

[REDACTED] BA (Hons) MA

Proof of Evidence

Appeal by Wain Estates (Land) Ltd

Land north of Wilderness Lane, Great Barr

PINS ref: APP/G4620/W/24/3341688

LPA ref: DC/24/68822

June 2024

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[Redacted]
[Redacted]

Client
Wain Estates (Land) Ltd
Our reference
HIMQ3001

June 2024

1. Introduction

Qualifications

- 1.1 My name is [REDACTED]. I am a Director and head of Planning Midlands at Turley Associates (trading as 'Turley') in the company's Midlands offices in Birmingham and Nottingham. I am instructed to present evidence to this Inquiry on behalf of Wain Estates (Land) Ltd ('Wain Estates') (the 'appellant'). I hold a Bachelor of Arts (with Honours) degree in Town Planning from Newcastle University and a Master of Arts in Urban Design from Birmingham City University.
- 1.2 I am a member of the Royal Town Planning Institute. I have over 15 years' experience working in planning, 14 years of which have been as a planning consultant at Turley, Barton Willmore (now Stantec) and Fisher German. Prior to that I worked at Durham County Council. My experience includes providing planning advice for residential, mixed use and commercial development for a range of clients including housebuilders, landowners, funds, and land promoters.
- 1.3 The evidence which I have prepared and provide for this inquiry is true and has been produced in accordance with the guidance of my professional institution. I confirm that the opinions expressed are true and professional opinions.
- 1.4 I have acted for the appellant in respect of the appeal site since December 2015. I am very familiar with the site, the relevant planning policies, as well as the circumstances and material considerations affecting the determination of the current appeal.

Proof of Evidence

- 1.5 My Proof of Evidence relates to an appeal by Wain Estates against Sandwell Metropolitan Borough Council's decision to refuse an outline planning application for residential development on land to the north of Wilderness Lane, Great Barr (the 'appeal site'). The description of development as agreed at the CMC is as follows:

"Up to 150 new dwellings (including 40% affordable housing), a countryside park and associated works"

- 1.6 My Proof of Evidence considers the two reasons for refusal set out in the decision notice dated 17 January 2024 (**CD5.1**) and at section 1 of the Statement of Common Ground ('SoCG') agreed on 31 May 2024, and draws on the evidence of:
 - [REDACTED] – landscape and visual, and Green Belt
 - [REDACTED] – ecology
 - [REDACTED] – supply
 - [REDACTED] – affordable housing

Scope of evidence

- 1.7 My evidence addresses the question of whether the appeal proposals are acceptable in principle when assessed against the relevant policies at local and national level.
- 1.8 I also deal with the material considerations and benefits relevant to the appeal proposals.

The appeal site and proposals

- 1.9 A broad description of the site is included at section 2 of the SoCG and the appeal proposals are set out at section 3 of the SoCG.
- 1.10 As part of this appeal approval is sought for the following plans:

Plan Name	Plan Ref	Author	Date
Site Location Plan	9364-FPCR-XX-ZZ-DR-L-0009-P03	FPCR	20/06/2023
Development Framework Plan	9364-FPCR-XX-ZZ-DR-L-0010-P10	FPCR	27/07/2023
Building Heights Parameter Plan	9364-FPCR-XX-ZZ-DR-L-0013-P01	FPCR	25/08/2023
Access Plan General Arrangement	07381-CI-A-0001 Rev P02	PJA	25/08/2023

Structure of evidence

- 1.11 The Proof is structured as follows:
- Section 2 – summary of the development plan
 - Section 3 – my assessment of whether the appeal proposals comply with the development plan
 - Section 4 – my assessment of other material considerations
 - Section 5 – summary of third party responses
 - Section 6 – undertaking of the overall planning balance
 - Section 7 – summary and conclusions

2. The development plan

- 2.1 Pursuant to section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for determination of this appeal is the development plan. In this case the development plan (as agreed in the general SoCG at section 4) for the appeal site comprises the:
- Black Country Core Strategy (February 2011) ('BCCS') (**CD2.1**)
 - Sandwell Site Allocations and Delivery Development Plan Document (December 2012) ('SAD') (**CD2.5**)
- 2.2 The BCCS and SAD have not been reviewed within five years of their adoption, as required by National Planning Policy Framework¹ ('NPPF') (December 2023) (**CD2.3**). The BCCS is the strategic 'part 1 plan', with the SAD being the subservient 'part 2 plan' which provides greater detail on matters such as site delivery, as set out at paras 1.4 to 1.8 of the SAD. The strategic BCCS was also adopted before the first NPPF was published in March 2012.
- 2.3 NPPF para 225 is clear 'due weight' should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).
- 2.4 From the outset it is important to understand that the NPPF, in all its different versions, continues to represent a 'radical change' in national planning policy compared to before its first publication, as has been confirmed in the courts².
- 2.5 My view is that the NPPF provides a far reaching departure from the more restrictive and cautious approach to planning control that existed for a number of years before its publication, which is amongst the contributing factors to the housing crisis we face today. Instead the NPPF requires a more positive approach to decision taking (NPPF para 38).
- 2.6 The NPPF was prepared to support a pro-growth agenda. This is clear from the tone and content of the NPPF (in all its versions), and in particular this comes out clearly from the sections relating to housing provision. This is best demonstrated by the NPPF's objective to 'significantly boost' the supply of homes (NPPF para 60).
- 2.7 Sandwell's development plan is fundamentally inconsistent with the NPPF and the radical change in planning it seeks to achieve.
- 2.8 Firstly, the BCCS proposes a supply based on capacity which is presented as a 'housing requirement', it includes no reference to the evidence which would establish a need at

¹ Para 33

² Solihull MBC v Gallagher Estates Limited and Lioncourt Homes ([2014] EWCA Civ 1610) (**CD4.15**)

that time. The Inspector's Report to the BCCS (**CD2.2**) confirms at bullet IX of the preamble³ that:

"Although the housing requirement for the BC was set out in the WM RSS, it was based on joint evidence from the Councils on the area's capacity to accommodate growth".

- 2.9 The BCCS clarifies at para 2.8 that this capacity based approach is identified through the Councils' Strategic Housing Land Availability Assessments ('SHLAA'), the Black Country Employment Study and an estimate of likely housing renewal during the plan period.
- 2.10 The BCCS' entire spatial strategy is therefore predicated on an artificially lower 'housing requirement' which was based on a capacity led approach alone, contrary to NPPF paras 23 and 35a).
- 2.11 Secondly, despite the above, at the point of Sandwell adopting its SAD, both plans together (along with other Area Action Plans adopted at the time) were not capable of meeting the BCCS' artificially lowered 'housing requirement' up to the end of the plan period in 2026 (i.e. just under two years time).
- 2.12 The Inspector's Report to the SAD (**CD2.6**) is clear from the outset⁴ that the Council was not able to identify sufficient sites to meet the BCCS' requirement:
- 2.13 *"Residential targets can only be met by redeveloping areas in employment use. The Council is not confident it can accurately gauge which sites will be needed after 2021 because of the 'unprecedented scale of change' envisaged in the BCCS".*
- 2.14 It goes on to state at para 18 that:
- "...overall there is a lack of clarity in relation to post 2021 planning which needs to be addressed".*
- 2.15 In response, the Inspector's Report to the SAD⁵ is clear that a review of the BCCS strategy (or other replacement plan) will be required in 2016, triggering a review of the SAD, in order to affect a transition to post 2021 planning.
- 2.16 This is reflected in the final version of the SAD, which covers the plan period up to 2021 only. It states that the 'definition in detail'⁶ of the post 2021 allocations will:
- "...follow immediately after the review of the BCCS programmed for 2016".*
- 2.17 Thirdly, in any case, the RSS Phase 2, which the BCCS aligned with, was published in September 2009, almost 15 years ago. Therefore the RSS Phase 2 was published (as was the BCCS) before the first version of the NPPF in March 2012. As referenced above, the NPPF represents a 'radical change' to national planning policy compared to before its publication. Neither the RSS Phase 2 housing figures nor the BCCS respond to this need

³ p6

⁴ Para 15, p6

⁵ Para 19, p7

⁶ Para 1.7, p3

for a radical change in how we plan, including significantly boosting the supply of new homes.

- 2.18 Fourthly, the development plan is out of date having regard to footnote 8 of the NPPF in the context of the housing land supply and the Housing Delivery Test ('HDT'). It is common ground the Council can only demonstrate a 1.4 year housing land supply, and the HDT results 2022 (**Table JRT4** of Mr Richards' Proof) show the Council's score as **47%**. This puts Sandwell amongst the 15 worst scoring authorities in England (within that group it is only one of two authorities outside the South East). It is therefore common ground that the presumption in favour of sustainable development is triggered by both its HDT and housing land supply positions.

Summary on development plan

- 2.19 Therefore, overall the development plan is not consistent with the NPPF and out of date on the basis that:

- The BCCS' entire spatial strategy is predicated on an artificially lower 'housing requirement' which was based on a capacity led approach alone and not objectively assessed needs, contrary to NPPF paras 23 and 35a).
- No review of the BCCS has been undertaken despite it being made clear in the SAD Inspector's Report (published only 19 months after the adoption of the BCCS) that neither the SAD nor BCCS' strategy are capable of meeting the plan's artificially lowered 'housing requirement' up to the end of the plan period in 2026.
- The BCCS, and the basis for its 'housing requirement', the WM RSS Phase 2, both came before the NPPF was first published in March 2012, which represented a 'step change' in national planning policy, including a requirement to now significantly boost the supply of housing.
- In any case, by virtue of the Council's HDT score of 47% and housing land supply of 1.4 years, the presumption of triggered.

- 2.20 Overall, it was clear the BCCS' spatial strategy was going to fail at the point Sandwell adopted its SAD in December 2012 and that is how it has played out in reality.

- 2.21 As **Table JRT1** of Mr Richards' Proof demonstrates, apart from the first two years (2006-2008) of the plan period (which were retrospective figures given the BCCS was not adopted until 2011), the Council has in all years (except one year in 2014/15) failed to meet its minimum housing requirement based on the BCCS policy HOU1 annual target. **Table JRT2** of Mr Richards' Proof demonstrates that if the BCCS requirement were to be annualised across the plan period as a whole (1,074 homes), the Council has failed to meet that requirement in any year since the beginning of the plan period.

- 2.22 We are now over 11 years on from that point, and we still have no updated strategy to meet the BCCS' artificially lowered housing requirement, yet alone Sandwell's most up to date housing needs, which represent a 'radical change' following the introduction of the NPPF. To provide some context, the BCCS' annualised housing requirement for

Sandwell is 1,074 homes, whilst the more up to date local housing need for the borough is now 1,550 homes (an additional 476 homes per annum).

