CLOSING STATEMENT ON BEHALF OF THE HCA

SECTION 1: INTRODUCTION

1. In this appeal, the Homes and Communities Agency (‘HCA’) seeks planning permission for residential development of up to 1000 homes and other associated development on a site recently allocated in the statutory Development Plan for precisely those purposes, in a region where the local authority cannot demonstrate a five year housing land supply, and where it is agreed that the development will bring substantial benefits to Northampton and the West Northamptonshire region.¹

2. The HCA’s application for development on the Appeal Site is part of its accelerated disposals programme, and pursuant to its statutory purpose to improve the supply and quality of housing in England, with a view to meeting the needs of people living in England.² Its accelerated disposals programme,³ of which the Appeal Site forms part, is consistent with recent calls by the Secretary of State for Communities and Local Government for departments to “loosen their grip” on sites that are standing idle so they can be released for new housebuilding, with a target of 150,000 homes by 2020.⁴ The HCA’s track record

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¹ See the proof of evidence of Mr Stephens, paras 6.1 – 6.8; and confirmed in XX, Day 2 am.
² The Housing and Regeneration Act 2008, section 2.
³ CD 129 HCA Land and Development Disposal Plan.
⁴ Announcement of 31 May 2015: https://www.gov.uk/government/news/greg-clark-tells-whitehall-and-town-halls-loosen-your-grip-on-surplus-land: “Speaking ahead of the first meeting of a dedicated ministerial Housing Taskforce, Mr Clark is urging departments to “loosen their grip” on sites that are standing idle so they can be released for new housebuilding, with a clear target to release enough land for 150,000 homes by 2020 – equivalent to the number of homes in Wakefield”. More recently the Government published “Fixing the foundations: Creating a more prosperous nation”. The urgency with which the Chancellor and Business Secretary are seeking to address housebuilding cannot be ignored. The document points out that (see para. 9.1) “[t]he UK has been incapable of building enough homes to keep up with growing demand”. And that “[t]his harms productivity and restricts labour market flexibility, and it frustrates the ambitions of thousands of
in delivering high quality housing is proven, and it has regularly exceeded its housing delivery targets\(^5\). As confirmed by Mr Tulley in his evidence, the swift grant of permission in this Appeal is likely to see in excess of 250 dwellings built within the next five years.\(^6\)

3. The case in favour of this appeal was summarised in the Report to Committee prepared by the Council’s Head of Planning in advance of the Committee’s determination of the application (‘the OR’). In recommending approval, the OR summarised the reasons for that recommendation as follows:\(^7\)

“The National Planning Policy Framework supports sustainable housing development and economic growth. The development of the site for up to 1,000 dwellings forms a significant and vital component of the Borough Council’s 5 year housing land requirement and would contribute towards the Government’s aims of improving economic development and the creation of employment and training opportunities. The site is located in a sustainable location on the edge of Northampton, which will be adequately served by the necessary infrastructure and it is considered that the environmental and highway impacts can be adequately mitigated or reduced to an acceptable degree. The proposal supports the sustainable growth of Northampton in accordance with the National Planning Policy Framework and the submitted West Northamptonshire Joint Core Strategy (as subsequently modified) and subject to the recommended conditions and planning obligations contained within the associated S106 agreement development of the site as proposed is considered acceptable.”\(^8\)

4. In this Appeal, the HCA has sought to demonstrate that the Council’s Head of Planning was right to recommend approval of the application. The Appeal Scheme before the Secretary of State is wholly in line with national and local planning policy. It represents sustainable development and offers significant and immediate benefits. In line with paragraph 14 of the National Planning Policy Framework (‘NPPF’), we ask that planning permission is granted without delay.

\[^5\] people who would like to own their own home\(\) (ibid). It also says (see para. 9.2) that “an effective land and housing market promotes productivity by enabling the economy to adapt to change, helping firms to locate where they can be most efficient and create jobs, and enabling people to live and own homes close to where they work.” This is what the HCA is seeking to provide in Northampton.

\[^6\] It is also a leader in best practice: see Mr Tulley’s EIC, Day 4.

\[^7\] CD 57, Committee Report para. 1.1.

\[^8\] In granting planning permission for the SUE at Upton Park the Council gave the following reason (CD107) “The principle of the site has been established … by allocation of the site in the West Northamptonshire Joint Core Strategy. The development of the site for up to 1000 dwellings forms a key component of the Borough Council’s housing land requirement.” Both these reasons are equally applicable to the current proposals. This permission was granted on 31 March 2015 after the application the subject of this appeal was refused by Members against officer recommendation.
5. Mr Tulley’s evidence in chief was that a refusal of this appeal would weaken market confidence. Para. 17 of the NPPF urges taking into account “market signals”. His view was that a refusal would be a very poor signal to the market. This being a HCA site allocated for housing in a very recently adopted Development Plan⁹.

SECTION 2: HISTORY OF THE SITE AND THE APPLICATION

6. In 1968 Northampton was formally designated a "new town" and the Northampton Development Corporation (‘NDC’) was set up to expand and develop the town in partnership with the Council. Since that time, the Appeal Site has been held for the purpose of the development and growth of Northampton, first by NDC, and then by its successor organisations, the Commission for New Towns (‘CNT’), English Partnerships (‘EP’) and, more recently, by the HCA. The Appeal site has therefore been in public ownership through agencies of central government, and held for development purposes since 1968.¹⁰ Nonetheless, no application for planning permission was made by any of the agencies responsible for the land until the proposed allocation of the land for a sustainable urban extension in the Development Plan was very well advanced,¹¹ with the in principle support of the Council¹² and the full support of the West Northamptonshire Joint Planning Unit (‘the JPU’).¹³ This strongly evidences the commitment on behalf of those agencies to work responsibly and collaboratively with the Council.¹⁴

7. The HCA’s active promotion of the Appeal Site for allocation in the Development Plan commenced in 2005, in light of the Planning and Compulsory Purchase Act 2004, and in light of the commencement of the plan making process which led, eventually, to the adoption of the West Northamptonshire

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⁹ EIC Mr Tulley, Day 4 pm.
¹⁰ See the proof of evidence of Mr Tulley, paras 2.1 – 2.4.
¹¹ Although some third parties, including Mrs Leadsom, have suggested that the site has previously been “turned down for development”, that is not correct.
¹² Proof of evidence of Mr Stephens, para. 4.9.
¹³ CDs 40 and 45, Joint Position Statements on Policy N6.
¹⁴ As confirmed by Mr Tulley in Evidence in Chief, Day 4 pm: and see e.g. CD122, 123, 124 and 125 on the pre-application discussions.
Joint Core Strategy (‘the JCS’) in December 2014. In that JCS, the Appeal Site and adjacent land promoted by Martin Grant Homes (‘MGH’) and Harcourts Developments (‘the Adjacent Land’) are allocated for residential development in the region of 1300 dwellings, along with associated infrastructure, under Policy N6.

8. As set out in the evidence of Mr Tulley,\textsuperscript{15} Policy N6 was developed through an iterative process with the JPU, as follows:

   (1) In the emergent JCS (2009) the Appeal Site fell within the proposed Northampton South East Extension which was envisaged to deliver 6250 dwellings;\textsuperscript{16}

   (2) In the pre-submission JCS (early 2011), the Appeal Site was proposed to be allocated for 1000 dwellings under policy N6 as Northampton South of Brackmills Sustainable Urban Extension (“SUE”).\textsuperscript{17} The Council indicated its in principle support for this proposal;\textsuperscript{18}

   (3) In response to representations made by the HCA, the text of the pre-submission JCS was amended to allocate the Appeal Site for “in the region of 1000 dwellings” (late 2011), in order to allow some flexibility for detailed masterplanning;\textsuperscript{19} and

   (4) After Main Modifications recommended by the JCS Inspector to better reflect the objectively assessed housing needs, policy N6 of the adopted JCS allocated the Appeal Site and the Adjacent Land for “in the region of 1300 dwellings”.\textsuperscript{20}

9. Having previously expressed support for the original proposed allocation of 1,000 homes, the Council only raised objections to the Main Modification to

\textsuperscript{15} Proof of evidence of Mr Tulley, paras 2.31 – 2.42
\textsuperscript{16} See Appendix B to the proof of Mr Tulley and also Fig. 11, Appendix 1 to the proof of Mr Brashaw showing the “Wooton SDA” in yellow.
\textsuperscript{17} CD 26 West Northamptonshire JCS pre-submission version, p.136.
\textsuperscript{18} See the proof of evidence of Mr Stephen at para. 4.9.
\textsuperscript{19} CD 40 Joint Position Statement on Policy N6, paras 4.1 – 4.2.
\textsuperscript{20} CD 28 JCS, p.128.
incorporate the Adjacent Land and an additional 300 homes into the N6 allocation. However the JCS Inspector rejected those objections, noting that:\footnote{CD 44 JCS IR, p.29 under the heading “Issue 13 – Northampton South of Brackmills (policy N6)”.

(1) The N6 site was “well related to the existing built up area on the south eastern edge of the town with existing housing to the west and south and close to the substantial Brackmills employment area to the north” (paragraph 139);  

(2) “… a green corridor running roughly north west to south east across the site, plus peripheral green spaces would help to define but also soften the edges of the development, especially to the east where it would adjoin open countryside” (paragraph 140);  

(3) “The local landscape sensitivity of parts of the site can be addressed and partly mitigated through such measures, together with the backdrop of woodland to the north, which forms a strong local landscape feature, as part of a comprehensive masterplan for the whole site …” and that “[a]s a result, the development should not materially threaten the separate identity of the settlements of Hardingstone and Wootton” (paragraph 141);  

(4) The concerns of local residents regarding, inter alia, traffic generation could “be satisfactorily addressed through appropriate technical analysis and on site measures, as well as contributions to offset impacts elsewhere”. He noted that “[t]his should include through a full Transport Assessment looking at all traffic movements likely to occur on the local road network in the context of the agreed NGMS for the A45 route”. He concluded that such issues were thus not sufficient “to indicate that the site is unsuitable in principle for a SUE” (paragraph 142);  

(5) Because the Appeal Site was owned by the HCA “and forms part of their accelerated disposals programme to assist the delivery of new housing nationally … this site is clearly able to have an early start to delivery and to make a material contribution to the plan’s new housing trajectory accordingly” (paragraph 144);  

(6) The Sustainability Appraisal for the JCS “did not identify any material constraints” and “the site is suitable in principle to accommodate a SUE and for about 1,300 rather than just 1,000 new homes”, something that “would
also accord with the earlier Northampton Longer Term Growth Options Study”.

10. As is clear, the details of the allocation in the emergent, pre-submission and adopted JCS were subject to change, and the Council objected to the Main Modification adding the Adjacent Land and 300 dwellings to the N6 allocation. However, two matters remained consistent: i) the entirety of the Appeal Site was, throughout the process, part of the allocation; and ii) the Council and the JPU consistently supported the allocation of the Appeal Site for 1000 homes.

Indeed the undisputed evidence shows that prior to the determination of the application:

(1) The Council had only ever expressed its support for the principle of 1000 homes on the Appeal Site, and never raised any objection to that number of homes on the Appeal Site;

(2) The Council and the JPU were considered to be partners in the development of the HCA’s application, and had welcomed the HCA’s active progression of the delivery of the site;

(3) Council officers had given substantial input into the development of the Appeal Scheme, including in relation to the Masterplan that is before this Appeal, and were satisfied that outstanding design issues had been resolved;

(4) The JPU considered that the Appeal Site was a suitable and available site, and that the Masterplan for the Site had been prepared to ensure that the proposed development had a positive relationship with the existing neighbouring communities and created a characterful, green

22 See, for instance, CDs 40 and 45 Joint Position Statements on Policy N6; and CD 137 Council Representations on pre-submission JCS and Main Modifications.

23 CD 137 Council Representations on pre-submission JCS and Main Modifications.

24 Inspector’s questions of Mr Stephens, Day 2 am. This is contrary to Cllr Larratt’s statement made in his evidence that “when proposals for development on this site have come before the Council it has consistently been resisted and in no way has it been supported”. That evidence was categorically wrong.

25 See CD a4, Minutes: Northampton South of Brackmills SUE (Wootton) – Development Strategy Meeting; and confirmed in the proof of evidence of Mr Tulley at para 3.7 and also in his EIC.

26 See, for instance, CD 122 Minutes of Pre-application meeting, section 3; and confirmed by Mr Brashaw in EIC, Day 3 pm.
and accessible new community, integrated with its neighbours and considerate of its surrounding landscape context.27

11. It is in that context that the Secretary of State must consider the Council’s refusal of permission for the Appeal Scheme and formal registration of an objection (‘the Objection’) to the allocation of the Appeal Site and the Adjacent Land for 1300 dwellings under policy N6 of the JCS.28 That Objection to its own29 recently adopted JCS was incoherent from a planning policy perspective and is likely to have been unlawful. As set out in the legal opinion in Appendix E to the proof of evidence of Mr Tulley, it is likely that the Objection was unlawful on the basis that it was irrational/perverse and/or on the basis that it sought to make planning policy outside of the statutory plan-making process and in conflict with the Development Plan, and/or on the basis that it frustrated the purposes of the Planning Acts.30

12. As agreed by Mr Tulley,31 the identity of the HCA is irrelevant in this appeal, but the history of the Site, the history of its allocation in the Development Plan, the history of the preparation of the application, and its prospective delivery in accordance with the statutory duties of the HCA, are not. The Appeal Site has been earmarked for development for almost 50 years. As a result of the long term promotion of the Appeal Site by the HCA and its predecessors, in partnership with the Council and the JPU, it is now allocated in the Development Plan for residential development. The Appeal Site forms part of the HCA’s accelerated disposals programme and the HCA is ready to deliver through its delivery programme as soon as permission is granted.

27 CD 40, Joint Position Statement, paras 5.4 and 6.1.
28 See CD 48 NBC Officers Report on NBC position on West Northamptonshire Joint Core Strategy Adoption; and CD 49 NBC Full Council Minutes: NBC position on West Northamptonshire Joint Core Strategy Adoption.
29 Although it was adopted by the Joint Committee; it is the Development Plan for this Council’s administrative area.
30 As explained below, Mr Stephens in XX confirmed that the Council did not ask that the Secretary of State refuse the appeal by placing any reliance on its objection.
31 EIC, Day 4 pm; XX, Day 5 am.
13. In the planning system, the HCA seeks to adopt a cooperative, partnership-based approach. It did so in this case. It is rare indeed that it takes refusals of planning permission to appeal. However, in the particular circumstances of this case, where the Council has refused permission for an application it had consistently supported and encouraged, and where it has sought to resile from the recently adopted JCS, the HCA determined that an appeal should be made to ensure that planning permission for a high-priority application, which is fully in accordance with the Development Plan, is granted without delay.

SECTION C: THE COUNCIL’S CASE AGAINST THE APPEAL SCHEME

14. As explored during evidence to the Inquiry, the Council’s case against the proposed development is deeply confused, as set out below.

15. First, the Council’s case has been confused as to the reasons for refusal. The minutes of the Planning Committee’s decision to refuse permission for the Appeal Scheme record the Planning Committee raising a number of disparate concerns about the proposed development before concluding that “[t]he development fails to comply with Policy H7 of the Northampton Local Plan and is not in conformity with the overarching intentions of the National Planning Policy Framework.” However, the formal reasons for refusal issued more than a week later do not reflect the Committee Minutes, but instead record that the HCA failed to demonstrate/failed to provide sufficient information that the impacts of the Appeal Scheme were acceptable in highways and landscape and visual terms. On the basis of the Minutes of the Planning Committee, it can be seriously doubted that the formal reasons for refusal are the genuine reasons for refusal.

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32 Neither the Council’s Officers nor Planning Committee Members gave evidence to the Inquiry. The Council relied instead on an external team of expert witnesses whom had no prior involvement in the officer’s recommendation or the decision making process. As explored below, it is clear that the Council’s witnesses had to construct a case to defend the Council’s position.

33 CD 58 Committee Minutes, p.5. H7 is a housing policy restricting development outside allocated sites.

34 CD14 Decision Notice.

35 Indeed, if Members had wanted more information, they could have deferred determination: the application was previously delayed for that reason: see CD118 letter from the Council to the HCA.
The Minutes record no concerns in relation to landscape at all. Moreover, the Council’s attempts to place reliance on passing references in the Minutes to highways concerns must be seen for what they are: *ex post facto* rationalisations. A number of people spoke at the Committee Meeting about a range of issues. Two comments amongst many referred to the possibility of highways impacts, but neither of those comments were made by Committee Members. As noted by Mr Tulley, the only indication of what Committee Members thought of the application is the reason for refusal quoted above, identifying conflict with H7 of the Local Plan and with the overarching principles of the NPPF. Indeed, had the Committee been genuinely concerned about the absence of sufficient information in the application, it could have deferred determination and requested that further information. The reality is that the Committee was asked, in January 2015, to ratify the formal reasons for refusal published in the Decision Notice on the basis that those reasons did not bear any relationship to the minuted reasons for refusal and because the minutes did not record any intention to delegate the detailed wording of the refusal to the Chair and Vice Chair of Committee in conjunction with the Head of Planning.

16. Further, the reasons for refusal morphed for a second time when ratified by the Planning Committee, when the word “*sufficiently*” was inserted into the highways reason for refusal, implying a weakening of the objection. Mr Corner sought to explain on Day 1 of the Inquiry that the insertion of the word “*sufficiently*” was an “error” and should not have been included. However, despite the fact that the point had been highlighted by the HCA on numerous occasions.

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36 It is also notable that in objecting to the adoption of the N6 Policy the report (CD48) focused on highway issues not on landscape issues which are barely even mentioned.

37 In objecting to the adoption of the N6 Policy the report (CD48) focused on highway issues related to the North West Bypass. In XX Mr Stephens accepted that the North West Bypass was wholly irrelevant to the N6 allocation.

38 Neither Councillor Nunn, nor Councillor Bell were members of the Planning Committee: see the list of Committee Members in attendance at the top of p.1 of the Committee Minutes, CD 58.

39 RX, Day 5 am

40 See paras 3.1 – 3.4 of the Officer’s Report on confirming the reasons for refusal: CD 61.

41 Or as Mr Tulley put it a “*softening*”.

42 The Council did not set out what specific information proved inadequate, nor did they invite further information.
occasions, that explanation had never before been given. It was not in the Council’s Statement of Case, the Statement of Common Ground, or in witness proofs, and had never been explained to the HCA in any correspondence or communication. Messrs Stephens and Birch were non-committal about when they first learnt that the insertion of the word “sufficiently” was an error; both of their proofs quote the word without any comment being made about it.

17. Moreover:

   (1) In respect of the Council’s objections on landscape and visual grounds, the reasons for refusal eventually ratified by the Council’s Planning Committee allege a failure to provide sufficient information to demonstrate appropriate mitigation for the impact of the development in landscape and visual terms. By contrast, the Council now accepts that there is sufficient information to determine the landscape and visual impacts of the Appeal Scheme. Its case is now that the proposed scheme is unacceptable in landscape and visual terms, but that case does not reflect a view held by Council Members who have – at no stage – considered (let alone opined on) the acceptability or otherwise of the Appeal Scheme in light of the additional information provided.

   (2) In respect of the Council’s highways objections, the reasons for refusal ratified by the Council’s Planning Committee allege an absence of sufficient information to demonstrate that the cumulative residual impacts of the Appeal Scheme will not be severe. By contrast, in both the evidence of Mr Birch and in the Council’s opening statement, the Council has asserted a positive case that they will show that the impacts of the Appeal Scheme will be severe, notwithstanding the fact that the Council has produced no original evidence to support that positive case; but has confined itself to attacking the case of the HCA.

18. Secondly, the Council’s case has been confused as to its support or objection to the principle of development on the Appeal Site. The Objection made by the

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43 XX Ms Howe, Day 3 pm
44 XX Mr Birch, Day 7, am.
45 INQ1, para.17.
Council was a clear *in principle* objection to development on the Site.\textsuperscript{46} However, the Council’s case before the Secretary of State includes a plea to the Secretary of State not to rely “at all” on the Objection when determining this appeal,\textsuperscript{47} and instead the Council purports to support the principle of development on the Site. Nonetheless:

1. Although the Council claims not to be attacking the principle of development in accordance with policy N6 of its own JCS, the Council’s case on landscape and visual impact is based on the fundamental premise that the land allocated for 1300 dwellings cannot actually accommodate 1300 dwellings.\textsuperscript{48} That is an *in principle* objection to policy N6 of the JCS.

2. Although the Council claims not to be attacking the principle of development in accordance with the JCS, its highways case is based on the fundamental premise that while the Northamptonshire Growth Management Strategy (‘the NGMS’) will provide some benefits in terms of the strategic road network this would be at the price of worsening congestion on the County road network.\textsuperscript{49} That premise flies in the face of the JCS (which endorsed the NGMS), and runs counter to the views expressed by Highways England (‘HE’), Northamptonshire County Council (‘NCC’) and the Council itself.\textsuperscript{50} It is, in essence, an *in principle* objection to the JCS strategy of developing SUEs around Northamptonshire, premised on the delivery of the NGMS.

