

Land North of A507, West of A10, Buntingford

Appeal by Hallam Land Management Ltd

PINS Ref: 6008238

APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. This is an appeal against the Council's refusal to grant outline planning permission for up to 600 dwellings, 60 new homes for the over 55s and a new school, together with a new local centre and necessary infrastructure.
2. Up to 264 of the homes will be affordable.
3. By the close of the inquiry the Council's case was accepted to turn upon a single policy choice for the Inspector derived from part of policy S5.1 j in the NPPF – is the proposed development physically well related to Buntingford? To which the Appellant considers the answer is demonstrably 'yes'.
4. This in turn is answered by a series of very detailed considerations as to off-site highways works. The Appellant would encourage the Inspector to hold the broader picture here firmly in mind – the Site is adjacent to the urban area of Buntingford, defined as a town and the only top tier settlement beyond the Green Belt in the District, the Council has at best a 2.88 year housing land supply, its other settlements are constrained by Green Belt and the Council's planning witness did not encourage refusal of the scheme on the basis of residual landscape and other harms alone. The Council's main objections relate to detailed criticisms of the toucan crossing proposed on the A10 and the width and treatment of active travel works off-site.
5. By the end of the inquiry, the criticisms of the toucan crossing amount to a debate about the potential widening of the toucan crossing in the context of an agreed statement of common ground in which the Council agreed that sufficient land was available within the highway to

accommodate further design recommendations.¹ Ms Carpenter's concerns as to potential pedestrian/cycle conflicts on the island can, firstly, be addressed by minor widening which is not a material deviation from the submitted plans and secondly, go properly to attractiveness or 'directness' of the route in LTN 1/20 terms, not to highway safety. There is ample evidence before the Inspector that the crossing is safe and that there is sufficient land available to make any sensible adjustments needed to make it more commodious for cyclists if that is considered to be necessary.

6. In relation to active travel more generally it is clear that the Appellant proposes a comprehensive package of works which is the most appropriate given the highways land available on Baldock Road and given the County Council's implacable and misconceived refusal to upgrade PROW36 contrary to the intentions of its own published provisions in the LCWIP.
7. In relation to landscape, it was clear that there was very little between the landscape witnesses and in relation to the physical relationship between the Site and Buntingford, the debate centred upon whether the A10 was a boundary between the two. It was nevertheless agreed by Mr Browne that the development around Neale Drive is perceptible from the Site and that the Site was "adjacent to" Buntingford.

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

8. At the outset, it should be noted that the Council was at pains to distance itself from the final element of Main Issue 1 relating to the A507. This is despite this forming an area of disagreement within the Highways Statement of Common Ground². Nevertheless, the Council led no evidence on this point and confirmed (via cross examination of Mr Duffy) that this was not part of its case before the Inspector.

¹ CD15.13 para 5.1 final bullet "There is sufficient highway land to take on board further design recommendations as may be raised through a future Road Safety Audit process at the Section 278 stage."

² CD 15.13 para 9.12

9. Mr Duffy has addressed this issue at section 6 of his proof and puts the matter beyond doubt that there is no policy conflict here and no basis to withhold permission based upon the main accesses into the Site. Ms Carpenter’s evidence did not take any issue with the Site accesses.

Toucan – broad type and location

10. The context to the debate in relation to the toucan crossing of the A10 needs to be seen in the following context:
11. In relation to this application, the Council raised the issue of highway safety about the toucan crossing as a reason for refusing permission for the first time at the start of June 2026 after the appeal had been submitted and only shortly before its statement of case was filed. The consequence, as explained by Mr Duffy in cross examination was that the Appellant did not have the opportunity to discuss the matter in the context of this application with the Highway Authority in the potentially constructive manner that one might expect had the issue arisen during the application stage when a more iterative and collaborative process could have been followed. It is in this context that the issue arose in this appeal.
12. Ms Carpenter agreed in cross examination that this was the correct broad type of crossing i.e. a signalised crossing and that she did not run any case that a toucan was in principle unacceptable.
13. Ms Carpenter also agreed in cross examination that this was the correct broad location for such a crossing. In re-examination she stated in relation to location that “20m is the sweet spot – it creates some stacking distance and close enough drivers not accelerating away.”
14. We therefore have agreement between the parties that this is the right type of crossing in broadly the right location – the Inspector has plans showing a crossing at 10m and 30m and the “sweet spot” would appear to be somewhere in the middle. This is in the context of DMRB guidance which recommends 20m³ and a road safety audit which states that there is “little difference” in safety when considering further setback from 10m and 20m⁴. as such, the plan proposed by Mr Duffy referred to as 046 P1⁵ in terms of the difference between it being

³ See excerpt at JD POE para 8.2.10

⁴ CD 17.10a Mr Duffy Apx pdf p.284 para 3.1 “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 the HGV driver will have more time to recognise the signal and that the vehicle will be squarer to the approach.”

⁵ CD 17.31, since revised to P2.

located at 10m and the 20m preferred by Ms Carpenter makes “little difference” in terms of safety.

15. In terms of set back location it is submitted that 20m would be “generally in accordance” with the 10m submitted plan for the reason that in safety terms i.e. the Council’s core objection, this is assessed as making “little difference” and is in any event in accordance with where the Council’s own witness stated she would prefer the crossing to be located.
16. We therefore reach a stage at which the evidence demonstrates an acceptable type of crossing and an acceptable location.
17. Given the scheme is an outline permission and the requirement is to demonstrate that in principle it is an appropriate location for development, the concern relates to detailed matters and there is flexibility in the condition to achieve design amendments, there the matter should end. This is particularly so in light of a signed Highways SoCG which records agreement that:
 - a. “Provision of the new Toucan Crossing of the A10, the vehicular site access onto the A507 and the active travel route along Baldock Road can be secured by condition and delivered via a S278 agreement and a S38 agreement where works are not on the adopted highway.” – paragraph 4.1
 - b. The [submitted Road Safety] Audit has been carried out to an agreed brief, by an approved Practitioner, as pre-agreed with the LHA (details set out in Doc Ref: 23161 TN11). – paragraph 5.1 first bullet
 - c. The Audit concluded that the segregation of cycle movements from the roundabout combined with positive control of cycle and pedestrian crossing movements on the A10 is likely to enhance safety for vulnerable user supporting both a safe system approach and the change in hierarchy of need identified in the latest version of the Highway Code. – paragraph 5.1 4th bullet
 - d. There is sufficient highway land to take on board further design recommendations as may be raised through a future Road Safety Audit process at the Section 278 stage. – paragraph 5.1 last bullet

18. The Council for the first time in the inquiry raised on Day 5 of the inquiry via its advocate that it did not consider that any safe crossing could be delivered. This does not reflect the Council's evidence. Ms Carpenter, agreed the following:
- a. There was no existing problem on the evidence relating to the uncontrolled existing crossing of the A10
 - b. The Council has recently permitted an extension to the business park which anticipates people accessing it by cycling and walking on existing infrastructure
 - c. Provision of a toucan crossing in the proposed location would also serve primary and secondary walking and cycling routes in the published LCWIP
 - d. The form of crossing in broad terms i.e. a signalised crossing "can be suitable" but it was "not my [her] role to design" it.
 - e. The broad location and set back c.20m are in accordance with DMRB.
 - f. No issue was taken with forward visibility even for a design speed of 60mph
 - g. DMRB accepts a stagger arrangement for pedestrians
 - h. Staggers are common
 - i. The central island could be made wider
 - j. LTN 1/20 addresses pedestrian and cycle conflict within a "confined" central island and advises against because of "usability" not safety – as to which see CD10.4 at 10.4.19 and table 10-1.
 - k. A stagger on the island can be helpful for pedestrians
19. The above demonstrates that by the end of the highway safety session of the inquiry, the evidence demonstrates that the main issue raised by the council in relation to the proposed stagger was one of convenience rather than safety. And that there was agreement that additional space on the island could address this concern and there is agreement in the SOCG that sufficient land exists to address design amendments. The LPA's late assertion to the contrary is not supported by the recorded evidence or previous signed agreements.

Toucan – speeds of approach

20. In relation to speed of approach, Ms Carpenter referred in her written evidence to table 10-2 in LTN 1/20⁶ which notes that signal controlled crossings are unsuitable for 60mph limit roads.

