority, if not all, of the dwellings would be built out and occupied within five years (paragraph 8.2.24, 1/POE)

Delivery from this site

317. HPPC takes a point about delivery of the site given that GDL is a land promoter and not a developer (paragraphs 152 -156, ID48). With respect, it is a bad point. GDL is a commercial entity which, as Mr Lee explained in evidence, foots the bill for the application and the appeal and only recovers those costs when the land is sold to a developer. That is not just a powerful incentive to procure the sale of the site as quickly as possible post planning permission, but also demonstrates that GDL, with extensive experience of land promotion and sale up and down the country (having secured permission for over 15,000 homes) must have confidence that the site will be bought and developed. Logic dictates that GDL would not go to the expense of promoting a site it could not sell.

318. Contrary to HPPC's submissions at paragraph 153, the issue was not addressed for the first time in Mr Lee's oral evidence. Paragraphs 10.5.2-10.5.5 of Mr Lee's proof explains the position. Further, the suggestion that a housebuilder would then acquire the site (paragraph 156 ID48) and do nothing with it when there is a time-limited permission is incomprehensible and not supported by any evidence whatsoever. Housebuilders invest millions of pounds acquiring sites and would not play fast and loose with an extant planning permission for some speculative future gain.

Conditions, Unilateral Undertaking and Green Infrastructure plan

319. Conditions and the obligation were discussed at the Inquiry. Financial contributions and other obligations have been provided to satisfy the District and County Councils that the impacts of the development can be effectively mitigated. The changes proposed by the Rule 6 parties have been taken into account and changes made where the requests were appropriate. No wording was provided by either Rule 6 party to GDL after the close of the Inquiry sitting days but both GDL and the Council agree the obligations are CIL compliant and ensure that the proposals are not unacceptable in planning terms.

320. Unfortunately, the changes could not include any of those proposed by SPMRG in relation to the blue land. The Parish Council has indicated a willingness to take on the management of that land if permission if granted but it is not within the power of GDL to designate the area for its ecological value such as it presently is.

321. Green Infrastructure Plan (ID1.6a) was provided at the Inquiry to provide confidence that the scheme will come forward as anticipated to provide a high quality development.

Planning Balance

322. Hatfield Peverel is identified as being one of the more sustainable locations within the District in the adopted and emerging plan. It is a KSV which on page 31 the CS explains are "large villages with a good level of services, including primary schools, primary health care facilities, convenience shopping facilities, local employment, frequent public transport to higher order settlements and easy access by public transport to secondary schools".

323. The appeal proposals are in full accordance with the spatial strategy of the existing plan as well as the emerging BNLP which directs growth to Hatfield Peverel as a KSV situated on the A12/Great Eastern Mainline corridor (paragraph3.3, CD16.1 set C).

324. The appeal proposals constitute sustainable development and will contribute to enhancing the vitality of Hatfield Peverel and the surrounding area. The proposals will deliver new homes of the right type, at the right place and at the right time to support the Council's growth aspirations in line with their adopted and emerging spatial strategy. The development accords with these principles in the Framework.

325. The benefits of the scheme are vast and cover all three dimensions of sustainable development. In terms of economic benefits they include, but are not limited to, millions of pounds of spend on the construction of the site and household expenditure of new residents that would amount to millions of pounds annually.

326. The social dimension of sustainability would be fulfilled not just by the provision of market housing but also affordable housing for which the need is acute. It cannot sensibly be argued that the weight to be given to those benefits is anything other than significant. Further, there are benefits to the sustainability of the settlement and the new green infrastructure and play area will be available for use not just by residents of the new development but existing residents too.

327. The scheme provides environmental benefits through proposed green infrastructure and planting. There is potential for site-wide biodiversity gains through new hedgerow tree planting and the SUDS pond which will strengthen habitat linkages across the site and into the wider area.

328. When completed, the scheme will be an attractive built environment that can be successfully assimilated into its environmental and landscape context. It will be a place where people want to live.

329. SPMRG make a point that where mitigation is provided as part of the scheme that cannot amount to a benefit. That is conceptually and factually wrong; there is no reason why something cannot be both. Mr Lee gave the example of the bus stop real time information that will be provided as part of the scheme. Yes, it mitigates an impact related to the scheme, but it will not be used exclusively by residents of the proposals. Other residents of Hatfield Peverel will receive the benefit.

330. SPMRG argues that the benefits that could arise from the proposals could be achieved with housing development elsewhere. The argument is sometimes called the "generic benefits" argument and is misconceived. They are benefits that attach to this scheme and the scheme is not being promoted as an alternative to housing elsewhere. There is a national housing crisis and the benefits of new housing development are not being realised as they should be.

331. In respect of a similar complaint elsewhere Inspector Felgate in the Blean decision (CD32.1 set C) stated:

> *The Council acknowledges these as benefits, and does not challenge the figures, but sees them as modest in scale, and argues that they should carry limited weight. To my mind this seems a somewhat grudging response. The NPPF makes it clear that building a strong, responsive and competitive economy is a key element of sustainable development, and that housebuilding is to be seen as an important contributor to this aim. On this basis, I see no reason not to give significant weight to the economic benefits.*

Summary of benefits

i) Market housing

ii) The provision of 40% affordable housing (up to 32 dwellings)

iii) The proposals provide a considerable amount of open space (totalling 5.35ha), including areas of amenity open space, a locally equipped area of play, structural planting, and an extensive green infrastructure network (including perimeter footpaths) It is agreed that the scheme provides an opportunity for net gains in biodiversity.

iv) An investment in construction of circa £ 8.5 million.

v) Around 76 FTE construction jobs per annum on average throughout the construction period and an additional 83 FTE indirect jobs in associated industries. (CD1.20A)

vi) Up to 80 residential dwellings which could be home to 192 residents, 96 of which will be expected to be economically active.

vii) Annual household expenditure of £ 1.9m supporting up to 7 jobs.

viii) The implementation of the agreed scheme of off site highways works on Stone Path Drive (including signing and double yellow lines) will help to address an existing concern of local residents regarding the use of Stone Path Drive by commuters using the train station.

ix) Improvements to bus stops on The Street to include shelters and Real Time Information.

x) Enhancements to the PROW connecting the site with The Street

xi) Biodiversity enhancements in line with NPPF Chapter 11

332. It is accepted that there will be some harm arising from the development - that is almost inevitable when open countryside is built on - but that does not make the proposals unacceptable, particularly when the Council is relying on such sites to come forward to ensure its housing land supply meets the housing needs going forward. The harm is in respect of landscape and the acknowledged policy conflict with policies CS5, and RLP2 of the development plan.

Conclusion

333. In conclusion it is abundantly clear that there is only a very limited impact to be weighed against a number of very significant benefits. Chief among them, but certainly not exclusively, is the provision of market and affordable housing. There are however many and wide ranging benefits in all three dimensions of sustainability. The development and the people that live there will have the potential to contribute to Hatfield Peverel and enhance the village in a number of ways. They will become active members of the community and contribute to existing services and facilities and perhaps stimulate the provision of new ones. The site is entirely suitable to accommodate residential development, in principle and of this scale; there is no good reason upon which to resist the grant of planning permission on the site.

334. Accordingly, GDL invites the Inspector to recommend that the appeal be allowed and the Secretary of State to grant planning permission, subject to appropriate conditions and the terms of the s106 Obligations.

The Case for Hatfield Peverel Parish Council

335. The three schemes each conflict with the statutory development plan and so the starting-point is that they should be refused permission. In essence, the decisions on the three schemes will come down to whether the potential supply of housing should be given priority over the policy objectives of directing growth to other locations within development boundaries and at higher-order settlements in order to protect the environment (including the character of the settlement and historic assets), avoid excessive pressure on local facilities and infrastructure, and reduce the need to travel. This is a question of weight, which may depend on the extent to which any shortfall in 5 year housing land supply is identified, and on the Secretary of State's confidence that the proposed housing would be delivered on site within the 5 years.

5 year housing land supply: the four step approach

Step 1: quantify the deliverable sites

336. The Secretary of State will need to ask for the purpose of applying the Framework whether there is any shortfall in terms of 'supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements' (that is, the OAHN) and the extent of any shortfall (Framework paragraph 47, second bullet, emphasis added). This is a matter of planning judgment in terms of assessing whether a particular site is 'deliverable', and the capacity of a particular site to take a given quantity of housing, but it is otherwise a straightforward quantification exercise.

337. The policy test whether housing land is to be included in the 5YHLS is merely whether there is a 'realistic' - that is, non-fanciful - prospect of housing delivery (*St Modwen v SSCLG* [2017] EWCA Civ 1643 paragraphs 35-39, CD32.18 set C). A site does not have to be allocated in any plan, let alone be granted permission, in order to be included in the 5YHLS. Its delivery does not have to be a certainty, nor even more likely than not; the policy requires that it be 'realistic'.

338. Just because a site is outside development boundaries of the current plan does not mean it should be treated as having an unrealistic prospect of development where the planning authority has allocated it in an emerging plan and is currently

of the view that it is a suitable and available site, viable and achievable within 5 years for the purpose of footnote 11 of the Framework, so has included it in its 5YHLS trajectory. In the Council's closing submissions, they give the example of the Gimsons site, and assert that "[u]ntil such time as the draft allocation supersedes the present development plan status, it cannot be considered 'deliverable'."

339. This statement demonstrates that the Council has taken and continues to take a legally erroneous approach to counting sites within its 5YHLS for the purpose of Framework paragraph 47. What the Council has done is to treat sites not allocated in the current plan as *ipso facto* incapable of being considered suitable, and has not included a single one in its land supply monitoring figures for the next 5 years. It is elementary that the adopted development plan is the starting-point but it does not predetermine the outcome of any planning application where there are good reasons for determining it otherwise than in accordance with that plan. If it were, this Inquiry would have been unnecessary. The Council cannot rationally treat sites as suitable for housing for the purpose of its forward planning but at the same time automatically treat them as unsuitable when determining actual applications just because the emerging plan has not been adopted.

340. Of course there might be other circumstances where a site allocated in an emerging plan would only become realistic for delivery in the 5 years if the plan was adopted (such as a site requiring planned infrastructure and/or a new settlement to be in existence first, if that new infrastructure or settlement would not otherwise come forward in time). No such circumstances apply here; the new settlements proposed in the emerging local plan are not proposed to come forward in the first 5 years of the plan, and are not relied upon in the early part of the housing trajectory. This is the advice in the PPG which states “If there are no significant constraints (eg. infrastructure) to overcome such as infrastructure [sic] sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe.” (Paragraph: 031 Reference ID: 3-031-20140306).

341. On this analysis, it was wrong to exclude the sites that the Council is satisfied are soundly evidenced for inclusion in the trajectory showing the 'expected rate of housing delivery' for the purpose of promoting its local plan.

342. On that basis, the Secretary of State is entitled to rely on the sites counted in the housing trajectory appended to the Council's letter to the Rt Hon Priti Patel dated 29 November 2017 (ID42). On that basis, there is no, or no material, shortfall for the purpose of Framework paragraph 47. The trajectory table shows delivery in the first 5 years of the plan period as (501 + 577 + 1128 + 1443 + 1329), which is 4978 dwellings. Taking OAHN of 716, multiplying by 1.05 to allow for the 5% buffer gives 751.8 (say 752) dwellings per year), this gives 6.62 years’ supply. If the Liverpool approach to adding backlog is adopted ((716 + 107) x 1.05), the annual requirement would need to be 864 which gives 5.76 years’ supply (taking the OAHN figures from Alison Hutchinson’s proof, (BDC1, table 1 on p.11). If the Sedgefield approach is adopted ((716 + 332) x 1.05 using Ms Hutchinson’s figures) an annual requirement of 1,100 and 4.52yrs’ supply is the outcome. The text of the letter to Ms Patel quotes figures of 6.24yrs and 4.9 yrs respectively, but the workings for arriving at those are not indicated.

343. Furthermore, the housing land supply position is improving and may have improved further by the time the Secretary of State issues a decision. For example, Mrs Hutchinson's Proof, (BDC1 table 2, page 12) shows improvement from 3.91 to 3.97yrs on the Liverpool approach and 3.1 to 3.9 years on the Sedgefield approach between 31 March 2017 and 30 September 2017, adopting the Council's approach of excluding the emerging allocations.

344. It is appreciated that the prospect of delivery of housing on one or more of the sites before this Inquiry may also be relevant to the determination of these schemes, if - contrary to HPPC's submissions that these sites are not suitable - the Framework footnote 11 requirements were thought to be met and it were considered that housing on one or both was realistically likely to be delivered within 5 years (whether or not by virtue of these applications). Some addition to the supply might need to be made for that by the Secretary of State depending upon how each appeal or application is to be determined, when determining the others.

Step 2: take the OAHN

345. There was uncontested evidence at this Inquiry that the extent of OAHN is 716 dwellings annually.

Step 3: decision as to whether to add to the requirement to allow for past shortfall and over what period to expect this to be made up

346. At the Inquiry there was a debate about whether an addition should be made to the housing requirement to make up for previous shortfalls using either the Liverpool or the Sedgefield methods.

347. This exercise is essentially a policy judgment for the decision-maker which, importantly, is not prescribed by Framework paragraph 47. As Lindblom J noted in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (paragraph 108, ID61) upholding a decision to apply a Liverpool approach:

> *Neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF. In my view the inspector was free to come to his own judgment on this question.*

348. Framework paragraph 47 does not say to add previous years' shortfalls to the current OAHN to arrive at an annual requirement figure. This may be of significance when applying Framework paragraph 49 and determining whether the second bullet of the decision-taking limb of Framework paragraph 14 should apply.

349. The closest is the advice in the PPG section dealing with plan-making rather than decision-taking, which says, "Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate." This guidance is consistent with the plan-led system, and does not dictate whether to add to a current years' annual requirement when taking a particular decision to make up for previous shortfalls, nor dictate a method for doing so.

350. If an allowance to make up for past shortfalls is to be added, the Liverpool method is appropriate here because the emerging local plan contains a strategy

shared with partner Essex authorities to accommodate growth in new garden communities and large allocated sites, which can better respond to the requirements for new infrastructure, and will come forward later in the plan period. The evidence of the Council's professional planner Ms Hutchinson was that in her judgment the Liverpool approach was amply justified, but that the Council felt constrained not to advocate such an approach until the examination of its emerging local plan as it had lost other appeals.

351. However, HPPC considers this to be over-timid and inappropriate. The spatial strategy of the emerging BNLP would be undermined if development in less sustainable locations was permitted with the intention to meet a short-term need, to the detriment of what the Council properly consider to be the best long-term plan for the District. At this Inquiry there was no evidence led to contest the soundness of the Council's overall approach in its emerging BNLP. Indeed, Mr Lee sought to argue consistency with it, albeit on the selective basis that some growth was proposed for Hatfield Peverel whilst downplaying the fact that the Stone Path Drive site was located in the countryside for the purpose of the emerging plan (paragraph 13.3.6,1/POE). Although no party would contend that the emerging plan should be treated as if it were already the adopted development plan, the Secretary of State is fully entitled to give weight to it and to apply the Liverpool approach to these applications and appeal.

Step 4: add buffer

352. The Framework paragraph 47 provides guidance that an adjustment should be made to the OAHN by the addition of either a 5% or a 20% buffer. This requires a different form of judgment to be made about whether the record of the local planning authority is one of 'persistent under-delivery'.

353. A buffer of 5% is the default for ensuring choice and competition in the market for land. A buffer of 20% should be added 'to provide a realistic prospect of achieving the planned supply' where there is a record of 'persistent under-delivery' (Framework paragraph 47). The point is to make an allowance for proven persistent failures of delivery, to correct for over-optimism about meeting planned-for targets or requirements and to build in a margin for failure to deliver the targets currently planned for.

354. There is no further or different purpose (other than also ensuring choice and competition in the market) for the 20% buffer suggested by the Framework. It is not specified to apply by reference to a particular level of accumulated current shortfall, and is not designed to hasten the delivery of units in response to a particular urgency of need. The purpose of the buffer is not to correct for a particular shortfall, but to address the problem of over-optimism. Any accumulated shortfall in delivery against what is now understood to be the OAHN is reflected automatically in the figure for current housing need.

355. It would be quite wrong to test 'under-delivery' anachronistically against requirements that were not known at the time. HPPC respectfully adopt the archery analogy given by Mr Cannon (paragraphs 22-23, ID47). There is no record of persistent under-delivery here.

356. Even if there were a record of persistent under-delivery, the Framework is only guidance and the purpose of applying the higher 20% buffer is to ensure 'a realistic prospect of achieving the planned supply'. The Secretary of State is

entitled to assume that sites in the Council's housing trajectory are 'realistic' (HPPC has not given evidence of its own on suitability and deliverability other than on specific comprehensive development area sites at Hatfield Peverel) and can be counted on as indicating the expected rate of housing delivery.

Summary

357. Adopting the correct *St Modwen* approach to the meaning of 'deliverable sites', the Liverpool method for apportioning past under-delivery and a 5% buffer, there is no shortfall and the Council has a healthy 5.76 years' housing land supply on the latest figures. Even if one were able to demonstrate that some of the allocated sites were not realistic prospects, one would still have a 5 year supply on the Liverpool approach if there were land sufficient for 4,320, so there is a built-in healthy margin for error.

358. Whilst HPPC do not consider adopting the Sedgefield method to be appropriate, if we include the emerging allocations and a 5% buffer, there would be 4.52 years' supply, even on that basis, which is a very modest shortfall in the context of a rapidly improving supply position.

Policy issues in respect of all schemes

Framework paragraph 14 and its application-updatedness

359. The question of 'updatedness' does not depend on chronological age in itself (Framework paragraph 211) but on changes in circumstances and/or planning policy.

360. By virtue of Framework paragraph 49, shortfall in 5YHLS would usually be treated as a factor indicating policies for the supply of housing were 'out of date', hence the materiality of the 5YHLS question.

361. The term 'policies for the supply of housing' has a narrow meaning, but as the Framework is only guidance it is not appropriate to embark on a legalistic exercise of classifying policies (paragraph 59, CD31.2 set C). Whether policies for the supply of housing (or indeed other policies) are out of date does not determine the weight to be given to them, which remains a matter for the decision-maker (paragraphs 29, 55 to 56 CD32.2 set C).

Framework paragraph 14 and its application-silence

362. Mr Lee –but not Mr Dixon- sought to argue that the development plan was ‘silent’ in relation to these appeals, because “the Development Plan is now silent in respect of where development should be located outside of the strategic areas identified on the Core Strategy Proposals Map” (paragraphs 6.4.3 to 6.4.4 1/POE).

363. Mr Lee's argument cannot be sustained here. In *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 at [100]-[101], Holgate J rejected as a 'fallacy' the analogous argument that 'first, the inspector had to consider whether the plan was "silent on a particular issue" and second, that issue was where land to provide for a shortfall of 6,823 square metres of B8 floorspace should be located'. The learned judge ruled:

Neither paragraph 14 of the NPPF nor SD1 of the RTVLP [the local plan at issue] enable a party simply to select one of the "issues" relevant to the outcome of a planning application or appeal, so that it may be claimed that the plan is "silent" on that particular issue. Instead, the proper question for the decision-maker is whether there is a sufficient policy content in the plan taken as a whole to enable the planning application to be determined as a matter of principle…
… In the Bloor Homes case Lindblom J explicitly stated, at para 59, that the fact that allocations have yet to be put in place in a development plan (in that case for housing), does not mean that the development plan is "silent".'

364. The policies in the adopted Braintree Core Strategy, taken as a whole, indicate that permission should be refused because the strategy places both the Gleneagles and Stone Path Drive sites outside the village boundary in the countryside and directs growth to brownfield sites and infills within the village. Furthermore, there are emerging plan policies at an advanced stage which maintain both the Stone Path Drive and the Gleneagles sites outside the village boundary, and specifically protect the sites (particularly emerging NDP policies HPE6 on landscape setting and HE1 on coalescence).

365. Mr Lee referred to *South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173, but that case needs to be considered on its peculiar facts. There, a core strategy stated that at least 1154 dwellings would be allocated in certain larger villages including Chinnor, but no allocations had been made. The inspector had regard to the fact that the emerging local plan was at a very early options stage, and there was not even a draft emerging neighbourhood plan to give direction. It was in those circumstances that the Inspector concluded there was a 'policy vacuum on the issue of site allocations in the larger villages' (judgment at paragraphs 43 and 48, citing decision letters). The judge ruled that:

'91 …the question for the decision maker is…(1) does this development plan contain a body of policy relevant to the proposal being considered; and (2) is that body of policy sufficient to enable the development to be judged acceptable or unacceptable in principle? The first question involves an identification of the policies in question, and their correct interpretation; the second involves the exercise of planning judgment on the practical effect of that body of policy on the making of the decision in issue.

92….It follows also from the fact that the decision maker must make a planning judgment that… what matters is not simply whether the plan contains a policy which can be looked at to determine the question posed in Bloor at [50] and repeated in the last sentence of my [91] above: for its sufficiency at the time the decision is being made is an essential issue, and that involves the making of a qualitative planning judgment. I emphasise that the judgment to be made is at the time of the decision. A Development Plan may not have been "silent" when adopted, but has become so.

93… In the case of this Development Plan, the mechanism by which its housing requirement figures were intended to be translated into actual allocations was the DPD, which SODC had since abandoned. The question "how much housing does the Development Plan intend should be allocated in the period x to y" is

not the same question as "where does the Plan say that that housing could or should be built?" In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.'

The judge concluded:

97 'This was a case where it was her planning judgment that it was the answer to the second question above which mattered… Thus, she found that there was effective silence on the critical issue. That was a planning judgment which she was entitled to form.
98 Her conclusion…is a planning judgment that was open to her'

366. Although in the case before this Inquiry, the initially envisaged site allocations document to follow the CS did not proceed to adoption, there are important distinctions from the situation in the Oxfordshire case. CS policy CS1 states that the dwellings 'will be located…On previously developed land and infill sites in the Key Service Villages and other villages'. Furthermore, unlike the South Oxfordshire case where the development boundaries and countryside protection policies were merely contained in a previous saved plan pre-dating the core strategy, CS5 states as set out above (paragraph 39).

367. This gives a further clear steer that large housing developments in the countryside are not in accordance with the CS. Thus, Braintree's adopted plan is not, in its policies, silent about where it expects the growth to take place. The policies do not require the Site Allocations DPD before being able to say whether in principle development in green open countryside adjacent to Hatfield Peverel is encouraged: the answer is a clear 'no'. By way of further distinction, there are submitted examination drafts of the emerging BNLP, and emerging NDP. Furthermore, the question of how much development is intended in Hatfield Peverel matters as well as where that development is located.

368. In this regard, the situation here is more akin to that in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754, where the site lay within a 'green wedge' designated by a policy in the core strategy and the High Court upheld the decision that the plan was not 'silent' even though the core strategy had contemplated that a future site allocations DPD would review that boundary (see judgment at paragraphs 29, 30, 36 and 51-58).

369. The unsustainability of any argument that the development plan is silent is perhaps demonstrated by the subsequent length of Mr Lee's proof where he sets out and considers the relevant policies, and by his eventual acknowledgement (paragraph 13.2.2, 1/POE) that "Having tested the proposals against the material policies contained within the Braintree development plan I accept that the appeal proposals conflict with the Plan'. Notwithstanding his subsequent oral equivocation over this point during his cross-examination, that acknowledgement in the Proof was rightly made.

Framework paragraph 14 and its application-Specific policies in this framework

370. 'Specific policies in this framework' means policies that, applied here, indicate in the judgment of the decision-taker that permission should be refused. Such policies may include relevant development plan policies within the framework of the Framework.

371. The second bullet-point in the decision-taking limb of Framework paragraph 14 is no more than guidance and only applies where a development plan is absent, silent or out-of-date. It does not displace the statutory presumption in favour of determining applications in accordance with the development plan so that proposals conflicting with the plan should be refused unless material considerations indicate otherwise (Framework paragraph 12). It has to be read consistently with that presumption. Where, although the plan may be generally or in some particular respects (e.g. in its policies in relation to the supply of housing) out-of-date so as to engage Framework paragraph 14, that does not determine the weight to be given to particular development plan policies. Over-legalistic interpretation of the Framework, drawing fine, unintended distinctions, is to be deprecated. These principles are clear from *Suffolk Coastal* (paragraphs 14, 21, 23, 54-56, 74 and 85 CD32.2 set C).

372. At Framework paragraph 154 it is emphasised that 'Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where'. A decision-maker is fully entitled to conclude that specific policies within the Framework -such as for protection of countryside and favouring greenfield over brownfield development- indicate that permission is to be refused without having always to conclude that benefits are 'significantly and demonstrably' outweighed by harms.

The adopted development plan

The spatial strategy

373. The CS is based on a 'hierarchy of place' (paragraphs 2.4-2.14, HPPC2) focusing growth at settlements higher up the hierarchy. In that context, at policy CS1 it identifies a minimum requirement of 600 homes for the period 2009 to 2026 at the six KSVs. The number of dwellings to be provided in these Inquiry schemes (up to 260 across the two Inquiry sites), in combination with the development permitted since 2009 in Hatfield Peverel, would greatly exceed a proportionate distribution across the villages. The proportions are relevant as well as the numbers: six KSVs are to take 12% of the homes between them (paragraphs 2.15-2.18, HPPC2).

374. Policy CS 1 further states:

These dwellings will be located (as set out in table CS1):
On previously developed land and infill sites in the Key Service Villages and other villages.

375. This means that the growth is being directed within the village, and to previously developed land, rather than to greenfield sites outside the village such as those at issue at this Inquiry.

376. The supporting text to the CS (para 9.11) noted that sites would be allocated in a subsequent DPD, and stated, 'There will also be sites, which are not yet identified in the Housing Supply Trajectory or Table 6, which could come forward through minor extensions to town or village development boundaries in the Site Allocations DPD', but this text was not part of the policy and does not cut down or qualify the policy to direct growth outside the settlement boundaries (paragraph 16, *R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567).

377. In that context, policy CS5 is an intrinsic part of the spatial strategy (paragraphs 2.19 to 2.25, HPPC2). It should be given full or substantial weight for the reasons explained by Ms Jarvis in her Proof and later in these submissions. Saved Policies RLP2 and RLP3 are not merely hangovers but are reflected in the CS.

378. Accordingly, there is a conflict between the spatial strategy of the adopted local plan and the principle of the Inquiry schemes. The strategy has been based on sound planning principles and is consistent with the objectives in the Framework paragraphs 17, 34, 37, 38, 70, 110-111, 112 of being genuinely plan-led, minimising the need to travel, focusing development in locations that are or can be made sustainable, preferring land of lesser environmental value and previously developed land over green field land, taking account of the different roles and character of different areas, protecting the intrinsic character and beauty of the countryside, minimising adverse effects on the local and natural environment, undertaking significant development on agricultural land only when necessary, and planning for the location of housing, economic uses and community facilities and services in an integrated way.

379. Hatfield Peverel is a fairly small village with 1815 households in 2011. It has a limited range of services and little employment potential, having lost employment with loss of the Arla Dairy. For weekly or big-ticket item shopping, employment and indoor leisure facilities, it is already necessary to travel outside the village. The village can only sustainably accommodate housing growth in proportion to its role in the settlement hierarchy.

Boundaries and review

380. Mr Tucker suggested in cross-examination that the Hatfield Peverel settlement boundaries in the current and emerging local plans were merely holdovers from previous plans and that their maintenance had not been reviewed. This is not a submission supported by the evidence.

381. Both the adopted CS and the emerging BNLP have been subject to sustainability appraisal and the latter exercise specifically considered the question of retention of boundaries, assessing this as environmentally positive to landscapes and townscapes, service centre vitality, sustainable travel, climate change and accessibility compared to relying on the Framework alone; and the question of new allocations was considered (PoE/Jarvis pages 17-20 and paragraph 2.40 and Appendix PJ2, HPPC2). Spatial Strategy Formulation (ID33) refers to review criteria, options, KSVs, countryside and draft allocations. The adopted CS was found sound by the Secretary of State.

382. It is right that the policy was not to alter the boundaries to take the Inquiry sites within the village envelope of Hatfield Peverel. Strategic policy choices were taken to retain the settlement boundaries, subject to specific allocations and to creating new urban areas or extensions, and to focus growth elsewhere. These were legitimate policy choices.

383. Whilst HPPC accepts that the Secretary of State is entitled to consider provision of housing to be a material consideration weighing against applying the development plan at the Inquiry sites, there are no grounds to give less weight to the adopted or emerging development plan just because successive plans have retained the Hatfield Peverel boundary south of the A12.

Policies for the protection of the countryside

384. The suggestion by GDL that the adopted countryside policies and policy CS5 in particular are inconsistent with the Framework is wrong. Two further assertions are also misconceived. First, that the Framework draws a distinction between valued landscapes and the countryside such that 'ordinary' countryside is not subject to general protection. Second, that because the countryside and emerging NDP green wedge policies do not have built-in exceptions for beneficial housing development made them inconsistent with the Framework.

385. The Framework comprises general policy guidance. It is not a statute and must not be read like a statute. In contrast to statutes, which must be obeyed unless there is an express exception, it is an intrinsic feature of policies and guidance that they may be departed from for good reasons, where material considerations indicate otherwise. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) at paragraphs 43 and 45, Gilbart J cited Lindblom LJ's judgment in *Suffolk Coastal*:

> *The NPPF is a policy document. It ought not to be treated as if it had the force of statute… It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense."*
>
> *… Before Suffolk Coastal it had been striking that NPPF, a policy document, could sometimes have been approached as if it were a statute, and as importantly, as if it did away with the importance of a decision maker taking a properly nuanced decision in the round, having regard to the development plan (and its statutory significance) and to all material considerations. In particular, I would emphasise this passage in Lindblom LJ's judgment at [42]-[43], which restates the role of a policy document, and just as importantly how it is to be interpreted and applied. NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it.'*

386. In *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 at paragraphs 175 and 186, Lindblom J (as he then was) considered the argument that a 'green wedge' policy was inconsistent with the Framework if it restricted all house-building without an exception for a positive cost-benefit analysis, rejecting 'the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the Framework, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal'.

387. Mr Lee cited the case of *Telford and Wrekin BC v SSCLG* [2016] EWHC 3073 (Admin) (CD31.3 set C), where Lang J declined to quash a decision by a planning inspector that a policy which sought to 'strictly control' development in the countryside 'is not up-to-date and in conformity with the more recent planning policy context established by the Framework, where there is no blanket protection of the open countryside and where there is a requirement to boost

significantly the supply of housing,' such that he would give it 'less than full weight'. The *Cawrey* judgment was not cited. Lang J stated at paragraph 47,

> *In my judgment, the Inspector did not err in law in concluding that Policy CS7 was not in conformity with the NPPF and so was out-of-date. It is a core planning principle, set out in NPPF 17, that decision-taking should recognise "the intrinsic character and beauty of the countryside and supporting thriving rural communities within it". This principle is reflected throughout the NPPF e.g. policy on the location of rural housing (NPPF 55); designation of Local Green Space (NPPF 76); protection of the Green Belt (NPPF 79 - 92) and Section 11, headed "Conserving and enhancing the natural environment" (NPPF 109- 125). However, NPPF does not include a blanket protection of the countryside for its own sake, such as existed in earlier national guidance (e.g. Planning Policy Guidance 7), and regard must also be had to the other core planning principles favouring sustainable development, as set out in NPPF 17. <u>The Inspector had to exercise his planning judgment to determine whether or not this particular policy was in conformity with the NPPF</u>, and the Council has failed to establish that there was any public law error in his approach, or that his conclusion was irrational.* (emphasis added).

388. At its highest, the *Telford* case was therefore decided on the basis that the weight to give to various principles within the Framework pulling in different directions (supply of housing and other principles versus protecting intrinsic character and beauty) was a matter of planning judgment that Lang J would not interfere with. It is not automatically inconsistent with the Framework, as a matter of law, to have a general policy to protect the countryside by restricting the development that is presumed to be appropriate there. This judgment does not require the Secretary of State to follow the Telford inspector's approach to weight as a matter of planning judgment, which remains a matter for the decision-maker even if a policy is judged to be out of date (per *Suffolk Coastal* cited above).

389. Whether a policy is judged to be inconsistent with the Framework is a matter of planning judgment depending upon the weight to attach to different passages of the document, so long as the wording of the Framework is understood correctly. Clearly, the actual character and attractiveness of particular countryside will be relevant to the weight to place on a policy protecting the countryside, and the merits of making an exception in the particular case. Policies cannot just be applied mechanistically for the sake of it in a 'blanket' way, without regard to features of particular sites. But that is a straw man argument, because HPPC are not contending for such an approach here.

390. HPPC commend the approach taken by the Secretary of State in his decision regarding Land East of Ditchling Road, Wivelsfield, East Sussex (ID25). The relevant part of the decision concerned the question whether a materially indistinguishable general policy to protect the countryside ('CT1') outside development boundaries was inconsistent with the NPPF. In the decision letter, (para 15), the Secretary of State concluded, 'for the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision'. The Inspector had concluded as follows:

[IR 327] With respect to the adopted plan, there is conflict only with one policy, CT1, of the Local Plan, but this leads to an overall conclusion that the proposal is not in accordance with the development plan as a whole.

[IR 328] The defined Planning Boundaries as the means through which policy CT1 operates are related to development requirements that no longer apply, with an end date for these of 2011. While policy CT1 gives blanket protection to countryside, the NPPF directs specific protection to valued landscapes. Nevertheless, a core planning principle of the NPPF includes recognising the intrinsic character and beauty of the countryside. Policy CT1 is expressed as the 'key countryside policy' in the Local Plan. The proposal would involve the incursion of development on a greenfield area of countryside. Taking into account also the finding above that a five-year housing land supply is demonstrated, I consider that policy CT1 is not out-of-date for the purposes of paragraph 14 of the NPPF, and that the conflict with it should be given significant weight in the decision'.