19. Thirdly, the Council’s case has been confused about the weight to be attached to, and the Appeal Scheme’s compliance with policy N6 of the JCS. In summary:

\textsuperscript{46} CD 49 NBC Full Council Minutes: NBC position on West Northamptonshire Joint Core Strategy Adoption. 
\textsuperscript{47} XX Mr Stephens, Day 1 am. 
\textsuperscript{48} See below at paras 80 - 88. 
\textsuperscript{49} Something that arises not as a result of the Appeal Scheme according to Mr Birch but from the NGMS itself: see further below. 
\textsuperscript{50} See in particular, CD76 Memorandum of Understanding Annex 3, p.2 and the agreement of the parties that the NGMS is based on sound technical evidence and is necessary for the future growth of Northampton: see further below.
The formal reasons for refusal do not mention policy N6 of the then emerging JCS, let alone allege any conflict between the Appeal Scheme and policy N6.\(^{51}\)

The Council’s Statement of Case notes that policy N6 of the adopted JCS was a relevant policy, but also notes the Council’s in principle objection to that policy.\(^{52}\) It does not allege any conflict with policy N6, which was by that time adopted policy.

The Principal Statement of Common Ground notes the Council’s position that reduced weight should be attached to policy N6 in light of the Council’s in principle objection to that policy.\(^{53}\) There is no suggestion of a conflict with policy N6.

By contrast, the Council’s case before this Appeal, as presented in the evidence of Mr Stephens, is that full weight should be attached to policy N6,\(^{54}\) but that the Appeal Scheme conflicts with that policy.\(^{55}\)

20. **Fourthly**, the Council’s case has been confused as to its approach to the acceptable density of development on the Appeal Site. In the Reasons for Refusal, in its Statement of Case, and in the written evidence of Ms Howe, the Council has alleged that the proposed development would be of too high a density and so detrimental to the existing rural character of the surrounding area. However, in its evidence and submissions at the Inquiry, the Council has suggested that the HCA ought to have increased significantly the density of development so as to reduce the developable area of the N6 allocation.

21. **Finally**, the Council’s case has been confused in relation to the benefits or detriment of the NGMS. Despite signing a Memorandum of Understanding (‘the MoU’) with NCC and HE confirming that all parties support the NGMS as an essential element of delivering considerable housing and employment growth in Northampton (including the development of the Appeal Site), the Council’s case

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\(^{51}\) CD 14 Decision Notice.

\(^{52}\) CD 21 Council’s Statement of Case, para. 2.11.

\(^{53}\) CD 18 Principal Statement of Common Ground, paras 10.3 and 10.8.

\(^{54}\) Response to Inspector’s questions, Day 2 am.

\(^{55}\) See paras 45 - 63 below for a rebuttal of that suggestion.
in this Appeal is that the NGMS itself will have a detrimental impact on the functioning of the County roads. This argument is not only non-sensical, on the basis that NCC are responsible for the County road and surely would not have signed the MoU if they had any concern, it is also objectionable. Having agreed that the NGMS is “based on sound technical evidence” one can only conclude that Council officers had either seen the modelling prepared by HE (modelling that is unavailable to the HCA and unavailable to the Appeal on the grounds of confidentiality) or they were content to rely on the technical abilities of the HE in undertaking that modelling.

22. Let us be clear: those are the only two possibilities and one of them is that the Council has already seen the HE’s modelling. That modelling would have confirmed whether the Council’s concerns were justified or not and would have confirmed whether the Council’s highways case was professionally arguable or not. But the Council’s team before this appeal did not make internal inquiries of its own officers. By not making these inquiries, the Council preserved its ability to argue its highways case in blissful ignorance of the Council’s existing knowledge. But we suggest that adverse inferences should be drawn against the Council’s failure to take the most basic of preparatory steps in presenting its case.

23. Two conclusions should be drawn from the confused nature of the Council’s case. First, the Council’s entire case is infected by its in principle objection to its own JCS. The Council is aware that its formal objection to its own recently adopted JCS is potentially unlawful; and it recognizes that reliance on that objection is likely to amount to unreasonable behavior for the purposes of this appeal. Consequently, it has sought to maintain a fiction that its objections to the Appeal Scheme are narrow and focused, but the in principle objection continues to infect its arguments.

56 XX Mr Birch, Day 6 am
24. Secondly, even on the narrow formal reasons for refusal, the Council has shifted its position at multiple times and on multiple issues\(^{57}\) in order to maintain its objection to the Appeal Scheme. The HCA has been asked to respond to a moving target and has done its best to do so.\(^{58}\)

25. Notwithstanding the serious problems underlying the Council’s case as presented, it is that case that the HCA must answer and the Secretary of State must determine. In summary, the Council:

   (1) Agrees that full weight should be accorded to the policy N6 allocation of the Appeal Site and Adjacent Land in the Development Plan;\(^{59}\)

   (2) Supports the principle of 1000 dwellings on the Appeal Site;\(^{60}\)

   (3) Agrees that the Appeal Site is in a sustainable location, on account of its proximity to both the town centre and to employment opportunities, including Brackmills Industrial Estate (‘BIE’), and on account of the existing public transport links and opportunities to improve them;\(^{61}\)

   (4) Agrees that the Council does not have a five year housing land supply;\(^{62}\)

   (5) Agrees that the 1000 homes proposed would make a significant contribution to the objectively assessed need for housing in the plan period; and also a significant (250 homes) contribution to the 5 year supply\(^{63}\);

   (6) Agrees that the refusal of permission for this scheme, along with the refusal of permission for 1000 dwellings at Collingtree, further reduces

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\(^{57}\) It will be recalled that Art. 31 of the TCP(DMPO) 2010, in force at the relevant time, provided that “full reasons” for refusal must be stated “clearly and precisely”: see XX of Mr Stephens, and also CD66: correspondence with NBC regarding reasons for refusal.

\(^{58}\) This is most evident in respect of the transport case: see below.

\(^{59}\) Mr Stephens, response to Inspector’s questions, Day 2 am.

\(^{60}\) As confirmed by Mr Stephens in both EIC and XX.

\(^{61}\) Mr Stephens, response to Inspector’s questions, Day 2 am, and also see CD18 Principal Statement of Common Ground, para. 6.7.

\(^{62}\) CD18 Principal Statement of Common Ground, para.7.5; XX Mr Stephens, Day 1 pm.

\(^{63}\) CD 18 Principal Statement of Common Ground, para.7.5; XX Mr Stephens, Day 1 pm; and the proof of evidence of Mr Stephens, para. 6.2.
its five year housing land supply, and jeopardises its overall housing trajectory;\(^6^4\)

(7) Agrees, in that context, that the delivery of 1000 dwellings, including up to 240 affordable dwellings, is a significant benefit of the Appeal Scheme;\(^6^5\)

(8) Agrees that the Appeal Scheme would bring substantial other benefits, including: contributing to the regeneration of Northampton;\(^6^6\) creating a minimum of 209 full time jobs;\(^6^7\) providing a labour force in close proximity to BIE at a time when staff retention is an acknowledged problem for the businesses located;\(^6^8\) providing greater access to both new and existing residents to Brackmills Wood and Country Park;\(^6^9\)

(9) Agrees that, in relation to design and landscape issues, there is scope to address many of these issues at the Reserved Matters stage;\(^7^0\)

(10) Nonetheless considers that the Appeal should be dismissed because:
   i. The landscape and visual impact of the Appeal Scheme is unacceptable; and
   ii. The Appeal Scheme will have residual cumulative impacts on the highways network that are severe, or alternatively that it has not been demonstrated that the impacts will not be severe.

(11) Finally, the Council accepts that its third argument in relation to the impact on BIE is consequential on its highways case and stands or falls with that case.\(^7^1\)

SECTION D: THE BENEFITS OF THE PROPOSAL

(i) Housing Need

\(^6^4\) See also what was said on this in the OR CD 57 paras 7.9 – 7.11 and the further report from the head of Planning at CD73 para 5.5.

\(^6^5\) XX Mr Stephens, Day 1 pm.

\(^6^6\) XX Mr Stephens, Day 1 pm; and see policy N1 of the JCS: CD28.

\(^6^7\) XX Mr Stephens, Day 1 pm, and see the proof of evidence of Mr Tulley, paras 6.18 – 6.32. This figure excludes any jobs from the social and community infrastructure.

\(^6^8\) XX Mr Stephens, Day 1 pm; and see Appendix 1, p.15 to the evidence of Mr Stephens.

\(^6^9\) XX Mr Stephens, Day 1 pm; and see CD 2 Access and Movement Framework Plan DWG. NO. 3238_201 Rev A.

\(^7^0\) XX Ms Howe, Day 3 am

\(^7^1\) XX Mr Stephens, Day 1 pm; XX Mr Birch, Day 7 pm.
26. As the JCS Inspector noted, the spatial strategy, the spatial vision and the strategic focus of the JCS is on a series of large SUEs, mainly around Northampton but also at the other main towns.\textsuperscript{72} Those SUEs are "critical to overall delivery" of the housing strategy over the plan period, and the "strategic focus" of the JCS\textsuperscript{73}. Having, within the space of seven months, refused two applications for a total of 2300 dwellings at allocated SUEs, the Council is now in urgent housing need. Indeed the Council has gone further and made a resolution to object in principle to the allocation of both sites in the JCS\textsuperscript{74}.

27. It is agreed that the Council cannot demonstrate a 5 year housing land supply, even if the houses allocated on the Appeal Site and at Collingtree – but now resisted - were delivered. The Council’s own assessment indicating only a 4.87 year supply.\textsuperscript{75} As Mr Stephens acknowledged, it would be possible to end the discussion there.\textsuperscript{76}

28. However, it is relevant to note that the Council’s 4.87 year supply assumes the delivery of 625 dwellings from the allocated SUEs at the Appeal Site and at the Collingtree site. Given that the Council’s Objection amounts to an in principle objection to development on those sites, and given that planning applications in respect of both sites have recently been refused, they cannot rationally be included in the 5 year supply figures. As set out in the proof of Mr Tulley, the removal of those sites from the 5 year supply figures results in a 4.52 year supply, applying a 5\% buffer (i.e. the minimum buffer), and a 3.95 supply applying a 20\% buffer.\textsuperscript{77}

29. Given the Council’s record of persistent under-delivery of housing, the HCA submits that it is entirely appropriate, in line with paragraph 47 of the NPPF, to apply a 20\% buffer to the Council’s 5 year housing land supply needs. That there

\textsuperscript{72} CD 44 JCS IR, para. 18.
\textsuperscript{73} CD 44 JCS IR, para. 43.
\textsuperscript{74} CD 49 Full Council Minutes - NBC position on West Northamptonshire Joint Core Strategy Adoption; as Mr Tulley noted in EIC, this objection in principle gives a clear indication of what the Council’s reaction would be if further applications were made on either site.
\textsuperscript{75} CD 17 Principal Statement of Common Ground, para.7.10.
\textsuperscript{76} XX Mr Stephens, Day 1 pm.
\textsuperscript{77} Proof of evidence of Mr Tulley, para.7.38.
has been a persistent under-delivery of housing cannot be disputed: over the last 13 years, the Council is cumulatively 2929 units behind on delivery; in seven of those 13 years, including both recessionary and non-recessionary years, the Council failed to deliver on its housing targets. As Mr Stephens accepted, recessionary years cannot be discounted in the assessment of persistent under-delivery. Nor can failures to meet targets set under the Regional Spatial Strategies be discounted or given less weight; after all, they were the only targets for those years against which delivery can be assessed. Moreover, even if assessed against the updated objectively assessed needs set out in the JCS, there was a shortfall of 3229 houses in the years 2001 – 2011.

30. The question for the Secretary of State, then, is whether to rely simply on the last three years of meeting housing targets in the Borough, or whether to acknowledge the persistent under-delivery over the longer period, both before and during the recession, that has led to a 2929 shortfall on defined targets over a 13 year period. In the Groby AD (see Mr Tulley’s Appendix F) the Inspector noted that there was merit in taking “a longer view” and that the NPG supported this (see paragraph 15).

31. The HCA asks the Secretary of State to conclude that – on the best figures available to the Inquiry – the Council has only a 3.95 year housing land supply, and to conclude that housing delivery in the region is urgent. Even on its own best case the Council has only a 4.52 year supply (see above). The latter conclusion is reflected in the September 2014 Report to Committee prepared by the Council’s Head of Planning in respect of the Council’s 5 year housing land supply. In that report, she highlighted the urgent need for delivery of homes and the risks inherent in the refusal of permission on sites – like the HCA’s – that are allocated in the JCS. She noted (emphases added):

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78 Proof of evidence of Mr Tulley, Table 4, p.67.
79 That is confirmed by all of the appeal decisions referred to by both Mr Tulley at section 3 of his rebuttal proof of evidence and those referred to by Mr Stephens.
80 Mr Tulley’s EIC was that there was another way of approaching the matter and that was by reference to the OAN set out in the JCS, see CD28, table 4 and which showed an annualised minus in terms of delivery against OAN of 3229 in the period 2001 – 2011.
81 CD 73 Committee Report on 5 Year Housing Land Supply.
5.5 ... the assumption is that sites included as Sustainable Urban Extension allocations (SUEs) within the JCS will start delivering housing in a timely manner, with all providing some dwellings in the five year period. The 5 year assessment is based on the situation as it was assessed 1st April 2014. More recent decisions by Planning Committee including the refusals for sites such as the Northampton South of Brackmills SUE (JCS Policy N6) and land at Harcourt Way potentially put at jeopardy the assumptions contained within the 5 year supply analysis. This could be in the delivery of the SUE for which permission has been refused and also its impact on confidence of developers to bring forward other SUEs until the JCS allocations are resolved through adoption of that Plan ...

7.1 As identified the NPPF places significant weight on local planning authorities being able to identify deliverable housing sites to achieve a 5 year supply. The reality is that local planning authorities who do not confront the issue of pro-actively seeking to meet their objectively assessed housing needs through positive planning, either in plan making or taking decisions to support timely delivery to meet the 5 year supply have the potential to lose the initiative in the future planning of their communities”.

32. Mr Stephens sought to suggest that any shortfall created by the refusals of permission at two strategically important SUEs could be made up from: (i) windfalls; and/or (ii) allocation of sites through the Part 2 JCS. However, as Mr Tulley explained in his EiC:

(1) the 5 year supply of the Council in fact already makes allowance for windfall (see CD72, table 4.5); and

(2) no reliance can be placed on the Part 2 JCS as there is not yet even a published timetable for this. Mr Stephens thought it might be adopted within two years, but Mr Tulley rightly considered that highly optimistic. In any case, a two year delay to development being delivered would fly in the face of national and local policy for swift delivery of housing.

33. The absence of a five year housing land supply for the Council has policy consequences. The High Court has upheld an approach which treats housing land supply as “the most important material consideration” in a planning decision which and is capable of outweighing policies within the development plan: see Tewkesbury Borough Council v SSCLG [2013] EWHC 286 (Admin). Paragraph

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82 XX Mr Stephens, Day 1 pm, and also see his proof of evidence at para 5.23.
83 EIC Mr Tulley, Day 4 pm.
84 In the Stratford AD (CD110) the Secretary of State concluded that the absence of a 5 year supply of housing outweighed harm to landscape and to the setting of Anne Hathaway’s Garden (see paras. 17 and 18).
47 of the NPPF requires planning authorities to “boost significantly the supply of housing” and paragraph 49 of the NPPF provides that “Housing applications should be considered in the context of the presumption in favour of sustainable development.”

34. Paragraph 49 continues to state that “[r]elevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.” Although both Mr Stephens and Mr Tulley spent some time considering the consequences of this provision on policies in the JCS, such as policy S5, S6 and N6, we submit that there can be no real doubt about its application. In circumstances where a local authority cannot demonstrate a 5 year supply of housing land, paragraph 49 does not require the Secretary of State to treat all policies for the supply of housing as out of date (i.e. including those recently adopted policies which seek to secure housing delivery); it requires only “relevant” policies to be treated as such. Policies (in this case adopted only 7 months ago) which permit or encourage the provision of housing, or policies which allocate land for housing, can still be accorded full weight. It is only those policies that discourage, restrict or prohibit housing that need to be treated as out of date. To do otherwise would run counter to the entire purpose of paragraph 49 and would defeat ab initio any newly adopted plan in a scenario where an LPA cannot demonstrate a 5 year supply of housing, thus frustrating the role of plan making. Even Mr Stephens concluded that Policy N6 ought to be given full weight.

35. In a context in which the Council cannot demonstrate a five year housing land supply, and in the context in which the Appeal Site is allocated for housing, the need for housing in the region is “the most important material consideration” in this Appeal. The Appeal Scheme offers the prospect of 250 dwellings within the next five years, and 1000 dwellings over the plan period. As Mr Stephens accepted, that is a significant benefit.

85 Mr Stephens’ answers to questions from the Inspector, Day 2 am.
86 Proof of evidence of Mr Stephens, para. 6.2.
36. In addition, the HCA also offers up to 240 affordable homes at a time of affordable housing need.\textsuperscript{87} Although the 24\% affordable offer is below the policy target of 35\%, the Council agrees, having had access (on an open book basis) to all the HCA’s commercially confidential data,\textsuperscript{88} that 24\% is the highest proportion of affordable housing that can be provided viably and constitutes a substantial planning benefit.\textsuperscript{89} On that basis, the Appeal Scheme is wholly consistent with Policy H2 of the JCS, which requires the delivery of 35\% affordable housing, subject to viability on a site-by-site basis.

\textbf{(ii) Other benefits}

37. The Appeal Scheme offers the following additional benefits, summarised here, but some of which are developed in more detail below:

\begin{enumerate}[label=(\arabic*)]
\item As noted in the JCS, the delivery of the Appeal Scheme will contribute to the regeneration of Northampton;\textsuperscript{90}
\item It will provide a primary school, local centre, community facilities, and public house;
\item It will create a minimum of 209 full time jobs in construction and in A1 – A4 uses, as well as additional jobs in the local centre, the school and at community facilities;\textsuperscript{91}
\item It will deliver up to 1000 homes, including 240 affordable homes, in close proximity to major employment locations, including at BIE, supplying well skilled local labour in a sustainable way;\textsuperscript{92}
\item It will provide a substantial improvement in access to public open spaces, offering new links for existing and new residents to Brackmills Wood and Country Park, creating children’s play spaces, and providing a network of green infrastructure that enhances biodiversity on the Site;\textsuperscript{93}
\end{enumerate}

\textsuperscript{87} Proof of evidence of Mr Tulley, para.6.41.
\textsuperscript{88} EIC Mr Tulley, Day 4 am.
\textsuperscript{89} Joint letter by CBRE/Savills on viability.
\textsuperscript{90} CD 28 JCS, Policy N1, p.146.
\textsuperscript{91} Proof of Evidence of Mr Tulley, para. 6.18, as explained further in cross examination.
\textsuperscript{92} See further below at Section H, para.188.
\textsuperscript{93} See further below at paras 56 - 58.
(6) It is likely to provide nearly £8 million in New Homes Bonuses;\(^\text{94}\)

(7) It will provide total financial contributions of £19m, including infrastructure improvements which will benefit existing businesses and residents as much as new. Crucially, a £1.2m contribution to the NGMS will ensure that a scheme supported by the JCS, HE, NCC, and the Council, and designed to improve the existing congestion on the A45, is delivered for the benefit of all.\(^\text{95}\) HE, NCC and the Council all agree that the NGMS is crucial for the future development of Northampton and it is to be funded in large part through contributions from developers of the allocated SUEs. The refusal of permission to this and other SUEs undermines the prospects of delivery of the NGMS which is designed specifically to manage growth including on the Appeal Site.

38. Mr Stephens acknowledged that paragraph 19 of the NPPF requires significant weight to be attached to the economic benefits of the Appeal Scheme.\(^\text{96}\) We submit that significant weight should also be attached to the social, environmental and infrastructure benefits the Appeal Scheme will bring.

39. That is not to discount the fact that there will be some environmental disbenefits. As acknowledged by Mr Tulley, the loss of fields and replacement with housing inevitably brings a disbenefit.\(^\text{97}\) But that is inevitable given the allocation of the land for housing. The Sustainability Appraisal conducted for the Core Strategy appraised and balanced environmental benefits and harms and reached positive conclusions in relation to the development of the Appeal Site. The Principal Statement of Common Ground notes the agreed environmental benefits of the proposal,\(^\text{98}\) and even Mr Stephens in the section of his proof on the planning balance does not note any planning negatives aside from those listed in the reasons for refusal.

SECTION E: COMPLIANCE WITH THE STATUTORY DEVELOPMENT PLAN

\(^{94}\) Proof of evidence of Mr Tulley, Table 3, p.56.
\(^{95}\) See further below at .
\(^{96}\) Proof of evidence of Mr Stephens, para. 6.8.
\(^{97}\) RX Mr Tulley, Day 5 am.
\(^{98}\) CD 18 Principle Statement of Common Ground, paras 6.5 - 6.6.
40. The evidence before the Appeal confirms without question that the Appeal Scheme complies with the statutory Development Plan. Below we consider each of the most relevant aspects.

(i) Policies S1 and S5 of the JCS

41. As set out above, the strategic focus of the JCS is on a series of large SUEs, mainly around Northampton but also at the other main towns. Those SUEs are “critical to overall delivery” of the housing strategy over the plan period. Policy S1 of the JCS marks Northampton as the Principal Urban Area for the West Northamptonshire region and seeks to concentrate development and economic activity in and around that Principle Urban Area in order to accommodate in-migration and enhance economic growth. Policy S5 of the JCS provides that outside the existing urban areas development will be focused on SUEs. The Appeal Site is identified as part of the Northampton South of Brackmills SUE.