- 2.23 I am clear that in the absence of an up-to-date plan-led system within an area constrained by Green Belt, there is only going to be a further worsening of housing delivery for the foreseeable future, as evidenced by the woeful housing land supply position in Sandwell, which continues to deteriorate year on year, despite the Council's efforts to improve the position via Housing Delivery Test Action Plans (which I reflect on further at **Section 4** of my Proof). This has created Sandwell's own housing crisis. Overall, there is no alternative but to deliver new homes on Sandwell's Green Belt, which I discuss further at **Section 4** of my Proof.
- 2.24 I am also clear that the most important policies for determining this appeal are not only deemed out of date through reference to NPPF footnote 8, they are also fundamentally out of date too, being based on a strategy that did not even meet the needs known at the time the plan was first adopted, let alone the needs of present and future generations. In any case, the BCCS was prepared in an entirely different planning policy context than which applies today.
- 2.25 The result of the above reduces the weight to be afforded to any conflict with development plan policies, which I reflect on further at **Section 3** of my Proof.
- 2.26 For the purpose of this appeal, taking the Council's delegated report and alleged harms, I consider the following policies to be the important policies in determining this appeal:
- BCCS policy CSP2 (development outside the Growth Network)
 - BCCS policy CSP3 (environmental infrastructure)
 - BCCS policy ENV1 (nature conservation)
 - BCCS policy HOU1 (delivering sustainable housing growth)
 - SAD policy EO2 (Green Belt)
 - SAD policy H2 (housing windfalls)
- 2.27 I assess these policies and whether the appeal proposals comply with the development plan as a whole at **Section 3** of my Proof.

3. Compliance with the development plan

- 3.1 In this section I provide my assessment of the appeal scheme's compliance with the development plan. Whilst I have carried out this detailed assessment of compliance, ultimately the determinative test in this appeal is whether the benefits clearly outweigh the harms, in line with NPPF para 153.
- 3.2 The proposals are in conformity with the majority of the relevant policies contained in the different parts of the development plan. I cover those of most relevance to the determination of this appeal in my evidence below.
- 3.3 For the majority of the relevant 'technical' considerations affecting the acceptability of the appeal proposals there is no difference between the parties. Therefore a significant number of the relevant development management policies have been satisfied.
- 3.4 For example, as agreed in the general SoCG, there are no technical objections in relation to highways impacts, flood risk and drainage, heritage and archaeology, arboriculture, air quality, and land contamination.

SAD policy EOS2 (Green Belt)

- 3.5 Although not referred to in the decision notice, the officer's delegated report (**CD5.2**) refers to conflict with the policy.
- 3.6 SAD policy EOS2 states that within Green Belt, inappropriate as defined in Planning Policy Guidance 2: Green Belts (PPG2) (January 1995) will not be permitted, except in very special circumstances, where the harm of the development is clearly outweighed by other considerations.
- 3.7 Notwithstanding the most important policies in determining this appeal are out of date, as the test at SAD policy EOS2 largely mirrors the test at NPPF para 153, I do consider the policy to be broadly consistent with the requirements of the NPPF.
- 3.8 This includes the list of what would be appropriate development in the Green Belt (although the list at NPPF para 154 is more extensive than the list at paragraph 3.4 of PPG2). In both cases, the appeal proposals would represent inappropriate development.
- 3.9 I consider this to be the key development plan policy test, but as identified above, the key test in relation to this appeal is NPPF para 153 and whether the benefits clearly outweigh all harms.
- 3.10 By finding that the appeal proposals' benefits clearly outweigh all harms and compliance with this part of the NPPF (as I set out at **sections 4 and 5** of this Proof), consequently they also comply with the test set out at SAD policy EOS2.
- 3.11 Accordingly, I consider the appeal proposals to be compliant with SAD policy EOS2.

BCCS policy HOU1 (delivering sustainable housing growth)

- 3.12 Although not referred to in the decision notice, the officer's delegated report (**CD5.2**) refers to conflict with the policy.
- 3.13 The policy identifies that sufficient land will be provided to deliver at least 63,000 net new homes over the period 2006-2026. The majority of this is to be met through committed sites and the phased allocation of sites within Regeneration Corridors, Strategic Centres, appropriate free-standing employment sites and housing renewal areas.
- 3.14 Beyond the above, additional housing capacity will also be sought elsewhere through allocations and planning permissions on suitable sites.
- 3.15 The policy is specific that at least 95% of new housing will be built on previously developed land.
- 3.16 The policy does not explicitly state that land in the Green Belt cannot contribute to the borough's housing needs, which follows given SAD policy EOS2 largely mirrors the test at NPPF para 153 and allows for a judgement to be made on whether the benefits of development in the Green Belt clearly outweigh the harms.
- 3.17 Firstly, the policy accepts that 'suitable sites' outside of allocations in the plan will be necessary to meet the plan's 63,000 new home target. Furthermore, the policy accepts that these sites which are not previously developed land will be needed to meet the BCCS housing requirement.
- 3.18 As such the test as to whether the appeal proposals accord with BCCS policy HOU1 is whether the appeal site represents a 'suitable site'. As demonstrated by the evidence submitted to this appeal and in my Proof, the benefits clearly outweigh the harms, therefore the appeal site represents a 'suitable site' and accords with policy HOU1.
- 3.19 Notwithstanding this, as set out at **Section 2** of my Proof, the housing requirement established by the policy has been artificially lowered as it is not based on any objective assessment of housing need as required by NPPF para 35a), instead it reflects a capacity led exercise. Furthermore, it is intended to align with the RSS Phase 2, and sits within a plan that was adopted before the NPPF was first published in March 2012.
- 3.20 As set out at **section 2** of my Proof, the urban focused strategy referred to within the policy was already off course in terms of delivering Sandwell's artificially lowered housing needs at the point the SAD was adopted in December 2012, hence the need for a review of the BCCS to be in place by 2021.
- 3.21 With no review in place and no allocations plan in place to deliver the borough's housing needs beyond 2021, the strategy remains well off course and incapable of meeting the BCCS' housing requirement, let alone Sandwell's up to date local housing need (a 476

home per annum increase on the BCCS' requirement). The Council admits as much in the draft Local Plan (CD3.1) published for consultation in 2023⁷:

*"The most immediate issues both Sandwell and the Black Country are facing is that both their population and economy are continuing to grow and as a result there is a need to identify additional housing and employment sites. **This demand is now beyond the capacity of the existing Strategy to address**".*

- 3.22 Overall, the strategy is incapable of meeting anywhere near Sandwell's housing needs. There is no alternative strategy for meeting this need, beyond delivering homes in the Green Belt, as proposed by this appeal, which I discuss further at Section 4 of my Proof.
- 3.23 For the reasons above the policy is not only out of date but is not compliant with the NPPF. I therefore give it limited weight.

SAD policy H2 (housing windfalls)

- 3.24 Although not referred to in the decision notice, the officer's delegated report (CD5.2) refers to conflict with the policy.
- 3.25 This policy identifies that sites not specifically allocated for residential use will only be permitted if they meet certain criteria listed by the policy, which I discuss below. The policy also provides separate criteria as to when residential uses are proposed on unallocated greenfield land.
- 3.26 Firstly, the first criterion in the first list is read as only seeking to test the suitability of development proposed on previously developed land (i.e. it does not apply to greenfield), as opposed to resisting any residential development not on previously developed land. If it were the latter, it would conflict with the second list within the policy, which tests when residential development would be acceptable on greenfield land. The latter would also conflict with BCCS policy HOU1, which is clear development not on previously developed land will be required, to meet the BCCS' housing needs.
- 3.27 Given the above and reading the policy alongside BCCS policy HOU1 and SAD policy EOS2, there appears no explicit reason why land in the Green Belt should not be considered against the criteria provided.
- 3.28 I have set out in Table TA3.1 below the criteria from the first list within the policy and my assessment of the proposals against them:

Table TA3.1 Assessment of appeal proposals against first list of SAD policy H2 criteria

Criteria	Assessment
The site is previously developed land that is suitable for residential development or conversion to residential development	No conflict – the site is not previously developed, this criteria therefore does not apply.

⁷ Para 21, p13

Development of the site for housing will not lead to an unacceptable reduction in the supply of employment land	No conflict – the site will not result in the loss of any employment land.
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The use is compatible with other development plan policies	No conflict – overall, the proposals are considered to be in accordance with the development plan as a whole.
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- 3.29 The second list within the policy sets out when residential development on unallocated greenfield land will be considered acceptable. By the use of ‘or’ between each criterion, it is read as proposals must only meet one of the criterion. The proposals are assessed against the criterion in Table TA3.2 below.

Table TA3.2 Assessment of appeal proposals against second list of SAD policy H2 criteria

Criteria	Assessment
The site is not protected as community open space and is deemed low quality, low value within the Council’s Green Space Audit	Not relevant – site not considered in Council’s Green Space Audit (2019) ⁸ or subsequent Green Spaces Strategy (2022).
The site is a piece of Council-owned land that is deemed surplus to requirements	Not relevant – site is not Council-owned.
The development of the site will bring an under-used piece of land back into beneficial use	No conflict – as demonstrated at Sections 4 and 5 of my Proof, the proposals will deliver significant benefits through opening up currently inaccessible land for public use as a countryside park.
The development of the site is infill and will meet the requirements of other policies	Not relevant – the site is not infill.

- 3.30 Given the above I am therefore of the view that the proposals comply with SAD policy H2 as they will bring an under-used piece of land back into beneficial use in terms of public benefits and ecology.

BCCS policy CSP2 (development outside the Growth Network)

- 3.31 Although not referred to in the decision notice, the officer’s delegated report (CD5.2) refers to conflict with the policy. The appeal site is not located within a ‘Strategic Centre’ or a ‘Regeneration Corridor’, it is therefore located ‘outside of the Growth Network’ and BCCS policy CSP2 applies.

⁸ As confirmed at figure 22, p164 (CD6.34)

3.32 Table 1⁹ of the BCCS (CD2.1) goes on to provide an ‘indicative distribution’ for development across the Black Country between 2009 and 2026, summarised as follows for housing:

- Growth Network – 67%
- Outside the Growth Network – 33%

3.33 The table clarifies that this is based on 63,000 homes. This therefore equates to 42,210 homes in the Growth Network, and 20,790 homes Outside the Growth Network.

3.34 It is clear from the above that the spatial strategy underpinning the BCCS accepts housing will be delivered outside the Growth Network. In principle the policy therefore does not resist development in locations such as the appeal site.

