<u>Planning appeal under s.78 of the Town and Country Planning Act 1990</u>

Land North of A507, West of A10 Buntingford, Hertfordshire

Appeal by Hallam Land Management Limited (PINS Ref: 6008238, LPA Ref: 3/24/0966/OUT)

CLOSING SUBMISSIONS ON BEHALF OF
EAST HERTFORDSHIRE DISTRICT COUNCIL

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1. Locational sustainability is the heart of the new NPPF and the Achilles heel of this proposal[1], which is consistently contrary to local and national policy and guidance on accessibility. This is a large housing development on the wrong side of the A10, whose success as a sustainable extension depends upon high quality, inclusive, safe and attractive connections prioritising active travel modes, which this scheme simply does not provide. The proposed accessibility improvements are wholly insufficient to incorporate this 660-dwelling satellite scheme into Buntingford, leaving residents dependent on their cars to access local services contrary to local and national policy. The inquiry also has served to highlight serious road and social safety concerns, and laid bare obvious design failures, each of which independently justify refusal. Those matters (coupled with the A10, a literal physical barrier) emphasise how poorly this development physically relates to Buntingford.

2. The proposal is agreed[2] to be contrary to the development plan[3] and there are no material considerations that indicate that a decision should be taken other than in accordance with that plan. Indeed, the Council's case is that the proper application of the Framework also directs refusal. Permission should accordingly be refused, applying s.38(6) of the Planning and Compulsory Purchase Act 2004. East Hertfordshire District Council (**"the Council"**) contends for three routes by which the appeal should be dismissed, applying the NPPF:

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[1] Full description of development: *"Up to 600 Dwellings (C3) Elderly Accommodation (C3), Mixed Use Local Centre (including Flexible Use E, F and Sui Generis), First School, Informal and Formal Open Space, Associated Works and Infrastructure Including a New Access from the A507 and Pedestrian Bridge over the A10, With all matters Reserved Except Access"* (see Planning SoCG §3.1 **CD15.1**)
[2] GS XX
[3] Comprised of the East Herts District Plan (October 2018) (**CD5.1**) (**"the LP"**) and the Buntingford Community Area Neighbourhood Plan 2014-2031 (**CD5.2**) (**"the NP"**).

a. The development does not fall within one of the classes of development set out within policy S5 of the NPPF, and so represents an impermissible form of development in the countryside. In particular, the development does not fall within policy S5.1(j) because it is not physically well related to Buntingford. There are no exceptional circumstances present to justify such unacceptable development in the countryside, applying policy S5.4.

b. The proposed toucan crossing at the south of the site represents a real danger to members of the public (including vulnerable users). The proposal is accordingly unacceptably unsafe and should be refused on this basis alone, applying policy TR6.4.

c. In general terms, the harms of granting permission would substantially outweigh the benefits, justifying refusal (applying the 'stem' of policy S5.1) given the extent of conflict with local and national policies concerning landscape, accessibility, the spatial strategy, BMV, heritage and highway safety. That is particularly so because there are two national policies which direct refusal in their own right (TR6.4 and DP3.1, read with DP3.3), which S5.2 of the NPPF confirms will likely mean that the harm of granting permission would substantially outweigh the benefits.

3. The following abbreviations are adopted within these closing submissions: Kate Carpenter (**"KC"**), Robert Browne (**"RB"**), Richard Lewis (**"RL"**), and Phillip Hughes (**"PH"**); Peter Blair (**"PB"**), James Duffy (**"JD"**), Natasha Jones (**"NJ"**), Gary Stephens (**"GS"**). The main issues in the inquiry are addressed in turn.

MAIN ISSUE 1: Whether the proposed Toucan crossing to be provided at grade level over the A10 would be safe, the acceptability of proposed speed limit reductions on the A10, the extent to which the site would be capable of delivering safe access and route connections for all users in accordance with an acceptable Road Safety Audit, and whether the proposed access from the A507 would be suitable and safe.

4. The proposed toucan crossing across the A10 (**"the Toucan Route"**) is one of (a maximum of) two routes for cyclists from a site of 660 new homes (of which 60 are reserved for over 55s) to the settlement of Buntingford. Any crossing in this location is likely to be used by cyclists, wheelchair users, pedestrians and those pushing prams all needing to cross the A10 to access the settlement, where the majority of facilities are

found. All existing schools are, for example, the other side of the A10. The Toucan Route must be safe for all users, which means *"everyone from 8 to 80 and beyond."*[4] JD rightly agreed that it was *"obviously crucial"* that the route was safe.[5] It is not. Permission should be refused on this basis alone as per national planning policy (see TR6.4 of the NPPF).

5. In general terms, there was a stark difference between the clarity, authority and quality of the evidence given by the competing experts on this crucial topic. KC is a highly experienced Road Safety Auditor who gave clear, insightful and detailed answers to the issues arising. JD, in contrast, accepted that he had never performed a Road Safety Audit (**"RSA"**).[6] After giving evidence for over four hours he remained unable to convincingly answer questions from the Inspector designed to clarify his position: not least, which of the various designs he considered was the best/safest.

6. In the end, there was overwhelming evidence before the inquiry that the proposed toucan crossing (in its various guises) was unacceptably unsafe for both pedestrians and cyclists, and users of the A10 road. This was borne out by the Appellant's own expert: despite the Appellant relying on multiple alternative designs for the scheme, JD's evidence in re-examination concluded with the position that there was *"wiggle room"*[7] for yet a further (unseen) design to the Toucan Route. Plainly, that was a tacit admission that all the designs actually before the inquiry were unsafe, as KC had convincingly explained.

<u>The designs</u>

7. The Appellant wishes the Inspector to consider the following six alternative designs for the Toucan Route:

    a. The 'original' crossing, drawing 0046 P1[8]

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[4] LTN1/20, **CD10.4**, §1.6.1(1)
[5] JD XX.
[6] JD XX
[7] JD Re-X
[8] JD Rebuttal, Appendix A, pdf p.20, **CD18.1** (see also **CD17.31**).

b. The ‘alternative’ crossing, drawing 0043 P2[9] which *inter alia*, proposes a longer central island in the carriageway.

c. A drawing similar to the ‘original’ but with a slightly longer central island, drawing 035 P3.[10]

d. A *“drawing showing potential A10 crossing positions,”*[11] drawing 041 P1, which contained two alternative options for the crossing:

    i. One with a ‘set back’ from the roundabout at 15m and

    ii. Another with the ‘set back’ at 20m.

e. A further unparticularised option, unsupported by a plan, of undertaking *“minor widening”*[12] to the A10 highway (to an unparticularised extent) where it meets the Baldock Road roundabout with a view to expanding the central island (also to an unparticularised extent).

8. It has also been suggested that further amendments to plans 046 P1 or 043 P2 might be undertaken pursuant to proposed condition 17 such that a further scheme which is different to but in general conformity with those plans could be approved by the Local Planning Authority as a detailed matter. It is unclear precisely what changes would be made to either of those plans. We first deal with the plans which are before the inquiry and then address the further unparticularised proposed crossing and the condition 17 issue below.

9. In a nutshell however, the position following the evidence was very clear: KC explained that she *“had seen a range of designs, broadly in the same form”* all of which were unacceptably unsafe.[13] She also informed the inquiry that she did not consider that there was any evidence before the inquiry such that the ‘tweaks’ approach available within

[9] JD Rebuttal, Appendix A, pdf p.21, **CD18.1**
[10] **CD2.22.xi**
[11] JD PoE Appendix T, pdf p.300, **CD17.10a**
[12] JD Re-X
[13] KC EIC

the scope of condition 17 would sufficiently address her safety concerns[14] and that she was not satisfied that the Appellant had demonstrated that a safe access at the proposed location was even possible.[15]

<u>The problems</u>

10. **Speed**: The A10 is a high-volume motor traffic movement corridor and a primary distributor in the Hertfordshire Roads hierarchy[16] which presently has a speed limit of 60mph. The relevant guidance (LTN 1/20 Table 10-2[17]) confirms that such roads are not suitable for a signal-controlled crossing, and would exclude most users at the present speed limit.[18] There is, on any analysis, therefore a need to reduce the speed limit to 40mph for a proposed crossing to have any prospect of operating safely (which is, no doubt, why the Appellant proposes it).

11. KC's evidence on this issue was very clear and applied to all six alternatives set out above: she considered it unlikely that road users would register and adhere to the proposed speed reduction to allow for a safe approach to the toucan crossing. The proposal would entail an isolated 40mph section of road with limited visual cues to a driver to encourage them to slow down, especially as the settlement of Buntingford is set back from the A10 to the east and largely set behind dense tree cover.

12. Indeed, KC explained that this would be the case even considering the proposal 'as-built.' The illustrative layout of the scheme[19] confirms that the A10 remained in cutting for a long stretch approaching the roundabout, and proposed SUDS and tree and hedgerow planting to the eastern extent of the site – itself set back from the A10 here - would mean that a driver would not read any intensification of built form to the west when travelling south. The road would retain a *"trunk road style"* with no material difference from the present, undeveloped character which surrounds it.[20]

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[14] KC XX
[15] KC EiC
[16] KC PoE, §5.4, **CD16.7**
[17] KC PoE, §7.36 **CD16.7**
[18] JD XX
[19] **CD1.5** and see HSoCG, App A, **CD15.3**
[20] KC EiC

13. Isolated 40mph sections in areas of limited frontage can lead to overtaking issues, and disregard for speed limits. Without effective cues, drivers maintain higher speed, causing longer reaction times and braking distances when crossings are first seen, giving rise to substantial safety concerns for highway users, pedestrians and cyclists. This is particularly the case here given that southbound drivers would not have been required to give way since Royston more than 7 miles to the north.

14. Introducing a crossing in a location immediately prior to a roundabout and out of context with the existing route is likely to create a situation where drivers fail to anticipate a crossing, resulting in late braking, and a failure to stop at a red light, causing potential rear end collisions between motor vehicles (or worse: failing to stop at a red signal hardly needs further exploration).

