



Ministry of Housing,
Communities &
Local Government

Mr Jonathan Dunbavin
ID Planning
Atlas House
Leeds
LS1 2HL

Our ref: APP/N4720/W//17/3169594
Your ref: 16/05981/OT

12 July 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY THE SIR ROBERT OGDEN PARTNERSHIP
LAND AT DUNNINGLEY LANE, TINGLEY, WAKEFIELD, WF3 1SJ
APPLICATION REF: 16/05981/OT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Richard Schofield BA(Hons) MA MRTPI, who held a public local inquiry between 28 November to 1 December 2017, 5-6 December 2017 and 23 to 24 January 2018 into your client's appeal against the failure of Leeds City Council to determine your client's application for outline planning permission (all matters reserved except for partial means of access to, but not within the site) for residential development up to 770 dwellings and convenience store (up to 4000 sqft) together with creation of new areas of public open space and drainage attenuation works with access taken off Thorpe Lane (A654) and Dewsbury Road (A653), in accordance with application ref: 16/05981/OT, dated 23 September 2016.
2. On 13 March 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and outline planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeal and refuse outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

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determined in accordance with the development plan unless material considerations indicate otherwise.

6. In this case the adopted development plan for the area comprises of the saved policies of the Leeds Unitary Development Plan Review (UDPR) 2001, Leeds Core Strategy (CS) 2012-2028, and the Natural Resources and Waste Local Plan (NRWLP) 2013. The UDPR safeguards the site as a Protected Area of Search (PAS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.2-4.5.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging site allocation plan

8. The Secretary of State considers that the emerging site allocation plan is of relevance to this case, in particular policy HG3 which identifies this site explicitly as Safeguarded Land (IR4.6). Although examination of the SAP commenced in October 2017, housing and mixed-use policies will not be examined until July and August 2018.
9. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the Inspector's conclusions at IR13.150 that the SAP has some way to go before it is close to adoption, and the unresolved objections to it, the Secretary of State gives the SAP only little weight, in agreement with the Inspector.

Main issues

Housing land supply and the paragraph 14 'tilted balance'

10. The Secretary of State notes (IR13.4) that it is common ground that the Council is unable to demonstrate a five year supply of deliverable housing sites. For the reasons given at IR13.5-13.11, the Secretary of State agrees with the Inspector that the Council's housing land supply is around four years.
11. From the reasons given at IR13.14-13.20, the Secretary of State agrees that there are relevant policies for the supply of housing within the CS, and that UDPR policy N34 is not a policy that indicates that development should be restricted. As such the Secretary of state concludes, in agreement with the Inspector (IR13.21) that the proposal should be considered under the 'tilted balance' set out in paragraph 14 of the Framework.

Spatial strategy

12. For the reasons set out at IR13.25-13.34, the Secretary of State agrees that the proposed scheme would be a substantial standalone housing estate, with an extremely limited range of facilities, for which the CS makes no provision. Given this overall context, the Secretary of State agrees that the scheme conflicts with the locational requirements of Spatial Policy 1.

Accessibility

13. The Secretary of State agrees, for the reasons set out at IR13.35-13.79, that the site's locational shortcomings are evident when considered against the Accessibility Standards (IR13.75). He further agrees that the appeal scheme's deficiencies with regard to accessibility to relevant services and facilities are significant (IR13.78). He therefore concludes that the appeal proposal would fail to accord with CS policies SP1, H2 and T2, and paragraph 29 of the Framework. He further agrees that the scheme would fail to accord with paragraph 38 of the Framework, for the reasons set out at IR13.79. As H2 is a policy for the supply of housing, he gives only moderate weight to the conflict with it in light of the lack of a five year housing land supply.

Development of PAS Land (UDPR Policy N34)

14. The Secretary of State notes that there is no dispute between the parties that the appeal proposal conflicts with Policy N34 (IR13.81). The Secretary of State has given careful consideration to the Inspector's analysis at IR13.82-13.93 and agrees, for the reasons given, that N34 is up to date.

Highway safety

15. For the reasons given at IR13.94-13.108 the Secretary of State agrees, for the reasons given, that there is insufficient evidence to conclude that the appeal proposal would result in adverse highway safety impacts. He thus concludes that the proposal would accord with UDPR policy GP5, CS policy T2 and paragraph 32 of the Framework (IR13.109). However, he also agrees, for the reasons given at IR13.110, that both the Middleton and M62 J28 routes would give rise to perceptions of being unsafe for many potential users, which could well discourage walking and result in a preference for the use of the private car, and the fact that the routes would need to be used at all is reflective of the site's significant locational shortcomings.

Highway efficiency

16. The Secretary of State agrees, for the reasons given at IR13.116-13.123, that a scenario that envisages no background traffic growth over a period of significant planned development is unrealistic. He notes that Highways England has raised no objection to the appeal proposal on highways efficiency grounds, being content that any impacts upon the strategic road network would be acceptable (IR13.128.) The Secretary of State has then gone on to consider the impact of the development on the disputed junctions.

17. The Secretary of State agrees, for the reasons given at IR13.131-13.135, that in regard to Junctions 2, 3, 4, 6 and 7 there is no evidence to suggest that the additional levels of delay arising from the appeal proposal would result in any kind of cumulative domino effect from one junction to another or reach a tipping point of some kind. He further agrees (IR13.135) that any increased congestion needs to be viewed in the context of overall journey times, wherein the effect of the proposed development may make little material difference or would give rise to additional peak spreading.

18. For the reasons given at IR13.137-13.141 he further agrees that even when considered in relation to the proposed employment allocation at Capitol Park, it is premature to see

the potential interaction between the two sites in relation to Junction 1 as justifying the refusal of the appeal proposal.

19. Overall he concludes that the effects of the appeal proposal modelled on a 'With Growth' basis would not give rise to materially adverse impacts on the local highway network that could be considered so severe as to warrant the refusal of planning permission. He therefore concludes, in agreement with the Inspector (IR13.142), that in highway efficiency terms the appeal scheme would accord with UDPR policy GP5, Policy T2 and paragraph 32 of the Framework.

Prematurity

20. While the Secretary of State has had regard to the fact that some time has elapsed since the inquiry, and that the SAP hearings have begun, he concludes, for the reasons given by the Inspector at IR13.144-13.151, that there is no evidence as to any harm arising from possible over-allocation, and that the SAP has some way to go before it is close to adoption. He thus agrees that the appeal proposal cannot be reasonably regarded as prejudging the plan making process in either practical terms or in the terms set out in the Guidance.

Other matters

21. For the reasons given at IR13.152-13.154, the Secretary of State agrees that the proposal is not supported by Spatial Policy 4. He further agrees, for the reasons set out at IR13.155, that the scheme does not draw support from CS Spatial Policy 6.
22. The Secretary of State agrees, for the reasons given by the Inspector at IR13.156-13.160 that the fact that the Council has been designated as PAS land does not mean that any development proposal for it is automatically to be regarded as sustainable.
23. While the Secretary of State notes that the proposal would result in the loss of grades 2 and 3a Best and Most Versatile agricultural land (IR13.161), for the reasons given he agrees that this does not weigh heavily in the planning balance. He further agrees, for the reasons set out at IR13.162-13.163 that the adopted development plan is the appropriate expression of the city's housing requirement.

Planning conditions

24. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.12, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing outline planning permission.

Planning obligations

25. Having had regard to the Inspector's analysis at 12.1-12.3, the planning obligation dated 8 March 2018, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.4 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligation

overcomes his reasons for dismissing this appeal and refusing outline planning permission.

Planning balance and overall conclusion

26. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies SP1, H2, T2 and N34 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
27. In the absence of a 5-year supply of housing land paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.
28. The Secretary of State gives significant weight to the provision of market and affordable housing, in an area with a history of shortfall in housing delivery. He concludes that the M62 J28 works would do little beyond mitigation the traffic impacts of the proposal, and as such affords this little weight.
29. He gives very little weight to the changes to the Thorpe Lane/Smithy Lane junction as there is no evidence that the crossing is currently unsafe. Given his conclusions that the M62 J28 route is not attractive for cyclists or pedestrians, and that there is no evidence of safety issues at the crossing, he affords little weight to the M62 J28 works. He affords little weight to the provision of a bus gate on Dewsbury Road as there is no reason to consider that the number of beneficiaries would be significant.
30. He gives moderate weight to the opportunities for habitat enhancement offered by the scheme. Given its location away from other settlements, he affords very little weight to the provision of open space. He gives no weight to the works on the public footpath network, as this would be merely mitigation.
31. He gives moderate weight to the economic benefits of the proposal through construction jobs, local investment and longer term expenditure in the local economy. He affords little weight to the economic benefits of New Homes Bonus and Council Tax receipts, as no directly evidential link to the local area from New Homes Bonus has been established, and Council Tax receipts are not a material planning consideration.
32. Against this he finds that the appeal site is not an appropriate location for the development proposed, in terms of accessibility, use of PAS land and spatial strategy, and conflicts with a number of development plan policies which attract full weight even in the absence of a five year housing land supply, and as such would conflict fundamentally with up-to-date development plan policy for the location of new residential development. The Secretary of State attaches very significant weight to this harm.
33. The Secretary of State therefore concludes that the adverse impacts of the proposed development would significantly outweigh the benefits when considered against the Framework when taken as a whole. He therefore concludes that the proposal would not represent a sustainable form of development. He thus finds no material considerations

which indicate that the appeal should be determined other than in accordance with the development plan.

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission (all matters reserved except for partial means of access to, but not within the site) for residential development up to 770 dwellings and convenience store (up to 4000 sqft) together with creation of new areas of public open space and drainage attenuation works with access taken off Thorpe Lane (A654) and Dewsbury Road (A653) in accordance with application ref: No 16/05981, dated 23 September 2016.

Right to challenge the decision

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

36. A copy of this letter has been sent to Leeds City Council and Morley Town Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

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

by Richard Schofield BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date: 9 April 2018

Town and Country Planning Act 1990

Appeal by

The Sir Robert Ogden Partnership

against the decision of

Leeds City Council

Richborough Estates

Inquiry held on 28 November to 1 December; 5 to 6 December 2017; & 23 to 24 January 2018

Land and premises at Dunningley Lane, Tingley, Wakefield WF3 1SJ

File Ref: APP/N4720/W/17/3169594

File Ref: APP/N4720/W/17/3169594

Land and premises at Dunningley Lane, Tingley, Wakefield WF3 1SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of Leeds City Council to give notice of their decision within the prescribed period.
- The appeal is made by The Sir Robert Ogden Partnership against Leeds City Council.
- The application Ref 16/05981/OT was dated 23 September 2016.
- The development proposed is outline planning permission (all matters reserved except for partial means of access to, but not within the site) for residential development up to 770 dwellings and convenience store (up to 4000 sqft) together with creation of new areas of public open space and drainage attenuation works with access taken off Thorpe Lane (A654) and Dewsbury Road (A653).

Summary of Recommendation: That the appeal should be dismissed and planning permission refused.

1. Procedural Matters

- 1.1 The Inquiry sat for eight days (28 November to 1 December; 5 to 6 December 2017; 23 to 24 January 2018). During that time I undertook several unaccompanied visits to the site, which is crossed and circled by public rights of way, walking from there into Tingley and Middleton, and crossing the M62 Junction 28 roundabout on foot. I also visited the business park (Capitol Park) referenced in evidence, drove around the local road network and observed the various road junctions referred to in representations. The parties to the Inquiry agreed, on the final day, that accompanied visits were not necessary.
- 1.2 The application was submitted in outline, with all matters other than access reserved for future consideration. The site location plan is Core Document (CD) A1, with the access drawings being CD A7 and CD A8. I have treated the various additional submitted drawings (CD A2 to CD A5) as illustrative, albeit that they would inform any proposals submitted under reserved matter applications should it be decided that planning permission should be granted.
- 1.3 Following the submission of the appeal, the plans submitted with the original planning application were revised. An addendum to the Environmental Statement was also produced and consulted upon. The details are as set out in the Planning Statement of Common Ground (PSoCG), Section 4.
- 1.4 The main parties agreed that the revisions were not so substantial that they changed the nature of the outline proposal and, as such, that they should be considered by me. Given the relatively minor nature of the revisions and the additional consultation that took place, I do not consider that anyone would be prejudiced by my consideration of them. As such, I have considered the appeal proposal on the basis of the revised plans.
- 1.5 The Council did not issue a Decision Notice. Nonetheless, following the submission of the appeal the application was considered by the Council's City Plans Panel on 29 June 2017. It was resolved that had the Council been in a position to determine the application it would have refused planning permission for seven reasons, encompassing the proposal's conflict with the development plan's spatial strategy; the site's location and accessibility; the release of safeguarded land; prematurity with regard to the emerging Site

Allocations Plan; highway safety and efficiency; and impacts on local infrastructure¹.

- 1.6 A copy of a planning obligation in the form of a Deed of Agreement under Section 106 (S106) of the Town and Country Planning Act 1990 was submitted to the Inquiry². The Council confirmed formally³ at the Inquiry that this addressed its final putative reason for refusal, which it no longer proposed to defend. The S106 agreement is a material consideration and is discussed in more detail later.
- 1.7 It is stated that the proposed development falls under Schedule 2(10) of the Town and Country (Environmental Impact Assessment) (Amendment) Regulations 2015, being an urban development project exceeding 150 dwellings and with an overall site area in excess of five hectares. The main parties agreed that an Environmental Statement (ES) should be prepared.
- 1.8 The ES has been reviewed and found to have complied with the requirements of the relevant Town and Country Planning Act (Environmental Impact Assessment) regulations. I have no reason to depart from this position.
- 1.9 For the sake of completeness I record that the appeal was recovered for determination by the Secretary of State as it involved a proposal for residential development of over 150 units, which would significantly impact upon the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.

2. The Site and its Surroundings

- 2.1 The appeal site and its surroundings are described in detail in the Design and Access Statement (CD A6), the report to the City Plans Panel (CD C1), and the PSoCG (section 3). Briefly, however, the site is part of a wider area of safeguarded land, referred to as Protected Area of Search (PAS) land in the development plan. It is located on the northern side of the M62 motorway, beside junction 28 (J28), with the A653 Dewsbury Road to the east and the A654 Thorpe Lane to the west. It is approximately 33 hectares in size and comprises expansive agricultural fields. There is a negligible amount of brownfield land in the south western corner of the site.
- 2.2 The site does not adjoin any settlement. Tingley is located to the south, beyond the M62, with Middleton to the north east, along Thorpe Lane, and Morley to the west beyond Dewsbury Road. Capitol Park business park is opposite the site's proposed access onto Dewsbury Road.

3. The Proposal

- 3.1 The proposed development would provide up to 770 dwellings, of a range of types, 15% of which would be affordable units. A small convenience store would be provided⁴, along with areas of public open space and an area

¹ See PSoCG

² The executed version being received after the Inquiry closed.

³ Mr Cyhanko, during the S106/Conditions section.

⁴ It was confirmed at the Inquiry that this would be around 186sqm (2000sqft).

safeguarded for a two form entry primary school. Vehicular access would be from Thorpe Lane and Dewsbury Road, with a link road running through the site between these points. The public rights of way running across and around the site would be retained.

3.2 Further highway and public transport works would be implemented as follows:

- widening of the footway between the proposed site access on Thorpe Lane and its junction with Bradford Road⁵;
- widening the footway on Dewsbury Road between Topcliffe Lane and Wide Lane, to provide a shared footway/cycle way⁶;
- improved pedestrian crossing facilities, and highway works, at the roundabout at M62 J28⁷;
- a new bus gate for the southbound bus stop on Dewsbury Road;
- changes to the Thorpe Lane/Bradford Road/Smithy Lane junction⁸; and
- the 117 bus service, running between Leeds and Wakefield, would be diverted through the site with new internal bus stops provided.

4. Planning Policy and Guidance

4.1 The agreed planning policy context for the proposed development is set out in Section 6 of the PSoCG. The most relevant policies are summarised below.

Leeds Unitary Development Plan Review (UDPR)

4.2 The UDP was adopted in 2001 and reviewed in 2006 (UDPR). Saved policy N34 identifies the appeal site as a Protected Area of Search (PAS), now known as safeguarded land. Development upon it is restricted:

"to that which is necessary for the operation of existing uses together with such temporary uses as would not prejudice the possibility of long term development".

4.3 UDPR policy GP5 requires new development to address detailed planning considerations including matters of highway safety and efficiency.