⁶ CD10.4 pdf p.97

21. That is not an issue here given that, as set out in section 8 of Mr Duffy’s proof, the Baldock Road roundabout already acts as feature that slows traffic speeds on approach. The Appellant has, however, proposed the introduction of a 40mph limit as part of the proposals. Mr Duffy does not consider that is necessary to deliver a safe crossing.
22. Ms Carpenter’s written evidence then criticised this on the basis of an “observation” (a matter returned to below) in the RSA that *“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**”*⁷ (Emphasis added).
23. Whilst the Council has used this as a springboard from which to argue that the speeds are inappropriate or dangerous, this needs to be seen in the context that (1) Ms Carpenter agreed in cross examination that a signalised crossing was appropriate, (2) the table notes that a signalised crossing is appropriate in areas with a speed limit of anything less than 60mph and there is therefore considerable wiggle room given speeds have been recorded on approach from the north and set out in Mr Duffy’s proof that are approximately 30mph at the 85th percentile.
24. Ms Carpenter agreed that if the Inspector accepted the speed survey evidence then this addressed her case on this matter. The Inspector is invited to accept that survey as being sufficiently robust for the purpose of identifying that the broad nature of the measured speeds falls within an acceptable range noting that LTN 1/20 authorises use of a signalised crossing such as the one proposed for speed limits up to and including 50mph.
25. Mr Duffy’s evidence provides speed survey results which demonstrate that over 2 weeks in March, which in Mr Duffy’s view was a suitably “neutral” month, speeds in the location of the approach to the proposed crossing were measured. The survey was undertaken c.57m back from the entry to the roundabout and therefore c.46m from the southbound stop line of the proposed crossing (in its original position). The data show that measured speeds were very consistent across the two survey weeks and the measured 85th percentile speed southbound was 30.6mph – well below the target of 40 and vastly below the speed limit currently of 60mph.

⁷ CD 15.3 pdf p.67 para 3.2 second bullet

26. The comment of the RSA above and Ms Carpenter's evidence as to the lack of likely change in context meaning that existing speeds may continue to be experienced post development are noted but do not generate a problem – the existing speeds are well below what would be needed to safely introduce a signalised crossing – given LTN 1/20 permits this up to a 50mph limit. The observation of the RSA and Ms Carpenter that context may not drive change therefore goes nowhere as no change is required in order to safely introduce the crossing.
27. Speeds are already slow as measured, people are already slowing to the roundabout and given that the speed survey was taken over 57m back from the roundabout and vehicles are slowing towards the roundabout, speeds at the stop line of the proposed crossing are likely to be materially lower. The context is also that there is at least 215m of visibility of the signals from the southbound A10 – sufficient visibility to provide for vehicles traveling at 60mph rather than in the region of the measured 30mph. There is therefore well in excess of sufficient visibility and there can be no real concern as to the workability or safety of including a signalised crossing in this location.
28. Ms Carpenter's detailed critique of the speed survey (expressed for the first time in evidence in chief) relied upon guidance documents not before the inquiry and sought more information over a longer period and from a distance further back from the crossing, citing a 50m guidance point. It is submitted that 2 weeks of data is sufficient particularly given the consistency in that data across the survey period. A couple of extreme outliers do not change the conclusions based on the 85th percentile speed which is, as Mr Duffy explained, the relevant measure to use. In any event, there is plenty of comfort in the measurements as set out above, between the c.30mph 85th percentile speed and the 50mph speed limit at which LTN 1/20 would still support a signalised crossing. Therefore, there is a significant margin for error in the data before guidance would suggest another form of crossing. Moreover, given vehicles are slowing to the roundabout it is unrealistic to suggest speeds at the proposed crossing would be more than those measured at the survey location.
29. It is also notable that a 40mph limit is proposed and Mr Duffy's evidence, in light of the landscape and visual evidence before the inquiry, is that the context will change post development. The landscape evidence is discussed below but in summary, there will be intervisibility between the appeal site and the development on Neale Drive, the scheme on Neale Drive is already visible from the A10 noting there is an access from the A10 at this point. There would also be a future access for the appeal scheme from Throcking Lane which is accessed from the A10. The context is therefore very much readable as an approach to a

settlement with traffic turning off left and right from the A10 before the crossing in order to access the Neale Drive scheme and SEND school⁸ and the appeal site respectively.

30. In summary, the measured speeds demonstrate the suitability and safety of the proposed crossing and even if the Inspector determined that there would be no change in context as a result of the appeal scheme this matters not as the safety of the crossing doesn't rely upon any change in speeds below the existing measured situation.

Criticisms of the RSA

31. The high watermark of the Council's case on the RSA appears to be that a number of matters set out within section 3 of the RSA should instead have been located within section 2 i.e. should have been labelled as "issues" or "problems" rather than "observations". Even if this is correct and contrary to Mr Duffy's views, this goes nowhere as a matter of substance – the points are covered within the report and all of them are matters which the RSA notes can be addressed at detailed design:

- a. In relation to the stagger, the RSA confirms this is "likely to be appropriate" but would depend upon phasing and timing. The timing of traffic lights is plainly not a matter for approval as part of this appeal.
- b. The reference to a potential for a "constant green" effect is noted in the RSA followed by the comment that *"these elements, however can only be considered as the detailed design progresses"* emphasis added.
- c. In relation to the "confusion" point i.e. drivers confusing the crossing signal with permitting entry to the roundabout the RSA again notes that *"the audit team accept that the scheme is at preliminary design and the finer detail of the provision has not been addressed"*.

It is notable that the DMRB guidance states that *"NOTE 1: On the approach to the roundabout, 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 and it leaves sufficient storage space for vehicles waiting to enter the*

⁸ Note future developments on the east of the A10 shown on p41 of the main SOCG CD 15.1

roundabout”⁹ and an alternative set back crossing option has been presented that demonstrates that this can be achieved.

32. The ‘confusion’ point is therefore addressed by a set back of 20m in line with DMRB and as proposed by Ms Carpenter as being “the sweet spot”. It in no way goes to the principle of having a toucan crossing in this broad location as DMRB guidance explains a way to address the potential issue. In line with the RSA, the exact citing of the crossing can be finessed at detailed design stage.
33. Ms Carpenter also raised a “queuing back” point in relation to the northbound element of the crossing. This too is addressed by a 20m set back and DMRB expressly notes the same.¹⁰
34. Where the RSA expressed a view that the HA views should be sought on the location of the crossing, this is in the context of the difference between 10m and 30m and Ms Carpenter expressed a clear view on behalf of the HA in re-examination that 20m was the HA’s preferred location.
35. It should be noted that in no world would a crossing be constructed that had not been subject to an RSA. The RSAs criticised by the Council are stage 1 documents of a 4 stage process. As explained by Mr Duffy, any material amendments to the crossing would need to be subject to stage 1 audits again. This is another reason why the LPA’s forensic critique of the RSA goes nowhere – they will be re-done for any finally submitted drawing. Nothing in the existing RSAs suggests any detail cannot be later safely addressed and nothing in the Council’s cross examination of Mr Duffy on this point demonstrates that a toucan crossing broadly in accordance with the plans already subject to successful RSAs cannot be safely constructed in this general location.

Toucan - stagger

36. It is clear that the guidance documents taken in the round do not prefer a staggered crossing but this is clearly in the context of whether it is direct and attractive for cyclists. It is not a safety point and it is not prohibited. Particularly in DMRB which deals with major roads and

⁹ Included at JD POE para 8.2.10

¹⁰ As above

motorways – it anticipates staggered crossings. Indeed, even LTN 1/20 notes that staggers are common¹¹ and the HA itself approved one recently at Jarman Park.¹²

37. The Council cannot sensibly suggest that a staggered crossing is unsafe and unacceptable. The highest they can sensibly put their case is that it is not what LTN 1/20 or the Rural Design Guide prefers. There is other guidance which suggests a stagger is preferred such as the Traffic Signs Manual¹³. Therefore, the Inspector is presented with conflicting guidance but notably none of which states that a stagger would make a crossing unsafe.
38. As set out above, LTN 1/20 addresses pedestrian and cycle conflict within a “confined” central island and advises against because of “usability” not safety. The Council’s case on this was essentially that a 2.8m design vehicle had only 20cm of room if it entered the stagger perpendicular to the island. Even on the Council’s evidence this is an unrealistic scenario – Ms Carpenter addressed orally that longer cycles would likely take a diagonal approach to ease the turn. Even if this is thought to be both realistic and unacceptable there is plenty of land available to create a wider island at the northern crossing point – noting it is 3m at the top and 5.3m at the southern crossing point. It is therefore not a point going to safety, is not realistically likely to arise and in any event can be addressed through a detailed design.
39. This particular criticism is rooted in LTN 1/20 (and the Rural Design Guide which is expressly based upon it). LTN 1/20 needs to be read for what it is – it is not planning guidance it is a design standard for cycle infrastructure proposals brought forward by authorities seeking funding. It expressly anticipates that it may not be met in full – paragraph 14.4.6 states that *“New and improved highways will need to strike an appropriate balance to best meet the various design objectives that have been set, including the needs of people using cycles as set out in Chapter 4.”* At 14.4.7 the guidance refers to meeting the guidance *“as far as is possible”*. It does not require to-the-letter adherence even on its own terms.
40. Both Mr Duffy and Ms Carpenter acknowledged that a stagger would be beneficial for pedestrians. Mr Duffy therefore reaches a legitimate judgement that a stagger is safe and beneficial and his judgement on this point is supported by the independent RSA.