391. It should be noted that unlike Wivelsfield, where the countryside boundaries were merely in a saved out of date policy in a time-expired plan, in this case they are a tool utilised by policy CS5 in the adopted CS which has an end date of 2026.

392. HPPC readily acknowledges that Wivelsfield was a case where there was a 5YHLS and that the weight to give to such a policy may depend on whether there is a 5YHLS, but that is a different point to the question whether it is inherently inconsistent with the Framework, and therefore always to be given low weight by virtue of Framework paragraph 215 regardless of the housing land supply. The clear decision in Wivelsfield (DL para 15) was that there is no such inconsistency. That is a planning judgment which is right and should be followed here.

393. HPPC also draws the Secretary of State's attention to the Finchingfield decision where the Inspector considered CS policy CS5 and likewise determined that it was consistent with the Framework for the purpose of Framework paragraph 215:

I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215.'(paragraph39, CD32.10 set C)*.*

Paragraph 109 and value to attach to a given area of countryside

394. Mr Lee in particular was anxious to argue that Framework paragraph 109 did not apply and that this would mean less weight should be given to the policies protecting the countryside (paragraphs 7.1.14 and 8.2.43-48, 1/POE).

395. Paragraph 109 is merely providing sensible general guidance that 'The planning system should contribute to and enhance the natural and local environment by among other things, protecting and enhancing valued landscapes, geological conservation interests and soils'.

396. The countryside is itself a type of landscape. The value to place on protection of any particular part of the countryside is ultimately entirely a matter for the Secretary of State's planning judgment, depending upon the advice in this report concerning the appreciation of the site and its features or attributes. If the Secretary of State considers the current landscape valuable at a particular spot, it is likely to be desirable, other things being equal, to preserve and enhance it. That is all paragraph 109 is getting at.

397. It would be quite inappropriate to treat paragraph 109 like a statute establishing a special category apart of 'valued' landscapes that has to be closely defined and given special status, and implying that the remainder of the countryside is not worth protecting or enhancing generally. That would be quite against the spirit of the Framework and would be just the kind of legalistic exercise that was deprecated in the *Suffolk Coastal* case by the Court of Appeal and Supreme Court.

398. The only cases to consider Framework paragraph 109 in light of argument about its meaning have stressed that a decision-maker must have regard to demonstrable physical attributes and not merely popularity. For instance, in *Stroud DC v SSCLG* [2015] EWHC 488 (CD31.20 set C), where Ouseley J stated:

> *[13] It is important to understand what the issue at the Inquiry actually was. It was not primarily about the definition of valued landscape but about the evidential basis upon which this land could be concluded to have demonstrable physical attributes. Nonetheless, it is contended that the Inspector erred in paragraph 18 because he appears to have equiparated valued landscape with designated landscape. There is no question but that this land has no landscape designation….The Inspector, if he had concluded, however, that designation was the same as valued landscape, would have fallen into error. The NPPF is clear: that designation is used when designation is meant and valued is used when valued is meant and the two words are not the same.*
>
> *[14] The next question is whether the Inspector did in fact make the error attributed to him. There is some scope for debate, particularly in the light of the last two sentences of paragraph 18. But in the end I am satisfied that the Inspector did not make that error. In particular, the key passage is in the third sentence of paragraph 18, in which he said that the site to be valued had to show some demonstrable physical attribute rather than just popularity. If he had regarded designation as the start and finish of the debate that sentence simply would not have appeared….*
>
> *[16] …The closing submissions of Miss Wigley referred to a number of features and it is helpful just to pick those up here. The views of the site from the AONB were carefully considered by the Inspector. There can be no doubt but that those aspects were dealt with and he did not regard those as making the land a valued piece of landscape. That is a conclusion to which he was entitled to come.'*

399. What *Stroud* did not do was hold that Framework paragraph 109 creates a rigid category or implies that protection of countryside not within that category was not desirable for the purposes of the Framework.

400. In *Cawrey Ltd v SSCLG* [2016] EWHC 1198, Gilbart J ruled:

[49] NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that paragraph [109] may recognise that some has a value worthy of designation for the quality of its landscape does not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in Stroud DC v SSCLG [2015] EWHC 488 per Ouseley J or in Cheshire East BC v SSCLG [2016] EWHC 694 per Patterson J which suggests otherwise. Insofar as Kenneth Parker J in Colman v SSCLG may be interpreted as suggesting that such protection was no longer given by NPPF, I respectfully disagree with him. For it would be very odd indeed if the core principle at paragraph [17] of NPPF of "recognising the intrinsic beauty and character of the countryside" was to be taken as only applying to those areas with a designation. Undesignated areas - "ordinary countryside" as per Ouseley J in Stroud DC - may not justify the same level of protection, but NPPF, properly read, cannot be interpreted as removing it altogether. Of course if paragraph [49] applies (which it did not here) then the situation may be very different in NPPF terms.
*[50] Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) PCPA 2004 issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission…There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.' (*emphasis added*).*

401. Accordingly, the fact that no witness or party at this inquiry argued for any special 'valued' status by reference to paragraph 109 does not mean that the Secretary of State cannot or should not give weight to the protection of the countryside at these sites and to the adopted and development plan policies that seek to achieve this, nor that as a matter of law he cannot treat the physical attributes of the sites as favouring their protection. It is simply a subjective question of judgment for the Secretary of State in the particular case what value to place on the sites.

402. This also accords with the Guidelines on Landscape and Visual Impact Assessment (para 5.26) which advise that the fact that a landscape is not designated 'does not mean that it does not have any value. This is particularly true in the UK where in recent years relevant national planning policy and advice has generally discouraged local designations unless it can be shown that other approaches would be inadequate. The European Landscape Convention promotes the need to take account of all landscapes with less emphasis on the special and more recognition that ordinary landscapes also have their value'.

The emerging BNLP

403. The emerging BNLP can be given significant weight as it has progressed to examination stage. It properly seeks to meet the identified OAHN with an

additional 10% margin in a strategic way in collaboration with other Essex authorities.

Spatial strategy

404. This is again based upon a hierarchy of place. Part 1 policies SP2 and SP3 which set out the spatial strategy and the number of homes to be planned for across north Essex and in the Council area are summarised above (paragraphs 44and 45).

405. The way in which the quantum of new homes to be provided in Braintree District is to be apportioned is explained by Ms Jarvis (paragraphs 2.29-2.53, HPPC2). The order of focus of new development is the town of Braintree, new planned garden communities, then Witham, then the KSVs in the A12 corridor, then other settlements. The principle of garden communities is fully consistent with national policy (e.g. Framework paragraph 52).

406. An allocation of land for 285 homes (2% of the total) is made at the Comprehensive Redevelopment Area (CRA) in Hatfield Peverel by draft Policy LPP31.

407. The District's population is about 150,000 (paragraph 3.3, CD16.3 set C). The populations of Witham and Hatfield Peverel were 25,353 and 4,500 in 2011 (paragraph 2.44, HPPC2). Hatfield Peverel therefore has around 3% of the District's population. Given that about 3,650 (25%) of the new homes in the District are to be located in the 2 new garden communities, it is evident that the emerging BNLP envisages Hatfield Peverel accommodating the planned housing growth in scale with its share of the population. Development significantly in excess of the 285 homes allocated in the draft plan would not be in keeping with the spatial strategy for distribution of housing.

408. Furthermore, Policy LPP17 makes clear that 'Sites suitable for more than 10 homes are allocated on the Proposals Map and are set out in Appendix 3', and no other site outside the CRA is allocated in or adjacent to Hatfield Peverel. Paragraph 6.63 of the supporting text makes explicit what is already implicit, that '<u>All</u> sites suitable for delivering ten or more homes are allocated for development on the Proposals Map' (emphasis added). This indicates that the spatial strategy does not envisage either the Stone Path Drive site or the Gleneagles site being suitable for large-scale housing development. The unsubstantiated assertions made in cross-examination by Mr Tucker QC that the boundaries have not been reviewed and considered is flatly contradicted by paragraph 5.17 of the supporting text in Section 2 to the emerging plan, which states:

> *Development boundaries within this document have been set in accordance with the Development Boundary Review Methodology which can be found in the evidence base.*

409. This is evidently linked to the assessment of constraints. Paragraph 5.7 of Section 2 of the emerging BNLP supporting text explains that 'Development <u>may</u> be considered sustainable <u>within</u> a KSV, <u>subject to the specific constraints and opportunities of that village</u>' (emphasis added).

410. One such constraint is the surrounding countryside and local character. It is not envisaged that there should be built development outside of the settlement

boundaries, nor ribbon development along the A12. That is seen at Policy LPP1, the full text of which is given at paragraph 45 above. For reasons explained above, it is perfectly consistent with the Framework to have such a general policy that built development is considered not to be appropriate in the countryside, so long as it is always applied in individual cases with the particular characteristics of a particular site in mind.

411. Another constraint is local infrastructure, services and facilities including roads, healthcare and schools. Draft Policy SP 5 states that development 'must be supported by provision of infrastructure, services and facilities that are identified to meet the needs arising from new development', including sufficient school places in the form of expanded or new schools.

412. For reasons already alluded to above in relation to the 'Liverpool method' and the adopted plan, the spatial strategy in the emerging local plan seeks to advance planning objectives underlying the Framework. It should be given significant weight and provides comfort that the District's OAHN will be met sustainably without the Inquiry schemes coming forward and encroaching on the countryside setting of Hatfield Peverel.

The emerging NDP

413. Mr Renow's evidence has set out in detail why the NDP is supported by written national policy and the political commitments made by the present Secretary of State.

Emerging stage and status of the NDP

414. The NDP can be given significant weight insofar as it indicates the concerns and aspirations of the local community and their vision for the village of Hatfield Peverel.

415. The NDP can be given at least as much weight, if not more weight, as it was given by Inspector Parker in connection with the 80 dwelling appeal, as it has now progressed to examination.

416. Whilst it is accepted that there are likely to be modifications to the drafting of the NDP before it is put to referendum, in particular to ensure that it allocates no less development than the emerging BNLP, the Secretary of State can be confident that a plan containing the relevant restrictive policies directly in issue at this Inquiry (Policies HPE6 and HPE1) in materially the same form will be passed.

417. The Regulation 14 consultation indicated extremely high (89%) support for the vision and objectives of the draft NDP, support between 77% and 92% for each of the individual draft policies (HPPC1, Appendix MR 18). The survey in September 2017, with 570 respondents, indicated 96% approval of the draft plan at that stage (HPPC1, Appendix MR26). Subject to the question of legal compliance with the 'basic conditions', the Secretary of State can be confident that the NDP would pass a referendum and proceed to adoption.

Basic conditions

418. Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990, as modified by section 38C(5) of the Planning and Compulsory Purchase Act 2004, requires the examiner to consider the following:

i) whether the draft plan 'meets the basic conditions' (defined at sub-paragraph (2));

ii) whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and

iii) whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and

iv) whether the draft plan is compatible with 'the Convention rights', as defined by the Human Rights Act 1998.

419. There can be no suggestion that the NDP is incompatible with anyone's human rights, and there has been no suggestion that the referendum area should be wider than the parish.

420. The Examiner is not considering whether the neighbourhood plan is 'sound' (the test in section 20(5) of the 2004 Act for local plans), and the tests of paragraph 182 of the NPPF do not apply. In other words, unless the strategic environmental assessment procedure applies, the Examiner does not have to consider whether a draft policy is the 'most appropriate strategy' compared against alternatives, nor is it for her to judge whether it is supported by a 'proportionate evidence base' (paragraph 13, *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin). The 'basic conditions' only require consideration whether it is 'appropriate' to make the plan having regard to national policy and guidance, whether it is in general conformity with the adopted plan; whether the making of the plan contributes to sustainable development, whether the making of the plan is compatible with EU obligations, and prescribed conditions are met. Regulation 32 of and paragraph 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 prescribe the condition that: '[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).'

HRA

421. As it is one of the prescribed 'basic conditions' that the plan should not be likely to have a significant effect on a protected European site and as the likelihood of such an effect is also an important, if not determinative, consideration to decide whether SEA is required, it made sense for HPPC to commission a re-screening examining possible effects on European protected sites before it reconsidered the broader question whether SEA was required.

422. As Mr Renow explained in his evidence (pages 12-13, HPPC1), Section 2 of the emerging BNLP which includes an allocation of 285 dwellings at the CRA as well as much larger quantities of other development, has been assessed for compliance with the Habitats Directive and found compliant. No issue is predicted to arise except in combination with other forthcoming district plans envisaged by Section 1.

423. The draft NDP would progress in advance of those other plans and would be for a much smaller quantum of development than the BNLP which proposed at least 14320 dwellings as well as employment development and other development.

424. In *R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 at [13] Sales LJ ruled:

> *where a series of development projects is in contemplation, the strict precautionary approach required by the Habitats Directive will be complied with in relation to consideration of the first particular proposed development project if that project will not of itself have a detrimental impact on a protected site and there will be an appropriate opportunity to consider measures in relation to a later project which will mean that any possible in-combination effect from the two projects together will not arise (failing which, permission may have to be refused for the later project, when it is applied for: see the Smyth case, paras 87—102. In other words, so long as the relevant assessment of options has been carried out at the level of the relevant development plan (land use plan), as explained in Commission v United Kingdom [2005] ECR I-9017, it will be lawful when planning permission is sought for the first specific development project in the series for the relevant planning authority to assess that that project taken by itself will not have any relevant detrimental impact on the protected site (and then grant planning permission for it), even though it is possible that there might be future in-combination effects on the protected site if planning permission were later granted for the next project in the series.'*

This was based upon opinions of the Advocate General Kokott in the *Commission v United Kingdom* and *Waddenzee cases,* and the need to 'avoid sclerosis of the system' (Sales LJ at paragraphs 15-18).

425. This principle applies by analogy to plans as well as to projects. Where a draft plan (here the NDP) is the first in a possible series of plans that would be promoted separately by other authorities (here, the Local Plans of Braintree District and the other North Essex districts), it is sufficient to assess the draft plan in combination with other existing plans and permitted projects, without attempting to speculatively assess combined future effects of other plans. The impacts of those plans can be assessed when they come forward.

426. Furthermore, a habitats regulations screening assessment in July 2017 found no requirement even for 'appropriate assessment' before grant of planning permission for up to 145 homes at the Arla site (ID14).

427. In the light of the above, the Secretary of State can be confident that the requirements of the Habitats Directive will not prevent adoption of the NDP.

SEA

428. The Examiner's concern was that the SEA screening was done when the plan was at an earlier stage of development and premised on no allocation being made in the Draft NDP, when the Arla site was subsequently allocated by draft Policy HO6. If the allocation policy were dropped and allocations left entirely to the emerging local plan, it is unlikely that SEA would be required.

429. As regards SEA, article 3(2) of Directive 2001/42/EC only requires strategic assessment of plans that 'determine the use of small areas at local level and minor modifications' to broader town and country planning plans if the Member States 'determine that they are likely to have significant environmental effects'.

430. Whether potential environmental effects are 'significant' is a matter of judgment for the planning authority, subject to review on grounds of reasonableness.

431. It is not anticipated that the NDP is likely to give rise to significant environmental effects, and no evidence has been presented at this Inquiry by any party proving that it would.

432. It is therefore anticipated that the Examiner and the Parish and District Councils would conclude that the NDP determines the use of small areas at local level (the parish) and that it is not likely to have significant environmental effects in combination with existing plans, programmes and projects. This is particularly the case given that the Arla site has already been granted permission for a greater number of homes than contemplated in the current Draft NDP, the project is on brownfield land and that project has been found not to be likely to have significant effects on a protected European site which is one of the important factors relevant to the assessment (ID14). If that is the eventual conclusion, no SEA would be required.

433. SEA has already been conducted for the emerging BNLP. Article 4 of the Directive expressly provides that 'Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).' Article 5(2) and (3) in turn state that where an environmental assessment report is required, the level of detail should take account of 'the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment', and the report may use 'information obtained at other levels of decision-making or through other Community legislation'. This is reflected in regulation 12(3) and (4) of the Environmental Assessment of Plans and Programmes Regulations 2004.

434. Even if it were considered that NDP does require SEA, then the sustainability appraisal could draw upon the work already carried out in that regard rather than duplicate it. Whilst some additional months would be required to assess the draft plan and the reasonable alternatives, Mr Renow's evidence was that this could be expected to have been completed by summer 2018. The requirements of the SEA Directive are not 'showstoppers'.

Evidence base for not allocating the Inquiry sites

435. It was suggested that the Parish Council should have sought to take a more proactive approach to maximise housing delivery and that the exercise was only aiming to allocate sites sufficient to provide 78 homes. However, that criticism does not impinge on the appropriateness of adopting the draft NDP. A neighbourhood plan does not have to make any site allocations. The written and

oral evidence of Mr Renow was that HPPC would accept a pre-emptive 'future-proofing' modification of the text to bring the draft into line with the CRA in the emerging Local Plan. Its policies would be superseded by specific conflicting policies in later development plan documents such as the emerging BNLP in any event.

436. An attack was made on the ranking assessment when determining which sites to allocate for development in the NDP (CD18.3 set C). It was put to Mr Renow that the exercise unfairly failed to expressly mention in the 'opportunities' column of the table the opportunities afforded by the Gleneagles site to provide housing. This was itself an unfair critique; it was a given, as the whole point of the exercise was to determine which of the sites to allocate for housing and one of the scoring criteria was the number of homes that could be accommodated.

437. In any case, sites HATF313, HATF630 and HATF608 which correspond to the CRA all scored more highly in their ranking than the Inquiry sites. The scoring system was one that was perfectly reasonable and lawful. The choice of policy objectives and the weight to attach to each was a matter for the judgment of the democratically elected Parish Council.

438. Lastly, the criticism was levelled that the site assessment was not considering these particular projects with mitigation measures. Such is almost always the case when engaging in forward planning of this nature and does not invalidate the assessment.

The evidence base for protected views

439. The NDP specifically designates views for protection and enhancement in order to protect the landscape setting of the village (Policy HPE6). It is evidence that the specified 'views and open spaces…are valued by the community and form part of the landscape character' (NDP 'objectives' p.32).

440. Extensive evidence was given by Mr Renow of the local engagement that the Parish Council undertook with the local community, including the survey, the 'walkabout' and photographic competition referred to in the supporting text to the policy, as well as public consultation. The reality is that the abovementioned engagement and evidence-gathering programme provided a sufficient evidence base.

441. DWH sought to suggest that the Parish Council had been disingenuously misrepresenting that View 5 in the table accompanying HPE6 had been identified in the Landscape Character Assessment of October 2015 (CD18.4 set C), and consequently that the policy lacked an evidence base. However, this line of attack was misconceived. The text of HPE6 makes very clear that it protected both views 'identified by the community (see pages 33-37) <u>and</u> the Hatfield Peverel Landscape Character Assessment' (emphasis added), and was not purporting to say that all the views were identified in the Landscape Character Assessment.

442. Although the Landscape Character Assessment (CD 18.4 set C) did identify 'key views' and photographs, these were selected to 'reflect the key characteristics of each area' (para 3.12) by an individual professional consultant as part of an exercise to characterise the area and make suggestions for its management. That exercise had not involved public consultation to ascertain the

views of the community. Meanwhile, the residents' survey in October 2015 indicated that 'views towards Witham looking from Gleneagles Way' was selected as one of the 3 views to 'be safeguarded if new development takes place in the parish' by 237 respondents (HPPC1, Appendix MR28). In those circumstances, it was perfectly proper to reflect the wishes of the community.

443. The Table at pages 34-35 of the NDP identifies the key features/physical attributes of the views, and any access by residents. It is not merely about popularity but rather the NDP explains the features of the views that are valued. Views 1 and 5 are attractive open vistas and it is readily understandable why the views are valued by the local community.

444. Criticisms were directed at the Parish Council's reviewer of the feedback from the workshop held in December 2016 (CD 18.6 set C). A comment was made by that individual that in respect of the view from Gleneagles Way (view 16 in that document) they were not personally sure if the view had value but people liked it, and so it had been retained.

445. Insofar as it was suggested for DWH that it was illegitimate for the draft NDP to reflect the views of the community, the whole point of neighbourhood plans is to 'reflect the… priorities of their communities' (Framework paragraph 1), giving 'communities direct power to develop a shared vision for their neighbourhood' (Framework paragraph 183) and to 'shape and direct sustainable development in their area' (Framework paragraph 185). Landscape value and the degree of attractiveness of any view is highly subjective and it is a matter that the Secretary of State will form his own view on, informed by this report, itself informed by the inspection of the site and surrounding area. Any argument that the personal opinions of a particular hired consultant or parish working-group volunteer are privileged over the views of the community reflected in a neighbourhood plan is to be deprecated.

446. It was also suggested that the response to the workshop is evidence that views were chosen merely to stymie development at those locations and not because of the value of the views. However, it is plain as can be that the reviewer in question in December 2016 was engaged in a whittling-down process determining which of the views identified by the community to retain as most valued and meriting protection, not introducing new views of their own. It was perfectly proper to choose to designate and protect only those valued views that might realistically be subject to development. Neighbourhood plans are supposed to be practical documents to shape and direct development. Mr Renow explained in his oral evidence and cross-examination how views identified by the public were then whittled down to retain the most locally valued views that required protection.

Coalescence and the propriety of policy HPE1

447. This point is relevant only to the Gleneagles site and is not therefore set out in full.

Housing delivery

448. Any argument that an exception should be made to allow development conflicting with the statutory development plan on the basis that there is not

currently a 5 year supply of housing land has to be premised on the scheme in question being delivered within 5 years, so as to meet that housing need.

449. It is therefore relevant not only what the level of OAHN is (and the extent of any shortfall) but also how likely it is that the housing in any particular scheme will actually be completed and occupied as a home within 5 years. The evidence in relation to delivery is addressed separately in respect of each scheme later.

Health, education and infrastructure/sustainability issues common to all 3 schemes

450. There would be conflict with Policy SP5 of the emerging BNLP ('Development must be supported by provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.'). Development whose needs are not served should not be considered acceptable in planning terms, and where planning obligations are inadequate to make the development acceptable, permission should be refused (Framework paragraph 176).

451. In both his written and oral evidence Mr Renow explained the existing situation in terms of the lack of employment opportunities for new residents within Hatfield Peverel (pages 26-27, HPPC1); the pressure on health facilities and their lack of space to physically expand (pages 27-28, HPPC1); the requirements for additional school places (pages 29-33, HPPC1); the lack of a safe walking route to Witham along the A12 (pages 33-35, HPPC1); and pressures with regard to transport infrastructure and traffic (pages 36-38, HPPC1).

452. No suggestion was made by the applicants that it was safe for children to walk to Witham along the A12, with reliance being placed instead on potential travel by bus (paragraph 7.2.35, 1/POE).

453. As regards healthcare and the physical inability to extend the Sidney House surgery, the factual evidence of Mr Renow was not challenged or rebutted. The developments would generate additional occupiers who would require health services. There was no evidence that mere internal reconfiguration of the surgery would provide the required extra accommodation for an extra doctor; furthermore there is no indication that any such improvement to the Sidney House Surgery is planned or even practicable.

454. As regards current and projected school places, and the number of students generated by the developments, the numerical situation appears to be common ground (ID1.8).

455. The occupiers of the dwellings would require school places. There are currently 484 primary pupils on the roll of schools within Hatfield Peverel, which have a capacity of 525. The number without additional housing is predicted to fall slightly to 470 by 2021/22. The extant Former Arla Diary and Bury Lane permissions would generate an additional 58 primary school pupils between them (ID1.8, Appendix). This means that any of the Inquiry schemes would result in excess demand that could not be met by existing capacity.

456. Village schools' admissions policies give preference to village children if they become over-subscribed, but this is subject to sibling preference. It would also only apply to children newly entering the school and existing pupils would not be moved. This means that for many years, primary-age occupants of the Inquiry schemes would be required to travel further afield for schooling. This is contrary

to the objectives in the Framework of minimising the need to travel and providing schools within walking distance of larger scale housing development (Framework paragraphs 34 and 38).

457. The corollary of that outbound travel phenomenon diminishing in scale would be a diminishing in-school choice for parents living outside the village and the requirement for children residing outside the village who otherwise would have attended the Hatfield Peverel schools having to be found school places elsewhere. As a result, the developments would generate a demand for additional school places whether for the children of occupiers or those children who otherwise would have been accommodated at the village schools. This requirement for additional educational provision is a negative externality of the developments to be weighed in the planning balance.

458. The cost of that externality would not be internalised by means of a Section 106 planning obligation. None was requested by Essex County Council in respect of the costs occasioned by these schemes because it was concerned that the CIL Regulations prohibit pooling of 5 or more contributions in respect of a particular project or type of infrastructure (CD21 set C). In fact, CIL regulation 123(3) prevents pooled planning obligations being relied upon as 'a reason for granting planning permission'. This is not exactly the same as a prohibition upon pooling such contributions, or against treating absence of such contributions as a reason for refusing permission. There is no CIL charging schedule in place either. As a result, the cost of putting in place the educational provision would be borne by the taxpayer.

459. Moreover, the additional travel costs in terms of bus transport would either fall to be borne by the local authority (to the extent that it is statutorily obliged or agrees as a matter of discretion to pay them) or by parents. This would be a particular burden for parents on low incomes.

460. Framework paragraph 72 states that 'The Government attaches <u>great importance</u> to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities…local planning authorities should… <u>give great weight to the need to create, expand or alter schools</u>' (emphasis added). This principle is also reflected in Draft Policy SP5 of the emerging BNLP. The Secretary of State should attach great weight to the failure of these schemes to provide for the necessary school places and the impact on parental choice.

Summary of HPPC's case respecting the 80 dwelling scheme

Conflict with the spatial strategy

461. The development conflicts with the spatial strategy in the adopted and emerging development plans for the reasons set out above. That means there is a statutory presumption against granting permission by virtue of s38(6) of the Planning and Compulsory Purchase Act 2004. Specifically, there is conflict with policies CS1, CS5, and RLP2 of the adopted plan and draft policies LPP1 and LPP17 of the emerging Local Plan. This conflict should be given great weight.

Landscape and visual harm/harm to the character and appearance of the area

462. The scheme would result in harm to the distinctive character of Hatfield Peverel at the countryside edge. The character of the open field/meadow would be irreversibly harmed by its replacement with a housing estate.

463. The development would almost totally block and ruin the highly attractive unspoilt open view from Viewpoint 1 shown in the table accompanying draft NDP Policy HPE6 and illustrated for instance by Mr Renow's photographs (ID13). This would conflict with emerging NDP policy HPE6.

464. The view is enjoyed by people whom the Guidelines for Landscape and Visual Impact Assessment 3rd Edition, (paragraph 6.33) indicate are most susceptible to change, namely residents at home (along Stone Path Drive), 'people, whether residents or visitors, engaged in outdoor recreation including use of public rights of way, whose attention or interest is likely to be focused on the landscape and on particular views' (pedestrians along Stone Path Drive, walkers along Footpath 43); 'visitors to heritage assets… where views of the surroundings are an important contributor to the experience' (visitors to Hatfield Place); and 'communities where views contribute to the landscape setting enjoyed by residents in the area' (Hatfield Peverel) (paragraph 5.10, HPPC2).

465. The view stretches across the Ter valley- an unusual feature in this part of Essex - to the Baddow Ridge beyond. The table in the NDP describes the key features of the view: 'foreground is a meadow with mature trees and hedgerow, with a distant view over the Ter Valley towards the Little Baddow Glacial Ridge (rising to the highest point in Essex)'.

466. Furthermore, it would block that open view to the south for persons travelling through the housing estate along the well-used Footpath 43.

467. The GLVIA3 advice (para 5.32) that in making the assessment of landscape value, it is important where possible to draw on information and opinions from consultees, including local people. The community values the view, which is why it was designated in the emerging NDP, as already explained. As GLVIA3 advises (paras 6.37 and 6.44), effects on people who are particularly sensitive to changes in views and visual amenity and large-scale changes which introduce new, non-characteristic or discordant or intrusive elements into the view are more likely to be significant.

468. According even to GDL's own original LVIA assessment criteria this qualifies as a 'major' adverse impact (paragraph 2.23, CD 1.6 set A):

> *Major: An effect that will fundamentally change and be in direct contrast to the existing landscape or views.*

It should be noted that by the time Mr Holliday had come to produce his Proof of Evidence for this Inquiry, he had produced, at Appendix 3, a different set of definitions which was entirely circular (major being defined as ‘a major landscape or visual effect’). That set of definitions included the following definition for ‘high magnitude’ change which clearly applies: ‘The proposal will result in a large and immediately apparent change in the view, being a dominant and new and/ or incongruous feature in the landscape.’

469. Mr Holliday conceded that this harm to the view was an adverse effect, but he had not assessed it as a 'major' effect on the basis that he had looked at the whole route of Footpath 43 (including 'blue land' to the west where there was not currently an open view because of enclosure by trees and hedgerows and the view back to the north), and had, in effect, 'averaged out' the change to the view at Viewpoint 1 across the whole length of the footpath. That was a misleading and inappropriate approach. Travellers' eyes would naturally be drawn to the south, and they would naturally most appreciate the most enjoyable and distinctive open views. The expansive, picturesque open view across the valley from Footpath 43 would be lost precisely at the points where it could be enjoyed.

470. Mr Holliday sought to downplay the attractiveness of the view and the rural character of the site by reference to the homes at the edge of the settlement which were characterised as 'defining' the site and as being unsightly or untidy.

471. Currently, the homes along Stone Path Drive are either bungalows or 2 storey, and are set back some distance from the application site on relatively flat land, such that their built form appears low and unobtrusive in views from Viewpoint 1 and along the footpath. It would be wrong to treat them as in any sense 'defining' or dominating the pastoral character of the meadow site. The current relatively open, low-rise interface with the surrounding countryside is locally distinctive (uncharacteristic of the wider landscape – CD18.4, set C referenced at paragraph 5.13 HPPC2)) and would be lost. The higher-rise development up to 2 storeys on the application site would result in a suburbanisation of the edge-of-rural character and feel of Stone Path Drive, which currently has views out across the open land.

472. The suburbanising effect would result not just from the visual effects but also the noise, traffic and activity on the estate and on the 'blue land' as it became used for general recreation. This location is a relatively tranquil spot both in terms of peaceful views across the valley and in terms of noise, certainly compared to the northern part of the village along the railway and A12. The ‘peaceful and rural qualities of the valley landscape' were rightly identified by the Local Landscape Character Assessment of October 2015 (character area 2 section, CD28.3, set C).

473. In this regard, Inspector Parker was right to identify harm by reason of visual jarring, detrimental change to the fundamental character of the field, erosion of the distinctive landscape of the area, and loss of the tranquil farmland scene both visually and aurally (paragraphs 19, 26 and 27, CD5.1 set A).

474. There would also be visual harm by virtue of the intrusion of built development into the views towards the village from the south, such as for those travelling up the road named Crab's Hill.

475. Some reliance was placed by Mr Holliday on the Braintree District Settlement Fringes Study (CD 14.4 set B). However, this was done without consulting the community, on the basis of lumping the 'blue land' in with the 'red-line' area and adopting a highly subjective scoring system that made some bizarre assumptions (for instance, ignoring views out and looking only at views in, assigning points for 'complexity', and weighting vegetation (a transient feature) as a 'primary' feature which is supposed to be permanent.

476. Mr Holliday suggested that the proposed planting would mitigate the visual harm. In fact, insofar as the loss of open views constituted the harm this would only be exacerbated by planting and certainly would not be remedied. Thickened screening would create a very different and less attractive feel; rather than settling and integrating the built development gently into the countryside, it would create an apparent sharp edge defined by the planting. It would block future residents of and visitors to the housing estate from enjoying the open views of the countryside setting, as well as existing residents along Stone Path Drive.

477. Retention of existing hedgerows and field boundaries, and planting of a small new area of meadow at the entrance to the site, would not make up for the fundamental harm caused by loss of the meadow to residential development.

478. There would be conflict with LPR Policy RLP80. This requires that development 'should not be detrimental to the distinctive landscape features and habitats of the area such as trees, hedges, woodlands, grasslands, ponds and rivers. Development that would not successfully integrate into the local landscape will not be permitted.' Plainly, there would be detriment by reason of loss of open grassland and the development would not integrate into the existing local landscape. Emerging Policy LPP71 is expressed in similar terms.

479. There would be conflict with CS policy CS8 which says, so far as relevant:

> *where development is permitted it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment… The natural environment of the District… will be protected from adverse effects.*

480. There would be conflict with Framework objectives to recognise the intrinsic character and beauty of the countryside (Framework paragraph 17) to conserve and enhance the natural environment, promote local character and distinctiveness (Framework paragraphs 60 and 131) and to protect areas relatively undisturbed by noise and are prized for their recreational and amenity value (Framework paragraph 123).

481. The visual and landscape harm, and policy conflict, should be given great weight.

Heritage harm

482. HPPC has not led evidence that there would be material heritage harm from the 80 dwelling scheme.

Evidence regarding delivery

483. GDL were put on notice (paragraphs 29 and 40, INSP2) before the Inquiry opened regarding reservations about delivery within 5 years on the Inquiry sites. The Note says that 'This is especially the case with the GDL site as this is one step removed from a housebuilder having an interest.' This issue was of course critical to GDL's case from the outset, which rested on a putative shortfall in 5YHLS.

484. Only in Mr Lee's evidence-in-chief did GDL provide any evidence addressing this critical issue. His evidence was that GDL makes its money when the

landowner sells the site (with permission secured by GDL) to a housebuilder. In terms of 'track record', Mr Lee was unable to provide any evidence as to the proportion of units delivered within 5 years of permission, stating that the firm had not been sufficiently long-established and he could only give figures relating to commencement of development and erection of the first home which he said took an average of 18 months. No records were produced to substantiate this claim in order that the Secretary of State could examine the predictive value of the record in predicting future likelihood of delivery on this site.