3.35 The policy sets out a number of criteria which the area outside the Strategic Centres and Regeneration Corridors (i.e. the area the site sits within) should provide. In Table TA3.3 below I assess the appeal proposals against each of the criteria:

Table TA3.3 Assessment of appeal proposals against BCCS policy CSP2 criteria

Criteria	Assessment
A strong Green Belt to promote urban renaissance within the urban area and provide easy access to the countryside for urban residents where the landscape, nature conservation and agricultural land will be protected and enhanced where practical and possible	Minor conflict – as discussed at Section 4 of my Proof the proposed countryside park will ensure currently inaccessible land is open to the public, and will be subject to a management regime that will contribute to its enhancement given its decline over recent years. This is a benefit. The proposals will however not ‘protect’ the landscape. As discussed at Section 4 of my Proof, I find there is some limited harm in terms of landscape and visual impact.
A mix of good quality residential areas where people chose to live	No conflict – proposals will be of a high quality design.
A strong network of green infrastructure, centres and community facilities	No conflict – proposals will contribute to this through the provision of the countryside park and its management regime.
Strong and seamless links to regenerated areas in Regeneration Corridors and Strategic Centres, via access and design improvements to spread regeneration benefits and ensure integration of existing and new communities	No conflict – site not in close proximity to Regeneration Corridor or Strategic Centre. Site will however benefit from nearby public transport links, providing high frequency service to Strategic Centre of Walsall.

⁹ p24

A constant supply of small-scale development opportunities	Not relevant – proposals are not small-scale.
A limited supply of large-scale development opportunities through allocations on free-standing employment sites and other surplus land	No conflict – although the proposals do not represent a large-scale opportunity on a free-standing employment site, the policy does not preclude other types of development.

- 3.36 The site is not within the areas listed where windfall developments will occur. Beyond this list, the policy does clarify that the ‘broad approach’ to development will be to focus on previously developed land, locations with best access to services and areas of lowest flood risk.
- 3.37 I read a ‘broad approach’ that is ‘focused’ is not an absolute requirement, and therefore does not preclude the appeal site, particularly as it is well located in terms of accessibility (which I discuss at **Section 4** of my Proof) and it is in an area of lowest flood risk.
- 3.38 Overall, I do find some minor conflict with BCCS policy CSP2 insofar that the proposals will not ‘protect’ the landscape (see **Table TA3.3¹⁰**).
- 3.39 Mr Holliday also concludes that the site does not represent a valued landscape, which I agree with. National policy therefore does not afford any ‘protection’ of the landscape the site sits within. Instead, at para 180b), it states that decisions should contribute to and enhance the natural and local environment by ‘recognising’ the intrinsic character and beauty of the wider countryside.
- 3.40 For the above reason I find BCCS policy CSP2 is not in accordance with national planning policy and therefore give it limited weight. In any case, the policy is based on a spatial strategy which is no longer capable of meeting the borough’s needs.

BCCS policy ENV1 (nature conservation)

- 3.41 Although not referred to in the decision notice, the officer’s delegated report (**CD5.2**) refers to conflict with the policy.
- 3.42 The policy states that development is not permitted where it would harm internationally and nationally designated conservation sites, including SINC. The movement of wildlife through both linear habitats (e.g. wildlife corridors) and the wider urban matrix (e.g. stepping stone sites) is not to be impeded by development. Species which are legally protected, in decline, or rare within the Black Country, will not be harmed by development.
- 3.43 The site is wholly within the Peak House Farm SINC. I deal with the impact of the proposals on the SINC at **Section 4** of my Proof. In summary, the proposals will result in the partial loss of the Peakhouse Farm SINC to built development.

¹⁰ p11

- 3.44 Built development would however be focused to areas of relatively low quality, with other parts of the site which are to be retained of higher quality. There would also be some limited removal of hedgerow.
- 3.45 Mr Goodman concludes at para 10.11 of their Proof that the proposals represent no more than **low level harm** prior to mitigation. When balanced with the maximised retention and enhancement of natural habitats, and a 20% net gain is provided, the proposals do not result in the loss of irreplaceable habitat. Mr Goodman therefore finds that the proposals “*follow the overarching requirement of Policy ENV1*”. No other adverse impacts on biodiversity have been identified.
- 3.46 I agree with Mr Goodman’s conclusions and therefore find that the proposals accord with BCCS policy ENV1.
- 3.47 Even if conflict were to be found with this policy, I do not consider it to be up to date by virtue it does not accord with national policy. NPPF para 186 advocates for a hierarchical approach to managing and mitigating any biodiversity impacts. I find at **section 4** of my Proof that the appeal proposals comply with NPPF para 186. I therefore afford the policy limited weight.
- 3.48 Furthermore, if conflict were to be found, then I consider the Inspector’s findings to the two separate Purton Road, Swindon appeal decisions (**CD4.6** and **CD4.12**) would apply in any case, there the proposals would result in the partial loss of a county wildlife site (‘CWS’). There the Inspector found that the ecological benefits, including design, ecological enhancement and management measures, would reduce impacts as far as possible and appropriate compensation measures could be secured. Those ecological benefits would outweigh the loss of part of the CWS¹¹. Those benefits attracted significant weight, sufficient to outweigh the limited conflict with the relevant ecology policies, which sought to ‘protect and enhance’ biodiversity, similarly to BCCS policy ENV1.
- 3.49 As I find at **section 4** of my Proof, the ecological benefits of the proposals subject to this appeal are sufficient to attract significant weight, and following the same logic as the Purton Road, Swindon appeal decisions, would be more than capable of outweighing any conflict with BCCS policy ENV1.

BCCS policy CSP3 (environmental infrastructure)

- 3.50 Although not referred to in the decision notice, the officer’s delegated report (**CD5.2**) refers to conflict with the policy.
- 3.51 This policy states that development proposals will need to demonstrate that the strategic network of environmental infrastructure will be protected, enhanced and expanded at every opportunity. The network includes a very broad range of infrastructure, including:
- open space

¹¹ Para 45, p8 (**CD4.6**)

- sport and recreation facilities
 - areas of biodiversity and geodiversity importance
 - wildlife corridors
 - the canal network
 - watercourses and cycle routes
 - areas and buildings of high design quality
 - the special character and historic aspects of locally distinctive elements of the Black Country
- 3.52 Any development which compromises the integrity and quality of environmental infrastructure will be resisted. Development proposals will be required to improve the quality and quantity of the area's environmental infrastructure in a manner appropriate to the character and needs of the area.
- 3.53 The policy refers to the above also being achieved through the implementation of the Black Country Environmental Infrastructure Guidance Phase 2, this has never been published.
- 3.54 I have found that the proposals comply with BCCS policy ENV1. Beyond this, as set out at **section 4** of my Proof, the proposals include ecological benefits sufficient to attract significant weight in the planning balance. This includes focusing built development on the areas of relatively low quality, and retaining the areas of higher quality, providing the necessary mitigation, and implementing a programme of enhancements to ensure the quality of the remaining fields within the SINC are improved, potentially returning them to a quality more akin to their SINC status, and halting the evidenced decline in the quality of the SINC since its designation in 2019.
- 3.55 I consider that the appeal proposals would contribute to the borough's environmental infrastructure, particularly through the delivery of the new countryside park, they therefore comply with BCCS policy CSP3.

Compliance with the development plan as a whole

- 3.56 In applying section 38(6) it is necessary to have regard to the accordance of the proposals with the development plan as a whole. The R. v Rochdale Metropolitan Borough Council ex p. Milne (CO/292/2000) (July 2020) judgment ¹² (**CD4.16**) is clear that:

"...it is enough that the proposals accord with the development plan considered as a whole. It does not have to accord with each and every policy therein".

¹² Para 50

- 3.57 I do find some minor conflict with BCCS policy CSP2 insofar that the proposals will not 'protect' the landscape. However I find the policy does not accord with national planning policy and therefore afford it limited weight.
- 3.58 My assessment of compliance with SAD policy EO2 is on the basis the benefits clearly outweigh the harms such that the test at NPPF para 153 is passed. By applying SAD policy EO2, I consider that by finding a positive outcome against this overall planning balance test (which is the case in this appeal), that is sufficient to amount to compliance with the development plan taken as a whole, the minor conflict I find with BCCS policy CSP2 is not sufficient to outweigh this. I find SAD policy EO2 complies with national planning policy.
- 3.59 If that approach is not accepted and conflicts with certain policies are found, that does not automatically mean a failure to comply with the development plan as a whole. Instead, a judgement will need to be made as to the weight to be given to that policy, the extent of the conflict and the importance of that policy in the consideration of the development proposals.
- 3.60 Finally, even if I was found to be wrong in relation to compliance with the development plan when taken as a whole, its policies should largely be afforded limited weight given it is based on a spatial strategy which is out of date and is incapable of meeting the borough's housing needs, at a time when the borough is suffering from an acute housing crisis and there are no alternative options available.

4. Other material considerations

4.1 The following other material considerations are relevant to this appeal:

- Sandwell's need for an up to date plan
- The need for market housing and housing land supply
- The need for affordable housing
- The emerging local plan
- Park House Farm SINCE and biodiversity
- New countryside park
- Green Belt
- Landscape and visual
- Heritage
- Air quality
- Locational accessibility
- Economic benefits

4.2 It is common ground that the NPPF is a material consideration in the determination of this appeal. The NPPF includes a range of policies relevant to the appeal proposals and the Council in its reasons for refusal reference conflict with specific aspects of it. I discuss the application of the NPPF in terms of each of the material considerations relevant to the site below.

Sandwell's need for an up-to-date development plan

4.3 NPPF para 33 is clear that policies in local plans and spatial strategies should be reviewed to assess whether they need updating at least once every five years. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly.

4.4 Similarly PPG echoes the importance of having an up-to-date plan. It states that:

"Under 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every five years from their adoption to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every five years. Reviews should be proportionate to the issues in hand".

4.5 It goes on to say:

“There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of five years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible”.