¹¹ CD 10.4 para 10.4.19

¹² Mr Duffy rebuttal appendix

¹³ CD 10.33 pdf p.125 para 15.3.2

Summary

41. In summary, the HA accept the broad location and nature of the crossing. Its remaining criticisms are addressed in the RSA as being matters of detail for a later stage, noting we are at stage 1 of a 4 stage process. The context includes the agreed position that sufficient highways land exists to accommodate later design evolution. This would plainly include, among other possibilities, sufficient land for a wider island.
42. The agreed condition 17 refers to proposals coming forward to discharge that condition as being “generally in accordance with” the submitted plans detailing the 10m or 30m set back. Both plans were assessed by the RSA as being safe and the difference in set back making “little difference”. The Appellant’s primary case is that the plans are adequate and safe to allow progression to a detailed design stage.
43. If it is considered that amendments are likely to improve the crossing or be necessary, these can be achieved as such amendments would be “generally in accordance with” the depicted scheme. Whether any given amendment meets this test is a matter of planning judgement.
44. If the Inspector considers that more amendments would be required, it is possible to impose a Grampian style condition requiring a revised scheme to be submitted. The Appellant proposes wording which would require the broad parameters of the RSA and submitted scheme to be respected i.e. a toucan style of crossing, in this broad location and with a 40mph speed limit. Any such revised proposal would be subject to RSA – this would be the case whether expressly set out in a condition or not.
45. It is well established that:

“There is no absolute rule that the existence of difficulties, even if apparently insuperable, must necessarily lead to refusal of a planning permission for a desirable development. A would-be developer may be faced with difficulties of many different kinds, in the way of site assembly or securing the discharge of restrictive covenants. If he considers that it is in his interest to secure planning permission notwithstanding the existence of such difficulties, it is not for the planning authority to refuse it simply on their view of how serious the difficulties are”¹⁴

¹⁴ As to which see *British Railways Board v Secretary of State* [1993] 3 PLR 125

46. As a matter of law, conditions may be imposed which restrict development until some event, in this case the approval of a toucan crossing plan, has taken place. The Inspector does not need, as a matter of law, to have any confidence that the event is likely to occur.¹⁵
47. The PPG provides the policy test that Grampian conditions should not be imposed where there is “no prospect” of the event occurring within the lifetime of the permission.
48. The totality of the evidence before the inquiry does not support a finding that there is no prospect at all of a safe toucan crossing plan being approved within 3 years, particularly as the crossing forms part of a route expressly supported in the LCWIP. The Council’s concerns are detailed design issues which can be overcome by widening of the island, potential further signage or colour treatment of the carriageway, phasing of lights etc. if necessary. There is every likelihood that an agreed scheme can be designed.
49. The Council objects to a more broadly drafted Grampian condition which does not cite a plan reference on the basis that this essentially defers consideration of the issue to discharge of condition stage. A similar argument was considered by the Court of Appeal in *R(LB Hillingdon) v Secretary of State for Transport* [2020] EWCA Civ 1005. In that case, the developer (HS2) sought to argue that it was not necessary for them to provide any information in relation to archaeology or for the authority to perform any assessment of impact or related mitigation or modification measures¹⁶. In those circumstances it was, unsurprisingly, found by the Court that a condition wholly deferring the issue of archaeology to post-permission was not lawful. Here, that is not the case. The Council and Inspector have a wealth of information about the safety of a potential crossing of the A10. An analogy to this case would be if the Appellant had provided no plan, no RSA and no highway safety evidence but instead asked the Inspector to take on trust entirely that the A10 could be safely crossed. Here, the Inspector has an agreed position based on considerable evidence that a signalised crossing located between 10m and 30m is appropriate and the HA consider it should be at 20m. The outstanding issues as to stagger, width of island, timing of lights etc are details. They do not go to the heart of whether the A10 can be safely crossed by pedestrians and cyclists in this location.
50. As such, a wider condition would equally be lawful and appropriate.

¹⁵ As above

¹⁶ See paragraph 9 for a summary of the issues in that case

51. In conclusion, there is no conflict with NPPF policy TR3.1c. A safe crossing is achievable and subject to the imposition of a condition securing this, there is no significant adverse impact on the network or highway safety. Policy TR6.4 is not offended: there is no unacceptable impact on highway safety.
52. Reason for refusal 1 cites DPS1 and TRA1 of the Local Plan. DPS1 is not relevant. TRA1 primarily relates to active travel. This makes sense as the reason for refusal as drafted makes no reference to the Council's later concerns in relation to the A10 crossing. There is in any event no conflict with the local plan.

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.

53. The appeal scheme performs well when tested against all of the issues raised in this main issue. That is for the following reasons.
54. The new NPPF advocates use of the DfT Connectivity Tool when assessing planning applications. This has been done by Mr Blair but the issue is ignored in Mr Lewis' evidence. Excluding driving, the appeal site has a connectivity score of 45, meaning that it is 45% as well connected as the best connected place in the country, which is a grid square within Tower Hamlets. However, the local context is important. That is because it is the Council's task to provide for sufficient housing land delivery and supply within its own administrative area. The Connectivity Tool allows for sites to be scored relative to areas within the same District. In this case, the site falls within band B (still excluding driving), on a scale from A to J, where A is the best connected category. That shows that the appeal site is well-connected when compared to other parts of the same District. Well connected sites limit the need to travel, not least by reducing travel distances. Buntingford is the best connected area within the northern part of the District, that which is outside the Green Belt.

55. Of course, when car connectivity is also factored in, the scores improve further, given the site's proximity to the A10 and A507. All of those scores take the present connectivity of the appeal site and ignore the measures proposed in the appeal scheme.
56. The appeal scheme would support working from home through digital working. Online deliveries would be accessible. There was no challenge to Mr Blair's written evidence that the proposed Travel Plan's mode split targets could be achieved.
57. The appeal scheme would make good and improved provision for access to bus services. The Council takes no issue with the appeal scheme's provision for public transport use. At present, the nearest bus stop is about 805m from the appeal site's centre, on Baldock Road opposite Greenways. Table 5.1 of Mr Blair's evidence summarises the services, their days of operation and frequency of service that are served. His table 5.2 sets out the journey times from Buntingford to the nearby towns which the services serve.
58. The appeal scheme would improve that situation by providing bus stops on site, at the local centre and also in the northern part of the site. Bus services numbers 18, 331 and 37 would be diverted into the site, with the appropriate contribution made in the planning obligation to support those services whilst passenger numbers increase as the scheme is built out. Residents of the appeal scheme would have good access to a good range of frequent bus services which serve multiple destinations.
59. The residents of the appeal scheme would also have access to two other transport services:
- a. Hertfordshire has a Demand Responsive Service called Hertslynx. Users choose pick-up and drop-off locations through an App, meaning that locations in addition to those served by the traditional form of bus service could be accessed. The service has 7 buses and serves around 5,000 people per month. Herts CC did not require a s106 contribution towards that service; and
 - b. Buntingford Community Area Transport ("BCAT") provides a weekly shopping service, running on Tuesdays and Thursdays to Brookfield Farm (Marks & Spencer and Tesco) and Royston (Aldi, Marks & Spencer and Tesco). The planning obligation contains a £500 per dwelling contribution towards that service.
60. The nearest rail services are at Royston which serves Cambridge, Brighton and Kings Cross and stations *en route* to those destinations. Royston station is 13.2km from the site and can be

reached by a 33 minute bus journey using the no.18 bus (which would be diverted into the appeal site), or else a 15-25 minute car journey. Baldock station is 12.9km from the appeal site and is served by the same services as Royston. It can be accessed by an 18 minute journey on the no.37 bus (which would divert into the appeal site) to Baldock market place and then a walk of about 7 minutes to the station.

61. So far as the principal parties are concerned, the controversial aspect of the appeal scheme in accessibility terms is about the site's connectivity for pedestrians and cyclists. The Appellant's position on the A10 crossing has already been addressed. In this part of the closing, we address the other measures proposed by the Appellant.

62. Mr Lewis' evidence was adversely affected by a number of matters. First, his proof expresses a judgement that the appeal scheme was not sustainable and he asks for the appeal to be dismissed. That approach was wrong because:

- a. Sustainability is about more than transport issues. Even when it is about transport and movement, issues in addition to walking and cycling are relevant, such as public transport access, which his evidence does not address;
- b. He cannot ask for the appeal to be dismissed as he is not undertaking the overall planning balance; and
- c. The real purpose of his evidence was to identify alleged shortcomings in the appeal scheme which were negatives to weigh in the balance.

63. Mr Lewis agreed with all of those points in XXm.

64. Second, there was his failure to acknowledge, let alone address, two important matters that are relevant to the question of whether land to the west of A10 is unsustainably located as RfR1 essentially argues:

- a. The Council's allocation of site BUNT3 at the Buntingford Business Park for employment purposes. That site lies west of the A10. The Local Plan tells us¹⁷ that the plan makes employment allocations in sustainable locations. BUNT3 is then listed. The LPA cannot think that the A10 is a feature that severs east-west connections.