42. It is notable that in its Objection to policies N5 and N6 of the JCS, the Council did not object to policies S1 and S5, both of which clearly support the proposed development. But a more fundamental point can be made in respect of these policies. Growth in Northampton is inevitable, but also positive for the wider West Northamptonshire region and beyond. And the growth needed in Northampton cannot take place without development outside the existing urban boundaries. As explored during the cross examination of Ms Howe, only a small minority of the identified suitable, available and achievable sites in the Northampton region come from within the urban area of Northampton. Less than 25% of those sites are found within existing settlements; the rest are found on “edge” sites which are currently undeveloped, or on land entirely outside of existing settlements. Accordingly, the development of the urban/rural edge of Northampton is necessary in order to meet objectively assessed needs.

99 CD 44 JCS IR, para. 18.
100 CD 44 JCS IR, para. 43.
101 CD 68 2012 SHLAA Update, p.39 Table 6.
102 Hardingstone and Wooton are neighbourhoods of Northampton not villages: see the JCS at para. 12.44. The Hardingeone Parish Council argued for “village status” in the JCS (see the OR, CD57, at p. 13) as did HAG (ibid p. 18 para 6.22). The JCS Inspector concluded that the N6 allocation was “well related to the existing built up area”, CD44 para.139. This is shown graphically by the colour aerial photographs in the DAS discussed in Mr Brashaw’s EiC and in
Through the JCS process, the JPU adopted a careful, plan-led approach to identifying those edge sites most suitable for development and allocated the Appeal Site as one of a number of SUEs, having conducted sustainability appraisals in advance.

43. Moreover, SUEs were identified in the JCS as the preferred approach to meeting the objectively assessed housing needs because of the need to deliver sustainable and coordinated development and infrastructure (both social and physical), rather than inefficient piecemeal development on smaller sites.\textsuperscript{103} The OR advised members as follows:\textsuperscript{104}

> “7.10 Incremental development of smaller brownfield sites within or on the edge of Northampton sufficient to achieve the required 5 year land supply are more difficult to serve with the range of community facilities and infrastructure needed to support the increase in population. Consequently, spatial strategy such as the Core Strategy aims to concentrate additional development that cannot be allocated within the town centre in a small number of Sustainable Urban Extensions that can provide the necessary infrastructure to support the growth.

7.11 In this context, it is considered that the residential development of the site would make a significant contribution towards the Council’s housing requirements and that the proposal accords in principle with the overriding aims of the NPPF for the provision of housing and the Council’s obligations to ensure a 5 year housing land supply as required by the Government.”

44. Consequently, the Secretary of State should give substantial weight to the Appeal Scheme’s compliance with policies S1 and S6 of the JCS.

(ii) Policy N6 of the JCS

45. Policy N6 of the JCS allocates the Appeal Site as part of the Northampton South of Brackmills SUE and sets out specific requirements for that allocation. It is agreed that Policy N6 should be accorded full weight as part of the Development

\textsuperscript{103}See also para. 52 of the NPPF, CD22 which says “[t]he supply of new homes can sometimes be best achieved through planning for larger scale development, such as … extensions to existing villages and towns …”.

\textsuperscript{104}CD 57 Committee Report.
Plan, and the HCA submits that the Appeal Scheme is entirely in accordance with policy N6.

46. As noted above, the Council’s case on policy N6 has been confused. Up to the point of exchange of proofs, the Council had not alleged non-compliance with the policy. No part of the Reasons for Refusal or the Statement of Case alleged non-compliance with emerging, then adopted, policy N6. Although Mr Stephens claimed that the failure to identify non-compliance with N6 was a mere "omission" that answer must be seriously doubted. In the Principal Statement of Common Ground, the Council did not identify the Appeal Scheme’s compliance with policy N6 as a matter in dispute. Instead, it identified the weight to be attached to the policy as a matter in dispute, presumably because the Council, at that stage, wanted to avoid the consequences of the clear support that the policy provided to the Appeal Scheme. Now that the Council has changed its mind and decided to accord the policy full weight, it claims that the Appeal Scheme is in conflict with policy N6. For the reasons that follow, that contention must be dismissed.

47. First, the Appeal Site falls completely within the N6 allocation.

48. Secondly, it is agreed that the Appeal Site is in a sustainable location, not just because of its proximity to the town centre but also because of its proximity to employment locations, including in particular BIE.

49. Thirdly, the Appeal Scheme complies with bullet point (a) of the N6 allocation to provide in the region of 1300 homes on the Appeal Site and the Adjacent Land. The Appeal Scheme offers up to 1000 homes on the Appeal Site. As confirmed by Mr Stephens, there is no suggestion that an application can only be compliant with policy N6 if it relates to the entire allocation and there is no suggestion that

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105 Mr Stephens response to Inspector’s questions, Day 2 am.
106 XX Mr Stephens, Day 1 am.
107 CD 18 Principal Statement of Common Ground, paras 10.3 and 10.8.
108 Agreed by Mr Stephens in his response to the Inspector’s questions, Day 2 am.
the Appeal Scheme prejudices the delivery of around 300 homes on the Adjacent Land.  

50. In the context of the Council’s landscape objections, it is important to note that an application for materially less than 1000 homes on the Appeal Site would not be compliant with policy N6. As explored in the cross-examination of Mr Stephens, the number of dwellings required by policy N6 was increased by the JCS Inspector in the Main Modifications to the JCS to ensure that there was sufficient supply to match the objectively assessed needs and longer plan period. In short, the Inspector concluded that 1000 homes on the Appeal Site was insufficient for the N6 allocation and therefore added the Adjacent Land and an extra 300 homes to that allocation. Although Mr Stephens was reluctant to agree, Ms Howe was more frank in her admission that, in that context, the provision of only 1000 homes across the entire N6 allocation would not be “in the region of” 1300 homes.  

51. Fourthly, as required by bullet point (b) of policy N6, the Appeal Scheme provides for a primary school. In addition, it offers a section 106 contribution to support secondary school provision in the area.  

52. Fifthly, as required by bullet point (c) of policy N6, the Appeal Scheme provides a local centre including a convenience store.  

53. Sixthly, although Mr Stephens sought to disagree, it is clear that the Appeal Scheme offers an integrated transport network focused on sustainable transport modes, as required by bullet point (d) of policy N6. The Appeal Scheme provides a number of public transport enhancements, including a substantial upgrading of bus services and frequency; and the upgrading of existing bus stops and the provision of new bus stops on Landimore Road and Newport.

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109 XX Mr Stephens, Day 1 am.
110 XX Mr Stephens, Day 1 am; XX Ms Howe, Day 2 am.
111 Agreed by Mr Stephens in XX, Day 1 am.
112 Agreed by Mr Stephens in XX, Day 1 am.
113 CD16 Statement of Agreed Position, section 3.9.
Pagnell Road to accommodate existing bus routes and potentially facilitate a new north-south link between BIE and the existing Wootton residential area. It offers a range of new pedestrian and cycle links through the site and enhanced connections with Hardingstone, Wootton and Brackmills Woods and to BIE. Its sustainable location will likely result in some modal shift.

54. Mr Stephens agreed that the development was in a sustainable location both in terms of its proximity to the town centre and areas of employment. He agreed that the existing public transport links combined with the proposed improvements to those links supported the sustainability of the scheme, and he confirmed that the Council had no criticism of the proposed pedestrian and cycle links offered by Appeal Scheme.

55. His contention that the Appeal Scheme did not comply with bullet point (d) of policy N6 was based on the Council’s highways case; that is, he contended that the failure of the HCA properly to mitigate its effects on the highways network meant that it did not provide an integrated transport network. In so doing, Mr Stephens confused the delivery of an integrated network with the mitigation of highways impacts. They are two separate issues and need to be considered separately. The Council’s case is that the Appeal Scheme will cause severe residual cumulative effects on the highways network. If that is the case (which the HCA strongly disputes), the Appeal Scheme will fail to comply with the requirement in policy C2 of the JCS for new development to mitigate its effects on the highway network, but it does not mean that the HCA is not delivering an integrated transport network focused on sustainable transport modes for the purposes of bullet point (d) of policy N6. Indeed, the distinction between the need to mitigate highways impacts and the delivery of an integrated highways network and supported by the structure of policy C2 which requires mitigation of effects separately from the requirement for SUEs to deliver sustainable transport

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114 CD9 Planning Statement, para.8.10; CD16 Statement of Agreed Position, section 3.8; and confirmed by Mr Tricker in EIC, Day 7 am.
115 CD16 Statement of Agreed Position, section 3.8.1; and CD 2 Access and Movement Framework DWG. NO. 3238_201 Rev A.
116 XX Mr Stephens, Day 1 am; and this was confirmed by Mr Birch in XX, Day 6 am.
provision. For those reasons, we submit that, irrespective of the Council’s highways case, the Appeal Scheme complies with bullet point (d).

56. **Seventhly,** as required by bullet points (e), (f) and (h) of policy N6, the Appeal Scheme provides structural greenspace and wildlife corridors and a landscape buffer to the south west of the site, as indicated on Figure 5 of the policy map, and adequate open space and leisure provision. As described by Mr Brashaw in evidence, the masterplan has sought to deliver an integrated design incorporating all of these requirements while still delivering the 1000 homes required by policy. The masterplan has been structured around swathes of open space including:

1. A Green Infrastructure spine, which runs along the existing PRoW KN6 across the highest, western part of the site;

2. A multifunctional Green Corridor running around the interface with the northern, eastern and part of the southern boundaries of the site, providing habitat improvements and ecological connectivity, as well as children’s playspace, and cycle and pedestrian circulation into adjacent publicly accessible green spaces including Brackmills Country Park; and

3. Proposed allotments to the south west of the Appeal Site, in preference to formal screening.

57. As set out in the HCA’s Note on Width of Green Corridors, and as agreed by Ms Howe, the details of each of these elements can be determined at the reserved matters stage. It will be recalled in particular that Mr Brashaw was confident that Ms Howe’s criticisms in relation to the treatment of the green corridor to the public right of way, and the width of the northern and eastern green corridor, as shown in the Illustrative Masterplan, could be determined and corridors widened without jeopardising the delivery of in the region of 1000 homes on the Site.

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117 Agreed by Mr Stephens in XX, Day 1 am.
118 See the Green Infrastructure Framework drawing 3238_205 Rev A (CD 2) and the HCA’s Note on Width of Green Corridors with accompanying plan (INQ 26).
119 Proof of Evidence of Mr Brashaw, paras 6.5.5 – 6.5.10.
120 XX Ms Howe, Day 2 am.
58. Open space provision of 9.98ha has been provided. Although that is lower than policy might otherwise require, this is not a matter on which the Council has taken issue with the Appeal Scheme, given the proximity of the Appeal Site, and direct access, to Brackmills Wood and Country Park.121

59. Eightly, as required by bullet points (g) and (i) of policy N6, the Appeal Scheme has carried out archaeological and ecological assessment of the site and will provide satisfactory flood risk and surface water management.122

60. Many of the points above are reflected not only in the evidence received orally at the Inquiry, but in the Principal Statement of Common Ground agreed between the HCA and the Council.123

61. The only points of genuine dispute remaining between the HCA and the Council relate to the N6 requirements i) that necessary infrastructure should be phased alongside the development, and ii) to provide a masterplan which demonstrates how the land use elements positively respond to context and design issues (the Council having confirmed that there are no issues in respect of connectivity and sustainable planning requirements)124. The Council’s case in respect of the masterplan is addressed below in relation to its broader case on landscape and visual impact. It suffices to say here that the masterplan submitted with the application, considered alongside the application documentation as a whole, clearly demonstrates a thoughtful, integrated approach to the design of the Appeal Scheme, which properly takes into account its context.

62. In respect of the Council’s case on the phasing of necessary infrastructure, it is clear that the Appeal Scheme is in compliance with the policy. The relevant part of the policy states that “necessary infrastructure is required to be phased alongside the delivery of the development.” As confirmed by Mr Stephens and Mr Birch, the

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121 CD 57 OR, para.7.24; and see also the detailed note on open space provision in Mr Brashaw’s Appendix 4.
122 All agreed by Mr Stephens in XX, Day 1 am.
123 CD 18 Principal Statement of Common Ground
124 XX Mr Stephens, Day 1 pm.
Council takes no issue with phasing of infrastructure delivery,125 but the Council seeks to place emphasis on the words “necessary infrastructure” as if this were a policy seeking to assess the infrastructure requirements for the development and require the provision of that necessary infrastructure. Clearly, that is not the case. Policies INF1 and INF2 of the JCS achieve the purpose of ensuring necessary infrastructure generally,126 and Policy C2 achieves this specifically in respect of highways infrastructure. The Policy N6 requirement does not seek to replicate those other policies but is, instead, a recognition that the development of 1300 dwellings in their entirety will take place over a relatively long period and that delivery of infrastructure should be phased alongside the delivery of the development. As such, it is a requirement directed at phasing, and not directed at the assessment of the adequacy of infrastructure. Given that Mr Stephens confirmed that the Council has no concerns in relation to phasing, there is compliance with this part of policy N6. In any event the HCA submits that the necessary infrastructure has indeed been provided (see below).

63. Accordingly, we submit that the Council was right not to allege any non-compliance with policy N6 in its reasons for refusal and Statement of Case, and was right not to identify compliance with policy N6 as an issue in dispute in the Principal Statement of Common Ground. The Council’s belated (and frankly half-hearted) attempt to claim such non-compliance must be rejected.

(iii) Policy N1 of the JCS

64. By virtue of its compliance with policy N6, the Appeal Scheme also satisfies policy N1 of the JCS which is aimed at the regeneration of Northampton. It notes that the regeneration will be supported by, inter alia, housing development through SUEs, including at Northampton South of Brackmills. As confirmed by

125 XX Mr Stephens, Day 1 am; XX Mr Birch, Day 6 pm.
126 INF1 makes clear reference in the supporting text to Developer Contributions as the manner in which any additional infrastructure can be provided see e.g. CS para 11.15. That is what the HCA is doing in the agreed section 106 package. INF2 works similarly. In other words, the policies provide the solution for any identified infrastructure requirements rather than requiring planning applications simply being refused because of a need for further infrastructure.
Mr Stephens, the Appeal Scheme will support the regeneration of Northampton and accordingly comply with policy N1.127

(iv) Policy C2 of the JCS

65. Policy C2 of the JCS requires development to mitigate its effects on the highway network and be supported by a transport assessment and travel plan prepared in accordance with current best practice guidelines. Compliance with this element of policy C2 is addressed in detail below in the context of responding to the Council’s highways case. However, policy C2 also provides a number of specific requirements for SUEs, each of which is satisfied by the Appeal Scheme, as follows:

1. “provide access via walking, cycling and public transport routes to a mix of uses including local employment, housing and retail facilities” and “secure the most efficient networks for walking, cycling and public transport within the development”. As set out above, the proposal includes a substantial upgrading of bus services and frequency;128 and the upgrading of existing bus stops and the provision of new bus stops129 and a range of new pedestrian and cycle links through the site and to Hardingstone, Wootton and Brackmills Woods and to the Brackmills Employment Area.130

2. “ensure that new or enhanced public transport services are secured on occupation of the first dwelling when this is appropriate”. As set out in section 6 of the draft section 106 Agreement, enhancements to the public transport improvements must take place prior to first occupation of the Dwellings.

3. “ensure sufficient density across the site in order to sustain public transport and other local services.” As confirmed by Mr Brashaw, densities compliant with Policy H1 of the JCS are deliverable on the Site in line with the submitted Framework Plans. Densities of around 35dph are sufficient to sustain public transport and other local services.

127 XX Mr Stephens, Day 1 pm.
128 See the HCA’s note on bus services INQ 34; and CD 16, para.3.9.
129 See the HCA’s note on bus services INQ 34; and CD 9, para.8.10.
130 See CD 2 Access and Movement Framework Plan DWG. NO. 3238_201 Rev A.
(v) Policies INF1 and INF2 of the JCS

66. Policy INF1 requires the provision of physical, green and social infrastructure on site to support the demands generated by the proposed development. INF2 requires financial contributions to be made to support off-site infrastructure. The Appeal Scheme is wholly in compliance with both policies.

67. In addition to the public transport, and walking and cycling improvements noted above, the Appeal Scheme offers a range of on-site infrastructure, including a large green infrastructure network, incorporating allotments, children’s play areas, parks and gardens, and outdoor sports facilities.\footnote{131} It offers a primary school, local centre, community facilities, a convenience store and a public house. In respect of off-site infrastructure it offers substantial financial contributions for infrastructure improvements. In particular, the contribution of more than £1.2m towards the NGMS will help to ensure the much-needed improvement of the A45 corridor and its associated junctions. Contributions for secondary school and healthcare provision exceed £4 million.\footnote{132} As noted above it will provide total financial contributions of £19.6m for infrastructure improvements.

(vi) Policy S8

68. Setting aside the Council’s highways objection, which is considered in detail below, it is clear that the Appeal Scheme supports the purposes of policy S8 of the JCS. That policy seeks to focus the majority of new jobs growth within the principal urban area of Northampton, including at BIE. As noted by the JCS Inspector, its objective is “to retain and diversify the local economic base, whilst maintaining a broad balance between new homes and jobs”. Together with the other strategic employment policies in the JCS, it is based on the assumption of a minimum net increase of 28,500 jobs from 2008 – 2029.\footnote{133} Accordingly, policy S8 cannot be delivered without new housing.

\footnote{131}{See CD 2 Green Infrastructure Framework DWG. NO. 3238_205 Rev A.}
\footnote{132}{See the signed s.106 Agreement.}
\footnote{133}{CD 44 JCS IR, para.54.}
In considering the location of the Appeal Site, the JCS Inspector commented on its proximity to the "substantial Brackmills employment area to the north". Mr Stephens cited its proximity to BIE as a factor in concluding that the Appeal Site is in a sustainable location. And as Mr Tulley noted, the Appeal Scheme would be likely to provide BIE with a pool of nearby labour at a time in which staff retention has been highlighted as a problem. Indeed, the co-location of employment and residential development is good planning and clearly supports the objectives of the JCS to balance jobs and housing growth.

Policy BN5 of the JCS and saved policy E7 of the Northampton Local Plan

Policy BN5 is poorly drafted and, on its face, does not clearly address landscape issues beyond those related to heritage. Nonetheless, the HCA has proceeded on the basis that it could be interpreted as including a more general requirement for developments to sustain and enhance the landscape features which contribute to the character of the area including the skyline and landscape settings of towns and villages. The policy must clearly be read in the context of the JCS as a whole, and in line with Policy N6, which allocates the Appeal Site for development and requires the masterplan to take into account the potential for development within the SUE to impact on the skyline when viewed from the north and the east. Notably, the policy does not amount to a prohibition on development that affects that skyline; it simply requires the effect to be taken into account.

For the reasons explored in detail in the section that follows on landscape and visual impact, the Appeal Scheme clearly complies with this policy.

Policy E7 of the Local Plan is more complicated. Similar to policy BN5 read with N6 of the JCS, policy E7 does not impose a prohibition on development that affects the identified skylines. Instead, it simply attaches special importance to the impact on those skylines. It states:

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134 CD 44 JCS IR, para.139.
135 Proof of Evidence of Mr Stephens, Appendix 1, p.15.
“when considering, in the context of Policy E1, the impact of proposed development upon the landscape, special importance will be attached to its effect upon the skyline of the following areas: Between Great Houghton and Hardingstone (as seen from the Nene Valley to the north)"

74. Notwithstanding the fact that the Appeal Scheme complies with policy E7 for the reasons set out below, the HCA also submits that limited weight should be attached to the policy. Although Mr Stephens sought to insist on putting full weight on the policy, the Council’s Head of Planning has already acknowledged that less than full weight is appropriate. We say that policy E7 should attract only limited weight for the following reasons:

(1) The policy is old, having been adopted in 1997, and having been based on the housing delivery requirements of the Northamptonshire Structure Plan 1989;

(2) The housing requirements today are completely different;

(3) Brackmills Wood was planted in 1998 – 2000, and therefore post the adoption of policy E7. That wood has already impacted substantially on the skyline referred to in the policy and screens the vast majority of the land behind it;

(4) Although the policy was saved in 2007, it was saved “in the expectation that [it would] be replaced promptly …” and that has not happened;

(5) As policy E1 is no longer any part of the Development Plan, policy E7 can no longer be “read in context of” that policy (which policy E7 expressly requires). In any case, policy E1 was restrictive and non-NPPF compliant (as the Head of Planning report notes). It must now be read in light of the more positive and flexible BN5 (assuming it is applicable at all – see above) which replaced policy E1;

(6) There is no conflict alleged between on the one hand any policies in the JCS including policy N6 and on the other hand policy E7; indeed the

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136 CD a6 Planning Committee Report: The impact of emerging plan policy in determining planning applications; and CD a7 Planning Committee Report: Assessing the weight of saved policies.

137 See the proof of evidence of Mr Brashaw at para 7.4.15 and CD19 Principal SOCG, para 8.1.

138 CD25 Saving Direction.

139 In XX Mr Stephens not surprisingly accepted that 8 years was not prompt in this regard.

140 If it is not applicable then Policy E7 seems to have no surviving context in which to be applied.
supporting text in N6 also refers to consideration being given to the skyline. Given this it is difficult to see what policy E7 adds.

75. It is clear that E7 read with BN5 does not seek to proscribe development of the ridge that affects the skyline but asks that this be carefully considered.

SECTION F: LANDSCAPE AND VISUAL IMPACTS
(i) The consequence of the N6 allocation for the consideration of landscape and visual effects
76. One of the Council’s two objections to the Appeal Scheme is that its landscape and visual impacts are unacceptable. Below, we address in detail the Council’s criticisms, but as a matter of approach, it is important to note at the outset that any consideration of the landscape and visual impact of the Appeal Scheme must be considered in the context of the allocation of the Appeal Site and the Adjacent Land for a sustainable urban extension made up of in the region of 1300 dwellings with associated infrastructure including a primary school, and a local centre with a convenience store; health and community facilities and a public house.