- 4.6 As set out at **section 2** of my Proof, the BCCS was adopted over 13 years ago, before the NPPF was first published in March 2012. Its entire spatial strategy is predicated on an artificially lower ‘housing requirement’ which was based on a capacity led approach alone and not objectively assessed needs. No review of the BCCS has been undertaken despite its age and Sandwell’s SAD Inspector’s Report identifies that neither the SAD nor BCCS are capable of meeting Sandwell’s artificially lowered housing requirement up to 2026¹³.
- 4.7 In not having an up to date plan in place, Sandwell has failed to meet the requirements of the SAD examining Inspector from nearly 12 years ago, the requirement of national policy (NPPF 2023, para 33) and legal requirements (regulation 10A of the Town and Country Planning (Local Planning) (England) Regulation 2012).
- 4.8 This is an appalling situation for an authority area that’s own emerging local plan acknowledges is *“...predicted to grow at a faster rate than both the population of the West Midlands and the national average and is forecast to increase by 30,000 between 2016 and 2030. The area is the second-most densely populated local authority area across the West Midlands (after Birmingham)”*¹⁴.
- 4.9 Sandwell is now progressing a new local plan following the joint Black Country Plan being abandoned in November 2022, this will not be adopted until December 2025 at the earliest (as I discuss further below in this section of my Proof). This plan currently has no weight and is more than a year away, at best.
- 4.10 The NPPF makes clear that the planning system should be genuinely plan-led¹⁵, and having regard the Green Belt constraints in the borough which applies to all land beyond the built-up areas, it is plain that given the acute nature of Sandwell’s housing crisis, there is no alternative to land being released from the Green Belt sites if the borough is going to come anywhere close to meeting its housing needs.
- 4.11 I am aware NPPF para 145 relating to reviewing Green Belt boundaries has been revised in the last version of the NPPF. This is however not a matter for the determination of this appeal, but for plan making. This is not a new approach, the NPPF has never included a requirement to review and amend Green Belt boundaries, it simply clarifies the matter. Indeed the Secretary of State for Levelling Up, Housing and Communities’ speech on 19

¹³ Para 19, p7 (CD2.6)

¹⁴ Para 36, p17 (CD3.1)

¹⁵ Para 15

December 2023 to announce the publication of the updated NPPF said the following in relation to para 145:

“But let me be clear. While this is a more robust assertion of previous principles and protections, it is not a route to the evasion of responsibilities. Local authorities must provide rigorous evidence justifying their departure from assessed housing need, they must do everything to identify other land suitable for development, and while the Planning Inspectorate will respect well-made cases, it will not accept under-shooting that is not firmly rooted in environmental or other safeguards. This is about sensitive adjustment in meeting targets, not their abandonment”.

- 4.12 I am therefore of the view that the NPPF does not prevent a review of Green Belt boundaries and if a strategy were proposed avoiding any such review, this would require ‘rigorous evidence’ to be justified if it would result in a clear shortfall against objectively assessed housing needs.
- 4.13 Any review of the Green Belt would have to be balanced against the NPPF’s clear objective to significantly boost the supply of new homes and meet needs. The NPPF states that strategic policies should, as a minimum, provide for objectively assessed needs (para 11b) and local plans should provide “...a framework for **meeting** housing needs” (para 15).
- 4.14 Reflecting the above, I note that the draft local plan published for regulation 18 consultation in October 2023¹⁶ proposes to deliver 11,167 new homes, leaving a 18,606 home shortfall, representing circa **63%** of the borough’s total needs. On this basis, and as I discuss further below at para 4.41, it is my view that there is no alternative for Sandwell other than to review its Green Belt boundaries to meet its housing needs, something which the emerging local plan does not propose to do.
- 4.15 In line with the objectives of national policy, I accept it would be preferable if proposals such as this appeal scheme could be managed through the plan-making process but considering the wider bleak context I have outlined, with no realistic prospect this will be remedied soon, it is necessary to consider individual proposals such as these on their merits, outside of the plan-making process.

The need for market housing and the Council’s housing land supply

- 4.16 Mr Richards deals with housing land supply in his Proof. It is an agreed matter that the Council cannot demonstrate the necessary four year housing land supply (‘4YHLS’), as required by NPPF para 77. Below I focus on the need for housing across Sandwell.
- 4.17 As evidenced in **section 2** of my Proof, the BCCS was adopted before the NPPF was published in it was clear the BCCS’ spatial strategy was going to fail at the point Sandwell adopted its SAD in December 2012. We are now over 11 years on from that point and we still have no updated strategy to meet the BCCS’ artificially lowered housing requirement, yet alone Sandwell’s most up to date housing needs.

¹⁶ Para 3.13, p52 (CD3.1)

4.18 I am clear that in the absence of an up-to-date plan-led system within an area highly constrained by Green Belt (as discussed further below), there is only going to be a further worsening of housing delivery for the foreseeable future, as evidenced by the woeful housing land supply position in Sandwell, which continues to deteriorate year on year, exacerbating Sandwell's own housing crisis.

4.19 The NPPF, which represents a 'radical change in respect of housing provision' following its first publication in March 2012, is clear at para 8 that to deliver sustainable development it is necessary to:

"...support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations...".

4.20 Para 60 states that to support the Government's objective of **significantly boosting** the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed.

4.21 NPPF para 61 does indicate that the outcome of the standard method is an advisory starting point for establishing a housing requirement for an area. This is not a new situation following the updated NPPF being published in December 2023, there has always been a provision within the NPPF to use an alternative approach for assessing housing need, where exceptional circumstances exist. This is however not a matter for decision taking and this appeal, it is to be resolved through plan-making. As such the standard method should be used to calculate the housing requirement for the purpose of housing land supply.

4.22 Above and at **section 2** of my Proof I have demonstrated that the BCCS represents an artificially lowered 'housing requirement' which does not meet the current and future needs of Sandwell's residents.

4.23 Even against this artificially lowered housing requirement, [REDACTED] Proof demonstrates the stark and perilous position Sandwell's housing land supply is in:

- Sandwell has only met the BCCS policy HOU1 phased target in three years out of 17 years of the current plan period.
- If the artificially lowered 'housing requirement' were to be annualised, Sandwell has never met its annual requirement.
- Given the above, at the current base date (1 April 2023), the level of under-delivery against the BCCS' annualised housing requirement is **8,263 homes**. This is a **serious and significant level of under-delivery**. Mr Richards concludes at paragraph 3.11 of his Proof that this is one of the worst levels of under-delivery he has seen in many years of undertaking such assessments.
- Using the Council's own evidence, [REDACTED] identifies that at the end of the plan period (31 March 2026), the Council will have under-delivered against the BCCS housing requirement by some **7,821 homes**.

- Sandwell has failed the HDT every year since its introduction. Since the introduction of the HDT in 2018, the Council's score has worsened to **47%**, the lowest it has ever been. [REDACTED] concludes that despite the implications of the HDT, including the requirement to prepare action plans since 2019, it is clear it has had little to no effect on improving housing delivery. Indeed, the Council's own Housing Delivery Test Action Plan 2024 (April 2024) (**CD6.26**) confirms the expectation Sandwell's HDT result will worsen further.
- It is an agreed matter that the Council can only demonstrate a **1.4 year housing land supply** (a shortfall of **6,693 homes**). This is clearly a serious and significant level of under-delivery and provides a further clear and compelling indication of the need for more homes, particularly on sites capable of delivering homes in the four year period.

4.24 In the absence of an up-to-date local plan it is clear Sandwell's housing delivery position will not materially improve until a new local plan is adopted, which is more than a year away, at best (I discuss the emerging local plan below). And as set out above that plan is only proposing to meet **37%** of the borough's total needs, leaving a 18,606 home shortfall between 2022-41.

4.25 Overall, there is a serious and significant housing shortage across Sandwell, which is acute and contributing to creating the borough's own housing crisis. I therefore give **very substantial weight to the delivery of new market homes** as part of the appeal proposals. This is common ground, as stated at para 7.4 of the Council's SoC, and follows the same reasoning as the Inspector's findings to the allowed Colney Heath and Elstree Green Belt appeal decisions (**CD4.8** and **CD4.19**).

4.26 In the same sentence the Council question whether that weight is sufficient to overcome harm to the Green Belt by reason of inappropriateness and other harm, as in their view there is a "*limited number of properties provided (a small number in comparison to the Council's shortfall)*".

4.27 Firstly, it is not for housing delivery alone to clearly outweigh any harms, the benefits are to be considered collectively as part of the wider planning balance, which I undertake at **section 6** of this Proof.

4.28 Secondly, the number of homes to be delivered should have no bearing on the weight to be afforded to overall housing delivery. This is reflected in the appeal decision at Calne, Wiltshire (**CD4.17**) where the Inspector found¹⁷ that whilst 28 homes represented a 'moderate' number of homes in the scale of Wiltshire's shortfall (equivalent to 927 homes, so much less than Sandwell's), it would:

"...nonetheless contribute positively in the right direction".

4.29 Overall, the scale of the scheme did not change the weight to be afforded to the delivery of market homes. Given this I am of the view that the scale of the appeal proposals does in no way impact my view that housing delivery should be afforded very substantial

¹⁷ Para 72, p13 (**CD.4.17**)

weight, particularly given the scale of Sandwell's shortfall and the clear lack of strategy to remedy it in the short term.

The need for affordable housing

4.30 [REDACTED] summarises the relevant national policy in relation to affordable housing at section 2 of his Proof. National planning policy establishes that the delivery of affordable housing remains a key national priority, it is a fundamental element in the drive to address and resolve the national housing crisis. [REDACTED] finds in their Proof that:

- Between 2006/07 and 2022/23 3,697 affordable homes were delivered, equating to a 32% gross provision of the total supply.
- When accounting for the number of Right to Buy sales over the same period, the Council has added just **18 affordable homes per annum**, equivalent to 3% of the total average net housing completions.
- Since the start of the 2017 Strategic Housing Market Assessment (SHMA) period in 2011/12, on average there has been a **net loss in affordable homes of 15 homes per annum**. For this period a 1,307 affordable homes shortfall has arisen, against a need of 244 affordable homes per annum.
- This position is not going to improve. The Council's supply claims the borough is likely to deliver 167 affordable homes per annum over the next five years, but will lose 174 affordable homes per annum through Right to Buy, resulting in a **net less of seven affordable homes per annum** between 2023/24 and 2027/28.

4.31 It is clear that Right to buy sales are depleting the affordable housing stock across Sandwell faster than the replacements from acquisitions. The Council has therefore fallen persistently short of meeting identified needs.

4.32 In light of the above [REDACTED]' view is that Sandwell's position is "*...a bleak view for anybody in housing need in the borough who is potentially facing a diminished housing stock*"¹⁸. Again, this has to be considered in the context that Sandwell's population is expected to grow at a faster rate than both the population of the West Midlands and the national average (as referred to as para 3.8 above).

4.33 As agreed in the Council's SoC, the benefit of affordable housing delivery arising from the appeal proposals should be afforded **very substantial weight**. Again, this reflects the approach to the allowed Colney Heath and Elstree Green Belt appeal decisions (**CD4.8** and **CD4.19**).

The emerging local plan

4.34 The Council is preparing a new local plan which will replace the BCCS insofar as it relates to Sandwell Borough. The draft Sandwell Local Plan was published for regulation 18 consultation between 6 November and 18 December 2023. Timescales for progressing

¹⁸ Para 7.7, p33

the plan are set out at para 4.8 of the general SoCG, with adoption anticipated no earlier than late 2025 / early 2026.