¹⁷ CD5.1 plan page 28 paragraph 3.2.8

Further still, the allocation itself¹⁸ makes no mention of any need for any improvements to connections across the A10; and

- b. The Council has recently granted planning permission for new development within the Buntingford Business Park¹⁹. The application form²⁰ shows that 24 cycle spaces are proposed and that the development would generate employment for 112 full-time equivalent employees. In its consultation response²¹, the LHA raised no objection, did not seek active travel improvements across the A10 and at the end of the response said²²:

“The site also benefits from a footway connection into Buntingford, providing links to the local bus network and access to nearby amenities such as lunch facilities....”

65. Mr Lewis deals with none of this. The news that he was giving evidence as an expert seemed to come as a surprise to him in XXm. He did not know what the duties of an expert were and his explanation for not addressing these matters was that he was only asked to address the Appellant’s proposals. He also said that he did not give evidence very often. Neither explanation is satisfactory. In any event it is, of course, relevant to the assessment of the Appellant’s proposals to note that the Council has made decisions which clearly undermine the contention that land west of the A10 is, in movement terms, isolated or severed from or poorly connected with Buntingford. Mr Lewis should have addressed these issues.

66. Third, Mr Lewis relies upon the public sector equality duty (“PSED”) in section 149 of the Equality Act 2010 to support his case. He repeatedly treats the PSED as a duty to achieve a given result in every case²³. That is wrong. The PSED is a duty to have regard to the specified objectives when making decisions and not to achieve them in every decision: see, in the planning context, *R (on the application of Daniel Coleman) v The London Borough of Barnet Council and another* [2012] EWHC 3725 (Admin) at [66], [68], citing earlier non-planning cases. This error also undermines the judgements he expresses.

¹⁸ CD5.1 plan pages 84 to 85

¹⁹ The site’s location is shown on CD10.37.

²⁰ CD10.35

²¹ CD10.28

²² Top of final page

²³ See paragraphs 21, 23 and 24 of his proof.

67. Mr Lewis' approach to the assessment of the Appellant's active travel proposals is that he regards LTN1/20²⁴ as minimum standards to be met. He says as much in his proof²⁵. He also stressed that a cycling route is only as strong as its weakest link. He has an absolutist approach to the application of LTN1/20 which is not warranted by the guidance itself. In addition to the paragraphs to which we drew attention in the highways safety section of this closing, paragraph 1.1.2 of the guidance makes it clear that even when the guidance is being used for its intended purpose of testing funding applications, complete compliance with the guidance is not required. Paragraph 1.1.2 sets out that when schemes are tested against the Cycling Level of Service in its Appendix A or the Junction Assessment Tool at Appendix B, a score of 70% has to be achieved with no "critical fails". Even if these minimum requirements are not met, the DfT might still approve funding if the authority can justify its design choices. Flexibility is built into the standard. As an important example, Mr Blair drew attention in his oral evidence to the fact that the guidance allows for limited proportions of provision to be below standard and yet still meet the standard overall. No doubt the Council will have closed its case on the basis that the failures against LTN1/20 are important indicators of the scheme's lack of merit, but Mr Lewis' evidence was entirely predicated on an inappropriately absolutist approach to and application of the guidance. His approach fails to recognise the practical limitations that real world geography can impose upon the ability to achieve in full what the guidance contains. LTN1/20 comes nowhere close to saying or implying that a failure to meet its requirements in full would produce unsafe or even unattractive conditions. An overall judgement is required.

68. Mr Lewis also presents his judgements in a confusing manner. When dealing, for example, with the Baldock Road improvements, he ends up stating²⁶ that the provision of the improvements along Baldock Road is of moderate benefit but that the transitions at the eastern end create significant harm. It is very hard sensibly to reconcile these two statements. His explanation of what he has done in XXm was no clearer.

69. The Appellant contends that a more appropriate approach is to form an overall judgement about the works proposed and whether they would be an improvement, to what degree and whether they would be safe and attractive for users overall. The fact that they might be imperfect when tested against the full rigour of LTN1/20 is a factor to take into account but is

²⁴ CD10.4

²⁵ Page 21 paragraph 39.

²⁶ Proof page 34 paragraph 68

not determinative of itself. An example of an Inspector applying such an approach is to be found in the Langho decision that Mr Blair produces²⁷: especially its paragraphs 12 and 15.

70. It was clearly established in XXm of Mr Lewis that he accepted that there were facilities and services in Buntingford that were within an accessible 2km distance of the appeal site and that he was concerned about the quality of routes rather than their distance. It was no part of his written or oral evidence to say that the distances to facilities for pedestrians were too great or even off-putting. That was not surprising, given it is common ground in the HSoCG²⁸. Despite the HSoCG and the evidence of the Council's witness, Mr Blair was XXd on walk distances. If that XXm served any purpose, it can only have been to suggest that there was some problem with the accessibility of services that were more than 800m or so from the appeal site which arises simply by dint of their distance. There is not, as Mr Lewis confirmed. The Council's evidence is clear.

71. When it comes to testing the Appellant's proposals, Mr Lewis is content with the ability to provide suitable active travel provision within the site itself, given the outline nature of the application.

72. The Appellant is proposing four routes for active travel:

- a. Route 1: out of the site onto Baldock Road, across the A10 and then along Baldock Road;
- b. Route 2: Out of the site's eastern boundary and across either the existing pedestrian bridge or a new active travel bridge and then either:
 - i. Route 2a, along PROW36 to Bowling Green Lane, or
 - ii. Route 2b, onto Skipps Meadow and then onto Baldock Road; and
- c. Route 3: a new pedestrian bridge across the A10 at the site's northern end and then heading south east to Bowling Green Lane.

Route 1

²⁷ Mr Blair's appendix M-2, page 238 of 298 and following.

²⁸ CD15.3 paragraph 6.2 first bullet.

73. Mr Lewis confirmed in XXm that he took no issue with the proposed provision on the west side of the A10. The issues relating to the Toucan crossing have already been addressed. These submissions address provision at the east side of the A10²⁹. Mr Lewis was taken through the detail of those proposals in XXm and identified no issues which were of insuperable concern to him apart from the following.
74. The Appellant proposes a 3m wide shared cycleway and footpath. For its initial length it has a “buffer” between it and the carriageway. The buffer would then peter out and the shared way would head east, passing behind a bus stop. Between the A10 and the beginning of the 30mph speed limit, the current speed limit is 60mph, but would be reduced to 40mph if the appeal scheme went ahead. It is accepted that table 6-1 of LTN1/20³⁰ recommends an absolute minimum of 0.5m for a separation distance between a road with a 40mph speed limit and cycle provision. However, the Council does not contend that such provision is unsafe as its safety case is confined to the Toucan crossing. In any event, as Mr Blair explained, 2.5m would be an appropriate width for a shared cycle and pedestrian way and so a buffer could be incorporated at detailed design stage. For all other parts of the Baldock Road works, the road has a 30mph speed limit where table 6-1 of LTN1/20 provides that making no separation is acceptable.
75. Mr Lewis expressed concern about the proposed raised crossing of Baldock Road, to the west of Bowling Green Lane. That concern was nothing more than Mr Lewis’ unsubstantiated fear that drivers would not stop. He did not say that the crossing was technically deficient in any way or that the proposed markings and road signs were in any way contrary to traffic regulations. His concern is baseless.
76. Mr Lewis was concerned about the termination of cycling provision for active travellers on Bowling Green Lane. The planning obligation contains a substantial contribution to works which is intended to be spent on Bowling Green Lane and Norfolk Street to further improve conditions for active travellers and Mr Blair stated that the highway authority has consulted on plans to reduce the speed limit on Bowling Green Lane to 20mph.
77. Mr Lewis also expressed concern about the eastern end of the works on Baldock Road itself. There is scope to place cycle stands in that general location so that cyclists could take the

²⁹ These are shown on the drawing overlaid onto the aerial photography base at Appendix G to the HSoCG [CD15.3].

³⁰ CD10.4 page 54

opportunity to park up and walk around the town centre. There is no evidence to support any contention that the transition would be unsafe or unattractive. The tenor of Mr Lewis' approach is that he expects to see fully LTN1/20 compliant infrastructure provided along all routes that people might want to use to all destinations. It is an unrealistic approach.

78. The proposed works along route 1 would be safe, attractive and, above all, a significant improvement compared to the present provision. The works would of course, benefit all users and not just residents of the appeal scheme. By making provision for active travellers and not including works to make things easier for motorists, they do prioritise active travel. Baldock Road west of the A10 is a secondary cycling route in the County Council's LCWIP and a primary route east of the A10. It is a route whose route the County Council wishes to encourage. The works would be a good fit with the aspirations of the LCWIP. Again, what the LCWIP says about the route was totally ignored by Mr Lewis.

79. Further still, the final position of the County Council during the application process was that it was broadly supportive of the proposals for route 1 (save for the Toucan): see their consultation response of 1st September 2025³¹, where the County Council said:

"The Highway Authority is broadly supportive of the proposals as detailed within the resubmission, including the active travel corridor on Baldock Road to the east of the A507/A10 junction, whilst noting the difficulty of being able to achieve a fully LTN 1/20 compliant route into the town centre. The improvements to the Rights of Way are also noted. Should the Local Planning Authority be minded to grant planning permission (via a package of Section 278 works), the Highway Authority would seek to develop the enhancements to pedestrian and cyclist connectivity as detailed on these plans."