485. Mr Lee provided a one-line e-mail from a Mr Church of Linden Homes dated 15 December 2017 (ID32) stating, 'Further to our recent discussion…I confirm that should you be successful with your planning application then Linden Homes would be interested in acquiring the site'. Even on its face, the e-mail could provide no certainty even that Linden Homes would bid for the land, let alone shed light on the likelihood of actual delivery. The author of the e-mail and its recipient a Mr Alex Cox were not tendered for cross-examination. It was entirely unclear what discussions and leading questions had been asked or inducements offered or exchanged for this message. No weight or reliance can be placed on it.

486. Mr Lee also produced a letter dated 12 December 2017 to Mr Alex Cox from a Mr Reeves of Cala Homes (ID31). This claimed to be a letter 'in support of the above application which it is understood has been called-in by the Secretary of State'. It stated that Cala had 'expressed to the Landowner an interest in the acquisition of the site' and asserted that 'we would look to implement the consent and build out the development as a priority to ensure the immediate delivery of housing'. Even taken at face value, there could be no certainty that Cala would bid, let alone make the highest bid and be sold the site. Once again, the authors were not tendered for cross-examination, and the document was submitted too late for HPPC to investigate Cala Homes' track record or circumstances to provide a rebuttal. As such no weight can safely be placed on this letter.

487. In reality, it could well be the case that a patient developer wished to acquire the site and wait to commence development, or indeed submit further alternative planning applications, in the expectation that land values or house prices would increase, or planning policy would become less restrictive. In a rising market, there could well be an incentive to delay.

Unsustainability/ demand for services

488. As regards medical services, the occupiers would generate demand for primary care that could not be met within the village. The issues identified by Mr Renow relating to unsustainability, namely insufficient medical staff on site to cope with patient numbers and insufficient accommodation for such additional staff, could not be addressed by the £26,340 offered in the Unilateral Undertaking of 17 May 2017 for refurbishment, extension or reconfiguration of the surgery since, for reasons he explained, it would not be possible to physically extend the surgery. There was no evidence provided on behalf of GDL to the effect that refurbishment or reconfiguration achievable with this sum would resolve the issues and meet the extra demand placed on the service by occupiers of the 80 dwellings. This extra strain on services would conflict with the objectives of ensuring healthy, inclusive communities with sufficient healthcare facilities to meet demand (Framework paragraphs 7, 17 final bullet, 69, 156, 162, 171).

489. There would be further stress placed on schools for the reasons set out previously. In this case, the development has been assessed as generating an assumed 24 primary pupils, and Essex County Council originally requested a financial contribution of £293,232 to meet this additional demand (CD3.6 set A), in addition to provision of a safe walking route to Witham. The request was withdrawn not because the issue of school places and transport costs had gone away, but purely because of the perceived strictures of the CIL regulations. For the reasons set out above, great weight should be given to this planning harm.

Loss of agricultural land

490. Although not best and most versatile agricultural land, the development would still entail significant loss of greenfield agricultural land which the Framework treats as undesirable unless the loss is 'necessary' (Framework paragraphs 110, 111 and second sentence of Framework paragraph 112). The developable area would be about 2.73ha plus areas of proposed planting and 'detention basin' in a red line area of approximately 4.57Ha. This is harm that should be weighed in the planning balance.

5YHLS/weight attaching to provision of housing

491. HPPC's case is that on the correct approach, there is no shortfall in 5YHLS for the reasons set out above. Even if that be wrong, the shortfall does not justify departure from the development plan. The specific development plan policies and the physical and policy harms referred to (including conflict with the Framework) significantly and demonstrably outweigh the benefits of providing 80 dwellings at this location.

Conclusion of HPPC case to the Inquiry

492. For the reasons set out above, the 3 schemes should be refused planning permission; the GDL 140 dwelling and the DWH 120 dwelling applications should be refused and the GDL appeal dismissed.

The Case for Stone Path Meadow Residents Group

Introduction

493. There are three parts to the case for SPMRG. First, identifying conflict with the Development Plan; second, the application of Limbs 1 and 2 under the fourth bullet point of Framework paragraph 14; and third, a consideration of the planning balance.

494. In very brief summary, SPMRG submit that with respect to part one, there is a conflict with development plan in respect of seven separate policies.

495. With respect to part 2, SPMRG submit that there is a five year housing land supply and that as such the fourth bullet point does not, in fact, apply. Should it be found that nevertheless it does, SPMRG consider that the operation of Framework paragraph 134 indicates that development should be restricted applying Framework footnote 9 (SPMRG accepts that this is the only relevant restrictive policy that falls to be considered). In the event that the Secretary of State does not agree with that analysis, SPMRG considers that the adverse impacts of granting permission would significantly and demonstrably outweigh

the benefits, when assessed against the policies in the Framework taken as a whole in respect of both the 80 and the 140 schemes.

496. Under part 3 SPMRG submit that the planning balance weighs against both schemes in the light of the identified harms and the weight that ought to be given to the benefits identified.

497. Each of these points is now developed in further detail.

Part one

498. SPMRG submits that the evidence presented at the Inquiry demonstrates that there is significant conflict with the following adopted development plan policies:

i) Policy RLP2: Town Development Boundaries and Village Envelopes;

ii) Policy RLP80: Landscape Features and Habitats;

iii) Policy RLP100: Alterations and Extensions and Changes of Use to Listed Buildings, and their settings;

iv) Policy CS5: in relation to the countryside and development outside village envelopes;

v) Policy CS8: the character of the landscape and its sensitivity to change; the enhancement of the natural environment and maximising opportunities for creation of new green infrastructure;

vi) Policy CS9: regarding the built and historic Environment and the preservation of the setting of Grade II* Listed buildings;

vii) Policy CS11: in relation to infrastructure and facilities.

499. These breaches militate strongly against the grant of planning permission.

Development Boundaries: RLP2 and CS5

500. Both application schemes clearly fall outside the adopted development boundaries, and it was accepted by Mr Lee for GDL that both proposals would therefore breach policies RLP2 and CS5. Significant weight should be given to these breaches. The relevant policy in the emerging BNLP is LPP1 the wording of which is set out above (paragraph 45).

501. Ms Jarvis was asked in cross-examination about the date when development boundaries were last reviewed. It is submitted that, in the context of this District and this site, this is irrelevant. It is apparent from the emerging Local Plan that the Council's spatial strategy, as discussed by Ms Jarvis in her written and oral evidence, is focused on significant development in other areas of the District and, in particular, on a number of Garden Villages. It is plain from BNLP Inset Map 36 that the development boundaries of Hatfield Peverel are intended to remain exactly the same in relation to this site as they are in the adopted development plan documents. The current intention of the Council as seen through the emerging Local Plan therefore clearly demonstrates that the development boundaries are appropriate in their current location.

502. It is acknowledged that the RLP2 and CS5 date from before the introduction of the Framework and therefore must be judged against Framework paragraph 215. In the very recent appeal decision (CD.32.10 set C, paragraph 39), on the same policies under consideration here, the Inspector discussed Policy CS5:

> *I accept that the policy does not reflect the exact wording of the Framework; its adoption pre-dated the publication of the Framework. For that reason the policy needs to be considered against paragraph 215 of the Framework. It is a policy firmly aimed at protecting the environment, landscape character and biodiversity of the countryside. <u>This accords with recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it given in paragraph 55 of the Framework. I therefore consider that it should be given the greater weight identified in paragraph 215</u>.* (emphasis added).

503. Contrary to suggestions made at Inquiry that this Inspector had erred in her analysis , she has clearly identified that it was open to her to attach "due weight… according to [its] degree of consistency with this framework" to CS5 as set out in Framework paragraph 215. It is submitted that the Inspector found that the policy was highly consistent with the Framework, focusing in particular on Framework paragraph 55 and therefore determined that, given its closeness to the Framework, she could accordingly give it greater weight than if it had been inconsistent with the Framework. In accordance with the well-rehearsed principles set out in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) in relation to how to read an Inspector's decision letter, it is therefore submitted that the Inspector's analysis is sound, based on an accurate understanding of the Framework and should be adopted here.

504. It is therefore submitted that significant weight should be attributed to the breaches of RLP2 and CS5 that would occur should either proposal be granted planning permission. As set out below when considering the tilted balance, emerging policy LPP1 would also be breached.

Landscape and Visual Impact: Policies RLP80 and CS8

505. SPMRG submits that both schemes would breach policies RLP80 and CS8, which should be given significant weight. In particular, RLP80 provides that "development that would not successfully integrate into the local landscape will not be permitted"; CS8 provides that "development must have regard to the character of the landscape and its sensitivity to change and where development is permitted it will need to enhance the locally distinctive character of the landscape…". SPMRG submits that it is plain that neither scheme (despite the Green Infrastructure plans (ID16a and ID16b) submitted at Inquiry) would comply with these policies.

506. The relevant BNLP policy is LPP71, which provides that "Development which would not successfully integrate into the local landscape will not be permitted". The Hatfield Peverel NDP emerging policy HPE6 "seeks to protect the landscape setting of the village through preservation and enhancement of views identified by the community and the [HPLCA]… Any proposed development… must ensure their key features can continue to be enjoyed, including distant buildings, areas of landscape and open agricultural area." These policies would also be engaged, as referenced below in the consideration of the tilted balance.

507. It is SPMRG's case that either scheme would result in a significant and unacceptable impact on the intrinsically rural and open character of the site, destroying the much-valued south-western rural fringe of the village. There would be a departure from the historic settlement pattern of Hatfield Peverel in this thrust into open and undeveloped countryside, a loss of farmland and a

significant erosion of "the peaceful and rural qualities of the valley landscape [which] provide a green corridor" identified in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). These factors, coupled with the loss of much valued views and the intrusion of the site into views across the valley towards Hatfield Peverel, combine to result in unacceptable harm to the landscape character of the site.

508. As described by Mr Dale in his oral and written evidence, the landscape of and views from Stone Path Meadow (particularly from the corner of Church Road and Stone Path Drive) are highly valued and cherished by local residents: the views across Stone Path Drive from the corner of Church Road and from the footpath are "unrivalled anywhere else in the Parish". He described how, when walking along the footpath alongside Stone Path Drive, "the eyes are always drawn to the open vista", to the distant views across the Chelmer vale and the Ter valley and towards Baddow Ridge. Whilst Stone Path Drive is physically present for footpath users and those moving along Stone Path Drive itself, "that is not where the eyes are drawn, and you would forgive that edge anything for the views that it gives".

509. Mr Dale's evidence also addressed the loss of the views from Church Road and the footpath in the context of breaching the emerging policy in NDP policy HPE6 (as did Cllr Renow on behalf of HPPC), referred to below in relation to the tilted balance.

510. In terms of the schemes' impact on the rural setting of the village, it was suggested on behalf of GDL that, although Hatfield Peverel would expand into open countryside as a result of the development, the new housing estate would remain surrounded by countryside on three sides, such that Hatfield Peverel's rural setting would be retained. Mr Dale's evidence in chief on this point was that from the point of view of Stone Path Drive, the rural setting would be "destroyed" through the loss of the open views and the presence of housing. From within the new housing estate, Mr Dale noted that residents "would not see the tranquil views; those views would be gone". Finally, he described how the site would be visible in views across the valley and noted that the village's rural setting would be damaged by the intrusion of urban development into the countryside.

511. So from an aerial and cartographic viewpoint, Hatfield Peverel would retain a rural setting, as neither scheme would mean physical coalescence with any other urban development. However, SPMRG submits that this is essentially irrelevant: the point is that the current rural setting of the village is open and visible. At present, one has views out from this fringe of Hatfield Peverel and, looking back towards the village, one can just make out the edge of Church Road and Stone Path Drive in views from across the valley, as noted in the Hatfield Peverel Local Landscape Character Assessment (CD28.3 set C). On both schemes, the housing and the significant amount of proposed planting around the edges of the development - expressly included to shield the housing from view - would mean that neither current nor future residents of the housing estate would be able to see the rural setting of the village. Further, as described by Mr Dale, the slope of the site and the relative flatness of Hatfield Peverel mean that either scheme would be visible from views across the valley to a greater extent that at present, detrimentally impacting on the rural setting of the village.

512. In terms of mitigating the impact on the site, Mr Dale reasonably agreed that the proposed planting and landscaping at the northern edge of the site adjoining

Stone Path Drive might improve the views from the site towards Stone Path Drive. However, he maintained that this would not make the price of development worth paying: "to take away our panoramic vista across the valley and replace it with a small suburban park with trees would not be a major step forwards".

513. In terms of the Blue Land which would be available to residents and the public, Mr Dale noted that the majority of the Blue Land is next to the A12: it "lies in less tranquil settings up near the A12, with constant road noise and with no window onto the valley landscape." He suggested that, in landscape and visual impact terms, the Blue Land was "no mitigation" for the losses that would be suffered. In particular, he explained that this was because the Blue Land is some ten metres lower into the valley than the northern edge of the site such that, although one could still see the River Ter and the views are pleasant, these views are no mitigation for the loss of the views from the top of the site.

514. Mr Holliday gave landscape and visual impact evidence on behalf of GDL. Mr Holliday's evidence discusses five landscape character assessments ranging from a national level down to site level: the National Character Area assessment (CD28.4 set C), the Essex Landscape Character Assessment (CD.28.2 set C), the Braintree Landscape Character Assessment (CD 14.5 set B), the Hatfield Peverel Local Landscape Character Assessment (CD.28.3 set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B).

515. It should be noted that Mr Holliday was content to pick up on the small details of the illustrative masterplans and Green Infrastructure Plans - such as the retention of existing individual hedges onsite - and point to these as positive evidence of the schemes' compliance with these larger landscape character assessments. His written evidence, however, failed to assess and he was reluctant to agree in his oral evidence that there were other, broader aspects of these character assessments which would be breached or detrimentally impacted upon by either scheme.

516. In relation to the National Character Area Assessment ("NCAA"), Mr Holliday noted that the schemes' provision of "new planting and… conserving trees and hedges" meant that the schemes chimed positively with the NCAA (at 2/POE paragraph 6.2). He then found that the development of the site "would have a negligible effect on the wider character area at this broad geographic scale" (at 2/POE paragraph 6.3).

517. Of course, Mr Holliday is correct to say that a 4.57ha or a 6.35ha site would not alter the county of Essex. He did not, however, mention any ways in which the schemes might negatively impact on this specific part of Essex.

518. The NCAA gives a number of Key Characteristics for this Character Area, which include "agricultural landscape [which] is predominantly arable with a wooded appearance… Field patterns are irregular despite rationalisation" and "A strong network of public rights of way provides access to the area's archetypal lowland English countryside" (cited in Mr Holliday's proof at 2/POE paragraph 3.23). Stone Path Meadow is a perfect example in miniature of these key characteristics of Essex and therefore, it is submitted, makes a strong contribution to the character of the surrounding area as classic Essex countryside. This contribution would be destroyed by development of the site with the loss of arable landscape, the loss of the irregular field pattern through housing and the loss of the

footpath's rural setting. Yet, despite Mr Holliday's having identified specific ways in which the schemes would positively chime with the NCAA, he did not identify or choose to take into account the ways in which the character of the site, as relevantly described by the NCAA, would be negatively impacted.

519. The Essex Landscape Character Area Assessment (ELCAA, CD.28.2 set C) describes the character area containing Stone Path Meadow as the "Central Essex Farmlands" character area. Mr Holliday again picks up on the substantial proposed planting around the development as assisting with the key landscape sensitivity of "moderate inter-visibility of the landscape" identified by the ELCAA (2/POE paragraph 6.5). He then assesses that developing the site would result in a "negligible effect" on the Central Essex Farmlands character area.

520. Whilst this is true at a Character Area level, Mr Holliday again omits to assess how this particular bit of the Central Essex Farmlands would be impacted upon. The Key Characteristics of this area include:

> *Key Characteristics:*
> *Irregular field pattern of mainly medium sized arable fields, marked by sinuous hedges and ditches.*
> *Mostly tranquil character away from major roads…*
> *Overall Character:*
> *The Central Essex Farmlands is an extensive area of gently undulating arable farmland bisected by the Chelmer Valley. Irregular fields are enclosed by thick but intermittent hedgerows…*
> *Away from the A120, A130, A12, M11 road corridors… large parts of the area have a tranquil character, embracing tracts of fairly secluded countryside*

521. Again, SPMRG submits that the description fits Stone Path Meadow exactly and that the site currently makes a very strong contribution to these aspects of this area around the edge of Hatfield Peverel as an area of Central Essex Farmland. Again, SPMRG submits that the development of this site for housing would destroy that contribution and that therefore there would be a significant impact on this portion of the character area described in this assessment. Indeed, Mr Holliday accepted in cross-examination that, insofar as there would be a loss of farmland through developing the site for housing, that was "obvious".

522. The Braintree Landscape Character Assessment (CD14.5 set B) describes the area as "gently undulating landscape (which) is fairly densely populated… Surrounding the settlements, pastoral fields tend to be small to medium with their boundaries delineated by gappy and fragmented hedgerows" (page 93). The Suggested Landscape Planning Guidance recommends that planners "ensure that any new development is small-scale, responding to historic settlement patterns, landscape setting…" (page 95).

523. Mr Holliday notes that the area has a "low to moderate sensitivity to change overall" (2/POE paragraph 6.10) and that the Suggested Land Management Guidelines recommend conserving and enhancing the hedgerow pattern. He again identifies that the schemes include green infrastructure proposals, which he describes as "these benefits", but the effects of "these benefits" will be contained within a localised area, such that the impact on this character area is negligible.

524. In the first place, SPMRG submit that the benefit of retaining the hedges onsite can only be minimal where they are either contained within a housing development (as can be seen on the Green Infrastructure plan for the 140

scheme), or where they merely form the perimeter for the development. This is because, it is submitted, the hedges are mentioned in the landscape character assessments under discussion in the context of rural arable farmland, of fields divided and subdivided by hedge structure: the loss of that context of the open arable fields makes the mere retention of the hedges somewhat pointless.

525. Secondly, SPMRG again suggest that Mr Holliday has not included in his analysis other aspects of the schemes which do not comply with the Suggested Landscape Guidelines, namely the "small-scale" development or "responding to historic settlement patterns". A development of 80 or 140 houses would be a significant expansion in Hatfield Peverel, a village of 1,815 households. It should also be borne in mind that the emerging NDP policy HO1 provides that "development on unallocated sites should be for small numbers of houses of up to 30 dwellings".

526. Moreover, as suggested to Mr Holliday in cross-examination, developing Stone Path Meadow for housing would not respond to the historic settlement pattern. This is visible in the series of maps dating from 1777 which are appended to Mr Handcock's proof of evidence (3/APP Appendix A2). It is submitted that it is clear from these maps that the historic development pattern of the settlement was to fill out a linear settlement along the Street, heading north and east of Church Road and coalescing in a relatively tight knot around a centre focused on the Street, north of Church Road and around the Strutton Memorial Ground. The development of the significant Stone Path Meadow site would constitute, it is submitted, a departure from that pattern, as well as detrimental impact on the landscape character of the site and its surrounding area.

527. Again, SPMRG submit that, contrary to Mr Holliday's assessment of the impact of the site's development on this character area as "negligible", there would be a significant and detrimental impact on this portion of the landscape character area, as described in the Braintree Landscape Character Assessment.

528. In terms of the site-specific assessments (Hatfield Peverel Local Land Character Assessment (CD28.3, set C) and the Braintree District Settlement Fringes Evaluation (CD14.4 set B), Mr Holliday considers that there would be a medium/high magnitude of change "given the adjacent settlement context of the site" (2/POE paragraph 6.17). It is submitted that the fact that Stone Path Meadow forms the rural setting to Hatfield Peverel does not lessen the magnitude of change on the site from its proper classification as "high"; indeed, if anything, it should increase the significance of this change. Further, it is submitted that Mr Holliday's characterisation of the site as "a relatively small area of agricultural land… characterised by the existing open settlement edge" overstates the matter. Stone Path Drive is formed of low, modest houses, set back beyond a road and pavement and partially screened by trees and hedges on the edge of Stone Path Meadow and by the properties' own hedges. It is submitted that a far greater influence on the character of the site is the rural nature of the land surrounding three sides of it and the rolling views visible from the footpath.

529. Mr Holliday's assessment is that the landscape effect upon the local landscape character of the site and surrounding area would be Moderate Adverse" at Year 1 and "Minor/Moderate Adverse" at Year 10 (2/POE paragraph 6.18). In cross-examination, Mr Holliday agreed that the appropriate comparison for identifying the impact is between what the site looks like "now" and at Year 1, and between

the site "now" and at Year 10: it is not a question of becoming accustomed to the development or "time easing the pain". He also explained that his reason for judging that the impact reduces to Minor/Moderate is the "settling in" effect as the planting infrastructure matures and the colours of the buildings "settle down".

530. In the first place, SPMRG submits, however, that the appropriate landscape impact would be "Major Adverse", for the reasons set out above about the scale and nature of the impact that development would cause. Secondly, it is submitted that the mere growth of plants and the mellowing of buildings is not sufficient for a comparison between the site as it is now and the site at Year 10 to have decreased in magnitude as suggested by Mr Holliday: there would be an undeniable magnitude of change caused by this development which cannot justify a conclusion of reducing "Moderate Adverse" to "Minor/Moderate Adverse". It is therefore submitted that the impact would remain at "Major Adverse" for Year 1 and Year 10.

531. SPMRG therefore submits that there would be a much greater impact on the landscape character of the area and this specific site, as described by these assessments, than Mr Holliday allows in his analysis.

532. Inspector Parker took the correct approach to assessing landscape character impact in his Decision Letter of 24th July 2017 (CD32.6 set C), particularly paragraphs 19 and 25-27:

> *"19. The proposed scheme would see the complete redevelopment of the appeal site. Its intrinsically rural farmland character, abutting the established settlement, would therefore be altered into a purposely laid out housing development. The result would be a development that would visually jar with the existing settlement given that the field forms a distinct separation between the built-up areas of the settlement to the north and east and the countryside lying to the south and west of the appeal site. Whilst I note that various landscaping schemes could be employed to reduce this impact, given that only one side of the site is currently bounded by any significant built form, the fundamental character of this agricultural field, and its contribution to the intrinsic beauty of the countryside, would detrimentally change.*
> *25. Returning to character and appearance more widely, my concerns are further reinforced when one considers the Landscape and Visual Impact Assessment (LVIA) submitted by the appellant, which found that the proposal would result in a 'minor-moderate adverse' effect, and that there would specifically be a long term 'moderate effect' on users of the PROW (FP43). There is an existing mature landscape structure along many of the boundaries to the site which provides an element of containment for any development within the field.*
> *26. Nevertheless, the landscape harm here would be through the erosion of the distinctive landscape of the area, including the loss of the tranquil farmland scene. The Local Landscape Character Assessment undertaken by Landscape Partnership in October 2015 found that 'the peaceful and rural qualities of the valley landscape provides a green corridor'. From this, the Parish Council developed emerging Policy HPE6 of the NP, which seeks to 'protect the landscape setting of the village through the preservation and enhancement of views…any proposed development…must ensure key features can continue to be enjoyed including…open agricultural countryside'.*

27. The sense of tranquillity both visually and aurally - which is important in the settlement owing to the noise and bustle created by the A12 - would be detrimentally eroded, with the open footpath bounded on one side by a large housing estate. In this respect, I concur with the findings of the LVIA which identified a moderate adverse effect on the PROW and its users. For similar reasons, I also find that the proposal would result in moderate harm in landscape terms."

533. This approach is commended to the Secretary of State. SPMRG note that the Secretary of State did not agree that this particular element of Inspector Parker's decision was flawed and so, whilst the decision itself was quashed in its entirety, SPMRG do not accept that this aspect of his analysis is wrong in law or policy. The Secretary of State could (and SPMRG submit that he should) lawfully come to the same conclusion as Inspector Parker in respect of landscape harm.

534. SPMRG therefore submit that policies RLP80 and CS8 would be breached, in that there would be unacceptable landscape character impact and the development would not integrate into the landscape. Further, these breaches should be given significant weight. Emerging policy LPP71 would also be breached, which is relevant when considering the tilted balance below.

Heritage: Policies RLP100 and CS9

535. SPMRG's case is that policies RLP100 and CS9 are engaged and would be breached if development were to be permitted. In respect of CS9 this would be because there would be a failure to "protect[] and enhance[…] the historic environment in order to respect and respond to the local context, especially in the District's historic villages, where development affects the setting of historic or important buildings…". In respect of RLP100, the breach would be because there would be a failure to "preserve and enhance the settings of listed buildings by appropriate control over the development, design and use of adjoining land".

536. In this context SPMRG note that in determining the Steeple Bumpstead appeal, the Inspector said:

*"…although RLP100 mostly refers to alterations, extensions and changes of use to listed buildings, it does include reference to their settings. It specifies that the Council will preserve and enhance the settings of listed buildings by appropriate control over development design and use of adjoining land. It is therefore relevant" (*paragraph 29, CD32.10 set C*)*

537. LPP60 in the emerging Local Plan, Section 2 similarly provides that the Council will seek "to preserve and enhance the immediate settings of heritage assets by appropriate control over the development, design and use of adjoining land". Emerging policy HPE8 in the NDP requires "respect the [heritage asset(s) in the Parish] … and to ensure that no harm comes to them as a result of their plans. This will include the setting of the asset." These emerging policies would be breached in the same way as RLP100 and CS9 above.

Hatfield Place

538. As explained by Mrs Freeman in her written and oral evidence, Hatfield Place is of great significance to the residents of Hatfield Peverel and locals in the area: this significance draws heavily on Stone Path Meadow as part of the setting of

Hatfield Place. Her evidence addressed the longstanding historic and social links between Stone Path Meadow and Hatfield Place, and particularly the ancient link between the two provided by the footpath, Public Right of Way (PROW) 43, as first marked on the Tithe Map of 1841 (F21c). She explained how these historic and social links find their expression in local lore and stories told by residents and locals about Stone Path Meadow, the owners of Hatfield Place and events that took place on Stone Path Meadow.

539. Mrs Freeman described in detail the experience of walking along PROW 43 towards the asset and the building anticipation as one journeys along the footpath, waiting for Hatfield Place to emerge amongst the trees, the "jewel in the crown of Hatfield Peverel", as she called it. It is submitted that this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance.

540. The historic maps appended to Mr Handcock's evidence (3/APP) also provided proof of longstanding links of ownership between Hatfield Place and Stone Path Meadow. As discussed with Mr Handcock in cross-examination, much of the site for both the 80 scheme and the 140 scheme was in the ownership of Hatfield Place for significant periods since the construction of the house in the late 1700s. The evidence also suggests that Stone Path Meadow has been in use as agricultural land for most of that period.

541. Mr Handcock agreed that there were functional and economic links between Stone Path Meadow and Hatfield Place, notwithstanding the fact that the land had never been included as part of the house's ceremonial formal pleasure gardens. Hatfield Place may not have been, as explained in detail by Mr Handcock, a "country house" set in acres of parkland like Boreham House, nor was Stone Path Meadow part of Hatfield Place's pleasure gardens or crafted views: Stone Path Meadow was therefore not significant in understanding that particular aspect of Hatfield Place. Nevertheless, it is submitted that it is not appropriate to ignore any other types or manifestations of significance that the setting of Hatfield Place might make to the asset. SPMRG therefore submits, contrary to Mr Handcock's assessment, that these more practical links between land and house - of ownership, economic and functional reliance - are of value in understanding Hatfield Place's heritage significance and place in the landscape.

542. A further contribution of Stone Path Meadow to the significance and understanding of Hatfield Place is its intrinsically rural, open nature. In the first place, as noted by Historic England, this open, undeveloped space contributes to the physical division between Hatfield Peverel and Hatfield Place and, consequently, to an appropriate understanding of Hatfield Place as a separate residence of greater wealth, social status and significance from houses in Hatfield Peverel (CD4.5b set B and CD27.4 set C).

543. Again, notwithstanding Mr Handcock's assessment of Hatfield Place as an "edge of settlement" residence which is within the experiential orbit of Hatfield Peverel, it is clear from an examination of the historic maps provided (3/APP Appendix A2) that Hatfield Place has always been demonstrably and clearly separate from the village itself, from the 1777 map to the most recent OS map of 2002. Whilst the land to the north of the Street has been heavily developed in the centuries since Hatfield Place's construction, it is obvious from these maps the land to its east and south has remained undeveloped, save for the sole

incursion into that open space of allotments, followed by the anomalous development of Stone Path Drive. This, in Mrs Freeman's words, is a "neat and discrete development that nestles unobtrusively in the landscape" and, it is submitted, most unlike the present applications, which jut out strongly into historically undeveloped countryside.

544. Further, the fact that Stone Path Meadow, the "Blue Land" and the land which became Stone Path Drive, has been in the ownership of Hatfield Place for much of the house's history and yet remained undeveloped (until the late 1980s in the case of Stone Path Drive) strongly suggests that this separation from the village was preserved by the owners of Hatfield Place. SPMRG submits that it is plain that Stone Path Meadow makes a significant contribution to the significance of Hatfield Place in this regard.

545. Secondly, it is submitted that the mere fact that the land has remained undeveloped and in agricultural use ever since the house's construction is of significance. Historic England's "Setting of Heritage Assets" guidance notes that where part of an asset's setting remains as it was when the asset was constructed, this can create significance (page 4 onwards, CD27.3 set C). Further, whether this is a deliberate preservation or is simply "fortuitous" is not relevant: it is the fact that the land has remained as it has always been which is of importance. It is submitted that, here, the fact that Stone Path Meadow has never been developed and remains in its historic agricultural use means that, as part of the setting of Hatfield Place, it contributes to the significance of that asset. This land provides a fast-narrowing window onto the surroundings of Hatfield Place as they have always been. Even if the land had never been owned by Hatfield Place, therefore, it is submitted that this would be significant to its setting. The fact that the land has been owned by Hatfield Place, and that it contributed to the financial maintenance of Hatfield Place through its functional, agricultural links with the house, only increase that contribution of significance.

546. Thirdly, it is submitted that the contribution made by Stone Path Meadow to the significance of the asset has increased over the 20th century, with the rapid advance of modernity on Hatfield Place. It is acknowledged in the Historic England guidance that the contribution made by setting to an asset may change over time (page 2, CD27.3 set C). As Hatfield Peverel has expanded over the centuries, as development to the north of the Street and along Church Road has intensified and, particularly, once Stone Path Drive was built, there has been an inevitable build-up of pressure on the remaining undeveloped rural land surrounding Hatfield Place, protecting it from the encroaches of suburbia and modernity. Stone Path Meadow plays a vital role in relieving that pressure, ensuring that Hatfield Place remains aloof from Hatfield Peverel, and providing a source of tranquillity in strong contrast to the A12 road to the immediate north.

547. It is SPMRG's case that the links and contributions described above between Stone Path Meadow and Hatfield Place mean that Stone Path Meadow contributes heavily to the significance of Hatfield Place as a Grade II* Listed Building - both in terms of when it was built and in its modern context. It therefore follows inevitably that the development of the site for housing (whether under the 80 or the 140 scheme) and the intrinsic destruction of its open, rural nature would result in the destruction of those links and the consequential damage to the significance of Hatfield Place.

548. In terms of the mitigation offered by GDL, as explained by Mrs Freeman in her evidence, the mere preservation of the footpath route through a housing development would not prevent a severely detrimental impact on the experience of journeying along the footpath. Further, it is submitted that the new planting proposed will not mitigate in any way the kind of impacts described above.

549. The recent case of *Steer v SSCLG* [2017] EWHC 1456 is of relevance to a proper assessment of Mrs Freeman's evidence on the experiential significance of the site to Hatfield Place. In this case, the High Court held that an inspector had erred by failing to consider that the existence of a historical, social and economic connection between a Grade 1 listed asset and agricultural land between 550m and 850m outside the boundary of its Park could bring that land within the setting of the heritage asset and could contribute to its significance. In particular, the Court considered at [69] that "the Inspector adopted an artificially narrow approach to the issue of setting which treated visual connection as essential and determinative".

550. SPMRG therefore submits that the contribution of Stone Path Meadow described by Mrs Freeman to the significance of Hatfield Place, and in particular the experiential element of that contribution, is sufficient to base a finding of heritage harm, even if no visual links could be identified between the site and the asset.

551. Further and in addition to the impact on Hatfield Place already set out above, there would be also a visual impact on Hatfield Place in that there would be clear inter-visibility between the site and the asset during the winter and early spring months when there are no leaves on the trees, and potential co-visibility of both schemes throughout the year.

552. It is clear from photographs provided at Mr Handcock's 3/APP, Appendix A.4, CD 27.5, set C and Mrs Freeman's proof that during the winter months, when the trees bordering Hatfield Place have lost their leaves, there is clear inter-visibility between the sites of both the 80 scheme and the 140 scheme and the heritage asset. Mr Handcock agreed in respect of his photograph from the point marked as A.4.11 (Appendix A4) that there is inter-visibility between the 80 scheme and the asset, and that even one-storey buildings would be visible from Hatfield Place, particularly from the higher-level windows.

553. Further, the photographs at F28B clearly demonstrate, as Mrs Freeman explained, the "extent of the intrusion and encroachment into the setting of Hatfield Place" that the 140 scheme would represent. This greater degree of inter-visibility of the 140 scheme is supported by the photo montages provided by Iceni Heritage at Viewpoints 3A and 3B of Figure 4, which make it plain that the development would be visible from the grounds of Hatfield Place (CD27.5 set C). SPMRG does not accept Mr Handcock's characterisation of this as "heavily filtered and difficult to appreciate" (3/POE paragraph 5.48) and submits that the inter-visibility would be far more significant than this, as the Inspector will have seen on his site visit.