- 4.35 The draft local plan published for regulation 18 consultation in November 2023 did include proposed allocations, therefore by virtue of NPPF 2023 paragraph 226 Sandwell is only required to identify and update annually a supply of specific deliverable sites sufficient to provide four years' worth of housing.
- 4.36 The plan does not propose to allocate the appeal site, nor does it propose any Green Belt release elsewhere in the borough.
- 4.37 NPPF para 48 clarifies that weight may be given to relevant policies in emerging plans according to the stage of preparation of the plan (the more advanced it is, the greater weight that can be given); the extent to which there are unresolved objections; and the degree of consistency of the emerging plan with the NPPF.
- 4.38 The publication plan is yet to be published for regulation 19 and is not expected to be submitted for examination until later this year at the earliest. It is also still subject to unresolved objections, including from the appellant. For these reasons I give the emerging local plan no weight in the determination of this appeal.
- 4.39 In summary, I consider the plan is some way off, so does not provide any short term solution to Sandwell's own housing crisis, and given its early stage of preparation it is unclear whether it will provide the necessary solution in its current form.

Emerging local plan evidence base

- 4.40 Although I give no weight to the emerging plan, throughout this Proof, and the Proof of my colleagues, we consider and assess the evidence base informing the plan insofar as it is up to date and relevant to the proposals. For instance, the LUC Black Country Green Belt Study (September 2019) considers the entire site, and not the area which will be subject to built development alone. This is reflected upon in the FPCR Landscape and Visual Appraisal and Green Belt Assessment (October 2023)¹⁹ submitted with the application, and [REDACTED] Proof.

There are no alternative solutions

- 4.41 I have already addressed the issue of the Council's supply based on their current approach of previously developed land. Beyond this, there are no alternative solutions to how Sandwell meets its housing needs.
- 4.42 Firstly, there is limited greenfield land not in the Green Belt. Sandwell's Local Plan Policies Map²⁰ (which was last updated on 2 November 2023) demonstrates that all of the borough's greenfield land is within the urban area and is designated for another use, predominantly as 'community open space'. This must be right, as the Council's most up

¹⁹ CD7.20

²⁰ CD2.7

to date SHLAA (May 2024) states that²¹ the definition of windfalls has changed to include greenfield land, “...such as open space and residential gardens”.

- 4.43 Secondly, that greenfield land has limited capacity for housing. This is reflected in the Council’s SHLAA identifying only one area of open space in the supply – for 13 homes²². This is despite Table 2²³ of the SHLAA clarifying that only areas of open space identified as being of high quality / high value in the Council’s Green Space Audit 2019 should be discounted from the supply. Table 103²⁴ of the 2019 Green Space Audit clarifies that 21.5% of the borough’s green space is of high quality / high value, meaning 78.5% meets the criteria for being included in the SHLAA.
- 4.44 Thirdly, the lack of supply from greenfield land is reflected in the emerging plan, which only proposes to allocate 3%²⁵ of the total supply on greenfield land, equalling circa 534 homes²⁶ (though 190 homes of that supply is already subject to planning permission at Bramhall Golf Club). So in total the emerging plan identifies an meagre additional circa 334 homes on greenfield land, a total 1.16% of Sandwell’s total housing need for the plan period.
- 4.45 Beyond previously developed land, which is clearly incapable of delivering anywhere near Sandwell’s housing needs, there is very limited opportunities to accommodate any new homes on greenfield land outside of the Green Belt. As such it is necessary for new homes to be delivered on Sandwell’s Green Belt if its housing needs are to be met.
- 4.46 Even then, there are limited locations for delivering new homes on the Green Belt given Sandwell’s constrained nature. 9.6% of the borough comprises Green Belt, within that a significant proportion is constrained by the M5 motorway, a sewerage treatment works, and Sandwell Valley Country Park.
- 4.47 In summary, given Sandwell’s constrained nature, there is no alternative to sites like the appeal site, if the Council is to get anywhere near meeting its pressing housing needs.

Park House Farm SINC and biodiversity

- 4.48 The Council’s SoC identifies the effect of the development on the Peak House Farm SINC as one of the main issues for this appeal to consider.
- 4.49 The site wholly falls within the Peakhouse Farm SINC (a regional designation). The SINC designation incorporates all habitats within the site boundary and its network of grassland field compartments. Whilst all habitats are included within the designation, the grassland and the site’s hedgerow network are considered in the Council’s site assessment undertaken in 2018²⁷ to be most important to the SINC designation. The site assessment identifies the majority of the grassland field compartments as being ‘semi-

²¹ Bullet six, para 3.5 (CD6.17)

²² Brook Road Open Space, Wolverhampton Rd, Oldbury (site ref: 6667)

²³ p9

²⁴ P168 (CD6.34)

²⁵ Para 7.4, p177 (CD3.1)

²⁶ Table at p12-29 (CD3.1)

²⁷ CD6.2

improved neutral grassland – species poor’, with a small number of fields comprising more diverse ‘semi-improved grassland’.

Grassland

- 4.50 The proposals will result in the partial loss of the Peakhouse Farm SINC. This however represents only a small proportion of the SINC (15% of the total site area) and is of relatively low quality. [REDACTED] is of the view that this area is species poor when compared to other parts of the site.
- 4.51 The entire site, including the area to be lost to built development, is not currently subject to any management regime aimed at supporting ecological interests. Indeed since the SINC designation was established in 2019, neither the Council or the Birmingham and Black Country Wildlife Trust (or any associated nature conservation organisation) have provided the landowner or tenant with any advice on appropriate management of the site.
- 4.52 The site is either used for agricultural purposes for silage crop or commercial hay, or left unmanaged, either way the survey work indicates compromises the ecological value of the land. The available evidence does not indicate improving or even maintained ecological value, indeed it is declining. Without appropriate management, the evidence submitted indicates the value of the grassland will continue to decline. This view is also shared in the Council’s own site assessment report that supported designated the site as a SINC.
- 4.53 A much more significant proportion of the SINC would be a countryside park, it would remain and not built upon, and could be made the subject of a more appropriate management regime.
- 4.54 Overall, suitable mitigation and enhancement measures could be put in place to ensure that the quality of the remaining fields within the SINC would be improved, potentially returning them to a quality more akin to their SINC status.
- 4.55 I am of the view that such improvements are unlikely to be achieved by other means and would compensate sufficiently for the loss of the area of the SINC where new homes and associated infrastructure would be built. Measures for the site’s management are to be secured via condition.

Hedgerows

- 4.56 As [REDACTED] sets out at para 7.39 of his Proof, of a total network of 4.53km of hedgerows and treelines, there will be the loss of only minor sections of hedgerows (3.71%), with the majority retained (96.29%).
- 4.57 The remaining hedgerow would be retained as part of a green infrastructure corridor and subject to occasional sympathetic management as outlined in the submitted management plan (CD7.17). An additional 360m of hedgerow planting is also proposed on the former ancient hedgerow lines. This will result in a total additional provision of 7.95%.
- 4.58 [REDACTED] concludes that the loss of sections of the hedgerow would not affect the site’s SINC status given the overarching mitigation package.

Mitigation, BNG and proposed enhancements

- 4.59 The proposals minimise impact to biodiversity through the restoration and enhancement of habitats on land surrounding the development area. This includes through:
- The provision a countryside park comprising 85% of the total site area,
 - the retention of over 96% of the existing hedgerow network
 - the creation of an additional 7.95% of new native species hedgerows restoring the historic hedge patterns
- 4.60 The proposals represent a net gain in biodiversity exceeding 20% habitat units and 10% hedgerow units. They include the provision of higher quality habitats within the site. The proposed mitigation does retain, and will restore and enhance grassland situated within the green infrastructure of the development. The retained areas will also be subject to long term conservation management control to be secured via condition.
- 4.61 The proposals therefore accord with NPPF para 180 as the biodiversity value of the designated site will be retained and enhanced, albeit in a slightly reduced form in terms of size. They avoid any significant harm to biodiversity and do not result in the loss of deterioration of irreplaceable habitats, in accordance with NPPF para 186.

Harm

- 4.62 The proposals will result in the partial loss of the Peakhouse Farm SINC to built development. Built development would however be focused to areas of relatively low quality, with other parts of the site which are to be retained of higher quality. There would also be some limited removal of hedgerow.
- 4.63 Mr Goodman concludes at para 4.5 of their Proof that with the appropriate mitigation, **the proposals would result in no more than ‘low level harm’**.
- 4.64 This however has to be balanced with the benefit the proposals will deliver in terms of suitable mitigation and enhancement measures which will ensure that the quality of the remaining fields within the SINC are improved, potentially returning them to a quality more akin to their SINC status, and halting the evidenced decline in the quality of the SINC since its designation in 2019. Beyond this, the proposals would deliver a 20% BNG benefit, which will be secured via a condition or s106 Agreement.
- 4.65 In the land off Pump Lane, Rainham, Kent Secretary of State decision the Inspector afforded substantial weight to similar ecological benefits to what is proposed here, including an at least 20% BNG benefit²⁸, which the Secretary of State agreed with. Reflecting this I therefore I afford **substantial weight to the appeal scheme’s ecological benefits, which in my view more than outweigh the low level harm resulting from the partial loss of the SINC**.

²⁸ para 12.204, page 191, **CD4.10**

New countryside park

- 4.66 The Council's SoC identifies²⁹ that the countryside park has the potential to cause further harm to the Green Belt, for example an increase in litter, traffic congestion, footpath erosion from overuse and conflict with other land users.
- 4.67 As set out in [REDACTED] Landscape Proof, the Council appear to have misunderstood the nature of the proposed countryside park and the effect the proposals would have. No built development is proposed within the countryside park. Sustainable drainage features and a small play area are proposed, with the majority of the site remaining as it currently is with enhanced management and some new planting.
- 4.68 In summary the countryside park could provide:
- 23.09ha of dedicated landscape, green infrastructure, public open space, play and habitat related proposals – representing **85%** of the total site area.
 - an accessible area of open space for the public in an area that is currently inaccessible, complete with ecological enhancements that would be subject to an agreed management regime.
 - a potential alternative route for the Beacon Way long distance footpath to the west.
 - A cycle route along its edge.
 - New informal mown footpath routes to be provided around the site with connections to the potentially relocated Beacon Way long distance footpath and the footpath which runs adjacent to the Q3 academy to the south.
 - A proposed naturalistic local play area to be located to the proposed new homes at the north east of the site.
 - A sustainable drainage system incorporating a series of drainage basins and existing ditches which will attenuate the site's water run-off as well as contributing to delivering biodiversity and amenity enhancements.
 - New and enhanced habitats such as grassland, shrub, hedgerow and tree planting, with enhanced management to promote biodiversity.
- 4.69 There will be no built form within the countryside park, it will remain open. A more detailed description of what the countryside park could look like is set out at section 7 of [REDACTED] Proof.
- 4.70 If an application were to be submitted for the countryside park (85% of the total site area) alone, and it were assessed on that basis, it is considered it would not constitute inappropriate development in the Green Belt under exception e) of NPPG para 155 which

²⁹ Para 7.5

allowed for changes of use of land for recreational use. Notwithstanding this, this appeal seeks to consider the proposals as a whole, including the countryside park.