15. KC was not alone in raising this concern, and the authors of the RSA plainly identified the issue as follows: *"the approach from the north is relatively long and straight with no features to indicate that the environment is changing over the current situation and as such vehicle speeds may remain similar to those currently observed"* (emp. add.).[21] We deal with the wider issues with the RSA and what may be taken away from that document below, but here, it is noteworthy that JD eventually agreed that the auditors had identified the potential for the proposed speed limit to be ineffective.[22]

16. JD's various attempts to address this issue were unconvincing. His first argument was that there was no need to reduce the speed limit at all, because the speed data which (he asserted) demonstrated traffic slowing down, on average, as it approached the roundabout. JD agreed, however, that the relevant guidance table was based on speed *limits* rather than actual speeds.[23] Further, the average speeds provided by JD[24] achieved little:

    a. JD failed to provide figures for the AM and PM peak, with the result that the collective day average offered little insight into how quickly drivers travelled down

[21] RSA, §3.2
[22] JD XX
[23] JD XX
[24] JD PoE, Table 8.1, **CD17.10**

the A10, especially as all of the data was collected during one two-week period in March 2026. As KC put it, this data simply *"does not tell us much."*[25]

b. JD agreed that the real concern was in respect of outlier drivers,[26] i.e. the issue was not, generally, whether the average driver might be travelling at the speed limit approaching the roundabout, but the likelihood of some drivers not doing so. To that end, his speed data evidenced the opposite of what he hoped to achieve. For example: there were four drivers travelling between 93-99mph between 0700-0900 on the 11 March 2026[27] – a time when schoolchildren from the site would be expected to be using a crossing in this location.

c. The concern articulated by the RSA authors was that speeds might, notwithstanding the change in limit, "*remain similar to those currently observed*." The speeds "*currently observed*" are the problem, not the answer.

d. The location of the ATC collecting speed data is insufficient to deliver meaningful data about the profile of speeds on this stretch – to what extent are vehicles slowing down as they approach the site of the proposed crossing? KC explained clearly why that might be a meaningful piece of data in this context, but could not be gleaned from a fixed-point survey close to the crossing location.

17. The 'case studies' on which JD sought to rely were similarly unhelpful in meeting the concerns about speed:

a. JD agreed that the Winston Churchill Way[28] example *"was not a good comparator for speed"* and *"can't tell us anything about whether a reduction is or might be effective,"*[29] given the existing speed limit in that example is 40mph.

b. Similarly, the Malabar Farm example[30] involved the relevant road being converted to 40mph and there was no concern about whether the 40mph in that case would be

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[25] KC EIC
[26] JD XX
[27] JD PoE, Appendix U, pdf p. 332, **CD17.10a**
[28] JD PoE, §8.4.1, **CD17.10**
[29] JD XX
[30] JD PoE, §§8.4.3-8.4.6, **CD17.10**

an effective reduction. In addition, the proposal was under construction, so JD agreed there was no evidence of how it operated.[31]

c. Whilst the example of the Cattle Market roundabout in Newark[32] includes a road with a national speed limit, there was no information on user traffic volume. The crossing had also not been introduced as a new and significantly used link to shops and services. Indeed, JD agreed there was no significant residential presence anywhere near the relevant crossing[33] and when asked to confirm that the example was totally different to the present scheme, the best JD could do was to answer: *"not totally."*[34]

18. **Constant Green behaviour**: KC identified a real risk of 'constant green' behaviour, whereby in the event the crossing is activated infrequently, or perceived to be activated infrequently, vehicle users will not expect or anticipate that the signal may turn red. In practice, this results in either drivers ignoring the signal or braking harshly and late, and in either instance endangering pedestrians and cyclists and other road users. Once again, this was a concern which had been raised within the RSA (yet not flagged as a problem for further consideration): *"there are concerns that where crossing are not used [sic] <u>the 'constant' green</u> to drivers can be <u>overlooked</u> if it changes to red as local drivers become over familiar with the road layout"* (emp. add.).[35]

19. JD's response to this issue was to suggest it could be mitigated through the introduction of timed red phases, or put otherwise, that the lights might turn red automatically even where there is no demand. In fairness, that (surprising) option is one mooted by the author of the RSA.[36]

20. KC explained that this was *"at best an unevaluated approach"* which had not been subject to an RSA and she had *"never seen it done on a high speed trunk road location."*[37] Her experienced view was that the proposed timed red phases could raise

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[31] JD XX
[32] JD PoE, §8.4.2, **CD17.10**
[33] JD XX
[34] JD XX.
[35] RSA §3.2, HSoCG, Appendix N, **CD15.3**
[36] RSA §3.2, HSoCG, Appendix N, **CD15.3**
[37] KC EiC

further issues: if there were consistent 'fake' red signals at the crossing in circumstances where there were no nearby pedestrians or cyclists, this could promote road users ignoring the red signals entirely. Drivers respond to the environment they experience and, in the event they consistently experience the red signal being shown without justification, there is a prospect that drivers will consider it may be ignored. Plainly, creating a situation in which drivers are primed to ignore red signals creates a further safety concern, and leaves would-be crossers of the carriageway as vulnerable, if not more, than if the 'constant green' issue remained.

21. Nor was it persuasive for JD to refer to the peak expected pedestrian and cycle traffic across the junction in this context. By their nature these show the busiest time for the crossing. The constant green effect arises at the *least* busy times (for which we have no data).

22. **Confusion:** Given the proximity (10m[38]) of the proposed crossing to the roundabout in the original and amended drawings, and given the difficulty in effectively communicating the location of the crossing to southbound traffic on the A10, there is a real danger that drivers will mistake the crossing as a signal-controlled roundabout, failing to realise that they must give way at the roundabout even where there is a green light at the crossing. Once more, this was an issue raised within the RSA: *"there is the potential for drivers approaching from the north in particular those unfamiliar with the area, <u>to assume that the roundabout is signal controlled and that they have right of way leading to the potential for failure to confirm type collisions</u>"* (emp. add.)[39]

23. Once again, JD's responses offered little comfort. Despite relying on the presence of an existing informal crossing in his proof of evidence,[40] in evidence he agreed that this did not take matters further because there was no signal control there.[41] He similarly agreed that the proposed crossing location (and all but one alternative) was at odds with the guidance within the Design Manual for Roads and Bridges (**"DMRB"**)[42] to install staggered crossings at 20m or more than 60m from roundabouts.

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[38] JD XX
[39] RSA §3.2, HSoCG, Appendix N, **CD15.3**
[40] JD PoE, §8.2.13, **CD17.10**
[41] JD XX
[42] **CD10.29,** §8.2.4

24. The reason for the proposed 20m distance in the DMRB was explained at its Note 1, which is of direct relevance to this issue: *"a distance of 20 metres for a signal controlled crossing can reduce the likelihood of drivers confusing the signal with one controlling flow into the roundabout."*[43] The best JD could do here was to assert that the guidance was 'should' guidance, and not mandatory, but he did not provide any reasonable justification as to why it should not be applied.

25. The other issue arising from the set back of the crossing related to drivers travelling east along the A507 and then turning north onto the A10. With the proposed crossing at a 10m distance, they may be faced with a red signal and therefore have to brake sharply immediately after leaving the roundabout, in circumstances where they will have been focused on the roundabout traffic coming from their right (i.e., the other direction) and/or expecting to accelerate away from the junction. Again, the presence of the existing informal crossing was agreed to be irrelevant to this issue, and Note 2 to the relevant section of the DMRB recommended that a greater set back of the crossing could avoid issues of this kind.

26. JD's final approach to either or both of the above issues was to simply assert that the crossing could potentially be moved further north.[44] However, the RSA of May 2026[45] had confirmed in respect of the 15m-20m setback alternatives that these made *"little difference in road safety performance"* and more concerningly raised the prospect that if the setback were moved further north, pedestrians and cyclists might choose to forgo the amended crossing location altogether: *"pedestrians and cyclists prefer to cross on desire lines and will circumvent the identified route in order to achieve this."*[46] As such, moving the crossing would – even if it ameliorated the initial concern - be robbing Peter to pay Paul: different and unassessed issues may arise, with potentially even more adverse effects on safety.

27. Importantly, despite JD's curious assessment that the views of the Highway Authority about the road safety implications of the proposals had become irrelevant, the authors

[43] **CD10.29**, §8.2.4
[44] JD PoE, §8.2.14, **CD17.10**
[45] JD PoE, Appendix R, **CD17.10a**, p. 273
[46] JD PoE, Appendix R, **CD17.10a,** §3.1, p. 284

of the RSA had noted that it *"would be advantageous to seek the highway authority's views on the crossing location."*[47] Those views were expressed clearly by KC, who confirmed that she did not consider the proposals were safe on *inter alia* the 'confusion' issue, and highlighted that even in the event guard rails were positioned to avoid pedestrians attempting to cross at the desire line, *"in practice people climb over them"* noting also that sites with guard rails actually tend to have more accidents than those without them[48] such that modern practice was not to support their use.

28. KC's considered position was that even if the crossing were moved further north to 20m setback, then northbound traffic would likely be seeking to accelerate upon leaving the roundabout and would then *"create a split second decision"* as to whether to stop or not.[49] In short, the RSA did not consider that the additional proposed setback would improve safety, and KC, whose views the auditors sought, confirmed that a greater setback could create additional and different safety concerns.

29. **Staggered crossing:** All the proposed planned options include a staggered (or offset) crossing. As such, they are all agreed to be contrary to consistent national and local guidance.[50] It is difficult to see how JD could seek to maintain that the scheme was an example of good design in those circumstances.[51] KC told the inquiry that staggered crossings created conflicts between cyclists and pedestrians travelling in opposite directions at the same time, which is why designers are repeatedly advised against using them.

30. The guidance on this point could not be clearer. LTN 1/20 states that: *"cycle crossings at junctions and across links should not be staggered."*[52] Further reasoning within that document explains why: *"negotiating a staggered refuge can be highly problematic and sometimes impossible for those using non-standard cycles"* and it can *"also give rise to additional conflict with pedestrians in the confined space available."*[53] Much the same advice is found in the more recent Rural Design Guide,[54] which again refers

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[47] JD PoE, Appendix R, **CD17.10a,** §3.1, p. 284
[48] KC EiC
[49] KC EiC
[50] JD XX
[51] JD XX
[52] **CD10.4**, Table 10-1, p. 97, pdf p. 94
[53] **CD10.4**, §10.4.19, p. 103, pdf p. 100
[54] **CD10.6**, p. 139, pdf p. 139

to such crossings as *"highly problematic"* noting they leave *"little room to manoeuvre and cyclists can conflict with pedestrians."* At a local level, there is further clear advice from the Hertfordshire Design Guidance: *"staggered traffic islands should not be used on cycle routes."*[55]

31. JD provided little justification for the stagger. In his rebuttal he had sought to rely on the additional wait times that would be available for users[56] but of course cyclists crossing the road would not wish to have a wait time at all, and in fact forcing cyclists to co-mingle with pedestrians in the small space provided (on which more below) is one of the main sources of conflict.