554. It is submitted that inter-visibility of suburban development would impact detrimentally on the significance of Hatfield Place by visually undermining the separation between village and house and introducing a discordant element of modernity detracting from the pleasant and rural setting of Hatfield Place to its south and southwest. Historic England also noted in its letter of 6th February

2017 (CD4.5b set B) that this inter-visibility would detract from Hatfield Place's significance.

555. SPMRG note that Historic England is a statutory consultee and "a decision-maker should give the views of statutory consultees… 'great' or 'considerable' weight. A departure from those views requires 'cogent and compelling reasons'" (*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) at 72). The views expressed in Historic England's letters of 6th February 2017 should therefore be given significant weight.

556. In terms of co-visibility, SPMRG relies on the photograph taken by Mr John Warrant from PROW90-13 to the south-west of Hatfield Place (page 7, RG2). It was Mrs Freeman's evidence that both the 140 scheme and the 80 scheme would be visible from this point (she pointed out that "no one has yet invented an invisible house"). This evidence was not challenged by Mr Handcock (although he disagreed with the significance to be attributed to co-visibility).

557. As Mr Handcock explained in cross-examination, in this photograph Hatfield Place has a commanding position of its views across the valley and "appreciating it topographically in this way creates the impression that it has greater isolation from the village than is actually the case". Further Mr Handcock's own analysis of Hatfield Place's significance draws heavily on the views of its immediate pleasure grounds and the way in which longer views across the valley to its south and south-west have been designed to create an impression that the house has a far larger landholding than is the case. It is submitted that views back along the same axis also contribute to an understanding of Hatfield Place's significance and separation from the village.

558. It is therefore submitted that co-visibility of the development with Hatfield Place from this viewpoint would detract from the significance of Hatfield Place: it would represent a significant visual incursion into the setting of Hatfield Place and significant dilution of its separation from Hatfield Peverel.

559. It is therefore submitted that harm would be caused to Hatfield Place by either scheme: this harm would be "less than substantial" and Framework 134 would apply. On the spectrum of harm within the “less than substantial” category the 140 scheme harm would be moderate to high while that of the 80 scheme would be low to moderate given its reduced incursion into the setting of Hatfield Place and reduced visual impact compared with the 140 scheme.

William B. Public House

560. It is not part of SPMRG’s case that there would be harm caused to the William B Public House by the appeal scheme.

Conclusions on Heritage Policies

561. Policies RLP100 and CS9 would therefore be breached should planning permission be granted for either development, given the harm that would be caused to heritage assets by development of a part of their rural setting. The breach would be more significant in terms of the 140 scheme, given that the William B. would be affected as well as Hatfield Place.

562. In terms of the weight to be given to those breaches, SPMRG submit that the weight should be significant. In the very recent planning appeal in Land off

Finchingfield Road, Steeple Bumpstead (paragraph 29, CD.32.10 set C), an Inspector addressed the same policy context and the same policies in discussing the impact that a residential development would have on the setting of a Grade I listed church. The Inspector found that:

> *CS Policy 9 and saved LP policies RLP 90… and RLP 100 all seek to conserve local features of architectural, historic and landscape importance, including the setting of listed buildings… Whilst these policies do not contain the balancing requirement of the Framework contained in paragraph 134 they reflect the statutory test and therefore, unlike my colleague in the Silver End case, I consider that they should be afforded considerable weight.*

563. Policies RLP100 and CS9 are therefore both relevant and would be breached by both development proposals. These breaches should be given considerable weight, as they were in the recent Land off Finchingfield Road case. Emerging Policies LPP60 and HPE8 would also be breached, which is of relevance to the tilted balance analysis.

Infrastructure: Policy CS11

564. Policy CS11 relates to the Council's duty to ensure that "infrastructure services and facilities required to provide for the future needs of the community… are delivered in a timely, efficient and effective manner". Emerging NDP policy FI3 regarding "Education and Health Infrastructure" is also engaged: it provides that the "loss or degradation of education or healthcare services will be resisted", which is relevant given that the capacity of Hatfield Peverel's current educational and health facilities would be exceeded by either the 80 or the 140 scheme.

565. Cllr Renow gave evidence on behalf of HPPC in respect of the impact on infrastructure and community services, in particular on health services, education and traffic. As explained above (paragraph 23) Mr Boyd Ratcliff, Cllr Lewis and Cllr Bebb were not called to give oral evidence. It was made clear, however, that SPMRG continues to rely on their written evidence, although untested in cross-examination.

566. In respect of the impact on Hatfield Peverel's schools, the reasons why Essex County Council has not asked GDL for the original significant contributions to primary school places mentioned in its initial correspondence were made clear at Inquiry (CD 3.6 & CD3.7 set A, CD4.6 & CD4.9 set B). Mr Lee accepted in cross-examination that there was nothing in the Education Statement of Common Ground (ID8) to suggest that Essex County Council no longer needed the money or would not seek a contribution if able to. He also accepted that the cumulative impact of the four development sites mentioned in the letter to Priti Patel MP (Appendix 8 to ID8) would mean that there would be an estimated 81 children for whom there would be no school places in Hatfield Peverel.

567. Evidence emerged at Inquiry that there are no concrete local plans for expanding education capacity in the area. The Lodge Farm school discussed by Cllr Renow and Mr Lee is clearly at a very early stage and, in any event, is clearly intended to provide capacity for that development and the other significant development taking place in Witham: relying on such putative projects to mitigate the impact on Hatfield Peverel is speculative at best.

568. It was suggested to Mr Lee in cross-examination that, given there would be a cumulative impact as a result of the Stone Path Meadow schemes and that GDL was not making any financial contribution to ease the situation, it would be more accurate and credible to acknowledge that either scheme would contribute to a negative impact on education provision which should be weighed in the planning balance, even if GDL was unable to mitigate that impact. He agreed that there would be a "short term impact" on Hatfield Peverel schools, although he suggested that Hatfield Peverel-based pupils could attend unidentified schools in Witham (notwithstanding his own point that 35% of children in Hatfield Peverel schools live in other areas such as Witham), and agreed that this fact should be weighed in the planning balance (although he only suggested it should be given limited weight).

569. SPMRG submit that it is clear that, cumulatively, the 80 scheme or the 140 scheme would exceed the capacity of Hatfield Peverel's schools and this would constitute a planning harm, as per the evidence of Cllr Renow and the written evidence of Cllr Louis (on behalf of SPMRG). This impact engages CS11, as it is clear that the necessary facilities for the children of Hatfield Peverel are not being planned for in an efficient and timely manner. Mr Lee suggested that because Essex County Council and the Council have "worked with" GDL and will work with other developers in respect of other proposals, there is no conflict with CS11 overall. SPMRG does not accept this: part of the cumulative impact on education provision springs from this development, so the failure of this development to contribute in any way to ease the situation must mean that there is conflict with CS11.

570. In respect of the impact to local GP services, Cllr Renow's evidence was clear that there is no physical capacity to expand at either the Laurels or Sydney House practices: they are "landlocked". SPMRG's case is that the financial contribution of £52,992 will do nothing to ease the actual and significant problems experienced by the Hatfield Peverel services: namely, lack of funding, lack of staff and patient numbers which exceed suggested safe practice. Cllr Bebb's written evidence and the Practice Manager's letter (CD20.1 set C) make clear the deeply felt frustrations and concerns of both the community and the medical staff.

571. Again, SPMRG submit that although GDL are paying the contribution requested, given that this will not address the actual issues, a negative impact will nevertheless result from either the 80 scheme or the 140 scheme which constitutes a planning harm and engages CS11. It does not matter that GDL are unable to do anything further to mitigate the issue: there is still a negative impact and it would be wrong to ignore it and the residents' deep concerns.

572. SPMRG therefore submit that CS11 is engaged and breached: community services will be negatively impacted by further development in the village and the actual impact is not being effectively mitigated. In the alternative, should these impacts on community services not be found to constitute a breach of CS11, they should be considered as standalone considerations in the planning balance (as accepted by Mr Lee in respect of the impact to education services).

Conclusions on Development Plan Policies

573. SPMRG therefore submit that both proposals breach the adopted development plan and the seven specific policies identified above. These policies should be

given their full weight as adopted development plan policies on a proper application of Framework paragraph 215.

Part two:

574. This second part addresses the two limbs of the fourth bullet point of Framework paragraph 14: the "tilted balance" in Limb 1 and the "unweighted balance" to be applied to the identified heritage harm in Limb 2.

575. First it is necessary to consider whether the proposals fall within the fourth bullet point at all - is the development plan "absent, silent or [are] relevant policies out of date" - before considering the restrictive heritage policies under Limb 2, followed by the tilted balance under Limb 1, in the event that the Secretary of State disagrees with the first two conclusions.

Does the Fourth Bullet Point Apply?

Five Year Land Supply

576. As per the table of the parties' agreed positions (ID1.13), it is SPMRG's case that the Council can demonstrate a 5YLS, such that Framework paragraph 49 does not apply and "relevant policies for the supply of housing" are "up to date", such that there is no access to the tilted balance on this ground.

577. SPMRG's position on the disputed elements of the 5YLS calculation is as set out in Mr Leaf's adopted proof of evidence (RG5) and as per the discussion at Inquiry.

The Liverpool approach

578. The appropriate approach to take in addressing the backlog is the Liverpool approach, spreading the backlog of 1,660 dwellings out over the remaining plan period.

579. As explained by Mrs Hutchinson on behalf of the Council, the Liverpool approach forms the basis of the emerging Local Plan which is currently at examination. SPMRG submits that to adopt the Sedgefield method would be to undermine this approach taken by the Council after considerable consultation and work and, consequently, would be inappropriate in a plan-led system.

580. Paragraph 35 of the PPG provides that undersupply should be addressed "where possible" during the first five years of a plan. SPMRG submit that, here, it is not "possible". Adopting the Sedgefield method plus 5% produces an annual requirement of 1,100 dwellings or 1,258 dwellings with 20%: these targets are far in excess of anything achieved by the Council going back as far as 2001 and it is therefore extremely unlikely that the Council would be able to achieve these targets. There is therefore no practical purpose to adopting this approach: it is simply not possible for the Council to meet these requirements given their historic performance. Similarly, Mrs Hutchinson notes in her first proof that it is unrealistic to expect that the scale of increase in delivery required could be achieved straight away (paragraph 4.16, BDC1).

581. The significant increase in housing requirement from the Core Strategy figure of 272 dwellings per annum to an OAHN figure of 716 also indicates that the Liverpool approach is appropriate. This sudden upsurge in the annual

requirement is another reason why it is not possible for the Council to address the existing backlog in the next five years.

582. It is also highly relevant that the Council is bringing forward new Garden Communities in its area as set out in policies SP2 and SP7 of the BNLP, Section 2. The Council has thus deliberately planned its anticipated housing delivery over the Plan Period as a stepped housing trajectory based on the delivery of a strategic site, as opposed to a "standard annualised requirement". The latest 5YLS Statement predicts that 40,000 new homes in North Essex will be delivered by these Garden Communities. This also suggests that the Liverpool approach is appropriate, given the way in which the Council is planning its approach to housing delivery over the whole plan period.

583. SPMRG notes that Planning Inspectors have adopted the Sedgefield approach in the recent decisions at Coggeshall (paragraph 14 to 15, CD32.2 set C), Steeple Bumpstead (paragraph 9, CD32.10 set C). In the first place, the BNLP has now been submitted for examination since these decisions, which is a significant step forward in terms of the certainty of the Council's approach to Garden Villages (although plainly the Plan has yet to make it through examination). Secondly, neither Inspector's analysis addresses the points raised above in respect of whether it is possible for the Council to make up the backlog in the first five years.

5% or 20% Buffer

584. As submitted at Inquiry, SPMRG's case is that the appropriate target against which the Council's record of delivery should be measured for the purposes of applying either a 5% or 20% buffer is the requirement that was in place at the time. SPMRG therefore agrees with the Council's closing submissions on this point.

585. Further support is provided for this use of contemporary targets for measuring delivery by the two planning decisions submitted by SPMRG on the first day of the Inquiry.

586. The first is the Navigator L decision, dated 20th January 2015 (ID44). Here the Council had "oversupplied" against local plan figures from 2006-2014, but had undersupplied against a SHMA figure dating from April 2011. The Council argued that it should have its policy "oversupply" deducted from the requirement figure going forward over the next five years, on the grounds that it could not have known about the SHMA figure until 2014, so the requirement should not be calculated using that figure. The Inspector rejected that argument, noting that "I fully accept that during 2011-2014 the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here." In footnote 8 to this paragraph, the Inspector goes on to say that the Council's being unable to meet a need of which it was not aware "might be relevant in other circumstances, such as where the point at issue relates to where there has been "persistent under-delivery" for the purposes of the NPPF-buffer". The issue he was deciding was different but he clearly took the view that the Council should be measured in "persistent under-delivery" terms against the targets which it knew it was aiming for.

587. The second decision is Land North of Cranleigh Road, dated 14th August 2017 (ID43). Here, the Council had a low pre-Framework Core Strategy housing

target, on which it sought to rely for establishing a forward requirement (unlike the Council here). The Inspector disagreed and found that the forward requirement should be calculated using much more recent and much higher OAHN figures, even though these were not yet tested or adopted in a development plan document.

588. The developer also argued that "persistent under-delivery" should also be measured against these new figures from 2011, the date from which the requirement was calculated. This argument was rejected by the Inspector, referencing the Navigator decision, on the grounds that "in the period up until 2014 when the then PUSH SHMA identified a OAHN the LPA could not have been expected to meet a need that it was not aware of. On this basis, allowing for peaks and troughs, significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified."

589. Both of these decisions provide support for adopting the targets in place at the time when determining whether the Council has persistently under-delivered. It is plain that there is no under delivery in the present case.

Supply

590. As set out in Mr Leaf's letter (ID21), SPMRG submits that the Council has underestimated its supply by 461 dwellings (including the Sorrell's Field at 50 dwellings), such that there ought to be a 5YLS of 5.35 years using the Liverpool method plus 5%. Individual treatment of these sites is set out in Mr Leaf's letter and is not repeated here.

591. SPMRG has identified these sites on an application of the principles in Framework paragraph 47 and footnote 11 of the Framework and paragraphs 35-9 of *St Modwen Developments Ltd v SSCLG and others* [2016] EWHC 968 (Admin) (CD31.18, set C). It is submitted that it is plain that these sites fall within the definition of "deliverable", which does not require a site either to be allocated or to have planning permission.

592. SPMRG makes the following submissions in response to the Statement of Common Ground between GDL, DWH and the Council (ID39).

593. SPMRG maintains that the identified sites can be considered to be "available now": the fact that steps need to be taken before the site can be developed does not prevent the site from being available any more than GDL's need to sell the site to a housing developer prevents Stone Path Meadow from being available.

594. The figure for Sorrells Field was adjusted down from 52 dwellings to 50 on the understanding that the application was being revised down to 50 units.

595. Contrary to the penultimate paragraph of the SOCG, the Gimsons site (WITC 421) is included in the housing trajectory appended to the letter to Priti Patel MP, headed "Copy of full housing trajectory including draft allocations re query". The entry is on the last page, showing 70 dwellings over the next five years and noting that "Planning application expected to be submitted Autumn 2017 by Bellway Homes".

596. Should the Secretary of State find that there is a 5YLS deficit, contrary to the above submissions, this deficit should be given limited weight for the reasons set out in Mr Leaf's adopted proof and applying the principles in the case of *Phides*

Estates (Overseas) Limited v SSCLG [2015] EWHC 827 (Admin) (CD31.10 set C) as set out in the Statement of Case (at paragraphs 103-108 and not repeated here).

Is the Core Strategy and Local Plan Review otherwise out of date, absent or silent?

597. GDL have suggested that the adopted development plan is silent because of the lack of a Site Allocations Development Plan Document: it is suggested that this means that the development plan is silent on where to locate development outside the strategic areas.

598. SPMRG disagrees that the development plan is either "silent" or "absent" for the purposes of Framework paragraph 14. The relevant question is whether there are adopted policies which enable a decision-maker to determine whether or not to grant permission, as per the test set out in *Bloor Homes East Midlands Ltd v SSCLG & Or* [2014] EWHC 754. The Court held that:

> *50. …I do not think a plan can be regarded as "silent" if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle.*
> *51. A plan may or may not be "silent" if it does not allocate the particular site in question for a particular use, whether on its own or as part of a larger area, or if it does not contain policy designed to guide or limit or prevent development of one kind or another on that site or in that location. In Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 , para 18 Lord Reed JSC observed that the development plan is "a carefully crafted and considered statement of policy", whose purpose is to show how the local planning authority will approach its decisions on proposals for development unless there is a good reason not to do so. This is an essential principle of the plan-led system.*

599. It is submitted that the CS and the LPR plainly contain numerous policies which show how the Council will approach a decision on a proposal for development on Stone Path Meadow. It is submitted that it is irrelevant, therefore, that there is no adopted Site Allocations Policy document allocating land for development. Further, SPMRG note that, even if such a document existed in adopted form, it would not include this site for allocation, as set out in detail in the Statement of Case (paragraphs 83-86).

600. Further, in the light of *Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146 (F6f), it is submitted that the development plan policies' relative age is irrelevant to their weight in the planning balance, given their overall consistency with the Framework.

601. SPMRG therefore submits that the development plan is neither out-of-date in the relevant sense, nor absent nor silent in respect of policies relevant to this site.

Limb 2 of Framework paragraph 14: Restrictive Footnote 9 Policies

602. As set out under 'Heritage' above, SPMRG submit that the 140 scheme would cause moderate to high harm which is "less than substantial" under Framework paragraph 134 to Hatfield Place and low levels of "less than substantial" harm to

the William B. The 80 scheme would also cause moderate to high levels of "less than substantial" harm to Hatfield Place.

603. Applying the appropriate unweighted balance under Limb 2 of Framework paragraph 14 in respect of restricted policies, it is submitted that the heritage harm caused by either the 140 and the 80 scheme is not outweighed by the benefits of the relevant scheme when the heritage harm is given the appropriate "considerable importance and weight" under the duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding the desirability of preserving the settings of listed buildings (paragraph 38, CD31.5 set C).

604. Further, Framework paragraph 132 makes it clear that "As heritage assets are irreplaceable, any harm of loss should require clear and convincing justification". SPMRG submits that none of the public benefits of either the 140 or the 80 scheme provide the necessary justification for harming Hatfield Place, highly valued by residents, or the William B (in respect of the 140 scheme alone).

605. In terms of the weight to be given to the benefit of housing: on SPMRG's primary case there is a 5YLS surplus, such that the weight that can be given to the provision of housing is limited. Even if there is a 5YLS deficit, the provision of either 80 or 140 dwellings should nevertheless be given no more than moderate weight in the circumstances of this particular District and the steps being taken by the Council to remedy the deficit, as set out above. Moreover, as submitted in Opening (paragraphs 10 to 11, ID6), the significant amount of development planned for Hatfield Peverel must reduce the weight that can be given to this proposal. The provision of housing alone cannot outweigh the permanent harm to irreplaceable heritage assets.

606. In terms of the economic benefits of construction jobs and residents' spend cited by GDL, it is submitted that such results would flow from any housing development and do not provide specific justification for the proposed development on this site.

607. Regarding the Blue Land public open space, SPMRG does not accept that this is as significant a benefit or as effective a piece of mitigation in terms of landscape and visual impact, heritage, ecological or biodiversity matters as has been suggested. In the first place, the Blue Land is clearly inferior in landscaping and visual terms to Stone Path Meadow: the views from the southern portion of the Blue Land (near the detention basin) are inferior to those from the top of Stone Path Meadow and non-existent from the Blue Land adjacent to The Street. The Blue Land adjacent to The Street is markedly less tranquil than the site itself, which undermines suggestions that this land would be suitable ecological mitigation and also the value to be derived from this land in landscape character terms and in its use by the public.

608. In heritage terms, as discussed with Mr Handcock in cross examination, it is submitted that preserving the Blue Land as open space is an empty gesture as mitigation for the heritage harms, given that development on the Blue Land would have such a noticeable impact on the setting of Hatfield Place and the William B that it is not likely to be developed on heritage grounds.

609. In terms of the Blue Land's improving the ecology and biodiversity of the area, it is not accepted by SPMRG that any wildlife benefits will be realised: the Blue

Land is to be heavily used by dog walkers and members of the public; much of the Blue Land is located very close to The Street and the A12; and there will be a significant increase in human presence and disturbance caused by the housing development, as per the evidence of Mr East in examination in chief and cross-examination.

610. Finally, it was suggested that the Blue Land could be ploughed up at any moment, such that ensuring its continuation as meadowland constitutes a benefit. This alleged risk, however, is pure speculation. Mr East's unchallenged evidence was that the land has not been ploughed at any point over the last two decades and does not seem likely to be ploughed up given its size and difficult access points. SPMRG also notes Inspector Parker's conclusion in respect of the Blue Land offered with the original 80 scheme: "as this land is sought to mitigate an impact arising from the development, it cannot be considered to also be a benefit" (paragraph 47, CD32.6 set C). If any weight at all to be attributed to the public benefits of the Blue Land, it clearly must be no more than very limited.

611. Similarly in respect of the children's play area and wider biodiversity benefits from increased planting, these are benefits commonly attached to housing developments, provide no specific justification for this harm and, in any event, must be balanced against the inevitable loss of open greenfield agricultural land. The alleged wider social benefits of additional residents in Hatfield Peverel must also be balanced against the impact on community services and infrastructure set out above. Finally, the minor and cosmetic benefits offered such as bus stop improvements, allotments and sporting facilities contributions do not constitute benefits capable of providing "clear and convincing justification" for causing irreversible heritage harms.

612. There is nothing special or specific whatsoever about developing Stone Path Meadow or these generic benefits that might flow from that development which warrants the harm described above to the highly valued heritage assets of Hatfield Place or the William B. The Finchingfield Inspector reached similar conclusions in that case (paragraphs 36 to 38, CD32.4 set C).

613. In respect of the 80 scheme, it is clear that moderate to high "less than substantial" heritage harm to the designated heritage asset of Hatfield Place is not outweighed by the scheme's public benefits.

614. On a proper application of Framework paragraph 134 therefore, Limb 2 of Framework paragraph 14 indicates that development should be restricted. Consequently, the presumption in favour of sustainable development is not available to either application through this route.

615. Should the Secretary of State disagree with this assessment, it would be necessary to apply the first Limb, or "the tilted balance", as is set out below.

Limb 1: the Tilted Balance:

616. Should the Secretary of State find, contrary to SPMRG's case, that the harm caused to the listed buildings is outweighed by the public benefits of the scheme, it is nevertheless submitted that the adverse impacts of granting either scheme permission outweigh the benefits of that scheme when judged against the policies of the Framework as a whole.

617. Even if these proposals are considered only in the context of the "tilted balance", this does no more and no less than apply a presumption in favour of sustainable development - defined in the Framework as consistency with the Framework itself.

618. As recognised by Lord Carnwath in the *Suffolk Coastal* decision, "The Framework itself …is no more than "guidance" and as such a "material consideration" …It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme" (paragraph 21, CD31.2 set C).

619. The benefits of the scheme have already been assessed in respect of the Limb 2 unweighted balance. The concerns raised above in relation to the conflict with development plan policies must therefore still be given significant weight in the assessment of the suitability of either of the proposed schemes.

620. In terms of the adverse impacts "assessed against the policies in this Framework taken as a whole", the harm in terms of the impact on heritage assets (which retains its "considerable weight" under the s.66 duty), the moderate landscape character and visual impact harm and the impact on local infrastructure have been set out above.

621. An additional, further source of harm is that caused by breaches of the emerging policies on development boundaries, heritage, landscape and visual impact, infrastructure and design of new developments in the NDP and BNLP Section 2 set out above; specifically policies HPE6, HPE8, F13, HO1, LPP 1, LPP 71 and LPP 60. Framework paragraph 216 provides that decision-takers may give weight to the policies in emerging plans according to the stage of preparation, the extent of unresolved objections and the degree of consistency between the emerging plan and NPPF policies.

622. SPMRG submits that moderate weight should be attributed to the breaches of emerging policies in the BNLP and the NDP. Significant amounts of work and consultation have been done on both plans - which have both been submitted for examination - and the policies are consistent with the Framework, as per the evidence of Ms Jarvis. SPMRG does not accept that the additional work suggested by the Examiner into the NDP warrants a conclusion that no or very limited weight can be given to the plan. First, as set out in HPPC's opening submissions, no substantive findings have been made on the NDP's ability to meet the basic conditions by Mrs O'Rourke (ID5). Secondly, any additional SEA or HRA work that needs to be done in respect of the Arla Dairy allocation will have no impact whatsoever on the policies relied on by SPMRG (in respect of landscape character, views, heritage, infrastructure or limits on unallocated housing developments).

623. To permit development on Stone Path Meadow in contravention of these emerging policies would constitute a planning harm in the context of a plan-led system, given the weight that may be attributed to these policies under Framework paragraph 216.

624. Taking these sources of harm together, it is submitted that they must significantly and demonstrably outweigh the benefits put forwards by GDL in respect of either the 80 or the 140 scheme, looking at the Framework as a whole.

The Framework does place significant emphasis on the need for housing, but this cannot constitute a silver bullet here given the scope and breadth of harm that would be caused by these proposals to a village which is already accommodating a significant amount of development.

Part 3: The Planning Balance

625. It is plain from the above submissions that, on SPMRG's primary case, the planning balance tips firmly against both applications given the harm identified from the breaches of seven separate adopted development plan policies, the harm caused to heritage assets, the presence of a 5YLS, the weight to be given to emerging BNLP and NDP policies and the limited weight to be afforded to the generic benefits offered by the proposals.

626. As previously submitted in the Statement of Case, there are no other material considerations sufficient to justify a decision other than in accordance with the adopted development plan, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004.

Conclusions

627. As set out in Opening, the residents who live in Hatfield Peverel attach real significance to this site. As was made abundantly clear throughout the Inquiry, they deeply care about the views, the wildlife, the landscape and the heritage connected with Stone Path Meadow and the surrounding area. They are also deeply concerned about the impact that this development will have on services in Hatfield Peverel and the local area: these cares and concerns are genuine and should be listened to.

628. It was also obvious throughout the Inquiry that localism is alive and well in Hatfield Peverel: the residents have clearly placed their trust in the principles of localism through their sustained and significant engagement with the emerging NDP. The development of this site would wholly undermine that engagement and the views and values expressed in the NDP.

629. SPMRG closes these submissions by repeating that these proposals are contrary to both adopted and emerging development plan policies; the Council has a 5YLS and the site is much loved and valued. Stone Path Meadow should be preserved for future generations to cherish. Neither proposal is acceptable in planning terms and the appeal in respect of the 80 scheme should be refused and the application in respect of the 140 scheme should be rejected.

The Case for Braintree District Council

Introduction

630. The background to this inquiry is set out in the Procedural Matters at the beginning of this report. The case set out addresses all three schemes before the Secretary of State unless otherwise stated.

631. As was made clear in Opening, the Council's position to this inquiry is that there is no sufficient basis to refuse planning permission for these schemes, notwithstanding that they are in conflict with the adopted development plan. It stands by the assessments that its officers made of the schemes. It recognises that had the two larger schemes not been called in, it is likely that they would

have planning permission by now. It has not sought to challenge the developers' core case that, respectively, their schemes merit planning permission.

632. Equally it is of course primarily for those developers to persuade the Secretary of State that their schemes are worthy of planning permission, and the Council has not, in that same context, sought to attack the case mounted against the schemes by SPMRG and HPPC, even where those parties have been critical of the Council's approach. That does not mean, of course, that the Council accepts those criticisms are well-founded - they are not - but stems from a recognition that the purpose of this Inquiry is to consider the case for granting planning permission for each of the schemes.

633. In that same context, the Council will not descend into the detail of many of the disputes which will govern the ultimate outcome of this process; not because the Council does not have a view on them, but because it recognises that additional submissions from the Council on those points, beyond those made by the party advancing a particular position, are unlikely to assist. Accordingly, the Council's case is relatively brief. It does, however, touch on some of the controversial issues where the Council has taken a particular position on them which may not be mirrored by the relevant other party. The first is in respect of housing land supply.

Housing Land Supply

634. A key element of the Council's conclusions on the ultimate acceptability of these schemes - all of which are contrary to the adopted development plan - is that it could not then and cannot now demonstrate a 5-year supply of housing land. Efforts were made 'behind the scenes' to reach an agreed position with the two appellants as to housing land supply (including the suggestion of agreeing a 'range') but that did not bear fruit.

635. The Council was pleased to agree a position in respect of OAHN but in the light of Mr Spry's eventual position, remain surprised that further agreement could not be reached. Broadly we accept the Inspector's characterisation of the position when summarising the round table discussion, that it is unlikely that there would be a materially different effect on weight whether there was a c.3.3-year (GDL/DWH high water-mark) or c.3.9-year (Council's best case) deficit. In either scenario, the deficit is considerable and weighs in favour of granting permission for more housing.

636. Nonetheless GDL/DWH maintained that the true position was the lower end of that range, for reasons the Council do not accept are valid. As such a number of points arise for further comment.

637. Before moving to the specific controversies, it is important to be absolutely clear about the Council's approach to its BNLP. It would not have submitted its draft Plan for examination if it was not confident about its soundness. It is not inconsistent with that confidence to recognise that until the examination process has been carried out and expert consideration given to the contents, some uncertainty remains. Confidence in the plan's soundness does not exclude a pragmatic view of the reliance that can be placed on its draft provisions in the development management context until such time as they are confirmed.

638. Indeed such an approach accords with national policy in the Framework, which at paragraph 216 advises that weight should be afforded to emerging policy according to various factors, all of which are referable to the inherent uncertainty about the contents of draft plans until they are adopted.

639. A good example is the inclusion of draft allocations for housing on sites which under the existing adopted plan - which retains its statutory primacy - would be contrary to the development plan. The Gimsons site - identified by SPMRG in this case as one draft allocation that should be included in the five-year supply - makes the point neatly. While the emerging plan allocates it for housing development, the adopted plan has it as a Visually Important Space under Policy RLP4, meaning it is inappropriate for housing. Until such time as the draft allocation supercedes the present development plan status, it cannot be considered 'deliverable'. Of course, there is the additional irony that Priti Patel MP, in whose office Mr Leaf works, has objected to the draft allocation of the Gimsons site in the emerging plan and yet here (by extension) argues that it should be treated as a deliverable site for housing.

640. This general approach is relevant to the Council's position in two respects. First, in terms of the Liverpool/Sedgefield dichotomy in dealing with the shortfall since 2013 and, second, in terms of the additional sites that SPMRG sought to promote as being deliverable in their letter of 12 December 2017 (ID21). The Council turns next to the specific components of the supply debate.

OAHN

641. There is no challenge in this inquiry to the Council's position that its OAHN is 716 dwellings per annum. That figure has been derived from the latest household projections (in accordance with the PPG), and uplifted by 15% to account for 'market signals' (essentially past unmet need). That means that the ultimate figure of 716 dpa specifically accounts for unmet need in past years, in the way the PPG requires.

642. The figure is one of the key elements of the first Section of the emerging plan, which will be considered at the EiP in January 2018. All parties will be likely to wish to make submissions on the outcome of that EiP on the OAHN, and its ramifications (if any) for the matters before this Inquiry if they remain undetermined at that point.

Shortfall

643. The quantum of the shortfall against the OAHN of 716 (effectively unmet need) since 2013 is uncontroversial, but the period over which it is sought to be 'recovered' is not. GDL/DWH argue that it should be recovered in the next five years, relying on the PPG, which suggests that this 'Sedgefield' approach is appropriate unless it is unachievable. The Rule 6 parties contend for the shortfall to be recovered over the entire plan period, the so-called 'Liverpool' approach.

644. The Council will contend at the forthcoming EiP into its emerging plan that the examining Inspector should accept, for the purposes of the soundness of the emerging plan, the 'Liverpool' approach. This is in large part because that same plan contains an overall strategy (shared with its partner authorities) of seeking to meet future growth in Braintree (and beyond) by creating new Garden Communities and allocating larger housing sites, which can better respond to the

requirements for new infrastructure to support housing development, a strategy which the Council considers accords with government policy and is a sound approach to meeting future growth needs.

645. That same strategy means, however, that some of the new land for housing will not come forward until the middle of the plan period (and indeed beyond). If it is confirmed by the EiP as a sound strategy, it will provide ample justification for the Liverpool approach. The Council hopes it will be so confirmed. However, it has argued in three recent s.78 appeals that it provides that justification now, even as a draft strategy, and in each case has failed to persuade the Inspector of that. The failure in each case has been broadly on the basis that until there is greater certainty about the emerging plan, the Sedgefield approach should be preferred. That appears to be rooted in Framework paragraph 216.

646. On that basis, and for essentially pragmatic reasons, the Council's position to this Inquiry has been that it accepts that until its strategy is confirmed, it is likely to remain the case that the Sedgefield approach to making up the shortfall is appropriate for development management decisions. It recognises the clear steer in the Framework and PPG towards meeting needs, and doing so for the next five 5 years in particular. It has had regard - entirely properly - to the conclusions on this very issue reached by three recent s.78 appeal Inspectors. Its key justification for the Liverpool approach depends on a strategy within a plan that is still emerging and has yet to be tested. Its approach here is pragmatic but also sound and sensible, and there is no inconsistency with its approach to the emerging local plan.

647. It is also consistent with its position of relying on the other conclusions of those three Inspectors, in respect of (for example) the weight to be attached to policies of the development plan. It is generally unattractive to seek to rely only on those parts of a recent decision that suit one's case, while ignoring other elements which do not. The Council does not fall into this trap.

Buffer

648. This debate was essentially reduced, via the round table session, to a binary disagreement about whether one treats the OAHN of 716 dpa as being the 'appropriate target' from 2013, or only from the time when it became a target at all (i.e. in 2016). Mr Spry says you should 'backdate' it to 2013, Mrs Hutchinson says not.