80. This statement by HCC was completely ignored in the Council's case and Mr Lewis' evidence.

Route 2: common section

81. The part of route 2 that is common to both routes 2a and 2b would comprise a new active travel bridge across the A10. That bridge would have ramped approaches of the appropriate gradient and geometry to facilitate use by all users. The new bridge would be of an appropriate width to accommodate all types of active traveller, as confirmed in paragraph 17

³¹ CD4.42

of Mr Lewis' proof. The existing pedestrian bridge would remain in place, providing opportunity for pedestrians not to share space with cyclists if that is what they prefer.

Route 2a

82. Route 2a would involve the use of PROW36 to Bowling Green Lane. The Council has not challenged the evidence that has been submitted about that right of way to the extent that it is not contentious that:

- a. PROW36 is not just a public right of way but also a publicly maintainable right of way;
- b. There is no reason not to apply the "hedge to hedge" presumption such that the right of way's width, though not defined on the definitive map and statement, can be taken to be as wide as 5m where there is no hedge and around 3.2m where hedges are present (with a possible small pinch point of 2.7m); and
- c. The publicly maintainable status means that the powers in section 278 of the Highways Act 1980 apply to it and that, together with the highway authority's various powers of improvement in the 1980 Act, mean that the footpath could be widened, surfaced and lit along its length. There is thus no dispute that the footpath could lawfully undergo substantial physical improvement.

83. The footpath would be widened to 3m (which is also sufficient as a shared pedestrian cycleway) and would be surfaced. It is straight and would be lit. The vegetation would be cut back. Some people may choose not to use it during the hours of darkness, but such users would not be forced to travel by car or stay at home. Routes 1 and 2b would be available to them. Mr Blair has shown the lack of evidence to suggest that the footpath is associated with any criminal behaviour and that Buntingford is a generally low crime area in which to live. The residents cannot be taken to know of detailed crime figures, but they can be taken to have a broad understanding of the kind of location in which they live and the general prevalence of anti-social behaviour and crime.

84. Then we come to the vexed issue of upgrading the legal status of PROW36 so that it could lawfully accommodate cyclists. As a starting point, cyclists who are disabled and using a

cycle adapted for their needs can already lawfully use PROW36 and all other footpaths³² pursuant to section 20 of the Chronically Sick and Disabled Persons Act 1970. As for other cyclists, the easiest route to upgrading the footpath would be the Cycle Tracks Act 1984. This permits the County Council to make an order that would upgrade the footpath to a cycle track, to allow cycles to be ridden on it as well as to continue pedestrian use. The only argument that has ever been made by the County Council for not making such an order is that they would need the landowner's consent. Indeed, that is what LTN1/20 records in its section "Creating Cycle Tracks" on its page 189:

"If the land is not owned by the Highway Authority, it must ensure that the landowner has consented in writing [CTA s3]."

85. Regrettably, that statement is wrong. Section 3(1) of the Cycle Tracks Act 1984 provides that a local highway authority may make an order to designate a path, or part of it, as a cycle track. Section 3(2) provides:

"(2) A local highway authority shall not make an order under this section designating as a cycle track any footpath or part of a footpath which crosses any agricultural land unless every person having a legal interest in that land has consented in writing to the making of the order. In this subsection "agricultural land" has the meaning given by section 1(4) of the Agricultural Holdings Act 1986; and "legal interest" does not include an interest under a letting of land having effect as a letting for an interest less than a tenancy from year to year." [Underlining added].

86. Whilst an order may be objected to by a landowner (or anyone else), the obligation to secure the landowner's consent prior to making an order only applies where the footpath crosses agricultural land. That is not the case here.

87. The only reason that HCC has ever given for not making an order is misconceived.

88. Mr Lewis confirmed in XXm that the physical works which could be carried out to upgrade the condition of the footpath would also suffice for its use for cycles. The only impediment to creating a cycle track is HCC's misplaced refusal to make an order under the Cycle Tracks Act 1984 or its own unwillingness to be co-operative. Its attitude is surprising given that the LCWIP also contains an aspiration to upgrade PROW36 to a way for cycles and the upgrade

³² Including the gap in route 2b addressed below.

would comply with the objectives of the LCWIP as Mr Blair sets out at his paragraph 7.6.26 – further points to which Mr Lewis failed to draw attention in his evidence.

89. Route 2b heads south from route 2 east of the proposed active travel bridge. It passes behind some houses on a short length of narrow path, which Mr Blair has treated as not being lawfully open to cyclists before joining Skipps Meadow. Skipps Meadow itself is a metalled way with footways and lighting. It serves a small number of houses and so traffic levels will be relatively low. Mr Lewis accepted that Skipps Meadow is suitable for use by all users. The gap in the route for cyclists is likely to be seen as a minor annoyance rather than as a disincentive to use. Cyclists will have to dismount at some point on their journey, maybe multiple times if they are travelling to different locations in the town centre.
90. Route 2/2a/2b would adequately serve all pedestrians and cyclists to and from the site, even if routes 1 and 3 were not present.
91. Route 3 is not addressed in any detail by Mr Lewis. It formed no part of his single morning's site visit. The new pedestrian bridge would be suitable for most pedestrians but it has to be accepted that it could not serve all users. It would be a significant improvement over the existing crossing of the A10 in that location which has no facilities of any kind.
92. Overall, the active travel proposals would be a significant improvement over the present routes. Residents of the appeal scheme would have 4 routes to choose from. Mr Blair's Appendix J lists the extensive measures that would be taken and which improve the position for active travellers not motorists. Active travel has been prioritised in the formulation of the appeal scheme and would be appropriately prioritised in the operation of the development.
93. The only transport policy in the Development Plan with which RfR1 alleges conflict is Local Plan policy TRA1³³. Having regard to its applicable criteria and for the reasons set out above, the appeal scheme would be located where sustainable journeys can be made; would ensure that a range of sustainable options for travel would be available; the timing of provision is not opposed by the Council; would protect rights of way and the Council makes no complaint about the future maintenance of any provision. The policy is complied with.
94. As regards the NPPF:

³³ CD5.1 plan page 244.

- a. Policy DP3(1) relates to on-site design. The references to context and surroundings are not dealing with off-site provision, but how those features should be taken into account when designing the scheme itself;
- b. Policy DP3(2)(d) would be satisfied as there would be good connections to the wider settlement;
- c. The development would be located where it can support sustainable patterns of growth as required by TR1(1)(b) and the more detailed requirements of TR3. Policy TR3(1)(b) is not applicable as it is about maximising density or the amount of development through making best use of existing or proposed transport infrastructure;
- d. Priority has been given first to walking, wheeling and cycling not just in the framework for developing the site itself but also in its connections with neighbouring areas. It would provide high quality public transport, all in accordance with TR4(1)(a);
- e. The proposals were accompanied by a suitable Transport Assessment and Travel Plan as required by TR6; and
- f. The appeal proposals would protect and enhance public rights of way and take the opportunities present to improve existing links, as sought by policy TR8.
- g. Policy S5 is dealt with towards the end of these submissions.

95. The appeal scheme is not just acceptable in active travel terms; it would bring improved provision.

Main Issue 3: The effect of the proposal on the character and appearance of the area including landscape character

96. The differences between the landscape witnesses are modest:

- a. It was agreed the appeal site does not exhibit high scenic quality, has low rarity and is representative of the wider agricultural landscape. The Appeal Site does not contain characteristics, features or elements that are important examples.
- b. The site is not designated or “valued” in the terminology of the previous NPPF.
- c. It is a “fairly frequent landscape type”
- d. The methodology of the LVIA was agreed
- e. Mr Browne stated orally that the LVIA represents a “robust baseline” from which to assess the proposals
- f. The differences related to sensitivity of visual receptors and judgements as to harm.

97. In broad terms, the appeal proposals are in the right place relative to Buntingford. Policy ES1 of the Neighbourhood Plan³⁴ states that *“Development proposals should be appropriate to and maintain the Rib Valley setting of the BCA.”* The supporting text states that *“development on the fringes of Buntingford which extends on to the higher ground surrounding the Rib Valley could have a harmful effect on the landscape of this area and parts of the Cherry Green Arable and Wyddial Plateaux.”*

98. Buntingford has developed within the Rib Valley and is contained within a landscape “bowl” as shown on fig. 5.7 within Ms Jones’s proof.³⁵ The NP includes a clear policy indication that any expansion of the urban area of Buntingford should be contained within the “bowl” and the Rib Valley rather than extend on to the higher ground surrounding the valley. Again, it is clear from Fig 5.7 that the appeal site respects this policy and is located below areas of higher landform and below the noted ridges to the west of the Site and outside of the noted ‘spurs’ of higher landform noted in pale and bright green and noted as ii and iii on the plan. Land to the East of Buntingford is similarly constrained by the ridges and spurs noted on the plan.