32. JD also referred to the prospect of the stagger splitting the control of traffic[57] but agreed that this was achievable via a two stage straight-across crossing design, and was not a benefit limited to staggered crossings.[58] In his proof of evidence, he had sought to rely on the Traffic Signs Manual as offering support for staggered crossings, but in that document, the term 'staggered' was clearly used to mean 'two stage' rather than the offset stagger proposed in the instant scheme.[59]

33. All in all, JD agreed there was no document before the inquiry which supported the use of a staggered crossing in the situation proposed[60], and every relevant piece of guidance advised against such use. In fact, in his evidence JD had failed to meaningfully engage with the relevant guidance at all and clarified that he was merely offering his *"professional opinion"* on the topic.[61]

34. This is not simply an argument about the principle of a staggered crossing. The actual proposed staggered crossing is itself overcomplicated, cramped and unintuitive whichever of the proposed alternatives is considered. It requires a cyclist from the site riding north along the A10, turning 90 degrees against the flow of traffic to press the button to cross. Once on the crossing, the rider must then turn 90 degrees right to travel south and then turn 90 degrees left to await a signal before turning 75 degrees right

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[55] **CD10.7f,** p. 229, pdf p.229
[56] JD Rebuttal, §4.2.1, **CD18.1**
[57] JD Rebuttal, §4.2.2, **CD18.1**
[58] JD XX
[59] **CD10.33**, §15.13.1 and KC in XX
[60] JD XX
[61] JD XX

again on a narrower, fully shared path to the east. The route from east to west obviously requires a cyclist to do the same in reverse, and of course, users will be travelling in both directions at all times, mixing with pedestrians and wheeled users without segregation.

35. If anything therefore, KC's description of the route as *"tortuous"*[62] underplayed the significant scope for conflict which the crossing offered. The result is a real risk of cyclists overshooting the entrance, of falling into the path of the road by accident, or of making sharp movements and knocking into other crossing users which might include pedestrians, parents with pushchairs or wheelchair users. Needless to say, these risks are exacerbated for more vulnerable users, here particularly any children who may wish to cycle to school.

36. Compounding this, the northern extent of the island is just 3m (see drawing 043, P1[63]) where the 'design vehicle' is 2.8m long.[64] Simply looking at the drawing, it is impossible to see how even two design vehicles could safely enter the island at the same time, let alone turn safely in conjunction with pedestrians and other wheeled users. JD's response to this was to assert that 'normal' bikes were roughly 1.8m long. This was both absolutely true, and absolutely nothing to the point: that the design he was promoting did not safely accommodate the design vehicle that it was supposed to. In fact, JD was then taken to local guidance which confirmed that a minimum 4m island crossing was required, and he agreed that the 3m he had designed did not meet that standard.[65] In answer to the Inspector's questions, he accepted the arrangement might lead to "*some conflict, but not a massive amount of conflict*." Such an observation requires little further comment in this context.

37. JD's further fallback was to suggest there was or might be space to widen the highway and apparently the island itself, although he had not provided any evidence of how that might be achieved by any plan before the inquiry. In a context in which the issue of the safety and design of the crossing had been raised significantly longer than a year ago, it did seem remarkable that he had not attempted to design (or sketch out) such an

[62] KC PoE, §7.33, **CD16.7**
[63] JD PoE, Appendix W, **CD17.10a**
[64] See LTN 1/20, Table 5-1, **CD10.4,** p.42, pdf p. 41 (and see Figure 5.2 on the preceding page for illustrations)
[65] **CD10.7f**, p. 229

approach. It was a sure sign of the weakness of the plans that were before the inquiry that he sought to design a new crossing in the course of giving evidence. We deal with the unparticularised alternative in greater detail below.

38. Dealing finally with the further examples provided by JD to seek to address this particular concern, it will be observed that the Jarman Park scheme did not facilitate access to a large-scale residential development and there was no data as to the daily use of the crossings as part of that development. Indeed, one of the staggered crossings at Jarman Park was supplemented by a footbridge.[66] It was a comparator wholly unlike the instant scheme and did little to allay the very serious safety concerns which KC raised around the use of a staggered crossing in the proposed location, in concert with prevailing local and national guidance.

39. On a straightforward comparison of the evidence given on these points, that of KC was much the more reliable, and should be preferred.

<u>The RSAs</u>

40. JD sought to rely extensively (see §1.1.13, §1.1.14, §8.2.9, §8.2.12, §8.6.1-8.6.2, §9.1.2 of his Proof and §3.3.1 and §5.1.1 of his Rebuttal) on the absence of a safety issue being identified within the RSA to justify a finding that the crossing was safe. Indeed, he had suggested that it was not appropriate for the Highway Authority to provide further input. However, the auditors consistently requested such input. In the August 2025 audit, the authors requested their conclusions be *"brought to the attention of the highway authority for their consideration"*[67] and noted in a later audit of May 2026 *"it would be advantageous to seek the highway authorities [sic] views on the crossing location."*[68]

41. Eventually, JD accepted that the mere fact that an RSA assessed a scheme as safe did not mean that it was so, and one was entitled to interrogate the findings of the relevant audits to determine whether they confirmed the proposal was acceptable in highway safety terms. KC accepted that the auditors were experienced, but highlighted clear

[66] JD Rebuttal, Fig. 4.3, **CD18.1**
[67] D2 RSA, §1.10, HSoCG, Appendix N, **CD15.3**
[68] JD PoE, Appendix R, §3.1, pdf p.283 **CD17.10a**

methodological deficiencies in their approach and showed how the matters which they had raised supported her own concerns about the scheme's safety.

42. Although the auditors were specifically requested to assess the safety issues arising from the introduction of the proposed toucan crossing (JD accepted the matter was 'in scope'[69]), in each audit report, the authors addressed this issue under a heading titled 'issues *outside* the scope of this audit and other observations.' No justification was provided as to why this particular safety concern was beyond the scope of the RSA, and the sidelining of the issue perhaps explains the methodological errors which follow.

43. KC explained that the appropriate approach when conducting a road safety audit (including, importantly, at Stage 1) is essentially to identify whether there are hazards/problems present, then if so, to flag these as issues with recommendations for further consideration. The correct approach was not seriously disputed by JD, who also agreed that in the event a relevant problem is identified by an auditor, the auditor is obliged to report that matter whether or not there was an identifiable solution to that problem.[70] He essentially accepted the definitions of those terms in the relevant guidance[71].

44. This much is uncontroversial and supported by the GG119[72] document. That guidance provides that *"the objective of road safety audit is to identify aspects of engineering interventions that could give rise to road safety problems and to suggest modifications that could improve road safety"* (emp. add.).[73] Here, a 'problem' is a 'road safety matter'[74] with a potential collision type (and *"can include road user injuries where there is no identifiable road traffic collision type"*[75]). A 'road safety matter' is *"[a]n element of the existing road environment or proposed road environment that could*

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[69] JD XX
[70] JD XX
[71] GG119, **CD 10.31**
[72] *ibid.*
[73] That is also borne out by §5.8 of the guidance, which states that *"[t]he RSA report shall contain a separate statement for each identified RSA problem describing the location and nature of the problem and the type of collisions or road user injuries likely to occur as a result of the problem"* coupled with §5.9 which provides *"each RSA problem shall be followed by an associated RSA recommendation."* And see Appendix D of the GG119 which provides that *"'Problems' recorded in RSA do not mean a scheme cannot operate safely, but there are actions the designer and/or Highway Authority need to address to reduce the hazards and in turn reduce potential for injury. (Ref Road Traffic Act S39)."*
[74] An element of the existing road environment or proposed road environment that could potentially contribute to a road traffic collision or features that could present a risk of injuries to road users
[75] **CD10.39**, p. 9

potentially contribute to a road traffic collision or features that could present a risk of injuries to road users."[76]

45. As above, but repeated for completeness, contrary to the clear approach required by GG119, the RSA authors identified a series of 'problems' which were not flagged, and in respect of which no formal safety recommendations were made:

    a. *"the approach from the north is relatively long and straight with no features to indicate that the environment is changing over the current situation and as such, vehicle speeds may remain similar to those currently observed."*

    b. *"There are concerns that where crossing[s] are not used the 'constant green to drivers can be overlooked if it changes to red as local drivers become over familiar with the road layout"*

    c. *"There is the potential for drivers approaching from the north in particular those unfamiliar with the area, to assume that the roundabout is signal controlled and that they have right of way leading to the potential for failure to conform type collisions"* (it is noted in this particular case that the auditors here both identified an issue and a relevant collision type arising from the same, but failed to report a concern.).

    d. "*In real terms there is little difference in road safety performance resulting from the crossing being setback 15m into the northbound link or 20m other than HGV driver will have more time to recognise the signal and that the vehicle will be squarer to the approach.* ***In terms of use pedestrians and cyclists prefer to cross on desire lines and will circumvent the identified route in order to achieve this****." (emp. add)*

46. JD provided no convincing answer as to why each of these problems had not been formally reported as part of the RSA. His approach was eventually to answer that all of the relevant matters were reportable problems, but that no formal reporting had been conducted, on the basis that the audit undertaken was a 'Stage 1' audit, and he expected

[76] **CD10.39**, p. 11

the relevant matters of detail to be picked up within 'Stage 2'.[77] It was unclear whether he eventually accepted that the RSA was materially inconsistent with the relevant GG119 guidance, but it was obvious that it was. The caveat he provided made little sense.