649. The Council adopts the Inspector’s characterisation of Mr Spry's approach as illogical. Unlike the consideration of the shortfall since 2013, this exercise is not one of quantifying unmet need. It is specifically considering how likely it is that the planned supply will be met, using past performance against applicable targets as an indicator of likely future performance. This is clear because the purpose of including a 20% buffer (where there has been 'persistent under-delivery') is 'in order to provide a realistic prospect of achieving the planned supply' (see Framework paragraph 47). A local authority which has persistently, as it were, fired its arrows wide of the target must be moved closer to the target in order to improve its chances of hitting that target in future.

650. It thus follows that the nature of this exercise is considering past performance, not in terms of meeting actual needs but in terms of meeting planned targets. It is not about being 'unfair' to anyone - that was Mr Spry's straw man - but about

the nature of the exercise. The advocates for GDL/DWH were quite correct to say this has nothing to do with 'punishing' anyone and should be carried out in an entirely dispassionate way. It also explains why it is not helpful here to consider whether past targets were themselves likely to be lower than actual needs. The question is how often Braintree's arrows hit the target, not whether those targets ought to have been different. Nothing in the *Cotswold* judgment (ID1.15) indicates otherwise.

651. The simple fact is that 716 was not in any sense a 'target' for this Council prior to 2016 and it makes no sense in this context to consider its performance in hitting a 'target' that it was not aiming for; that would say precisely nothing about the likelihood of 'achieving the planned supply' in the future. The usefulness of the exercise relies upon identifying what the target in fact was at the time. It was not 716 until 2016.

652. For those reasons a 5% buffer is appropriate. Mrs Hutchinson's evidence makes clear that Braintree has not persistently under-delivered.

Supply

653. There is (now) an immaterial difference, some 68 units, between GDL/DWH and the Council on the quantum of supply.

654. Of more materiality is the SPMRG position that ten further sites should have been included in the supply as set out in Mr Leaf's letter of 12 December (ID21). The question of whether those sites should be included in the supply is the subject of a SOCG between GDL/DWH and the Council (ID37), both as a matter of principle and on a site-by-site basis. The Council does not repeat, but does rely upon, those points here.

655. There is ample justification for the position taken by the Council in respect of those sites, as accepted by GDL/DWH. In short and in general terms the draft allocations may only attract limited weight until the emerging plan within which they appear has progressed further along its journey to adoption. Looking at the sites individually results in the conclusion in each case that they are not yet to be considered 'deliverable' for development management purposes.

656. It is also clear that these sites only make a material difference to the position if the position of the Rule 6 parties (contrary to the case presented by the Council and GDL/DWH) that the Liverpool approach should be adopted now is correct.

Conclusion - housing land supply

657. The above points lead to the conclusion that the Council is correct to say that it cannot yet demonstrate a five-year supply of housing land. Insofar as it matters, the position is that it can demonstrate something in the region of 3.9 years, at least until its emerging plan attracts greater weight. That means that the proposals fall to be determined having regard to the 'tilted balance' in Framework paragraph 14. There is, therefore, justification for not applying the restrictive policies of the development plan 'with full rigour'; and the delivery of housing attracts greater weight in favour of the proposals than it might if there was a five year supply.

The approach to the development plan

658. These proposals are all contrary to the adopted development plan. The controversy revolves around how that conflict should be treated within the context of the Framework and the statutory test.

659. GDL/DWH and the Council agree that the ultimate outcome of that exercise is that planning permission should be granted for all three schemes. However, there is some divergence in the way in which the parties arrive at that conclusion. On that basis it may assist to have the Council's position set out clearly.

660. The proper approach to the development plan, where there is no five year supply of housing land, has been considered a number of times recently by Inspectors on s.78 appeals in Braintree District Council. The Council respectfully adopts the reasoning of Inspectors Hill and Gregory in the Coggeshall (CD32.2 set C) and Steeple Bumpstead (CD32.10 set C) Inquiries (respectively), and the consistent decision of Inspector Fagan at Finchingfield (CD32.4 set C). It is of note that both GDL, and its counsel here, appeared at Steeple Bumpstead and advanced the same argument there as here in respect of restrictive policy CS5, and it was roundly rejected. There does not appear to have been any real recognition of that in their position to this inquiry.

661. In short:

i) There is a sound basis in principle for reducing the weight to be applied to restrictive policies of the development plan on account of the lack of a five year supply of housing land;

ii) The quantum of that reduction depends on a number of factors, including the extent of the shortfall, the purpose of the policy, and the consistency of the policy with the Framework;

iii) There is no sound basis for reducing the weight to be attached to restrictive policies on account of their age alone (paragraph 40 iii F6f); and

iv) In terms of consistency with the Framework, a nuanced approach is required by Framework paragraph 215 which calls for due weight to be attached depending on the degree of consistency with the Framework (paragraph 52, *Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459).

662. Saved policy RLP2 can be afforded limited weight because it is restrictive of housing and the District has a shortfall in housing land supply. The boundaries on which it relies were set with reference to housing needs for a period that has expired. This is the same conclusion reached by Inspector Fagan in the Finchingfield decision (CD32.4 set C, paragraph 10).

663. Although Saved policy RLP80 is not criteria based and applies a generalised approach in protecting landscape features and habitats, it is generally in conformity with the Framework and the Council maintains that it should be given considerable weight.

664. CS policy CS1 is a 'policy for the supply of housing' and is out of date by virtue of Framework paragraph 49. Insofar as there is a breach of its terms it attracts

limited weight as found by, for example, the Finchingfield Inspector (CD32.4 set C, paragraph 10).

665. By contrast, CS policy CS5 attracts more than the 'very limited weight' argued for by Mr Lee (for GDL) and the 'limited weight' argued for by Mr Dixon (for DWH). For the reasons set out by Inspectors Hill (CD32.2 set C, paragraph 59), Gregory (CD32.10 set C, paragraphs 39 & 65) and Fagan (CD32.4 set C, paragraph 59), policy CS5 should be afforded more than moderate, but not full, weight. It is consistent with the Framework core principle concerned with protecting the countryside from harm. There is some justification for a reduction in weight on account of the lack of a five year supply but no justification for that reduction to be as great as argued for by GDL/DWH here. This has been confirmed three times in s.78 appeal Inquiries since July 2017. It may be that Mr Dixon's evidence is in line with this, following clarification in his evidence in chief that it is the precise position of the boundaries, rather than the protective element, that attracts reduced weight.

666. GDL is correct to say that the Framework provides for a hierarchy of protection; at the top are designated landscapes, then below those come 'valued landscapes' and then the residual category of landscapes within which the Stone Path Drive site sits. It does not follow, however, that those at the bottom of this hierarchy get no protection. The hierarchy simply requires that they attract a lesser degree of protection than might categories above them in the hierarchy. In the Finchingfield and Steeple Bumpstead decisions, both of which concerned 'valued landscapes', it was held that Framework paragraph 109 was a 'footnote 9 policy' indicating that development should be restricted, providing an additional level of protection by disengaging the 'tilted balance'. That alone is sufficient to satisfy the hierarchy argument. Policy CS5 permits this hierarchy of protection to be respected.

667. In terms of heritage policies - only relevant to the GDL 140-unit scheme because that is the only scheme for which any heritage harm is alleged by the Council - there is no basis for reducing the weight to the conflict with policy CS9 (and/or policy RLP100) on account of inconsistency with the Framework (the only basis on which any reduced weight is alleged by Mr Lee). The absence of the 'balancing exercise' is not by itself sufficient to render the policy inconsistent with the Framework - see *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) - and in any event the Council has applied it as if that balancing test was incorporated. This policy should attract considerable weight. This was the conclusion reached in the Coggeshall (at paragraph 92), Steeple Bumpstead (at paragraph 29), and Finchingfield (at paragraph 33) decisions.

668. That said, it is the Council's case that because there is some 'less than substantial harm' caused by the GDL 140-unit scheme to the two heritage assets, the 'balancing exercise' of weighing that harm (to which considerable weight should be afforded) against the public benefits of the scheme must be carried out. In this case those benefits are considerable. Most importantly is the substantial contribution of needed new housing to contribute to the District's supply, helping it to meet its needs arising in the next five years. The outcome of this balancing exercise does not require refusal of the scheme. The 'tilted balance' in Framework paragraph 14 is therefore engaged. There is no impermissible 'double counting' of either harms or benefits in this approach which is, in any event, effectively prescribed by recent case law. Both the benefits and

the heritage harm are re-weighed in this overall balance, notwithstanding that they have already been weighed against one another in the Framework paragraph 134 balance.

669. Lastly, the emerging NDP. This is not yet part of the development plan and attracts only limited weight on that basis. It does not provide any sufficient basis for refusing any of the schemes. In particular, the debate about the wording of policy HPE1 (whether it is or is not restrictive of all - or all large - housing development in the countryside, and thus its consistency with the Framework) is precisely the kind of debate that will be resolved when the NDP is examined. It is an excellent example of why only limited weight attaches to plans at this stage of their development.

670. It would be remiss not to mention the Alan Massow e-mail (ID26). The position vis-à-vis the draft Green Gap between Hatfield Peverel and Witham is a draft policy in an emerging neighbourhood plan, which has some way to go before it is made and becomes part of the development plan. As Mr Massow's e-mail suggests, and as Mrs Hutchinson clarified in her evidence, the District Council considers that the question of whether there should be a green gap in this location to be a non-strategic one and for that reason it is not included as a draft policy in its emerging plan.

671. The question of whether a green gap in this location should be part of the development plan is left to the neighbourhood level, which is entirely proper. This Inquiry is not the place to examine either the emerging local plan or the emerging neighbourhood plan. The debate is sidestepped by acknowledging that the weight to be attributed to the terms of the emerging draft neighbourhood plan - including the draft Green Gap policy - is limited, pursuant to Framework paragraph 216.

The planning balance

672. In each case, on the above basis, a balance must be carried out using the 'tilted balance' contained within Framework paragraph 14. A finding that such an exercise points to the proposal being sustainable development (i.e. the harms not outweighing the benefits) will be a weighty material consideration pointing towards a grant of permission notwithstanding the conflict with the development plan. That is, essentially, the conclusion that the Council reached in respect of all three schemes. It is the conclusion the Council suggests should be recommended to the Secretary of State.

673. The crucial benefit here, in each case, is the delivery of much-needed housing in a situation of deficit. Given that the deficit is, on any view, more than a year's worth of housing at this stage, and is unlikely to be eliminated until such time as the new local plan is adopted, the weight to be afforded to that benefit is substantial and is not outweighed by the harms, which are relatively limited.

Conclusion

674. The conclusions reached by the Officer's Reports in respect of each scheme are sound and should in effect be confirmed.

The Case for the Interested Person

675. **Kenneth Earney** spoke in relation to the footpath crossing the site and asked whether the historic line of the path would be preserved and if the stones would be lifted and set into the new pathway. With respect to the effect on habitats, the lack of allocation in the development plan, the pressure on local schools and health facilities and traffic he made similar points to other speakers who made representations in respect of the DWH Gleneagles Way scheme only.

Written Representations

676. At application stage the Council received objections from 102 residential addresses with more than one representation from some. The main material and non-material reasons for objection are summarised in the report to Committee (CD5.1, set A). The main headings under which they are grouped are infrastructure in the area to sustain further development; highway/access problems; impact on wildlife/ecology/landscape; alternative sites; and general points. Most, if not all, of these issues have been raised by either or both HPPC and SPMRG in their evidence to the Inquiry.

677. A further nine representations were received by the Planning Inspectorate. These generally refer to both this scheme and the larger scheme on the same site that is subject of a separate report. No new issues are raised.

Conditions and Obligations

678. These were discussed at a round table session on the final sitting day of the Inquiry.

Conditions

679. Various drafts of the conditions that might be imposed if the Secretary of State decides to grant planning permission were submitted. The wording and need for each was discussed and a consolidated set helpfully provided by the Council following the discussion (ID53). In considering the conditions to recommend to the Secretary of State I have had regard to the advice in the relevant section of the PPG. The conditions that are recommended are set out in Annex C and the following references are to the conditions there.

680. Conditions 1 to 5 inclusive are standard outline planning permission conditions which define the reserved matters that will be subject of further approval and ensure that these will be considered in the context of the green infrastructure plan and the development framework plan both of which have had an important influence on the assessment of the development in LVIA terms and which set out various mitigation measures.

681. Condition 2 sets 2 years as the period within which the reserved matters applications must be submitted for approval to ensure that the eventual developer of the land brings forward housing in good time. Condition 5 secures the access arrangements which are for approval now.

682. Conditions 6 and 7 work together to control the ridge heights of the dwellings on those boundaries of the developable area that affect views of the settlement edge from the countryside. The restriction is necessary to integrate the current abrupt settlement edge into the setting of the village.

683. Conditions 8, 9 and 10 are required to ensure that in bringing forward the reserved matters applications the amenity of the future residents is protected and the development is landscaped in accordance with the parameters set out and maintained thereafter as specified.

684. In order to ensure that disturbance to the existing residents in the area is minimised as far as is practicable while the development takes place conditions 11 and 12 should be imposed to control the management and operation of the site and the hours during which work can take place and materials can be moved on and off site. The requirement for details of any piling to be approved (condition 14) arises for the same reason.

685. A number of schemes are required before development begins to ensure that any issues not already identified are explored and addressed as appropriate. These include conditions 15 (contamination), 16 (archaeology), 17 to 19 (surface water drainage) and 20 (foul water drainage). Condition 21 is similar in that it requires the measures to be put in place to protect all the identified existing trees and hedges that are to be retained to be approved prior to construction. I have removed the phrase 'to the complete satisfaction of the local planning authority' from the suggested condition 21 as this is an uncertain specification and therefore unenforceable. It would not therefore meet the tests in the PPG

686. There are a number of conditions that are required to protect the nature conservation interest of the site and surrounding area. These include no clearance of trees and hedges during the defined nesting season (condition 23), the provision of nest and roost sites as the development becomes occupied (condition 24) and a number of reviews of already submitted surveys if the development is delayed or suspended such that circumstances might have changed (conditions 25, 26 and 27). Condition 13 (external lighting) is required primarily to mitigate any disturbance that may be caused by light pollution to roosting and foraging bats. It is my understanding of the discussion that this is its purpose. It is not intended to provide detailed control over the lighting that individual occupiers might wish to provide for, say, security. It is more to address the lighting of public spaces that will be provided as part of reserved matters applications.

687. Conditions 28 to 31 secure a number of highway/transport matters that are designed to secure sustainable transport measures (conditions 28 and 29) or address highway safety issues that may otherwise arise from the development (condition 31). Condition 30 is a requirement of the highway authority and will, as I understand it, secure an upgrade of the surface of the PROW to allow, among other things, surface water drainage appropriate to a path running through a residential area.

688. Finally, condition 22 secures the important provision of space for the necessary materials recycling bins in order to facilitate the more sustainable management of waste materials by the local collection authority.

689. During the discussion of that condition it was suggested that its scope be widened to include the provision of other infrastructure such as high speed broadband. While there was a consensus that this would be desirable, its provision was not in the control of the developer. A condition of that nature would therefore be unenforceable and so would not meet the tests set out in the PPG.

690. Two other conditions were suggested by the Council and these are included within Annex C as conditions 32 and 33. They are set out there in italics as, in my view, neither is required. The suggested wording is nevertheless included should the Secretary of State take a different view.

691. Condition 32 is a standard materials condition of the type commonly imposed where this is either unclear at application stage or the local planning authority wishes to exercise further control over the matter. However, in this case 'appearance' is a reserved matter. It seems to me that the materials to be used are fundamental to the appearance of the buildings and I fail to understand why this important matter cannot be addressed then.

692. The Council explained that condition 33 is required to ensure that, initially, each plot is provided with some means of enclosure. The condition is not intended to remove the rights available under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. That may not be the intention but I consider that it would be the effect. No evidence was put forward to justify such a restriction which the PPG advises should only be imposed where circumstances require. Those circumstances do not exist here in my judgement.

693. A third condition suggested by the Council related to car parking standards. It was very specific in its requirements and referred to the Essex Parking Standards Design and Good Practice 2009 as the source. During the discussion it was argued that this condition was unnecessary as the reserved matters applications would be determined in accordance with the development plan policy and any supplementary planning document applicable at the time. I agree and do not suggest this condition be imposed.

Obligations

694. A planning obligation in the form of a Unilateral Undertaking has been submitted by the landowners to the Council and ECC (ID57a and b). The first obligation was entered into on 17 May 2017 and the second is in the form of an addendum to it dated 12 January 2018. The May 2017 Obligation is appended to the latter Obligation for convenience. Both are signed by all parties and dated and are explicitly made pursuant to s106 of the principal Act with the obligations entered into being enforceable by the Council and ECC. The commencement date is defined as being when a material operation for the purposes of s56 of the Act is carried out.

695. Together, the Obligations secure a number of matters through the schedules. These make provision either in the form of financial contributions or other mechanisms for ecological mitigation (schedule 2 addendum), progress of the development and payment of the education contribution (schedule 3 addendum), habitat, healthcare, allotments and outdoor sport contributions, open space works and transfer, blue land transfer and maintenance, affordable housing provision (schedule 2 May 2017), open space transfer (schedule 3 May 2017) and blue land transfer (schedule 4 May 2017). Schedule 1 in both is procedural and relates to the owner's title and site description.

696. The Council has submitted a statement of compliance with the CIL Regulations (ID28) setting out the policy justification for each of the obligations provided.

697. In my judgement each of the obligations is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development proposed. In my judgement each obligation meets the requirements of CIL Regulation 122 and Framework paragraph 204.

698. During the discussion SPMRG and, to a lesser extent, HPPC put forward a number of other matters which the local community would wish to see included in the agreement. Ms Osmund-Smith explains GDL's position on this [319 to 320] and I agree with her analysis.

Conclusions

Introduction

699. The reason the Secretary of State recovered the appeal for his own determination is set out above [5]. In short, this was so that he could consider the appeal and the called-in application on the same site at the same time.

700. The called-in application is the subject of a separate report. While that proposal is for a greater number of dwellings (140 rather than 80) and the developable area is consequently larger in extent, the considerations are the same. In my view, although on some of the considerations the harm caused by the appeal scheme is slightly less, the benefits (which are, in the main, driven by and proportionate to the dwellings to be provided) are also quantitatively and qualitatively smaller. In my judgement, there is no material difference between the schemes in terms of their mitigated impact.

701. Having come to the conclusion that I should recommend to the Secretary of State that the called-in application should be granted planning permission subject to conditions, I do not believe it would reasonable to come to the contrary view in relation to this appeal. That was the Council's conclusion as set out above [631].

702. Accordingly, the conclusions set out below are not materially different from those that I have come to in respect of the called-in application.

703. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion or inference is based.

Policies in the Framework on delivering a wide choice of high quality homes

704. This was the first reason for the application being called in by the Secretary of State [4]. It is also a material consideration in respect of this appeal. Save for one element, this was not really addressed by any party in the evidence.

705. Schedule 2 of the s106 obligation entered into in May 2017 by GDL (ID57a) will secure the provision of a substantial number of affordable homes within the development proposed. A mix of market and affordable housing would be delivered on-site and the policy set out in Framework paragraph 50, bullet 3 would therefore be delivered.

706. All of the other elements that go towards delivering the requirements for good design set out in Framework section 7 will be subject of the reserved matters applications that would need to be submitted. The Green Infrastructure Plan

(ID1.6a) sets an important context for the development and is therefore secured by condition 4. The Design and Access Statement (CD1.5 set A) also establishes some important principles that will no doubt guide the Council's development management process at reserved matters stage. Although the evidence before the Inquiry is at that conceptual level there is no reason to believe that Ms Osmund-Smith's confidence [321] is misplaced.

The extent to which the proposed development is consistent with the development plan for the area

707. The appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. What are the main considerations upon which the decision should be based were set out in my first pre-Inquiry note (INSP1) and have been developed in the light of the written and oral evidence given.

708. However, before considering the appeal scheme against the policies of the adopted development plan I shall address the weight that I consider should be given to the emerging BNLP and NDP.

709. Turning first to the BNLP, the SOCG between GDL and HPPC records that the weight to be given to the emerging plan policies should be determined in accordance with Framework paragraph 216 (paragraph 4.3.9, SOCG 2). In closing submissions HPPC has revised its position and argues that the emerging BNLP can be given significant weight as it has progressed to examination stage [403]. That however is only one of the three considerations in Framework paragraph 216 that have to be taken into account.

710. The SOCG between GDL and SPMRG simply says that the appropriate weight should be given to the BNLP (paragraph 3.3.8, SOCG 4). That too has been refined by SPMRG in closing submissions to a position that moderate weight should be attributed to the breaches of emerging policies in the BNLP [622].

711. GDL and the Council agree that only limited weight should be given to the BNLP (paragraph 3.3.10, SOCG 1). That position had not changed by the close of the Inquiry [302]. In an extensive representation (CD33.1 set C) GDL argues that policies SP1, SP3, SP5, SP7, SP8, SP9, SP10, LPP 1, LPP 18, LPP 19, LPP 22, LPP 37, LPP 49 and LPP 72 are unsound. Of these, only policy LPP 1 is a relevant policy. No criticism is made by GDL of the others (SP 2, LPP 31, LPP 60 and LPP 71) referred to above [44 to 48].

712. The stage reached remains as set out above [43]. That is an advanced stage in the process to adoption but it is, nevertheless, the first stage at which independent scrutiny of the plan takes place. The Council is best placed to know the full extent of the challenge to the plan and its individual policies and thus the number and nature of the unresolved objections to them. The degree of consistency with the policies in the Framework must therefore be viewed in that context. Taking these three components of Framework paragraph 216 into account, I see no reason to take a different view to the Council that only limited weight should be given to the BNLP.

713. The weight that should be given to the NDP is a matter of legal dispute between DWH [118 to 127] and GDL (adopting the DWH position [128]) and HPPC [414 to 434]. I am not legally qualified to resolve that dispute and the

Secretary of State may need to take his own legal advice to do so if he considers it necessary.

714. In my view, the position is actually quite straightforward. The NDP has been submitted for examination [49]. The exchange between the examiner and HPPC set out there seems to me conclusive. The examiner's first letter (Appendix MR24, HPPC1) is quite explicit that 'as it stands….the NDP fails to meet the Basic Conditions…'. Her second letter (Appendix MR25) declines to continue the examination because '…the issues raised are sufficiently substantive…' that to do so would risk abortive and unnecessary costs to the Council.

715. Both GDL and DWH have objected to the submission version of the NDP (CD33.2 set C and SAV50 and SAV52 respectively). Among the policies objected to are HPE1, HPE2, HPE6 and HPE8 [51 and 52]. Given the nature of the additional work to be done, the uncertainty over the timescale in which it will be completed and the effect that the outcome of that work and indeed the examination itself may have on the form of the NDP put to a referendum I consider that, in line with the guidance in Framework paragraph 216, very limited weight can be given to the NDP at this stage. In my view, the information provided by HPPC after the Inquiry sessions had ended and closing submissions made [11] does not alter that position. Although HPPC says the required work has now been done, Natural England's comments have not been made available; the outcome of the meeting with the Council to discuss the way forward is similarly unknown; and the views of the examiner about all of this are unknown in any event.

Would the proposal be in accordance with the spatial strategy?

716. The CS spatial strategy is set out in policy CS1 [38]. It promotes development in the KSVs and Hatfield Peverel is so categorised. The emerging BNLP does not alter the spatial strategy in that regard and identifies the A12/Great Eastern Mainline corridor as a location for future development [45]; Hatfield Peverel lies within that corridor.

717. As I explain a little later in this report I agree with GDL, DWH and the Council that the Council cannot show a 5YHLS. Framework paragraph 49 says that in those circumstances relevant policies for the supply of housing should not be considered up to date. Policy CS1 is clearly such a policy.

718. Whether it is the whole of the policy including the spatial strategy or just that part of the policy that sets the housing requirement that should be considered out of date was the subject of post Inquiry sessions correspondence (INSP4 and ID54 to ID56).

719. Taking those views into account it is my judgement that, although as a policy for the supply of housing policy CS1 should be considered out of date, the spatial strategy within it should still be afforded some weight. The Council is having to address a substantially increased OAHN in the emerging BNLP. How it is doing so is set out in the evidence base (ID33). This confirms that the SFE is part of the evidence base used to develop the strategy. That confirms that to meet the OAHN '…development will need to be accommodated on the periphery of the main towns and larger settlements…' (paragraph 1.4, CD14.4 set B) with Hatfield Peverel being identified as one of the nine settlements studied. Furthermore,

ID33 explains why both the 'new settlement only' and 'constrained growth' options were rejected.

720. It seems to me therefore very likely that any strategy coming forward through the BNLP will include development at the KSVs, especially where these are within the A12/Great Eastern Mainline corridor that is identified as a location for future development.

721. I therefore agree with GDL that the development proposed would be in accordance with the spatial strategy [323]. There is no evidence to support the contention by HPPC that development in any settlement needs to be 'proportionate' [373]. Nevertheless, HPPC is correct in my judgement to argue that the spatial strategy does not, of itself, dictate that the boundary in this part of Hatfield Peverel needs to be altered [378 and 379] but that is a different point that relates to policy CS5 which I turn to now.

Would the proposal conflict with policies RLP2 and CS5?

722. These two development plan policies are summarised at [34] and [39] respectively with the precise wording of policy CS5 set out. They are worded differently but their effect is the same. Both establish that outside the defined development boundaries of settlements, countryside policies will apply. Policy CS5 goes further explaining that development will be strictly controlled to uses appropriate to the countryside.

723. It is a matter of fact that the application site adjoins, but is nevertheless beyond, the development boundary of Hatfield Peverel. The proposal is therefore in conflict with the development plan in this regard, a fact acknowledged by GDL [280 and 332]. The point in issue is the weight that should be given to this conflict in the overall planning balance.

724. There are two aspects to this. First, whether the policy is inconsistent with the Framework; that argument applies only in respect of policy CS5 [287 to 291]. Second, whether the development boundaries that are critical to the application of the policies are out of date because they are based on out of date housing requirements. They have not been subject to review for many years [109, 110 and 284].

725. Dealing first with consistency with the Framework, policy CS5 has three components. The subject of the policy is (of relevance to this appeal) development outside village envelopes. The 'action' of the policy is to strictly control that development to uses appropriate to the countryside. The purpose is 'to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside'.

726. The policy does not, in my view, apply blanket protection to the countryside. It makes clear that uses appropriate to the countryside would be permitted. The policy itself and its supporting text do not explain what those uses might be but it is difficult to imagine that a substantial village expansion housing development would fall into that category. Some guidance is however given elsewhere in the CS (at paragraph 4.24) in the discussion of 'The Countryside'. Some of the uses there (for example, development necessary to support traditional land-based activities such as agriculture and forestry) are not dissimilar to one of those listed in Framework paragraph 55 (the first bullet).

727. One of the core planning principles set out in Framework paragraph 17 requires local planning authorities in both plan-making and decision-taking to recognise the intrinsic character and beauty of the countryside. To my mind a policy that seeks to 'protect and enhance', as policy CS5 does, is not seriously out of kilter with that core principle.

728. Although drafted in advance of the publication of the Framework I therefore do not consider policy CS5 to be inconsistent with it. As the Council notes when arguing that more than moderate but not full weight should be afforded to this policy [665] three previous Inspectors have considered the same policy in relation to other appeal proposals submitted by GDL in the District (CDs 32.2, 32,4 and 32.10 all in set C). My conclusion with respect to this aspect of the policy is consistent with each of theirs.

729. Turning to the development boundaries point, there is no evidence before this Inquiry of any review of the development boundaries as part of the preparation of the BNLP [110]. While the methodology for doing so has been approved by Council members (Appendix PJ3, HPPC2), there is no evidence that the review has actually taken place. However, GDL contends (by virtue of adopting the case of DWH [128]) and the Council accepts [657] that a 5YHLS cannot be shown. For reasons that I will discuss later, that is also my conclusion. If then the development boundaries are rigidly applied through the operation of both policies they would restrict the supply of housing and frustrate the aim of Framework paragraph 47. The court has held that in those circumstances the weight that can be afforded to them is much reduced [114]. That is also the view of the Council and the reason for it with respect to policy RLP2 [662] and, by inference, policy CS5 [665].

730. That was also the view taken by the three Inspectors in the decisions referred to above [665]. I see no reason to take a different view given that circumstances are more or less unchanged. Therefore, while there is a conflict with the adopted development plan policies, overall those policies can attract only moderate weight when it comes to the overall planning balance.

731. For completeness, the wording of BNLP policy LPP 1 is set out above [45]. It is not materially different from policy CS5. For the reasons set out above [709 to 712] the weight that can be given to that policy is limited.

The effect of the development on the landscape character of the area and the visual impact that the development would have

Context-landscape character

732. In my view, it is necessary to take into account the context of the application site which lies on the edge of the settlement. The historic maps in Mr Handcock's evidence (Appendix A2, 3/APP) shows how Hatfield Peverel has evolved from a linear settlement focused on The Street, shown as the Roman Road on the 1874 map and part of the route linking London with Colchester. By 1955 the land between Church Road and Maldon Road to the south of The Street had begun to be developed as had land to the north of The Street between it and the railway. This pattern continued to 1980 as more and more edge-of-settlement fields and allotments became housing developments until, by 2002, (the next map in the sequence provided) what is now the Stone Path Drive development had breached

the Church Road boundary and taken the village onto yet more former allotments on its western flank.

733. Ms Osmund-Smith sets out GDL's note of an exchange between Mr Holliday and Ms Scott [147]. My note is not materially different. He confirmed his view that the character of Hatfield Peverel had changed over the last 50 years or so from a linear settlement to a nucleated form and that the development proposed would simply continue that pattern and, by inference, be in keeping with what is now the character of the settlement. He rejected Ms Scott's suggestion that the Stone Path Drive development would be a complete departure from the settlement pattern. His view was that each time housing development has taken place on the edge of the village a field has been lost but there has been no further change to the character of the village; the development proposed would be no different.

734. This assessment is supported by Braintree Historic Environment Characterisation Project 2010 (CD28.1 set C). This report has been produced to assist ECC and the Council in the production of their development plans. It studies the historic landscape character, archaeological character and historic urban character and weaves the three strands together to establish the historic environment character. Discussing the Hatfield Peverel area (HLCA 13) it notes the historically dispersed settlement pattern with Hatfield Peverel being the only nucleated settlement of any size (emphasis added). The post-1950s boundary loss '…can be described as moderate, however the overall grain of the historic landscape is still clearly visible.'

735. Furthermore, there are a number of studies that have had an assessment of the landscape capacity of various areas of land around the settlement edge to absorb further development as their broad purpose.

736. CD14.1 set B focuses on eight key settlements in the District. Its purpose is to assess the sensitivity and capacity around those settlements to accommodate new development. The application site lies within a much larger study area (HP2) to the west and south of the settlement.

737. The conclusion drawn for this broad area was that its landscape capacity to absorb development was low to medium (Table 4.1). Notwithstanding this general finding it noted that a certain amount of appropriately located and well-designed development may be acceptable even in a moderately sensitive and highly valued landscape. However, potential opportunities for accommodating new built development around Hatfield Peverel were considered to be limited (paragraph 4.5). It further stated a view that any necessary residential and employment development opportunities would need to be informed by more detailed studies and were likely to be along the eastern edges of the settlement or along the western edge but north of the A12 (paragraph 4.5). This document does not therefore provide a great deal of support for the development proposed although I note the appellant's view that it is out of date, not being based on GLVIA3 [150].

738. The Landscape Partnership prepared CD14.4 set B for the Council. This followed and built upon the earlier Chris Blandford Associates document (CD14.1) and has the same broad objective for Hatfield Peverel but at a finer grain of analysis. The appeal site is substantially the same as study area 2c. Arguably, it is a more detailed study of the type envisaged in CD14.1.

739. This parcel is assessed as having a medium landscape capacity to accommodate residential or commercial development. At this finer grain therefore the capacity of the landscape to accommodate development is considered to be slightly higher. Of the 23 parcels studied only one had a higher capacity rating and all but five others had a lower capacity. In context therefore if development areas were to be sought, it could be said that this would be one of the first to be looked to.

740. In detail, the relatively abrupt settlement edge is remarked upon (paragraph 4.20) while '…the good scope to provide mitigation to proposed development that is in keeping with the existing landscape pattern' is noted (paragraph 4.21). In the same paragraph it is suggested that development should be aligned with existing residential development areas to the north east of the parcel and comments upon the opportunity to integrate the slightly abrupt urban edge in local views with a good network of tree and shrub planting to the development fringes. These comments and others including the need to both protect public footpath routes and take the opportunity to incorporate open space into extensions to residential areas are set out in 'guidelines for development and mitigation measures' for this parcel later in the report.

741. The Landscape Partnership also prepared the Hatfield Peverel Landscape Character Assessment for HPPC (CD28.3 set C). Its purpose is to assist 'the village' in commenting on development proposals coming forward and to support the emerging NDP. One of the aims is to provide an assessment of the landscape character and sensitivity of it around the village building on work undertaken at district level (paragraph 1.4). The appeal site is within local landscape character area 2 – river Ter south – which is much more extensive than area 2c in the CD14.4 study.

742. This study does not assess the capacity of the area to accommodate development. Rather, it sets out a general commentary about the characteristics of the landscape and some landscape guidelines which, on a fair reading, appear to assume development taking place to facilitate them.

743. Of relevance from the general commentary are the slopes that fall gently from Stone Path Drive in the north; the absence of vegetation to the Stone Path Drive development providing an uncharacteristic open edge between the village and the adjacent countryside; public access from Church Road to Hatfield Place; and views in and around the area being limited to those from footpaths and unenclosed sections of roads such as the open field boundary to the south of Stone Path Drive.