99. As such, the proposals would not undermine the Rib Valley setting and are in compliance with ES1.

³⁴ CD 5.2 p.36

³⁵ P.41

100. The Council's finding that the scheme would have a significant impact on LCA 141 is exaggerated. LCA 141 is a large character area with the appeal site being but a small part. Nor will the appeal scheme exert an influence across the LCA. As Ms Jones explained³⁶ there is more of the LCA from which the development would not be visible than area where it would be visible. It should also be remembered that the appeal scheme proposes developing c.50% of the site with around half as a country park and open space uses.

101. The proposals would also strengthen what is good about the character area with new woodland planting hedgerows and habitat creation including ponds, green-blue infrastructure and increased recreational access to open space. The land use components plan³⁷ shows 24.67ha of green infrastructure. As Mr Stephens' evidence notes, this is significant in light of an acknowledged deficit of usable open space typologies in Buntingford.³⁸ It is also significant in landscape terms as these elements directly support the published landscape strategy for LCA 141.

102. Given these positive elements, the LVIA assesses minor adverse effects at Y1 and beneficial effects by year 15. There are many elements in keeping with strengthening LCA 141 and the development is sited in a way to respect the Rib Valley setting of Buntingford in accordance with the Neighbourhood Plan. It is these positive elements and the weight to be afforded to them in softening impacts and integrating the development over time that forms a key difference between Mr Browne and Ms Jones. It is submitted that Ms Jones' approach is to be preferred – the positive elements that reinforce the character of LCA141 are valuable and the large increase in public recreational opportunities is a notable benefit.

103. Mr Browne referred orally to the "complete urbanisation of the site"³⁹. This is an exaggeration of the actual development proposed which includes a large area of parkland trees (amongst areas of other accessible open space) which cannot be described as "urbanising". Mr Browne also considered that the effects would be major adverse during construction and would remain major adverse at Y15, effectively giving zero effect to the maturation of planting to soften impacts. Again, it is submitted this is an exaggeration of the actual likely impacts which would, on any sensible assessment, not be identical at construction as at year 15 given the extent of planting proposed.

³⁶ ID9

³⁷ CD2.5

³⁸ GS POE para 5.23-5.25

³⁹ ID8

104. In terms of other aspects of the relationship between Buntingford and the proposed development, the Council treats the A10 as a defensible boundary to growth. However, Ms Jones' research demonstrates that this was not its intention. Nor is this its effect on the ground given the existence of Buntingford Business Park and the Council's proposed extension to it in allocating BUNT 3. There is an existing pedestrian bridge across the A10 and visual connection at the developed roundabout between the A507 and A10 and between the appeal site and Buntingford that is particularly evident from the north east of the Site.
105. Mr Browne described the appeal site as performing an important role in the transition between the existing urban area of Buntingford and the countryside beyond. However, it is part of a transitional landscape and of (agreed) medium value. Mr Browne agreed the Site is "adjacent" to Buntingford and Ms Jones described the Site in her oral evidence as the "transient edge" of Buntingford. This is important in the context of NPPF policy S5(1)(j) (a matter returned to below).
106. In addressing "physically well related" it was notable that Mr Browne placed considerable emphasis on perception – which is not accepted to be a relevant component of being physically well related.
107. Further, Mr Browne's oral evidence on this topic was that his main reason that the site was not "physically well related" was "*land use, agricultural land not part of settlement, physical separation of the A10, lack of development on site itself, open not perceived as part of urban area*".⁴⁰ Land use cannot be a defining characteristic for S5 given that by its nature this refers to extensions beyond existing settlements where "settlement" is defined in the Glossary as "*Include[ing] cities, towns, villages and other predominantly built-up areas, including land which is allocated or has permission for development which will form part of the built-up area once the development is complete...*"
108. The policy therefore applies to land which is not part of a built up area, is not allocated and does not have permission. Its existing agricultural land use is therefore nothing to the point – the vast majority of sites beyond existing settlement extents and to which S5 is intended to apply will be in a rural or countryside use and which, critically, are not part of the built up area. The policy is not restricted to previously developed land and is intended to permit growth on unallocated and undeveloped land outside of existing settlements. As such, Mr Browne's assessment misses the mark.

⁴⁰ As noted on day 1

109. Instead, Ms Jones' assessment should be preferred – there is intervisibility between the settlement and the Site and post development there will be visibility of the scheme from the A10 and from the western edge of Buntingford. Notably, this edge is expanding with new development consented and under construction. The development of BUNT 3 if it came forward would also extend an urban influence over this part of the Site. Ms Jones also pointed out that there is no intervening countryside between the settlement edge and the proposed development.

110. Mr Blair addressed the physical connections between the development and Buntingford and this is a matter we return to below.

111. In relation to visual impacts of the appeal scheme more generally, the users of footpaths crossing the site will plainly experience the largest change. However, the landscape witnesses broadly agreed that visual effects are primarily confined to the area closest to the Site with most notable effects within 1km or less and reducing substantially beyond that distance. Existing rights of way are maintained within the site and can be extended, as shown on the illustrative layout, to form a circular route around the proposed country park whilst maintaining access to the wider countryside beyond⁴¹. The Council has not alleged that any particularly important views would be lost altogether.

112. The greatest visual effects are within 0.5km and effects can therefore properly be described as localised and contained rather than spread across a wider landscape – there are no long distance significant effects.

113. In summary, the scheme complies with relevant policies. DES2⁴² asks that development demonstrate how it “conserves, enhances or strengthens the character and distinctive features of the district’s landscape”. The proposal achieves this by responding to the area’s topography being located below the ridge line and avoiding slopes which face outwards away from Buntingford. It would not fundamentally alter LCA 141 and respects its distinctive features.⁴³ The scheme contributes positively to the published strategy for managing change by creating new woodland, hedgerows and ponds.⁴⁴ Therefore, where it is able to do so it does contribute positively to conserving and enhancing the area. Mr Browne’s

⁴¹ See CD 2.6

⁴² CD5.1 pdf p.235

⁴³ Listed at para 3.1.10 of Ms Jones’ proof.

⁴⁴ See NJ POE para 3.1.12 and CD 9.1

view to the contrary is likely born out of his refusal to accept any positive or even mitigating effects of the proposed planting and landscaping.

114. HD2 in the Neighbourhood Plan⁴⁵ requires new housing proposals to be “sensitive” to the landscape. No issue is taken by the Council in relation to heights. The reference to conserving, enhancing and strengthening present in DES2 is also referred to here. For the reasons set out above, these policies are not offended.

115. It should also be noted that these policies could not properly be interpreted requiring no permissible harm to landscape. To require “no harm” would be contrary to the balanced approach of the NPPF. As such, the plan must anticipate a degree of harm being balanced against the introduction of positive features where appropriate for the form of development proposed, as is achieved in spades here with the introduction of c.25ha of open space.

116. It follows that the policies of the more balanced NPPF are also satisfied. N2.1a asks that landscape character and natural beauty (amongst other things) is “considered” and that opportunities to conserve or enhance are “identified”. The appeal scheme demonstrably achieves this by identifying appropriate opportunities to strengthen character through tree and hedge planting and ponds. It is clear that the scheme considers and respects the positive elements of the landscape character and seeks to respond to them and enhance where possible. This uses green infrastructure as part of the scheme to secure multiple benefits in line with N2.1e.

Main issue (iv) 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.

117. The planning obligation contains all of the provisions which the Councils consider to be necessary to make the development acceptable in planning terms, obviously without prejudice to the Council’s main case. Active travel has already been dealt with, and the education is dealt with below in relation to scheme benefits. All other aspects of the provision of necessary infrastructure are not controversial and this main issue has fallen away as a main area of dispute between the parties.

⁴⁵ CD 5.2 p.45

118. The planning obligation contains a “blue pencil” clause. There is no particular form of words required in a decision when a blue pencil clause has been included. A reasoned finding that a specified obligation is not compliant with the CIL Regulations or is otherwise immaterial is sufficient to make it clear that the clause will not take effect as regards that obligation.

Third Parties

119. Third parties addressed the inquiry on Day 1. Where matters were raised which overlap with issues addressed in the Council’s evidence, such as landscape or active travel, these are addressed substantively above. In relation to other matters raised we would comment as follows:
120. Cllr Nicholls attended on day 1 and expressed concerns in relation to ecology and a nearby chalk stream. Priority habitats including chalk rivers are plotted on p.1 of CD1.7ii, the potential connection to the river Rib via ditches is noted at paragraph 4.48 of the Ecological Impact Assessment (CD1.7i). Paragraphs 5.27-5.29 conclude that absent mitigation there is a potential for an adverse effect at local level to an onsite ditch, however, in paragraphs 5.30-5.33 it is explained that through standard pollution control measures secured by a CEMP and a LEMP there would be no significant residual effects.
121. In relation to water supply and sewage treatment, Thames Water has confirmed that it does not object to the development subject to the imposition of a condition requiring confirmation that necessary upgrades to foul drainage infrastructure have been completed. This is included at Condition 30.
122. Cllr Nicholls also raised an issue relating to air quality – an air quality assessment has been undertaken (CD1.24) which concludes that the Site is not within an air quality management area and the overall impacts are judged not to be significant (see paragraphs 4.9 and 4.13) and the proposed location was considered to be reasonable in relation to health impacts and better than much of England (paragraph 4.12).
123. Mrs Russ was concerned in relation to the potential for HGV movements through Throcking and a potential for the construction of the roundabout on the A507 to require closure of the A507 and for all traffic to therefore be diverted through Throcking. Mr Duffy explained that this would be controlled by a CTMP and it would be unlikely that there would be any need for a full closure of the A507, noting that the roundabout could be constructed in

two halves with part of the carriageway remaining open at all times. A CTMP would also govern construction traffic routing and would be subject to Council approval.