77. In this context, a single headline point can be made. As accepted by Ms Howe, when 1000 homes plus associated infrastructure are placed on a green field, there will inevitably be localised adverse landscape and visual impacts; there will inevitably be an urbanising effect, an encroachment of the urban edge, and a loss of openness. Ms Howe agreed that to be the case in respect of viewpoints on the existing footpath that crosses the site, and in respect of the landscape impact on her LCZ C, as viewed from viewpoints 2 and 15. She acknowledged that whatever one did in design terms there would be significant effects on these locations. The pass has been sold in this regard by the allocation; if this was a good point it would have led the JCS Inspector to conclude that the site was unsuitable in principle for development. He reached the opposite view.

141 XX Ms Howe, Day 2 pm; the proposal is for a “sustainable urban extension”; that will always have an urbanizing effect and encroach on the countryside.
78. Even on an unallocated site, the fact that green fields will be replaced by housing does not mean that the development is unacceptable in planning terms; the impacts must simply be weighed against the benefits of the proposal. But on a site allocated for a sustainable urban extension in a very recently adopted plan, and where the Council’s own data demonstrates the absence of any alternative to developing on “edge sites”, those inevitable impacts cannot weigh against the proposal at all because the impacts have already been factored into the allocation. That does not mean, of course, that careful consideration should not be given to sensitive design, taking into account the context of the proposed development, and ensuring sufficient mitigation for the impacts of the development. But it does mean that a substantial level of very localised landscape and visual impact is unavoidable and inevitable, however sensitively designed the scheme may be and however effective the mitigation of effects may be.

79. Consequently, we submit that the test for the Secretary of State in this appeal is not whether the landscape and visual impacts of the Appeal Scheme are acceptable, as compared to the existing green fields. Instead, the test is whether the landscape and visual impacts of the Appeal Scheme are acceptable, as compared to the inevitable landscape and visual impacts that have already been accepted by the N6 allocation for around 1300 homes and associated infrastructure.

80. As was clear from the evidence of the Council’s witness Ms Howe, a substantial part of the Council’s case against the Appeal Scheme on landscape and visual grounds is a case against the delivery of 1300 dwellings on the Appeal Site and Adjacent Land. Although the Council has sought to deny that characterisation, Ms Howe’s evidence permits no other conclusion. In criticising the HCA’s Illustrative Masterplan, and the proposed development on the Adjacent Land, Ms Howe’s proof of evidence and rebuttal proof of evidence record the following views on how the developable area on the Appeal Site and Adjacent Land should be limited:

(1) A need to widen the green corridor along the northern edge of the Appeal Site to increase the buffer to Brackmills Wood and Country
Park north of what Ms Howe describes as Landscape Character Zones ('LCZs') A and B (Proof of Evidence, paragraph 6.2);

(2) A need to widen the green corridor which incorporates the existing public right of way KN6 that runs through the Appeal Site through LCZs A and B (Proof of Evidence, paragraph 6.2);

(3) A need to set back the development from the eastern edge of LCZ C (Proof of Evidence, paragraph 6.5);

(4) A need to restrict development to the southern part of LCZ C along The Green\(^\text{142}\) (Proof of Evidence, paragraph 6.5);

(5) A need to restrict development on the Adjacent Land to the southern and western part of what Ms Howe describes as Area 2 (Rebuttal Proof of Evidence, paragraph 2.17);

(6) A need to prohibit development on all of what Ms Howe describes as Area 1 (Rebuttal Proof of Evidence, paragraph 2.17).

81. Mr Brashaw sought to reflect those limitations on the developable area on a sketch plan submitted to the Inquiry.\(^\text{143}\) Ms Howe agreed that the sketch plan broadly reflected her views as expressed in her Proof of Evidence and Rebuttal.\(^\text{144}\)

82. Mr Brashaw explained in stark terms the consequences of Ms Howe’s approach. If the developable area were restricted in line with her recommendations, and the Appeal Site were developed in line with the existing density of 35 dwellings per hectare ('dph'), the Appeal Site would accommodate under 800 dwellings, and the Adjacent Land would accommodate only 100 dwellings, resulting in an overall shortfall from the allocation of more than 400 dwellings. As Ms Howe accepted, that would not be “in the region of 1300 dwellings” and would not therefore be in accordance with the policy N6 allocation.\(^\text{145}\)

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\(^{142}\) The is some doubt over whether the road which passes along the south-eastern edge of the Appeal Site, marked on a number of plans as the Green, is correctly named as the Green. However, for the purposes of this Closing Statement, we will assume it is correct and will continue to use that name.

\(^{143}\) INQ 9.

\(^{144}\) EIC Ms Howe, Day 2 pm; XX Ms Howe, Day 3 am.

\(^{145}\) XX Ms Howe, Day 3 am.
83. Alternatively, densities could be increased substantially in the developable areas to ensure the delivery of the required number of dwellings, but— as Mr Brashaw noted— that would result in a hard living environment and less scope for varying densities across the site or providing a reduction in density towards the rural edge of the Appeal Site to the east. Moreover, even an average density of 42dph across the allocation, the Appeal Site and Adjacent Land—with a developable area as proposed by Ms Howe, would still fall substantially short of the 1300 homes required by policy N6.

84. Although the Council sought to argue that it would not be opposed to higher densities in the region of 42dph in parts of the appeal site, that is clearly false, and Ms Howe confirmed that she had not provided any evidence on whether a higher density of 42 dwellings per hectare would be acceptable. As Mr Brashaw explained in his evidence, the Council’s planning officers discouraged higher densities in and around 40dph at an early stage of consultation. Further, the formal Reasons for Refusal and the Council’s Statement of Case both note that the proposed density of 35dph “would be detrimental to the existing rural character of the surrounding area” and “results in a very urban form which is out of keeping with the rural edge location of the site”. Ms Howe concluded that the proposed development is of an “unacceptable scale and density” and has an “inappropriate density”. She recommended that housing in LCZ A should have a density similar to the existing, adjacent housing, which Mr Brashaw confirmed to be in a range between the low 20s and mid 30s in terms of dwellings per hectare. In respect of housing in LCZ B, she recommended that

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146 XX Mr Brashaw, Day 4 am.
147 XX Mr Brashaw, Day 4 am.
148 RX Ms Howe, Day 3 am
149 XX Mr Brashaw, Day 4 am.
150 CD 14 Decision Notice.
151 CD 21 Council’s Statement of Case, para.3.13.
152 Proof of Evidence of Ms Howe, para.3.61.
153 Proof of Evidence of Ms Howe, para 7.2.
154 Proof of Evidence of Ms Howe, App.1 para.4.11.
155 RX Mr Brashaw, Day 4 pm.
it should be of a “smaller scale”.156 And in respect of LCZ C, she recommended “low density”.157 Indeed, as Mr Brashaw noted, the entire presentation of Ms Howe’s evidence in her proof and rebuttal proof, and of the Council’s case, is directed at “lower density, smaller scale” development on the Appeal Site;158 a point confirmed by the conclusion of her proof of evidence where she noted that “a lesser amount of development could be acceptable on the appeal site”,159 implicitly confirming her view that the amount of development allocated in the JCS is unacceptable.

85. There is no material within Ms Howe’s or the Council’s evidence that states or suggests that a higher density than that presented by the Appeal scheme would or could be acceptable, and at no point during evidence did Ms Howe state that the higher density that would be necessary to deliver the required allocation within the smaller area that she proposes, would be acceptable.

86. In her cross examination, Ms Howe confirmed that she had not engaged in a masterplanning exercise and had not considered what the knock-on effects of her limitation to the developable area would be in terms of increased densities or decreased housing provision.160 But in those answers, she revealed the fallacy of her arguments. Of course larger buffers, more screening, more greenspace, more views, and more openness is desirable in a housing development. But those requirements must be balanced against the need to make efficient and viable use of land and to deliver the housing required by policy. Ms Howe’s approach was to lay out a landscape and visual wishlist for the Appeal Site, which could not meet the terms of policy N6 in respect of housing provision. Mr Brashaw’s approach was to come up with an integrated design response which sought creative solutions to balance all of the competing needs and constraints of the site, and which evolved through consultation with the Council, stakeholders and local people.161 As Mr Brashaw noted on several occasions, you cannot design a

156 Proof of Evidence of Ms Howe, para 6.3.
157 Proof of Evidence of Ms Howe, App.1 para.4.26.
158 RX Mr Brashaw, Day 4 pm.
159 Proof of Evidence of Ms Howe, para.7.9.
160 XX Ms Howe, Day 3 am.
161 RX Mr Brashaw, Day 4 pm.
sustainable and viable urban extension by considering landscape and visual impact in the abstract, and removed from all other considerations, but this is what Ms Howe has done.

87. The N6 allocation for 1300 homes was confirmed by the JCS Inspector in the knowledge that the Site was identified as part of Northampton Landscape Sensitivity and Green Infrastructure Study as an area of high\(^{162}\) or high to medium\(^{163}\) landscape sensitivity. And it was confirmed in the knowledge that the development would be likely to affect the skyline when viewed from the north and east.\(^{164}\) The Inspector’s conclusion was also based on a Sustainability Appraisal that “did not identify any material constraints in relation to the higher number of new dwellings”, i.e. the full total of 1300 dwellings.\(^{165}\)

88. The Council’s case against the Appeal Scheme on landscape and visual grounds, as developed in the evidence of Ms Howe, is a case against Policy N6 of the JCS. The Appeal Site has no nationally or locally important designation. Policy N6 requires in the region of 1300 dwellings to be delivered on the Appeal Site and Adjacent Land. The Council’s case amounts to an assertion that only around 900 dwellings should be provided on that land. The HCA submits that the Secretary of State should attach very little weight to that argument which is an in-principle objection to the N6 allocation and seeks to undermine the plan-led system.

(ii) Differences between the HCA and the Council

89. Having noted the fundamental error of approach in the Council’s case, it is worth recording that the differences in the HCA’s and Council’s assessment of the landscape and visual effects of the proposed development are very narrow. They are summarised in the Second Statement of Common Ground on Landscape Matters, and relate only to:

\(^{162}\) CD 94 Northampton Landscape Sensitivity and Green Infrastructure Study, paras 8.5.15 - 8.5.17.

\(^{163}\) CD 43 Sustainability Appraisal Addendum page A11-91

\(^{164}\) CD 28 JCS 12.46.

\(^{165}\) CD44 JCS IR p.145.
The approach to assessing landscape sensitivity, Mr Brashaw having conducted two Landscape and Visual Impact Assessments\textsuperscript{166} based on Landscape Character Areas defined by the current Northampton Landscape Character Assessment, November 2008\textsuperscript{167} and Ms Howe having assessed landscape sensitivity against her own detailed character assessment of the Appeal site and have divided it into three Landscape Character Zones (LCZs).\textsuperscript{168} Although there are differences between Mr Brashaw and Ms Howe in relation to the desirability of their approaches, both concluded that the other’s approach was reasonable.\textsuperscript{169}

The sensitivity of receptor and significance of effect at viewpoint 10 (VP10). This viewpoint from the Nene Way at the Northampton Washlands is the only viewpoint from the Nene Valley to the north, from which the Council considers that the Appeal Scheme will be visible to the extent that the skyline referenced in policy E7 is potentially affected. Mr Brashaw and Ms Howe followed different approaches to assessing significance of effect; Mr Brashaw assesses significance of effect on users of the Nene Way (using the scale of effect assessed at Viewpoint 10 to inform this) whereas Ms Howe assessed the significance of effect at the Viewpoint. Mr Brashaw finds there to be small Scale effects during construction and at Year 1, and Negligible scale effects at Year 15 at Viewpoint 10, leading to effects of Negligible magnitude and Minimal significance on users of the Nene Way at all stages of the project.\textsuperscript{170} Ms Howe considers the effects of the development from this viewpoint to be Low magnitude and Moderate to Slight significance.\textsuperscript{171} Accordingly, at its highest, the Council’s argument in favour of dismissing the Appeal on this point is that the Appeal Scheme will have a low magnitude effect of moderate to slight

\textsuperscript{166} The first is found in chapter 8 of the ES submitted with the application, CD 6, and the second is found at CD 134.
\textsuperscript{167} CD 101: a document for which Mr Brashaw’s firm was responsible, see CD17 Statement of Common Ground on Landscape & Visual Matters, para. 3.3.10.
\textsuperscript{168} Appendix 1 to the proof of evidence of Ms Howe.
\textsuperscript{169} XX Howe, Day 3 am; EIC Brashaw, Day 3 pm.
\textsuperscript{170} CD 134 Second LVIA, Table 2 and para.6.4.4.
\textsuperscript{171} Appendix 1 to the proof of evidence of Ms Howe, para.4.22.
significance on the skyline noted in policy E7, from a single viewpoint only.

(3) The assessment of the effects of the development on the public right of way (PRoW) KN6 which passes through the Appeal Site. Although both Mr Brashaw and Ms Howe agree that there would be adverse effects of High magnitude and Major significance, Ms Howe disagrees with Mr Brashaw’s conclusion that there may be some beneficial effects as well.

90. Consequently, the difference between the parties as set out in the Second Statement of Common Ground on Landscape and Visual Matters is very narrow indeed. That list, however, needs to be supplemented with the more fundamental attack made by the Council on the Masterplan submitted in accordance with policy N6 of the JCS. The Council’s case is that the Masterplan fails to demonstrate how the land use elements positively respond to context and design issues, in particular in relation to the treatment of the PRoW and the skyline, as well as its response to the changing character within the Site, as assessed by Ms Howe. None of those criticisms hold weight. As noted above, the fundamental point which drives all of Ms Howe’s criticisms of the Masterplan is her view that the N6 allocation ought not to have included 1300 dwellings. The Secretary of State should treat that approach with extreme caution as it amounts to a fundamental attack on the statutory Development Plan.

91. It should also be noted that the Parish Council instructed a landscape architect to consider the Appeal Scheme and his view was that “there is nothing in the Landscape Assessments to object against”: see the Note on Heritage at Appendix 7 (Appendix F to the rebuttal of Mr Tulley173). Thus, Ms Howe’s response to the Inspector’s questions that Hardingstone “is clearly a part of Northampton”, and the conclusion of the JCS Inspector, undermine the suggestion made by a number of third parties, including the Parish Council, that Hardingstone is a distinct settlement rather than a neighbourhood of Northampton.

172 Appendix 1 to the proof of evidence of Ms Howe, paras 4.25 – 4.28; CD 134 Second LVIA para.6.4.4.
173 And see also the XX of Cllr Thomas.
(iii) Approach to Landscape and Visual Impact Assessment

92. Mr Brashaw approached both his original and updated LVIA by utilising the published Landscape Character Assessment, Strategies and Guidelines for Northampton contained in the Northamptonshire Environmental Character and Green Infrastructure Suite\(^{174}\) and by drawing on baseline evidence contained in the Northampton Landscape Sensitivity and Green Infrastructure Study (NLS & GIS)\(^{175}\). Ms Howe conducted her own site-specific landscape character assessment and reached conclusions on the basis of that approach. Although Ms Howe and Mr Brashaw have accepted that each other’s approach is reasonable, it is worth considering the desirability and reliability of each approach.

93. Mr Brashaw, using the published material, has followed the approach recommended in the JCS, that development is not precluded in broad scale areas identified as having high landscape sensitivity by the NLS & GIS, but additional care is required\(^ {176}\). Although the published material assesses landscape on a larger scale than the Appeal Site, Mr Brashaw has taken into account site-specific matters in considering the characteristics and effects on landscape character: see section 6.2 and pp 43 – 46 of the revised LVIA.

94. In cross-examination, Mr Brashaw was criticized for failing to conduct his own landscape character assessment in line with the approach adopted by Ms Howe. Setting aside the fact that Ms Howe had already agreed that his approach was a reasonable one, his response to that line of cross-examination was convincing. He noted that the Guidelines on Landscape and Visual Impact Assessment (‘GLVIA’) cautioned against conducting such assessments. Particularly when acting for the developer of a site, there is a real risk of appearing self-serving by relying on your own landscape character assessment in preference to the evidence based and published landscape character assessments accepted by the local authority. Provided you take into account – as Mr Brashaw did – the specific characteristics of the individual site and its context and how they relate

\(^{174}\) CD101.

\(^{175}\) CD94.

\(^{176}\) CD 28 JCS, p.112.
to those recorded in the published LCA, it is a robust and widely accepted approach, and there can be no criticism of that approach.\textsuperscript{177}

95. The majority of the criticisms levelled at Mr Brashaw’s approach to assessing landscape sensitivity were based on an erroneous assumption that Ms Howe’s site-specific approach had yielded more accurate and/or detailed results. That is clearly not the case. Although Ms Howe’s site specific approach was reasonable in principle, it suffered from the following clear problems:

(1) Ms Howe’s assessment of landscape sensitivity failed to include any consideration of landscape value. GLVIA states that sensitivity is made up of judgments on the susceptibility of the receptor to change and the value attached to the receptor.\textsuperscript{178} As Ms Howe accepted in cross examination, her method, as set out in paragraph 2.17 and Table 1 of her Appendix 1 does not contain any reference to value.\textsuperscript{179} Although she sought to avoid the consequences of that failure, it is clear that the absence of any explicit consideration of value in her method risked overestimation of sensitivity in her assessment;

(2) The justification for Ms Howe’s division of the Appeal Site into three distinct LCZs is questionable. Although there are clearly nuanced differences as you move through the Appeal Site, there are no sharp distinctions as suggested by the division of the Site into LCZs A, B and C.\textsuperscript{180} Moreover,

i. In respect of Ms Howe’s view that LCZ B is “quite removed from human influences”, she acknowledged in cross examination that this comment must be seen in the context of accepted views of the edge of Hardingstone, the houses visible on Pagnall Court and at Wootton, the presence of numerous telegraph poles visible from and within LCZ B, and the presence of Landimore Road, with its associated traffic and lighting columns, running along the entire length of the west of LCZ B: see Mr Brashaw’s LVIA, Appendix 14,

\textsuperscript{177} XX Mr Brashaw, Day 4 am.
\textsuperscript{178} CD 152 GLVIA (3rd edition) para.3.26.
\textsuperscript{179} XX Ms Howe, Day 3 am.
\textsuperscript{180} A point emphasised by Mr Brashaw in his XX on Day 4 am.
VP 13 (Left) (Centre Right) and (Right). She also acknowledged that the “stillness” attributed to LCZ B is subject to the movement of vehicles along Landimore Road, which runs alongside LCZ B.  

ii. In respect of Ms Howe’s view that LCZ C has important interconnecting views to the countryside to the east, she acknowledged in cross examination that the topography of the site and the area to the east means that views from LCZ C to the east only extend as far as the Adjacent Land owned by MGH and allocated in policy N6: see the ZTV in Mr Brashaw’s LVIA, App.13, figure 3. Accordingly, if the N6 allocation is built out as planned, there will be only very limited or no interconnecting views of countryside from or to LCZ C. The interconnecting views that are alleged by Ms Howe to exist are represented by VPs 2 and 15, both of which are located on ‘The Green’, accepted by Ms Howe to be a minor rural road. For much of the year, those VPs may be blocked by a hedgerow. When they are not, Ms Howe accepted that – however development is designed – there will be a significant impact on the landscape and significant visual impact.

iii. In assessing each of the LCZs, Ms Howe has considered them individually, and in relation to each other, as they are now. In doing so, she ignores the interrelationship of the LCZs as allocated. For example, an assessment of LCZ C, as existing, will unsurprisingly find that LCZ C is separate from the existing built up settlement of Northampton and part of the rural countryside. Its sensitivity to development would accordingly be heightened. By contrast, an assessment of LCZ C in the context of the N6 allocation would recognise that, in circumstances where LCZs A and B and the Adjacent Land were built out (and Ms Howe accepts that some development is acceptable on all of those parcels of land),

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181 XX Ms Howe, Day 3 pm.
182 XX Ms Howe, Day 3 pm.
183 CD 134, Second LVIA, Appendix 14.
184 XX Ms Howe, Day 3 pm.
185 XX Ms Howe, Day 3 pm.
186 Proof of evidence of Ms Howe, section 6; and her rebuttal proof, section 2.
would not be separate from the built up settlement of Northampton and would not even be the urban edge. Its sensitivity would accordingly reduce. Accordingly, by splitting the Appeal Site into hard edged zones and assessing each zone separately and independently, Ms Howe has overestimated the sensitivity of Zones B and C.

96. Although Mr Brashaw accepted that Ms Howe’s approach to assessing sensitivity of the site in its existing condition was – in principle – a reasonable one, he justifiably criticised how she uses the existing condition of the site to conclude on the appropriate scope of development on the Appeal Site and N6 allocation. His view is that the Appeal Site is a transitional landscape with changing nuance and character, but in many respects it is a fairly uniform landscape of arable fields and hedgerows, which cannot be sensibly divided into three separate parts. Ms Howe’s approach does not lead to an integrated approach to the assessment of the existing landscape and townscape, and the design of a sustainable, viable urban extension, considering all aspects that need to be addressed, in the manner that was appropriately followed in designing the Appeal Proposal.  