Leeds Core Strategy (CS)

4.4 The CS was adopted in November 2014, with a plan period of 2012 to 2028.

- Policy SP1 sets out the spatial strategy for the area, concentrating the majority of new development within and adjacent to urban areas in accordance with nine development principles;
- Policy SP4 sets out four regeneration priority areas;

⁵ Transport Assessment - Drawing 3103/SK005/001

⁶ Ibid – Drawing 3103/SK006/001A

⁷ Ibid – Drawing 3103/SK003/004

⁸ Ibid – Drawing 3103/SK005/001

- Policies SP6 and SP7 set out the CS's housing requirement, along with criteria for the allocation and planned distribution of new residential development;
- Policy SP10 addresses Green Belt matters, including the need for a review of the Green Belt;
- Policy SP11 lists proposed transport infrastructure investment priorities;
- Policies T1 and T2 deal with transport management and accessibility requirements, seeking to ensure that new development is located in accessible locations. T2 references Appendix 3 of the CS, which provides a set of Accessibility Standards against which new development can be assessed;
- Policies H1 to H5 set out phasing of residential allocations; criteria for the acceptability of non-allocated housing sites; dwelling densities and mix; and affordable housing requirements. H2 is clear that the CS Accessibility Standards need to be met for non-allocated sites over five dwellings;
- Policies P10, G3, G4, EN1 and EN5 address matters of design and open space, and climate change and flood mitigation; and
- Policy ID2 sets out the circumstances in which planning obligations will be required.

Natural Resources and Waste Local Plan (NRWLP)

- 4.5 The NRWLP was adopted in January 2013. Among other things it defines Coal Resource Areas. The appeal site lies within such an area. Policy Minerals 3 – Coal requires all developments proposed for Coal Resource Areas to demonstrate how any coal present at their site can be recovered. This is a matter that is addressed by condition and is not considered further.

Emerging Leeds Site Allocations Plan (SAP)

- 4.6 Examination of the SAP commenced in October 2017. Although hearings have been held on a number of matters, the housing and mixed-use policies will not be examined until July 2018. Within the SAP, the site is identified explicitly under policy HG3 – Safeguarded Land. This states that such sites are:

“To be safeguarded from development for the plan period (to 2028) to provide a reserve of potential sites for longer term development post 2028 and protect the Green Belt”.

National Planning Policy Framework (the Framework) and Planning Practice Guidance (the Guidance)

- 4.7 The content of the Framework and Guidance will be well-known to the Secretary of State. It is, however, helpful to draw attention to the following paragraphs, which are referenced in evidence by the parties.
- 4.8 Paragraph 49 of the Framework states that relevant 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.

- 4.9 Paragraph 14 states, among other things, that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate that development should be restricted.
- 4.10 Paragraph 29 states that the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel.
- 4.11 Paragraph 32 states that decisions should take account of whether the opportunities for sustainable transport modes have been taken up, depending on the nature and location of the site, and safe and suitable access to the site can be achieved for all people.
- 4.12 Paragraph 35 states that developments should be located where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities.
- 4.13 Paragraph 38 states that where practical, particularly with larger developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.
- 4.14 Paragraph 85 addresses, among other things, the status of, and means of releasing, safeguarded land.
- 4.15 Paragraph 111 advises that planning decisions should encourage the effective use of land by re-using that which has previously been developed.
- 4.16 Paragraphs 215 and 216 consider, respectively, the weight that should be attributed to extant Local Plan policies and the weight that may be given to relevant policies in emerging plans.
- 4.17 Paragraph 014 Reference ID: 21b-014-20140306 of the Guidance considers the issue of prematurity in relation to emerging Local Plans. It is clear that:

“... arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area”.

5. Agreed Matters

- 5.1 The PSoCG between the Council and the Appellant was submitted prior to the Inquiry. Among other things, it confirms that:
- a) the Council is unable to demonstrate a five-year supply of deliverable housing land; and
 - b) the appeal scheme would provide housing, including affordable housing; create jobs through construction, providing some economic benefit; provide formal and informal public open space, long term management of new areas of public and private open space, and green infrastructure; provide improved access to public rights of way in the vicinity of the site, some additional local pedestrian and cycle infrastructure, and an alternative route from Thorpe Lane to Dewsbury Road; deliver some investment and some local facilities and services.
- 5.2 In addition, it was agreed at the Inquiry that the Council makes no objection on grounds of loss of best and most versatile agricultural land; adverse impacts upon the character and appearance of the area; or loss of the appeal site as a potential location for employment development.
- 5.3 A Highways Statement of Common Ground (HSoCG) between the Council and the Appellant was submitted during proceedings, setting out agreed times between the site and various relevant destinations in relation to the Council's Accessibility Standards. Beyond this, there was no agreement between the main parties on matters of accessibility and highway safety/efficiency.
- 5.4 The Appellant and Highways England produced a statement of common ground (HESoCG) in advance of the Inquiry. This set out agreement with regard to necessary mitigation works to J28 M62, stating that:

"Without the completion of the RSA1 [Stage 1 Road Safety Audit], the mitigation cannot be accepted by Highways England and without the necessary mitigation it is agreed that the development would not be acceptable".

6. The Case for Leeds City Council

- 6.1 The case for the Council is set out most comprehensively in its Final Submissions to the Inquiry⁹. The key points are summarised under a series of headings below:

The development plan and spatial strategy

- 6.2 The proposal departs fundamentally from the development plan. This does not approach being a case in which other material considerations indicate other than that the appeal must be dismissed.
- 6.3 The most recent Secretary of State decisions for Leeds correctly demonstrate that the CS is perfectly up-to-date, notwithstanding the Council's five-year housing land supply position and his Inspector's finding of a specific 'time-expired' policy serving a unique function. The Secretary of State's (and his

⁹ ID60

Inspector's) finding in those appeals that "[relevant] *policies for the supply of housing*" were out-of-date, was made in light of the Council's then concession regarding its relevant housing land supply policies.

- 6.4 CS policy SP1 was not found to be out-of-date by the Secretary of State as part of any of the most recent housing appeal decisions in Leeds.
- 6.5 As to relevant UDPR allocations, these are provided for by saved policies the function of which was unmistakably endorsed by the UDPR Inquiry Inspector.
- 6.6 The appeal site fails to meet any of the priorities for development in policy SP1(ii), which is clear that any proposed development must have regard to the priorities for urban regeneration, the balance of greenfield/brownfield land, and specific regard to the settlement's size, function and sustainability. The appeal site is isolated and remote. The poor public transport links and very limited services/facilities will inevitably mean very substantial car dependency.
- 6.7 CS Policy H2 makes clear that new housing on non-allocated land is acceptable in principle only where the number of dwellings does not exceed the capacity of transport infrastructure. For developments of the scale of that proposed, the location must accord with the CS Accessibility Standards (Table 2; Appendix 3). Policy H2 is only one of many key local and national policies relevant to this appeal that gives effect to the highways and accessibility objections.
- 6.8 Should the Council accept a need to exceed its housing allocations targets, this area could not begin to come anywhere near "*a most sustainable location for excessive growth*" (as indicated by the targets set out in CS Policy SP7). There are many sequentially-preferable locations, within the main urban area and city centre, for example. The development proposes the throwing out of the CS's carefully considered settlement hierarchy and spatial strategy, and its focus and priorities for development.
- 6.9 The deliverability of housing will be considered through the SAP, alongside any resulting consequences for locating development within the Outer Area where the site lies. On any view an approval of the appeal would determine an issue otherwise to be determined through the SAP, clearly prejudging its outcome.

UDPR policy N34

- 6.10 There is fundamental conflict with UDPR policy N34 and, thus, fundamental conflict with the development plan. This conflict alone justifies refusal.
- 6.11 The UDPR Inspector's negative appraisal of the site for housing remains relevant and significant today. The site was considered in the context of employment development. The UDPR Inspector gave considerable weight to the delivery of Supertram in his original decision that the site was appropriate for designation as PAS land. This project has since been cancelled. It follows that the original designation of PAS land is founded on the site's merits for employment uses and clearly not for housing.
- 6.12 Policy N34 does not provide for the location/distribution or numbers of housing. There is no suggestion within the policy that housing would be supported on this PAS site. Policy N34 by its own terms must, therefore, be considered as a policy that restricts development, and in no way could be construed as a policy relevant for the supply of housing, in the context of the

Supreme Court judgement¹⁰. There is, thus, no basis for concluding either that policy N34 is somehow rendered out-of-date, or even dated, simply because the Council is presently unable to demonstrate a five-year housing land supply.

- 6.13 Previous appeal decisions have wrongly concluded that Policy N34 is out-of-date. First, in those appeals the Council accepted, in accordance with the then Court of Appeal judgement¹¹ that N34 was a policy relevant to the supply of housing. That was the correct view then. It is incorrect now.
- 6.14 Second, Policy N34 is saved under direction. As such, it must bear full effect as a development plan policy pursuant to s38(6).
- 6.15 Third, the view that the policy was effectively “time expired” (on the basis that the plan period for the housing policies within the UDPR ended in March 2016) was arrived at *because* of the finding that N34 was a policy relevant to the supply of housing. The UDPR is also clear that some policies, such as those relating to PAS and Green Belt, extend beyond the plan period. Even if policy N34 had been technically “time-expired” (which is not the case), that could not render it out-of-date.
- 6.16 Policy N34 serves the very purpose of ‘safeguarded land’ that is promoted by paragraph 85 of the Framework. The function explained by paragraph 85, and which is resounded by Policy N34, is to meet “*longer term development needs stretching well beyond the plan period*”. It is clear from the wording of the explanatory text accompanying N34 that permission for long-term development is to be refused until the suitability of development on the sites is comprehensively reviewed through a Local Plan.
- 6.17 Paragraph 85 of the Framework is plainly restrictive of development on Safeguarded Land. Development on such sites is only countenanced once the site has been allocated for development. There is nothing in paragraph 14 or footnote 9 of the Framework requiring the restrictive nature of the policy to be in perpetuity. The correct reading of paragraph 85 is to find that it is restrictive in its own terms whilst the designation of Safeguarded Land remains in place.

Site Location

- 6.18 As shown on the UDPR Policies map, Map 3 of the CS and the SAP plan for the Outer South West, the appeal site is divorced from all existing settlements. The appeal site is not attached to a settlement and so does not form part of the settlement hierarchy.
- 6.19 The Appellant relies upon policy SP1 stating that “the majority” of development will be within and adjacent to urban areas. They interpret this to mean that there is an allowance for an unspecified ‘minority’ of development. But there is no suggestion in any part of the policy that development of the scale proposed at the appeal site, in a location divorced from existing settlements, is supported. SP1 has at its heart the importance of locating development in line

¹⁰ *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37

¹¹ *Suffolk Coastal DC v Hopkins Homes Ltd & Richborough Estates v Cheshire East BC* [2016] EWCA Civ 168

with the settlement hierarchy, whereas the proposal is removed from all existing settlements.

- 6.20 The Appellant also takes comfort from the word 'adjacent' in SP1, and uses it to mean 'near to' rather than 'adjoining'. Policy SP7 makes clear, however, the categories of sites for development that will be considered as part of meeting the housing requirement. There are only two: 'infill' and 'extension'. The site is neither infill nor is it an extension, as there would have to be a settlement attached to the site from which it could extend.
- 6.21 Finally, policy SP10 establishes an exceptional test for the release of Green Belt sites unrelated to the settlement hierarchy, namely that such sites should be in sustainable locations and provide a full range of local facilities and services.
- 6.22 The CS settlement hierarchy Map 3 was found sound in 2014, and clearly shows the site removed from any settlement. In addition, the up-to-date SAP also shows the site removed from any settlement. The idea that some of the baseline information is 20 years old does not alter this fact.
- 6.23 There is some inconsistency and conflict between the maps relating to Regeneration Areas within the CS. However, policy SP4 unequivocally cites the Key Diagram as the definitive map. It is clear from the Key Diagram that the appeal site is not located within a Regeneration Area. Even if that was not so, the development of the site would result in no regeneration to places such as Tingley, Morley or Middleton as the site is significantly physically divorced from them. Greenfield sites around Middleton were used as past examples by the Appellant but those sites were well-related to Middleton.
- 6.24 Paragraph 4.8.7 of the Core Strategy does not give support to the release of PAS sites in advance of a review. It is clearly directing the future SAP to the identification of PAS land. Explanatory text in the CS cannot override the clear statement of intent within N34 that development will be restricted to uses that would not prejudice the possibility of long term development.

Core Strategy Policy SP6

- 6.25 CS policy SP6 only allows for sites to be classified as windfall where they are both "small and unidentified". The appeal site is not small. Within the clear context of being "*Guided by the Settlement Hierarchy*" SP6 sets out six considerations that will be taken into account when allocating sites for housing. It is clear that the appeal site fails to meet the first and second considerations in that policy, namely that the site is not within a sustainable location and is not a brownfield site within a regeneration area. The Council was right to find the site unsuitable for a housing allocation through the SAP.

Prematurity

- 6.26 The very advanced SAP has been submitted for Examination. The anticipated resumption of Stage 2 is provisionally programmed for Summer 2018. The fact that further public consultation will be undertaken on what amounts to a limited 're-categorisation' of areas as broad locations for growth does not undermine the SAP's very advanced stage, consistent with advice in the Guidance on prematurity. There is no reason why the Council should not be confident of the provisional timetable and of the SAP's soundness.

- 6.27 It is of particular alarm, and unacceptable upset to the SAP, that the proposal would bring forward, on the wrong site, c.18% of the proposed quantum of housing allocations within the Outer South West area, contrary to how distribution is intended to perform against the CS and its targets. Given the highly significant undermining effect that approval of the development would have on the SAP, prematurity is demonstrated.

Paragraphs 14 and 49 of the Framework

- 6.28 None of the policies provided for under the putative reasons for refusal amount to "*relevant policies for the supply of housing*". Consequently, none of these policies can be treated as "*out-of-date*" by operation of paragraph 49. Nor do they provide a gateway into paragraph 14 and the question of whether the tilted balance weighs in favour of the appeal. Hence, while there are relevant housing policies under the CS, policies that the Secretary of State has previously found to be out-of-date, none involve those founding the reasons for refusal. Consequently there is no reason not to give them their full weight.
- 6.29 The Appellant's approach to 'triggering' paragraph 49 reads too much into paragraph 59 of the Supreme Court judgement in a way that (i) is out of context with the judgement's preceding paragraphs, which explain the interaction of paragraphs 49 and 14 of the Framework and (ii) wrongly dismisses (and is irreconcilable with) the purposeful wording of paragraphs 49 and 14, where the 'trigger' is in fact reserved to circumstances in which "*relevant*" policies for the supply of housing are found to be out-of-date.

Highways

- 6.30 A development of 770 dwellings would have a significant impact on important and already busy parts of the local and national strategic highway networks, including but not limited to the M62 motorway, A653 Dewsbury Road, A654 Thorpe Lane, A650 Bradford Road and A6110 Ring Road.
- 6.31 It remains the case at the time of writing that the developer has not demonstrated a solution that would address the severe highway and accessibility impacts that would be caused by the development. Nor is there adequate information to satisfy the Council on matters of safety.
- 6.32 While matters of judgement inevitably go to whether one or more risks arising from the proposal render it unsafe or not, this does not properly entitle the decision-taker to conclude that an unsafe proposal is acceptable. There are no shades of safety.
- 6.33 The Appellant has failed to apply appropriate traffic growth to surveys to model future year scenarios at key junctions affected by proposals. The general approach of Highways England on growth is aligned substantially with that of the Council, namely that growth is occurring and expected in future.
- 6.34 The increasing trips/growth on the motorway network, accepted by the Appellant, must inevitably leave the motorway network at some point. Here, the location of the site bears particular significance. Neither it nor local junctions affected are located within an outer area of Leeds adjacent to the motorway. They are not close to the city centre where capacity is arguably constrained, but where increased delay arises as drivers sit in a queue longer.