Main issue (v): Given policy S5 of the NPPF 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 those 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.

124. Policy S5 is applicable to the appeal site as it is agreed that the site lies outside the settlement of Buntingford. The Appellant's case is that policy S5(1)(j)(i) is the applicable provision. Taking that policy in stages:

125. It is common ground that there is an evidenced unmet need for the proposed development in that the Council does not have a deliverable five year supply. That is set out in the main SoCG. Mr Hughes also accepted in XXm that there is an evidenced unmet need for affordable housing. There are thus two items of need which the Council accepts and which satisfy the requirements of the first part of policy S5(1)(j).

126. The next consideration is whether the development would be physically well-related to an existing settlement. It is to be noted that the test applies to the proposed development not to the site itself, still less the site in its present condition. That is important, because when Mr Browne addressed policy S5 in his oral evidence (not having produced an updated proof to address the issue in writing) his evidence was replete with references to the present condition of the site (its open undeveloped nature etc). He took the wrong approach. The NPPF does not define "physically well-related". That is an untechnical expression which does not admit of elaboration and the temptation should be resisted to interpret it by analogy. It means what it says. Clearly, some aspects of the landscape and visual evidence will be relevant to the question, as will the evidence about the connections and possibilities for movement between the development and the existing settlement. Mr Stephens expressed some doubt as to whether highways safety issues are relevant, but the safety issues in this case are, in fairness to the Council, related to how well related the proposed development would be to the existing settlement via one of its four active travel routes.

127. For the reasons given in relation to the main issues above, the Appellant submits that it has been clearly shown that the proposed development would be well-related to the existing settlement, having regard to the relevant aspects of the landscape and visual evidence, the highway safety evidence, the connectivity and the accessibility evidence.

128. The Council does not allege that the appeal scheme would be of a scale that cannot be accommodated taking into account the existing or proposed availability of infrastructure. The second part of S5(1)(j)(i) is satisfied.

129. Policy S5(1)(j)(ii) is irrelevant in this case.

130. The next consideration is that a finding that the development meets the requirements of policy S5(1)(j) means that the new version of the tilted balance at the beginning policy S5(1) is engaged in this case.

131. It is therefore necessary to identify and weigh the harms and benefits of the appeal scheme.

Harms

132. The appeal scheme would cause the following harms.

133. The appeal scheme conflicts with policies DPS2 and GBR2 of the adopted Local Plan. Those policies deserve very limited weight for the following reasons.

134. Policy DPS2⁴⁶ sets out the settlement and development strategy for the Local Plan. It does so by prescribing that development within the urban area of Buntingford will be acceptable. The corollary is that development outside the settlement boundary conflicts with the policy. Policy GBR2⁴⁷ applies to the Rural Area outside the Green Belt. The plan's glossary defines that expression as applying to all land outside settlement and outside the Green Belt, so the appeal site is covered by the policy. The policy adopts a restrictive approach to development. Only development of certain specified types, of which the appeal scheme is not one, are acceptable in principle, and only acceptable in a specific instance if their impacts on the character and appearance of the countryside are acceptable. For a scheme

⁴⁶ CD5.1 plan page 31

⁴⁷ CD5.1 plan page 42

like the appeal scheme, which falls at the first hurdle, policy GBR2 does not permit, let alone require, an assessment of landscape and visual effects. That is the role of policy DES2.

135. Policies DPS2 set out to provide development to meet the Local Plan's development requirements. Land outside the settlement at Buntingford was not then allocated because it was not then needed. The Local Plan established the settlement boundary at Buntingford. GBR2 operates in relation to those boundaries.

136. Events have changed since the plan was adopted. It set out to deliver homes at an annual rate of 839, or a total of 18,458 homes over the plan period 2011 to 2033. The agreed local housing need that is now applicable to calculating requirement and supply is now almost 1.5 times higher at 1,237 homes per annum⁴⁸. As against local housing need, the Council does not have a 5 year supply. Its figure (which the Appellant does not accept) is that it has a 2.88 year supply, a shortfall of 2,756 homes against the five year requirement⁴⁹.

137. The Council was found to have a "modest" shortfall against five year supply in a decision letter issued in January 2023 after a hearing in December 2022, when it had been claiming a 5.8 year supply⁵⁰. There is no evidence that the Council has regained a five year supply at any stage since, given the application of LHN. The supply position has now got much worse on the Council's own figures. The Council has not made any claim that it will regain a five year supply in advance of adopting a new Local Plan and that is not expected to occur until April 2029 on the Council's own Local Plan timetable⁵¹. The evidence before the inquiry is therefore that the Council has been without a five year supply since at least December 2022 and is unlikely to regain one before April 2029, a period of nearly 6.5 years.

138. Further, Mr Hughes accepted that he cannot say that the Council could significantly increase supply or achieve a 5 year supply without using sites that contravene the terms of policies DPS2 and GBR2. Applying those policies with full rigour would therefore frustrate the need to deliver something approaching a sufficient housing land supply.

139. All of these factors point to the weight to be afforded to policies DPS2 and GBR2 being significantly reduced. Paragraph 2 of Annex A to the NPPF provides that Development Plan policies which are materially inconsistent with national development management

⁴⁸ Mr Pycroft's proof table 1.2 on page 4.

⁴⁹ Mr Pycroft's proof table 1.2 on page 4.

⁵⁰ CD7.17 DL52 and DL60

⁵¹ CD5.20.

policies (“NDMP”) should be afforded very limited weight. The paragraph goes on to say in its final sentence that other policies should not be given reduced weight simply because they pre-date the NPPF. The paragraph is not saying that the only circumstances in which a policy can have its weight reduced is if it contravenes a NDMP. It provides that if a policy does is materially inconsistent with the NPPF, then the weight should be reduced to very limited weight. It is a policy that is about prescribing weight, not whether weight can be reduced. The final sentence would have no purpose if that was the case. A development plan policy which does not reflect local housing need⁵² and which is therefore in tension with plan making policy HO3 and which , if applied with full rigour, would restrict housing delivery and supply, is a policy whose weight can and should be reduced.

140. But policies DPS2 and GBR2 both conflict with an NDMP anyway. Neither of them admits of development to meet an evidenced unmet need where development would be physically well-related to a settlement and of an appropriate scale, as policy S5(1)(j) prescribes. The are both materially in conflict with it. Annex A paragraph 2 does apply and those policies should be afforded very limited weight. Mr Hughes would not accept as much, but he offered no cogent explanation as to why the Development Plan policies were not materially in conflict with NPPF policy S5. The consequences for Local Plans may be significant, but perhaps that is wat the Secretary of State intends in order to drive housing growth.

141. Policy HD1 of the Neighbourhood Plan adopts a similar approach of support for development within the settlement and restriction outside of it. The same arguments apply as to why that policy should attract considerably reduced weight. Indeed, the arguments are stronger as the Neighbourhood Plan was not formulated so as to be in general strategy conformity with the present Local Plan, but its 2007 predecessor.

142. Mr Hughes never made any claim that grey belt policy or the policy about well-connected stations would assist the Council to any material degree. Indeed, he never broached those topics at all in his written or oral evidence at any stage. The points emerged for the very first term as unsupported propositions put to the very last witness at the inquiry. Any claims that grey belt or the stations policy would provide any material assistance in increasing supply, let alone achieve a 5 year supply are entirely unevidenced and are ones that no Council witness has ever set out. They deserve no weight and can be disregarded.

⁵² Save in the circumstances prescribed by NPPF Annex A paragraph 3, which do not apply here.

143. The Appellant accepts that the appeal scheme would cause some landscape and visual harm through the loss of a greenfield site which would cause some adverse character and visual impacts on and close to the site. On the Appellant's case, the localised adverse character effects deserve no more than moderate weight. But those impacts would not amount to a breach of policy DES2 of the Local Plan which does not presume against any harm, but requires a more wide-ranging judgment about the impact of the scheme upon the characteristics of the District's landscape. The policy does not provide that any site specific harm points automatically to refusal of permission.

144. The NPPF takes a different approach to landscape protection than the previous NPPF. There is a reference to "*limiting development away from settlements to help safeguard the intrinsic character and beauty of the countryside*" in the objective box at the opening of NPPF chapter 4 when setting out the "S" policies. Two points can be made about that:

- a. Paragraph 10 of the NPPF is clear that the statements in the objective boxes should not be applied as policy; and
- b. The terms of policy S5 show that the Secretary of State has struck the balance between providing more development and countryside protection by, among other things, taking a more permissive approach to development which is outside a settlement but which would be physically well-related to it.