47. First, there was no guidance document, anywhere, which suggested that a RSA should be conducted in this way (i.e. where matters which could be addressed in detail later should not be reported as problems). Second, the approach he proposed was contrary to the clear emphasis within the guidance to report all 'problems' even where solvable. Third, it would be odd for a road safety audit to proceed in the manner JD proposed: the thrust of the correct methodology is for recommendations to be made to address the problems identified so that further iterations of the scheme may be developed more safely. Clearly where there is no formal recommendation or problem, that process cannot operate as designed. All in all, JD's answers on this line of questioning were evasive, defensive and unimpressive, he plainly lacked insight as to the appropriate methodology for conducting road safety audits and failed to make reasonable concessions about the deficiency of the process which had been undertaken.

48. In truth, as above, the RSA repeatedly identified problems with the proposed crossing location and design, but failed to report these as problems. It is a striking feature of the successive RSA reports, published on 19 May 2026[78] and on 2 August 2026[79] that the authors failed to engage with the concerns they had raised earlier, and made no comment about whether the amendments which were before them meaningfully addressed any of the matters which they had raised.

49. In light of the above, JD's continued insistence in his rebuttal[80] that the RSA had simply been carried out in accordance with an approved process was unimpressive. He did not venture an explanation as to how the RSA was compliant with GG119 in light of the issues KC raised. Clearly, given the methodological errors set out above, it was not

[77] JD XX
[78] JD PoE, Appendix R, p. 271, **CD17.10a**
[79] JD PoE, Appendix W, p. 438, **CD17.10a**
[80] See §3.3, **CD18.1**

helpful to simply repeat that the RSA did not formally report a ‘problem’ as he had done again and again in his written evidence and indeed in chief.[81]

50. It is no doubt further cause for concern that the authors of the RSA failed to engage with the guidance set out below as to the inappropriateness of a staggered crossing for cyclists, the 90 degree turn which western entrants to the crossing would be obliged to perform, and/or the further sharp turns that users would have to perform to progress through the island. This justifiably caused KC to question whether the auditors had approached the safety dimension of the scheme with cyclists in mind, or informed by a practical sense of the issues which the proposed design may cause for cyclists, as highlighted within LTN 1/20.[82]

51. Not only did the authors fail to report the problems which they had identified, but they failed to identify all the problems. In that context, JD’s reliance on the RSA in seeking to affirm the safety credentials of the scheme is of no real value. Its authors in fact raised numerous matters for concern which have not been addressed. There is no reading of the RSA which could support the view that the auditors considered the scheme, as proposed, to be safe.

Condition 17 and the unparticularised approach

52. JD’s evidence resulted in him proposing further unparticularised works to widen the carriageway and presumably the island at the proposed crossing. The Appellant has insisted that it has not abandoned its existing planned crossings, but it is hard to see why a further unparticularised scheme would be necessary or relied upon if the Appellant had any real confidence in the alternatives it has generated.

53. It is also difficult to see how the Appellant can invite the Inspector to seriously consider that a *yet further* version of a crossing might be safe. The issue of the toucan crossing has been ‘live’ since May 2025. The Appellant has had over a year to attempt to design

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[81] JD EiC

[82] *“All designers of cycle schemes must experience the roads as a cyclist. Ideally, all schemes would be designed by people who cycle regularly. But in every case, those who design schemes should travel through the area on a cycle to understand how it feels - and experience some of the failings described above, to understand why they do not work. The most effective way to gain this understanding is to get out and cycle the route and observe users’ behaviour”* **CD10.4**, p.13

a safe crossing at the Site, and indeed has produced numerous variations (or 'options') to seek to do so (some of which have been subject to RSA). The fact that the inquiry is still without such a design is a sure sign that the Appellant has been unable to design a safe crossing and offers little comfort that a safe design is even achievable.

54. The Appellant appears to suggest that modest widening works might be achievable under condition 17 on the basis that some amendments to the submitted plans might be permissible as being in 'general conformity' with those plans. There is no dispute that the wording of Condition 17 permits some modest amendment to whichever of the various designs the Inspector might conclude is or can be made safe, but is very unlikely to permit the making safe of a design which is found, in its present form, to be unsafe. KC's evidence[83] as to whether that could meaningfully assist the Appellant was very clear: whilst there was some highway land available on either side, there was a significant level change at the western side of the A10 in this location, widening the central island would not assist with the issues at the eastern side, and she had not seen any drawing or design showing how (or indeed whether) this could be done. A recurrent theme both of the questions put to her, and her answers, was that changing one aspect of a crossing design can introduce or exacerbate other aspects.

55. After JD's evidence, the Appellant now appears to invite the Inspector to impose a (different) Grampian condition to allow the Appellant to submit a further (undefined) crossing design for the approval of the Highway Authority prior to the proposal being implemented. Such an approach is entirely inappropriate and should not be entertained:

a. The issue of the safety of the toucan crossing is Main Issue 1 in this inquiry. Were any party or the Inspector to have seriously considered that the matter should be dealt with by condition then the matter would not have been approached in this way.

b. In practical terms, as above, there are real concerns that such a safe access will not be reasonably achievable given none of the Appellant's preceding five crossing 'options' are safe (recalling that this only arises at all in a world in which none of the crossings so far demonstrated are safe), and the Appellant has presumably gone to some effort to try and address this issue. This inquiry is an evidence-led process,

[83] KC XX

and there is no evidence before the inquiry that the matters raised are resolvable. Indeed, there is little detail of what might even be proposed as part of a revised design.

c. Determining the nature of the crossing of the A10 here is a fundamental matter which the Inspector is required to resolve as part of this appeal if the other elements of the appeal are to be properly addressed. Other matters in the inquiry depend on this and a proper assessment of the in-principle merits of the development cannot be conducted without a full design for the Toucan Route:

    i. GS[84] agreed that the design of the Toucan Route is a matter which properly feeds into Main Issue 2, being one of two cycling routes from the Site into Buntingford (and it being a key criticism of that route that it features an unsafe crossing of the A10). In order to assess the quality of the active travel measures under Main Issue 2, it is essential the design of the proposed access is understood (and its safety evaluated).

    ii. GS also agreed[85] that the design of the Toucan Route is also a matter which feeds into the question of whether the proposal is physically well related to the settlement of Buntingford, and therefore falls to be considered in the analysis of policy S5 of the NPPF under Main Issue 5.

d. The relevant design has obviously not been audited. This is not a technical point: the RSA process often throws up issues with a crossing design which, whilst potentially capable of resolution, need to be thought about. The process may also throw up issues that are *not* capable of resolution.

e. Recalling KC's answer that any design will have pros and cons[86], any alternative crossing may have wider implications for other highways matters and route attractiveness and may also impinge on viability and deliverability issues. This is one of the reasons why the design of the crossing was assessed as a main issue, and plainly, dealing with the issue of safety by hiving it off for later consideration by

[84] GS XX
[85] GS XX
[86] KC XX

the Highway Authority will lead to a position in which these other potential impacts of any future design are not assessed or taken into account as part of the planning process.

f. The Inspector is obliged to determine the principle of whether a safe crossing is possible at the crossing, as this matter may not be revisited later (see, for example, *R (Hillingdon LBC) v Secretary of State for Transport* [2020] EWCA Civ 1005 at [85-89]). There is no basis for the Inspector to reach such a conclusion on the basis of the proposed Grampian condition, and the evidence which *is* before the inquiry does not support such a conclusion.

56. All in all, the evidence on this topic served to highlight the persistent and real safety concerns which the Toucan Route would generate. It is not possible to safely grant planning permission in such circumstances. The scheme in evidence would place members of the public, including vulnerable road users, in obvious and serious danger. It should be refused on this basis alone. That is the agreed[87] effect of NPPF Policy TR6.4.

MAIN ISSUE 2: Whether the development would be in a sustainable location with convenient access by all to a choice of sustainable modes of transport including socially safe and quality pedestrian and cycling routes to reach day to day amenities, facilities and services, including employment and food/comparison shopping facilities further afield, and the extent to which the proposed cycle and pedestrian route connections and bus improvements would make a suitable modal shift towards reducing car usage.

57. The Site is severed visually, physically, and perceptually from the main settlement of Buntingford where essentially all the relevant services and facilities are found. Existing routes for walking and cycling between those locations are very limited, unsurprisingly given the nature of the site as an agricultural field. PB agreed that the present crossings were not suitable to accommodate access for a 660-home development.[88] In this context the recent permission for a new unit on the Buntingford Business Park, without active travel upgrades, adds nothing to the picture. Nor does the 2018 allocation for an extension of that Business Park to the north.

[87] GS XX
[88] PB XX

58. The Appellant relies on three routes designed to stitch together the proposed scheme with the settlement in Buntingford. This issue essentially concerns the interrelated questions of whether members of the public from 8 to 80 and above, including those with disabilities, will consider these routes to be an attractive[89] alternative to using the private car, and in particular whether they may be used safely and consistently by those living within the proposed development or travelling to it.

59. PB agreed it was a stated aim of the proposal to promote strong active travel connectivity,[90] and the Appellant's application documents evidenced an apparent commitment to achieve this aim.[91] The Appellant's original DAS stressed its *"focus on encouraging residents to walk and cycle around town for everyday journeys"* and *"to help reduce the reliance on the private car."*[92] Similarly, the DAS addendum again displayed an *"emphasis on direct walking, and cycling links, providing accessible and convenient connections."*[93] Rightly, PB agreed that when considering the success of the proposed approach, the Inspector should consider the extent to which it satisfies its own goals.[94]

60. The NPPF states that *"transport considerations should be integral to the design of development"* and *"give priority first to walking, wheeling and cycle movements both within the scheme and with neighbouring areas"* (TR4.1(a)). It further emphasises the importance of ensuring that *"the arrangement of streets and other routes help[s] to create places that are safe, inclusive and attractive for all users (particularly for women and girls, for other groups who may be vulnerable to crime or the fear of crime and for those with limited mobility)"* (TR4.1(c)). This involves both minimising scope for conflict between pedestrians, cyclists and vehicles and meeting the needs of disabled people, older people and children (TR4.1(c)(i)-(ii)). It was common ground that considering the extent to which the active travel proposals were consistent with TR4 was a suitable basis to judge the quality of the scheme overall.[95]

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[89] PB XX
[90] PB XX
[91] **CD1.29i**, pdf p. 12: *"through the provision of strong active travel connectivity, the development can be integrated into the town."*
[92] **CD1.29i,** pdf p. 8
[93] **CD2.15**, p. 34
[94] PB XX
[95] PB XX

61. The issue here is not whether everyone will choose to abandon their cars and walk or cycle, or about the physical possibility of travelling to Buntingford by foot or cycle, but the extent to which a significant number might do so: that is not a hard-edged or binary question about distance, or about compliance with published standards, but a nuanced one incorporating all of those factors and more: the further, and less compliant with standards, the less a route feels safe to traverse, the more likely a potential active traveller will abandon their aspirations and get in their car. RL is a very experienced cyclist and would confidently cycle on-road in most conditions; this inquiry is not concerned with users like him but with those less confident, or disabled, or older, cyclists, or children who might be permitted by their parents to cycle alone, all of whom *might* choose to travel actively if the conditions were sufficiently attractive and the barriers sufficiently removed. It is thus a judgment call about how likely the routes are to achieve that, informed by established guidance such as LTN1/20 and the Rural Design Guide, and academic research underpinning it.