- 4.71 The countryside park will enhance public recreational opportunities in the area and ensure that a significant area of Green Belt currently inaccessible will be accessible to the public in perpetuity. This is a benefit of the proposals which is afforded **significant weight**.

Green Belt

- 4.72 It is an agreed matter that the appeal proposals represent inappropriate development in the Green Belt. NPPF para 152 is clear that such development is, by definition, harmful to the Green Belt and should not be approved unless the benefits clearly outweigh the harms. Para 153 goes on to state that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of the inappropriateness, and any other harm arising from the proposals, is clearly outweighed by other considerations.

- 4.73 Whilst the NPPF does not define openness, PPG³⁰ includes an open list of matters that should be taken into account when assessing Green Belt openness, including:

- openness is capable of having both spatial and visual aspects - in other words, the visual impact of the proposal may be relevant, as could its volume;
- the duration of the development and its remediability - taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- the degree of activity likely to be generated, such as traffic generation.

Spatial and visual impact on openness

- 4.74 Mr Holliday's Proof states at para 7.22 in respect to spatial impact on openness that PPG:

"...notes that openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume, and that the duration of the development and its reversibility are factors to consider along with the degree of activity, such as traffic generation".

- 4.75 The scheme would involve the change of 3.91ha of agricultural land to residential development, including homes of no more than 3 storeys close to Birmingham Road, and 2 storey elsewhere, limiting the spatial effect on the Green Belt.

- 4.76 Mr Holliday sets out at para 7.24 that the FPCR LVA (**CD7.20**) submitted with the application demonstrates the limited extent from which the proposed development would be visible due to the surrounding built form and intervening vegetation.

- 4.77 Mr Holliday goes on to state at para 7.24 that:

³⁰ paragraph: 001 Ref ID: 64-001-2019072

“Generally, there are few locations beyond the immediate context of the site where there would be any notable views of the proposals”.

- 4.78 On spatial and visual impact [REDACTED] concludes at 7.26 that:

“Overall, this means that the effects on visual openness would be very limited. The extensive areas of Green Infrastructure within Wilderness Countryside Park would provide further visual containment and would further reduce any effects on visual openness over time”.

Impacts on the purposes of including land in the Green Belt

- 4.79 I first turn to the impact of the proposals on the five purposes of including land in the Green Belt which are set out at NPPF para 143.

Purpose a): to check the sprawl of large built-up areas

- 4.80 In addressing the appeal proposals against purpose a), [REDACTED] comments at paras 7.20 and 7.21 that:

*“As built development within the scheme would be contained to the east and would not extend beyond the existing houses to the north and west, it would have a **Low effect** on the purpose of checking the unrestricted sprawl of the large built up area”.*

- 4.81 I agree with [REDACTED], the FPCR LVA submitted with the original application demonstrates the proposals would be contained. The proposals will therefore have a low effect on the purpose of checking the unrestricted sprawl of the large built up area.

Purpose b): to prevent neighbouring towns merging into one another

- 4.82 Mr Holliday concludes on purpose b) that:

“Overall, the scheme would have no adverse effect on the role the existing land parcel plays in preventing neighbouring towns from merging”.

- 4.83 I agree with [REDACTED] and that the appeal proposals will in no way result in the merging of Walsall and Birmingham, as claimed in the Council’s SoC.

Purpose c): to assist in safeguarding the countryside from encroachment

- 4.84 [REDACTED] states in respect to purpose c) that:

“Within this parcel, the scheme would only involve built development at the very eastern side of the land parcel, where wrapped around by existing development. This is the least prominent part of the site within the wider environment, and the land that is most influenced by the existing settlement. Fitting the development within the field parcels formed by the existing mature hedges, would minimise the effect on the character of the more open land. The scheme includes an extensive area of green infrastructure, with 85% of the site remaining in green use, managed for biodiversity and public access, and secured by legal agreement. Inevitably there would be local encroachment on the land used for housing itself with that land itself no longer being countryside, but the perception of encroachment on any wider area would be low / negligible”.

- 4.85 I agree with [REDACTED]. With only 15% of the total site to be developed, which is contained to the east of the site immediately adjacent to existing development, and the rest of the site remaining in green use, the perception of encroachment will be relatively low.

Purpose d) to preserve the setting and special character of historic towns

- 4.86 I agree with [REDACTED] that the site does not provide this role and would therefore have no effect on this purpose.

Purpose e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

- 4.87 Although not in relation to the Green Belt purposes, the Council's SoC does state at para 6.20 that the permanence of the Green belt assists urban regeneration in the borough, including £3bn of regeneration pipeline projects on previously developed land.

- 4.88 No evidence in respect to this pipeline has been advanced, nor how the Green Belt's permeance contributes to it. Given the immense scale of Sandwell's shortfall, in my view it is more the case that the Council should be 'turning on all the taps of supply' to meet its growing population's needs. I do not consider that the appeal proposals, at 150 new homes, will in anyway compromise the Council's ability to deliver its £3bn of regeneration pipeline projects. Given the scale of the proposals, I do not consider they would be likely to adverse impact on the regeneration of urban redevelopment sites elsewhere. Similarly to the allowed Colney Heath appeal decision (**CD4.8**), I therefore find no conflict with this purpose.

Green Belt compensation

- 4.89 [REDACTED] covers this at para 7.27 of their Proof. I agree the countryside park can provide Green Belt compensation.

Summary of Green Belt harm

- 4.90 I agree with [REDACTED] that the harm rating of introducing built development on 15% of the site would be low. Development of the site would maintain the physical and visual separation at the different parts of the wider suburban area and would have a very limited effect on encroachment on the wider countryside. Spatial and visual openness would be minimally affected. The significant new countryside park would provide new public access to local people, and the habitat value of the site would be enhanced. The compensatory improvements to the extent of the site remaining free of built development would be significant, as I conclude above.
- 4.91 Overall I therefore find the appeal proposals would have **low Green Belt harm, which I attach substantial weight to**, as advised to by NPPF para 153.

Landscape and visual

- 4.92 The Council's SoC identifies the effect of the development on the character and appearance of the areas as one of the main issues for this appeal to consider.
- 4.93 The FPCR LVA (**CD7.20**) demonstrates that there is no public access to the site, though a public footpath runs past the its southern boundary near the Q3 Academy, and the Beacon Way long distance footpath runs along the western boundary within a

constrained and unattractive corridor. There are some views across the site from Wilderness Lane which forms the south eastern boundary, and views back to parts of the site from the wider urban area to the south west mainly from taller buildings. These are relatively distant. Overall, the site is fairly well visually enclosed from short range views.

- 4.94 In landscape terms, part of the agricultural land at the site would be lost to built development, but this could largely be developed within the pattern of the retained and managed hedgerows. The larger part of the site could remain open and not developed, with enhanced management, keeping the pattern of hedgerows and meadows. In this respect, a limited length of hedge would need to be removed to accommodate the development.
- 4.95 There would be some inevitable closer range visual effects for adjacent residents and road users, but these effects would be very localised and not at a high level. There would also be some views from some nearby paths including the Beacon Way. A more open and attractive alternative to the Beacon Way could be provided through the site as part of the countryside park. Overall visual effects would be limited and localised.
- 4.96 The proposals will retain as far as possible and reinforce the existing field pattern highlighted by the AHHLV area. Effects upon the site and its immediate context are considered by [REDACTED] to be moderate adverse, with the potential to become moderate / minor adverse in the long term as the site's green infrastructure matures, including the significant new countryside park.
- 4.97 The countryside park, whilst not appearing significantly different to its present form, would bring a range of landscape benefits arising from enhanced management, bringing biodiversity improvements to the current improved grassland, and benefits arising from enhanced public access to green space.
- 4.98 [REDACTED] also concludes that the site does not represent a valued landscape, which I agree with.
- 4.99 I agree with [REDACTED] that the proposals will have a limited and very localised landscape and visual impact as a result of development only being proposed on 15% of the site, in a visually enclosed location. I therefore consider there would be minimal landscape and visual harm overall.

Heritage

- 4.100 It is an agreed matter that the proposals would not give rise to any adverse impacts on a designated heritage asset and in particular there would be no impact on either the Great Barr Registered Park and Garden or Great Barr Conservation Area. There would be no harm to any designated heritage asset.
- 4.101 The Archaeological and Heritage Impact Assessment (CD7.6) submitted with the application demonstrates that there would be 'very small' or 'small' impacts on the following non-designated heritage assets:

- Archaeology Priority Area 24: Peak House Farm Moated Site, which is located along the site's southern boundary and would be retained as part of the proposals. A Conservation Management Plan would be submitted to and agreed with the Council to compensate for any small or limited loss of the significance of the non-designated asset during construction. It would also be subject to a wider programme of conservation and management, including the provision of interpretation boards which would be accessible as a result of the proposals.
- Area of High Historic Landscape Value area 25: Peak House Farm Field System, a 'local designation' that covers the entire site. The proposals would result in a residual loss of significance from this non-designated asset where built development is to be located, the Heritage Impact Assessment demonstrates this would be no more than a small impact.
- The small impact identified in respect of the proposed development on the conservation status of unrecognised / unknown non-designated archaeological features, deposits and / or remains at the site can be adequately addressed and mitigated through the agreement of an appropriate programme of investigation and recording. There would be no long-term residual impacts on non-designated archaeological features.

4.102 NPPF para 203 states that:

"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

- 4.103 The EDP Archaeological and Heritage Impact Assessment (**CD7.6**) concludes there is no evidence to demonstrate any of the non-designated heritage assets which would be affected by the proposals are of any more than local significance, even if the Archaeology Priority Area could potentially be of regional significance. The scale of any loss would be very small or small, and to some degree will be balanced through mitigation, including a programme of conservation and management, the provision of interpretation boards, and providing public access to the area so its historic environment can be appreciated by visitors to the site.
- 4.104 On balance I therefore conclude there will be **no heritage harm**. This must be a view shared by the Council, as confirmed in the general SoCG the Council does not seek to resist the proposals on the basis of any perceived impact on the historic environment and it is not referred to in any reason for refusal.

Air quality

- 4.105 The air quality technical note enclosed at **Appendix TA1** states that the background PM2.5 concentrations in the vicinity of the site are likely to be below those provided by Defra background mapping. An updated contour map is therefore included in the technical note, that demonstrates PM2.5 concentrations were predicted to be below both the 2028 interim target and the 2040 future objective. Furthermore, pollutant

concentrations were predicted for 2025, whereas the future objective is to be achieved by 2040.

- 4.106 It is therefore concluded the site will experience PM2.5 concentrations below the current objective, the interim target, and the future objective, and is suitable for new homes. It has been agreed in the SoCG that an updated air quality assessment will be undertaken as part of any future reserved matters submission. As such there would be no air quality harm.