- 6.35 The Council has provided clear evidence on the amount of growth planned in Leeds. Locally, the planned housing and jobs growth has been significantly higher than assumed in the Appellant's TEMpro modelling. Traffic growth on the local road network is inevitable.
- 6.36 Highways England agrees that the link road and proposed mitigation at M62 J28 do not provide for any additional, still less material, benefits.
- 6.37 The headline conclusions of the Council are echoed in the authoritative RSA1. They strongly evidence an unsafe scheme. On this ground alone, there is ample reason for refusal.
- 6.38 The importance of the RSA1 process and findings are amplified by the strategic routes that are affected by the proposal: M62, A653, A650, and A654. The Project Sponsor found the mitigation incapable of support. It is evident that the north-south movement across M62 J28 for pedestrians/cyclists is currently very low.
- 6.39 Woodkirk Academy is located beyond the J28 roundabout. Walking and cycling routes here are deeply unattractive and provide an unsuitable route to school. Blackgates pupils from the western part of the site would also use the junction. There are no grade-separated routes across it. Development would introduce a very significant increase in numbers across the junction, primarily involving a vulnerable and unpredictable end user group. This results only because the Appellant cannot otherwise begin to argue accessibility from the site to key destinations (e.g. Woodkirk Academy and Blackgates Primary School).
- 6.40 The Appellant agrees that the J28 safety issue is a key matter that is required to be resolved at this stage. It is not a design-specific issue that can be addressed at later Stage 2. The Appellant accepts that the RSA1 process is a lead component of the safety analysis, underpinned by a specialist team whose expertise heavily underscores the value of the RSA1.
- 6.41 A massive proportional increase in pedestrians travelling north-south, across J28, would result from the proposed development. The Appellant has provided no assessment of the number of children that may use J28 to travel to Blackgates Primary (or Westerton, further south), despite this route being shorter for the western side of the appeal site. Nor has account been made of any parents accompanying children, young siblings accompanying parents or older siblings. Highways England agrees that there remains a risk of pupils still using the western side of J28 (which has the un-signalised M62 slip road).
- 6.42 The number of personal injury accidents involving the Tingley Roundabout is such that the junction has been a longstanding feature of the Council's 'Sites for Concern' list. The injury accident numbers are unarguably high and do not even include unreported injury accidents or damage-only accidents. Of the 10 red light violation accidents listed, the Appellant conceded that six were either on the route to Woodkirk Academy or to Blackgates Primary School.

Accessibility

- 6.43 CS policy SP6 makes clear that whether locations are sustainable for housing development should be assessed by reference to the accessibility standards in policy T2. T2 is explicit that these are minimum standards to be applied based upon the relevant accessibility characteristics of the Leeds district. Therefore,

the argument of whether flexibility is to be applied to the Standards works both ways. Accessibility is relative.

- 6.44 The appeal proposal fails fundamentally, even upon importing appropriate flex, to meet the Standards. This is an unsurprising reflection of the unsustainable character of the proposal. This is not even an appeal in which the Appellant may point to other like schemes as part of a high level, comparative exercise.
- 6.45 The appeal site would be left isolated. The unacceptable outcome is that future residents would be much less likely than the average Leeds citizen to use the bus or walk or cycle than they would the car. All of this is consistent with the position of the site outside of the settlement hierarchy. It is not the right location for homes, still less homes on the sheer scale of the proposal.
- 6.46 Footways into Middleton, to access as necessary the primary school, doctor's and shops, are substandard and unsafe. The nearest town centres are well beyond an acceptable walking distance. There is no local centre within an acceptable walk. The diverted bus service provides no connection, such are the fundamental locational problems with this site.
- 6.47 Proposed changes to bus services are still way short of the expected standard. Existing bus stops on Dewsbury Road are not within an acceptable walk of the vast majority of the site. The diversion of bus services will disadvantage a significant number of existing residents.
- 6.48 Nor is it arguable that the Council's accessibility standards are overly robust. Other guidance (e.g. Providing for Journeys on Foot, Manual for Streets, Public Transport in Development, etc.) is more stringent.

Housing Land Supply

- 6.49 The Appellant has presented very little evidence in positive challenge to the Council's case on 'realistic prospect', ultimately giving rise to a 0.62 years shortfall in housing land supply, following on from the Council's revised trajectory of the 'disputed' sites and providing for the current position at the date of the Inquiry.
- 6.50 In total, in the Council's view, the overall balance arising from the key disputed sites is +43 units. This means a total supply of 29,426 units. Accordingly, the forward (five-year) supply remains 4.38 years. This is consistent with the Council's case and all supporting evidence before the Inquiry. Less than significant weight should be attributed to such a modest shortfall.
- 6.51 The Council is being proactive and has in place a number of measures and incentives to promote the delivery of regeneration and housing, particularly affordable housing. These include selling brownfield land in its ownership to promote housing, and facilitating land sales. The Council has been working with the Homes and Communities Agency and DCLG to unlock early, accelerated growth in the city centre housing market. Leeds has a very good track record in working with partners across sectors to stimulate and support the housing market in its existing residential neighbourhoods.
- 6.52 In consideration of the Council's position on what is a modest shortfall, it is important to bear in mind that 'deliverability' under national planning policy does not require, or even signpost a preference for, the probability (still less,

certainty) of delivery before a site may properly be viewed as deliverable. The standard is a "*realistic prospect of delivery*" and no higher, as confirmed by the Court of Appeal.

- 6.53 The Council strongly anticipates that it will soon be able to demonstrate a five-year housing land supply within the context of the strengthening market, ongoing housing growth initiatives, and upon the adoption of the SAP. The likely forthcoming change to planning policy impacting upon the housing land supply requirement for Leeds, following on from the DCLG consultation on housing requirement methodology, may mean this happens sooner.

Planning Balance

- 6.54 The planning balance weighs strongly in favour of dismissing this appeal. In properly applying section 38(6), there are many key conflicts with the statutory development plan. They arise in respect of highways matters, accessibility and wider sustainability, safeguarded land and the spatial strategy. Any of these would be sufficient justification to refuse planning permission. That is to say that any one of the adverse impacts of the proposal "*would significantly and demonstrably outweigh the benefits*" when assessed against the policies in the Framework taken as a whole.
- 6.55 The few material considerations that weigh in favour of approval (e.g. the provision of a low level of housing during the five-year housing land supply period), do not begin to earn the significance of 'indicating otherwise' under s.38(6). The presumption under the development plan therefore remains firmly undisturbed and permission should be refused, applying the statutory test. Emerging policy under the SAP attracts very significant weight.
- 6.56 The provision of housing will always be a positive but even the Appellant may only say that the proposal will give rise to some neither particularly meaningful nor timely delivery. That must be seen in the light of a demonstrably unsustainable development. The other (generic) 'benefits' claimed are, in substance, either of no/neutral significance or are modest only and do not weigh materially in any paragraph 14 NPPF 'tilted balance' exercise.
- 6.57 Accordingly, the Inspector is respectfully invited to report, recommending the dismissal of the development. The Secretary of State is respectfully invited to dismiss this appeal accordingly.

7. The Case for Morley Town Council

- 7.1 The case for Morley Town Council is set out in the Closing Statement to the Inquiry¹². The key points are summarised under a series of headings below:

Overview

- 7.2 The site is rather bleak and open, made up of grade 2 and 3a Best and Most Versatile Agricultural Land. It is not within a Regeneration Area, as defined by the Core Strategy and, even if it were, housing here would do little to support regeneration, which should be focused on brownfield sites.

¹² ID59

- 7.3 The site is only (and unfortunately) PAS land as the UDP Inspector was persuaded to make it so, for employment uses, on the assumption that the (now defunct) Supertram would pass it. There has never been any intention that housing would be appropriate for the site. It remains as PAS, or safeguarded, land in the Council's emerging SAP.
- 7.4 If planning permission were granted for this scheme, it would be hard to resist the development of the rest of the PAS site, bringing the total development up to 1100 houses.

Lack of Preparedness

- 7.5 The Appellant should never have gone to appeal directly that the 13 week determination period was up. The information submitted with the application was deficient in relation to highways matters, as evidenced by the continuous submission of such evidence throughout the Inquiry. This should have been resolved in advance of any appeal.

Prematurity

- 7.6 The proper place to assess this site's appropriateness for housing is the SAP examination, where it can be considered in the context of other sites. There are considerably better placed sites that would be above the appeal site in any pecking order.
- 7.7 The appeal site cannot deliver 770 homes 'now', as work would not start until 2019 at the earliest. There would then be a 10 year build out period. There is no shortage of housing locally, with many other schemes under construction.
- 7.8 Leeds' housing requirement has been far too high, and unachievable, for too long. There is increasing recognition of this. It is likely that it will be reduced dramatically, in which case the Council would easily be able to identify a five-year supply of housing land.
- 7.9 There may be some under-allocation in the SAP for the Housing Market Area (HMA) in which the appeal site lies, but the HMAs were never intended to have individual targets. Leeds' housing requirement should be viewed in the round.

Education

- 7.10 All local schools except Blackgates Primary School are academies. This means that to physically expand them would need the permission of the trustees of the academies, not that of Leeds City Council. There is no guarantee that the expansion solutions proposed by the Appellant could be delivered in reality. A two form entry primary school on the appeal site would be too large for the development proposed, but would be of merit nonetheless in terms of reducing 'school run' traffic and ensuring children did not have to cross unsafe roads. It would also bring a sense of community to what would otherwise be an isolated estate cut off by roads.

Highways

- 7.11 Introducing significantly more walkers to the M62 J28 roundabout, which is almost devoid of them at present, must increase the likelihood of collisions between people and vehicles, especially if a high proportion of walkers are

children. The proposed crossing solution seems patently unsafe, for walkers and cyclists.

- 7.12 Queuing and tailbacks at the Blackgates crossroads would not be lessened, although walkers would find it easier to cross. More walkers coming from the appeal site would mean more 'green man' time and, thus, greater queues.
- 7.13 Increasing the 117 bus service to a half hourly service would not satisfy the CS policy requirements. Dunningley is closer to Wakefield than to Leeds. It should take around 20 minutes to get to Wakefield yet the 117 would take 41 to 56 minutes.
- 7.14 The bus timetable from 1969¹³ shows that it used to take just 17 minutes to get from Tingley to Leeds. Now it can take up to 39 minutes. It is reasonable to assume that car journeys have increased similarly. Overall transport efficiency has declined and the appeal proposal would exacerbate this.

Conclusion

- 7.15 There are many sound planning reasons why planning permission should be refused and it is respectfully asked that the appeal is dismissed.

8. The Case for the Sir Robert Ogden Partnership (the Appellant)

- 8.1 The case for the Appellant is set out in the Closing Submissions to the Inquiry¹⁴. The key points are summarised under a series of headings below:

Whether the site is an appropriate location for the development proposed

- 8.2 The Council has been promoting the appeal site, and the rest of the PAS land allocation in this area, as being suitable for development since the mid-1990s. It is also being promoted as such in the emerging SAP, albeit that little weight can be attributed to the SAP. The assessment of its suitability for long term development included consideration of the sustainability of its location. Thus, what is really being tested here is whether the package of mitigation measures is sufficient to meet the Council's broader policy objectives.
- 8.3 Case law is clear that policies may often pull in different directions and a proposal must be considered against the development plan taken as a whole. Thus, CS policies SP6 and SP7 are relevant, obliging the Council to deliver 70,000 new dwellings between 2012 and 2028. SP7 prescribes 7200 dwellings to the Outer South West Housing Market Area, where the appeal site lies. This figure excludes windfall, which is to be seen as an important component of supply. CS policy SP1 should not be interpreted so as to frustrate the central objective of SP6, being the delivery of housing.
- 8.4 CS policy H2 is permissive and seeks to guide housing development, including on non-allocated sites. Any suggestion that it is not relevant, as the appeal site is allocated as PAS land, is incorrect. Indeed, the Council cites the policy in one of its putative reasons for refusal. The Council takes no point in relation to the policy's protection of greenfield sites that have certain intrinsic values. There is no objection from the Council in relation to character and appearance.

¹³ ID31

¹⁴ ID63

- 8.5 There would be some loss of agricultural land arising from the appeal proposal, but this is not reflected in the CS locational policy requirements. Some such loss is inevitable in the context of Leeds.
- 8.6 CS policy SP4 supports development in relevant Regeneration Priority Programme Areas. The appeal site falls within such an area. Housing development adjacent to Middleton in recent years has contributed towards its regeneration. These regeneration processes are not complete. Weight can be given to economic regeneration benefits.
- 8.7 Both the CS and UDPR contain policies on safeguarded land, which need to be read together. If there is conflict, then the most recent document should prevail. CS policy SP10 reflects UDPR N34, and is Framework compliant. It assumes a review of Green Belt and the identification of new PAS land.
- 8.8 The Council presumes that N34 runs until such a time as the need for development has been demonstrated. The difficulty with this is that there is no sense of what the policy means by 'long term development', albeit that it is generally regarded as being longer than the end of a plan period.
- 8.9 The policy is required to protect the Green Belt, yet the Council is proposing Green Belt releases through the SAP rather than putting PAS sites forward for development.
- 8.10 Any temporal dimension to N34 can either be the end of the plan period upon which the policies are based or until development is needed in order to protect the Green Belt. The latter is more compelling. So, if housing development is needed now, and release of PAS land serves to protect the Green Belt, the proposals can be judged to be compliant with CS SP10 and UDPR N34.
- 8.11 If, however, the policy provides an indefinite rolling restriction on development then the appeal proposal would be contrary to it. If this were so, however, the word "only" would need inserting in the policy to make it clear that the review of PAS sites will "only" be carried out through the local development framework process. In fact, the supporting text sets out that PAS land is also there to provide some flexibility for Leeds' long term development.
- 8.12 If the restricted interpretation is favoured, then the policy is out-of-date. This is evidenced by recent appeal decisions including those of the Secretary of State. N34 is also inconsistent with the Framework in that it does not contain within it an internal balancing exercise.
- 8.13 N34 should also be considered a relevant policy for the supply of housing, in the context of the narrow definition set out by the Supreme Court. PAS land is there to provide a reserve pool to be drawn upon when needed. Such pools are calculated, at least in part, by reference to housing supply. In this case N34 provides PAS land for housing and employment. Any policy designed to bring forward land for housing is, therefore, relevant to its supply.
- 8.14 The Appellant is firmly of the view that the Council's interpretation of the Supreme Court judgement¹⁵ dealing with the interaction of paragraphs 49 and

¹⁵ *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37

- 14 of the Framework is wrong. Paragraph 59 of that judgement is clear and the Council's approach is no more than an exercise in linguistic sophistry of the sort discouraged by the courts.
- 8.15 N34 cannot be regarded as being a restrictive policy that should be caught by footnote 9 of the Framework, albeit that there are no Secretary of State decisions or legal judgements on this matter. It is counterintuitive to regard a policy that is there to provide a reserve pool for development to be regarded as restrictive in the terms of footnote 9.
- 8.16 The principal method for judging the appropriate proximity to the adjacent urban areas was agreed as being via the accessibility criteria in Appendix 3 to CS policy T2. The Council also placed weight on the CS Core Diagram (Map 3). As this uses a map base from the UDP and UDPR, it is out-of-date.
- 8.17 The linear green corridor in the valley between the appeal site and Middleton and the adjacent high ground will simply mirror the linear green corridors that are a feature of the settlement pattern of Leeds. The site is a logical and appropriate location for residential development in landscape terms and is well related to the existing local character and settlement pattern. Aerial photography shows its proximity to existing urban areas. It is not in a "very remote location", as characterised by the Council.
- 8.18 The Council accepts that there needs to be flexibility in the application of CS policy T2. The policy is not worded negatively and does not proscribe development that does not meet all of the criteria. The policy's Accessibility Standards are to be used as a guide rather than the Accessibility Indicators, which provide context on scale. If a Standard is met, there is no need for this to be repeated in respect of more than one facility.
- 8.19 Paragraph 38 of the Framework also seeks flexibility, stating that the provision of primary schools and local shops be located within walking distance of "most" properties for new large scale development.
- 8.20 The provision of an on-site convenience store would address the requirements of the first Standard. Around 45% of the site would be within the requisite walking time of the Thorpe Lane Convenience Store in Middleton also.
- 8.21 The re-routing of the 117 bus service is a major commitment and offers real benefit to future residents and those already living along its route. All future residents would be within a five minute walk of an on-site bus stop, offering real time information. The site would be served by four buses an hour to the key city centres of Leeds and Wakefield, as well as Ossett. This would accord with the standard and is an approach adopted in another appeal.
- 8.22 White Rose Shopping Centre, which offers more services than are available in most town centres in the District, can also be reached by bus from a stop within an acceptable walking distance.
- 8.23 The site is also adjacent to the Dewsbury Road bus corridor, with a significant proportion of the site being within 400m of existing bus stops offering buses every 10 minutes. It is highly likely, on the basis of other available guidelines, that future residents would walk further than 400m to access such a good quality service. The Appellant will fund a bus gate for southbound buses, which

will benefit existing users of services who may wish to access local facilities including Capitol Park.