(iv) Overall design approach

97. Mr Brashaw described his integrated and creative approach to masterplanning. That approach involved substantial consultation with community

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187 XX Mr Brashaw, Day 4 pm.
188 EIC Mr Brashaw, Day 4 am was that the appeal scheme has been “designed sensitively and through an extensive process of consultation, and iterative assessment and design, to respond to its urban and rural context and complies with relevant policies including Policy E7 of the Local Plan (to the extent relevant) and N6 of the Core Strategy”. He talked through the DAS (CD 5) and the Statement of Community Involvement (CD 10) explaining the design approach. He explained the approach to context (section 1.2) that looked at landform, character, the surrounding development, views and visibility, pedestrian access, ecology, the conservation area and even drainage. He explained that the design response was “a creative, collaborative … process” that addressed “many criteria including Policy, character, context, site features, landform, views and visibility, transport, heritage, ecology, drainage, views of stakeholders and local community, community facilities and links to existing communities, sustainability (economic, social, environmental) …”. This process involved a team of specialists led by the masterplanner to produce “a creative design response that does not just look at one set of criteria (landscape and visual) but addressed and integrates many criteria to produce a sustainable urban extension”.

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stakeholders, with the Council, and with the JPU to identify the key design principles driving the masterplan design. From the earliest stages of masterplanning, the design sought to respond to policy E7 of the Local Plan and the need to take into account the sensitive skyline; it sought to integrate the existing footpath as a coherent green spine running through the Site; and it sought to respond to the urban/rural edge to the east. Both Council Officers and JPU officers gave substantial input into the masterplanning process. The Design and Access Statement (‘DAS’) explains the evolution and development of the design principles.

98. The outcome of the masterplanning process, and the Masterplan submitted for the purposes of policy N6, are the Framework Plans and the Illustrative Masterplan. As emphasized by Mr Brashaw, the Illustrative Masterplan is merely illustrative and the Framework Plans set out the outer limits of possible development. They are evidence of the design principles which drives the Masterplan in responding to context with good design in, inter alia: setting lower density development in the “permeable edge” (also referred to as the permeable leafy edge) on the sensitive northern boundary and at the urban/rural edge to the east, while setting higher density development in the “permeable grid” in

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190 EIC Mr Brashaw, Day 4 am; and see also CD5 DAS, p.45; and the Statement of Community Involvement (CD10).
191 See, for instance, CD 96 ES Scoping Report (December 2011) at para.3.7.8; and CD 6 ES, para.8.4.2.
192 See CD5 DAS pp 30 and 31, CD10 Statement of Community Involvement, Appendix 3 slide 5.0.
193 See CD5 DAS p 44, CD10 Statement of Community Involvement, Appendix 3 slides 4.0 and 6.0.
194 See CD 40 Joint Position Statement on Policy N6; CD122 Minutes from Pre-app meeting; CD 123 Minutes from Stakeholder Meeting. And see also CD122 “CP (Chris Preston NBC Planning officer) confirmed that he has had an opportunity to review the latest draft masterplan sent to him for comment. Overall, CP was satisfied that the latest proposed plan addresses the issues raised in previous comments”.
195 CD 5 DAS.
196 See INQ 18 HCA’s note on the definition of the Masterplan. Note also that the HCA’s view that the definition of Masterplan for the purposes of policy N6 is different to the definition for the purposes of conditions is supported by the Upton Park Decision Notice (CD 107), which includes a condition requiring a Masterplan and Design Code covering the whole of the site to be submitted to and approved in writing by the Local Planning Authority.
197 Defined in CD5 DAS, p.73.
the western part of the site near the existing built development in Hardingstone and Wootton; locating lower building heights on the sensitive northern edge of the site and where the proposed development backs onto existing development; and incorporating the green spine and green corridors as key elements of the design scheme. Importantly, the Illustrative Masterplan and the Framework Plans allow substantial flexibility in the details of design, the widths and designs of green corridors, and the heights and density of buildings, as confirmed in the Landscape Statement of Common Ground. Ms Howe confirmed, in cross-examination, that a proposed condition requiring the submission of a Design Code would give the Council a “strong hand” in design matters in any reserved matters application.

99. To address specific issues raised by Ms Howe:

(1) In relation to the eastern end of the proposed development, the design of the eastern edge includes a positive interface between the development and the rural edge. As Mr Brashaw emphasised, the scheme has been designed to be deliverable on its own, whether or not the site comes forward on the east and has a positive frontage to the existing rural edge in contrast to the existing edge west and south of the Appeal Site of back gardens. The eastern end of the site will incorporate both lower density “permeable edge” development and lower building heights, and a green corridor.

(2) In relation to the sensitive northern edge of the development, the Appeal Scheme:

i. Incorporates a green corridor to provide, *inter alia*, opportunity for planting to provide screening to the development from the important views from the north, in addition to the screening

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198 CD 2 Proposed Layout Framework DWG. NO. 3238_203 Rev A.
199 CD 2 Scale Framework Plan DWG. NO. 3238_204 Rev A and CD5 DAS pages 80 and 81.
200 CD 2 Green Infrastructure Framework DWG. NO. 3238_205 Rev A and CD5 DAS pages 82 to 84.
201 See INQ26, the HCA’s note on the widths of green corridors.
202 CD 17, para 2.1.4.
203 XX Mr Brashaw, Day 4 am.
204 See references in para.98 above.
already provided by Brackmills Wood. Although Ms Howe considered that this buffer should be wider, she agreed that that could be addressed in a reserved matters application. Mr Brashaw confirmed that the green corridor to the north could be increased in width, along with an increase in the width of the green spine incorporating PRoW KN6, without jeopardising the delivery of around 1000 homes on the site at an average of approximately 35 dph, and in line with the Framework plans.

ii. Locates lower density “permeable edge” development and lower building heights adjacent to the northern edge in order to reduce the potential impact of the development on views from the north.

(3) In relation to the so-called ‘gap’ in Brackmills Wood, allowing glimpses of visibility of the Appeal Scheme when viewed from the north, Mr Brashaw explained that: (i) in visual terms the effects will be of Negligible magnitude and Minimal significance (see para. 89 (2) above); but that (ii) planting in the green corridor to the north of the Appeal Site itself ought to provide sufficient additional screening if this was considered to be an issue. However, in the event that it was considered necessary to require planting within the gap (within Brackmills Wood and outside the Appeal Site), the HCA would be willing to accept a condition, draft wording for which has been agreed with the council, that would allow the Council to require planting in the gap in Brackmills Wood: see the note on s.106 obligations and planting in Brackmills Wood.

(4) In relation to the PRoW running through the Site, the HCA has sought to incorporate that PRoW within a green spine running through the

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205 XX Ms Howe, Day 3 am.
206 RX Mr Brashaw Day 4 pm; INQ 26, HCA’s note on widths of green corridors.
208 One of the other ‘gaps’ is the cutting made for Landimore Road. There is though as the Framework Plans show the opportunity for planting along Landimore Road to mitigate views: EIC Mr Brashaw, Day 4 am; XX Ms Howe, Day 3 pm.
209 And Mr Brashaw’s evidence was that it was not necessary, RX Day 4 pm.
210 INQ 17.
development. Although Ms Howe considered that the buffer on either side of green corridor incorporating the footpath should be wider, she agreed that that could be addressed in a reserved matters application. Mr Brashaw confirmed that the green buffer corridor incorporating the footpath could – in principle be widened - without jeopardising the delivery of around 1000 homes on the site at an average of approximately 35 dph and in line with the Framework plans.

(v) Points of dispute

100. As set out above, the points of dispute in relation to the impact of the Appeal Scheme are very limited and relate only to the impact on footpath KN6, represented by VPs 11, 12 and 13 and the landscape and visual impact as viewed from the Northampton Washlands / Nene Way, represented by VP10. The issues concerning LCZC and VPs 2 and 15 are considered above.

101. First, and starting with VP10, it is agreed that:

1. The Northampton Washlands area including part of the Nene Way long distance footpath is the only area to the north of the Appeal Site where the Council has any concerns regarding the visibility of the Appeal Scheme on the skyline seen from the Nene Valley, and therefore the only area from which policy E7 will be engaged;

2. VP10 is a representative view from the Northampton Washlands and the Nene Way;

3. The photomontages, as produced at Appendix 6 of the Statement of Common Ground on Landscape and Visual Matters, can be relied on.

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211 See Mr Brashaw’s Appendix 6 which sets out illustrative views of the green spine on KN6. It shows possible treatments and demonstrates the careful consideration given to this aspect of proposal. Of course, views will change from those presently there but that is because path is now through an SUE not a field. Details can be altered at RM stage.

212 Howe XX Day 3 am.

213 RX Brashaw, Day 4 pm; INQ 26 Note on widths of green corridor.

214 XX Howe, Day 3 pm; and see CD 17 Statement of Common Ground on Landscape & Visual Matters at para. 3.7.3 and the Second Statement at paras. 1.1.4. Ms Howe’s “criticisms” that the photomontages were “a bit dark” and should have been in “A1” were answered by Mr Brashaw in his EIC. He was not cross-examined on this. The agreement set out in the
by the Secretary of State, in conjunction with the Inspector’s views formed while on a site visit, when reaching conclusions on the likely effects of the Appeal Scheme.

(4) At present you cannot see any of the Appeal Site from VP10 because of the tree cover in Brackmills Wood and that tree cover would screen much of the built development on the site from year 1;

(5) There is already a substantial amount of built development on the ridgeline running from Hunsbury Hill to the Appeal Site, but that development is mostly screened by trees from VP10.215

(6) The view towards the Appeal Site from VP10 is through, or over, the substantial built development of BIE;

(7) The skyline as viewed from VP10 is broken by a number of large pylons;

(8) At year 15, from VP10, you may see rooftops and upper parts of the second storeys of the northern edge of the development, but only in the limited gaps in Brackmills Wood including potentially through the cutting at Landimore Road and in the ‘gap’ saved for the proposed Link Road. Elsewhere, the built development would be entirely screened by trees.

102. In light of those agreed facts, Ms Howe accepted that there would be no significant visual effect in EIA terms. Additionally, she reconsidered her written opinion that the effect of the Appeal Scheme would be a “fundamental change to the landscape”216 and stated, instead, that there would be a “noticeable change”, reflecting a minor or partial alteration to the landscape.217 However, even that reconsidered view can be doubted. As the Inspector will have seen on the site visit, and as the Secretary of State will see in the photomontages, the impact of the Appeal Scheme on the skyline as viewed from VP10 is minimal. That is particularly the case in light of the following:

Statements of Common Ground on the use of these photomontages remains as Ms Howe confirmed in XX.

215 XX Howe Day 3 pm; also see the proof of evidence of Mr Brashaw App.1, DWG NO 3945_012.

216 Proof of evidence of Ms Howe, para.4.21.

217 XX Ms Howe, Day 3 pm.
As noted by Mr Brashaw in answer to the Inspector’s questions, the height of trees in Brackmills Wood as shown in the photomontages are underestimated to ensure the representations are robust and cannot be criticized for over-representing screening. The height of the trees as shown in the Year 1 photomontages (during the first year after completion of the whole development) are modeled at the agreed existing height of 8 – 10m\(^ {218}\). The height of the trees as shown in the Year 15 photomontages are modeled at the agreed height of 13.5m which they are predicted to reach 15 years from Year 1.\(^ {219}\) However, by the time the site is fully built out, the trees in Brackmills Wood would have grown substantially higher. Year 1 after completion of the building project is likely to be closer to 16 years on from now in terms of the height of these trees. Year 15 after completion of the building project is likely to be closer to Year 30 on in terms of growth for the trees.

In relation to the gaps in Brackmills Wood, the green corridor along the northern edge of the Appeal Site will allow for substantial planting to screen the development as viewed from VP10.\(^ {220}\) To the extent considered necessary, that screening could be supplemented by additional planting in Brackmills Wood.

103. Even at its highest, the Council’s case is that the Appeal Scheme, as viewed from VP10, will have low magnitude effects of slight to moderate significance. For the reasons set out above, even that conclusion overstates the reality. The Secretary of State should prefer Mr Brashaw’s conclusion that there will be effects of Negligible magnitude and Minimal significance. But on either basis, there is no justification to conclude that the impact of the Appeal Scheme as viewed from VP10 – or from anywhere else in the Nene Valley to the north - is unacceptable. The evidence before the Appeal supports the conclusion that the proposed

\(^{218}\) CD 17 SOCG, App.7.

\(^{219}\) CD 17 SOCG, App.7.

\(^{220}\) See especially the Green Infrastructure Framework Dwg No 3238.205 Rev A, CD2, and referring to “mixed mature woodland planting of deciduous and evergreen trees with shrub understorey. Subject to Highways Authority agreement”. Mr Brashaw confirmed in EiC that this had been discussed with NCC who were in principle content with such new planting along Landimore Road and which would reduce the gap caused by the cutting made for that road.
development is compliant with policy E7 of the Local Plan and compliant with the requirement in policy N6 of the JCS to take into account the potential for the development to impact on the skyline as viewed from the north.

104. Secondly, in relation to the impact of the development on footpath KN6, there can be no reasonable basis on which to refuse permission. The allocation of the Site and the Adjacent Land for a sustainable urban extension of in the region of 1300 dwellings will inevitably transform the footpath from a semi-rural to an urban footpath. There is no way to deliver the N6 allocation and avoid that consequence. Mr Brashaw did not seek to avoid the obvious conclusion that the effects of the proposed development on the footpath would be of High magnitude and Major significance. Widening the buffer to the footpath or providing greater planting around it would not alter the fundamental change that would be caused. Ms Howe accepted that, whatever was done with design, the change would never be less than significant.

105. Nonetheless, as set out above, the Appeal Scheme has sought to integrate the existing footpath as a key design element. The existing footpath becomes part of the green spine running through the western section of the urban extension. The width of that green spine is not defined in this outline application, but can be determined at the reserved matters stage. It may be that the minimum width indicated in the HCA’s Note on Width of Green Corridors will be considered sufficient by the Council at the reserved matters stage; it may be that the Council requires an increase in that width; both will be deliverable. And for those reasons, there is no basis on which to refuse this outline application in relation to a site allocated for this development on account of its landscape and/or visual impact on the existing footpath on the site.

(vi) Conclusion

106. In this appeal, the Council’s witness Ms Howe has failed to consider the wider context of the application. She has focused on the landscape and visual impact of the appeal, without having regard to the N6 allocation, without having regard to the unavoidable consequences of development in accordance with that allocation, and without regard to the unavoidable need to develop on edge sites.
Moreover, she has failed to conduct any exercise balancing the inevitable landscape effects of the proposal against the housing and other benefits. Those considerations, and that balancing exercise, were however undertaken by the Council’s Head of Planning when recommending approval of the Scheme. We conclude this section of the argument with her recommendations. She noted:

“7.30 The EIA acknowledges that the... existing skyline is visible from a number of locations. The design seeks to integrate development into the wider landscape with the Masterplan structured around swathes of open space and a green infrastructure spine which runs along the existing public footpath from north-west to south-east along the ridgeline. This green spine is intended to be a wide open green space which will have an informal and formal treed character, with trees having the potential to soften views of adjacent buildings, giving a green layered appearance when viewed from the surrounding countryside, thus softening the development and helping to integrate it into the surrounding countryside. The northern boundary of the site abutting Brackmills Wood would be further enhanced with additional tree and hedgerow planting.

7.31 The submitted Landscape and Visual Impact Assessment identifies the effects of the development during construction and upon completion as being of “High” magnitude decreasing rapidly with distance from the site boundary and where intervening development, vegetation and landform provide screening. The effects 15 years from completion would have reduced as the tree planting within the site and particularly along the eastern and south-eastern boundaries will have matured.

7.32 It is inevitable that the landscape character would change significantly with the development of the site and it is recognised in the allocation of the site as a SUE in the submitted JCS that the landscape is of high-medium landscape sensitivity. However, these impacts need to be weighed against the requirement for growth. The provision of sufficient and appropriate green infrastructure throughout the site and sensitive design of layout and building heights at reserved matters stage would assist in mitigating some of the impact on the existing landscape. The land has no nationally or locally important designation and officer opinion is that sufficient mitigation measures are proposed when balanced against the overriding requirements for housing provision.”

SECTION G: HIGHWAYS IMPACTS

(i) Introduction

107. Before engaging in any detail in the specific criticisms made by the Council against the highways impact of the Appeal Scheme, it is worth taking a broad view of the context in which the highways case needs to be considered. In particular, it is worth considering the strong cumulative support for the Appeal Scheme provided by the JCS Inspector, HE, NCC and the Council itself.

108. First, all large scale developments will have an impact on the highways network.

The Core Strategy Inspector recognised this but considered that the

221 CD 57 Committee Report.
understandable concerns of local residents regarding traffic generation “can all be satisfactorily addressed through appropriate technical analysis and on site measures, as well as contributions to offset impacts elsewhere”. He invited a “a full Transport Assessment looking at all traffic movements likely to occur on the local road network in the context of the agreed NGMS for the A45 route”. And concluded that transport matters were not “sufficient, individually or collectively, to indicate that the site is unsuitable in principle for a SUE”.\textsuperscript{222}

109. \textbf{Secondly}, before submitting the original TA with the planning application the HCA, in accordance with good practice,\textsuperscript{223} scoped and agreed its contents with NCC\textsuperscript{224} - the appropriate authority for these purposes.\textsuperscript{225} A scoping study was submitted which defined survey periods, trip forecasting assumptions and most importantly “modelling method”.\textsuperscript{226} The HA was consulted on this study – as was the Council – and neither raised any concerns.\textsuperscript{227} NCC considered that the scoping study was “comprehensive and robust”.\textsuperscript{228}

110. \textbf{Thirdly}, together with its application the HCA submitted the revised TA and proposed mitigation. All LinSig models used for the TA had previously been approved by officers of NCC.\textsuperscript{229} NCC and HE were wholly satisfied by the TA. NCC commented that the revised TA with proposed mitigation was “robust and fit for purpose”, a view echoed by the Council’s Head of Planning in the OR.\textsuperscript{230}

\textsuperscript{222} CD 44 JCS IR, p.29.

\textsuperscript{223} See CD139 DoT Guidance on Transport Assessments, para 4.2. This document has been withdrawn by the Government but remains a source of “good practice”: per Mr Birch XX, Day 6 am; and Mr Tricker EIC, Day 7 am. Both transport witnesses also explained that the focus on scoping is even stronger in the parts of the NPG that have replaced the Guidance.

\textsuperscript{224} CD 16 Statement of Agreed Position (SOAP), para. 3.2.1.

\textsuperscript{225} XX Mr Birch, Day 6 am.

\textsuperscript{226} See: CD16 SOAP, para. 3.2.2; proof of evidence of Mr Tricker, paras. 4.2.3 – 4.28, and especially paras. 4.2.4, 4.2.5 and 4.28; and EIC Mr Tricker, Day 7 am.

\textsuperscript{227} See: CD16 SOAP, para. 3.2.1; Mr Ticker’s rebuttal, para 1.3.5; and XX Mr Birch, Day 6 am.

\textsuperscript{228} Ibid; and see also CD85 at paras. 2.1 – 2.9 recording a number of meetings on scoping both pre and post submission of the original TA.

\textsuperscript{229} See CD85 TN1 at para. 2.9.

\textsuperscript{230} See CD57, para 6.1; and EIC Mr Tricker, Day 7 am. He explained that this meant that NCC was “satisfied to a high degree of certainty that the mitigation solutions were effective in mitigating the development”.

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111. Fourthly, since the submission of the TA, the HCA has carried out a vast amount of further corroborative work on the request of the Council in preparation for this appeal which underscores the robustness of the revised TA. Professional opinions on what constitutes an adequate TA can differ. There is rarely one correct answer to the question: what is the extent of the work required to assess a proposal in transport terms? In this case Mr Tricker, HE, NCC and officers of the Council share the professional judgment that there has been sufficient work done in the TA to allow a view to be reached that the proposal is acceptable. Mr Birch is alone in his disagreement.

112. Fifthly, for the purposes of this appeal NCC has entered into two Statements of Agreed Position (SOAPs) with the HCA agreeing, inter alia:

1. NCC does not support the Council’s first reason for refusal;
2. The traffic surveys provided with the TA in the form of classified vehicle turning counts during 2012 and 2014 are “comprehensive”, “accurate” and “appropriate” as a “basis for understanding the location, volume, composition and pattern of local traffic flows”;
3. The traffic modelling undertaken was “agreed” in terms of “modelling methodology” and that the use of LINSIG, ARCADY and PICADY were “the most appropriate tools for the purpose of impact testing and development of mitigation measures”;
4. The proposed mitigation in the form of local highway improvements are agreed and they are deliverable;
5. That “[b]ased on the proposed changes and increases in travel patterns … the development transport impact can be accommodated on the transport network subject to the various mitigating measures …”.

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231 XX Mr Birch, Day 6 am.
232 XX Mr Birch, Day 6 am.
233 See also Mr Birch’s proof at paras. 4.3.1 - 4.3.6.
234 CD16 SOAP, para 2.1.2.
235 CD16 SOAP, paras. 3.3.1 and 3.3.2.
236 CD16 SOAP, para 3.5.1. 7 junctions were modelled; and the Council now only take issue with the modelling on two of these – the QE and Brackmills Interchanges: see CD89 Glanville Letter re: SOAP between the HCA and NCC; and XX Mr Birch, Day 6 am.
237 CD16 SOAP, paras. 3.8.1 – 3.8.2 and 3.11.1 and section 6; and CD19 paras. 2.11 - 2.1.3.
238 CD16 SOAP, para. 3.11.1.
113. **Sixthly**, Mr Birch has sought to directly raise with NCC officers a number of the objections he repeats in his evidence, including the adequacy of the scoping, the study area of the TA, the use of LinSig modelling and narrowness of some lanes following the proposed mitigation. 239 And all of these points have been considered and refuted by NCC officers. 240 Moreover, recent exchanges of e-mails between Mr Tricker and NCC officers 241 have provided further consideration and rejection of the Council’s transport case on this appeal.