Locational accessibility

- 4.107 Despite it not being included in any reason for refusal, it was identified in the Council's original SoC that one of the main issues for this appeal to consider is whether the development would be suitably located in relation to access to services and facilities. However, in an email from the Council to the appellant and the Planning Inspectorate on 23 May 2024 (**Appendix TA2**) it was stated that:

"The Council has not refused the application on sustainable transport [and] therefore there is no need for the appellant to provide a witness. Any expenditure on this is up to the appellant as the Council is not seeking to argue the points. The Council will describe the site and its surrounds. If this [causes] confusion the Council can withdraw paragraph 6.39. To be clear, no evidence is required for the appellant to defend this position and the SoCG is updated to reflect this".

- 4.108 I note that the NPPF does not place an absolute requirement to prevent all car use, but effectively requires the decision maker to consider the potential to limit future car use (paragraph 128c)). This was a matter dealt with in the Transport Assessment (**CD7.31**) and I note that the Highways Authority has not objected to the appeal proposals. So it is for these appeal proposals to demonstrate that they have sought to limit future car use.

- 4.109 Enclosed at **Appendix TA3** is an extract from the Transport Assessment submitted with the original outline application. The plan identifies the location of nearby facilities and the table provides an approximate distance, walking time and indication of whether the facility falls within the IHT guidance³¹. The table at **Appendix TA3** demonstrates that the following local amenities are within what the IHT Guidance considers are either within desirable or acceptable walking distance (measured from the centre of the site):

- Q3 Academy School, Wilderness Lane – 550m
- Convenience store at Shell petrol station – 610m
- St Margaret's CofE Primary School, Birmingham Road – 670m
- Beacon Express convenience store, Birmingham Road, 670m
- You Fit Birmingham gym, Holiday Inn – 690m

³¹ A summary of this is provided at section 3.4, p.27 (**CD7.31**)

- Harvester Restaurant, Birmingham Road – 730m
- 4.110 In addition to the above, the following facilities are within the ‘preferred maximum’ walking distance:
- Grove Vale Primary School, Monksfield Avenue – 1.5km
 - Park House Surgery, Newton Road – 1.6km
 - Holy Name Catholic Primary School, Birmingham Road – 1.6km
 - Convenience stores – 1.1km and 1.6km
 - Aldi Supermarket, Newton Road – 1.6km
 - Well Pharmacy, Walsall Road – 1.8km
- 4.111 Beyond these nearby facilities, guidance from the Department for Transport on cycling³² clarifies that:
- “Cycling has the potential to replace trips made by other modes, typically up to 10km, although some people will cycle greater distances”.*
- 4.112 Figure 3.3³³ of the Transport Assessment shows that Walsall Town Centre is within 10km, offering a range of employment, retail and leisure opportunities, so is potentially accessible via bike according to the DfT’s guidance.
- 4.113 Notwithstanding the significant range of facilities within walking or cycling distance, a bus stop on the Birmingham Road is located immediately adjacent to the site’s eastern boundary. As shown on the development framework plan (**CD7.34**) (ref: 09364-FPCR-XX-ZZ-DR-L-0010) to be approved as part of this appeal, and as agreed in the general SoCG³⁴, at least one pedestrian and cycle access point is to be delivered between the site and Birmingham Road. This will provide access to existing public transport, residential area and local amenities, including the bus stops located along Birmingham Road.
- 4.114 This stop, and the corresponding stop on the other side of Birmingham Road, include seating, walking shelters and timetable provision. They are served by National Express West Midlands route 51, a high frequency (every 12 minutes) service Monday to Saturday, from early morning to late evening, to Birmingham City Centre, Perry Barr and Walsall. On Sunday the service reduces to every 30 minutes. During peak times it takes circa 17 minutes to travel into Walsall Town Centre and circa 40 minutes into Birmingham City Centre.
- 4.115 The next bus stop to the south, adjacent to Chapel Lane, is a 600m walk from the site. This stop is also served by the National Express route x51. This also serves Birmingham

³² DfT, Local Cycling and Walking Infrastructure Plans – Technical Guidance for Local Authorities, April 2017

³³ p32

³⁴ Para 5.12

City Centre, Perry Barr and Walsall, but is more regular (every 10 minutes) and has less stops, taking circa 32 minutes into Birmingham City Centre.

- 4.116 Both the x51 and 51 routes run along a dedicated bus lane, this forms part of a wider bus rapid transit scheme (SPRINT) across the West Midlands Combined Authority area. Phase 1 is complete, which included providing dedicated bus lanes along Birmingham Road (A34) and installing new shelters. When operational, the SPRINT route will effectively replace service x51, with route 51 continuing as existing.
- 4.117 Overall I recognise that the future residents of homes on the appeal scheme may be reliant on the private car to an extent, but not to any degree that would represent any level of harm.
- 4.118 Indeed I note from the Sarratt appeal decision (**CD4.14**) that the location of the two sites at a village with “...*relatively limited facilities, employment opportunities, and accessibility to public transport*”, which resulted in conflict with the relevant development management policies for needing to reduce travel by locating development in accessible locations, was not sufficient to outweigh the benefits of housing delivery in an area with a slightly better housing land supply than Sandwell (1.9 years).
- 4.119 I therefore conclude that the appeal site is located in an accessible location, which will not solely be reliant on private car use, and the appeal proposals will contribute to maximising opportunities for sustainable transport. Indeed, **the exceptional public transport links adjacent to the site boundary will be a significant benefit to future residents**. This is where new homes should be located.

Economic benefits

- 4.120 There are a number of direct and indirect economic benefits that will result from the development. These economic benefits are summarised on the infographic prepared by Turley Economics which is enclosed at **Appendix TA4**. The benefits include:
- £47m estimated in the construction of the proposed development
 - 40 new additional jobs created from the development
 - 45 gross jobs directly supported over the construction period
 - £6.6m in additional Council Tax per annum
 - An additional £6.2m spent on retail and leisure good and services, enough to support 60 jobs.
- 4.121 The above benefits are calculated using Homes England’s Additionality Guide³⁵ which provides guidance for assessing the net additional impacts of development. Further data

³⁵ Homes & Communities Agency (2014) Additionality Guide (4th Ed.)

published by organisations such as the Office for National Statistics also informs the benefits assessment. GVA data is sourced from Experian³⁶.

- 4.122 Whilst the construction phase economic benefits would be temporary in duration, when taken together with the longer-term economic advantages to the area from additional residents, they are collectively capable of attracting **significant weight**.

³⁶ Experian (2023) Regional Planning Service: September 2023

5. Third party comments

- 5.1 There are a number of other matters raised by interested parties.
- 5.2 The matters raised are addressed in turn below however it is worth noting that the majority of matters are addressed within this SoC and general SoCG.

Issue	Response
Development in the Green Belt	Overall the appeals would have low Green Belt harm, which is afforded substantial weight. The wider of benefits of the proposals however clearly outweigh any harms arising from the proposals, including it constituting inappropriate development in the Green Belt.
Traffic implications	It is agreed with the Council that the proposals will not result in an unacceptable impact on highway safety and the residual cumulative impacts on the road network will not be severe.
Impact on amenity	Whilst there will be some impact on views from homes immediately adjacent to the site, there will be no other impacts on residential amenity.
Scale of development	The parameters plans show a scale of development which can be acceptably accommodated at the site. The final scale of the proposals will be agreed at the detailed reserved matters stage.
Impact on trees	The Arboricultural Impact Assessment (CD7.5) demonstrates that there will be no significant tree loss required to facilitate development. Built development would be positioned centrally to the individual field parcels which are generally devoid of tree cover. Some small hedgerow removal would be required to facilitate the access, and one tree within the site would need to be removed to facilitate internal access.
Impact on ecology, including the SINC	<p>The proposals will result in the partial loss of the Peakhouse Farm SINC to built development. Built development would however be focused to areas of relatively low quality, with other parts of the site which are to be retained of higher quality. There would also be some limited removal of hedgerow.</p> <p>This however has to be balanced with the benefit the proposals will deliver in terms of suitable mitigation and enhancement measures which will ensure that the quality of the remaining fields within the SINC are improved, potentially returning them to a quality more akin to their SINC status, and halting the evidenced decline in the quality of the SINC since its designation in 2019. Beyond this, the proposals would deliver a 20% BNG benefit, which will be secured via condition.</p>

	No other biodiversity impacts have been identified.
Flood risk	<p>The Flood Risk Assessment and Drainage Strategy (CD7.19) demonstrates the site is either at a very low or low risk of flooding from all sources assessed.</p> <p>The sequential approach has been applied to the setting and layout of the proposals, directing built development away from any areas of surface water flood risk.</p> <p>The proposed surface water drainage strategy aims to replicate the existing situation of the site by discharging run-off into existing ditches in accordance with the site-specific greenfield QBar rate. Attenuation storage will be provided in the form of open SuDS features such as basins and swales.</p> <p>No objection has been raised by the Lead Local Flood Authority.</p>
Impact on existing infrastructure	A range of financial contributions including CIL payments will be secured to offset impacts on existing infrastructure. CIL funding will be determined at the detailed design stage once unit numbers and floorspace figures have been confirmed.
Impact on heritage and archaeology	No impacts to any designated heritage asset have been identified. Some very small impacts have been identified to non-designated heritage assets, these can however be mitigated.
Impacts on air quality	The site will experience PM2.5 concentrations below the current objective, the interim target, and the future objective, and is suitable for new homes. It has been agreed in the SoCG that an updated air quality assessment will be undertaken as part of any future reserved matters submission.
Noise impacts	The Noise Impact Assessment (CD7.28) demonstrates that with appropriate mitigation measures, the site is suitable for residential development. This mitigation will be agreed at the detailed design stage.
Coal mining risks	The Mineral Resource Assessment (CD7.28) demonstrates that there is no potential value in extracting minerals from the site and development at the site would not result in proximal sterilisation of the wider mineral safeguarding area.

6. Overall planning balance

6.1 The starting point for determining this appeal is the development plan. I consider that the appeal proposals accord with the development plan as a whole.

6.2 It is common ground that the appeal proposals represent inappropriate development in the Green Belt and should only be allowed if the potential harm to the Green Belt, and any other harms, are clearly outweighed by other considerations (NPPF paragraph 153). This test is summarised in **Table TA6.1** below.

6.3 In undertaking this test below, I am aware of the Wildie, R (on the application of Wildie) v Wakefield MDC [2013] EWHC 2769 (Admin) judgment (**CD4.18**) which at paragraph 29 states:

“...in order to qualify as “very special, circumstances do not have to be other than “commonplace” i.e. they do not have to be rarely occurring”.