- 8.24 The employment Accessibility Indicators show how well the site is located in terms of its overall sustainability. The 117 service passes a number of significant areas of employment on its journey into Leeds city centre, all of which are within a 40 minute journey time, including White Rose Shopping Centre, White Rose Office Park, Millshaw Industrial Estate and Asda House. Journey times to the centre of Leeds are 33 minutes in the peak and 25 minutes at other times. The site is therefore considered to be accessible for those wishing to work in Leeds city centre.
- 8.25 Dewsbury Road is earmarked for improvement (on site by 2021) in the SAP Infrastructure Background Paper¹⁶. The appeal scheme would further enhance this road as a key public transport corridor, with infrastructure improvements and an enhanced bus service. Locating houses directly adjacent to such a corridor is good land use planning, reflecting the Framework's advice to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
- 8.26 It is agreed in the HSoCG that all of the proposed development would be located within a 22 minute walk of Blackgates Primary School. Some 90% of the site would be within a 20 minute walk of the nearest primary school. All large sites are inevitably going to have varied walking distances to the nearest schools and as such 90% compliance does effectively meet the Standard. The extra two minutes for less than 10% of the site really is *de minimis*. If the route through J28 were used the entire site would accord with the Standard.
- 8.27 It would also be possible to access Blackgates Primary School from the proposed development using a direct bus service (the diverted bus service 117). Bus stops are located adjacent to the school entrance on Smithy Lane.
- 8.28 Looking at the wider Indicators shows that Middleton Primary School is within a 22 minute walk (1755m) of the centre of the site. As such, around 45% of the site would be within a 20 minute walk of that school.
- 8.29 In terms of primary health, based on the Accessibility Standards around 60% of the proposed development would be located within a 20 minute walking distance of Leigh View Medical Practice (and Rowlands Pharmacy). Around 40% of the site would be within a 20 minute walk of Middleton Community Health Centre. The site is well located for two primary health care facilities and substantially meets the Standards.
- 8.30 It is common ground that all the proposed development would be located within a 30 minute walk of Woodkirk Academy, via M62 J28. This fully accords with the Standards. Alternative walking routes are available and the centre of the site is no more than 2.8km distance via these alternate routes.
- 8.31 It would also be possible to access Woodkirk Academy using bus service 202, with bus stops on Dewsbury Road. Bus stops are some 500m from the main school entrance. All of the site would be located within an acceptable cycling distance of the Academy. The Appellant has proposed significant

¹⁶ CD K2

enhancements to pedestrian and cycle crossing facilities at M62 J28, which would offer a more direct route for walking or cycling to the Academy, using controlled crossings and minimising the number of roads to cross.

- 8.32 Five other secondary schools are within a 4.8km radius of the site, which demonstrates how well located it is in general terms. Residents would have the choice of school places that paragraph 73 of the Framework encourages.
- 8.33 Overall, the proposals meet the Standards in substance and comply with the development plan when the policies are applied with a modicum of flexibility. Paragraphs 17 (bullet 11), 32 (bullet 3) and 38 of the Framework are met.

Highway Safety

- 8.34 The Council's only outstanding safety concerns in relation to Thorpe Lane relate to the pinch points where the pavement narrows to accommodate lighting and other columns. The Council is incorrect in its view that the width would not be sufficient for two pedestrians to pass or for a child to walk alongside a parent. There is ample visibility to ensure that walkers would give way to each other.
- 8.35 The route is used at present with no adverse accident record or reported incident. Numbers would increase materially but would not reach the levels at which congestion would cause a problem.
- 8.36 With regard to the M62 J28 crossing, the Council confirmed that no relevant standards were being compromised in the scheme. Such standards are drawn up based upon a vast amount of empirical experience gained over many years. The approach to design standards involves a painstaking analysis of the safety of all relevant users. Most new development involves some increased use of highway infrastructure, which inevitably carries with it some increased risk. The utilisation of appropriate design standards sets the benchmark or starting point for the assessment of what constitutes an acceptable risk.
- 8.37 The Council does not attempt any detailed analysis of the accident record of J28 to support its contentions. The Appellant provides detail on key accidents which involved red right violations at J28. There are no recorded pedestrian-related accidents over the five-year period. There were three cycle accidents in the vicinity of J28 but it is notable that all of them involved cyclists who were struck by vehicles whilst using the circulating carriageway at J28 rather than using the existing off-road cycle provision.
- 8.38 The Appellant's observations record that 80 pupils are already crossing the south side of J28 in a westbound direction, towards Woodkirk Academy, between 0730 and 0900 without any recorded incident or evidence of a problem. There is no evidence to support or justify the alleged 'foolhardiness' of teenagers. Design standards accommodate all road user groups. The Council is effectively inviting the conclusion that the standards are somehow inadequate but without specific bespoke evidence. It is also important not to confuse the visual appearance of a route with the safety of its use.
- 8.39 The existing arrangements do not comply with current standards or guidance. The proposed pedestrian/cycle facilities would. The proposed improvements to

the existing route through the junction together with measures encouraging cyclists to use it will actually result in improvements to highway safety.

Highway Efficiency

- 8.40 There will be no severe residual impact arising from the appeal scheme, with improvements arising at the M62 J28 and the A650/Thorpe Lane/Smithy Lane junction. The Council agrees that in a 'Without Growth' scenario the traffic impact of the development, while 'mixed', is acceptable on the whole with improvements in the PM peak. In the 'With Growth' scenario the traffic impacts are mixed but acceptable on the whole with some improvements in the AM and PM peaks. While there is a clear difference of professional opinion on the topic, the Appellant submits that the evidence convincingly points in only one direction.
- 8.41 In short, the most appropriate available data clearly shows that there has been a trend for a reduction in background traffic growth in Leeds in the peak hour between 2010 and 2015. The Council's own report¹⁷ clearly demonstrates that there has been absolutely no growth in the AM peak between 1990 and 2014. The same report does expect to see continued traffic growth in Leeds but this will not occur in the peak hours. Indeed, the actual evidence suggests that it will be nil. The Council refers to the overall growth in person trips and car trips. These tables are actually evidence demonstrating the opposite effect to that claimed. If there has been trip growth over 15 years but no growth in the peak, this demonstrates the Appellant's point.
- 8.42 Likewise, the Council's analysis of average speeds tends to support the Appellant's case. If average speeds on the Leeds radials and orbitals have been slowing in the peak hours at the same time as there has been no growth in peak hour traffic, this simply proves that the cause is something other than increase in total numbers. The Appellant suggests that this is likely to be down to a number of important public transport initiatives within Leeds, such as new bus lanes and 2+ lanes on a number of major radial routes into the city.
- 8.43 Highways England is also sceptical about the Without Growth option. However, their comments focussed only on the Strategic Road Network (SRN), rather than the radials. It is acknowledged that there might be some growth on the SRN although Highways England produced no evidence as to the degree in growth of queues on the SRN.
- 8.44 The link road between the two site access points would serve to relieve congestion at J28 even at year one on the basis of Aimsun modelling. All parties agreed the use of Aimsun to determine the reassignment of traffic to the link road. The Council and Highways England both suggest that the pros and cons broadly balance out. The Appellant is of the view that the figures With Growth show a clear net benefit.
- 8.45 At Junction 2 (Wide Lane/Dewsbury Road), the Council remains concerned in the 'Without Growth' scenario by increased queues of 13 and 9 passenger car units (PCU) on the B6123. It could not clarify where the threshold of unacceptable delay occurs on this arm but helpfully did confirm there was no

¹⁷ CD K2 - Leeds Site Allocations Plan Infrastructure Background Paper p.87 Figure 2

evidence of queuing back in a sensitive location or of adverse driver behaviour. In the context of the heavily trafficked network, delays of this magnitude are to be expected and cannot be found to constitute a severe residual impact.

- 8.46 The Council also raises concerns about the potential prejudice to the proposed SAP extension at Capitol Park. This is not a 'commitment' as set out in the Guidance. There is not an appeal into a business park on that site and there is absolutely no basis in national or local advice as to why the Appellant should do all the work that would be required by the promoters of that site. There is no evidence before the Inquiry as to what modelling work has gone into the SAP allocation and no cogent evidential basis upon which it can be asserted that its delivery would be prejudiced. The Appellant in any case sees no insurmountable difficulty in providing a link through to the generously proportioned access to Capitol Park at Tingley Common.
- 8.47 The letter of objection from the agents for Capitol Park was concerned to ensure that the committed extensions at Capitol Park were properly taken into account in the transport assessment. This was done. There is no further comment at this Inquiry from the promoters of Capitol Park. The promoters are a major developer who would no doubt wish to protect their own interests if they had any concerns.

Housing Land Supply

- 8.48 It is agreed that there is no five-year supply of housing land in Leeds. Put simply there is no dispute over anything but the likelihood of deliverability of certain sites. 70% of the difference between the parties relates to their differing views on the impact of, and necessity for, the Housing Infrastructure Fund. Given the funding uncertainty, and the indication of lack of delivery and market failure required in the bid, these sites should not be included in the supply. The Appellant is also of the view that the delivery trajectories of a number of sites need to be pushed back. The supply lies somewhere between 3 to 3.5 years.

Prematurity

- 8.49 In terms of scale, the site represents just over 1% of the Core Strategy minimum requirement for housing. As a proportion of the local HMA, the figure is 10.7%. The Council agreed by way of statement of common ground at a public inquiry last year¹⁸ that the release of a PAS site for circa 400 dwellings was not so substantial in its own right or even combined with other sites in Leeds that granting planning permission would undermine the SAP process. The Council's approach then was correct. There is no reason to change from that position in the determination of this appeal.
- 8.50 Even if the Council could demonstrate that there was a danger of notional oversupply, it is difficult to contemplate what demonstrable harm would arise. The Council admits the undersupply of housing has been chronic and acute for many years. This, coupled with there being no cap for the CS's housing requirement, means the delivery of homes from the appeal site has no real prospect of being considered as so substantial in scale as to predetermine

¹⁸ CD M6

decisions about the scale, location or phasing of new development. Clearly, the SAP process can continue, unhindered by development on the appeal site. The scale of the site on a local level is not such as would prejudice the delivery of the draft allocations even in the localised market area.

- 8.51 On the face of it, the SAP is procedurally at an advanced stage but this cannot be divorced from the fact that it is subject to significant unresolved objections and in recent months has taken several regressive steps, resulting in the postponement of the sessions relating to housing. There is considerable doubt as to if and when the draft SAP will progress to adoption. Even now, no clear timescale has been provided as to when the examination in public will resume. Even if it is found sound, the SAP will not be adopted before 2019.
- 8.52 Given the emerging SAP's troubled and unclear progression, and the appeal site's relatively modest number of units in the context of the CS's requirements, the tests for prematurity are not met.

Benefits/Harms

- 8.53 The appeal scheme would deliver 116 affordable houses, which is a significant contribution, as well as a choice of well-designed market homes. It would deliver a level of open space that would exceed that required by policy. The economic benefits arising from the construction, operational and revenue phases are substantial. There would be material improvements to the current public footpath network and to the Leeds Habitat Network. The link road through the site would deliver some immediate benefits to M62 J28.
- 8.54 The only two harms would be loss of a greenfield site and agricultural land, which attract limited weight.
- 8.55 The outcome is clearly in favour of the appeal proposal and the Appellant requests that the appeal be allowed.

9. The Case for Interested Parties

- 9.1 The following representations were made at the inquiry:

The case for Mrs Jennifer Nicholson

The main points were:

- 9.2 I object to the appeal proposal. I am a resident of Tingley and live opposite Blackgates Primary School. The proposal would provide no health facilities or school. The access road will only transfer local traffic jams onto the A650 Bradford Road and make the peak time nose-to-tail queues on Dewsbury Road even worse.
- 9.3 There is only one doctor's surgery for the Tingley area and it takes over two weeks to get an appointment. The village needs an extra school, especially as Blackgates has had a poor Ofsted report recently, and an extra doctor's surgery. The appeal proposal will disadvantage existing residents of Tingley, as there will be no room for their children at the schools and there will be lots of extra cars on the roads.

The case for Cllr Jack Dunn

The main points were:

- 9.4 I am one of the Ward Councillors for this area. I visit the site on a daily basis and know the residents on Dunningley Lane. The appeal site is an isolated area of natural beauty, forming a green buffer and a green lung. There is lots of wildlife present.
- 9.5 The appeal proposal would be for a new community with no amenities. It would be close to the M62 motorway, which would be bad for the health of future residents. Increased traffic arising from the development would lead to a further increase in pollution.
- 9.6 Dewsbury Road is at saturation point at peak times. Local surgeries and schools are overwhelmed, particularly given the amount of development already allowed in settlements in the wider area including on appeal.
- 9.7 The SAP does not propose this site for development, but identifies it as protected. Such decisions should not be taken away from the local community. Enough is enough. We should be allowed to plan properly.

The case for Cllr Wyn Kidger

The main points were:

- 9.8 I am a local Councillor and resident of Tingley. The local health centre is excellent but is under pressure. The appeal proposal will generate 2750 extra patients, on top of those that will arise from other recent large developments. This is likely to increase delays for appointments. Future residents are unlikely to travel further afield to access healthcare elsewhere in the wider area.
- 9.9 The health centre may still be taking new patients but there comes a point when a line must be drawn. There is no proposal to create a new health centre on the appeal site.

The case for Cllr Judith Elliot

The main points were:

- 9.10 I am a member of Morley Town Council and Leeds City Council. I live in Tingley and am a school governor. The primary schools in Tingley and Morley are full. There are three other primary schools nearby but the amount of development proposed would overwhelm them. In addition, Kirklees Council is proposing to increase housing on the border with Tingley. This will further add to pressures. Space is to be provided on the site for a primary school, but who will finance it and build it?
- 9.11 There is only one senior school locally, being Woodkirk Academy. There is no realistic plan in place for the provision of places at this school. It is unrealistic to think that the Academy could be expanded without a negative impact upon educational standards.
- 9.12 The Framework seeks to secure sustainable development. Local healthcare and educational provision are integral to this.

The case for Cllr Robert Finnegan

The main points were:

- 9.13 I am a member of Morley Town Council and Leeds City Council. The appeal proposal will have adverse highways impacts on the M62 J28 and on the A653 Dewsbury Road. Congestion will increase. J28 is an infamous pinch point, where the challenges of high traffic levels remain unresolved.
- 9.14 The appeal proposal, particularly when Kirklees Council's proposals are also taken into consideration, will give rise to serious cumulative impacts on schools, roads and healthcare. This is a material consideration. The appeal scheme cannot be considered to be sustainable development.

The case for Cllr Lisa Mulherin

The main points were:

- 9.15 I am a member of Leeds City Council and a Ward Member for the area in which the site lies. Allowing the appeal proposal would be premature. The site is in a Protected Area of Search and is to be retained as safeguarded land in the SAP.
- 9.16 There are no local services nearby, beyond the potential convenience store. The site is isolated. Most people will use their private cars to access services, as bus services are inadequate.
- 9.17 At the recent Commuter Committee Meeting¹⁹ for the area everyone was very critical of local public transport networks. The West Yorkshire Metro Journey Planner shows that the site is around a 50-59 minute journey time to Leeds, including walking time, at present. The local highway network is congested.
- 9.18 Primary schools are not able to accommodate the number of pupils that would be generated by the new development. Woodkirk Academy would be a 47 minute walk from the centre of the site. Leigh View GP surgery already has lengthy waiting times to get appointments. It has been expanded, but other developments allowed in the area have taken up any spaces generated. Local residents can wait three weeks to see GPs.
- 9.19 There is already significant growth in new housing in the area, so there is no local housing need for the appeal scheme.

The case for Ms Andrea Jenkyns MP (as read on her behalf)

The main points were:

- 9.20 Ms Jenkyns has been contacted by a large number of local residents on this matter.
- 9.21 The site was part of the Green Belt and is now PAS land. Its reassignment was only to accommodate a Supertram route, which failed to materialise.
- 9.22 There are no exceptional circumstances to justify the release of this site. A bit of open space provision would not replace former Green Belt. The site should be returned to the Green Belt and brownfield land prioritised for development.