114. **Seventhly**, HE has at no time objected to the appeal scheme. It was consulted on scoping and has agreed with the HCA an appropriate contribution towards the NGMS. 242 This is important given that HE is the body responsible for the Strategic Road Network (“SRN”) and that it participates “in all stages of the planning process with Government Offices, regional and local planning authorities, local highway/transport authorities, public transport providers and developers to ensure national and regional aims and objectives can be aligned and met” 243.

115. **Finally**, the view of the Council’s Head of Planning in the OR was that “subject to the mitigation measures proposed to be secured by condition or S106 obligations the development would have a “nil” detriment to existing highway conditions …” 244.

**(ii) The derivation of the Council’s case on appeal**

116. Given the above background one wonders how it was that the Council came to refuse planning permission on transport grounds, and then build a case premised on the rather fundamental contention that the HCA should have, but did not, model the NGMS.

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239 See CD 90 Email chain between John Birch and Rob Sim-Jones. Note in particular the first four bullets.
240 See CD 90 Email chain between John Birch and Rob Sim-Jones.
241 INQ 23 Email exchange between Jon Tricker and Rob Sim-Jones, 19 & 22 June 2015.
242 See CD57 Committee Report, para 7.41 and the letters in CD78 HA Letters to HCA.
243 See the proof of evidence of Mr Tricker, at para. 3.4.1 referring to Circular 02/13: The Strategic Road Network and the Delivery of Sustainable Development.
244 CD57 Committee Report, para. 7.48.
117. The minuted reason for refusal makes no mention whatever of transport issues. Moreover, the minuted discussion of members is wholly unrevealing with non-specific references to “highway issues that remain unresolved” and “potential traffic issues” sandwiched within a general and wide-ranging discussion of the Appeal Scheme in which in-principle objections were raised. It will be recalled that Members had before them no technical highways evidence whatsoever to justify a transport refusal; all the advice and material before them pointed to there being no highways issue justifying a refusal.

118. Even the formal reason for refusal contained in the decision notice provided little clue as to the foundation for the objection. The “failure to demonstrate” reason did not identify any specific problems with the HCA’s TA, but also made no positive case that the transport effects of the appeal scheme “would be severe”. It was also difficult to comprehend given that members could have deferred the application if they felt more information was needed. Indeed, had the Council sought to comply with paragraph 187 NPPF, it would have done just that.

119. The reality, as set out above, is that Members objected to the Appeal Scheme in principle but were persuaded to identify more specific, defensible reasons for refusal, in order to avoid a costs application. There can be no serious doubt about that given the Council’s later objection to the N6 allocation (see above).

120. But that still leaves open the question of how the Council built its case. Given the clear support of HE, NCC, and Council Officers, and given the absence of any detail of the supposed inadequacies of the HCA’s TA in the various iterations of the transport reason for refusal, where did the attacks on the HCA’s TA – as advanced in this appeal - derive from? The answer is clear: from Mr Birch.

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245 CD58 Committee Minutes, page 5 which cites Policy H7 (a housing policy) as the reason for refusal and refers to non-conformity with the overarching intentions of the NPPF.
247 XX Mr Birch, Day 6 am.
248 XX Mr Birch, Day 6 am.
249 XX Mr Birch, Day 6 am.
121. The Council’s case only began to emerge in the Statement of Case served in February 2015: that is to say nearly 2 years after the planning application was made; 1 year and 2 months after the revised TA was submitted; 9 months after Members refused permission; but only 1 month after Mr Birch became involved in the appeal.²⁵⁰

122. Mr Birch’s engagement with the appeal was characterised by three features: first, an emphatic rejection of NCC’s judgment in this case; secondly, a scattergun approach in which scores of shots missed their target entirely; and thirdly, a surprising distance from the Council officers who might have disabused him of some key misconceptions.

123. First, Mr Birch was forced to concede that his case amounted to a submission that NCC had been “wholly negligent” and in “dereliction of their statutory duties”²⁵¹ to approve the Appeal Scheme. NCC as the Local Highway Authority (“LHA”) has responsibility for all the roads/junctions in issue on this appeal save for the A45 and its slip roads. This responsibility includes the circulatory carriageways of the Queen Eleanor (“QE”), and Brackmills interchanges. It is in the interest of NCC, as LHA, to ensure that capacity is maintained on County roads²⁵². Moreover NCC is “the authority with a technical transport and highway remit for the purpose of development control”²⁵³.

124. Given that NCC considered the HCA’s revised TA to be “robust” and “fit for purpose”, Mr Birch had no option – to support his conclusions that the revised TA is inadequate in a number of regards – but to conclude that NCC officers “failed to do its job” and that NCC had been “wholly negligent” and in “dereliction of their statutory duties”.²⁵⁴ That is the surprising case he, and thus also it must be assumed the Council, makes on this appeal.

²⁵⁰ Proof of evidence of Mr Birch, p.1.
²⁵¹ XX Mr Birch, Day 6 am.
²⁵² See the proof of evidence of Mr Tricker at para 4.2.10; and XX Mr Birch, Day 6 am.
²⁵³ See CD16 SOAP, para 3.1.1; accepted by Mr Birch in XX, Day 6 am.
²⁵⁴ XX Mr Birch, Day 6 am.
125. Mr Birch’s case that NCC had acted negligently in this case was even more surprising in light of Mr Birch’s evidence of his own experience of NCC as a responsible and effective highways authority which had – in his own experience of producing transport assessments for large schemes – made demands for further information and micro-modelling where they thought it required.\(^{255}\)

126. Secondly, Mr Birch adopted a scattergun approach. Since Mr Birch’s involvement commenced, the HCA has been faced with a deluge of transport-related questions that had not previously been raised by NCC or by the Council. The vast majority of those issues have now been abandoned. The ‘issues tree’\(^{256}\) shows just how many of the issues raised in the last 4 months were raised, pursued, then abandoned. This is also made clear when one examines the extent to which issues raised in the Council’s Statement of Case\(^ {257}\) and Mr Birch’s letters of 11 February and 10 April 2015\(^ {258}\) have not been pursued. Indeed letters indicating further agreement continued from Mr Birch up to the eve of the inquiry opening.\(^ {259}\) It is worth recording the range of matters, raised by Mr Birch as disputed issues, but which are now matters of agreement:

1. Whether the TA was scoped;
2. Survey data for Newport Pagnell Road and the QE Interchange (in part at least\(^ {260}\));
3. Whether it was necessary to assess the A428/Liliput Road junction;
4. Whether it was necessary to assess the Barnes Meadow interchange;
5. Whether committed developments were taken into account;
6. Trip assignment based on census data;
7. The assumed assignment to the north through BIE;
8. Development mode share;
9. Whether school trips were included in the TA;

\(^{255}\) XX Mr Birch, Day 6 am
\(^{256}\) INQ 22.
\(^{257}\) CD21 paras. 3.5 and 3.6; XX Mr Birch, Day 6 am.
\(^{258}\) CD83 and 84; XX Mr Birch, Day 6 am.
\(^{259}\) See INQ3 and INQ 25, letters from Mr Birch dated 15 and 17 June 2015.
\(^{260}\) The latter concession coming in Mr Birch’s EIC (Day 5 pm) following the submission of TN6.
(10) A very large number of detailed points regarding the LinSig modelling: e.g. points 1, 3 – 7 and 10 – 16 in Mr Birch’s 11 February 2015 letter as well as the vast majority of the 24 points raised in his letter of 10 April 2015261;
(11) All issues raised relating to the deliverability of the proposed mitigation save for lane widths on proposed junction improvements.

127. In light of this approach, we urge the Secretary of State to bear in mind the words of Simon Brown LJ, in the Court of Appeal, who noted: “Where, as here, a challenge or appeal is pursued in a somewhat scattergun fashion, it is simply not practicable to examine every pellet in detail.” 262 Nonetheless, the HCA has responded to every pellet fired from Mr Birch through a series of letters and Technical Notes issued by Mr Tricker, all of which appear in the evidence.

128. Thirdly, and perhaps more concerningly, Mr Birch appears to have kept a distance from those Council officers who had engaged with the HCA throughout the application and who might have disabused him of key misconceptions. To start with, he was unaware that the Council had been consulted on the scoping of the HCA’s TA.263 More fundamentally, he had never asked if the Council had seen HE’s modelling of the NGMS 264 and consequently did not take the opportunity available to him to check whether his core assumption – that the NGMS would cause substantial detriment to the County road network – was justified or fundamentally misconceived.

129. Let us emphasize the audacity of that approach. The Council has publicly confirmed that the NGMS is based on sound technical evidence. Either that is because they have placed complete reliance on the HE’s technical expertise, or because they have seen the technical modelling for themselves. The Council’s case before this Inquiry is that the NGMS will cause detriment to the County road network. But Mr Birch chose not to ask anyone in the Council if they had seen that modelling and, if so, what HE’s modelling actually showed.

261 XX Mr Birch, Day 6 pm: what remains in dispute being points 1, 2 (part only), 8, 17 and 21.
262 R (Richardson) v First Secretary of State [2003] EWCA Civ 1860.
263 XX Mr Birch Day 6 am.
264 XX Mr Birch Day 6 am.
130. Because Mr Birch did not ask its own officers what HE modelling showed, his case is that the HCA should have modelled the NGMS for itself. It will be recalled that this is not the position of HE (who produced the NGMS modelling), it is not the position of NCC (who is responsible for the County roads and will implement the NGMS with HE), and it is not the position of the Council’s Head of Planning, who considered the HCA’s modelling to be “robust and fit for purpose”.

131. Because HE’s modelling of the NGMS is confidential, the HCA is not in a position to know what it shows (though the HCA can make informed expert predictions). By contrast, the Council may well know exactly what the modelling shows. But Mr Birch chose, in this Appeal, not to make inquiries of those within the Council who would know.

132. The Inspector and Secretary of State will need to consider whether the choice of Mr Birch not to ask the Council’s own officers whether they had seen the NGMS modelling and whether it supported – or fundamentally rejected – his case was tactical or merely convenient. We submit that the failure to take such a basic preliminary step to establish whether an argument was right or wrong fundamentally reduces the weight that can be attached to the argument.

(iii) The policy test in paragraph 32 of the NPPF

133. It is agreed that for this application to be refused on transport grounds the test laid down in paragraph 32 of the NPPF must be met. This only permits refusal if the “residual cumulative impacts of the development are severe”. Although the Council has suggested that the burden is on the HCA to prove that the effects of the Appeal Scheme are not severe, that approach directly contradicts the clear wording of the NPPF. Refusal may only be countenanced where the residual cumulative impacts of the development “are severe”; it does not say “might be” “may well be” or even “likely to be”. Refusal on transport grounds is confined to a

265 Birch XX, Day 6 pm; and this view is reflected in the OR (CD57) and the reason for refusal itself.
case where the impacts “are severe”. Thus in the land at Whittingham Road, Longridge AD the Inspector’s approach was to see if there was “objective evidence” that the effects “would be severe” and concluded that if they were not “this does not constitute a compelling argument against granting planning permission”.

134. In our submission, paragraph 32 of the NPPF places an obligation on an applicant to produce an adequate TA. Once an adequate TA is produced, a decision maker can only refuse permission on transport grounds where the evidence justifies a conclusion that the residual cumulative effects will be severe. In this case, HE, NCC and the Council’s officers concluded that the HCA’s TA was “robust and fit for purpose” and the TA demonstrates ‘nil detriment’. Accordingly, there is no basis for the appeal to be dismissed on transport grounds.

135. Indeed, even if the Secretary of State were to find – contrary to the HCA’s evidence - that the Appeal Scheme did not meet the test it had set for itself of ‘nil detriment’ and found that it would cause some cumulative residual impact on the highways network, planning permission must still be granted unless those impacts are considered severe.

136. In this respect, the Council’s approach to the paragraph 32 test contains a fundamental contradiction. The reason for refusal is expressed as a failure to demonstrate that the impacts of the development would not be severe. But the Council on appeal – presumably in recognition of the fact that it bears some burden to demonstrate severe effects - has sought to argue that “the effects will be severe”; although Mr Birch’s evidence did not in fact go so far suggesting only that the residual impacts “may well be severe”. The contradiction is best illustrated by Mr Birch’s revised summary at paras. 12 and 13 and also his rebuttal at paras. 20 and 21. He argues first that the HCA has not done various

266 Birch XX, Day 6 pm.
267 CDa13 at para. 41.
268 See INQ 2 Council’s opening statement, para. 17.
269 See e.g. para. 21 of Mr Birch’s rebuttal.
assessments that he regards as necessary, but which he himself did not undertake, but he ends up concluding that as a matter of professional judgment that what is proposed will have adverse impacts and that these may well be severe.

137. However, the evidence for that conclusion is completely lacking. The Council has simply produced no evidence to the Inquiry capable of demonstrating that the effects of the Appeal Scheme will be severe. Taken at its highest, the Council’s evidence shows that: i) there is existing congestion on the County road network; and ii) the HCA’s modelling is inadequate. But this evidence does not – and cannot possibly – show that the residual cumulative effects of the Appeal Scheme will be severe. When set alongside the HCA’s detailed evidence and robust modelling, Mr Birch’s “professional judgment” that the Appeal Scheme “may well” cause severe residual cumulative effects is nothing more than conjecture.

(iv) The existing traffic conditions

138. This is a fundamental dispute between the parties primarily because the principal issue raised by the Council as regards the use of LinSig modelling is that because of the extent of existing exit blocking micro-modelling should have been used. It is thus necessary to understand the extent to which exit blocking occurs in the local network.

139. In terms of the evidence available on the existing traffic conditions the following are the key points:

   (1) The Council’s evidence is limited to an ‘observational study’\textsuperscript{270} carried out on 2 half days in April 2015. This does not provide any quantitative (as opposed to “qualitative”\textsuperscript{271}) evidence of queuing and congestion.\textsuperscript{272}

   (2) As against that the HCA has provided the following evidence:

\textsuperscript{270} Appendix D to the proof of evidence of Mr Birch.
\textsuperscript{271} The word used by Mr Birch in XX, Day 6 pm.
\textsuperscript{272} XX Mr Birch, Day 6 pm; the attempt to retract from this admission in RX was unpersuasive.
i. in the revised TA: “comprehensive traffic surveys ... across the study area via automatic traffic counts during 2012 and 2014” consisting of Classified Vehicle Turning Counts (Full 7-category classification) including data in respect of the QE Interchange provided by NCC;273

ii. In Mr Tricker’s proof and appendices: further ATC data for Newport Pagnell Road;275

iii. In Mr Tricker’s rebuttal:

1. Evidence of video observation data: see paras. 1.4.4 – 1.4.7 and 1.4.11;276

2. TN4 which includes observation studies, queue surveys277 and data as well as journey time surveys over two days in June;

3. TN6: which involved repeat queue surveys,278 observations and journey time surveys on two later dates in June.

140. The position is thus that:

(1) The HCA has provided far more by way of evidence on the existing conditions than has the Council279 (this includes 4 days’ data in June 2015280, turning counts, video surveys, ATCs and Google map information);

(2) The HCA has provided quantitative evidence in a number of forms, most notably the queue surveys in TN4 and TN6;281

(3) In comparison the Council’s evidence is limited (to one am and one pm peak) and it has provided nothing quantitative;

273 CD16 SOAP, para 3.3.1.
274 XX Mr Birch, Day 6 pm.
275 See Appendix A to the proof of evidence of Mr Birch and paras 5.24. – 5.26 of the main proof. In EIC, Day 7 am, Mr Tricker explained that a requirement for ATCs for all links assessed is disproportionate, and not supported by Guidance (see CD139 para 4.18).
276 EIC Mr Tricker, Day 7 am.
277 That is to say quantitative data. In his EIC Mr Tricker explained that for direct LinSig comparison outputs static queues were what needed to be surveyed.
278 The queue delay surveys do not show significant queuing: EIC Mr Tricker, Day 7 am.
279 XX Mr Birch, Day 6 am.
280 A neutral month: EIC Mr Tricker, Day 7 am.
281 EIC Mr Tricker, Day 7 am.
None of the HCA’s evidence shows levels of congestion and queuing anything like that seen in Mr Birch’s observational studies; indeed even the Google maps contained in Mr Birch’s study show considerably less queuing. Mr Birch must have observed a worst case;

Mr Birch in his EIC acknowledged that “congestion does vary significantly day to day”;

Most importantly the evidence shows very little exit blocking; and certainly no “endemic exit-blocking”, endemic being defined by the Oxford English Dictionary as “constantly or regularly found”.

The balance of the evidence very strongly supports the position of the HCA on the existing traffic conditions. In any case, Mr Tricker’s rebuttal contains a sensitivity analysis which re-ran the models with extreme levels of queuing – far beyond anything that is indicated as being a regular occurrence and this still demonstrated that with the proposed mitigation and NGMS there is nil-detriment, with an interim benefit to the County roads. It is telling how little attention was paid to this evidence in the case advanced on transport by the Council.

(v) An overview of the NGMS

The core of the Council’s case on highways is that the HCA should have modelled the NGMS. In that respect, the following matters are material.

First, HE has developed the NGMS to “facilitate the growth of Northampton” e.g. the housing growth envisaged in the JCS and including the N6 allocation of which the Appeal Site forms the major part.

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282 Day 5 pm.
283 EIC Mr Tricker, Day 7 am.
284 EIC Mr Tricker, Day 7 am and his rebuttal at paras. 1.12.10 – 1.12.19.
285 CD81 NGMS – Memorandum Of Understanding 2014, para. 4.1.
286 CD81 NGMS – Memorandum Of Understanding 2014, para. 2.1; and see also the table in CD76 NGMS – Memorandum Of Understanding 2012, p 12 of Annex 3.
144. Secondly, NCC supports the need for NGMS and has committed itself to working with HE to deliver it. Indeed the NGMS envisages coordinated works between HE and NCC via s. 278 agreements and the undertaking of at least some of the works by NCC. The proposed improvements to the QE and Brackmills Interchanges are being designed and delivered by NCC. NCC is also the banker for NGMS.

145. Thirdly, the NGMS has policy endorsement in the JCS and from the recent JCS Inspector’s Report. The Inspector endorsed the NGMS both generally (see para. 100) and in the specific context of N6 (see para. 142, see above).

146. Fourthly, HE, NCC, the JPU and the Council have entered into a Memorandum of Understanding ("MoU") the purpose of which is “to express, and place on record, a shared commitment by the parties to delivering development planned for Northampton” and which includes the Appeal Site “with commensurate improvements to the A45 trunk road and M1 J15 in the form of the NGMS, which the Highways Agency has developed as an appropriate approach to mitigating the impact of development ...”. The Council has made clear in the MoU that it fully supports the delivery of NGMS indeed its implementation is a “common aim” of all the parties to the MoU. The MoU also provides an agreed basis for supporting the funding and delivery of the NGMS.

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287 CD81 NGMS – Memorandum Of Understanding 2014, para. 2.5.
288 CD81 NGMS – Memorandum Of Understanding 2014 para. 3.4; CD76 Annex 3 at p. 2 says “These improvements will be delivered by the Highways Agency, in consultation with Northamptonshire County Council, which may undertake some of the works in agreement with the Highways Agency.”
290 CD81 NGMS – Memorandum Of Understanding 2014, para. 6.11.
291 CD81 NGMS – Memorandum Of Understanding 2014, para 2.6; and CD28 para 6.20 and see also p. 234 and 240.
292 CD 44 JCS IR.
293 The NGMS is also endorsed by the Council’s Planning Obligations SPD (see the proof of evidence of Mr Birch at para. 3.18).
294 CD81 NGMS – Memorandum Of Understanding 2014.
295 CD81 NGMS – Memorandum Of Understanding 2014, para. 3.1
296 CD81 NGMS – Memorandum Of Understanding 2014, para. 2.7.
297 CD81 NGMS – Memorandum Of Understanding 2014, para. 3.2
147. **Fifthly**, the NGMS is a strategic solution to a strategic problem. This involves collecting contributions through s. 106/CIL to fund the works that make up the NGMS.\(^{298}\) HE have determined that in order that the necessary funding can be obtained that where a contribution is agreed no Grampian condition will be sought.\(^{299}\) HE has recognised that this is the best approach and that it may not be in the best interest of users of the SRN to seek individual mitigation packages where these may result in piecemeal delivery of measures on the A45, or measures that have to be modified as further developments emerge. The pursuit of piecemeal measures as each development comes along would slow down the development process whilst the implementation of successive mitigation schemes on the A45/M1 would not represent a cost effective solution in economic terms or maximise benefit to users of the SRN.\(^{300}\)

148. **Sixthly**, the proposed works that make up the NGMS are listed in Annex 1 of CD76 which also contains preliminary designs of the work proposed.\(^{301}\) These works are partly on County roads and partly on the SRN. The works at all the junctions proposed were subject to VISSIM (that is to say – micro) modelling.\(^{302}\) The parties to the MoU, including NCC and the Council have agreed that “there is general consensus by all these parties that the proposed NGMS is required to support growth in the area and is founded on sound technical evidence and conforms to current planning and transport policies of encouraging environmental sustainability and managing the existing road network”\(^{303}\).