Table TA6.1 – overall balance of planning considerations

Benefits	Weight	Harm	Weight
Housing delivery	Very substantial	Inappropriate development in the Green Belt	Substantial
Affordable housing provision	Very substantial	Landscape and visual impacts	Limited
Ecological benefits, including a minimum 20% BNG and management regime for site	Significant	Conflict with BCCS policy CSP2	Limited
New countryside park	Significant		
Exceptional, high quality transport links adjacent to site boundary	Significant		
Economic benefits	Significant		

6.4 As demonstrated by **Table TA6.1** above, I am of the view there are limited harms in this case and substantial benefits.

6.5 I attach substantial weight to the appeal proposals representing inappropriate development in the Green Belt. I afford limited weight to harm arising from the site’s limited landscape and visual impact, and limited weight to the conflict with BCCS policy CSP2 insofar as it relates to ‘protecting’ biodiversity (although the proposals comply with all other parts of the policy).

- 6.6 Set against this is the **very substantial weight** which I have ascribed to market housing and **very substantial weight** to the enhanced, above policy compliant affordable housing off. Further advantage accrues from the **significant weight** I attach to the new countryside park and ecological benefits, including a minimum 20% BNG and management of the remaining land within the SINC to ensure it does not deteriorate further. I also afford **significant weight** to the site's location in relation to exceptional, high quality transport links and economic benefits.
- 6.7 The combination of these benefits, set against the failure of the development plan and plan-making process, the overwhelming deficiency in housing land supply, and the constrained nature of the borough, which really leave no alternative but to deliver homes on Green Belt land, **clearly** outweigh the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposals. Overall, I consider that very special circumstances exist which justify the development. The proposals therefore comply with SAD policy EO2.
- 6.8 Overall, I have found that the appeal proposals comply with the development plan as a whole. However, if this approach is not accepted, than in the context of s70(2) of the Town and Country Planning Act 190 and s38(6) of the Planning and Compulsory Purchase Act 2004, overall I conclude there are material considerations which indicate the appeal proposals should be approved.
- 6.9 There are important material considerations that exist in this case that indicate planning permission should be granted, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004.

7. Summary and conclusions

- 7.1 My Proof of Evidence addresses the overall planning merits of the appeal proposals.
- 7.2 The starting point for determining this appeal is the development plan, unless material considerations indicate otherwise, as established by s70(2) of the Town and Country Planning Act 1990 and s38(6) of the Planning and Compulsory Purchase Act 2004.

Development plan

- 7.3 Summarised below is my assessment of the policies most relevant to the determination of this appeal, overall I find the proposals are in accordance with the development plan as a whole:
- By finding that the appeal proposals' benefits clearly outweigh all harms and compliance with this part of the NPPF (as I set out at **sections 4 and 6** of this Proof), consequently they also comply with the test set out at **SAD policy EOS2**.
 - As demonstrated by the evidence submitted to this appeal and in my Proof, the benefits clearly outweigh the harms, therefore the appeal site represents a 'suitable site' and accords with **BCCS policy HOU1**.
 - Overall, I do find some minor conflict with **BCCS policy CSP2** insofar that the proposals will not 'protect' the landscape (see **Table TA3.3**³⁷). I find **BCCS policy CSP2** is not in accordance with national planning policy and therefore give it limited weight. In any case, the policy is based on a spatial strategy which is no longer capable of meeting the borough's needs.
 - Mr Goodman concludes the proposals represent no more than low level harm prior to mitigation. When balanced with the maximised retention and enhancement of natural habitats, and a minimum 20% net gain is provided, the proposals do not result in the loss of an irreplaceable habitat. [REDACTED] therefore finds that the proposals "*follow the overarching requirement of Policy ENV1*". No other adverse impacts on biodiversity have been identified. I agree with Mr Goodman's conclusions and therefore find that the proposals accord with **BCCS policy ENV1**.
 - Even if conflict were to be found with **BCCS policy ENV1**, I do not consider it to be up to date by virtue it does not accord with national policy. NPPF para 186 advocates for a hierarchical approach to managing and mitigating any biodiversity impacts. I find at **section 4** of my Proof that the appeal proposals comply with NPPF para 186. I therefore afford the policy limited weight.
 - I consider that the appeal proposals would contribute to the borough's environmental infrastructure, particularly through the delivery of the new countryside park, they therefore comply with **BCCS policy CSP3**.

³⁷ p11

- 7.4 I do find some minor conflict with **BCCS policy CSP2** insofar that the proposals will not 'protect' the landscape. However I find the policy does not accord with national planning policy and therefore afford it limited weight.
- 7.5 My assessment of compliance with **SAD policy EO2** is on the basis the benefits clearly outweigh the harms such that the test at NPPF para 153 is passed. By applying **SAD policy EO2**, I consider that by finding a positive outcome against this overall planning balance test (which is the case in this appeal), that is sufficient to amount to compliance with the development plan taken as a whole, the minor conflict I find with **BCCS policy CSP2** is not sufficient to outweigh this. I find **SAD policy EO2** complies with national planning policy.
- 7.6 Even if I was found to be wrong in relation to compliance with the development plan when taken as a whole, its policies should largely be afforded **limited weight** given it is not consistent with the NPPF and is out of date, as summarised below:
- The BCCS' entire spatial strategy is predicated on an artificially lower 'housing requirement' which was based on a capacity led approach alone and not objectively assessed needs, contrary to NPPF paras 23 and 35a).
 - No review of the BCCS has been undertaken despite it being made clear in the SAD Inspector's Report (published only 19 months after the adoption of the BCCS) that neither the SAD nor BCCS' strategy are capable of meeting the plan's artificially lowered 'housing requirement' up to the end of the plan period in 2026.
 - The BCCS, and the basis for its 'housing requirement', the WM RSS Phase 2, both came before the NPPF was first published in March 2012, which represented a 'step change' in national planning policy, including a requirement to now significantly boost the supply of housing.
 - In any case, by virtue of the Council's HDT score of 47% and housing land supply of 1.4 years, the presumption of triggered.
- 7.7 Beyond the development plan, I set out below a summary of the main issues that I consider to be material considerations to the determination of the appeal proposals, as covered in my Proof:
- There is an acute serious and significant housing shortage across Sandwell, contributing to creating the borough's own housing crisis. [REDACTED] finds that the Council is failing on every measurement:
 - against the BCCS housing requirement the Council's own evidence is showing an **under-delivering of nearly 8,000 homes** by the end of the plan period.
 - Against the SAD, the Council delivered **16,128 homes less than the plan anticipated up to 2021**.
 - The Council's HDT score stands at only 47%, one of the worst in the country. This is predicted to worsen to 41%. HDT Action Plans have had no impact.

- The Council can only demonstrate a 1.4 year housing land supply, a shortfall that has existed since 2017 and will persist every five year period during the emerging plan period.
- I therefore give **very substantial weight** to the delivery of new market homes, a view shared with the Council.
- The Council's affordable housing delivery is bleak. [REDACTED] find that the Council is losing almost as many homes through Right to Buy than it is delivering, resulting in a meagre net contribution to the borough's affordable housing stock of just 18 new affordable homes per annum between 2006/07 and 2022/23. The has played into Sandwell's housing crisis to the point that there are 16,356 applicants on the Housing Register as of 31 March 2024. I therefore afford the proposals above policy compliant, enhanced affordable housing contribution **very substantial weight**.
- The BCCS and SAD were essentially out of date from the point they were adopted as neither was capable of meeting Sandwell's housing needs. It is finally preparing a new local plan (which is some way off in any case), over ten years on from when it was first needed. But even that doesn't provide the solution to Sandwell's acute housing crisis – that is proposing to meet only **37%** of the borough's total needs, **leaving a 18,606 home shortfall up to 2041**.
- The Council therefore has no solution to address its housing crisis. Its previous and proposed strategies are not even close to meeting its housing needs, in a borough where the population is set to grow quicker than the national average.
- There is no alternative to delivering housing on the appeal site. Its supply on previously developed land is failing, there is limited greenfield land not in the Green Belt that is available, and even then most of Sandwell's Green Belt is constrained by other uses, such as the Sandwell Valley Country Park. **As such there is no alternative but to deliver homes on Green Belt land, at the appeal site**.
- The appeal proposals propose only to locate built development on 15% of the site area, comprising the fields with the lowest biodiversity value. The remaining 85% would be a countryside park, free of built development, bringing a significant area of Green Belt currently inaccessible into public use in perpetuity. This is a **significant benefit** of the proposals.
- The appeal proposals will result in the partial loss of the Peakhouse Farm Site of Important Nature Conservation ('SINC') (15% of the total site area). This however has to be balanced with the benefits of the proposals, including:
 - suitable mitigation and enhancement measures which would ensure the undeveloped part of the site was improved and potentially returned to a quality more akin to its SINC status, halting an evidenced decline in the quality of the SINC since its designation in 2019.
 - A minimum 20% BNG benefit

- With appropriate mitigation, [REDACTED] finds this partial loss would result in no more than 'low level harm'. This harm is more than capable of being outweighed by the benefits listed above, which I afford **substantial weight** to.
- The proposals represent inappropriate development in the Green Belt. However [REDACTED] finds the harm rating of introducing built development on 15% to be low. Development of the site would maintain the physical and visual separation at the different parts of the wider suburban area and would have a very limited effect on encroachment on the wider countryside. Spatial and visual openness would be minimally affected. The significant new countryside park would provide new public access to local people, and the habitat value of the site would be enhanced. Overall I find the proposals would have **low Green Belt harm, which I attach substantial weight** to.
- I agree with [REDACTED] that the proposals will have a limited and very localised landscape and visual impact as a result of development only being proposed on 15% of the site, in a visually enclosed location, I therefore consider there would be **minimal landscape and visual harm overall**.
- The appeal site is in an accessible location, which will not solely be reliant on private car use, and the appeal proposals will contribute to maximising opportunities for sustainable transport. This includes the exceptional, high frequency and high quality transport links adjacent to the site boundary, which I afford **significant weight** to as a benefit to future residents. This is exactly where new homes should be located.
- There would also be a range of economic benefits, that I afford **significant weight** to.
- I do not find any other harms would arise from the proposals, including in relation to heritage, highway safety, air quality and flood risk.

Planning balance

- 7.8 It is common ground that the appeal proposals comprise inappropriate development and should only be allowed if the potential harm to the Green Belt and any other harms are **clearly** outweighed by the benefits.
- 7.9 I have already identified the harms that would arise as a result of the appeal proposals and the weight that should be afforded to them. However, having a regard to the benefits of the proposals, as outlined above, I have found that these **clearly** outweigh the harms and therefore justify the grant of planning permission.
- 7.10 Overall, I have found that the appeal proposals comply with the development plan as a whole. However, if this approach is not accepted, than in the context of s70(2) of the Town and Country Planning Act 190 and s38(6) of the Planning and Compulsory Purchase Act 2004, overall I conclude there are material considerations which indicate the appeal proposals should be approved.
- 7.11 I therefore respectfully recommend to the Inspector that the appeal should be allowed.

Turley
Birmingham

T [REDACTED]