¹⁹ ID36

- 9.23 Allowing the appeal proposal would be premature. Leeds City Council has agreed to reduce its housing targets and there is incorrect pressure to build on greenfield land. Developers in the area have exploited the lack of a five-year housing land supply. Residents should not suffer for this. This is an opportunity to do right by the community.
- 9.24 There are highways issues with regard to the M62 J28 and the A653. Any small increase in traffic is likely to cause significant issues. I also have concerns about pollution, school places and healthcare.
- 9.25 Extra housing is needed, especially for the elderly and the young. The key issue is whether the site is an appropriate location for the appeal proposal, not whether the overall housing target is correct.

10. Written Representations

- 10.1 The representations received expressed some form of objection to the proposal. Those submitted in response to the original planning application are summarised in the officer's report to the City Plans Panel²⁰.
- 10.2 The responses submitted in relation to the appeal were all objections. They are summarised here and cover the same ground as those received in relation to the original planning application, notably:
- the area is safeguarded land under the draft SAP and the proposal is premature;
 - Tingley and the surrounding area has already had more than its fair share of housing development;
 - nearby dwellings would become unsaleable and their privacy compromised;
 - there would be an increase in the risk of crime;
 - the area around Dunningley Lane is a habitat and hunting ground for an abundance of wildlife;
 - local schools, surgeries and roads cannot cope; and
 - highway safety would be compromised, road noise would increase and pollution levels would rise.

11. Conditions

- 11.1 As set out in the Framework, conditions must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; and reasonable in all other respects. I have made a number of amendments to the conditions as presented (which went through various iterations), in the interests of clarity, precision and implementation and to avoid repetition. These amendments and additions were discussed and agreed at the Inquiry.
- 11.2 The conditions defining the scope of the reserved matters; specifying the time limits for submission of reserved matters and commencement of development; requiring compliance with the relevant plans; setting the maximum number of

²⁰ CD C1

dwellings and the convenience store floor space; and requiring the agreement of housing mix are necessary to provide certainty.

- 11.3 Conditions relating to drainage and sewerage, including that relating to culverts and that specifying finished floor levels, are required to ensure that the site is properly drained and to mitigate flood risk.
- 11.4 The ecological conditions are necessary to protect and enhance biodiversity on the site, in line with the recommendations of the ES. The open space condition is also so required, as well as to ensure policy compliance and to provide certainty about the permissible location of formal and informal open space.
- 11.5 A condition concerning a lighting scheme is necessary in the interests of protecting the living conditions of future occupiers and for ecological reasons, in relation to the creation of bat foraging corridors.
- 11.6 Parking conditions and off-site highways conditions are necessary to ensure highway and pedestrian safety and highway efficiency. The condition requiring Electric Vehicle Charging points is necessary to ensure policy compliance and in the interests of mitigating CO₂ emissions.
- 11.7 The Construction Method Statement condition and the hours of construction conditions are necessary to ensure that there is no adverse impact upon the living conditions of local residents, or upon the local highway network, during construction.
- 11.8 Contaminated land/soil and archaeological conditions are necessary to address the potential presence of contamination and the likely presence of historic remains on the site.
- 11.9 The noise mitigation condition is necessary in the interests of the provision of acceptable living conditions for future occupiers of the appeal scheme.
- 11.10 The condition requiring submission of a report to assess the potential to recover any coal within the application site is necessary to ensure policy compliance, given the site's location in a Coal Resource Area. That originally proposed in its place, in relation to ground conditions, is not necessary as there is no evidence of ground instability or former coal workings on the site.
- 11.11 The proposed condition relating to a car club is unnecessary as this matter is covered by a planning obligation. Those relating to the convenience store, drafted in response to my queries, are not required as this matter is addressed by a planning obligation.
- 11.12 I am satisfied that, in order to enable a full and complete understanding of the nature and construction of the development that may come forward as a result of this appeal, all of those conditions requiring action before commencement of development are so structured.

12. Planning Obligations

- 12.1 Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) requires that if planning obligations contained in S106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.

- 12.2 The obligations were not disputed by the Appellant. They relate to affordable housing; the laying out and ongoing maintenance of green space; public transport infrastructure and bus service contributions; a Residential Travel Plan, with associated funding; a car club contribution and infrastructure; provision, as required, within specified timescales of an area of land sufficient for the construction a two form entry primary school on the site; local employment and training initiatives; development and operation of the retail unit; and improvements to public rights of way.
- 12.3 Evidence of the necessity, relevance and proportionality of most obligations was set out in submissions from the Council²¹, which were discussed at the Inquiry. The justification for that relating to the local employment and training initiative seems to run counter to the Council's argument on the point of RPPAs, but this obligation is nonetheless required to support the Appellant's argument about, albeit limited, regenerative benefits of the scheme. The need for the obligation relating to the retail unit is necessary to ensure delivery, and to aim to meet the relevant Accessibility Standard, in the absence of planning conditions on this matter. That relating to land for a primary school is necessary to ensure adequate access to primary education in the event that provision cannot be made on existing sites.
- 12.4 Overall, the submission and oral evidence demonstrate the basis for the obligations and how they relate to the development proposed, set out (or reference) how any financial contributions have been calculated²² and indicate whether the CIL regulation pooling limits have breached. They set out the planning policy basis for the obligations. In my judgement they provide evidence that the above obligations meet the tests set out in the Regulations.

²¹ ID62

²² Such information may also be found in evidence e.g. correspondence with Arriva in the Transport Assessment.

13. Conclusions

- 13.1 The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry and on my inspection of the site and the wider area. The numbers in square brackets thus [] refer, as necessary, to paragraphs in other sections of the report.
- 13.2 In my judgement, having regard to the Council's putative reasons for refusal and the matters raised in and clarified by evidence²³, the main considerations in this appeal are:
- whether, having regard to local and national planning policy for the delivery and location of housing, and the effect of the proposal on the safe and efficient operation of the local highway network, the appeal site is an appropriate location for the development proposed; and
 - whether the proposed development is so substantial that to grant planning permission would prejudice the emerging Leeds Site Allocations Plan by predetermining decisions about the scale, location and phasing of new residential development.
- 13.3 For reasons of clarity I have addressed these considerations under a range of headings below.

Housing Land Supply and the Paragraph 14 'Tilted Balance'

Housing Land Supply for the Area

- 13.4 It is common ground that the Council is unable to demonstrate a five-year supply of deliverable housing sites.
- 13.5 The overall housing requirement and supply assessment period was agreed by the main parties. There was no dispute between them about any other housing land supply factor beyond the forward supply. Based upon all that I have read and heard, I have no reason to depart from this consensus. There was, however, dispute over the precise level of supply, which the parties considered to be relevant when considering the weight to be given to it.
- 13.6 Scrutiny of this issue took the form of a round table discussion, which focussed on the 28 largest disputed sites²⁴. The Appellant's view was that the supply was at 2.74 years, whereas the Council's position was that it was at 4.38 years. By the end of the Inquiry, the Appellant was of the view that the supply was between 3 and 3.5 years²⁵. The Council's position had not changed.
- 13.7 It is not possible, or necessary, for me to come up with an exact figure for what the Council's housing land supply may be. This would be difficult in any case due to the fact that a) much of the Council's site-specific evidence was drawn from its SHLAA, which was several months old, without up-to-date documentary support, rather than being recent and bespoke to the disputed

²³ Namely that the Council raised no objections on grounds of loss of BMV land; loss of potential employment land; or landscape.

²⁴ ID11

²⁵ See Appellant's closing submissions

sites, and b) much of the Appellant's evidence was also unsubstantiated, being based on alleged conversations with relevant developers.

- 13.8 The evidence that I do have, derived from discussion at the round table session, makes it clear that the Council has, historically, been ambitious with regard to the anticipated speed of commencement on a number of sites, most notably in the Aire Valley. This is also borne out by reported evidence put by the Council to other Inquiries²⁶, where the Council suggested that commencement was imminent on sites that have, in fact, yet to move forward in any meaningful way, if at all.
- 13.9 This being so, although I find most of the Appellant's site-specific evidence largely unconvincing²⁷, it being substantially founded upon assertion, I am also of the view that the Council has been, and remains, overly optimistic about delivery of those disputed sites without planning permission and without any empirical evidence of pro-active developer interest²⁸. Although the Council pushed the commencement of development on some sites further into the five-year period²⁹, it remained of the view that they would still deliver their full, predicted amount of housing within that timescale with, in my view, little substantive evidence to back this up.
- 13.10 On the basis of what I have read and heard there is nothing that would lead me to consider that there is a realistic prospect that housing would be delivered on most, or indeed any, of these³⁰ sites within five years. I am also mindful that there are sites which, while technically meeting the Framework's criteria for being considered deliverable, have planning permissions that are at least 10 years old and on which nothing more than a technical start has been made³¹ or where permissions have been renewed but not pursued. This must, inevitably, lead to questions about their attractiveness to the market and likelihood of their delivery.
- 13.11 Thus, on the basis of the information before me, in my judgement the Council's housing land supply is around four years at best.

The Implications of the Lack of a Five-year Supply of Deliverable Housing Land

- 13.12 As the Secretary of State will be well aware, the Framework, at paragraph 49, is clear that relevant 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.
- 13.13 Where this is the case, as here, paragraph 14 requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against

²⁶ APP/N4720/A/14/3001559; APP/N4720/A/15/3004106; APP/N4720/A/15/3004034

²⁷ With the exception of that for site 27 (as so numbered in ID11) where the developer's ES data supports the Appellant's view on delivery, resulting in a reduction of 120 dwellings from the Council's estimate.

²⁸ Including sites 3; 8; 9; 11; 14; 16 (as so numbered in ID11) totalling some 2221 dwellings on the basis of the Council's estimates.

²⁹ See folder ID44

³⁰ As footnote 27

³¹ E.g. sites 7; 20; 25 (as so numbered in ID11) totalling some 1055 dwellings

the policies in the Framework taken as a whole *or* where specific policies in the Framework indicate that development should be restricted.

- 13.14 The Council argued that no relevant policies for the supply of housing (in the 'narrow' terms set out in the relevant case law³²) were cited in the putative reasons for refusal. Consequently, it was suggested that, against agreement reached in the PSoCG, the Framework's paragraph 14 exercise was not relevant. Case law³³ is clear, however, that "relevant policies" in this context means policies relevant to the application before the decision-maker not just policies cited in a decision notice.
- 13.15 The CS contains policies setting out the quantum of new housing for the plan period and distributing that figure across the plan area³⁴. While these policies may not be "relevant" in as much as they do not bear immediately upon an assessment of the suitability of the site for development, they are very "relevant" when one considers the merits of development in the context of the lack of housing delivery against the targets within them. These policies are clearly "out-of-date" as the undersupply of housing gives rise to a very real risk that the requirements within them will not be achieved. In addition, CS policy H1 clearly intends that the Council will maintain a five-year supply of deliverable housing sites, which it is failing to do even having released some sites under its now withdrawn Interim Release policy for PAS land.
- 13.16 The Council also argued that, as the appeal site is PAS land, UDPR policy N34 should be regarded as a policy for land on which paragraph 14 of the Framework indicates that development should be restricted. No case law was found on the subject but two appeal decisions were presented to me wherein decision-makers have reached differing conclusions on this point with reference to safeguarded land³⁵. Thus, it appears to be a matter of judgement.
- 13.17 The matter turns on whether the PAS designation is restrictive. On its face it is, as N34 clearly states that development upon PAS land "*will be restricted...*". Set against this, however, is the fact that such restriction is caveated to development:
- "... which is necessary for the operation of existing uses together with such temporary uses as would not prejudice the possibility of long term development [my emphasis]"*.
- 13.18 Similarly, paragraph 85 of the Framework is clear that safeguarded land should be so designated, "*... in order to meet longer-term development needs...*".
- 13.19 It seems to me that PAS/safeguarded land policy anticipates development upon PAS land at some future time, rather than having the overall purpose of seeking to keep development to a minimum *ad infinitum*. This is in marked

³² *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37

³³ *Suffolk Coastal DC v Hopkins Homes Ltd & Richborough Estates v Cheshire East BC* [2016] EWCA Civ 168, para 32

³⁴ E.g. Spatial Policy 6 (The Housing Requirement and Allocation of Housing Land) and Spatial Policy 7 (Distribution of Housing Land and Allocations)

³⁵ CD F4 (APP/N4720/W/14/3001559) and ID35 (APP/D2320/W/17/3173275)

contrast to, say, policies relating to Green Belt or to National Parks. This being so, in my judgement, the PAS designation, through policy N34, is not restrictive in the terms set out by paragraph 14 of the Framework.

13.20 Taking the above factors into consideration, there are “policies for the supply of housing” within the CS, which are “relevant” to the matter in hand, namely the delivery of housing to meet the CS target. These policies are, in my judgement, rendered out-of-date by virtue of the lack of a five-year supply of housing land. In addition, UDPR policy N34 is not a policy that indicates that development should be restricted.

13.21 The consequence of these findings is that the appeal proposal may be considered under the so-called ‘tilted balance’, set out in paragraph 14 of the Framework, which is a significant material consideration.

Whether the development plan is absent or silent

13.22 In the event that the Secretary of State reaches a different judgement with regard to my findings above [13.12-13.21], the Appellant also sought to argue that the paragraph 14 tilted balance was relevant as the CS was silent and the SAP absent. Specifically, it was alleged that, in the absence of a site allocations document, the development plan is silent on where, very specifically, new development should go.

13.23 I do not find this to be persuasive. The absence of a site allocations document does not mean that the development plan when taken as a whole is absent or silent. The CS identifies those settlements to which development is to be directed and the appropriate scale of that development. It also sets out additional policies which, notably when used in conjunction with those articulating the overall development strategy, provide decision-makers and applicants with a clear framework within which development proposals, such as the appeal scheme, can be assessed and a judgement made about their acceptability.

13.24 While noting that it may not yet contain the degree of precision for which the Appellant wishes, in terms of identifying specific sites, I do not consider that the development plan can reasonably be considered to be either silent or absent.

Spatial Strategy

13.25 Spatial Policy 1 (Location of Development) of the CS is clear that the spatial development strategy for the area is to be based upon the Leeds settlement hierarchy. This is set out in CS Table 1 (p24) and illustrated in CS Map 3: Settlement Hierarchy. The strategy concentrates the “majority” of new development within and adjacent to urban areas.

13.36 This is articulated more clearly by principle i) of the policy. It specifies that the largest amount of development will be located in the Main Urban Area (MUA) and Major Settlements, with the scale of growth at any Smaller Settlements being considered having regard to a settlement’s size, function and sustainability.

13.27 Principle ii) gives a finer grain, setting out how principle i) is to be applied. The priority will be for previously developed land (PDL) and buildings within the MUA / relevant settlement; other suitable infill sites within the MUA / relevant

settlement; and, finally, key locations identified as sustainable extensions to the MUA / relevant settlement.

- 13.28 Even accepting that Map 3 is not detailed, it is still readily apparent that the appeal site is not within or attached to the MUA or to any settlement as defined upon it. The greater detail shown by the relevant UDPR proposals map³⁶ makes this even more explicit, with the site being distant from the settlement boundaries of Morley, Middleton and Tingley. Albeit that I give the emerging SAP little weight at this time, the relevant map accompanying it³⁷, which has been updated, shows little change to this situation.
- 13.29 This context is even more apparent from the appeal site. Although parts of Tingley, Middleton and Morley are visible, there is no appreciable sense of the site being part of, adjoining or adjacent to any of these settlements. Rather, the site is, and feels, isolated from them by major roads, which, in the case of both the M62 and Dewsbury Road (being a dual carriageway), form substantial physical (albeit crossable) and visual barriers.
- 13.30 Capitol Park, a business park on the opposite side of Dewsbury Road to the site, abuts Morley. It is, however, very much a separate entity to Morley and does not, in my judgement, form part of that settlement³⁸. Even if it did, the severance of the site from Morley made by Dewsbury Road would still remain.
- 13.31 There is also a small amount of dispersed ribbon development on Thorpe Lane near the site. This does not, however, provide any kind of 'urban development' context to the immediate area. Nor does it provide any meaningful link between the site and Middleton or Tingley.
- 13.32 Spatial Policy 1's initial wording does appear to allow for development "adjacent" to urban areas. In my judgement, given the context set out above, it would be stretching a point to argue that the site could reasonably be regarded as being either "adjoining" or "next to"³⁹ an urban area given its degree of physical separation from the nearest settlements.
- 13.33 Notwithstanding this, the policy's further articulation of its strategy very clearly envisages new development sites being *within* the MUA or a "relevant" settlement, in the form of PDL, infill or an extension. The appeal site is none of these things, having no appreciable relationship with any settlement. The very small amount of brownfield land aside, it is a substantial green field site, divorced from any settlement.
- 13.34 In addition, CS Spatial Policy 7, setting out the distribution of housing land and allocations, clearly directs dwellings towards existing settlements (being specific about infills and extensions), rather than making allowances for freestanding islands of development. The proposed scheme would, in effect, be a substantial standalone housing estate, with an extremely limited range of facilities, for which the CS makes no provision. Given this overall context, the appeal scheme conflicts with the locational requirements of Spatial Policy 1.