149. **Seventhly**, the modelling included the trips generated by the N6 site of which the Appeal Site forms part.\(^{304}\)

\(^{298}\) CD81 NGMS – Memorandum Of Understanding 2014, para 6.5
\(^{299}\) CD81 NGMS – Memorandum Of Understanding 2014, para. 6.8.
\(^{300}\) CD76 NGMS – Memorandum Of Understanding 2012, Annex 3, p. 6.
\(^{301}\) The plans take precedence over the text in terms of what is proposed: see EIC Mr Tricker, Day 8 am.
\(^{302}\) CD76 NGMS – Memorandum Of Understanding 2012, Annex 1, p 1; and Tricker EiC, Day 7 am.
\(^{303}\) CD76 NGMS – Memorandum Of Understanding 2012, Annex 3, p. 2.
\(^{304}\) CD76 NGMS – Memorandum Of Understanding 2012, Annex 3, p. 6 and 12.
150. Finally, HE has determined that the “priority elements” of the NGMS for delivery are the proposed improvements to the QE and Brackmills Interchanges save for ramp metering being delivered as stage 1. 305 With ramp metering being in stage 2 or 3. 306

(vi) The NGMS in this case

151. In this case the relevant contribution has been agreed with HE. 307 The Appeal Scheme is providing one twelfth of the funding for the whole NGMS. The delivery of the Appeal Site is thus critical to the delivery of NGMS, 308 acknowledged by Councillor Nunn as “the only show in town” for improving the SRN to accommodate planned growth in the region. 309

152. The Council’s case involves arguing that the NGMS will have a significantly detrimental impact on the County road network and thus that the Appeal Scheme was required to model the NGMS to ensure that those adverse impacts were incorporated in its modelling. This case is considered in detail below but it is important to note that it:

(1) Requires the Inspector and the Secretary of State to accept that NCC has willingly signed up to support, design, and deliver a scheme it has publicly stated is based on “sound technical evidence” when in fact it will cause substantial detriment to the roads NCC is responsible for. Indeed, as confirmed by Mr Birch, it involves an assumption that NCC have acted negligently and in breach of their statutory duties and will continue to do so when designing the specific detailed road improvements arising from the NGMS.

(2) Uses the NGMS, something specifically created to facilitate the Appeal Scheme coming forward, as an argument against the Appeal Scheme coming forward;

305 CD82 Joint position statement NGMS Update, p. 1.
306 EIC Mr Tricker, Day 7 am.
307 CD78 Letters from the HA to the HCA.
308 EIC Mr Tricker, Day 7 am.
309 XX Cllr Nunn, Day 3 am.
(3) Amounts to the Council resiling from its own agreement as to the delivery of the NGMS as being based on “sound technical evidence”;

(4) Necessitates individual developers repeating the work of HE to micro-model the entire NGMS. That is an extremely onerous task – and an unnecessary one as this exercise has been done by the HA and signed up to as “sound” by NCC and the Council;

(5) Seeks to turn this Inquiry into an inquiry into the NGMS.

153. In any case, it is clear that the Council’s contention that the NGMS will cause substantial detriment to the County road network is fundamentally wrong. The benefits of NGMS have been explored fully in the evidence. NGMS is a “multi-layered strategy” made up of corridor wide ramp-metering (of which that proposed at the QE Interchange is only a part); the introduction of MOVA; further signalisation and additional lanes/flare. These measures complement each other, providing added benefit. Mr Tricker explained that ramp metering alone would likely provide a 13% improvement in the operating performance of the SRN. MOVA also provided benefits – thus it “will help enhance overall junction capacity (by up to 13%) and seek to manage any blocking which currently occurs on the circulatory carriageway”. Together there was further added benefit.

154. The layered benefits for the two key junctions in issue were summarised in this way:

<table>
<thead>
<tr>
<th>QE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Layer 1</td>
<td>Corridor ramp metering (benefits A45 flow increase)</td>
</tr>
<tr>
<td>Layer 2</td>
<td>Ramp metering at QE (benefit contributes to wider ramp metering)</td>
</tr>
<tr>
<td>Layer 3</td>
<td>Override loop located at start of slip (benefit flushes queue if slip storage exceeded, and thus protects County Roads)</td>
</tr>
</tbody>
</table>

310 See below as regards the need for corridor wide modelling in this regard.
311 See the proof of evidence of Mr Tricker at paras. 4.4.20 - 4.4.25, his EiC, Day 7 am, and his XX, Day 8.
312 EIC Mr Tricker, Day 7 am.
313 EIC Mr Tricker, Day 7 am; TAL 3/97 (in Mr Tricker’s Appendix E) and INQ 23, the recent e-mail exchange between Mr Tricker and NCC.
314 EIC Mr Tricker, Day 7 am.
Although Mr Birch was forced to accept that ramp metering would generate benefits for the County road network his view was that new signalisation to be introduced as part of the NGMS, in particular signalisation on the Caswell Road junction at Brackmills (referred to by Mr Birch as a “gating strategy”) would cause “detrimental impact” on queuing on Caswell Road.\textsuperscript{316} In short, his view was that the combined NGMS measures, for which NCC would be responsible for detailed design and implementation, would cause detriment to the County roads. His view was that the overall effects of the NGMS would be “adverse” and there would therefore be a “need to mitigate the impacts of NGMS” which would simply relocate congestion from the A45 and its slip roads onto the County Roads.

155. Mr Tricker’s evidence was that the benefits to be delivered to the A45 via the NGMS would not be at a cost to the County network. He fundamentally disagreed with the zero-sum approach of Mr Birch. As Mr Tricker explained, the

\textsuperscript{315} See: EIC Mr Tricker, Day 7 am; INQ 23, the recent e-mail exchange between Mr Tricker and NCC; and INQ 30 HA Ramp Metering Technical Guidance, paras. 4.4.3 and 4.62.

\textsuperscript{316} Mr Birch did accept that there were also benefits to County Roads including keeping the circulatory carriageways of the QE and Brackmills Interchange clear; these benefits he regarded as significant: Birch IQ, Day 6 pm (see below).
NGMS is not simply about shifting existing congestion; it is fundamentally about increasing capacity on the entire network. The objective of increasing capacity is to reduce congestion throughout the network; not simply to move it from one part to another.\textsuperscript{317} Mr Birch’s approach is based on an erroneous zero-sum model where reducing congestion at one part of the network necessarily increases congestion at another part of the network.\textsuperscript{318}

156. That assumption is fundamentally wrong and Mr Birch’s own answers implicitly acknowledged that. For instance, in answer to the Inspector’s questions, Mr Birch accepted that new signalisation at Brackmills would have the desired result of keeping the circulatory carriageway moving. He also agreed that it is an important benefit to keep the circulatory carriageway moving because “if you don’t it will have its own impacts on the local road network.”\textsuperscript{319} In doing so, Mr Birch acknowledged the flaw in his zero-sum approach. Congestion in a sensitive location like a vital circulatory junction can cause severe congestion on the adjoining local roads. Signalisation to free up the circulatory junction may result in the formation of a queue at the signal. But that queue will be much smaller than it would have been if a stationary queue had formed on the circulatory junction itself.

157. Moreover, as noted by Mr Tricker, the NGMS will be implemented by HE in conjunction with NCC. The implementation, including detailed design, will be carried out to satisfy the needs of both parties and to balance the need for a free-flowing A45 with the need for reduced congestion on the County roads. Accordingly, the operation of ramp metering, the phasing of signalisation, and the functioning of MOVA will be programmed in such a way that it does not have a detrimental impact on the County roads.\textsuperscript{320} In that respect, it is not – as suggested by Mr Birch - for the HCA “to mitigate the impacts of NGMS”. That surely is a matter for HE and NCC in implementing/delivering the works.

\textsuperscript{317} See in particular RX Mr Tricker, Day 8 pm.
\textsuperscript{318} XX Mr Birch, Day 6 am.
\textsuperscript{319} XX Mr Birch, Day 6 pm.
\textsuperscript{320} XX Mr Tricker, Day 8 am.
Consequently, as Mr Tricker said, the overall impacts of the NGMS are likely to be beneficial to the A45 and the County Roads. It is not a win-lose situation. Had Mr Birch chosen to ask the Council’s officers what HE’s modelling showed, he might have been given the same answer. Instead, he argued that the HCA should have modelled the NGMS for itself. Mr Tricker’s response to that suggestion was fourfold:

1. The traffic modelling prepared by the HCA was fully scoped with NCC and with officers of the Council and at no stage was the HCA asked to model the NGMS;

2. You can only model the benefits of the NGMS if you model the entire NGMS. That is because the full benefits of ramp metering are seen when implemented on a corridor-wide basis. Consequently, the only way to model the overall effects of the NGMS on a single junction is to model the entire NGMS. To model the entire NGMS is an enormous task requiring a vast amount amount of time and resources. No other developer has been asked to model the NGMS as part of its TA, including those developers who are contributing to the NGMS by way of section 106 agreements.

3. The entire purpose of the NGMS is to facilitate strategic growth in Northampton, including on the Appeal Site. The Council’s suggestion that each developer on every strategic allocated site should be required to duplicate HE’s modelling of the entire NGMS runs counter to the objective of facilitating development.

4. In any case, HE has already fully modelled the NGMS and it agreed by the Council that it is based on sound technical evidence.

To conclude this point it is worth considering the principle of proportionality. It is always possible to include more information in a model; and it is always possible to spend more time and more money producing more and more detailed models and more and more detailed TAs. But the extra detail will not always result in a better product. What the planning system requires is a proportionate approach to produce a TA which accurately reflects the likely

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321 XX Mr Tricker, Day 8 pm.
322 INQ23 Email exchange between Jon Tricker and Rob Sim-Jones, 19 & 22 June 2015.
effects of a proposed development on the highways network. If that is achieved, it is not necessary to do further work simply because it is possible. As noted earlier, it is a matter of professional judgment how much information is required adequately to assess a proposal in transport terms. And in the professional judgment of HE, NCC, the Council’s officers and Mr Tricker, it was not necessary to model the NGMS to adequately assess the impact of the Appeal Scheme. Mr Birch is alone in suggesting that the micro-modelling undertaken for the NGMS by HE – micromodelling which factored in the N6 allocation - should have been redone in its totality by the HCA.

160. Indeed, that point is made explicitly by NCC in confirming a recent conversation with Mr Birch in which it was agreed as follows: 323

“LinSig was an appropriate tool for this assessment, as the HCA could not be expected to replicate the extensive and complex microsimulation (VISSM) work undertaken by Highway England in the development of the NGMS, which has already made allowances for growth including Hardingstone SUE. You also indicated that you were not aware of any recent developer Transport Assessment having used VISSM for this purpose and this includes all of the recent development sites which have contributed towards NGMS, including other major SUE developments such as Northampton South (Collingtree), Northampton North PI(Overstone Leys) and Upton Park”.

161. The HCA submits that the starting point in this appeal is that the main purpose of the request for modelling by NCC was to assess the impact of the proposed development on the County roads, as the strategic roads were dealt with by NGMS and had already been modelled by HE. That view is shared by NCC.

(vii) Issues with the HCA’s LinSig modelling

162. A large number of detailed criticisms were initially raised on this point but these have almost all been resolved to Mr Birch’s satisfaction. 324 The two issues remaining are:

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323 INQ23 Email exchange between Jon Tricker and Rob Sim-Jones, 19 & 22 June 2015; XX Mr Birch, Day 6 pm.
324 XX Mr Birch and Response to Inspector’s Questions, Day 6 pm.
(1) Whether micro-simulation modelling should also have been undertaken in addition to the LinSig modelling because the existence of exit blocking makes the latter an unreliable form of assessment;

(2) Whether the LinSig modelling was calibrated/validated.

163. Before considering these two remaining issues, it is worth recalling that NCC were satisfied with the use of LinSig modelling; they agreed, audited in detail and approved the same. No request for micro-simulation modelling was ever made by NCC, despite the fact that Mr Birch acknowledges that NCC to have requested micro-simulation in the past when it was considered justified. That is important because the purpose of modelling is to provide the competent authorities with sufficient information to make a decision about the traffic impacts and scale of a proposed development and the mitigation that is required. NCC, HE and officers of the Council were all content in this regard.

164. The issue of what modelling is required in a TA, and how any modelling is validated/calibrated, is quintessentially matter of professional judgment on which views may reasonably differ: there is rarely one right answer. The views of NCC officers and Mr Tricker are that micro-simulation was not needed; Mr Birch is alone in his disagreement.

Microsimulation

165. On the issue of micro-simulation, the Council’s case is predicated on exit blocking being an “endemic” problem. Even assuming the TfL Modelling Guidelines are applicable to Northampton what it says is that consideration

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325 See: CD 16 SOAP, at paras. 3.3.2 and 3.5.1; CD 90 Email chain between John Birch and Rob Sim-Jones, third bullet; and CD 85 TN1, at para. 2.9.
326 XX Mr Birch, Day 6 pm.
327 XX Mr Birch, Day 6 am
328 EIC Mr Tricker, Day 7 am and Mr Tricker’s rebuttal at para 1.11.2 and 1.11.18 on the model suitability.
329 XX Mr Birch, Day 1 am and pm.
330 CD142.
331 See Mr Tricker’s rebuttal at para. 1.11.14. Mr Birch’s case on the application of the TfL guidance is predicated on it being referred to as a “useful” “other resource” in a DfT guidance document: CD141. That document though (see para 2.1.9) makes clear that micro-simulation modelling is not much used or required by local authorities.
be given to micro-simulation modelling where “endemic exit-blocking exists within a network”.\textsuperscript{332} If it is not then the need for micro-simulation falls away.\textsuperscript{333} Thus for the Council’s case on this to get off the ground there must be a finding not just that there is some exit-blocking but that it is “endemic”. Even then this guidance merely suggests that it be considered, not that it is required.\textsuperscript{334} As submitted above the evidence before this inquiry does not demonstrate that exit-blocking is endemic; it is a “very minor” feature.\textsuperscript{335} If the comprehensive evidence of the HCA on this is accepted over the observational study relied on by Mr Birch then the issue falls away.

166. Further, the HCA submits that there was in any event no need to represent exit-blocking in the modelling as a key aim of NGMS is to remove any such issues from the QE and Brackmills Interchanges via corridor-wide ramp metering.\textsuperscript{336} This appears now to largely be a matter of agreement\textsuperscript{337} e.g. that ramp metering will be effective to deal with exit-blocking issues at these locations. The only point Mr Birch makes against this is that ramp metering is not in the first phase of NGMS works proposed. That is correct but: (i) Messrs Stephens and Birch confirmed that the Council is not raising a phasing issue;\textsuperscript{338} (ii) there is no dispute the proposed works will happen as part of NGMS so long as funding is obtained (which is itself dependent on the grant of planning permission for the Appeal Scheme); and (iii) the Appeal Scheme will take c. 16 years to build out entirely with other proposed mitigation on the County roads being provided before first occupation and hence providing “interim benefit” until NGMS works come on-line.\textsuperscript{339} The only area where exit blocking may arise currently is

\textsuperscript{332} Para 3.6.9.
\textsuperscript{333} XX Mr Birch, Day 6 pm.
\textsuperscript{334} XX Mr Birch, Day 6 pm.
\textsuperscript{335} EIC Mr Tricker, Day 7 am.
\textsuperscript{336} See the proof of evidence of Mr Tricker at paras. 5.7.26 and 5.7.27.
\textsuperscript{337} See the proof of evidence of Mr Birch at paras. 4.91, 4.94, 4.95, 4.96 and 4.98; and his XX, Day 6 pm.
\textsuperscript{338} HE do not seek Grampian conditions for NGMS works so long as a contribution is agreed.
\textsuperscript{339} See the proof of evidence of Mr Tricker at para. 5.9.7.

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Pavilion Drive where the HCA’s case, based on the most comprehensive evidence, is that this is infrequent and when it does occur is “short lived”.340

167. Moreover, the view of NCC officers (recorded in recent e-mail exchanges with Mr Tricker) is that “VISSM can pose problems for determining ‘nil detriment’ within TAs, as it does not include metrics to report on specific queuing or junction saturation which opens up a number of issues around which measures of operational performance are usable to test nil detriment”341.

Validation/calibration

168. It is important to appreciate what the Council’s case is in this regard. Mr Birch’s proof is clear. He says that the base models “were not calibrated or validated” (see his proof at para. 4.57) and that this is a “fundamental flaw in the assessment”. This position was always unarguable and in opening the Council had already softened its position; seeking to argue instead that the LinSig base models were not “properly calibrated nor validated” (see para. 12). The issue is not whether there was validation or calibration of the base models. There plainly was; and the Council (and Mr Birch342) now accepts that this is so. This issue involves a difference in professional opinion about how validation/calibration was carried out. The following are the key points:

1. It is accepted that the County Council audited the models in detail. They were content with the validation/calibration.343

2. In crosss examination Mr Birch accepted that the models had been calibrated and validated “to some degree”344. That this is so is indeed clear from the evidence. Mr Tricker’s rebuttal states “TN1 confirms in para 4.3 that the TA models were calibrated by inputting direct observations of geometric parameters and saturation flows based on traffic observations and

340 And caused by Barclaycard. Mr Tricker confirmed that, at its worst, it exists for no more than 15 minutes during the morning peak.
341 INQ23 Email exchange between Jon Tricker and Rob Sim-Jones, 19 & 22 June 2015.
342 XX Mr Birch, Day 6 pm.
343 See: CD90 Email chain between John Birch and Rob Sim-Jones; CD16 SOAP, para. 3.5.1; and CD85 TN1, para. 2.9. See also XX Mr Birch, Day 6 pm and his proof of evidence at paras. 4.59 and 4.60.
344 XX Mr Birch, Day 6 pm.
validated by confirming that the output degree of saturation was as observed – i.e. queues were forming – but not validated against queue surveys”. 345

(3) What was done was in accordance with the guidance in the LinSig Manual. This recognises how difficult it is to accurately model queues and recommends “avoiding directly calibrating models to measured queues as unless done with extreme care and highly detailed data it has the potential for introducing significant inaccuracy into the model. It is recommended that a greater emphasis is placed on ensuring capacities are modelled correctly whilst still checking that modelled queues are acceptable”. 346

(4) The approach taken in the TA has the endorsement of a highly expert and specialist transport modeller: see Appendix A to Mr Tricker’s rebuttal. Mr Stoneman is the Technical Director responsible for overseeing modelling skills and projects at Parsons Brinckerhoff and a member of the peer review team for the National Transport Model Futures Commission for the DoT. He is clear that the models “have been developed in an appropriate manner” and that “calibration included incorporating signal times and saturation flows and validation (although not reported as such) …” such that the models “can be considered reliable tools within which future scenarios can be tested”.

(viii) Mitigation – lane widths

169. A whole host of issues have been raised about the deliverability of the proposed mitigation. These were comprehensively answered in TN2; 347 a document agreed with NCC. 348 Only one issue continues to be pursued by the Council and that is related to the widths of some of the lanes following the proposed mitigation works. There is no merit in this argument for the following reasons.

170. First, NCC are content that any issues around lane widths and vehicle tracking can be resolved at the detailed design stage through s.278 agreement in the

345 See Mr Tricker’s rebuttal at para. 1.12.4.
346 See Mr Tricker’s rebuttal at para. 1.12.4; and XX Mr Birch, Day 6 pm.
347 CD86 TN2.
348 See CD19 Supplementary SOAP.
normal way. There is in any event agreement between the main parties that there is scope to widen the lanes if necessary. 349

171. Second, the lanes even as currently proposed in the drawings are in any event 3m wide and this is: (i) compliant with relevant guidance; 350 and (ii) is something already present at QE. 351

(ix) The Study area

(a) introduction

172. The Council’s case was originally that there should have been assessment of three further junctions: (i) the A45/A428 Barnes Meadow; (ii) the A45 southbound on-slip/Pavilion Drive; and (iii) the A428/Liliput Road. The Council now only pursues the point in relation to Pavilion Drive. 353

173. Before considering this junction in any detail the following general points are made:

(1) The scope of the TA was agreed with NCC (see above). That scoping process and the assessment made of the original TA led to agreement that there should be assessment of 7 junctions: (i) Newport Pagnell Road/Landimore Road/Wooldale Road; (ii) Newport Pagnell Road/The Warren/Hope Drive; (iii) Landimore Road/Gowerton Road; (iv) Caswell Road/Gowerton Road; (v) Caswell Road/Pavilion

349 XX Mr Birch, Day 6 pm; EIC Mr Tricker, Day 7 am. The recent e-mail exchange between Mr Tricker and NCC (INQ 23) records that their discussions included recognition that widening to 3.25m over the whole scheme “could be achieved by reducing the bridge verge width further, from the current proposed width of 1.7m to 0.5m on one side only. This would still achieve a level of protection to the bridge parapet (ie 0.5m), but require traffic management in the form of a temporary lane closure to undertake bridge inception or maintenance. You indicated that if this route is pursued at Section 278 stage, you may seek a commuted sum for increased maintenance cost. You also indicated that other options could be explored, should this be deemed an issue at Sec278 stage.”

350 EIC Mr Tricker, Day 7 am.

351 EIC Mr Tricker, Day 7 am; and see Mr Tricker’s Rebuttal Appendix I. There is no evidence that any issues arise from the operation of the existing lanes.

352 Previously it was 3 further junctions but it is now accepted that there was no need to further assess the A42/Liliput Road.

353 The Council conceded the point in relation to Barnes Meadow during Mr Tricker’s XX, Day 8 pm; the a A428/Liliput Road was conceded earlier on – see the Issues Tree.