62. There are significant and persistent difficulties with each of the off-site ‘active travel’ routes proposed, both in terms of meeting the expected standards set out in the relevant guidance and in being attractive, direct, coherent, and safe, and as such inviting to less confident cyclists. As a result, the scheme plainly fails to prioritise active travel modes and thereby meet its own aims - or those expressed within the NPPF. For local door-to-door trips at least, the scheme leaves members of the public highly reliant on the private car, and the Appellant has plainly not prioritised other modes of transport, leaving vulnerable users particularly disconnected from Buntingford if not using their cars.

63. In general terms, the first matter likely to dissuade pedestrians from utilising the proposed active travel routes (the best potential for replacing car journeys[96]) is the distance involved. Here, occupants of the proposal would be required to travel between 1.5km and 2km to access Buntingford, where guidance consistently confirms that a distance of around 800m is considered walkable. Manual for Streets provides that comfortable access by foot connoted a distance of up to about 800m or 10 minutes’

[96] Blair XX

walk[97] and similarly the NPPF defines a *"reasonable walking distance"* (albeit to a railway station) as around 800m.[98]

64. PB asserted that pedestrians would be willing to travel 2km by foot, which is no doubt true for some. However, even on his own analysis this was *"an acceptable maximum,"*[99] and well beyond what the above guidance describes as reasonable walking distances. The 2017 data on which PB relied in support of this assertion in fact indicated that the mean distance that people were willing to walk for a variety of purposes was around 1000m, and it was the 85th percentile figure that was used to justify the assertion that 2km might be walkable. He agreed[100], however, that the further one was required to walk beyond 800m, the less and less likely one would be to choose walking in preference to driving. Plainly there would be a declining number of people willing to walk up to the given 85th percentile figure and the data upon which PB relied did little more than confirm the general accuracy of the assessment of 800m as comfortably walkable.

65. When that 800m figure was considered against the 'walk distances from the centre of the Site to Buntingford' table,[101] of the 46 off-site services and facilities listed, only three were within 800m of the Site. As a starting point, the Site fares poorly in terms of connectivity for pedestrians. Applying the relevant guidance as to the distances people will in practice walk essentially all the facilities and services are found beyond that 'comfortable' range. In such circumstances the <u>quality</u> (and therefore attractiveness) of the routes becomes crucial.

<u>Route 3: the new northern bridge</u>

66. The proposed new northern bridge[102] across the north of the Site is proposed to connect footpath 41 to the west of the A10 with footpath 35 to the east. Its shortcomings are immediately obvious in terms of active travel. The footbridge is accessed via steps either side leading onto the footpaths. It is therefore not useable for those wishing to

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[97] **CD10.1**, §4.4.1
[98] **CD5.32**, p. 111
[99] Blair PoE, §5.4.1
[100] PB XX
[101] Originally PB PoE, Appendix F, **CD17.16** but note this was updated at **ID12**
[102] **CD22.viii** and **CD22.ix**

cycle, or to wheel pushchairs or buggies, or who are mobility impaired. Obviously, as RL explained, the proposed route was *"not very inclusive"*[103] and in fact could not even be characterised as a main pedestrian route given it was not accessible for wheelchair users. Indeed, *"a significant minority"*[104] would not be able to use this access at all.

Route 2: The Active Travel Bridge

67. The Appellant proposes to install a new active travel bridge across the A10 to be shared by cyclists, wheelers and pedestrians.[105] Given the inability of wheelers and cyclists to use the northern travel bridge, this proposed route represents half of the travel options for those groups wishing to travel to Buntingford (and for those pedestrians who cannot use steps). Plainly, the attractiveness of this option is only as good as what happens after the bridge. Two options are presented, both of which are unlikely to encourage their use.

68. The first option is via 'route 2a'[106], which would involve users leaving the bridge to the east and travelling towards facilities in Buntingford along PRoW 36. Where the Appellant had previously indicated the PRoW may be upgraded to accommodate cycle travel,[107] it was confirmed in the inquiry that this was no longer being proposed and that the 'upgrade' to that route simply involved widening it to 3m. As such, RL told the inquiry that a cyclist wishing to lawfully travel to Buntingford across the active travel bridge and via the PRoW would have to dismount from their bicycle immediately after leaving the bridge and wheel their bike along PRoW for a substantial stretch until they reached a bridleway or their destination. There is an obvious lack of connectivity with Buntingford – active travel essentially stops at the edge of the appeal site, i.e. the bridge, as cyclists will not be able to legally utilise their bikes along 'route 2a.'

69. We don't propose to get into the Appellant's point that the Highway Authority might have a change of heart and upgrade this stretch of footpath to permit cyclists after all. That outcome is not secured by these proposals, which should be judged on their own merits. It is speculative, relying on the HA accepting the Appellant's legal arguments

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[103] RL EiC
[104] RL EiC
[105] **CD22.iii** and **CD22.iv**
[106] PB PoE, Appendix E, **CD17.8a**
[107] PB PoE, §7.6.25, **CD17.8**

on the point, and directly contrary to the evidence of their intentions before the inquiry. That ought to be the end of it.

70. Pedestrians fare little better under 'route 2a.' RL explained that the footpath has a low level of natural surveillance, is hemmed in by vegetation and has a narrow, constrained feel. Even with the proposed widening and the addition of lighting, the route would feel isolated after dark, and is likely to be perceived as a safety risk by vulnerable users for this reason, and particularly at night. PB's reliance on the crime statistics in Buntingford were nothing to the point: pedestrians and cyclists will not *feel* safe utilising this route (noting the reference to responding to the *fear* of crime within the NPPF policy TR4.1(c)). The actual percentage-based risk of crime occurring does not influence perception and the clear unattractiveness of the route. PB agreed it would not assist a woman reluctant to travel down a non-overlooked passageway that the crime statistics for the area were actually quite low.[108] In truth, that user, like many others, would likely choose to travel instead by car.

71. There are similar issues with 'route 2b.' Much like route 2a, there is no way for cyclists travelling to the east to remain on their bikes upon leaving the appeal site at the eastern end of the active travel bridge. The route requires cyclists to dismount, and to wheel or carry their bikes through a 'snicket' (turning right and then right again across a 2m path[109]) before rejoining the carriageway at Skipps Meadow, which leads southwards towards the Baldock Road roundabout. From there, cyclists will be required to essentially continue along Baldock Road under the eastern element of 'route 1,' with which there are also serious problems discussed further below. Before addressing the unduly disruptive nature of this journey for a cyclist, it is obvious that members of the public (and particularly vulnerable users) will hardly be incentivised to travel through a narrow passageway with little natural surveillance at night.

72. Once again, 'route 2b' will be highly unattractive for cyclists who will have to dismount and potentially carry their bikes through a narrow, shared space before being able to join the carriageway at Skipps Meadow. RL highlighted that this would be particularly difficult for disabled people who may use their cycles as mobility aids and who may

[108] PB XX
[109] RL EiC

not be able to walk far either because of their disability or due to severe pain which cycling helps to reduce or relieve. Even as an experienced cyclist with a clear commitment to car-free travel wherever possible, RL indicated that he would *"resent having to dismount, in the same was as a driver would resent being told to get out and push their car into a car park"*[110] because his needs as a user of active travel modes would not have been prioritised. If the most committed cyclists would resent using this route, there is little prospect that a person considering the prospect of cycling rather than driving will be incentivised to travel to Buntingford via 'route 2.'

73. This route in any event only takes one as far as just east of the Baldock Road roundabout, where users will be expected to join pedestrian and cycle traffic on 'route 1' (as to which, see below). The net effect of these problems, once again, is that only the most determined cyclist will consider using 'route 2b,' and many people faced with the awkward transitions which it presents (or with a safety concern at travelling through the snicket at night) will simply choose to travel by the easier, safer and familiar option of getting in their cars. As with route 2a, route 2b is counter-productive, promoting precisely the opposite behaviour which it is designed to support.

74. Route 1: This route entails cyclists, wheelers (and pedestrians) crossing the A10 via the Toucan Route explained above, and thereafter travelling towards Buntingford along Baldock Road to the east.[111] For the reasons given above under Main Issue 1, and as articulated by KC, the proposed crossing is itself dangerous, and for that reason alone will not be utilised by users (and of course, if it is unsafe, permission should not be granted for the scheme anyway – see TR6.4 of the NPPF).

75. Leaving aside the safety of the crossing, RL emphasised that the convoluted route cyclists and pedestrians would take in using the island would make it unattractive in any event. He explained that his cargo bike (2.8m length, that of the design vehicle) would not be safely accommodated on the island alongside two way pedestrian and cycle traffic: *"Because the front of the bike extends well beyond the steerer, and potentially into the road, I'd have to get on and off the bike to access the controls, there's just no way I could use the crossing with [my cargo bike], this infrastructure*

[110] RL EiC
[111] HSoCG, Appendix G, **CD15.3**

restricts my access."[112] RL confirmed that he would likely have to wait in the carriageway to access the island whilst pedestrians were entering the island via the stagger. All in all he explained this *"doesn't feel like an attractive route to use."*[113]

76. Further features of route 1 compound its unattractiveness, particularly for cyclists. The spotlight here is on the journey from the east of the crossing into the services and facilities of Buntingford, and the proposed improvements to Baldock Road to facilitate this.[114]

77. The proposed route is shared by both pedestrians and cyclists and the beginning of Baldock Road to the east of the roundabout is at a 60mph speed limit. Here, guidance tells us that such shared use is to be used as *"a last resort"* which will not be favoured by either pedestrians or cyclists and *"can create particular difficulties for visually impaired people"*[115] Further, no buffer is proposed contrary to the guidance within Table 6-1 LTN 1/20 which recommends that the absolute minimum horizontal separation between the carriageway and cycle track should be 2m where the carriageway has a speed limit of 60mph.[116] No buffer is proposed to the west of the A10 either, where the speed limit is 60mph. PB agreed that the design fell below the absolute minima within guidance but suggested that *"riding down the carriageway is an option for anyone."*[117] The approach of having cyclists simply cycle in the road is plainly at odds with the stated aim of encouraging cycling because this will not be attractive for all (indeed, any) users, particularly given the 60mph speed limit at the start of this stretch of road.