³⁶ ID20

³⁷ CD B10 final page

³⁸ The development plan and emerging SAP very definitely exclude Capitol Park from Morley – see ID20 and CD B10.

³⁹ Oxford English Dictionary definition of "adjacent".

Accessibility

- 13.35 CS policy H2 (New Housing Development on Non-Allocated Sites) allows for housing development on “non-allocated land” providing that certain criteria are met. The Council⁴⁰ was of the view that the appeal proposal could not be considered under this policy at all, as the appeal site is ‘allocated’ as PAS land and is not, therefore, “non-allocated land”. This argument is not without merit. Nonetheless, given that policy H2 is dealing with housing development, logic would suggest that it is drawing a distinction between land that is already allocated for such development, rather than more general allocations, and land that is not.
- 13.36 Even if this was not the case, policy H2 is cited in the Council’s third putative reason for refusal in the context of the Accessibility Standards referred to by this policy. Thus, the Council was clearly thinking that it was appropriate for the appeal scheme to be assessed against H2 and that the policy was relevant.
- 13.37 I agree, albeit that I see no reason why the policy should be regarded as a means of side stepping the overarching locational strategy of the development plan articulated by Spatial Policy 1. It would be counterintuitive, if nothing else, for a site that accords with CS policy H2 to be acceptable even if it conflicts with the higher level, strategic locational requirements of the development plan. Rather, I consider that H2 is part of an integrated mechanism by which the CS ensures that sites are both suitably located *and* accessible. The fact that, in my judgement, the appeal site does not meet the requirements of Spatial Policy 1 means that one need not necessarily go further. Nonetheless, for the sake of completeness, and as the main parties have covered this matter, I go on to consider the site against the Accessibility Standards in the CS.
- 13.38 Criterion ii) of CS policy H2 requires sites for developments of five or more dwellings to accord with the CS’s relevant Accessibility Standards, found in Appendix 3 to that document. CS policy T2 (Accessibility Requirements and New Development) also makes reference to the Accessibility Standards and requires new development to be located in accessible locations that are:
- “adequately served by existing or programmed highways, by public transport and with safe and secure access for pedestrians, cyclists and people with impaired mobility”.*
- 13.39 Table 2 of the Accessibility Standards is the relevant section for the appeal scheme. It has five accessibility standards and I consider the appeal proposal against them here, using the data set out in the Highways Statement of Common Ground⁴¹ and given in oral evidence.
- 13.40 The first standard requires new development to be within a 15 minute walk of “local services”. Such services are defined as “small convenience shops, grocers, post offices, newsagents, etc”. The appeal scheme would have a small convenience shop on site, to be open by the time that the 300th proposed dwelling would be occupied. The description of development is for a store of up

⁴⁰ Mr Cyhanko XX

⁴¹ ID28

to 4000sqft (c.372sqm). The S106 sets out that it would in fact be a minimum of 2000sqft (c.186sqm). This would be within a 15 minute walk from all of the proposed dwellings. As such, in my judgement, the appeal proposal would meet the strict terms of this criterion. This was agreed by the Council⁴².

- 13.41 Nonetheless, the Accessibility Indicators look to the number and size of facilities within a 15 minute walk. It is common ground that the Indicators are contextual, rather than forming part of the assessment against the Standard. This does not mean that they are not informative⁴³, however, particularly in relation to a development of the scale proposed, or they would not be included in the table at all. In this instance, they provide a useful 'sense check' to the Standard.
- 13.42 The on-site store would be relatively small and it would take around 10 to 15 minutes to reach the two other stores and the off licence away from the site, in Tingley and Middleton, from the proposed dwellings nearest to them. It would take longer than this (from 17 to 29 minutes) to reach them from the proposed dwellings in the centre of the site and beyond. The nearest Post Office, in Middleton, would be within a 16 minute walk from the closest proposed dwellings but between 22 and 29 minutes from the centre of the site and beyond. This is a contextual factor to be considered when assessing accessibility in the round, with the Appellant accepting that few people would walk or cycle to the shops in Middleton⁴⁴.
- 13.43 The second and fifth standards relate to accessibility to employment and town/city centres respectively. They require new development to be within a five minute walk of a bus stop offering a 15 minute service frequency to a major public transport interchange and town/city centre. A major public transport interchange is defined as the city centres of Leeds, Bradford and Wakefield.
- 13.44 At present, the appeal site would not come close to meeting these criteria. The only stop offering a 15 minute service to a major transport interchange or town/city centre is that for the 202/203 bus between Leeds and Huddersfield. This stop is on Dewsbury Road and, as such, is a ten minute walk from the centre of the site, which would rise to a 17 minute walk from the furthest proposed dwelling.
- 13.45 The appeal proposal would, through the S106 agreement, secure the re-routing of the 117 service between Leeds and Wakefield through the site. It is common ground between the main parties that all proposed dwellings would, therefore, be within or at five minutes walking time from an on-site bus stop. However, the proposed service would provide only one bus to each city centre every 30 minutes from 0700 to 1900 Monday to Saturday. It would then be hourly outside these times⁴⁵. As such, the scheme would fail to meet the requisite Standards.

⁴² Mr Hodgson XX

⁴³ Indeed, they are used by the Appellant to support their case (see closing submissions)

⁴⁴ Mr Cornfoot XX

⁴⁵ See CD H5 and S106

- 13.46 The Appellant prayed in aid the argument that, as a 117 service *could* pass through the site every 15 minutes, with buses heading alternately towards Leeds and Wakefield, the Standards would be met. To my mind, although this could be argued as meeting the Standards on a technicality, it fails to address the spirit and ambition of them, which does not encompass the averaging out of bus times. The reality is that there would not be one bus every 15 minutes to the same city centre destination, which would be a situation that might well encourage public transport usage.
- 13.47 That said, the Secretary of State has supported a similar approach to this in the past⁴⁶. The site in question was, however, contextually different. Indeed, given its specific context, the Inspector was at pains to point out that he regarded criterion two as being overly inflexible "*in this case*".
- 13.48 In addition, it was agreed by the Appellant⁴⁷ that the issue of accessibility needs to be considered in the round, on the basis of the individual circumstances of a particular scheme and site. The previous decision does not set a firm precedent to which one must be wed, and the application of judgement means that it is perfectly legitimate to reach a different view.
- 13.49 In addition, it is clear that the bus journey to Wakefield on the 117 takes considerably longer than one would reasonably expect, when compared with times by other buses⁴⁸, due its somewhat convoluted route between Tingley and Wakefield. It may travel through Ossett on the way, but it was never seriously suggested that this was a realistic proxy for Leeds or Wakefield. Overall, then, this would, in my judgement, undermine the CS's aims of directing new development to areas with high levels of accessibility by public transport in order to minimise traffic growth.
- 13.50 The increased frequency of the 117 service would, it was suggested, benefit existing residents along its route. Given that much of its route is already travelled by 'high frequency' services, however, there is little merit to this argument. Indeed, the Appellant was of the view that the high frequency services on Dewsbury Road would be more attractive to (albeit existing) residents regardless of the changes to 117's frequency⁴⁹. Applying this logic to the appeal site further calls into question the realism of the attempt to meet the public transport accessibility Standards by re-routing the 117 through the appeal site.
- 13.51 In addition, the 117 would no longer move through Tingley, which would disadvantage those residents (of between 340 and 440 dwellings⁵⁰) for whom it is the only readily accessible service in the immediate locality.
- 13.52 The third standard requires new development to be within a 20 minute walk of primary healthcare and primary education facilities, or a five minute walk to a bus stop offering a direct service at a 15 minute frequency. The latter criterion is addressed above.

⁴⁶ APP/N4720/W/14/3001559

⁴⁷ Mr Cornfoot XX

⁴⁸ Undisputed evidence of Cllr Leadley

⁴⁹ ID1 p2

⁵⁰ See ID1 and ID23 respectively for the source of these figures

- 13.53 With regard to the former, the nearest primary healthcare facility to the site is the Leigh View Medical Practice in Tingley. Walking times would range from 13 minutes for the closest proposed dwellings to 25 minutes for those furthest from the site. It was agreed at the Inquiry⁵¹ that around 40-50% of the site would be beyond the Standard's walk time, using the more attractive route avoiding Dunningley Lane⁵², which was accepted as being a "*significant proportion*"⁵³. The appellant⁵⁴ is of the view that around 40% of the site would be within a 20 minute walk of Middleton Community Health Centre. This would be much the same area of the site already within the Standard time for Tingley (and my views on the route to Middleton are set out below [13.58-13.59]).
- 13.54 The nearest primary school is Blackgates Primary in Tingley. Walking times would range from 11 minutes for the closest proposed dwellings to 22 minutes for those furthest from the site⁵⁵, when using the route through the site and via Thorpe Lane. Between 80% and 90%⁵⁶ of future residents at the site would be within a timescale that meets the standard. Between 10% and 20% would not. Some flex could be applied here, given that there is only around two minutes difference, but this is not the only failing against the Standards.
- 13.55 Having spent a considerable amount of time walking on and observing the various routes from the site to the relevant nearby schools, I agree that the Thorpe Lane route is the one most likely to be used to access Blackgates. It is considerably more attractive than that via M62 J28, which would be very busy and noisy, with very fast moving traffic in close proximity to the footway.
- 13.56 This context is intimidating and would give rise to a very real sense of discomfort for footway users, notably to young children. One would also have to wait at a number of crossing points in order to negotiate the whole junction, extending the time that one has to spend at it. Thus, it is a reasonable assumption that most potential pupils (and their parents) would favour the less busy route to Blackgates through the site and down Thorpe Lane.
- 13.57 The Accessibility Indicator for the third Standard is the number/size of facilities with a 20 minute walk. Again, it provides a useful sense check. Blackgates Primary is the only school within the required walking distance and one cannot assume that all future residents would wish, or even be able, to secure places for their children at it. Certainly, the response from the Council's education team to the initial consultation on the application is clear that there is only capacity at Blackgates to accommodate demand arising from around 100 to 150 additional dwellings to 2020/21. In addition, it was not disputed that Blackgates, in contrast to Middleton Primary School (the nearest other primary school), has performance that is below par⁵⁷. This may very well influence

⁵¹ Mr Hodgson XX; Mr Cornfoot XX; Appellant's closing submissions

⁵² Using Dunningley Lane would shorten walking times by a couple of minutes, but this route is rough, unlit and lacks a footway. I am not persuaded that it would be used by many future residents, and Mr Cornfoot (in XX) agreed that it was a significantly less attractive route than via the main site access on Thorpe Lane.

⁵³ Mr Cornfoot XX

⁵⁴ Appellant closing submissions

⁵⁵ Again, avoiding Dunningley Lane.

⁵⁶ Respectively, Mr Hodgson XX and Mr Cornfoot in Chief

⁵⁷ Evidence of Mrs Jennifer Nicholson [9.2-9.3]

parental choice. Indeed, the Appellant accepted that a split in destinations for primary school age children⁵⁸ would be likely and that Blackgates had only been used by them for modelling purposes as it was the closest.

- 13.58 Walking times to Middleton Primary School range from 15 minutes from the closest proposed dwellings to 22 minutes (beyond the Standard) from the centre of the site. The school would be a 29 minute walk from the furthest proposed dwellings, which would comprise a large percentage of the site⁵⁹. In addition, the footway to Middleton, along Thorpe Lane, is of substandard width⁶⁰ for around 400 - 500 metres of its length⁶¹, and has a number of street lamps and telegraph poles intruding into it. There is no buffer between the edge of the footway and the road, where regular traffic passes at up to 50 miles per hour.
- 13.59 Sensible use of the footway by pedestrians would not necessarily give rise to any safety issues, but in my judgement the perception of risk would be a live one for certain user groups. The route is certainly constrained and the Appellant accepts that its usage could increase "materially", with the attendant issues of pedestrians trying to pass one another. The sense of discomfort arising from having to walk very close to fast moving traffic would, in my view, be a factor that could encourage those with young children or mobility difficulties to travel to Middleton by car.
- 13.60 The Appellant is proposing to make space for a new primary school on the appeal site, which would, clearly, be beneficial in accessibility and broader community terms. There is not, however, any certainty that this could, or would, be delivered, with the appellant not proposing to build it and the Council presenting no evidence funds to do so. The Council certainly raises concerns about whether the site would yield enough primary age pupils to make a new primary school, which would need to be a minimum two form entry of 30 pupils, feasible. Thus, this matter does not weigh heavily in favour of the appeal proposal.
- 13.61 Turning to the final Standard, this requires secondary education to be within a 30 minute direct walk or for a site to be five minutes' walk to a bus stop offering a 15 minute frequency service to a major public transport interchange. Again, the latter point is addressed above.
- 13.62 With regard to the former, the nearest secondary school is Woodkirk Academy in Tingley. Given the age of children attending Woodkirk Academy, it is not unreasonable to consider that most would be more capable than primary school age children of using the route via M62 J28 (albeit with its shortcomings set out above). On this assumption, the site would meet the requirements of the Standard, albeit at the maximum time of 30 minutes for the more distant proposed houses.

⁵⁸ Mr Cornfoot in response to Inspector's questions

⁵⁹ Agreed by Mr Cornfoot XX as around 60% of the site being beyond an acceptable walking distance to Middleton.

⁶⁰ When assessed against expectations in e.g. Manual for Streets

⁶¹ Roughly between Thorpe Fields and Thorpe Garth.

- 13.63 The Appellant raised a number of other issues in support of the site's accessibility, to which I now turn.
- 13.64 Other standards that deal with accessibility were cited by the Appellant⁶². While they may be material considerations, and could provide useful guidance where no local standards are in place, they are not the standards against which policy in the adopted development plan requires new development to be assessed. Thus, in my judgement, there is no compelling reason to prefer them and they attract little weight in this context.
- 13.65 The Institute of Highways and Transportation Guidelines for Planning for Public Transport in Development⁶³ states that:
- "it is more important to provide services that are easy for passengers to understand and attractive to use than to achieve slavish adherence to some arbitrary criteria for walking distance"*.
- 13.66 However, the Appellant agreed that the Council's adopted standards were both workable and reasonable⁶⁴. They have also been through Examination and there is no evidence before me to suggest that they are any more or less arbitrary than other standards. It is certainly clear that the Council does not expect slavish adherence to them.
- 13.67 It would be theoretically possible for future residents to catch a bus into Tingley and then walk either to the primary school or to the surgery. This would be attractive for some future residents, for whom walking may be difficult or impractical. In my judgement, however, this option is unlikely to be appealing to many. It would be a two stage process for a relatively short journey; would be dependent upon buses running to time; and would require being able to secure a GP appointment to coincide with bus times (there and back). Use of a private car would be more convenient.
- 13.68 Capitol Park is within an 8 to 21 minute walk of the proposed dwellings. It would be ambitious, however, to think that the majority of future residents would, or could, be employed there. As such, this factor carries very little weight in favour of the location of the appeal site.
- 13.69 Dewsbury Road is an existing high frequency bus corridor. It may well be that there are benefits in locating new residential development along it, insofar as it would provide access into Leeds city centre and some of the employment sites *en route*. Dewsbury Road is also identified on the CS Key Diagram as a part of the Leeds to Dewsbury Transport Corridor Package. Improvements to bus services along this corridor are also mentioned in the Leeds Site Allocations Plan Infrastructure Background Paper⁶⁵.
- 13.70 Nonetheless, in this case, the walking distances and times to the bus stops on Dewsbury Road are well in excess of those required by the Standards other than for those residents that would be living on the western fringes of the site. While some future residents might be prepared to walk further to access high

⁶² See Mr Cornfoot's Proof of Evidence pp 35-39

⁶³ CD H7

⁶⁴ Mr Cornfoot XX

⁶⁵ CD K2

quality public transport services, there is no compelling evidence before me to suggest that this is the case in Leeds. I am also mindful that no firm proposals were presented to the Inquiry to indicate when and how the cited improvements to this public transport corridor may take effect.