744. In my judgement, these studies establish an important context for an assessment of the effect of the development proposed on the character of the landscape. The study that is closest to the appeal site in terms of area (CD14.4, set B) is the most positive about the capacity of the local landscape to accommodate development subject, of course, to the suggested guidelines being followed. However, none of the other studies suggest that suitably designed development could not be accommodated.

The effect on landscape character

745. The appeal site is an area of agricultural land bounded by hedgerows and trees for the most part. However, along its boundary with Stone Path Drive it is

largely open with the most visible feature being the chain link fence. Although there is a PROW across the land, several notices around the site boundaries make it perfectly clear that it is private land. Apart from enabling the public to walk through the site from Church Road and carry on towards The Street the appeal site has no other recreational value. At the time of my site inspection a dog was running free in what would become the area of public open space between the built development and the Stone Path Drive boundary. In exercising the dog the owner of the animal may, or may not, have been doing so with the permission of the landowner or, indeed, may have been the landowner. There is however no evidence that such activity is generally encouraged or even allowed.

746. The principal characteristic of the application site that is found elsewhere in the county (CD28.2 set C) and in the Farmland Plateau Landscapes - Boreham Farmland Plateau Landscape Character Area (CD14.5 set B) is the fact that it is a medium sized arable field marked by hedgerows, banks and ditches.

747. In my judgement, the application site has no particular landscape features of note. Its value is its openness as it is this that allows the views of the far more attractive landscape beyond to be appreciated. Having regard to the *Stroud* judgement (paragraphs 15 to 18, CD31.20 set C) the application site cannot be considered a valued landscape for the purposes of Framework paragraph 109 although it can be and clearly is valued by the local community. In coming to this view I have taken the 'subjective question of judgement' approach commended by Mr Graham [401].

748. Having considered the evidence of SPMRG and Mr Dale in particular I am not convinced that the local community values the site itself for its landscape quality in any event. Careful reading of Ms Scott's presentation of Mr Dale's written and oral evidence shows that it is the effect on the views across the site that is of most concern, not the effect on the landscape character of the site itself [508 to 510]. In his evidence Mr Dale emphasises that it is '…the longer or more distant view across the Chelmer vale that makes the landscape setting of <u>the site</u> significant to our community – unrivalled anywhere else in the parish'(RG3) (emphasis added). The development proposed would have no effect on that landscape setting since, as described by Mr Dale, the site does not form part of it.

749. Early in his cross examination by Ms Scott, Mr Holliday helpfully described GLVIA3 as an objective framework within which subjective judgements can be made. The applicant's LVIA has been prepared 'based upon' (paragraph 5.2, 2/POE) GLVIA3. As part of that framework a matrix is commonly used to assess the overall effect of a proposal in landscape character and visual impact terms. The terminology used for each element in the matrix (value, susceptibility to change, etc.) is defined (Appendix A, CD1.6 set A). Ultimately however the term chosen to reflect both the baseline position and the effect of the proposal upon it is a subjective judgement. It is unsurprising therefore that the appellant and the local community take a different view about the precise terms that should be used for both.

750. The LVIA takes into account the green infrastructure plan proposals (ID1.6a). These include a new woodland copse and woodland edge on the southern boundary of the site, some woodland edge planting on the western boundary of the developable area, meadow grassland in the blue land to the north and west

of the retained agricultural land and amenity/mown grassland and individual trees in the frontage open space area adjoining Stone Path Drive.

751. Self-evidently the development proposed would replace an area of agricultural landscape with a housing estate. Applying GLVIA3 analysis the appellant assesses the effect of the proposal at national, county and District level as 'negligible' at both years 1 and 10 (paragraphs 6.3, 6.7 and 6.11 respectively 2/POE). Given the imperceptible impact that the removal of this small parcel of a wide-spread landscape type would have at this spatial level that judgement must be right.

752. The proposals would create, in effect, a new settlement edge for this part of the village. That new edge would be set the depth of the appeal field further to the south. This new edge would be planted and, in landscape terms, would address and integrate the slightly abrupt urban edge as the various guidelines discussed above suggest should be achieved taking advantage of any development that takes place [740 to 743]. At paragraph 6.18 (2/POE) Mr Holliday judges the landscape effect on the very local landscape character as 'moderate adverse' at year 1 reducing to 'minor/moderate adverse' at year 10.

753. Having regard to the definition of terms in the submitted LVIA (Appendix A, CD1. 6 set A) it would be possible to argue that the 'moderate' assessment at year 1 should be 'major'. However, since either would lead to some harm (which is acknowledged [176]) little is to be gained from pursuing this point, in my judgement.

754. Neither SPMRG nor HPPC has produced its own LVIA. Instead, both relied upon their cross examination of Mr Holliday to develop their case on landscape grounds. The Council officers assessed the application and commissioned independent advice [141 and 142].

755. On the totality of the evidence before me and on the basis of my visit to the site and the surrounding area, I see no reason to disagree with the appellant's assessment of the effect on landscape character.

The visual impact that the development would have

756. There are two aspects to this consideration; views across the site to the landscape beyond and views back towards the settlement edge from distance. Both aspects have been illustrated by photographs taken from representative viewpoints. The so-called photomontage (F16b) introduced by SPMRG has not been produced by the generally accepted methodology for such images and has not therefore been taken into account. The general point being illustrated is nevertheless appreciated.

757. Looking at the views across the site first, residents of the properties on Stone Path Drive and Church Road who have either a direct or an oblique view from their properties will experience a complete change to their view. Initially it will be of the new dwellings; later this view will be filtered as the planting on the edge of the development and within gardens begins to mature. Although the appellant puts the number of properties affected at no more than 20 or so (paragraph 7.2, 2/POE) it is nevertheless correct in my judgement to describe the impact as 'moderate/major adverse' at year 1 and 'moderate adverse' at year

10. It is not possible in my judgement to mitigate this effect in any meaningful way.

758. The view across the site to the south from both Stone Path Drive (looking across the chain link fence) and from footpath 43 as it crosses from Church Road to the point where it meets the edge of the Stone Path Drive development especially is that to the Baddow Ridge which Mr Dale explained is of particular value to the local community [749]. This view would also be replaced from these viewpoints by a view of the development. Again, I believe Mr Holliday is correct to categorise the effects as 'moderate/major adverse' at year 1 and 'moderate adverse' at year 10.

759. To some extent, this effect might be mitigated through the provision of the surfaced footpath around the edges of the development from where the view could still be obtained. On the southern edge the land is slightly lower however which would have an impact on a like-for-like replacement of the view. Of more concern would be the strength of the proposed woodland edge. The intention of this is to give effect to the guidelines referred to above [752]. A consequence of that however would be to block or at best filter any views available to the south. A careful balance would therefore need to be struck between these two potentially incompatible aims at reserved matters stage.

760. Although not strictly mitigation since it is unrelated to the development itself, I saw that a similar view to the south is also available from elsewhere on the southern edge of the village and, in particular, from footpath 90-7 which runs south from Church Road across the Ter valley to Mowden Hall Lane.

761. Other views across the site are available from The Street where footpath 43 meets it; from footpath 43 itself as it passes through what would become the blue land; from the William B car park; and, for pedestrians and other road users, from the highways immediately adjoining the site. In most cases, direct views across what would be the development in year 1 and the development filtered by structural framework landscaping as it matures in year 10 are limited to gaps, such as gateways, in the boundary and hedgerow planting that otherwise screens the view even in the winter months when I conducted my site visit. In addition such views are often transitory.

762. Generally, the effect from these viewpoints is assessed by Mr Holliday as 'minor/moderate adverse' at year 1 and 'minor adverse' at year 10; I consider that judgement fair.

763. Dealing briefly with the views back towards the settlement edge, these are very much influenced by the distance over which they are gained. Although the view on the ground is much clearer than that shown in the photographs (2/APP) it is nevertheless quite difficult to pick out the settlement edge from any of viewpoints 5, 6 and 10 to 14 (Figure 6, 2/APP). As can be seen from that Figure, woodland intervenes between the viewpoint and the settlement in some views. Indeed the photograph from viewpoint 14 is taken at one of the very few spots along that footpath where there is a gap in the planting alongside it.

764. The development would simply move the settlement edge slightly (at the distances involved) closer. The extent to which built development would be perceived would depend on the nature of the structural planting approved at reserved matters. In my judgement the change would generally be imperceptible

and the effects at either year 1 or year 10 negligible. There is the potential to soften the existing abrupt edge hereabouts and, to that limited extent, there would be an enhancement of the settlement edge.

Conclusion

765. An adverse effect equates, in my view, to harm. GDL acknowledge that [176]. That harm has to be seen in context however.

766. A small parcel of countryside landscape that has no distinctive features and therefore no inherent quality that is out of the ordinary would be replaced by a residential settlement edge landscape. Some of the studies discussed anticipate such a change and suggest guidelines that, if followed, would integrate that development into the local landscape.

767. In my judgement the green infrastructure plan that would be subject to a condition to ensure that the broad principles are carried through at reserved matters stage follows the guidelines established by the various landscape studies discussed above [735 to 741]. The development would not be detrimental to any distinctive landscape features and would integrate successfully into the local landscape. It has been designed to retain existing features and proposes additional landscaping including planting of native species of trees and other flora to maintain and enhance these features. There would therefore be no conflict with the landscape elements of policy RLP 80.

768. It is only the third paragraph of policy CS8 that is relevant to this consideration. It is clear from the submitted LVIA and the evidence presented to the Inquiry that the appellant has had regard to the character of the landscape and its sensitivity to change. That is what the policy requires and that part is therefore satisfied. Whether the development would enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment is a matter of judgement. Appendix 5 of the CS confirms that it is the 2007 study (CD14.1 set B) that is being referred to. That is regarded as being out of date by GDL [737] and, in detail, has been developed or superseded by later studies. In my view, the development would enhance the settlement edge as it appears as a feature in the landscape and thus this part of the policy would be complied with too.

769. Neither of these policies explicitly deal with the visual impact of proposed developments although these are the only two development plan policies that are referred to by the parties as being breached in respect of this overall consideration [see for example 505]. I have found that there would be harm caused by the development with respect to visual impact. To the extent that weight can be attached to the policies of the emerging NDP [715] there would be conflict with policy HPE6 in this regard. However, in addition to the general point concerning progress on the NDP there are specific concerns about the evidence base that underpins the views to be protected and enhanced under policy HPE6 [157 to 162]. Mr Graham addresses this but mainly in the context of the DWH development [439 to 446]. This is a matter properly for resolution through the NDP examination and, in any event, the impact and thus the conflict would be limited to a small number of adjoining residents and to users of footpath 43 over a length of some 230m only [153]. While this harm needs to be weighed in the overall balance, it attracts limited weight in my view.

The effect of the development on the enjoyment of users of the public right of way crossing the application/appeal site

770. Although this is strictly an 'other material consideration' I shall address it here as it flows directly from the previous discussion and, to a degree, is relevant to the following discussion of heritage.

771. This consideration has been addressed by the parties principally from the perspective of the views across the landscape that footpath users enjoy. While that is part of the experience and has been addressed above [758 and 761] there are, in my view, other ways in which the experience of users of the path would change as a direct result of the development.

772. At present, the footpath is along a worn grass track through the fields. In places but off the track as now marked by usage what may be remnants of the stone path can be seen. To one side there are views of the Stone Path Drive development while to the other are views across the countryside. Even though it was very windy on the day of my site inspection, the sound of both traffic on the A12 and trains on the main line could be clearly heard above the sound of the wind. To describe the area as tranquil overstates it in my view. Nevertheless, on any measure the experience is one of a walk, albeit fairly short, through the countryside between two roads.

773. That would fundamentally change in my view. Although the path would be retained on its current line, from the Church Road end the first 200m or so would have an area of public open space to one side and housing to the other. While both the new housing and the existing development on Stone Path Drive would eventually be screened to a degree by the proposed planting, in my view the walk would be perceived as one that passes through a housing estate.

774. That perception would be reinforced by the presence of the proposed play area near Church Road, the surfacing of the path itself to accord with the Highway Authority's requirements [687] and the use that may be made of what would be an area of mown amenity grassland.

775. Moving further along towards The Street and beyond the developable area, the path would pass through what is proposed as the blue land. While this would be maintained as meadow grassland, GDL envisage this becoming a significant recreational resource for the village as a whole [for example,179]. The nature of the use would therefore alter and the current experience would change.

776. Although clearly a matter of judgement, I consider that the experience of walkers along this relatively short length of PROW would be harmed by the development proposed.

The effect that the development would have on the significance of designated heritage assets

Introduction

777. Before turning to the substance of this consideration it is helpful first to review the development plan policies that SPMRG considers relevant and then to briefly consider the nature of the evidence presented. The heritage assets affected are then identified.

778. Dealing first with policy, Ms Osmund-Smith does not consider that policy RLP 100 can apply [293]. Neither do I [36] or Inspector Hill in the Coggeshall appeal decision (paragraph 91, CD32.2 set C). However, other Inspectors have taken a different view [536 and 562]. In addition to the Steeple Bumpstead appeal decision referred to by Ms Scott, Inspector Fagan took the view that, although poorly worded, it was relevant (paragraph 31, CD32.4 set C). Inspector Prentis (Silver End) also took the view that listed buildings and their settings were protected by the policy although for other reasons he felt it was inconsistent with the Framework (paragraph 63, CD32.7 set C).

779. Policy CS9 was written before the Framework was published. Its wording is somewhat cumbersome in my view and CS paragraph 8.21 does not assist. Even assuming Ms Scott's understanding of the meaning is correct [535], the policy is some distance from the requirements generally of Framework section 12 and of Framework paragraph 134 in particular. These require an assessment of the level of harm that would be caused to the significance of a designated heritage asset and a balancing of that against public benefits.

780. The way that policy should be interpreted is ultimately a matter for the court and the Secretary of State may wish to seek his own legal advice on the interpretation of these two policies. I however shall assess this consideration against the policies in Framework section 12 which post-dates both development plans.

781. To the extent that it pursues a heritage case at all the position as I understand it of the Council is that it relies on the findings of Historic England [667]. Only GDL and SPMRG give expert evidence.

782. The two heritage assets in issue are Hatfield Place and what is now known as the William B. Both are grade II* Listed Buildings.

Hatfield Place

783. The List Entry Summary is provided by Mrs Freeman (Appendix (vi), RG2). The description of Hatfield Place given by Ms Osmund-Smith [186] is drawn from the submitted Heritage Statement (CD1.16, set A). It is similarly described by Essex Place Services in its letter dated 9 December 2016 (within CD27.4, set C). This notes that it is the substantial architectural merit of the building itself, its associations with John Johnson, Colonel John Tyrell and George Sherrin and the consequent historic significance in relation to important historic associations in the county of Essex that cause it to be listed at grade II*. The house is in private ownership and is not open to the public.

784. It is not in dispute between the parties that the above represents the core significance of the heritage asset. Nor is it in dispute that the appeal site is within its setting. What is in dispute is the contribution that the appeal site as part of the setting makes to the significance of the heritage asset.

785. Mrs Freeman gives substantial and clearly well-researched evidence about Hatfield Place and the people and events associated with it. In particular she describes the lore associated with Hatfield Place and the importance of footpath 43 as a place where people can experience the various heritage buildings and exchange stories about the past events. This is reflected by Ms Scott in her submissions [579 and 580]. However, almost of all this evidence in my view

goes to the significance of Hatfield Place to those in the village for whom it is of interest. It says very little about the contribution of the appeal site, as opposed to the footpath that passes through it, to the significance of Hatfield Place as a heritage asset.

786. What I cannot find either in her written evidence or my notes of her evidence in chief and cross examination is the attribution implied by Ms Scott to Mrs Freeman ('this significance draws heavily on Stone Path Meadow as part of the setting of Hatfield Place' [538]). As Ms Scott acknowledges, the statement 'this communal experience of the heritage asset by residents and users of the footpath is an important part of Hatfield Place's heritage significance' [539] is her submission and inference from the evidence rather than the evidence that Mrs Freeman gave.

787. In any event, I do not consider that the communal experience described would be affected by the development proposed. As I was able to confirm during my site inspection, it was not until I had passed through what would be the developed area before the footpath bears north west that, even in winter, I was able to see Hatfield Place. That was also the evidence of Mrs Freeman [539] who said in cross examination by Ms Osmund-Smith that when walking through the red land (the developable area) anticipation was already forming looking at the Methodist church and the Marconi tower. Although the experience reached a crescendo in what would be the blue land as Hatfield Place came into view, the build-up was in the red land.

788. I fail to see why that experience should change as a result of the development. While I have already found that the experience of the short journey along the footpath through the developed area would alter [773] no evidence was given to explain why the anticipation of a building that cannot be seen at that point should be reduced or otherwise affected.

789. There may even be the opportunity to enhance that anticipation as a result of the development. It may be that during the archaeological works required by suggested condition 16 the historic flag stones are found. It may be appropriate for them to be lifted and set into the new pathway as Mr Earney suggested [675]. That will be for future review. Although not discussed at the Inquiry, it seems to me that there would also be scope for some interpretive material to be provided along the footpath within the development. This could help new residents appreciate the history of the area and would remove the chance element of meeting someone on the path with whom to discuss these things. That however would be a matter for the Council and the ultimate developer.

790. Turning to other points in Mrs Freeman's evidence, there appears to be only one event taking place in Stone Path Meadow that can be directly related to Hatfield Place. That is the gymkhana which was held in 1930 (F21h). My note of Mrs Freeman's evidence in chief is that the two-day pageant that was held in 1924 and which ended with a torchlight procession along footpath 43 (F21c) was held in Hatfield Place, not Stone Path Meadow. Mrs Freeman agreed in cross examination that the conveyance (F21e) did not indicate retained control over the land (the appeal site); it merely denoted control over documents [211]. Finally, much of what Mrs Freeman says about the contribution of the application site to the significance of the heritage asset draws on the letters from Historic England.

791. Turning to those letters and those from Essex Place Services, both consider that the development would cause harm to the significance of Hatfield Place [Historic England 6 February 2017; Essex Place Services 9 December 2016, CD27.4 set C). Historic England does not quantify the level of harm. Essex Place Services puts the harm at the lower end of the 'less than substantial harm' spectrum. SPMRG assesses the level as 'less than substantial' (although Ms Osmund-Smith considers this to be Ms Scott's evidence rather than that of her witness [220]) as does the Council [668]. These conclusions place the assessment of this consideration for Hatfield Place within the scope of Framework paragraph 134.

792. GDL's primary case is that there would be no harm at all to the significance of the heritage asset and I shall come to that shortly. However, anticipating that the Secretary of State may conclude that there is less than substantial harm, irrespective of any recommendation in this report, a precautionary balance has been undertaken by Mr Lee [220]. What GDL regard as the benefits of the proposal is set out [331].

793. Having regard to the clarification in the PPG as to 'what is meant by the term public benefits?' I consider that all of these are capable of being so characterised. Some, such as the provision of both market and affordable housing are very much in accordance with Government policy and go to the heart of the social role set out in Framework paragraph 7; they should be afforded great weight. Others, such as highway works to Stone Path Drive to address an issue that causes inconvenience rather than a highway safety concern attract considerably less weight in my judgement. However, in my judgement the totality of the public benefits in this case outweigh the harm to the heritage asset that has been identified and, as such, there is no conflict with Framework paragraph 134 in respect of Hatfield Place.

794. In coming to this conclusion I have had regard to s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that special regard shall be given to the desirability of preserving the building or its setting when considering whether or not to grant planning permission. The court has also held that in context 'preserving' means 'doing no harm'. However, the Court of Appeal (CD31.4 set C) has also held that the level of the harm must be taken into account. Any harm, however slight, does not have to outweigh any benefit [223]. I have followed that approach in coming to my conclusion.

795. Returning to GDL's primary case, Essex Place Services and Historic England have relied on the same evidence as Mr Handcock. They disagree about the way that evidence should be interpreted. Only Mr Handcock's evidence was tested at the Inquiry; it therefore carries more weight.

796. In his proof (paragraphs 5.18 to 5.23, 3/POE) Mr Handcock explains that he has followed Historic England's best practice guidance (CD27.1 set C) in undertaking his assessment. It would be unreasonable in my view to presume other than that Historic England had done the same.

797. Historic England will have seen the submitted Heritage Statement (CD1.16 set A), all the correspondence within CD27.4, set C except the letter from Iceni dated 9 March 2017 and the additional statement supplied (CD27.5 set C) prior to formulating its February 2017 response. The reasons for coming to the view

that there would be harm to the significance of the heritage asset are set out in two paragraphs.

798. First, it is stated that the appeal site fields '…greatly contribute to the significance…by providing an open tranquil and rural setting to the south and west of Hatfield Place. Furthermore, the degree of separation between (the house) and the rest of…Hatfield Peverel does make a strong contribution to the historic understanding of the building as its clear separation from the main body of the village along with its spacious grounds illustrate a deliberate display of the wealth and status of the historic owners.'

799. Second, it says that the encroachment of suburban development into the setting would diminish the ability '…to experience the heritage values of the building….by the proximity of modern development, lack of separation, erosion of views and the associated noise, lighting and movement.'

800. It is not clear whether or not Essex Place Services has seen the exchange of letters between Iceni and Historic England. Nevertheless, Essex Place Services also concludes that the setting of the house is partially defined by its isolated nature in so far as it is distinctly and deliberately separated from the village. The separation makes a contribution to the historic understanding of the building since its setting within large grounds is an intentional display of the wealth and significance of the owner. The sense of separation is also important to the way that the building is experienced. The visibility of the proposed development from within the grounds and, it is assumed, the upper floors of the house, would affect this separation although that would be less apparent in Spring and Summer when the intervening vegetation is in full leaf. It should be noted however that Essex Place Services does not consider that there is any formal association between Hatfield Place and the appeal site, '…as the strong tree boundary which runs along the eastern edge of the access track and grounds of the house would seem to be evident on the 1st Edition OS map.'

801. Why GDL disagrees with this analysis is summarised by Ms Osmund-Smith [191].

802. In short, based on his experience of assessing the type of mapped and documentary evidence available, which he said was excellent, Mr Handcock comes to the view that Hatfield Place was a gentry residence, not a country house, whose owners valued their privacy. In his view, the strong planting on the boundary referred to by Essex Place Services is evidence of this. It is also evidence of the proximate pleasure grounds being the most important part of the setting along with the orientation of the building which allows extensive views to the south over land not owned by the residents of Hatfield Place. He does not consider that separation from the village was of importance and the proximity of other buildings such as Crix is evidence of this. Furthermore, there is little clear evidence of any functional relationship between the appeal site and the house in the sense that the land was used or controlled in any way to achieve and maintain the separation claimed by Historic England. In summary, his evidence is that the appeal site makes very little contribution to the significance of Hatfield Place as a heritage asset and, as such, the development will have no impact on that significance.

803. This difference between the appellant, Historic England and Essex Place Services is difficult to resolve, primarily because neither of the latter explains

why they disagree with the views of Mr Handcock which were clear to both when they formulated their consultation responses to the application. As far as can be told from their responses they have simply not engaged with his arguments at all and have looked at the matter in fairly simplistic terms, emphasising the extent to which there would be inter visibility between the application site and the heritage asset.

804. Mr Handcock was robustly questioned by both Mr Graham (who did not distinguish between the two schemes in doing so in my view) and Ms Scott. In my view, his evidence on Hatfield Place was not undermined at all. I consider that his evidence should be preferred to that of Historic England and Essex Place Services. I therefore conclude that the development proposed would not harm the significance of Hatfield Place.

The William B

805. The former Crown Public House is a 15th Century coaching inn that has been altered in the 16th, 18th and 19th Centuries (Appendix (v), RG2). Its significance derives from physical fabric and architectural features noted in the Listing. Its functional and economic association is with The Street which it fronts onto [188].

806. Neither HPPC [482] nor SPMRG [560] has given evidence about the impact of the appeal scheme on the significance of the William B.

807. The consultation responses from Essex Place Services to the application make no reference to the William B (CD3.8 and CD3.9 set A). The response from Historic England (CD3.14 set A) references several listed buildings including the William B but comments only that the setting of Hatfield Place may be eroded. It requested further information but the assessment of that is in the context of the subsequent application for 140 dwellings.

808. It is my understanding therefore that there is no evidence before the Inquiry of any harm to the significance of the William B. Nevertheless, I set out below that part of my conclusions in the report on the called-in application in the event that those responses from Essex Place Services and/or Historic England can be construed as also relating to the appeal scheme

> *Essex Place Services observe that while there may be limited inter visibility between the appeal site and the William B there is no particular historic association between the two and thus no harm to the setting of the listed building (letter dated 9 December 2016, CD27.4 set C).*
>
> *Historic England makes the same basic observation as Essex Place Services. However, the conclusion drawn from the same observation is that the setting would be harmed because '…as an Inn on the edge of the village….this building has always enjoyed a semi-rural setting enjoying views of open countryside to the rear and the side.' Since the proposal would erode even further the rural setting with views becoming more urban in nature, Historic England is of the view that the existing setting would be harmed (letter dated 6 February 2017, CD27.4 set C). SPMRG make a similar case and relies on the view of Historic England.*

> *It seems to me that Historic England and, by extension, SPMRG have not applied the correct test. As is clear from the Glossary to the Framework where significance for heritage policy is defined, whatever the effect on the setting might be, in the absence of any analysis of the setting to the significance of the heritage asset, that effect is not relevant. Neither Historic England nor SPMRG explain why undeveloped land to the rear of the William B makes any contribution to its significance as a heritage asset. In my judgement of the evidence presented, there is none.*
> *The application would therefore not cause any harm to the significance of the William B.*

809. Should the Secretary of State consider that these responses can be construed as relating to the appeal scheme and, further, should he prefer the view of Historic England, he should note that it did not quantify the level of harm. For the reasons set out above [793 and 794], I believe that such a level of harm would be more than outweighed by the public benefits of the scheme and that there would be no conflict with Framework paragraph 134.

Conclusion

810. For the reasons set out under this consideration I do not consider that the appeal proposal would conflict with Framework paragraph 134 or policy CS9, insofar as it is relevant.

The effect of the development on community infrastructure

Education facilities

811. The concern relates only to primary school places and has been something of a moving feast as ECC, as education authority, has come to appreciate the full impact of planned and speculative development in Hatfield Peverel and the changing position over time with respect to school rolls (series of letters in CD21 set C). In my view, the SOCG (ID1.8) does not take things much further although the letter dated 1 September 2017 to Priti Patel MP from the ECC chief executive attached to it does. So does the helpful report from EFM that was prepared for GDL/DWH in response to my pre-Inquiry note (INSP1) and appended to the proof of Mr Lee (Appendix 4, 1/APP).

812. The EFM report explains that estimating the numbers likely to be demanding a place at any particular school in future years is an inexact science. It is compounded, in the author's view, by the inherent contradiction between the duty placed upon education authorities to promote choice and variety of schools on the one hand and the Framework paragraph 38 requirement to locate, where practical, primary schools within walking distance of most properties on the other hand (report paragraph 27). The position in Hatfield Peverel is further complicated as the Council does not have a CIL charging schedule in place.

813. The letter is slightly opaque but, as I understand it, any one of the four residential developments listed in the letter could, in isolation, be accommodated without the need for additional primary school capacity. As two of the potential developments are allocated in the BNLP and the other two are this appeal scheme and that submitted by DWH, it is unlikely that only one scheme in isolation will come forward. Depending on the decisions made by the Secretary of State, all four could come forward.

814. Both the letter and the EFM report say that in that circumstance it is necessary to look more closely at where the children attending the Braintree Group 10 schools (Hatfield Peverel Infant, St Andrew's Junior and Terling CE Primary) actually live. It appears that some 35% live in the priority admissions areas of other schools but chose to be educated at one of those three named schools.

815. Given that the education authority has a duty to secure sufficient school places (and there is no evidence that it will not do so) the assumption is that this issue will resolve itself over time through the operation of the admissions policy. In short, in-catchment applications will always trump out-of-catchment applications (report paragraph 42) and, while no pupils will be displaced, over time more and more pupils in the Braintree Group 10 schools will come from Hatfield Peverel if that is their choice.

816. GDL's response to this is set out above [251 to 258]. It can perhaps be summarised by Mr Lee's answer to my question when he confirmed that had ECC asked for a contribution to primary school provision it would have been paid. There is therefore no resistance from GDL to addressing the issue. Although Mr Graham believes that ECC may have misdirected itself in respect of CIL Regulation 123(3) [458] the fact remains that its understanding of the pooling restriction prevented it from seeking any contributions from the appellant.

817. Nevertheless, while the situation settles down, and there is no indication as to how long that may take, Mr Lee accepted that there would be a short term impact which GDL was unable to mitigate [568]. That is most likely to manifest itself through additional journeys to school, either by bus or private car. In my judgement it is very unlikely that any pupils would walk to schools in Witham. The walk is by the A12 and unpleasant in my view and likely to be perceived as dangerous even if, in fact, it is not.

Health facilities

818. The consultation response by NHS England (CD3.16 set A) has the 'feel' of a template letter (see also CD4.11 set B). At paragraph 5.1 of the response it says that the development would give rise to a need for improvements to capacity by way of 'extension, refurbishment or reconfiguration at the Laurels surgery'. Those are the terms used in the definition of the 'healthcare contribution' in the s106 Obligation [695] although it specifies that it must be spent at Sydney House.

819. It is clear in my view that the impact of the development and the contribution sought to mitigate it is established purely in terms of the need for additional floor space generated. Unchallenged evidence was given by Mr Renow to the effect that Sydney House could not be physically expanded [454]. GDL respond to this by saying that the capacity can be increased without necessarily having to physically expand the building by, for example, internal alterations [260].

820. However, a letter from the Practice Manager is somewhat confusing as to what is meant by 'capacity' (CD20.1 set C). One reading is that it is the number of medical staff available that is the issue, not the physical space available. Not only is the concern expressed that the contribution would not be spent by NHS England at that surgery (rightly rebutted by Ms Osmund-Smith given the terms of the Obligation) but that it was not recurrent funding. That is suggestive of the concern locally not being one of space constraints.

Conclusion

821. CS policy CS11 says, in essence, that the Council will work with partners, service delivery organisations and developers to provide required infrastructure services and facilities in a variety of functional and service areas that include education and health. Provision is to be funded through among other things, planning obligations and CIL. In the absence of the latter, the Council is reliant in this case on planning obligations.

822. The evidence suggests that there may be some short term harm in terms of additional journeys to schools while a new equilibrium is established in the primary education sector. It may well be that what appear to be current capacity issues at the surgery may be exacerbated if, as HPPC and SPMRG contend, the surgery cannot be expanded and that is, as NHS England would appear to believe, actually the issue.

823. However, having identified those concerns it must be acknowledged that GDL has obligated to make all the contributions that have been requested to mitigate any effect from the appeal scheme. In my view, a finding of conflict with policy CS11 in those circumstances would not be appropriate.

Other topic areas

824. There are a number of topics on which GDL disagrees with HPPC and SPMRG respectively [20 and 21].

825. The treatment by Inspector Parker of the best and most versatile agricultural land issue was the ground of challenge on which the Secretary of State conceded in relation to the appeal decision in respect of this scheme. In order to address the issue further GDL commissioned a site specific study, the report of which was submitted in evidence (Appendix 1, 1/APP). This confirms that the application site is not best and most versatile agricultural land and SPMRG did not pursue this point of disagreement [226]. The point taken for the first time during oral evidence from Mrs Jarvis is wrong [226]. There is therefore no policy conflict with respect to best and most versatile agricultural land.

826. The position with respect to transport and highway matters and air quality is, to my mind, very fairly set out by Ms Osmund-Smith in her closing submissions [264 to 273]. In short, GDL has submitted a number of documents at application stage (within CD1 set A) and these have been assessed by the relevant statutory and other consultees. These have been supplemented by GDL/DWH with further reports addressing cumulative air quality (ID1.4) and transport/highway (ID1.5) issues in response to the first pre-Inquiry note (INSP1) which followed on from my review of the evidence submitted by that time.

827. Neither HPPC nor SPMRG challenged this supplementary evidence or, in the event, took issue with the submitted studies. The SOCG between GDL and the Council (SOCG1) confirms that there are no matters on either issue that cannot be resolved by conditions. There is therefore no evidence before the Inquiry to justify a finding of conflict with the development plan.

828. Finally, ecology. This has been the subject of application submission studies (CDs1.9 and 1.24 set A), further submissions in response to queries raised by consultees in respect of the called-in scheme (CDs 3.7 to 3.9, 3.15, 3.22 and 3.23 set B and CD26.1 set C) and evidence to this Inquiry (5/POE). After

consideration in the officers' report which set out the views of the Council's landscape officer, the Council Committee was advised that there would be a limited ecological impact but that no objection had been raised by any statutory consultee (CD5.1 set A).

829. Dr Mansfield gave detailed evidence about the ecology of the site and particularly about the way the various studies required to understand it had been carried out in accordance with current best practice and guidance. The outcomes are summarised above [228 to 230]. In short, although there is potential for the survey area (land encompassing both GDL schemes and associated blue land) to support breeding and foraging farmland bird species, the restricted range of habitats present and the changeable arable management regime mean the survey area is only likely to support these species in low numbers and on an intermittent basis. Breeding Bird Surveys completed in 2017 have confirmed that limited numbers of farmland species use the site on an occasional basis for foraging and the site does not currently provide suitable nesting habitat for skylark.

830. Mr East for SPMRG seemed unable to accept these results. Throughout his cross examination he sought to cast doubt on the evidence of GDL and the views of the County Council ecologist. He is not an ecologist [231] but he nevertheless set the brief for the surveys that he commissioned and then interpreted the results. Dr Mansfield explained why all the surveys relied upon by Mr East did not follow best practice [242] and should therefore be treated with caution. She also dealt with the matter of the butane cannon [241] that Mr East felt had undermined the appellant's surveys. In my judgement Mr East has no evidential basis to challenge the appellant's substantial evidence.