78. The route into Buntingford once on the eastern side of the A10 is also neither coherent nor safe. It involves cycle traffic being required to cross Baldock Road itself on at least two occasions and to cross four side roads, all in a relatively short distance. This arrangement would be *"unpleasant and unwelcome"*[118] for cyclists, particularly less mobile cyclists who might use their bikes as mobility aids. The interrupted nature of the journey means it is necessarily indirect and creates multiple opportunities for

[112] RL EiC
[113] RL EiC
[114] See **CD2.22i**
[115] **CD10.4**, §6.5.4, p. 67, pdf p. 65
[116] **CD10.4**, Table 6-1, p. 54, pdf p. 52
[117] Blair XX
[118] Lewis EiC

conflict between cyclists and other road users contrary to the guidance in LTN 1/20 to design to remove or manage conflicts between cyclists and motor vehicles. It is plainly contrary to the further guidance that *"the occasions when cyclists need to stop or give way should be minimised"* and that routes should *"be made in a legible manner, without requiring people to deviate significantly from their overall desire lines."*[119] Indeed, RL's ultimate conclusion given the circuitous nature of the route was that it would be more comfortable simply cycling in the carriageway. Again, that can hardly be the sign of a successful active travel route.

79. Further still, negotiating the route along Baldock Road will not take cyclists to their destination (the facilities in Buntingford), and they will ultimately be forced to join the carriageway or to get off and walk, via two routes. The first is to travel around a corner up to Bowling Green Lane, which itself leads to few facilities and from which there is still some distance to travel on foot to the majority of the facilities in Buntingford. The other option is for cyclists to cross from the south of Baldock Road to the north side of the carriageway and either continue cycling on the carriageway, in mixed traffic, towards the town centre, or to park their bikes at the eastern edge of the active travel provisions on Baldock Road and then walk.

80. The prospect of having cyclists utilise the carriageway (which is the logical end point of the proposed design) is simply unsafe in the proposed location at the given speeds, let alone inclusive. The latest average daily flow data for Baldock Road is 6,312 vehicles[120] and for Bowling Green Lane it is 3,488 vehicles.[121] Cross referencing this data with Fig 4.1 of LTN1/20 on appropriate protection from motor traffic on highways, for Baldock Road (at the section where cycle traffic will be required to join the carriageway at a speed limit of 30mph), cycling in mixed traffic here will be *"suitable for few people and will exclude most potential users and/or have safety concerns."*[122] Despite there being a lower quantum of traffic on Bowling Green Lane, the guidance provides exactly the same result for motor flow traffic between 2,000-4,000 daily trips. PB eventually agreed that this would be likely to discourage users and would be

[119] LTN 1/20, **CD10.4**, Table 10-1, p. 97, pdf p. 94
[120] **CD10.39**, pdf p. 2
[121] **CD10.40**, pdf p. 2
[122] **CD10.4**, p. 33, pdf. p. 33

relevant to the question of how many people would use bikes rather than the private car.[123] He was right to do so.

81. A cycle route is only as good as its weakest link.[124] Although PB was keen to picture 'route 1' as an improvement, it is consistently contrary to very clear national guidance. A stagger had been used at the crossing, there is no segregation of pedestrian and cycle traffic, there is no buffer for cyclists, the route requires cyclists to cross/stop numerous times across a short space of road, and the route eventually results in cyclists being required to enter a carriageway where it is patently unsafe for them to do so (or get off and walk). Again, not only is this approach likely to be actively unsafe in practice, but these individual and collective breaches of guidance will surely dissuade all but the most committed of cyclists. In truth, the quality of the route, as expressed by the above guidance breaches will once again mean that the 'wavering cyclist' will simply choose to travel by car. PB's evidence on this topic ended by his saying that: *"people will weigh up their options."*[125] We agree; and in all but the most committed case, will be likely to choose their cars. PB's evidence included the raising, and slaying, of a classic straw man: *"I think it's a bit extreme for every destination to be accessible by everyone."*[126] Literally no-one in this inquiry makes that suggestion, but it is a decent aspiration. Ultimately the evidence on these measures fell well short of demonstrating any 'prioritisation' of these modes of travel.

82. RL's evidence about what *might* have been contemplated were active travel modes to have been prioritised at the design stage highlighted how far short these proposals in fact fall. There is scant evidence of any consideration of the applicable standards at the design stage.

MAIN ISSUE 3: the effect of the proposal on the character and appearance of the area including landscape character.

83. As explained by RB, the proposal would cause significant and lasting harm to the landscape character and appearance of the Site and its surroundings.

[123] PB XX
[124] **CD10.4**, p. 13, pdf p. 15
[125] PB XX
[126] PB XX

84. Contrary to the suggestion by NJ, the Site is not in an urban fringe landscape but represents a substantial area of open agricultural countryside which is located within the Cherry Green Arable Plateau Landscape Character Area (LC 141) and adjacent to the High Rib Valley LCA (LCA 142) and Ardeley/Cottered Settled Plateau LCA (LC 140). The site displays many of the characteristics of those character areas and contributes to the rural setting of Buntingford as well as the transition between the settlement and surrounding countryside. As the Inspector will have appreciated from his site visits, these landscape features, plus the presence of the A10 further underscore the argument (explored further below), that the proposal is not physically well related to the settlement of Buntingford. Although the Site is adjacent to the A10 and near the Buntingford Business Park, these features do not define its character.

85. The site possesses medium landscape value: it is in generally good condition as active agricultural land, displays multiple characteristics of the relevant character areas and has a good level of scenic value especially experienced from the footpaths crossing the site. Furthermore, it has a degree of tranquillity, particularly as you move west, and the relative absence of urban development provides a generally peaceful landscape experience. As above, the site plays an important functional role within the wider landscape, forming part of the agricultural countryside surrounding Buntingford and contributing to the rural setting of the settlement whilst also maintaining a distinction between the built form of Buntingford and the surrounding rural landscape.

86. Agricultural land use, varied topography and the limited influence of surrounding development give the site a high susceptibility to the form of development proposed. Rightly, the East Herts Landscape Character Assessment identifies the landscape of which the site forms part as one which is *"visually sensitive to changes in built form,"*[127] and RB explained that the Site and adjacent landscape character were of a high landscape sensitivity, and that the ratings for landscape value, susceptibility and sensitivity are agreed between the parties. Plainly the relevant features of that LCA as expressed within the site would be lost entirely, which can only be said to materially devalue the LCA.

[127] **CD9.1**, p.220, pdf p. 224

87. The scheme would result in the loss of a substantial area of open agricultural land and its replacement with 660 dwellings and related infrastructure. This would fundamentally alter the character of the site and its immediate surroundings. Given the topographical variation across the site, substantial earthworks would be required to facilitate the development. NJ's suggestion that the development would not harm LCA 141 on the basis that it was a large area of which the appeal site simply formed part represented an unrealistic approach to assessing value: it would mean that only extremely large-scale developments could impact the LCA, which is plainly not the case. Causing harm to a constituent part of something has obvious capacity to harm the whole: hence the phrase 'death by a thousand cuts'. Here NJ raised[128], and sought to slay, another straw man, insisting that the proposals "*would not fundamentally alter the characteristics of the LCA*". There is no such test; and most development proposals would be unlikely to <u>fundamentally alter</u> the characteristics of a given LCA.

88. The proposals *would* cause harm to character though. The greatest landscape effects would occur within the site itself and on the character of the PRoWs crossing the site. These effects would be major adverse on the character of the site and immediate surroundings during construction, at year 1, and at year 15. There would also be major adverse effects on the character and appearance of footpaths 40 and 41 throughout the assessment period. There would be attendant effects on the Cherry Green Arable Plateau (LCA 141) (moderate adverse) and minor adverse effects on the Ardeley/Cottered Settled Plateau (LCA 140) and High Rib Valley LCA (LCA 142) which would remain at year 15 and which would not be reduced to negligible by the proposed mitigation. These effects would be permanent and irreversible, because this parcel of open rural landscape would become a significant suburban settlement in the countryside. The difference between the parties on this point essentially relates to the efficacy of proposed mitigation over the following 15 years. Given the scale of the proposals and of the impact on the Site, on any analysis it seems that there will still be substantial adverse effects <u>on character</u> after that time and against the above, NJ's assessment that there may somehow be beneficial effects on the character of the landscape is simply untenable.

[128] KC EiC

89. There is considerable agreement between RB's assessment and the LVIA regarding the principal visual receptors and likely pattern of visibility that need not be rehearsed, however, as explained by RB, NJ had underplayed the visual value and sensitivity of many receptors, particularly footpath users and nearby residents.

90. The greatest visual effects would be experienced by users of PRoW within and immediately adjacent to the site. There would be major adverse visual effects during construction, at year 1 and at year 15. Mitigation would soften some aspects of the development over time, but could not replace the existing open views across undeveloped countryside nor prevent the development remaining a prominent and intrusive feature within the view.

91. Pedestrians using nearby PRoW within 0.5km of the site would also experience major adverse visual effects during construction and at year 1, reducing to moderate to major adverse by year 15. Residents occupying dwellings closest to the site would experience moderate adverse visual effects during construction and at year one. This would lessen with mitigation although the residual effects would be moderate to minor adverse by year 15.

92. Accordingly, and unsurprisingly given the scale of the development and its situation on a greenfield site, the proposal would cause significant and lasting landscape harm.