- 13.71 It is also noteworthy that the site has very easy access to the strategic road network and one might equally argue that some future residents would be as attracted by this factor as others would be by access to a high frequency public transport corridor. As such, overall, this factor attracts little weight.
- 13.72 Middleton has a reasonable retail offer, with an Aldi, an ASDA and a small range of other stores in the town. Even so, they are well beyond the minimum walking distances set out in the Accessibility Standards and I discuss the footway's shortcomings above [13.58-13.59].
- 13.73 White Rose Shopping Centre (WRSC) is a relatively short distance from the appeal site. It could be accessed by bus along Dewsbury Road or by cycling along the same. This could mean that future residents would be able to access retail and some leisure facilities by sustainable modes of transport.
- 13.74 WRSC is also an easy drive away, however, and has well over 4000 free parking spaces. This would, in my judgement, rather negate the attraction of a bus or cycle journey. It would also be rather counter-productive to place a residential development in a location where it could, through necessity or due to ease of access by private car, increase the patronage of a large, out-of-centre shopping mall, rather than of local shops or a city/town centre.

Conclusion on Location and Accessibility

- 13.75 As the Secretary of State will be aware, the Framework at paragraph 29 sets out the ambition of balancing the transport system in favour of sustainable transport modes, giving people a real choice about how they travel. The appeal site would be located such that there would be access to bus routes and would be some opportunities for walking and cycling⁶⁶ to facilities in surrounding settlements. Even so, its locational shortcomings are evident when one considers it against the Accessibility Standards. In other words, although there may be some choice of transport modes available, given my findings in relation to them the likelihood of them being preferred by future residents over the private car is, in my view, highly questionable. Indeed, the fact that the Appellant sees the re-routing of the 117 bus service as being a very important part of their proposals⁶⁷, but that it still fails to meet the requisite Accessibility Standard, is telling.
- 13.76 Even so, just because a proposal may fail to meet some or all of the Standards does not mean it should be rejected by default. The issue of conformity with the Standards must be viewed in the round, having regard to a range of factors. It is common ground that the Standards can be flexed to reflect local

⁶⁶ The Appellant proposes to extend the cycle path on the western side of Dewsbury Road from J28 to Wide Lane, although there would still be gaps in it beyond this point if used as a route into Leeds. There is an off-road cycle route from Middleton into Leeds, albeit that there was debate about how attractive sections of it really are for daily commuter, as opposed to leisure, use notably in the winter months. See also [13.42] re Middleton itself.

⁶⁷ Mr Cornfoot XX

circumstances and different site contexts. Indeed, it was accepted by the Council that it has done so on occasion, as have Inspectors and the Secretary of State, when granting residential planning permissions.

- 13.77 The examples cited to me, however, appeared to be for sites on the edge of (i.e. physically adjoining) existing settlements, where greater flexibility might be seen as being appropriate if development that was coherently integrated with existing communities could be achieved. This is not the case here.
- 13.78 On the basis of my considerations above, I am of the view that the appeal scheme's deficiencies with regard to accessibility to relevant services and facilities, arising from the site's anomalous location, are significant. One would have to apply varying degrees of flexibility to three of the Accessibility Standards to make the appeal proposal fit them. Overall, this would amount to more than the 'modicum' suggested by the Appellant. Where the site does meet the Standards the wider context derived from the Indicators, and the sub-optimal walking routes to some relevant facilities, puts this achievement into somewhat stark relief. I conclude on this matter, therefore, that the appeal proposal would fail to accord with CS policies SP1, H2 and T2, the requirements of which are set out above [4.4], and paragraph 29 of the Framework [4.10] (for the reasons noted above [13.75]).
- 13.79 I also consider that the scheme would fail to accord with paragraph 38 of the Framework [4.13]. Whether "most" properties would be within walking distance of key facilities "such as" (but not exclusively) primary schools and local shops is, clearly, a matter of judgement. In my judgment, on the basis of the estimated percentages, and wider contextual matters, set out above they would not. I am also mindful of paragraph 38's particular emphasis on large-scale developments in this context.

Development of PAS Land (UDR Policy N34)

- 13.80 Saved UDR policy N34 identifies the appeal site as a Protected Area of Search (PAS), or safeguarded land. Development upon it is restricted:

"To that which is necessary for the operation of existing uses together with such temporary uses as would not prejudice the possibility of long term development".

- 13.81 The appeal proposal does not meet this requirement and there is no dispute between the parties that the appeal proposal conflicts with this policy.
- 13.82 Nonetheless, the Appellant argued that N34 was out-of-date for several reasons and, therefore, that limited weight should be attributed to the appeal proposal's conflict with it.
- 13.83 First, it was alleged that N34 is a "relevant" policy for the supply of housing (as per the Framework, paragraph 49), in the narrow terms of current case law⁶⁸, as it is about the quantum and distribution of housing. I do not consider this to be so. It may be that a forensic analysis of the history to the policy⁶⁹

⁶⁸ *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37

⁶⁹ CD B6; CD B7

could identify its past purpose as safeguarding a fixed amount of land for future housing, but there is also compelling evidence that it was safeguarded solely for employment purposes notably due to an expected Supertram extension to the site⁷⁰.

- 13.84 Ultimately, such analysis is unhelpful and inconclusive. On its face, N34 merely makes PAS designations and sets out the criteria against which development proposals for the PAS sites will be assessed. It may have a bearing on housing development, or indeed any form of development, in the same way that, for example, settlement boundaries might, but that does not, in my judgement, make it a "relevant policy" as the Framework is now to be read. Even the Appellant accepts⁷¹ that "*it is arguable*" that N34 is not a relevant policy for the supply of housing.
- 13.85 Other appeal decisions⁷² may have reached different conclusions but they were made in the context of now superseded case law in relation to what "*relevant policies for the supply of housing*" might be.
- 13.86 Second, it was suggested that N34 was out-of-date as it does not contain the 'cost/benefit' balancing approach of the Framework. There has been legal judgement⁷³ in this regard. However, subsequent case law⁷⁴, which was drawn to the Appellant's attention, indicates that the past judgement is not:
- "... authority for the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the NPPF, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal".*
- 13.87 Consequently, I do not consider that N34 can be, *de facto*, out-of-date in this regard.
- 13.88 Third, it was suggested that N34 was out-of-date as the UDPR only ran until 2016. Thus, N34 was past its time limit and was actively preventing development from occurring. The Secretary of State has agreed with much of this proposition in the past⁷⁵. That was, however, on the basis that N34 was a relevant policy for the supply of housing and specifically time limited by the UDPR to 2016.
- 13.89 For the reasons just discussed, and noting that N34 is not found in the Housing Chapter of the UDPR, this is no longer the case. Even were that not so, the relevant test in the Framework in relation to whether policies in existing plans (which must include saved policies) are out-of-date is not one of chronology but of consistency with the Framework⁷⁶. The Appellant agreed⁷⁷

⁷⁰ Ibid

⁷¹ Mr Dunbavin's Proof of Evidence

⁷² CDF4 and CDM6

⁷³ *Colman v SSCLG, North Devon District Council, RWE Npower Renewables Limited [2013] EWHC 1138 (Admin)*

⁷⁴ *Bloor Homes East Midlands v SSCLG and Hinckley & Bosworth Borough Council [2014] EWHC 754 (Admin)*

⁷⁵ CD F4

⁷⁶ Paragraph 215

that N34 is consistent with paragraph 85 of the Framework, which deals with safeguarded land. I concur. N34 clearly secures PAS land for future, rather than present, development, with the supporting text being clear that, in line with the Framework's requirements:

"The suitability of the protected sites for development will be comprehensively reviewed as part of the preparation of the Local Development Framework."

13.90 This is also borne out by the extant CS, which notes that the UDP designated PAS land outside of the Green Belt for *"unidentified [development] needs in the future"*, such needs being potentially housing or employment related⁷⁸. In other words, the UDPR clearly did not envisage N34, and PAS designations, ceasing to have effect at the end of the UDPR plan period.

13.91 Finally, it was suggested that CS Spatial Policy 10 was such that it overrode N34. The two are, however, different sides of the same coin. The latter defines PAS land and secures it for long term development and the former signposts a review of the Green Belt that will:

"... create new Protected Areas of Search (to replace those in the UDP which will be allocated for future development)".

13.92 It is difficult to see this as anything more than the correct operation of safeguarded land policy, as defined in paragraph 85 of the Framework. N34 may not have a 'release mechanism' but it is not required to do so, given its purpose in safeguarding land for the longer term. Any release is to be considered at plan review stage. This is clearly set out in the supporting text⁷⁹ to N34, which helps to provide some interpretation of what is meant by "long term development".

13.93 Overall, therefore, I consider N34 to be fully up-to-date and conclude that the appeal proposal is in conflict with it.

Highway Safety

13.94 The Off-Site Highway Infrastructure Joint Statement⁸⁰ sets out the matters in dispute between the main parties in relation to highway safety. By the end of the Inquiry it was agreed that the Council's concerns in relation to the Thorpe Lane Site Access Junction could be resolved by a suitably worded condition. I have no reason to disagree with this position.

13.95 Highways England raised no objections to the scheme on grounds of adverse impacts upon the safety of the strategic road network and deferred to other parties in relation to the non-strategic network.

13.96 Thus, the sole matters in dispute on this issue (I have addressed the matter of the Thorpe Lane footway, in relation to Accessibility, above) related to the pedestrian and cycle crossing proposals for the M62 J28 roundabout and the

⁷⁷ Mr Dunbavin XX and, by implication, Closing Submissions para 21

⁷⁸ CS paragraph 4.8.6

⁷⁹ UDPR para 5.4.9

⁸⁰ ID40

Dewsbury Road/Topcliffe Lane Site Access Junction. It was common ground that, although the experts differed in their views, the matters were, ultimately, ones of judgement. I address each in turn.

M62 J28

13.97 First, to clarify, the Appellant's proposals for the junction assume that Highways England's own Congestion Relief Fund (CRF) scheme for the junction will go ahead with funding secured for the 2018/19 financial year. On the basis of evidence provided to the Inquiry by Highways England⁸¹, I have no reason to consider that it will not.

13.98 The shared, and very real, concern of the City Council and Morley Town Council in relation to the Appellant's proposed roundabout crossing is that it is fundamentally unsafe for pedestrians and cyclists. The difficulty with sustaining this argument is that no substantive evidence was presented in support of it.

13.99 A range of relevant technical guidance⁸² was cited by both parties, but no obvious safety breaches or conflicts in relation to the appeal proposal were identified. By contrast, the current means of crossing the roundabout on foot or by bicycle is clearly unsatisfactory. At certain points the footways/cycle paths are of insufficient width and there is no buffer between them and the carriageway. In addition, the eastbound M62 entry slip road has no controlled crossing. Such matters would be rectified by the appeal proposal, which, in addition, would mean fewer crossing points. It may be that if one was designing the roundabout from scratch one might favour grade separation, but that has not been suggested as being either a feasible or, indeed, a necessarily more desirable option.

13.100 The increase in, chiefly pedestrian, numbers crossing the roundabout was highlighted, by way of contrast to the low numbers⁸³ using the route at present, the assumption being that a, potentially significant (in base numerical terms), increase in usage could lead to an increase in accidents. If no obvious technical flaws with the proposed crossing design can be identified, however, then it is difficult to see how an increase in pedestrian numbers can be automatically assumed as being harmful.

13.101 Most of the increased usage would arise from children, chiefly teenagers, walking to and from Woodkirk Academy. The Council sought to argue that this demographic is unpredictable in terms of behaviour and, therefore, vulnerable insofar as highway safety is concerned.

13.102 Human behaviour is without doubt a relevant factor here. It may well be that some children are less observant or sensible than others when it comes to crossing roads. No empirical evidence was presented to the Inquiry, however, to support an argument that secondary school children are incapable of taking due care and paying attention when crossing busy roads. I am also mindful

⁸¹ Mr Edward's response to Inspector's questions

⁸² ID48 to ID52

⁸³ Albeit assessed on the basis of fairly light touch survey data.

that children regularly cross the junction without reported incident, albeit only the shorter east/west route over Dewsbury Road south.

13.103 The roundabout features on the Council's list of Sites for Concern, in relation to personal injury accidents⁸⁴. None of the reported accidents, however, featured pedestrians (albeit that I note the low pedestrian usage at present). Three related to cyclists, which is a cause for concern, but it is reasonable to consider that if a more attractive and legible cycle route through the junction was provided then fewer cyclists would be inclined to use the main carriageway.

13.104 In reaching these conclusions I am acutely aware of the RSA1's⁸⁵ recommendation that:

"... alternative pedestrian and cycle facilities should be provided to cross the M62 which do not involve using the present interchange and which will be convenient for children travelling between the new development and the Primary School and Academy."

13.105 Again, however, this recommendation appears to be based chiefly upon the 'increased usage equals increased risk' formula. As noted above, this is far from being an unreasonable position but without any detailed analysis of alleged shortcomings it is difficult to see it as more than an issue of perception.

13.106 The RSA1 notes that users might still attempt to use the route of the existing crossing facilities. Given the difficulties and readily apparent risks that would be associated with the latter, once the new proposals were in place, I consider this to be unlikely. It also notes that the proposal would mean crossing more lanes than at present. With effective 'walk with traffic' crossings in place, however, this should not give rise to any safety issues. The matter of signal failure is a more significant concern, but is a general concern equally applicable to signal-controlled crossings over any busy road. I was not presented with any evidence to suggest that this is a likely problem.

Dewsbury Road/Topcliffe Lane Site Access Junction

13.107 The issue here is whether the relocation, further north, of the crossing over Dewsbury Road on the northbound carriageway, would compromise pedestrian safety. The Council's concern is that pedestrians might well seek to cross further south than the proposed crossing point, using a more direct route over Dewsbury Road to Capitol Park. This concern is reflected in the RSA1.

13.108 Again, however, with appropriate barriers in place, and the self-evident risks of climbing over them from having crossed, or to cross, moving traffic, the likelihood of pedestrians circumventing the formal crossing points must be very slim.

Conclusion on Highway Safety

⁸⁴ ID 43 Appx C

⁸⁵ ID8

13.109 To conclude, I do not consider that there is sufficient weight of evidence before me to give rise to the conclusion that the appeal proposal would result in adverse highway safety impacts. This is, as noted above, a matter of judgement. Thus, I consider that the appeal proposal would accord with UDPR policy GP5, CS policy T2 and paragraph 32 of the Framework, which seek, among other things, to ensure that new development maximises highway safety and provides safe access to the site for all people.

13.110 Let me be very clear, however, that this does not mean that I am dismissive of the concerns of the two Councils. Just because I have not found the proposed crossing schemes, or the route to Middleton, to be demonstrably unsafe does not mean that I find them ideal. As noted above [13.55-13.56; 13.58-13.59], the M62 J28 route would remain intimidating and unattractive and the route to Middleton does not encourage pedestrian use. Both would, in my view, give rise to very real perceptions of being unsafe for many would be users, which could well discourage walking along them and result in a preference for the use of the private car. The fact that the routes would need to be utilised at all is reflective of the site's significant locational shortcomings.

Highway Efficiency

13.112 The principal issue of contention between the parties was whether appropriate levels of background traffic growth, reflecting the impact of development in the area over time, had been fed into the models used to assess the impact of the appeal proposal on the local highway network during the peak AM and PM periods (i.e. whether the modelling should be preferred using a 'With Growth' or a 'Without Growth' scenario). Both pieces of work were undertaken by the Appellant, with the Council and Highways England favouring the former and the Appellant the latter.

13.113 The Council confirmed that in the Without Growth scenario it was only the Wide Lane/Dewsbury Road junction that gave it cause for concern.

13.114 In addition, there was dispute about whether the proposed employment allocation at Capitol Park needed to be factored into the traffic modelling.

13.115 It was agreed that a) the assessment and modelling of traffic growth was not an exact science and b) whether or not background traffic growth should be applied came down to judgement. Neither approach could be regarded as inherently unreasonable.

With Growth/Without Growth

13.116 Throughout the emerging SAP process the Council has used TEMpro⁸⁶ growth rates when modelling the need for junction improvements. It is of the view that this should remain the case for the appeal scheme.