354 See CD16 SOAP, para. 3.5.1.
Drive/Rhosili Road; (vi) the Brackmills Interchange; and (vii) the QE Interchange. All of these junctions were accordingly assessed in the revised TA with modelling carried out in respect of all of them.\(355\)

(2) Mr Birch directly raised with NCC officers the assessment of the Barnes Meadow and Pavillion Drive junctions. NCC officers (see below) rejected the need for this.\(356\)

174. The position in relation to Pavillion Drive junction is as follows:

175. First, NCC’s position when asked by Mr Birch about the need to assess this junction was that this is a HE road and that the need for its assessment should be raised with them.\(357\) Of course, HE were consulted on the scoping of the TA and did not require the testing of the junction. Mr Birch confirmed that he had made no efforts to contact HE and raise the issue with them.\(358\)

176. Secondly, part of the NGMS works are intended at this junction, and thus the junction would have been micro-modelled by HE.\(359\) Thus assessment and modelling of this junction was part of the “sound technical evidence” on which the NGMS is agreed by all parties to the MoU to be based.

177. Thirdly, the concern raised by Mr Birch in relation to this junction is one that arises “irrespective of the increase in traffic”; that is to say the traffic generated by the Appeal Scheme.\(360\) He is concerned instead with localised existing queuing by vehicles entering the Barclaycard premises which his observational study suggested leads to queues that extend back to affect the performance of the Brackmills Interchange through exit-blocking. The extent of the issue that arises here is in dispute with the HCA’s far more extensive evidence on traffic not supporting Mr Birch’s observational study (see above). The journey time surveys

\(355\) Mr Birch has no issues with the junction modelling at the first five of these junctions: see his letter of 1 May 2015 (CD89) and his answers in XX Day 6, pm.

\(356\) CD90 Email chain between John Birch and Rob Sim-Jones.

\(357\) CD90 Email chain between John Birch and Rob Sim-Jones.

\(358\) XX Mr Birch, Day 6 pm.

\(359\) CD76 NGMS – Memorandum Of Understanding 2012, Annex 1.

\(360\) See the proof of evidence of Mr Birch at para. 4.22.
in particular fail to identify any serious issue in this regard.\textsuperscript{361} Moreover, the PPG is clear that the HCA cannot be expected to solve a pre-existing problem and, in any case, HE and NCC have powers to deal with any localised issue caused by Barclaycard if it is causing serious problems for the network\textsuperscript{362}.

178. Fourth, as noted above the junction is covered by the NGMS and it will be signalised to help manage traffic flow\textsuperscript{363}. Mr Birch’s rebuttal\textsuperscript{364} accepts that this is so but argues that the “effect of signalising this junction may well be to exacerbate the current queuing problem on the slip road section of Pavilion Drive that reduces the capacity of the Brackmills Interchange”. Thus the argument is (see above) that the NGMS to which NCC and the Council have signed up to as being based on “sound technical evidence”, and which NCC is involved in designing, delivering and banking the funding for will not work without causing detriment to the County road network. This is an attack on NGMS, and Mr Birch accepted that it was. He also accepted (see above) that this was a necessary plank in his case in this and other regards.\textsuperscript{365}

179. Thus any argument that this junction needed to be assessed: (i) is based on an existing problem rather than the impacts of the development traffic; (ii) ignores the fact that the development traffic will not use the lane that can become congested as that dedicated lane does not lead to the A45, but instead leads to Barclaycard; (iii) proceeds on the presumption that the NGMS will have detrimental effects; and (iv) ignores the fact that this junction, for which HE is responsible, has already been subject to micro-simulation, taking into account proposed growth including at the Appeal Site.

180. HE having been consulted on the scope of the TA did not require this work to be re-done in order to assess if there was any cumulative impact with the HCA’s proposed mitigation. Had there been any concern, doubtless HE would have raised it. Moreover, if Mr Birch is correct that the signalisation for this junction

\textsuperscript{361} EIC Mr Tricker, Day 7 am. And see TN4.
\textsuperscript{362} XX Mr Birch, Day 6 am.
\textsuperscript{363} See the proof of evidence of Mr Birch, para 5.3.19.
\textsuperscript{364} See para. 20.
\textsuperscript{365} XX Mr Birch, Day 6 pm.
proposed by NGMS will detrimentally effect the Brackmills Interchange for which NCC is responsible, NCC would have raised a concern.

(x) Capacity at Newport Pagnell Road

181. This issue was not raised in the reason for refusal\(^{366}\) or the Council’s Statement of Case\(^{367}\).

182. The concern raised by Mr Birch (for the first time) in his proof is with the capacity of Newport Pagnell Road on the westernmost section between QE Interchange and Hermitage Way.\(^{368}\) There is agreement here: (i) that the road at this location is classified as UAP2 for the purposes of TA79/99;\(^{369}\) and (ii) as to what the base traffic flows are.

183. The issue between the parties turns on the measurements for Newport Pagnell Road. Mr Birch has measured off a plan and he has excluded parts of the carriageway from his measurements (e.g. ghost right turn lanes associated with Waitrose). Mr Pease explained that maps for the area are out-of-date. He has actually measured the road: see his diagram 4A.\(^{370}\) The HCA is prepared to accept those measurements; Mr Tricker having also carried out on-site measuring checks\(^{371}\). The road at its westernmost section, when properly measured, is between 7.23 and 8.1m. Using the lower figure, but rounding it up,\(^{372}\) table 2 of TA79/99 gives a capacity of 1470 vehicles. But it is agreed\(^{373}\) that TA79/99 allows (see para. 2.1) capacity flows to be up to 10% greater than the values contained in the document. That gives a total allowable flow of 1617 vehicles. The 2026 link flows do not exceed this\(^{374}\).

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\(^{366}\) See the proof of evidence of Mr Birch at para. 4.40 which acknowledges that this is so.

\(^{367}\) XX Mr Birch, Day 6 pm.

\(^{368}\) Mr Birch’s proof at para. 4.61; XX Birch, Day 6 pm.

\(^{369}\) CD144.

\(^{370}\) INQ 27.

\(^{371}\) As he explained in his EiC, Day 7am.

\(^{372}\) Agreed in XX Birch, Day 6 am.

\(^{373}\) XX Mr Birch, Day 6 pm.

\(^{374}\) See Mr Birch’s proof at para 4.63 and his answers in XX, Day 8 pm.
184. In any event:

(1) TA79/99 makes clear that the guidance it contains must be applied “flexibly”;\(^{375}\)

(2) The 2026 flows include TEMPRO growth, which includes the N6 allocation as part of the JCS, with traffic from the Appeal Scheme on top. Given the proximity of Newport Pagnell Road to the Appeal Site there is thus likely to be a significant element of double counting in the 2026 link flows;\(^{376}\)

(3) Moreover, the 2026 flows make no allowance for internalisation of trips and thus the Appeal Site traffic will have been assumed to be higher.\(^{377}\)

(xi) Conclusions on highways issues

185. To conclude our submissions on the Council’s highways case it is worth returning to the fact that all the points raised by Mr Birch, including all the points addressed above together with the many other scattergun shots that missed the target and were since abandoned, are points that derive not from Council officers and not from Council members. Instead, they derive from Mr Birch himself.

186. In respect of technical highways evidence, HE supports the scheme. NCC supports the scheme. The Council’s officers support the scheme. Mr Tricker supports the scheme. Only Mr Birch objects. And he does so on the basis that i) the statutory authority responsible for the County roads has acted negligently and in breach of its statutory duties; ii) the growth strategy agreed by HE, NCC and the Council to deliver growth in Northampton, including on the Appeal Site, will cause substantial harm to the local road network; and iii) the HCA should be expected to duplicate all the work previously done by HE in modelling the NGMS. None of those are reasonable conclusions. But even if they were, they do not, on their own demonstrate that the Appeal Scheme will have

\(^{375}\) CD144 TA 79/99 Traffic Capacity of Urban Roads, Design Manual for Roads and Bridges, para. 2.1. See also answers in XX Mr Birch, Day 6 pm and Mr Pease, Day 6 pm.

\(^{376}\) XX Mr Birch, Day 6 pm.

\(^{377}\) See Mr Tricker’s rebuttal at paras. 1.8.4 and XX Mr Birch, Day 6 pm.
residual cumulative effects that are severe. The Council has simply produced no evidence at all to show that.

187. The evidence the Inspector and Secretary of State can rely on is found in the TA, combined with Mr Tricker’s proof of evidence and TNs. Together, they show mitigation measures that will deliver substantial interim benefit to the County road network, and will ensure, in the long term, that the Appeal Scheme causes nil detriment to the road network.\textsuperscript{378}

SECTION H: IMPACT ON BRACKMILLS INDUSTRIAL ESTATE

188. The following submissions are made by the HCA on this aspect of the Council’s case.

189. First, the Council accepted in opening that its case on the impact of the Appeal Scheme on the BIE is entirely consequential on its highways case.\textsuperscript{379} If the Secretary of State does not conclude that the residual cumulative impacts of the development will be severe, then there is no independent basis on which to refuse to grant permission because of the impact on BIE. Consequently, we keep this element of our closing argument short.

190. Second, and more fundamentally, the Appeal Scheme will benefit BIE:

\begin{itemize}
  \item [(1)] As noted by the Core Strategy Inspector in the JCS IR, the N6 site is “well related to the existing built up area on the south eastern edge of the town with existing housing to the west and south and close to the substantial Brackmills employment area to the north” \textsuperscript{380}. The JCS, and the Core Strategy Inspector thus carefully balanced employment and housing growth\textsuperscript{381}.
  \item [(2)] The proximity of the housing provided by the Appeal Scheme with the employment opportunities nearby aligns perfectly with the objective of
\end{itemize}

\textsuperscript{378} See tables 8-1 to 8-8 of the revised Transport Assessment (CD8) the contents of which were not challenged by the Council.

\textsuperscript{379} INQ 2.

\textsuperscript{380} CD 44 JCS IR, p.29, para.139.

\textsuperscript{381} CD44 para 54 referring to “maintaining a broad balance between new homes and jobs”.
the JCS to “to retain and diversify the local economic base, whilst maintaining a broad balance between new homes and jobs”;

(3) As Mr Stephens acknowledged, the Appeal Scheme is in a sustainable location, not least because it will provide a labour force in close proximity to BIE at a time when staff retention is an acknowledged problem for the businesses located there;382

(4) The Appeal Scheme offers a range of new pedestrian and cycle links through the site and thus enhanced connections to the BIE.383

(5) The Appeal Scheme will create a new north-south link bus link between BIE and the existing Wootton residential area which will provide further support to the employment area as well as delivering a number of significant improvements to bus infrastructure and services in the area384. This is important as public transport provision has been shown to be an issue for BIE385;

(6) The contribution of the Appeal Scheme to the NGMS will also contribute to easing traffic congestion at BIE (a point acknowledged by Cllr Nunn).386

191. Third, although some concerns were raised by the Council in relation to the impact of existing traffic congestion on the Business Park, Cllr Nunn’s evidence was that BIE remains a “premier” business park in high demand and that it would be “premature” to conclude that there had been any decline in its

382 XX Mr Stephens, Day 1 pm; and see Appendix 1, p.15 to the evidence of Mr Stephens which cites issues with “Staff recruitment/Skill levels” and “Staff retention”.
383 CD16 Statement of Agreed Position, section 3.8.1; and CD 2 Access and Movement Framework DWG. NO. 3238_201 Rev A.
384 CD9 Planning Statement, para.8.10; CD16 Statement of Agreed Position, section 3.8; and confirmed by Mr Tricker in EIC, Day 7 am; INQ 34 HCA’s note on public transport strategy.
385 See Mr Stepehn’s Appendix 1 p. 15.
386 XX Cllr Nunn, Day 3 am.
desirability. The evidence provided by Mr Tulley, evidencing high demand, and the recent long-term commitment of Howdens, supports that view.

192. There is thus no basis for alleging any breach of policy S8 as a result of the Appeal Scheme. Indeed BIE will benefit in a number of ways from the proposed development.

SECTION I: MATTERS RAISED BY THIRD PARTIES

(i) Localism and the Duty to Cooperate

193. A recurring theme in submissions by third parties, crystallised in the submission of Mrs Leadsom, was the suggestion that the JCS process led by the JSPC was undemocratic, a product of the now defunct RSS system, and contrary to the localism agenda. That suggestion must be roundly rejected.

194. As confirmed in numerous High Court decisions, including *R (Tewksbury BC) v Secretary of State for Communities and Local Government* [2013] EWHC 286 (Admin), the Localism Act did not sweep away the need to provide sufficient housing land to satisfy objectively assessed needs. Indeed, the former Secretary of State said as much when he noted:

“The Localism Act has put the power to plan back in the hands of communities, but with this power comes responsibility: a responsibility to meet their needs for development and growth, and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities.”

195. Nor did the Localism Act eliminate the requirement for neighbouring authorities to reach joined-up solutions on meeting the needs of development and growth. At the same time as abolishing Regional Spatial Strategies, the Localism Act 2011 introduced, through an amendment to the Planning and Compulsory Purchase

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387 XX Cllr Nunn, Day 3 am.

388 Rebuttal proof of Mr Tulley, section 2; and Appendix A to the rebuttal proof of Mr Tulley. Thus vacancy rates are low – 6/7% average which given the need for “churn” shows a strong demand. This is supported strongly by the Savills letters attached to the evidence of Mr Tulley. The recent lease renewal by Howdens is also an important piece of evidence in this regard.

389 Appendix C to the rebuttal proof of Mr Tulley.

390 BIE submitted some evidence after the close of oral evidence for the Inquiry by way of letter dated 29 June 2015. That letter was responded to by the HCA by letter dated 6 July 2015. Both letters have been provided as part of the evidence to the Inquiry.

391 EIC Mrs Leadsom, Day 4 am.
Act 2004, the duty to cooperate. 392 That duty requires local planning authorities to make efforts to secure cooperation with neighbouring authorities on strategic cross boundary matters – including housing - before they submit their Local Plans for examination. In circumstances where no such efforts have been made, the Local Plan is unlikely to be sound.

196. In the case of the Council, it willingly signed up to the JSPC in 2007, signing a memorandum of intent to set out the scope of the work of the JSPC 393 and agreeing rules of procedure to govern the working methods of the JSPC. 394 It worked cooperatively within the JSPC both before, and after, the abolition of RSSs, and relied on its participation in the JSPC and the JPU to satisfy its legal duty to cooperate, as imposed by the Localism Act. 395 Consequently, far from being contrary to the localism agenda, the JCS process was wholly consistent with it. The Council may not like the outcome of the process – and may have wished that policy N6 allocated only the Appeal Site for 1000 houses, rather than including the allocation of the Adjacent Land for an extra 300 houses, but it is a process the Council signed up to and it is a process the Council relied on to satisfy its obligations under the Localism Act. Moreover, the JCS remains the statutory Development Plan, against which this appeal must be determined.

(ii) Heritage matters

197. Both Hardingstone Parish Council (‘HPC’) and Hardingstone Action Group (‘HAG’) have raised objections to the Appeal Scheme on the basis of its impact on heritage assets, in particular, the Hardingstone Conservation Area (‘the CA’). The Principal Statement of Common Ground between the HCA and the Council states that ‘The level of impact on the Conservation Area, listed buildings and any other known heritage assets is agreed with NBC as being nil detriment’ and records that:

\footnotesize
393 CD 32.
394 CD 33.
395 CD 47 Duty to Cooperate compliance statement.
'There are no issues relating to heritage that would constitute a reason for refusal'.

Similar views were set out in the OR.

198. In response to the submissions made by HPC and HAG, the HCA has submitted a note by heritage expert Gail Stoten. That note addresses each of the concerns raised by HPC and HAG and concludes “that objections made on the grounds of heritage are unfounded”. In relation to Ms Servant’s submissions that the Appeal Site forms an important part of the setting of the CA, the Conservation Area Appraisal (‘the CAA’) has a plan showing important boundary walls and important views which clearly shows that there are no important views to the site from the CA. Although that plan omits the south eastern corner of the CA, this is immaterial, given that:

1. Ms Stoten was aware of the correct boundaries to the CA;
2. Although the text of the CAA refers to land to the south east forming an important part of the setting of the CA, that text is written in the context of Pittam’s Farmhouse and land to the south east. It refers to land on which a stone barn has recently been replaced by modern farm buildings. As illustrated in the HCA’s plan submitted at the Inquiry, the land around Pittam’s Farmhouse lies to the east of the CA. The Appeal Site is mostly to the south of that land. No stone barn has been replaced by modern farm buildings on the Appeal Site. The OR confirms that the important view considered in the Pittam’s Farmhouse appeal is not the Appeal Site.

199. Accordingly, the Inspector and Secretary of State can conclude with confidence that there is no legitimate heritage objection against the application.

(iii) Ecology

396 CD 18 Principal SOCG, paras 8.4 and 8.6.
397 CD 57, paras 7.71 – 7.75.
398 CD 95, Appendix 2, Map 2.
399 CD 95, p.12.
400 RX Mr Brashaw Day 4 pm.
401 See CD57 para 7.73.
402 CD18.
200. The Principal Statement of Common Ground notes that biodiversity issues do not constitute a reason for refusal and records that the Appeal site has limited ecological value. It notes agreement between the Council and the HCA that the Appeal Scheme is likely to enhance the biodiversity value of the site through, the incorporation of semi natural habitats including:

1. Species-rich, wide hedgerows;
2. Lowland neutral grassland/wet grassland (local UK/BAP habitat) along Sustainable Urban Drainage swales (open ditches) and footpaths;
3. Lowland neutral grassland and wildflowers around the perimeter of amenity areas to be managed for the benefit of wildlife;
4. The creation of ephemeral and permanent ponds (local UK/BAP habitat) managed for the benefit of wildlife (i.e. not stocked with fish) where possible; and
5. Planting of native trees of local provenance including fruit trees.

201. Notwithstanding this evidence, third parties, including HAG, contend that the Appeal Scheme will cause harm to biodiversity on the site and beyond. In response, we ask the Inspector and the Secretary of State also to rely on the Technical Note dated 17 June 2015 which sets the background to all the work carried out by the HCA in respect of ecology and responds to the HAG submissions, concluding that there will be “no significant impacts to ecology” from the Appeal Scheme. In respect of the specific question of the impacts to the Golden Plover, raised in the evidence of Ms Servant of HAG, we direct the Secretary of State to Technical Note dated December 2011 which provides a full answer to those concerns and concludes that “development of the site will not significantly affect any habitat used by foraging or roosting golden plovers”.

SECTION J: CONCLUSION

202. We conclude this closing statement by repeating the key features of the appeal, as follows:

403 INQ 11 HCA’s Note on Ecology issues.
404 INQ 19 Letter from Gemma Cookson on behalf of the HCA in respect of Golden Plovers, and attached Technical Note from December 2011.
(1) The HCA seeks planning permission for residential development of up to 1000 homes and other associated development on a site recently allocated in the statutory Development Plan for precisely those purposes;

(2) During the course of the JCS process, the Council expressed support for the principle of 1000 homes on the Appeal Site, and Council officers have worked closely with the HCA to develop the application that is now before the Inspector and Secretary of State;

(3) The application is made in a region where the local authority agree they cannot demonstrate a five year housing land supply, and where it is agreed that the development will bring substantial benefits to Northampton and the West Northamptonshire region;

(4) The HCA’s application for development is part of its accelerated disposals programme, and pursuant to its statutory purpose to improve the supply and quality of housing in England, with a view to meeting the needs of people living in England.

(5) The accelerated disposals programme, of which the Appeal Site forms part, is consistent with recent calls by the Secretary of State for Communities and Local Government for departments to “loosen their grip” on sites that are standing idle so they can be released for new housebuilding, with a target of 150,000 homes by 2020.

(6) The HCA’s track record in delivering high quality housing is proven, and it has regularly exceeded its housing delivery targets. As confirmed by Mr Tulley in his evidence, the swift grant of permission in this Appeal is likely to see in excess of 250 dwellings built within the next five years.

(7) Despite the Council’s current objections on highways and landscape grounds, neither of these grounds were identified by the Council’s Head of Planning (who gave a strong recommendation for approval) or by the statutory authorities responsible for both the County road network and the SRN (who found the HCA’s highways modelling to be comprehensive and robust).
203. The planning system in England and Wales is, fundamentally, plan-led. That is confirmed by the first ‘core planning principle’ set out in paragraph 17 of the NPPF (advocating that planning be “genuinely” plan led), by section 70(2) of the Town and Country Planning Act 1990, and by section 38(6) of the Planning and Compulsory Purchase Act 2004. Although the Council has, at various stages of this process, sought to undermine the weight to be attached to the statutory development plan, and one of its councillors has gone so far as to suggest the possibility of a legal challenge to it, the position today is clear: the JCS is the adopted statutory Development Plan for the Council; there is no prospect of any successful legal challenge to its status as such; and policy N6 which allocates the Appeal Site for residential development is to be given full weight in this appeal.

204. The Appeal Scheme is in accordance with the statutory Development Plan and planning permission should be granted unless material considerations indicate otherwise. We submit that the case in favour of the appeal is overwhelming. There are no material considerations which individually or collectively weigh against the appeal. As such, and in accordance with paragraph 14 of the NPPF, we ask the Inspector to recommend that the appeal is allowed, and the Secretary of State to grant planning permission, without delay.

JAMES MAURICI QC
TOBY FISHER
Wednesday, 29 July 2015
Landmark Chambers
180 Fleet St London EC4A 2HG

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405 Irrespective of the merits of such a challenge (and we submit there are none), any challenge would now be time-barred, as confirmed by Mr Corner QC for the Council.

406 XX Mr Stephens, Day 1 pm