MAIN ISSUE 4: whether the proposal would provide the necessary infrastructure to make the development acceptable including affordable housing, custom/self-build housing, active travel provisions, education, and public transport provisions.

93. Nothing within this main issue is in dispute between the parties following provision of the latest draft s.106 agreement insofar as making the development acceptable in planning terms. It is noted that the Appellant proposes to provide land for a school as part of the scheme, which is a matter addressed further below.

MAIN ISSUE 5: given policy S5 of the National Planning Policy Framework 2026, (a) if the development proposal falls within one of the categories in such a policy whether the benefits of the proposal would be substantially outweighed by any adverse effects when assessed against the national decision-making policies, and b) if the development proposal does not fall within one of the categories in such a policy, whether exceptionally the benefits of the proposal would substantially outweigh any adverse effects, including any

possible adverse effects on the character of the countryside and in relation to promoting sustainable patterns of movement.

Benefits

94. **Housing:** There is essentially no dispute between the parties that the delivery of housing should attract substantial positive weight.[129] The difference in approach is simply that GS chose to disaggregate this benefit, where PH did not. The argument about the difference in approach goes nowhere, given PH explained that either approach ends up in the same position. GS agreed that each instance of 'substantial' weight did not attract the same level of weight in the balance, which is obvious given he purported to afford the same *category* of weight to the delivery of 6 self-build plots, of 60 dwellings for older persons, and to the delivery of 600 market houses. Plainly it is reasonable to evaluate the collective benefit of housing in a holistic way, as PH did, and there is no real dispute the importance of that benefit in the circumstances.

95. **Local centre:** There is a lack of clarity as to what will be accommodated within the local centre and an absence of evidence relating to such provision. The 'Plunkett' document which the Appellant asserted provided support for the local centre was little more than a brochure, PH explained, and provided no information on the potential viability of such a facility.[130] Moreover, the document revealed that Plunkett had little direct contact with the Appellant and had not engaged with the substance of the application, as it states *"Plunkett would be excited to be invited by Hallam Land to be commissioned…"*[131] Comments from HDD[132] as to the viability of the local centre were premised on a first school being provided, and its users are posited as a key component for the customer base. As below, the proposed school is not supported by the Education Authority and is not, in reality, going to come forward. PH explained that the further examples relied upon by the Appellant in its Local Centre Capacity Assessment[133] were essentially dissimilar to the proposed development and therefore offered little insight into the viability of the local centre and the likelihood of it coming forward. This dimension of the scheme is also poorly considered in general terms: it apparently posits

[129] **CD15.1**, §9
[130] PH EiC
[131] **CD5.23**, quoted at PH PoE, §6.18, **CD16.1**
[132] **CD5.22**
[133] GS Rebuttal, Appendix 1, **CD18.2**

the positioning of a hot food takeaway within walking distance of a school contrary to policy HC5 NPPF, which directs that such applications should be refused. Accordingly, PH rightly concluded that limited weight attached to this benefit.

96. GS was keen to press the application of NPPF policy HC4 to afford substantial weight to this benefit, however, he agreed that HC4 directs weight be afforded to community facilities where they would actually come forward (note that the weight only attached where the benefit *"would be provided"* per HC4.1(a)). There is no evidence for the viability of such a centre, as above, and its provision is far from secure. GS agreed that it was appropriate to exercise judgment when approaching the application of policy HC4.[134] For the reasons given, the proper exercise of that judgment is to afford limited weight to the benefit, as PH did.

97. The success (or otherwise) of the local centre also affects consideration of Main Issue 2, because the Appellant relies on facilities in the local centre being accessible on foot. The fewer of those there are, the greater the reliance on the off-site active travel routes, which (for the reasons already set out) are unsatisfactory at best.

98. **Community infrastructure with healthcare facilities:** It is unclear what precisely is being proposed under this issue (i.e. there is no clarity as to whether what is proposed is a podiatrist, a physiotherapy centre or something else entirely). PH highlighted that a new surgery building has been consented on the site of a recent development at Hare Street Road, Buntingford.[135] In the circumstances it is difficult to see how a further health facility of that kind will be required or arise in practice. Accordingly, no weight should be attributed to this claimed benefit separately from that afforded to the local centre. A similar point arises as above in respect of the application of NPPF policy HC4: in the circumstances it is once again unclear whether this benefit will arise and what it might actually comprise. No weight can be afforded accordingly.

99. **Provision of land for education:** This part of the s.106 is not compliant with Regulation 122 of the CIL Regulations. It would not make the development acceptable in planning terms because it is not required to mitigate the impact of the proposals: the

[134] GS XX
[135] **CD7.3,** §4

pupil yield can be met within existing (and growing) capacity within the town. It cannot be taken into account when considering whether to grant planning permission.

100. If, contrary to that straightforward point, it is taken into account, no weight should be afforded to this claimed benefit. At best, what is proposed is a provision of land for a school by the Appellant. However, the Inspector will recall the clear evidence from the Education Authority in the s.106 session that they do not consider that there is sufficient need for such a facility (and why). Although the Appellant seeks to challenge the underlying need calculations which underpin that assessment, the point goes nowhere because the Education Authority rely on their own forecasts, which are carried out in accordance with guidance, and they reject the Appellant's criticisms of them. There is no indication that if the Appeal comes forward that the Education Authority would seek to use the land for a school and in fact on the present state of the evidence their clear conclusion was that they would not do so.

101. The Appellant latching on to the use of the word "*low*" in the LEA's speaking note was a measure of its position: reading that note as a whole, the position is perfectly clear about whether the LEA thinks there is a reasonable prospect of delivering a school here in the foreseeable future.

102. The highest the Appellant's evidence was put in the s.106 session was that if all the developments with outline (rather than full) planning permission came forwards at once, that would all but wipe out the present and forecast surplus; and so the land for a new school would be needed to accommodate the pupils of *this* site. But in that scenario, which for sensible reasons is not entertained by the LEA, there would be no benefit: just a mitigating of the impact arising from this development. No weight should attach to it.

103. **Provision of new green space:** The provision of this green space must be seen in the context of the development causing a loss of the site as a wider open space resource for all. The provision is required to meet the needs of future residents and without it the scheme would not function or be attractive to future residents. It is a matter which simply meets the amenity requirements for residents of the scheme. Set against this background the benefit should attract limited weight only, as PH explained.

104. **Landscaping enhancements:** These proposed enhancements essentially arise only as a means of mitigating the effects of the scheme, replacing the existing legible and clearly defined landscape boundary with a different boundary. They should accordingly be afforded limited positive weight only.

105. **Country Park and provision of sports facilities:** These matters may be taken together as they are part of the same proposed improvement to provide open space for recreation to meet local wider need. The accessibility of these benefits is also tied in with the accessibility matters which have been addressed above, meaning that there will be a poor level of connectivity for these features (which are, in any event, proposed on the western (far) side of the appeal site. On balance, PH's evidence was that significant positive weight be afforded to this benefit, affording a reduction in weight from that indicated by policy HC4 for the reasons given.

106. **BNG:** the extent of the provision is by no means unusual for a scheme of this type. PH was amply justified in awarding this benefit limited positive weight as a result, which is essentially common ground.

<u>Harms and application of local and national policies</u>

107. This is agreed to be a scheme which conflicts with the development plan[136] and the starting point is therefore that it should be refused unless material considerations indicate otherwise (applying s38(6) of the Planning and Compulsory Purchase Act 2004).

108. In his written evidence, GS contended that policies DPS2, GBR2, HD1 and TRA1 were materially inconsistent with the NPPF, and should by application of para 2 of Annexe A to the NPPF be afforded very limited weight. This thesis did not fare well under scrutiny:

a. In cross examination he accepted that TRA1 was not materially inconsistent with any relevant policy of the NPPF; and that bar DPS2, GBR2 and HD1, the remaining policies relevant to the appeal could be afforded full weight.[137]

[136] GS XX
[137] GS XX

b. He also accepted that the basis of this thesis (in his written evidence) was that the policies were inconsistent with policy HO3 in the framework because, essentially, the Council were not meeting their 5yhls figure (and/or were not planning to meet LHN). But HO3 is not a national decision-making policy of the NPPF and so had no relevance to Annex A, paragraph 2, which states that a policy which is materially inconsistent with a *"national decision making policy"* in the framework should be given very limited weight. He had misread the NPPF in this regard and it was regrettable that he did not feel able to accept that.

c. Despite it not being advanced in his written evidence, GS said in oral evidence – following a line of cross-examination of PH - that GBR2 and DPS2 would in any event be materially inconsistent with policy S5 of the framework (which *is* a NDMP), and so should attract very limited weight on that basis anyway.

109. As PH explained, however, neither policy is materially inconsistent with S5.[138]

110. DPS2 provides the spatial strategy for the district and is entirely silent on the circumstances where development may be acceptable outside settlement boundaries (which is the material focus of S5). Indeed, the LP deals with such development via a different policy, GBR2, as explored below. The suggestion that there are certain circumstances where development may come forward outside settlement boundaries (as in S5) is plainly not materially inconsistent with a local planning authority having settlement boundaries and a settlement hierarchy to guide development. Indeed, policy TC1 of the framework continues to urge local planning authorities to pursue this approach, and it would make little sense if doing so were then afforded not just less, but in fact "very limited" weight automatically by virtue of an inconsistency with policy S5. Whilst therefore, it makes sense for DPS2 to be afforded less weight because the spatial strategy is not at present delivering the quantum of housing required by the local plan – the approach taken by PH - it is not materially inconsistent with S5 and therefore should not automatically attract very limited weight by operation of paragraph 2 of Annex A.

[138] PH XX

111. Of course, if it were correct to say that a spatial strategy policy of this nature is caught by paragraph 2 of Annex A, then every single spatial strategy in every plan in the country would be worth very limited weight: not a single one contains the specific structure and formulation of NPPF policy S5 (for obvious reasons). That cannot be the intention of a framework which continues to urge local authorities to develop spatial strategies with settlement hierarchies.