831. In her closing submissions on ecology Ms Scott raises only a concern about the ability of the Blue Land to improve the ecology and biodiversity of the area when it will be subject to considerable recreational use by people and pets. That in my view goes to the weight that can be attributed to the benefits claimed in the overall planning balance. The Secretary of State will wish to note in this context the County Council ecologist's assurance with respect to the section 40 biodiversity duty [234].

832. I therefore see no evidence to disagree with GDL's conclusion regarding compliance with development plan policies RLP 80, RLP 84 and CS8.

Conclusion - The extent to which the proposed development is consistent with the development plan for the area

833. I have concluded that the development would accord with the spatial strategy [721]; would not conflict with policy RLP 80 [767] or policy CS8 [768]; and would not conflict with policy CS11 [823]. There would be some visual impact from the development [769] and some harm also to the amenity of users of the PROW [776]. However, in each case the harm would be limited and very localised in effect. Moreover, neither matter appears to be subject of a relevant adopted development plan policy. On heritage matters, should the Secretary of State prefer the advice of Historic England, I consider that the harm identified to Hatfield Place [791] would be 'less than substantial' and would be outweighed by the public benefits [793]. I come to a precautionary balanced view in relation to the William B [809] although my understanding of that evidence is that no harm is suggested. There would therefore be no conflict with Framework paragraph

134. My conclusion on the evidence is that there would be no harm to the significance of either heritage asset in any event [804, 808 and 809].

834. The sole conflict that I have identified with the development plan is that with policies RLP 2 and CS5. The conflict arises because the application site lies adjacent to but beyond the development boundary of the village. For the reasons set out the weight that should be attributed to this conflict is moderate [722 to 731].

Five year housing land supply

Background

835. For the purposes of the Inquiry there is no challenge to the Council's assessed OAHN of 716 dwellings per annum [75]. The requirement side of the equation is therefore accepted and the focus of the debate is on the extent to which that requirement can be met over the five year period by the supply of specific deliverable sites.

836. Again, for the purposes of this Inquiry only, the Council accepts the 'Sedgefield' method to deal with the shortfall [646 and 647]. It does not agree with GDL/DWH that there has been persistent past under delivery of housing and does not therefore agree that a 20% buffer should be applied [648 to 652]. On supply there is an immaterial difference between the Council and GDL/DWH of 68 dwellings [653].

837. The final and agreed position is that there would be a 3.4 years' supply (GDL/DWH – Sedgefield+20%) or 3.9 years' (Council – Sedgefield+5%) (Appendix 3 ID37). It was agreed during the Inquiry when I summarised my understanding of the position that this was not close enough to 5 years for the Secretary of State to give anything other than substantial weight to the shortfall. However, as it was not possible on even the most favourable assumptions to get below 3 years, GDL/DWH accepted the implications of the Written Ministerial Statement on Neighbourhood Planning if the NDP passed a referendum before the Secretary of State determined the application.

838. In those circumstances it is not necessary to resolve the small difference between the Council and GDL/DWH.

839. HPPC [357] and SPMRG do not agree with this and suggest that there is a 5YHLS. They contend that the 'Liverpool' approach should be used to deal with the shortfall and that the buffer should be 5%. However, as is clear from the SOCG (Appendix 3, ID 37) that alone is not enough to show a 5YHLS. It also requires most, if not all, of the additional supply sites first mentioned by SPMRG during the round table discussion and then confirmed in writing (ID21) to be 'deliverable' within the meaning of Framework footnote 11.

Supply of deliverable sites

840. Except for Mr Tucker's criticism of Mr Graham's specific interpretation of *St Modwen* regarding the term 'realistic' [72], it appears to be agreed between the parties that whether a site is deliverable or not is determined by the ordinary and everyday meaning of the words in Framework footnote 11 and not on the planning status of the site in question. It is in that context that GDL/DWH/the Council have reviewed and commented upon (ID37) the sites put forward by

SPMRG (ID21). ID37 is dated 21 December 2017, the final day of the Inquiry sessions. Ms Scott's first and only opportunity to respond was through her closing submissions although what she says [594 and 595] is, in fact, taken into account in ID37.

841. Appendix 1 to ID37 sets out in detail the positions of both GDL/DWH and the Council in respect of each site. None has planning permission and only three are subject of planning applications. A number are subject of objections and until these are resolved through the BNLP examination they must be considered uncertain notwithstanding their allocation in the draft BNLP. Furthermore, some are owned or part owned by the Council. The mechanism by which they will be developed has yet to be confirmed by the Council and they cannot be considered as available now.

842. Ms Scott puts the additional sites suggested by SPMRG as adding a further 461 dwellings to the supply [590]. In only challenging ID37 in respect of two sites (Sorrell's Field and Gimsons), it must be assumed that SPMRG accept the case made on the others. Even if the SPMRG response to ID37 is agreed, GDL/DWH/the Council say that it adds only about 25 units net to the supply. They further contend that this additional supply makes no material difference to the 5YHLS position.

843. In my view that must be correct. However, the extent of the shortfall below 5 years may still be material and it is therefore necessary to consider the next most significant factor which is whether 'Sedgefield' or 'Liverpool' is the appropriate approach to take to dealing with the shortfall.

Sedgefield or Liverpool?

844. The shortfall arises because the OAHN has been applied, as it should be, from the start of the plan period in 2013 but the plan itself, the strategy and the allocations to deliver it are not yet approved and planned delivery is thus delayed. I appreciate that some of the developments that may come forward as a result of the adoption of the submitted BNLP may do so towards the latter part of the period. That may well be an argument for the Liverpool approach and is likely to be put by the Council to the examining Inspector. However, that is all for the future and the shortfall exists now. Although Ms Scott argues that the BNLP is now far more advanced than when Inspectors Hill and Gregory considered their respective appeals [583], in practice that is not so as she implicitly acknowledges ('although plainly the Plan has yet to make it through examination').

845. The PPG is quite clear that Sedgefield should be preferred unless there are sound reasons for not doing so. The case made by SPMRG that the Council is simply not able to deliver housing in the numbers required following the Sedgefield approach [580] is attractive at first sight. However, there is no analysis as to why that has not been the case in the past (is it lack of market demand, lack of available sites, lack of planning permissions being granted against a former development plan requirement?) so the past is not necessarily a guide to the future performance. In any event, even an under-shoot would still make up some of the shortfall.

846. The approach advocated by HPPC [346 to 351] makes the plan strategy point referred to above and, referring to *Bloor Homes* (ID61), argues that it is a matter of judgement for the decision taker.

847. In my judgement there has been no material change in circumstances since my colleagues determined the Coggeshall and Steeple Bumpstead appeals. They both concluded that Sedgefield was the appropriate approach to adopt and this has influenced the Council's acceptance of that for the purposes of this Inquiry [645]. There is no cogent evidence before this Inquiry to take a different view.

Conclusion

848. As Mr Tucker put it [95], in order for HPPC and SPMRG to get the 5YHLS 'over the line' all the stars must align. The evidence shows that when the assessed supply of deliverable sites is taken into account and the Sedgefield approach is applied it makes no material difference whether it is 5% or 20% that is applied as the buffer. On either, the best that can be achieved is still less than 4 years' supply.

Framework Paragraphs 49, 14 and the 'tilted balance'

849. In the circumstances that I have just found Framework paragraph 49 is clear that relevant policies for the supply of housing should not be considered up to date. In turn, that means Framework paragraph 14 is engaged. Planning permission should be granted unless either of the limbs of Framework paragraph bullet 4 indicates that the tilted balance should be dis-applied.

850. Dealing with the second limb first, footnote 9 sets out a non-exhaustive list of specific policies in the Framework which indicate that development should be restricted. By the close of the Inquiry sessions Ms Scott explicitly stated that the only relevant policy which SPMRG considers falls into that category in this case is Framework paragraph 134 [495]. I have concluded that there is no conflict with this policy, first, because in my view there is no harm to the significance of either heritage asset and, second, in the event that the Secretary of State accepts the advice of Historic England, the less than substantial harm would be outweighed by the public benefits [793, 794, 804,808 and 809]. The tilted balance should not therefore be dis-applied by virtue of the second limb.

851. As I understand Mr Graham's case for HPPC it is not argued that the tilted balance should be dis-applied on the basis of the second limb.

852. Turning now to the first limb, the harms that I have identified are set out above [833 and 834] with the conflict with development plan polices identified where appropriate. The totality of the harm or adverse impacts is limited and localised and restricted to a very small number of aspects. The benefits in terms of housing numbers and tenure mix are considerable and there are other benefits across a range of Framework policies [331]. In my judgement, the limited adverse impacts of the proposal are some distance from significantly and demonstrably outweighing those benefits. Accordingly, I do not consider the first limb dis-applies the tilted balance either.

853. To conclude on this consideration, the tilted balance set out in Framework paragraph 14 applies in this case and is a material consideration that should be given substantial weight in the planning balance.

The planning balance

The development plan

854. The appeal proposal would conflict with the policies of the development plan. The appeal site is beyond the development boundary of Hatfield Peverel and it is not a use appropriate to the countryside. There is a conflict therefore with policies RLP 2 and CS5 [834]. I do not consider there to be any other conflict with the development plan.

855. The appeal should therefore be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there are a significant number of material considerations to take into account.

Material considerations against the development

Footpath 43

856. In my view, the experience of users of this path will be harmed by the development [776], including the provision of the blue land and the public open space between Stone Path Drive and the northern boundary of the developable area. However, the path is not lengthy and does not form part of any promoted country walk [153]; it links two roads. I consider the weight to be attributed to this harm to be limited.

Visual impact

857. In my understanding, the effect on landscape character and visual impact are two separate, but related, issues although they are usually considered in a single LVIA. My conclusion on landscape character is part of my assessment of the development against the policies of the development plan.

858. In relation to visual impact, I conclude (as to be fair do GDL [178]) that there would be some harm caused [756 to 764]. However, that would be very localised, affecting very few residential occupiers and users of limited lengths of public highways over and above footpath 43. Although I agree with GDL's categorisation of the scale of adverse effect, the harm caused is limited. Given my conclusions on the weight that should be given to the emerging NDP [715] any conflict with emerging policy HPE6 on this consideration can be given very limited weight, particularly as this is a policy that is subject to objection from GDL and possibly others although there is no evidence about that.

Material considerations in favour of the development

859. These are set out by Ms Osmund-Smith above [322 to 331].

Tilted balance

860. I have concluded that the Council cannot show a 5YHLS [848]. Moreover, at less than 4 years' supply, the shortfall is of some significance. In these circumstances Framework paragraph 14 is engaged by virtue of Framework paragraph 49. There is no reason why the tilted balance should be dis-applied [850 to 852] and I consider that it should attract substantial weight [853].

Housing delivery

861. There is no reason to suppose that the proposal would not deliver a high quality development that includes a mix of market and affordable housing [705 and 706]. There is however a legitimate concern in my view about the rate of delivery within the first five year period.

862. The query was raised in my second pre-Inquiry note (INSP2) and arose from the evidence of Mr Spry and Mrs Hutchinson's rebuttal proof. She explained that one of the sites that Mr Spry sought to downgrade in terms of its contribution to the 5YHLS (Land South Of Oak Road, Halstead) was one where GDL had secured outline planning permission and then sold it to developers (Bloor Homes and DWH) (paragraphs 2.63 to 2.68 BDC3). Although it was ultimately concluded that there should be no change to the Council's trajectory for this site, Mr Spry's analysis was that the delays caused by the two developers seeking separate reserved matters approvals meant, in his view, that full build-out in five years was optimistic (pages 8 and 9, Appendix 1, 4/POE).

863. As this shows, GDL do not build houses; they are a site-finding company whose business model is to secure outline planning permission and dispose of the land to a housebuilder as soon as possible thereafter [317]. Mr Lee explains that over the period during which GDL has been operating, outline planning permission has been secured for some 15,000 homes (section 10.5, 1/POE) but does not say how many dwellings have actually been delivered within the five years from permission being granted. In oral evidence he explained why this could not in fact be computed (essentially because GDL had not been operating long enough for a true figure to be available).

864. I give little weight to the two letters of intent (ID31 and ID32) since both post-date INSP2 and would appear to have been solicited specifically to address my query. Nevertheless, Framework footnote 11 is clear that sites with planning permission (which, as not excluded, must include outline planning permission) should be considered deliverable unless there is clear evidence (examples are set out) to the contrary. In this case at this point in time there is no such evidence. It must be assumed therefore that the whole site could be developed within five years. It is also noteworthy in this context that condition 2 reduces to two years the period within which the reserved matters applications must be submitted. There is no reason therefore not to afford moderate weight to the delivery of housing over the five year period.

Spatial strategy

865. Notwithstanding any conflict with the development plan arising from the position of the village development boundary, the appeal proposal would accord with the longstanding and continuing spatial strategy for the area [721]. That attracts some weight in the balance.

Economic, social and environmental benefits

866. These are the three dimensions of sustainable development set out in Framework paragraph 7.

867. With regard to the economic role, there is nothing in the Framework to suggest that the economic benefit of a development must be enjoyed by the area in which the development is located to meet this objective. The financial

contributions to the economy set out [331], which were not challenged as to the quantum, are therefore a benefit to which some weight should be attributed.

868. The social dimension is however locally focused since it is aimed at supporting strong, vibrant and healthy communities. The supply of housing already mentioned comes into this. The additional residents will also have the potential to contribute to the social activities of the village and to increase spending in and use of local shops and services. This may help to address the issues identified by Mr Renow whose evidence seemed to suggest that in some respects the village was in decline [246]. These aspects carry some weight too.

869. With respect to environmental matters, the enhanced biodiversity arising from the new boundary planting and the management of the existing boundaries for this purpose is a benefit to which weight must be attributed.

Material considerations which are neutral

870. The identification of the blue land is required to mitigate any adverse effects that there may be on the nearby Natura 2000 sites [27]. It is intended to have a recreational focus to provide an alternative to the Natura 2000 site for that purpose. Whether or not SPMRG is correct that a mitigation measure should not be considered a benefit [610], I believe the effect of its use will contribute to the adverse effect on the experience of those now using footpath 43. Any benefit is therefore offset by the harm caused. Similarly offset is any benefit from the enhancement of footpath 43 as it passes through the development site and any provision of open space and play area in the vicinity of the footpath.

871. In my view also the provision of enhancement to the nearby bus stops and the shelters and the implementation of minor traffic management measures to address what are largely existing conditions should attract so little weight as to be neutral.

Conclusion

872. In my view the conflict with the development plan, which attracts moderate weight applying Framework paragraph 216, and the material considerations that weigh in favour of determining the appeal in accordance with it are significantly outweighed by those that indicate it should be determined other than in accordance with the development plan. In my judgement the appeal represents sustainable development as defined in the Framework and planning permission should be granted.

873. This conclusion is clearly different to that of Inspector Parker when he determined the appeal (CD32.6 set C). In part, this can be explained by the fact that I had different evidence available to me about the agricultural land classification of the appeal site and the position with regard to the emerging NDP. Both of these factors weighed against the proposal when Inspector Parker considered the planning balance. He may well have attributed different weight to each had he had the same evidence that has been put before this Inquiry. In part however I have simply come to a different planning judgement on the effect of the proposal on the character of the landscape and its visual impact. In that respect I had the assistance of cross examination of all relevant witnesses by leading and junior planning counsel which, in particular, examined the evidence

base underpinning NDP policy HPE6 and clarified more precisely what it is about the appeal site that is valued by the local community.

Recommendation

File Ref: APP/Z1510/W/16/3162004

874. I recommend that planning permission be granted subject to conditions

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon of Counsel	Instructed by Ian Hunt Legal Services Braintree District Council
He called	
Alison Hutchinson BA MRTPI	Partner, Hutchinsons Planning & Development Consultants

FOR THE APPELLANT:

Thea Osmund-Smith of Counsel	Instructed by Christien Lee, Senior Planner Gladman Developments Ltd
She called	
Matthew Spry BSc (Hons), DipTP (Dist) MRTPI MIED FRSA	Senior Director Nathaniel Lichfield and Partners
Dr Suzanne Mansfield BSc (Hons) PhD	Director FPCR Environment and Design Ltd
Laurie Handcock MA(Cantab) MSc IHBC	Director Heritage Team Iceni Projects
Gary Holliday BA MPhil LD CMLI	Director FPCR Environment and Design Ltd
Christien Lee BSc(Hons) MCD MRTPI	Senior Planner Gladman Developments Ltd

FOR HATFIELD PEVEREL PARISH COUNCIL:

David Graham of Counsel	Instructed by direct access
He called	
Mike Renow	Parish Councillor
Philppa Jarvis BSc DipTP(Hons) MRTPI	Principal PJPC Ltd (Planning Consultancy)

FOR THE STONE PATH MEADOW RESIDENTS GROUP:

Rosie Scott of Counsel	Instructed by Birketts Solicitors
She called	
Margaret Freeman MA (NUI) HDipEd (NUI)	Local resident giving evidence on heritage matters
Mark East	Local resident giving evidence on ecology

	matters
Kevin Dale	Local resident giving evidence on landscape matters and soils

Annex A

CORE DOCUMENTS

Set A: Appeal Ref: APP/Z1510/W/16/3162004

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Impact Appraisal
1.7 Transport Assessment
1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Assessment
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological Desk Based Assessment
1.16 Heritage Assessment
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Impact Report
1.21 Sustainability Report
1.22 Framework Plan Rev H 09.08.16
1.23 Education and Heritage response 25.08.16
1.24 Bat and GCN survey 05.10.16
1.25 Iceni Heritage letter 07.10.16

CD2 Correspondence with Local Planning Authority

2.1 Email with minutes of pre-ap meeting 29.03.16
2.2 Pre-ap response letter from BDC 08.04.16
2.3 Email from GDL to BDC requesting pre-ap response 11.05.16
2.4 Email and letter from GDl to BDC 11.05.16
2.5 Email exchange re conference call 08.06.16
2.6 Email from BDC re Chris Paggi contact 10.06.16
2.7 Email from Chris Paggi re POS 17.06.16
2.8 Email from GDL to BDC re POS 21.06.16
2.9 Email exchange re additional land 30.06.16
2.10 Email exchange re education meeting 30.06.16
2.11 Email exchange re site visit 05.07.16
2.12 Email from GDL to BDC re response to additional land request 12.07.16
2.13 Email from GDL to BDC re officer support 12.07.16
2.14 Email from GDl to BDC re submission of 2nd application 13.07.16
2.15 Email and letter from BDC re additional land 21.07.16
2.16 Email from BDC to GDL re education 01.08.16
2.17 Email from GDL to BDC re amendment to Framework (footpath) 12.08.16

2.18 Email from BDC to GDL re legal agreement 23.08.16
2.19 Letter from GDL to BDC re legal agreement/conditions 23.08.16
2.20 Email from GDL to BDC re legal agreement/heritage 24.08.16
2.21 Email from GDL to BDC re education 25.08.16
2.22 Email from BDC to GDL re legal agreement 25.08.16
2.23 Email from GDL to BDC re feedback from Conservation Officer 07.09.16
2.24 Email from BDC to GDL re financial contributions 09.09.16
2.25 Email from GDL to BDC re photos of the site from Hatfield Place 13.09.16
2.26 Email from BDC to GDL re HoTs/conditions 20.09.16
2.27 Email from GDL to BDC re legal costs 21.09.16
2.28 Email from BDC to GDL re HoTs 23.09.16
2.29 Email from BDC to GDL re TRO 27.09.16
2.30 Email from BDC to GDL re highways 05.10.16
2.31 Email from BDC to GDL re survey work 05.10.16

CD3 Consultation Responses

3.1 Anglian Water - 24.08.16
3.2 BDC - Environmental Health
3.3 BDC - Landscape - 05.09.16
3.4 ECC - Archaeology 11.04.16
3.5 ECC - Drainage 18.04.16
3.6 ECC - Education 1 - 20.04.16
3.7 ECC - Education 2 - 30.08.16
3.8 ECC - Heritage 1 - 24.05.16
3.9 ECC - Heritage 2 - 06.09.16
3.10 ECC- Highways 12.05.16
3.11 Hatfield Peverel Parish Council 12.05.16
3.12 Highways England 25.05.16
3.13 Highways England 21.06.16
3.14 Historic England 16.08.16
3.15 Housing Research and Development 27.04.16
3.16 NHS England 19.04.16
3.17 PRoW 15.04.16

CD4 Validation Letter

4.1 Validation letter from Braintree District Council dated 30.03.16

CD5 Committee report and Decision Notice

5.1 Committee Report
5.2 Decision Notice

Set B: Appeal Ref: APP/Z1510/V/17/3180725

CD1 Application Documents

1.1 Application Covering Letter, Application Form and Certificates
1.2 Location Plan
1.3 Framework Plan
1.4 Planning Statement
1.5 Design and Access Statement
1.6 Landscape and Visual Appraisal
1.7 Transport Assessment

1.8 Travel Plan
1.9 Ecological Appraisal
1.10 Arboricultural Assessment
1.11 Flood Risk Assessment
1.12 Foul Drainage Analysis
1.13 Air Quality Assessment
1.14 Noise Assessment
1.15 Archaeological DBA
1.16 Heritage Statement
1.17 Phase 1 Preliminary Risk Assessment
1.18 Utilities and Infrastructure Statement
1.19 Statement of Community Involvement
1.20 Socio-Economic Report
1.21 Sustainability Report
1.22 SUDS checklist

CD2 Additional reports submitted after validation
2.1 Ecology Response to RSPB comments 14.12.16
2.2 Additional Heritage Statement to respond to HE 13.01.17
2.3 Rebuttal letter to HE comments 09.03.17

CD3 Correspondence with Local Planning Authority
3.1 Notice to Owners
3.2 EIA screening letter
3.3 Update and recommendation
3.4 RSPB objection
3.5 Letter to case officer
3.6 Landscaping photos
3.7 Bird mitigation land
3.8 Ecology matters
3.9 Ecology matters - Wistaston decision
3.10 Heads of Terms
3.11 Single storey buildings around perimetre
3.12 Timing of Reserved Matters application
3.13 Heads of Terms
3.14 Blue land managament
3.15 Response to RSPB objection
3.16 Ecologist qualifications
3.17 Overall recommentation
3.18 On agenda
3.19 Education contribution
3.20 HRA matters
3.21 Maintenance of blue land
3.22 Farmland bird surveys and contributions
3.23 Interim breeding bird surveys

CD4 Consultation Responses
4.1 Essex County Council Specialist Archaeological Advice
4.2 Essex County Council SUDS
4.3 Braintree District Council Environmental Health
4.4 Parish Council
4.5a Historic England
4.5b Historic England

4.6 Essex County Council Education Statement
4.7 Essex County Council Historic Buildings Consultant
4.8a Highways England
4.8b Highways England
4.8c Highways Recommendation
4.9 Essex County Council Economic Growth and Development
4.10a RSPB Response to applicants ecologist
4.10b RSPB
4.11 NHS Statement
4.12 Essex County Council Highways
4.13 Essex County Council Ecologist
4.14 Briantree District Council Wynne-Williams Landcape Review
4.15 Shaun Taylor Landscape Services
4.16 Natural England
4.17 Anglian Water
4.18 Police
4.19 Braintree District Council Ecology
4.20 Essex County Council Flooding and Water update
4.21 Essex Field Club
4.22 Archaeology Place Services
4.23 Braintree District Council Environmental Health

CD5 Third Party Representations

5.1 Mr Mark Scofield
5.2 Ms Allison Hinkley
5.3 MP Priti Patel
5.4 Mrs Diana Wallace
5.5 Mr Paul Hawkins
5.6 Mrs Linda Shaw
5.7 Mr John Dinnen
5.8 Mrs Amanda Millard
5.9 Mrs Angela Peart
5.10a Mr Peter Harvey
5.10b Mr Peter Harvey
5.10c Mr Peter Harvey
5.11 Mr Kenneth Earney
5.12a Mr Mark East
5.12b Mr Mark East
5.13 Mrs S.J.Freeman
5.14 Miss Marine Page
5.15 Mr Philip Swart
5.16 Mrs Susan Farrell
5.17 Ron and Marel Elliston
5.18 Mr M Fleury
5.19 Mrs Rita Hocking
5.20 Mr Tom Bedford
5.21 Mrs Helen Sadler
5.22 Mr B.Knight
5.23 Ms Serena Grimes
5.24 Andy and Stephanie McGuire
5.25 Mr Nicholas Carey
5.26 Mrs Greta Taylor

5.27 Residents Group
5.28 Mr K. Kearns
5.29 Mrs Margaret Freeman
5.30 Kenneth and Jackie Earney
5.31 Mr Kevin Dale
5.32 Mr Robert Shales
5.33a Ms Janis Palfreman
5.33b Ms Janis Palfreman
5.34 Mrs Diane Wallace
5.35 Mrs Faye Churchill
5.36 Mr Derek Jones
5.37 Mrs Janet Jones
5.38 Miss Grace Clemo
5.39 Mrs Valerie Bliss
5.40 Mr Bryan Hale
5.41 Mr Les Priestley
5.42 Ade
5.43 Ms Janice Robinson
5.44 Mr James Knights
5.45 Mr Guy Bosworth
5.46 Rachel and Liam Bone
5.47 Mr Robert Anstee
5.48 Mr Lee Vandyke
5.49 Frank Diane Flynn
5.50 Mrs Stella Miller
5.51 Dr Judith Abbott
5.52 Mr Mitchell Cooke
5.53 Ms Jane Russell
5.54 Mrs Lesley Naish
5.55 Mr John Wallace
5.56 Mr Peter Naish
5.57 Mr Tim Steele
5.58 Ms Irene Lindsell
5.59 Mr and Mrs Edwards
5.60 Kathleen and Albert Evans
5.61 Mr Paul Harris
5.62 Mr Mark Nowers
5.63 Mr Ian May
5.64 Ms Ann Ford
5.65 Ms Alexandra Harris
5.66 Mr Nick Harris
5.67 Lynsey and Rob Deans
5.68 Ms Theresa Brewster
5.69 Ms Sue Pienaar
5.70 Ms Karen Devlin
5.71 Mr Peter Devlin
5.72 Ms Catherine Devlin
5.73 Ms Lisa Hanikee
5.74 Mr Timothy Barber
5.75 Mr Martin Gibbs
5.76 S.Warrant
5.77 Mr David Bull

5.78 Mr Sean Osborne
5.79 Mr Richard Parker
5.80 Miss Joanna Burch
5.81 Mr Colin Moore
5.82 Mr Chris Earwicker
5.83 Mrs Kate Bryant
5.84 Mrs Gillian Jones
5.85 S.Warrant
5.86 Ms Rita Hocking
5.87 Mrs Karen Williams
5.88 Mr Philip Hawkins
5.89 Ms Jane Hawkins
5.90 T Davis
5.91 J.C.Roche
5.92 Mr Keith Wright
5.93 Mr Peter Haldane
5.94 Mr John Campbell
5.95 Ruth Ramm
5.96 No Name
5.97 Ms Deborah Fraser
5.98 Ms Lindsay Gilligan
5.99 Mr Michael Renow
5.100 Mr Neil Ruston
5.101 Mr Vincent Hawkins
5.102 Mr Trevor Wilson
5.103 Mr Sebastian Gwyn-Williams
5.104 Mr Darryl Day
5.105 Mrs Ann Walker
5.106 Mr Richard Butler
5.107 Mrs Angela Lapwood
5.108 Mrs Teresa O'Riodan
5.109 Mrs Elise Gwyn-Williams
5.110 Mr Daniel McDermott
5.111 Mr Richard Windibank
5.112 Mrs J.Buckmaster
5.113 Mrs J P Wright
5.114 Carole and Howard Cochrane
5.115 Chistine C Lingwood
5.116 D.R.Wallis
5.117 Mrs Jean Ashby
5.118 Mrs Lesley Wild
5.119 Mr Paul Hanikene
5.120 Mr George Boyd Ratcliff
5.121 Mrs Helen Peter
5.122 Mr Mark East
5.123 Graham and Jean Lightfoot
5.124 Mr Roderick Pudney
5.125 Mr Stephen Mitchell
5.126 Mrs L.Wild
5.127 Mr and Mrs David Warburton
5.128 Ms Marian Headland
5.129 Mrs Chris Marks

5.130 Mrs Carole Allen
5.131 Mrs Amanda Bright
5.132 Mrs Joe Quieros
5.133 Mr Richard Quieros
5.134 Mrs Joanne Melly
5.135 Mrs Claire Harris
5.136 Miss Natasha Wilcock
5.137 Mr Ted Munt
5.138 Mr Neil Ekins
5.139 Margaret and Robert Parry
5.140 Mr Neville Oldfield
5.141 Ms Joanne Middleton
5.142 Ms Steph Gunn
5.143 H.J.Lane
5.144 Mrs M.Blake
5.145 Mr I and Mrs J Jolly
5.146 Derek and Jan Newell
5.147 Henryk Podlesny
5.148 Lorraine Podlesny
5.149 Glenn Blake
5.150 Mr Paul Wallace
5.151 Stone Path Residents Group
5.152 Mr David Bebb
5.153 Mrs Jo Bull
5.154 Mr David Groves
5.155 No Name
5.156 No Name
5.157 Julie Gammie
5.158 No Name
5.159 Mrs Ann Westhersby
5.160 C Merritt
5.161 Mr Tony French
5.161 Mrs Elsie Filby
5.163 Mr Charles William Joiner
5.164 Michele Lewars
5.165 Mr Andrew Jackson
5.166 Mrs Julia East
5.167 A.W.Mabbits
5.168 No name
5.169 Mr Paul Thorogood
5.170 No name
5.171 Jane and Eddie Cook
5.172 Richard Foulds
5.173 Mrs M.E.Gratze
5.174 S.Hughes
5.175 No Name
5.176 No Name
5.177 No Name
5.178 Alan J Evans
5.179 Ron and Marel Elliston
5.180 Elizabeth Pryke
5.181 Suzanne Evans

5.182 Mr Mark Schofield
5.183 Sonya Foulds
5.184 Daniel Power
5.185 Daniel Power
5.186 Miss Susan Nye
5.187 Philippa Moody
5.188 Moira and Steve Hagon
5.189 Kevin and Sue Aves
5.190 Allison Hinkley
5.191 Mr Peter Fox
5.192 Mrs Elizabeth Simmonds
5.193 Mr Mark Bayley
5.194 Mr Andy Simmonds
5.195 Mr Stephen Armson-Smith
5.196 Miss Charlotte Greaves
5.197 Mrs Jodi Earwicker
5.198 Mrs Vivian Cooke
5.199 Mrs Victoria Wren
5.200 Mrs Natacha Murphy

CD6 Committee Report
6.1 Committee Report
6.2 Committee Meeting Minutes

CD7 Habitats Regulations Assessment
7.1 HRA Screening Report
7.2 NE response in respect of HRA

CD8 Draft Legal Agreement
8.1 Engrossed legal agreement

CD9 Appeal decisions
9.1 Walden Road, Thaxted
9.2 Chapel Lane, Wymondham

CD10 Braintree District Local Development Framework Core Strategy
10.1 Core Strategy Policies

CD11 Braintree District Local Plan Review
11.1 Extracts of Policies

CD12 Braintree District Council Draft Local Plan
12.1 Current status of draft local plan
12.2 New policy numbers for publicaton of draft local plan
12.3 Publication draft Local Plan part 1
12.4 Publication draft Local Plan part 2

CD13 Supplementary Planning Guidance/Documents
13.1 Essex Design Guide
13.2 External Artificial Lighting 2009
13.3 Open Space contributions 2017
13.4 Open Space contributions effective 01.04.16
13.5 Open Space Action Plan
13.6 Open Space SPD Nov 2009

13.7 Parking Standards
13.8 Affordable Housing SPD

CD14 Other Guidance
14.1 2007 Landscape Character Assessment
14.2 E40 Landscape Character Assessment preface 2006
14.3 E40 Landscape Character Assessment intro 2006
14.4 Settlement Fringes Landscape Area Evaluatoin 2015
14.5 Landscape Character Assessment

CD15 Draft Hatfield Peverel Neighbourhood Plan 2015-2033
15.1 Reg 14 version of NHP (Superseded)
15.2 Pre-examination version HP NHP

Set C: Appeal Ref: APP/Z1510/V/17/3180725, APP/Z1510/V/17/3180729 & APP/Z1510/W/16/3162004

CD16 Policy
CD16.1 Emerging Local Plan Part 1
CD16.2 Emerging Local Plan Part 2
CD16.3 Emerging HP Neighbourhood Plan

Parish Council Documentation

CD17 Housing documents
CD17.1 Neighbourhood Area Housing Requirement Study
CD17.2 Slipping through the loophole
CD17.3 Government response online petition
CD17.4 BDC draft five year supply table at 30/09/17

CD18 Neighbourhood Plan Background Documents
CD18.1 Basic Conditions Statement
CD18.2 Consultation Statement
CD18.3 HP Site Assessment 2017
CD18.4 HP LLCA Oct 2015
CD18.5 Character Assessment HP
CD18.6 Workshop for important views
CD18.7 NPD Support results
CD18.8 Residents survey Oct 2015
CD18.9 Residents survey results Oct 2015
CD18.10 Business survey Sept 15
CD18.11 Business survey results Sept 15
CD18.12 RCCE HN report Feb 2015
CD18.13 Estate agents survey March 2015
CD18.14 BDC letter to PC re SEA screening
CD18.15 HP NP SEA screening report 2016
CD18.16 BD economic dev prospectus 2013-2026
CD18.17 Minutes 08/12/14
CD18.18 Minutes 26/01/15
CD18.19 Minutes 30/03/15
CD18.20 Minutes 21/03/16
CD18.21 Minutes 16/08/16
CD18.22 Minutes 27/02/17
CD18.23 Minutes 25/09/17