145. The approach in the "S" series of policies also helps to understand the approach in NPPF policy N2. So far as landscape and visual matters are concerned, the policy does not presume against any and all harm. It is carefully worded in part 1(a) which requires consideration of landscape character and beauty of the countryside and the identification of opportunities for those qualities to be conserved or enhanced. The contrast with the drafting of part (d) of the same paragraph, which does directly require certain natural features to be conserved and enhanced is instructive and presumably deliberate. The wording of policy N2 clearly shows that the causing of any adverse character and visual effects is not automatically a breach of policy N2. If it were otherwise, it is hard to see how many, if any, schemes which comply with policy S5(1)(j) would not conflict with policy N2. The NPPF needs to be read as a whole.

146. The appeal scheme would cause no highway safety harm. Nor would it harm accessibility but would rather promote it.

147. The appeal scheme would cause harm through the loss of BMV land. Given that the use of such land is inevitable if the Council is to deliver enough housing, that harm deserves limited weight. The weighting is agreed.

148. The appeal scheme would cause some harm to the setting and significance of the listed Holy Trinity church in Throcking. The parties agree that that harm deserves limited weight, taking into account the statutory duty in section 66 of the Planning (Listed buildings and Conservation Areas) Act 1990.

Benefits

149. The appeal scheme would bring about many and varied benefits. They are recorded in section 9 of the main SoCG.

150. Most obviously, it would deliver up to 660 homes, of which up to 396 would be much needed open market homes. As prescribed by NPPF policy HO7, substantial weight should be afforded to this benefit. The facts behind the degree and duration of the lack of a 5 year supply are relevant to the assessment of weight for this benefit particularly if, as Mr Cannon KC put to Mr Stephens, not all factors ascribed the same descriptor are actually of the same weight (a benefit could be at top or bottom end of the “substantial” category for example) and if the NPPF prescriptions of weight do not remove the need to apply planning judgement.

151. The appeal scheme would deliver up to 264 affordable homes at the policy compliant 40% rate. The unchallenged evidence of Mr Roberts shows the significant unmet affordable housing need and the affordability problem in the District. This benefit also deserves substantial weight.

152. There is an unmet need for homes for older persons as Mr Warner’s evidence shows. That too is agreed to attract substantial weight.

153. The scheme would deliver self and custom build homes. It is agreed that that should attract substantial weight.

154. Probably nothing much turns on the point, but Mr Stephens is right to address the four elements of housing provision separately. They are different types of housing responding to different needs, as identified in NPPF policy HO1, with different delivery and supply histories.

155. The appeal scheme would deliver a local centre. There is no merit in the Council's concerns that a retail facility would not be delivered. Mr Stephens' rebuttal contains a socio-economic report which shows that the proposed development's residents (ignoring pupils at a school) would have ample spending power to support a shop of the size contemplated. Mr Hughes was not able to challenge that assessment's findings. His observation on the comparator sites go nowhere as the nub of the assessment is the calculation of the available expenditure from residents, which he did not challenge. In any event, the case study in the Plunkett document⁵³ was a site of 619 homes, very similar in size to the appeal scheme. The local centre deserves the substantial weight afforded to it by Mr Stephens.
156. The Council's approach to affording the community facilities in the local centre only limited weight is misconceived because it proceeds on the basis that what is proposed is necessarily a GP surgery, when one is to be provided elsewhere. The Appellant has never confined the healthcare element to a GP surgery. There are lots of other facilities that fall within the category which could be provided. In accordance with NPPF policy HC4, the community infrastructure including healthcare deserves substantial weight.
157. The provision of new green space to meet the development's needs and wider needs also falls within the scope of policy HC4 of the NPPF. Mr Stephens' evidence shows how there are significant shortfalls of open space, parks and natural greenspace against the Council's own standards, a point Mr Hughes' did not address. These aspects of provision deserve substantial weight.
158. The appeal scheme would secure outline permission for a first school and the planning obligation would secure the land and a significant financial contribution for a specified period. Mr Hunter's evidence shows that there is a likelihood that a school will be needed because the Council's forecasts, in accordance with national guidance, only include sites which have full permission or outline permission plus reserved matters approval. There are sites in Buntingford with outline permission. The Appellant's point is simple. If those developments come forward, they will generate pupil yields which the County Council does not take account of at the present time. The Education Authority's position is that there is a low likelihood of a further school being needed. But they do not rule it out. If the need manifested itself, the appeal scheme would generate pupils when there was a shortfall of places to accommodate them. Some Appellants would take the advantage that the County

⁵³ CD5.23

Council was offering to them, but the Appellant does not consider that would be the right thing to do. It is proposing a planning obligation that would allow the LPA and education authority to be protected from the adverse consequences that would occur if the school need arose. The obligation does not just propose the reservation of land, but also the payment of a significant sum in that eventuality too. There is no reason why a need dealt with in a planning obligation should be manifest now. Safeguarding against a risk which may or may not arise, but of which there is a real prospect, is a perfectly proper material consideration. Indeed, there is no reason why a decision maker shouldn't find that guarding against that adverse risk is necessary to make a scheme acceptable in planning terms. The planning obligation is CIL compliant, should be taken into account and deserves substantial weight. It should not be disregarded.

159. The appeal scheme would deliver new sports facilities which would be oversized relative to the development-generated need. That would assist with tackling the proven shortfall in local provision. Mr Hughes affords that significant weight, Mr Stephens gives it substantial weight.

160. There is agreement about the weighting of benefits through the provision of SuDS, economic benefits, active travel and bus improvements and modest disagreement about the weighting to BNG, which need not be addressed further.

The Overall Balance

161. The appeal scheme conflicts with policies DPS2 and GBR2 of the Local Plan and policy HD1 of the Neighbourhood Plan and that can be equated with breach of the Development Plan overall. The Appellant accepts that there need to be material considerations that justify taking a decision otherwise than in accordance with the Development Plan.

162. Those material considerations exist in spades. They are found in the terms of the new NPPF, the lack of housing land supply and its consequential effects, the considerable scheme benefits and the low level of harm caused.

163. Policy S5 contains the new version of the tilted balance. If the Appellant's case is accepted that the development is physically well-related to Buntingford, then it must follow that any issue which has been taken into account in deciding that issue in the Appellant's favour cannot be brought back into play when the tilted balance is applied, as those issues

have already been addressed. In the circumstances where the requirements of policy S5(i)(j)(i) have been found to be met, only adverse effects that are not related to the by then rejected contention that the site is not physically well-related can be taken into account. In this case, they could only be:

- a. Landscape and visual issues which are not relevant to the physical relationship of the development to the settlement;
- b. The loss of BMV land; and
- c. The heritage harm to Holy Trinity church.

164. Mr Hughes accepted in XXm that those harms would not substantially outweigh the scheme's benefits. He was right to accept that.

165. It is also noteworthy that the tilted balance has changed in its terminology. "Significantly and demonstrably" has now become "substantially". That is clearly deliberate. The Appellant makes no apology for delving into the depths of the Government response to the consultation on the mineral aspects of the NPPF as their response sheds light on this issue. The response to Q104⁵⁴ explicitly sets out that the Government has chosen to use the phrase "substantial weight" throughout the NPPF for consistency and because it:

"represents the highest level of weight applied in planning policy".

166. The change from "significantly" to "substantially" is therefore deliberate and changes the degree of tilt in the tilted balance to represent the highest that it can be in favour of presumed permission. The irresistible inference is that the change to the tilted balance is a deliberate choice to make it a higher hurdle to the refusal of permission than it was before. The harms have to do more work to achieve refusal of permission than was previously the case.

167. The application of the tilted balance in the NPPF points decisively to the grant of permission once it is concluded that the development falls within the scope of policy S5(1)(j)(i) of the NPPF.

⁵⁴ CD5.33 document page 73

168. As for the second part of the main issue, the Appellant has put its case that policy S5(1)(j) is satisfied. The outcome of the reversed tilted balance would be critically dependent upon the basis upon which it was found that part (j)(i) was not met. For example, a finding that the Toucan would be unsafe would undoubtedly carry more weight than a finding that the scheme just failed to be well-related for landscape reasons. But the scheme benefits would be the same and would still be powerful indicators for permission. As policy S5(4) reverses the tilted balance but still uses the word “substantially” the Appellant has to recognise the hurdle that the word suggests exists, as explained above. Policy S5(4) seems to imply that the exceptional circumstances exist when the reversed tilted balance is satisfied, rather than requiring (i) a search for something that is exceptional and (ii) that the reversed tilted balance is satisfied.

Conclusion.

169. The appeal scheme is much needed sustainable development which would bring many considerable benefits and would assist with housing delivery and the delivery of other beneficial development. It should be allowed to proceed in the public interest.

170. The Appellant asks for the appeal to be allowed.

MARTIN CARTER KC
STEPHANIE HALL
Counsel for the Appellant
18th September 2026

Kings Chambers
Manchester – Birmingham - Leeds.