112. As to policy GBR2, it is agreed that the policy is – unsurprisingly – not in identical form to S5, because the categories within that policy which permit development in the countryside do not precisely map the new categories for acceptable countryside development in policy S5. On this point it is noted that several of the categories within GBR2 *are* the same as those within S5, e.g. limited infilling and buildings for agriculture. The thrust of the policy is to licence certain forms of countryside development outside settlement boundaries, which is also the purpose of policy S5. Whilst there is a degree of inconsistency over what those categories actually are, the material approach within GBR2 is in broad accordance with the approach within S5. There is no *material* inconsistency, and again, whilst less weight may be afforded to the policy based on a degree of inconsistency, it would go too far to afford the policy very limited weight.

113. Ultimately this is a dry debate: where a proposal offends against the application of GBR2 but meets one of the requirements of S5 then it is usually appropriate for S5 to take precedence. Again, that is simply a practical approach to interpreting and supplementing the prevailing local plan policy in the context of what is (still) a plan-led system, rather than jettisoning the spatial approach of the LP entirely.

114. Much the same point may be made about policy HD1 of the NP: the policy has the same purpose as national policy S5, which is to licence countryside development in certain circumstances. Again, it will be observed that there is considerable overlap between the categories within HD1 and S5: note the reference to demonstrable unmet need (compared with S5.1(j)) and the acceptance of infill development. Whilst, as above, it must be conceded that HD1 and S5 are not identical in terms of the countryside development which they support, the policies seek to achieve the same ends. There is no material inconsistency between them, although again it is accepted that reduced weight may be afforded to HD1 for the reasons given.

115. GS's theory that the only place to meet the needs of East Herts is around Buntingford because the only other sustainable locations are in the south of the district, where Green Belt prevents development, was not quite the point he thought it was: although it is true that the southern third of the district is Green Belt, and is also the location of the main urban settlements:

a. The advent of the grey belt policy significantly weakens the protection given to Green Belt areas in this context, and designedly so;

b. The new railway stations policy in the NPPF also overrides Green Belt protection in qualifying circumstances (GS did not address his mind to whether the stations at the urban centres he referred to would qualify, but they do); and

c. In this context Green Belt policy in those areas is unlikely to provide the firm bar to development his thesis suggested; indeed the Council is actively assessing the potential for Grey Belt sites for its new local plan.

116. Nor had he considered that a number of allocations made by the *existing* local plan remained undelivered[139]: whilst it is true (as recognised by PH) that the plan had not, to date, delivered against needs, it was not correct to say that it could not in future: there were substantial allocations not yet delivered but expected to come forward in the near future. Delivering housing on those sites would not involve 'breaches' of the settlement boundaries established by the plan, by definition.

117. **Spatial strategy:** The NPPF continues to state that the planning system should be genuinely plan led (see para 2 NPPF). The proposal lies in the open countryside outside the settlement boundary of Buntingford (and beyond any perceived edge of the town) and is contrary to the spatial strategy set out in Policy DPS2 of the local plan, which seeks to direct development to the urban areas of the District. There would also be conflict with policy GBR2 on the basis that the proposal is not compatible with the character and appearance of the rural area. Whilst it is agreed that policy S5 directs a wider number of categories of permissible countryside development, the proposal does

[139] See, for example, the AMR at **CD5.11** and the evidence of Ben Pycroft (**CD17.11**)

not fall into any of those categories (on which more below), meaning that the extent of any inconsistency between GBR2 and S5 is immaterial to decision making in this case. On the same basis, there is also conflict with policy HD1. Affording proper recognition to the fact that the proposal is contrary to the plan-led approach for where development is to be located, the conflict with the above policies (taken together) should be afforded significant weight.

118. **From Main Issue 1:** As explained by KC in the Main Issue 1 sessions, the proposal is unacceptably unsafe and would therefore have an *"unacceptable impact on highway safety."* Paragraph TR6.4 within the framework unequivocally directs that such schemes *"should be refused."* The framework therefore states on its face that the proposal should be dismissed as unsafe. In the alternative, it was agreed with GS that this is a qualifying policy,[140] which being breached would indicate that the harms of granting permission would be likely substantially to outweigh the benefits, per S5.2 of the NPPF. Further, the scheme gives rise to conflict with policy TRA2 of the LP which states that proposals *"should ensure safe and suitable access can be achieved for all users"* and that access proposals should *"be acceptable in highway safety terms."* PH's clear view was that substantial weight should be afforded to the harm arising under this issue and GS confirmed that if the Inspector agreed that the plans provided do not demonstrate a safe crossing, the appeal should be dismissed.[141]

119. **From Main Issue 2:** In reliance on the evidence of RL, it was clear that this scheme did not achieve accessibility improvements and the promotion of sustainable travel, in accordance with policy TRA1.1 of the LP. There was also substantial conflict with the sub-limbs of that policy: the proposal is not located in a place to enable sustainable journeys to key services and facilities (TRA1.1(a)), it does not ensure that a range of sustainable transport options are available to occupants or users (contrary to TRA1.1(c)), and it does not have a layout prioritising the provision of modes of transport other than the car (contra TRA 1.1(d)).

120. The proposal is also accordingly contrary to national policy TR3 as it does not enable good accessibility for different users and is not in a location which limits the need to

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[140] GS XX – "*one of the national decision-making policy which state that development proposals should be refused in specific circumstances*."
[141] GS XX

travel, particularly by private car and it does not offer a genuine choice of transport modes for residents and users (see specifically TR3.1(a)). There is further conflict with national policy DP3.2(d) in that the proposal does not provide transport infrastructure and choices which support the design vision for the site and it does not provide good connections to the wider settlement or prioritise walking, wheeling, cycling and public transport. There is yet further conflict with national policy on a similar basis in that the proposals would not prioritise sustainable patterns of movement contrary to policy CC2.1(a) of the NPPF and would not support good access to facilities, thus reducing the need to travel, contrary to policy CC2.1(b). PH gave this harm significant weight.

121. **From Main Issue 3:** RB provided convincing evidence to the inquiry justifying a substantial level of landscape harm arising from the permanent irremediable impact of the development to the character of the landscape and the significant residual adverse impact on visual amenity. Accordingly, there was conflict with policy GBR2 on the basis that the proposal was not compatible with the character and appearance of the rural area (notwithstanding that it also fails to match any of the categories of supported development) and with DES2 of the LP because the proposal does not demonstrate how it would conserve, enhance or strengthen the character and distinctive features of the district's landscape.

122. On a similar basis, the proposal conflicts with policy ES1 of the NP on the basis that it is not appropriate to nor does it maintain the Rib Valley setting of the Buntingford Community Area and with HD2 of the NP because it is not sensitive to the landscape, and does not demonstrate how it would conserve, enhance or strengthen the character and appearance of the local landscape.

123. The above-mentioned impact also gives rise to conflict with national decision-making policies. In conflict with policy N2.1(a) the proposal does not contribute positively to the natural environment or consider the environmental quality of the appeal site including landscape character. Nor does the development conserve and enhance existing natural features of visual value (contrary to policy N2.1(d)).

124. Similarly, the development is contrary to national decision-making policy DP3.1 in that it does not respond to its context or integrate with its surroundings. As per policy DP3.3, conflict with policy DP3.1 means that the framework directs that permission should be

refused. On this basis policy S5.2 directs that the harms of granting permission are likely to outweigh the benefits for the purposes of the 'stem' of policy S5.1. In the circumstances, the conflict with the relevant local and national landscape policies was rightly afforded significant weight by PH.

125. **BMV:** Although not discussed at length in the inquiry, the proposal will also give rise to c.45ha of Best and Most Versatile land (of which 25ha are Grade 2, and 19ha are Grade 3a land). There has been no demonstration that the use of the land for agriculture is no longer needed or viable, contrary to policy ED2 of the local plan. This conflict also sounds in national policy, as policy N2.1(b) requires decisions to contribute to the natural environment by taking into account best and most versatile land and to use poorer quality land where possible. PH explained in his proof of evidence that limited weight should be afforded to this in the overall planning balance, which is common ground.

126. **Heritage:** It is common ground that the proposals will lead to a less than substantial level of harm (at the lower end of the scale) to the setting of the Grade II* listed Holy Trinity Church at Throcking. It is common ground between the parties that the appropriate weight in the planning balance should be limited.

<u>Balance</u>

127. The above submissions reveal the extensive conflict between the proposal and the development plan. The key question that follows is whether there are sufficient material considerations that might justify a decision other than in accordance with the development plan. The application of the NPPF clearly confirms that permission should be refused.

128. On the facts, given the proposal is agreed to be outside any settlement and in the open countryside, the application of S5 governs whether the Framework supports the scheme. Within that provision, only certain forms of development are permitted in the countryside, and in the event a proposal does not fall within a permitted category within S5.1(a)-(j) the NPPF directs refusal in the absence of exceptional circumstances.

129. The applicable category is S5.1(j) on the basis that the Council do not have a 5yhls and there is therefore an evidenced unmet need. To satisfy the requirements of the category however, the proposal must also be *"physically well related to an existing settlement."* GS agreed that this was an open textured matter incorporating both landscape and accessibility considerations.[142] Given the submissions on accessibility set out above, and also in light of RB's evidence on landscape, it is clear that this is not a proposal which would be physically well related to Buntingford. The site is remote, and separated visually, experientially[143] and functionally from Buntingford by the busy A10 road,[144] and the accessibility provisions as part of the scheme are woefully insufficient to materially improve that relationship. Indeed they are actively dangerous. In the circumstances, the proposal therefore does not fit within any category within S5.1 and the framework accordingly directs refusal as a starting point.

130. There are no exceptional circumstances (see policy S5.4 of the NPPF) which might nevertheless justify permission. In fact, even if the test applied, the harms of granting permission would substantially outweigh the benefits. That much is obvious when one considers the nature of the harms (endangering the lives of members of the public or having the effect of preventing vulnerable users from accessing Buntingford other than by private car). That observation is underlined by the fact that, as above, the proposal conflicts with two national decision-making policies (TR6.4 and DP3.1 (read with DP3.3)) that direct refusal, which policy S5.2 confirms mean the harms of granting permission are likely to substantially outweigh the benefits. They do so here.

CONCLUSION

131. For the reasons set out above, the appeal should be dismissed.

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18 September 2026

[142] GS XX
[143] Cllr Nicholls described the A10 as a "*physical and mental barrier*" in this context.
[144] NJ said that the A10 had not been 'designed' as a barrier, but that is another straw man: the plain fact is that it functions as one presently.