CD19 Stone Path Drive (SP) Correspondence 80 & 140

CD19.1	PC email to BDC 12.05.16
CD19.2	PC letter to BDC 24/11/16
CD19.3	PC presentation 28/03/17
CD19.4	PC email to BDC 30.05.16
CD19.5	PC letter to BDC 04/04/17
CD19.6	BDC letter to PC 19/04/17
CD19.7	Extract PC minutes 24/04/16 - 17/08/16
CD19.8	MP letter to PC 21/04/17
CD19.9	Extract PC Minutes 16/11/16
CD19.10	Extract minutes BDC 11/10/16
CD19.11	Development boundary 80 & 140

CD20 SP - Health

CD20.1	HP Surgery Letter 31/08
CD20.2	Surgeries constraints
CD20.3	Extract village Healthcare Cllr Bebb
CD20.4	Letter to PINS surgery_ Schools 25/09/17

CD21 SP - Education

CD21.1	ECC letter 12.01.17 SPM
CD21.2	ECC letter 15.0617 Arla
CD21.3	ECC letter 11.0117 GE
CD21.4	ECC emails 21&22.1216 GE
CD21.5	ECC letter 27.07.17 Bury Farm
CD21.6	ECC letter 10.08.17 Sorrells

CD22 SP - Road infrastructure

CD22.1	HE A12 Widening Intro
CD22.2	Existing traffic capacity and journey times
CD22.3	Extracts HE A12 Widening Options
CD22.4	Environmental Constraints Plan
CD22.5	Ecology impact A12
CD22.6	Bus stops

CD23 Gleneagles Way (GE) correspondence

CD23.1	PC letter to BDC 11.01.17
CD23.2	PC presentation 25.04.17
CD23.3	PC letter to BDC 11.05.17
CD23.4	MP letter to PC 11.05.17
CD23.5	BDC letter to PC 01.06.17
CD23.6	MP letter to PC 02.06.17
CD23.7	Extract minutes 11.01.17
CD23.8	List of 3rd Party reps
CD23.9	Comments from residents (combined)

CD24 Gleneagles Way (GE) documents

CD24.1	PC letter to BDC 30.11.15

CD24.2	Extract minutes 25.11.15
CD24.3	CMTE report 26.04.16
CD24.4	Decision Notice 26.04.16
CD24.5	Extract minutes BDC 26.04.16
CD24.5	Location Plan

Gladman documentation

CD25 Stone Path Drive Plans for determination

CD25.1	Revised Framework Plan (80)
CD25.2	Tree retention plan (80)
CD25.3	Access Plan for both schemes
CD25.4	Email re access plans
CD25.5	Tree retention plan (140)

CD26 Ecology

CD26.1	Breeding bird survey report - 2nd application
CD26.2	Stonepath Bird Survey (Paul Hawkins) Jan 17

CD27 Heritage

CD27.1	Conservation principles
CD27.2	HE Managing Significance
CD27.3	HE The setting of Heritage Assets
CD27.4	Correspondence between Iceini ECC and HE
CD27.5	Heritage Statement - Additional information

CD28 Landscape

CD28.1	Braintree HEC extracts
CD28.2	Essex LCA extracts
CD28.3	HP LLCA
CD28.4	NCA 86 extracts

CD29 HLS/OAN

CD29.1	PPG - Housing and Economic development
CD29.2	PPG - Housing and Economic Land availability assessments
CD29.3	OAN Study Nov 2016 Update, Peter Brett Associates
CD29.4	SHMA Update December 2015
CD29.5	BDC: 5 Year Supply Statement as at 30 June 2017
CD29.6	BDC: 5 Year Supply Housing Trajectory as at 30 June 2017
CD29.7	BDC: 5 Year Supply Statement as at 30 September 2017
CD29.8	BDC: 5 Year Supply Housing Trajectory as at 30 September 2017
CD29.9	BCD Authority Monitoring Review 2015/2016 (AMR, May 2017)
CD29.10	Planning for the right homes in the right places – Consultation Proposals (Sep 2017)
CD29.11	Housing White Paper (February 2017)
CD29.12	Planned and Deliver (Lichfields, 2017)
CD29.13	Start to Finish (Lichfields, 2016)
CD29.14	A long-run model of housing affordability, University of Reading
CD29.15	OBR Working Paper No. 6 – Forecasting House Prices (2014)
CD29.16	Review of Housing Supply, Delivering Stability: Securing our Future Housing Needs' (March 2004), Kate Barker
CD29.17	Developing a target range for the supply of new homes across England' (October 2007), NHPAU
CD29.18	Housebuilding, demographic change and affordability as outcomes

of local planning decisions; exploring interactions using a sub-regional model of housing markets in England' (2 October 2014) in Planning 2015

CD29.19 Business West: Wider Bristol Housing Market Area Strategic Housing Assessment 2015: Commentary by Bramley

CD29.20 Building more homes' 1st Report of Session 2016–17 (15 July 2016)

CD29.21 The Redfern Review into the decline of home ownership' (16 November 2016)

CD29.22 Forecasting UK house prices and home ownership' (November 2016) Oxford Economics

CD29.23 OBR March 2017 Economic outlook accompanying tables and charts – Chart 3.21 on house prices

CD29.24 Planning Application (ref. 15/01319/OUT) Transport Assessment & Framework Travel Plan, September 2017 (ref. VN30215), Vectos

CD29.25 Application of proposed formula for assessing housing need DCLG, 14 September 2017

CD29.26 East Hampshire Local Plan Inspector's Report (April 2014)

CD29.27 Eastleigh Local Plan Inspector's Report (2015)

CD29.28 House of Lords Select Committee on Building more homes

CD29.29 OAHN Study Nov 2016 Update

CD29.30 Bramley and Watkins report on Housebuilding

CD30 Planning

CD30.1 Committee transcript

CD30.2 Local plan sub committee 25.05.16

CD30.3 Examiner procedural matters letter

CD30.4 PPG determining a planning application (prematurity)

CD30.5 HP Independent examination correspondence 20.09.17

CD31 Planning Judgements

CD31.1 *BDW & Wainhomes Vs CWAC* 2014

CD31.2 *Suffolk Coastal* Supreme Court Judgment -2017

CD31.3 *Telford and Wrekin v SoS for CLG* - 2016

CD31.4 *Palmer v Hertfordshire Council* - 2016

CD31.5 *Forest of Dean & SoS for CLG & Gladman* - 2016

CD31.6 *Colman & SoS for CLG & NDDC & RWE Npower Renewables Ltd* – 2013

CD31.7 *SODC & SoS for CLG and Cemex Properties UK Ltd* (Crowell Road) 2016

CD31.8 *Barwood Strategic Land II LP & East Staffs & SoS for CLG* 2017

CD31.9 *Lee Vs FSS & Swale BC* 2003

CD31.10 *Phides Estates Ltd & SoS for CLG & Shepway DC & Plumstead* – 2015

CD31.11 *St Albans City and District Council v (1) Hunston Properties Ltd and (2) SoS for CLG* - 2013

CD31.12 *(1) Gallagher Homes Ltd and (2) Lioncourt Homes Ltd v Solihull MBC* - 2014

CD31.13 *West Berkshire District Council v SoS for CLG & HDD Burghfield Common Ltd*

CD31.14 *Satnam Millennium Limited and Warrington Borough Council* 2015
CD31.15 *Kings Lynn and West Norfolk Borough Council v SoS for CLG* 2015
CD31.16 *Wainhomes and SoS for CLG* 2013
CD31.17 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2016
CD32.18 *St Modwen v (1) SoS for CLG, (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* 2017
CD31.19 *Chelmsford City Council v SoS for CLG* 2016
CD31.20 *Stroud DC v SoS for CLG* 2015

CD32 Appeal Decisions

CD32.1 Land at Blean Common, Blean Appeal Ref: APP/J2210/W/16/3156397
CD32.2 Land at West Street, Coggeshall, CO6 1NS, Appeal Ref: APP/Z1510/W/16/3160474
CD32.3 Land east of Crowell Road, Chinnor, Appeal Ref: APP/Q3115/W/14/3001839
CD32.4 Land of Wethersfield Road, Finchingfield Appeal ref. APP/Z1510/W17/3172575
CD32.5 Land north of Pulley Lane and Newland Lane, Newland, Appeal ref APP/H1840/A/13/2199426
CD32.6 Land off Stone Path Drive, Hatfield Peverel, Appeal Ref: APP/Z1510/W/16/3162004
CD32.7 Land off Western Road, Silver End, Appeal Ref: APP/Z1510/W/16/3146968
CD32.8 Land off Plantation Road, Boreham, Essex CM3 3EA Appeal Ref: APP/W1525/W/15/3049361
CD32.9 Land at Southwell Road, Farnsfield, Nottinghamshire Appeal Ref: APP/B3030/W/15/3006252
CD32.10 Land off Finchingfield Road, Steeple Bumpstead ref. APP/Z1510/W/17/3173352
CD32.11 Land to the south of Dalton Heights, Seaham, Appeal Ref: APP/X1355/W/16/3165490
CD32.12 Longbank Farm, Ormesby, Middlesbrough, TS7 9EF Appeal Ref: APP/V0728/W/15/3018546
CD32.13 Land at Flatts Lane, Normanby Appeal Ref: APP/V0728/W/16/3158336

CD33 Representations made by Gladman

CD33.1 Representations to the Braintree Local Plan (Reg 19) July 2017
CD33.2 Representations on the HP NHP (Reg 16) July 2017

Documents submitted by SPMRG

(Where a number in the sequence is missing the document is already listed elsewhere in this Annex)

F1 Main Statement by Stonepath Meadow Residents Group (SPMRG) submitted to initial hearing for APP/Z1510/W/16/3162004
F2a Letter from The Rt Hon Priti Patel to The Rt Hon Sajid Javid MP dated 30 March 2017
F2b Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree

	Council) dated 29 March 2017
F2c	Letter from Cllr Derrick Louis (Essex County Council) to The Rt Hon Sajid Javid MP dated 19 June 2017:
F2d	Letter from Hatfield Peverel Parish Council to Nicola Beach (Braintree Council) dated 3 April 2017
F2e	Letter from Kevin Dale to Cllr Graham Butland (Braintree Council) dated 23 May 2017
F2f	Letter from Cllr Graham Butland (Braintree Council) to Kevin Dale dated 31 May 2017
F2g	Letter from Hatfield Peverel Parish Council to The Rt Hon Sajid Javid MP dated 4 July 2017:
F2h	Letter from Lisa Miller (Hatfield Peverel Parish Council) to Nicola Beach (Braintree Council) dated 5 April 2017
F2i	Letter from Margaret Freeman (SPMRG) to The Rt Hon Sajid Javid MP dated 24 April 2017
F5e	Pre Referendum data
F5f	Letter from Kevin Dale (SPMRG) to Cllr Graham Butland (Braintree Council) dated 23 May 2017
F5g	Audio-typed account of Local Plan Sub Committee Meeting (Braintree Council) dated 11 July 2017
F6b	Notes from the Office of The Rt Hon Priti Patel MP
F6c	UKSC press summary
F6f	*Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146
F6g	*BDW Trading Ltd v Cheshire West & Chester Borough Council*, [2014] EWHC 1470 (Admin)
F6h	*Phides Estates (Overseas) Limited v SSCLG* [2015] EWHC 827 (Admin)
F7a	Key Facts Briefing for Councillors, Refuse the application for 16/01813/OUT, Stonepath Drive, Hatfield Peverel, issued without prejudice, March 2017
F7b	Appendix 1: Stonepath Bird Survey from 7th January 2017 by Paul Hawkins
F7c	Appendix 2: The Historical Significance of Landscape, Heritage and Public Footpath 43 on the site known locally as Stonepath Meadow, an essay written in good faith by Margaret Freeman
F7d	Letter from Mark East (SPMRG) to Cllr Mrs WD Scattergood, Chairman of the Planning Committee (Braintree Council)
F7e	Email reference from Mr Daniel Watkins (Ecology Consultancy) in respect of Mr Paul Hawkins dated 10 March 2017
F8b	Local Plan Map Publication Draft for Consultation, Braintree District Council, June 2017
F8c	General Comments
F9a	Environmental report: Annexe B – Baseline Information, Sustainability Appraisal and Strategic Environmental Assessment, Braintree District Site Allocations and Development Management Policies Plan, Place Services, Essex County Council, January 2013
F9b	Email from Emma Goodings (Braintree Council) to Mark East (SPMRG) commenting on housing targets for Hatfield Peverel dated 29 April 2016
F9c	General comments regarding report by Place Services (a) and email from Emma Goodings

F10a	Resolution passed by Essex County Council to call on the Secretary of State for Communities and Local Government to issue urgent statutory guidance which protects valued greenfield sites from predatory development
F10b	Freedom of Information request by Mark East (SPMRG) to Mike Gosling, Performance and Information Officer requesting information on housing need in the district and specifically Hatfield Peverel
F10c	Housing Needs Statistics in Hatfield Peverel by Housing SatNav, June 2015
F10d	Housing need and economic threat to the economy through speculative development, a study by SPMRG that could show how speculative development may not provide economic benefit and stability to the nation
F10e	Case Officer email re Bury Lane, Sorrells, 3rd Nov 2017
F11	Letter from the Planning Policy and Reform Correspondence Team, Department for Communities and Local Government to Mark East (SPMRG) dated 5 May 2017
F12a	Decision notice by Braintree Council in respect of 05/02313/OUT
F12b	Case officer's report in respect of 05/02313/OUT
F12c	Consultation documents in respect of 05/02313/OUT
F12d	Preapplication planning advice dated 12 March 2015
F12e	General comments by SPMRG regarding planning history
F12f	Residents representations in respect of 05/02313/OUT
F13	Maps showing Stonepath Meadow as being a Special Landscape Area
F14b	Landscape guidelines in respect of Stonepath Meadow
F14c	Landscape notes by SPMRG
F15a	A note by Kevin Dale to accompany the Hatfield Peverel Local Landscape Character Assessment
F15c	Map accompanying the Hatfield Peverel Local Landscape Character Assessment
F15d	General comments on landscape by Kevin Dale
F15e	Certificate of membership showing Kevin Dale's fellowship of the Geological Society
F16a	A second note to accompany the Local Landscape Character Assessment by Kevin Dale
F16b	Photomontage of Stonepath Meadow
F18c	Email from Steve Roe (Natural England) to Mark East (SPMRG) dated 25 January 2017
F18d	General ecology notes for Call in by SPMRG
F18e	A12 Ecology Findings
F20b	Map of Stonepath Meadow showing the proposed development boundaries of 16/00545/OUT and 16/01813/OUT
F21a	Heritage Statement submitted to the Appeal Hearing APP/Z1510/W/16/3162004
F21b	"Historic Footpath- Public Footpath 43" treatise submitted to the Appeal Hearing APP/ Z1510/W/16/3162004
F21c	"The Historical Significance of Landscape, Heritage and Public Footpath 43", an essay written in good faith by Margaret Freeman
F21d	Cover sheet of sale brochure for Hatfield Place (1917)
F21e	Clause 21 condition of sale in sale brochure for Hatfield Place

	(1917)
F21f	Academic qualifications of Margaret Freeman (nee McDermott)
F21g	Professional/voluntary experience of Margaret Freeman
F21h	Gymkhana notice 1930
F22	Letter from The Rt Hon Priti Patel MP to Mark East (SPMRG) dated 25 April 2017
F23a	Extract from Braintree District Local Plan Review, Inspector's Report Part 2 proposals map and inset map showing why Stonepath Meadow was not included in the existing local plan
F23b	Email sent by Kevin Kearns (SPMRG) in advance of the committee meeting to determine 16/01813/OUT dated March 2017
F23c	SPMRG's response to the appellant's Appendix 8 in the Appeal Statement of Case dated January 2017 (appeal reference: APP/Z1510/W/16/3162004)
F24e	Email from Gavin Jones, Chief Executive (Essex County Council) to The Rt Hon Priti Patel MP dated 1 September 2017
F24f	Letter from Sarah Cutting to Braintree District Council dated 10 August 2017
F26	Responsible Development in the Parish of Hatfield Peverel by SPMRG dated September 2016
F27	The Objective Argument for Site HATF314 dated May 2017
F28a	View from Hatfield Place before/after the proposed development for up to 140 houses
F28b	View from Stonepath Drive before/after the proposed development for up to 140 houses
F28c	Considerable local interest from the community in support of plan led development and opposition to speculative development on valued greenfield sites
F29b	Open letter from Beverley Jones (Sidney House/Laurels) dated 31 August 2017
F29d	Leaflet regarding Sidney House/Laurels Surgeries produced by the Patient Participation Group dated Autumn 2017
F30c	Housing Supply Calculations Table
F30d	Misc Documents
F31a	Letter from Ian Hunt (Braintree Council) to The Rt Hon Priti Patel MP dated 10 April 2017
F31b	Letter from The Rt Hon Priti Patel MP to Nicola Beach (Braintree Council) dated 11 April 2017
F31c	Letter from The Rt Hon Priti Patel MP to The Rt Hon Sajid Javid (SSCLG) dated 13 April 2017
F32a	Opening submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32b	Ecology submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32c	Landscape submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32d	Traffic/Pollution submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32e	Heritage/Footpath submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32f	Hatfield Peverel Parish Council submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004

F32g	Early Years/Doctors/Schools/Highways submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32h	Closing submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32j	Rt Hon Priti Patel MP submissions in respect of Appeal Hearing APP/Z1510/W/16/3162004
F32k	Hatfield Peverel Neighbourhood Development Plan inc. Housing Needs Survey (2 documents)

Relevant Documents submitted by David Wilson Homes

SAV50	Letter from Savills (Jonathan Dixon) to HPPC dated 30/09/16 setting out representations on behalf of DWH to Reg. 14 NDP consultation.
SAV52	Letter from Savills (Jonathan Dixon) to HPPC dated 17/07/17 setting out representations on behalf of DWH to Reg. 16 NDP consultation. (NB Subject line incorrectly refers to Reg. 14.)
SOCG3	Gladman Developments Ltd and Stone Path Meadow Residents Group

Statements of Common Ground

SOCG1	Gladman Developments Ltd and Braintree DC
SOCG2	Gladman Developments Ltd and Hatfield Peverel PC
SOCG3	Gladman Developments Ltd and Stone Path Meadow Residents Group

Proofs of Evidence

Gladman Developments Ltd

1/POE	Christien Lee Proof (Planning)
1/APP	Christien Lee Appendices
2/POE	Gary Holliday Proof (Landscape)
2/APP	Gary Holliday Appendices
3/POE	Laurie Handcock Proof (Heritage)
3/APP	Laurie Handcock Appendices
4/POE	Matthew Spry Proof and Appendices (Housing Land Supply)
5/POE	Dr Suzanne Mansfield Proof (Ecology)
5/APP	Dr Suzanne Mansfield Appendices

Braintree District Council

BDC1	Alison Hutchinson Proof
BDC1a	Alison Hutchinson Appendices
BDC3	Alison Hutchinson Rebuttal Proof

Hatfield Peverel Parish Council

HPPC1	Mike Renow Proof and Appendices
HPPC2	Philippa Jarvis Proof and Appendices

Stone Path Meadow Residents Group

RG1	Mark East Proof and Appendices (Ecology)
RG2	Margaret Freeman Proof and Appendices (Heritage)
RG3	Kevin Dale Proof (Landscape)
RG4	Kevin Dale Proof (Soils)
RG5	Kevin Kearns Proof and Appendices (Housing)
RG6	Derrick Louis Proof (Infrastructure: Education)
RG7	David Bebb Proof (Infrastructure: Health)
RG8	George Boyd Ratcliff Proof (Infrastructure: Traffic & Pollution)

Documents submitted during the Inquiry by the parties

ID1.1	*Lee v First Secretary of State and Swale BC* [2003] EWHC 2139 (Admin) (GDL)
ID1.2	*Arun DC v Secretary of State for Communities and Local Govnt and Green Lodge Homes LLP* [2013] EWHC 190 (Admin) (GDL)
ID1.3	What is Neighbourhood Planning? PPG extract (GDL)
ID1.4	Cumulative Air Quality Impact Assessment (GDL & DWH)
ID1.5	Transport/Highways Note in response to Inspector's pre-Inquiry note No. 1 (GDL & DWH)
ID1.6a	7015-L-106 rev B Green Infrastructure Strategy for 80 dw scheme (GDL)
ID1.6b	7015-L-108 rev C Green Infrastructure Strategy for 140 dw scheme (GDL)
ID1.7	Plans omitted from CD14.4 set B (GDL)
ID1.8	Statement of Common Ground Education (GDL & DWH)
ID1.9	Secretary of State Appeal decision APP/D3830/A/12/2189451RD (GDL)
ID1.10	Council decision on land adjacent to Walnut Tree Cottage, The Street, Hatfield Peverel (GDL)
ID1.11	Updated table showing past supply against housing requirement 2001/2-2017/18 (GDL & DWH)
ID1.12	Reworked Table 6.1 as requested by Inspector on 7 December 2017 (GDL & DWH)
ID1.13	Update post exchange of proofs re 5 year housing land supply at 30/9/17 (GDL & DWH)
ID1.14	Schedule of supply table for round table discussion (GDL & DWH)
ID1.15	*Cotswold DC v Secretary of State for Communities and Local Govnt and others* [2013] EWHC 3719 (Admin) (GDL)
ID1.16	Supplementary Unilateral Undertaking (GDL)
ID2	Opening statement (GDL)
ID3	Opening statement (DWH)
ID4	Opening statement (Council)
ID5	Opening statement (HPPC)
ID6	Opening statement (SPMRG)
ID7	Note on housing land supply (Council)
ID8	Statement by John Webb (interested person)
ID9	Presentation by Michael Hutton (interested person)
ID10	Statement by Lesley Moxhay (interested person)
ID11	Statement by Ron Elliston (interested person)
ID11a	Further Statement by Ron Elliston (interested person)
ID12	Statement by Kenneth Earney (interested person)

ID13	Viewpoints and photographs (HPPC)
ID14a	Council HRA Screening Report Arla Dairy Site (HPPC)
ID14b	Natural England consultation response on above (HPPC)
ID15	Suggested conditions for the 80 dw and 140 dw schemes (GDL)
ID16	Email from Sue Hooton to Council dated 12 December 2017 (GDL)
ID17	Draft agreement under s106 (DWH)
ID18	Suggested conditions for Gleneagles Way scheme (DWH)
ID19	Consultation comment by Essex County Council on Hatfield Peverel Neighbourhood Plan (DWH)
ID20	Briefing Note: clarification of presentation provided by Mr John Webb (GDL & DWH)
ID21	Note on additional five year land supply sites (SPMRG)
ID22	Now ID11a
ID23	Statement by Andy Simmonds (interested person)
ID24	Not used
ID25	Secretary of State Appeal decision APP/P1425/W/16/3145053 (HPPC)
ID26	Email thread between Diane Wallace and Alan Massow re green wedge policy in neighbourhood plan (HPPC)
ID27	Extract from Chapter 7 of the Lewes Local Plan (HPPC)
ID28	Statement of compliance with CIL Regulations re: Gladman schemes (Council)
ID29	Statement of compliance with CIL Regulations re: David Wilson Homes scheme (Council)
ID30	Conserving and enhancing the historic environment: PPG extract (GDL)
ID31	Letter dated 12 December 2017 from Cala Homes (GDL)
ID32	Email from Linden Homes dated 15 December 2017 (GDL)
ID33	Spatial Strategy Formation (Council)
ID34	Call in conditions comparison (DWH)
ID35	Not used
ID36	Not used
ID37	Statement of Common Ground: joint position on additional housing land supply sites (Council, GDL & DWH)
ID38	Not used
ID39	Viewpoints and Photographs (HPPC)
ID40	Article re: housing at Towerlands park Bocking (SPMRG)
ID41	Consultation notification re: housing at Church Road, Great Yeldham (SPMRG)
ID42	Letter from the Council to Priti Patel MP dated 29 November 2017 re: five year housing land supply (SPMRG)
ID43	Appeal decision APP/A1720/W/16/3156344 Portchester, Fareham, Hampshire (SPMRG)
ID44	Appeal decision APP/A1720/A/14/2220031 Lower Swanick, Hampshire (SPMRG)
ID45	Report to Cabinet dated 27 November 2017 re: proposed disposal of land to provide access to residential development site off Maldon Road, Witham (SPMRG)
ID46	Land east of Gleneagles Way: Statement of Landscape Principles (DWH)
ID47	Closing submissions (Council)
ID48	Closing submissions (HPPC)

ID49	Closing submissions (SPMRG)
ID50	Closing submissions (DWH)
ID51	Closing submissions (GDL)
ID52	Historic Environment Good Practice Advice in Planning Note 3 (GDL)
ID53	Consolidated suggested conditions post Inquiry round table session (the Council)
ID54	Response to INSP4 (GDL)
ID55	Response to INSP4 (DWH)
ID56	Response to INSP4 (HPPC)
ID57a	Completed planning obligation for 80 dwelling scheme (GDL)
ID57b	Addendum to planning obligation for 80 dwelling scheme (GDL)
ID58	Completed planning obligation for 140 dwelling scheme (GDL)
ID59	Completed planning obligation for 120 dwelling scheme (DWH)
ID60	Letter dated 29 January 2018 re progress on the NDP (HPPC)
ID61	*Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) (BDC)
ID62	*Daventry DC v SSCLG and Ors* [2015] EWHC Civ 3459) (BDC)
ID63	*Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) (SPMRG)
ID64	*Steer v SSCLG* [2017] EWHC 1456 (SPMRG)
ID65	*R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin); [2015] J.P.L. 22 (HPPC)
ID66	*R (Forest of Dean Friends of the Earth) v Forest of Dean DC* [2015] EWCA Civ 683 (HPPC)
ID67	*R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin) (HPPC)
ID68	*Cawrey Ltd v SSCLG* [2016] EWHC 1198 (Admin) (HPPC)
ID69	*R(Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567) (HPPC)
ID70	*South Oxfordshire District Council v Cemex Proprties UK Limited* [2016] EWHC 1173 (HPPC)
ID71	*Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [2017] PTSR 408 (HPPC)

Inspector Documents

INSP1	Pre-Inquiry Note no. 1 dated 8 November 2017
INSP2	Pre-Inquiry Note no. 2 dated 5 December 2017
INSP3	Email to parties dated 7 December 2017
INSP4	Post Inquiry sessions Note dated 18 January 2018

Annex B

Abbreviations

5YHLS	5 year housing land supply
BNLP	Braintree New Local Plan
CS	Braintree District Core Strategy
CRA	Comprehensive Redevelopment Area
DWH	David Wilson Homes Eastern
ECC	Essex County Council
ELCAA	Essex Landscape Character Area Assessment
Framework	National Planning Policy Framework
GDL	Gladman Developments Ltd
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
HPPC	Hatfield Peverel Parish Council
HRA	Habitats Regulation Assessment
KSV	Key Service Village
LCA	Landscape Character Area
LLCA	Local Landscape Character Assessment for Hatfield Peverel
LPR	Braintree District Local Plan Review
LVIA	landscape and visual impact assessment
NCCA	National Character Area Assessment
NDP	Hatfield Peverel Neighbourhood Development Plan
PPG	Planning Practice Guidance
PROW	Public Right of Way
OAHN	objectively assessed housing need
SEA	Strategic Environmental Assessment
SFE	Settlement Fringes Evaluation
SOCG	Statement of Common Ground
SPMRG	Stone Path Meadow Residents' Group

Annex C

Suggested Conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 80 dwellings, parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed below and broad compliance with the illustrative Development Framework Plan 7015-L-02 rev J.
Approved Plans:

Location Plan:	7015-L-04 Rev B
Access Details:	A095687-SK01 Rev C
Green Infrastructure Plan	7015-L-06 Rev B

5) Prior to the first occupation of the development the primary access shall be implemented as shown on drawing A095687-SK01 Rev C.

   Prior to occupation of any dwelling, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times.

6) No building erected on the site shall exceed two storeys in height or have a maximum ridge height of more than 9 metres.

7) Any Reserved Matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

   The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

8) Any Reserved Matters application relating to scale or layout shall be accompanied by a Noise Report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of Table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and that the upper guideline noise level of 55 Db(a) will be achieved for outside amenity space such as gardens and patios.

9) Any Reserved Matters application relating to landscaping shall be accompanied by a Biodiversity Management Plan for the site which shall set out the site wide strategy for enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed. The development shall be implemented in accordance with the approved Management Plan.

10) Any Reserved Matters application relating to landscaping as required by Condition 1 of this permission shall incorporate for the written approval of the local planning authority a detailed specification of hard and soft landscaping works for each phase of the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. The scheme and details shall be implemented as approved. The scheme and details shall provide for the following:

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the local planning authority.

Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

Any Reserved Matters application relating to landscaping shall be accompanied by cross section drawings showing the relative heights of the proposed dwellings in association with landscape features.

11) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be implemented as approved. The Statement shall provide for:

- Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;

- The parking of vehicles of site operatives and visitors;

- The loading and unloading of plant and materials;

- The storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;

- A scheme for recycling/disposing of waste resulting from demolition and construction works.

- A scheme to control noise and vibration during the construction phase

- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

12) Demolition or construction works, including starting of machinery and delivery to and removal of materials from the site shall take place only between 08.00 hours and 18.00 hours on Monday to Friday; 08.00 hours to 13.00 hours on Saturday; and shall not take place at any time on Sundays or on Bank or Public Holidays.

13) Details of any proposed external lighting to the site for each phase of the development shall be submitted to, and approved in writing by, the local planning authority as part of any Reserved Matters application. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures). For the avoidance of doubt the details shall also:

- identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

- show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

14) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction process.

15) No development shall commence until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable

risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme approved in writing by the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented and completed prior to the first occupation of any phase of the development.

The developer shall give one-month's advanced notice in writing to the local planning authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report undertaken by competent person or persons and in accordance with the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers' and the approved remediation measures shall be submitted to the local planning authority for approval. There shall be no residential occupation of the relevant phase of the development until the local planning authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the local planning authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the local planning authority.

16) No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by to and approved in writing by the local planning authority.

A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following completion of the programme of archaeological evaluation as approved within the written scheme of investigation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority.

Within 6 months of the completion of fieldwork a post-excavation assessment shall be submitted to the local planning authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum and submission of a publication report.

17) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation. In particular the scheme shall provide for the following mitigation measures outlined in the Flood Risk Assessment:

    i) Control all the surface water run-off generated within the development for all events up to and including the 1 in 100 year event plus 40% climate change.

    ii) In the event of using attenuation SUDs (infiltration basin soakaway) as a means of controlling run-off from the development, the design criteria should be based on limiting the discharge (overflow after all infiltration) from the basin/pond to the 1 in 1 greenfield rate for all events up to and including the 1 in 100 plus 40% climate change.

    iii) Run-off management within the site must prioritise the use of SUDs both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement.

    iv) Provide evidence of water quality treatment from the development using the risk based approach as outlined in the CIRIA SUDs manual C753.

    v) Provide a plan showing the final exceedance flow paths, these shall be away from any buildings.

    vi) Provide details of the adoption and routine maintenance of the SUDs features including the maintenance of the outfall to the ditch downstream of the pond/basin.

    The mitigation measures shall be implemented in accordance with timing/phasing arrangements embodied within the scheme

18) No development shall commence until a Maintenance Plan detailing the maintenance arrangements for each phase of the development, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall be implemented as approved.

    The applicant or any successor in title or adopting authority shall maintain yearly logs of maintenance which shall be carried out in accordance with any approved Maintenance Plan for each phase of the development. These shall be available for inspection upon a request by the local planning authority.

19) No development shall commence until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

20) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

21) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained (as identified on the Tree Retention Plan 7015-A-03 Rev B) on the site and the trees located outside but adjacent to the site boundary from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

    No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

    No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

22) No above ground works shall commence in the relevant phase of the development until details of the location of refuse bins, recycling materials storage areas and collection points have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter so retained.

23) No clearance of trees, shrubs or hedges in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

24) Prior to the commencement of above ground construction of the relevant phase of the development details of a scheme for the provision of nest and roost sites for birds and bats shall be submitted to and approved in writing by the local planning authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so retained.

25) If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 3 years from the date of the planning consent, the approved ecological measures secured through Condition 9 shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats and farmland birds and ii) identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

26) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys for Great Crested Newts as necessary shall be undertaken of all suitable ponds within 500 metres of the application site. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

27) In the event that development is not commenced (or, having commenced, is suspended for more than 12 months) within three years of the planning consent, further surveys shall be carried out as necessary to establish the presence of any farmland bird species which could be affected by the proposed development. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within 8 months of the completion of the survey and a mitigation/compensation scheme, if required shall be provided for approval prior to the commencement of development. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

28) No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include appropriate signage and lining measures and improvements to the two existing bus stops located at Hatfield Peverel, The Swan public house. The approved works shall be implemented in full before the first occupation of any dwelling hereby approved.

29) Prior to first occupation of the development hereby approved, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved in writing by the local planning authority, (to include six one day travel vouchers for use with the relevant local public transport operator).

30) No occupation of the development shall take place until a scheme for the enhancement of the existing Public Right of Way which runs through the application site between The Street and Church Road has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme prior to the first occupation of the development.

31) No development shall commence unless and until a strategy for the introduction of parking restrictions has been submitted to and approved in

writing by the local planning authority. The strategy shall include details of the proposed Traffic Regulation Orders that would be necessary, together with provision of associated signage and lining to prevent parking in the vicinity of the proposed primary vehicle access. The strategy shall be implemented as approved.

32) *No above ground development shall commence in the relevant phase of the development until a schedule and samples of the materials to be used on the external finishes have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.*

33) *Prior to first occupation of the relevant phase of the development, details of all gates / fences / walls or other means of enclosure within the relevant phase of the development shall be submitted to and approved in writing by the local planning authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the relevant plot.*

Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.