13.117 The Appellant contends that this gives rise to unrealistic levels of traffic growth, drawing on the Council's own detailed transport documentation⁸⁷ used to support the SAP. The relevant study states that:

⁸⁶ Trip End Model Presentation Program

⁸⁷ CD K2 Appendix 3

“NTEM⁸⁸ suggests that weekday car traffic in Leeds rose by 24% between 2001-14, when in fact the Leeds Monitoring Cordon around the city centre shows only a 2% increase since 2000 ... and data from DfT surveys covering A-roads across the District shows a similar 2% growth between 2001-13. These forecasts therefore need to be viewed with some caution. It is considered that both the model and NTEM forecasts represent very much a worse case in terms of traffic growth, in particular with regards to radial peak hour traffic”⁸⁹.

- 13.118 It is alleged that this assessment is supported by Automated Traffic Count (ATC) data taken from the A6110 Millshaw Roundabout north of the site on Dewsbury Road. Between 2010 and 2015 this appears to demonstrate a reduction in background traffic growth (albeit that there has been a clear jump in the hour between 0700 and 0800).
- 13.119 In my judgement, however, this data needs to be treated with some caution insofar as it can be extrapolated and applied to the locality of the appeal site. First, the quoted paragraph above relates to traffic flows close to Leeds city centre. It is difficult to see how they are immediately applicable to the appeal site, which is contextually very different. Second, it was not disputed that the ATC data is from an identified traffic hotspot, where traffic flows will be constrained by current network capacity shortcomings. It is also, in my judgement, hard to draw any meaningful conclusions from a single data set for a junction some distance from the appeal site.
- 13.120 Notwithstanding this view, the ATC data, although showing an overall fall between 2010 and 2015, is actually demonstrative of what appears to be an, albeit slow, upward trend in traffic flow after significant falls between 2010 and 2013. This would appear to reflect the Council’s evidence⁹⁰ that overall car trips in West Yorkshire are rising after being suppressed during the economic downturn.
- 13.121 In short, the Council’s own work appears to be suggesting that predictions from NTEM data analysed using TEMpro do not reflect what has happened to traffic flows in reality in and around the city centre. As such, some caution may be warranted in this area going forward. The same is not true of outer Leeds, however, where the appeal site lies, and the study does not dismiss the use of TEMpro growth here in the peak period.
- 13.122 Indeed, it seems to me that given the levels of growth being planned for across Leeds, which appear to be even greater than that assumed by the TEMpro forecasts, the application of background growth to the traffic models is reasonable.
- 13.123 It may well be that the full modelled levels of background traffic growth will not be realised, as a result of current and planned initiatives encouraging the use of sustainable modes of transport across Leeds. Even so, in my judgement, a scenario that envisages no background traffic growth over a period of significant planned development is unrealistic.

⁸⁸ National Trip End Model

⁸⁹ CD K2 Appendix 3 p130

⁹⁰ Mr Hodgson Rebuttal Proof p9

- 13.124 I also note the Appellant's acceptance of Highways England's view that there would be traffic growth on the strategic road network. Although this network is generally used by through traffic it is difficult to reconcile this acceptance with the appellant's view that in areas where one can exit that network to head towards a major conurbation, such as at M62 J28, the application of background growth to local roads is not warranted.
- 13.125 In reaching this judgement, I am also mindful that the Guidance advises that when producing transport assessments:
- "Projections should use local traffic forecasts such as TEMpro drawing where necessary on National Road Traffic Forecasts for traffic data"*⁹¹.
- 13.126 The question then arising is whether any residual cumulative impacts from the With Growth model could be considered as being serious enough to justify the refusal of planning permission, as per the advice in the Framework at paragraph 32 [4.10] and the requirements of development plan policy⁹².
- 13.127 In response to my questions about how one might establish what "severe" adverse highways impacts might be⁹³, the main parties and Highways England agreed that there was no definitive measure. The chief considerations were whether the effects of traffic growth at key junctions would result in adverse impacts upon highway safety (e.g. from drivers undertaking erratic manoeuvres to avoid queuing) or would compromise other junctions further along the network (e.g. due to queues stretching back from an affected junction/roundabout to another). In my judgement, which should not be regarded as any sort of precedent, severity does not have to be linked with safety, which is an issue in its own right. It should relate to matters of capacity and congestion.
- 13.128 Either way, Highways England raised no objection to the appeal proposal on highways efficiency grounds in either the With Growth or Without Growth scenarios, being content that any impacts upon the strategic road network would be acceptable⁹⁴.
- 13.129 In advance of the Inquiry the main parties identified nine key junctions for assessment. By the end of the Inquiry only five gave rise to disputes over impacts in a With Growth scenario. These are Junctions 2 (Dewsbury Road/B6123 Wide Lane Roundabout); 3 (Dewsbury Road/WRSC roundabout); 4 (Tingley Bar Signalised Gyratory); 6 (Bradford Road/Westerton Road/Common Lane); and 7 (Thorpe Lane/Middleton Park Avenue/Throstle Road).
- 13.130 In addition, there was dispute over Junction 1, being the interaction between the M62 J28 and the Dewsbury Road/Topcliffe Lane site access.

⁹¹ Paragraph: 015 Reference ID: 42-015-20140306

⁹² UDPR policy GP5; CS policy T2

⁹³ In relation to the Framework test

⁹⁴ Mr Edwards' response to Inspector's questions and ID40

Junctions 2, 3, 4, 6 and 7

- 13.131 I do not consider it necessary, or helpful, to set out the parties' respective positions on each junction by way of a forensic assessment of the technical detail. Such information can be found, if required, in the main parties' respective proofs and in the Transport Assessment and its various updates. The relevant Transport Assessment scenario in each case, on the basis of my With Growth finding, is '*Scenario 3: With [the appeal] Development (With Growth)*'. The obvious basis for comparison with it is '*Scenario 2: Do Minimum (With Growth)*', which represents a situation without the proposed development but with committed developments, background growth and the CRF changes to M62 J28. Thus, I deal with this grouping of junctions *en masse*.
- 13.132 In all cases the Scenario 2 modelling shows congestion, and thus delays, worsening from the 2017 base year for all junctions. The issue then becomes whether the respective Scenario 3s, which generally show additional queue times and queue lengths, are so significantly worse than the Scenario 2s that the impacts of the development could be regarded as severe or material in the wider context.
- 13.133 The Council's case in relation to the additional levels of delay arising from the appeal proposal, at each contested junction, is that they would materially add to problems at points that would already be very congested. As such, they are not acceptable and are considered severe. The difficulty with this argument is the lack of evidence about how any effects of this additionality would be manifested in real terms. There is not, for example, any evidence before me to suggest that the additional levels of delay arising from the appeal proposal would result in any kind of cumulative domino effect from one junction to another or reach a tipping point of some kind.
- 13.134 This is not to say that an additional queue time of nearly five minutes on, for example, the B6123 in the AM peak, being the greatest difference between the two scenarios, is negligible. There can be little doubt that it, and other less notable queuing times at the other contested junctions, could well prove inconvenient and/or frustrating for many drivers and may be on the borders of acceptability.
- 13.135 In my judgement, however, the differences between scenarios 2 and 3 are not so marked across the network that they could realistically be seen as *materially* adding to the adverse efficiency impacts, individually or cumulatively, which are modelled as being likely to arise regardless of whether the appeal proposal comes forward. This is particularly so given the lack of any specific thresholds set by the Council (or, indeed, any other body), whereby adverse impacts upon efficiency generally, or specific junctions in particular, become intolerable. In addition, any increased congestion needs to be viewed in the context of overall journey times, wherein the effect of the proposed development may make little material difference or would give rise to additional peak spreading⁹⁵.

⁹⁵ i.e. the broadening of the peak periods to reduce congestion at the apex of the peak

13.136 It is worth noting at this point that Junction 2 was the only one where impacts were disputed in the Without Growth scenario, in relation to increased queue times which were considerably shorter than in the With Growth scenario. Thus, should the Secretary of State consider that a Without Growth scenario is more appropriate then he will also need to come to a view on whether the Without Growth impacts upon Junction 2 are "severe". On the basis of my findings above I do not consider that they are, for the same reasons.

Junction 1

13.137 The Council's position in relation to Junction 1 is that the impact of the proposed development would give rise to capacity issues in the PM peak. This is correct. It is evident, however, that capacity issues would arise anyway, without the proposed development. Thus, while there may be capacity issues, the With Growth modelling shows that the proposed changes to the junction arising from the development actually have a beneficial impact, although it still operates over capacity at certain times. In other words, the situation would not get worse with the development in place.

13.138 The Council was of the view that the modelling for this junction should also take account of the SAP's proposed employment allocation at Capitol Park. Its work on this⁹⁶ demonstrated that the Topcliffe Lane arm of the junction would be severely over capacity in both the AM and PM peak periods. The Guidance, however, advises that transport assessments need only consider:

"... trips from all directly relevant committed development in the area (i.e. development that there is a reasonable degree of certainty will proceed within the next 3 years)".⁹⁷

13.139 Even if this was not the case, it does not seem to me to be reasonable or necessary to include in the detailed junction modelling an indicative employment allocation from an emerging plan over which there is not yet any certainty. Even if one were to feel that the allocation should be considered, one must bear in mind the fact that no detailed investigation of mitigation options, which could address the capacity concerns, has been undertaken. As such, I consider it premature to see the potential interaction between the two sites as a showstopper for the appeal proposal.

Other Highway Efficiency Considerations

13.140 There was some debate about whether or not the Aimsun software was of assistance with the modelling work. The common position was that it was a supplement to the more traditional highways modelling software, rather than providing definitive scenarios in its own right, and was not without its shortcomings⁹⁸. The Appellant confirmed that the key difference of opinion in relation to highway efficiency was the With Growth/Without Growth argument,

⁹⁶ Mr Hodgson Supplementary Proof of Evidence ID43 Appx B

⁹⁷ Paragraph: 015 Reference ID: 42-015-20140306

⁹⁸ For example, 'trapping' traffic within it without being able to redistribute it, through a lack of route choice, in some scenarios.

rather than whether Aimsum should or should not be taken into account. As such, I do not consider this matter further.

- 13.141 The Council raised concerns about the capacity of the highway network in the event that the wider PAS land in the vicinity of the appeal site was proposed for residential development (if planning permission was granted for the appeal scheme and, thus, a precedent was assumed). There is not, however, any proposal before me that would, in my judgement, warrant such an assessment at this stage. Furthermore, if such a scheme did come forward it would need to be considered in the context of any committed scheme on the appeal site, with any attendant highways implications.

Conclusions on Highway Efficiency

- 13.142 I conclude, therefore, that a With Growth scenario is the most appropriate basis for consideration of the appeal proposal. I further conclude that the effects of the appeal proposal modelled on this basis would not give rise to materially adverse impacts upon the local highway that could be considered so severe as to warrant the refusal of planning permission. Thus, I consider that the appeal scheme would accord with UDPR policy GP5, CS policy T2 and paragraph 32 of the Framework, which seek, among other things, to ensure that new development does not materially add to problems of congestion and efficiency on the highway network or give rise to residual cumulative impacts that are severe.

Prematurity

- 13.143 The section of the Guidance in relation to prematurity is set out above [4.15]. Two criteria are given and I address them below, given that the Guidance forms the basis for the fifth putative reason for refusal.
- 13.144 The SAP has reached examination stage. Whether that can be considered to be 'advanced' in procedural terms must be a matter of fact and degree. In this instance, the hearings on housing matters are not scheduled until much later in 2018 and it is not disputed that there are a very considerable number of objections to the SAP on this matter. It may be that they are not substantive, but there is no evidence before me to support such a view (nor would it be appropriate for me to come to one, even were that possible). It is also clear that the SAP Inspectors have many questions⁹⁹ on the SAP's housing policies and its approach to housing allocation more generally.
- 13.145 In addition, Councillor Leadley who sits on the Council's City Plans Panel, as well as representing Morley Town Council, was frank¹⁰⁰ that everything with regard to the SAP was "*very much in a state of flux*" and that "*everything is very fluid*" with regard to future housing numbers for Leeds (in the light of the Government's proposals for standardised calculations of housing need).

⁹⁹ CD M4

¹⁰⁰ Cllr Leadley - Chief

- 13.146 Thus, there does not seem to me to be any grounds for assuming that the SAP is guaranteed to advance apace, even if the housing hearings were fast approaching rather than being some time away.
- 13.147 The appeal scheme itself is, clearly, sizeable. It would amount to around 11% of the overall requirement for the Outer South West Housing Market Area of Leeds (OSWHMA). It could result in an 'over allocation' of housing in the OSWHMA if planning permission was granted and all of the SAP's proposed allocations were to be accepted by the examining Inspectors.
- 13.148 That said, it would be offset to some degree, as the SAP under-allocates in this area by around 230 dwellings against the relevant CS requirement. Furthermore, given the Council's inability to demonstrate a five-year supply of deliverable housing land, it is arguable that additional flexibility of supply could be a benefit in the face of the potential uncertainty surrounding the SAP process.
- 13.149 In short, the Council was not able to articulate clearly what the harm arising from any possible over-allocation might be in real terms. The CS housing requirements are not minima; there is no allegation that granting planning permission would jeopardise other sites coming forward; and, following the submission of the S106 agreement, no objections are raised by the Council on local infrastructure grounds. No substantive evidence was presented by other parties in support of their concerns in this latter regard.
- 13.150 Furthermore, the SAP appears to have some way to go before it is close to adoption. I am not persuaded that in this instance it can be considered as being at an advanced stage, and certainly not at the "*highly advanced*" stage alleged by the Council's putative reason for refusal.
- 13.151 I conclude that the appeal proposal cannot reasonably be regarded as prejudicing the plan-making process in either practical terms or in the terms set out in the Guidance. In addition, given the stages that the SAP still has to go through, along with the potential complexity and volume of the issues still to be examined, I consider that it attracts little weight at the time of writing.

Other Considerations

- 13.152 CS Spatial Policy 4 (Regeneration Priority Programme Areas (RPPA)) identifies four RPPAs, of which one is South Leeds. The policy refers to the Key Diagram, which excludes the appeal site, when identifying the priority areas. Even so, there are additional maps within the CS, which set out the boundary of South Leeds RPPA in more detail. These maps are, somewhat unhelpfully, contradictory. Map 5 excludes the appeal site, focusing on the defined settlements, while Map 5D, which is more detailed, includes it (chiefly because the M62 is used as a natural boundary).
- 13.153 Assuming, for the sake of argument, that the appeal site does lie within the South Leeds RPPA, it was suggested that housing development at the appeal site would be of regeneration benefit. My attention was drawn in this regard to large-scale market housing development in Middleton, which is commonly agreed to have been beneficial in creating a more mixed and balanced community. The key difference here, however, is that such development was effectively part of Middleton, rather than being a standalone

development away from the settlement. It is difficult to see how a large, discrete community separated from the nearest settlements would have any direct regenerative benefits upon them, whether falling within an RPPA or not.

13.154 Even if that was not the case, the rationale behind Spatial Policy 4 is to direct regeneration funding and resources to these areas, and support Council-led initiatives outside them, rather than being a green light for *ad hoc* development proposals.

13.155 It was suggested that the appeal scheme draws support from CS Spatial Policy 6 (The Housing Requirement and Allocation of Housing Land). Although this policy makes passing reference to an expectation of windfall development on "*small and unidentified sites*"¹⁰¹, it is, however, an allocations policy. The criteria therein are to guide allocations. That it lends support to the appeal proposal as windfall development is, at best, debateable. Even if this was not the case the policy contains criteria against which the appeal proposal would score poorly, notably those relating to accessibility and a preference for brownfield land.

13.156 It was further suggested that the site's separation from other settlements was characteristic of the wider Leeds area, wherein green swathes run right into the city and, in some cases, result in the separation of different areas. This is wishful thinking, in my judgement. Rather, the appeal scheme would be an island of development within an existing green swathe separating Morley, Middleton, Beeston and Tingley. It would still fail to relate to any settlement and would appear as uncharacteristically distinct, standalone development.

13.157 The appeal site has been designated as PAS land, named Tingley Station, since the time of the UDP. The Appellant's argument that it must be inherently "sustainable" if it is earmarked as a potential long-term development site is not without merit. Indeed, the UDP Inspector's report is supportive of the site's potential for employment uses due to its accessibility by existing and planned public transport (namely the now defunct Supertram, which was a key factor in the decision to safeguard the site). This position was, however, tempered by their view that the site would be an "*anomalous inset*" in the Green Belt, in an area that maintains the separation between Middleton, Morley and the Ardsleys. It was also commented that:

*"The Tingley Station site is an isolated area of land within the remaining gap between two towns... it would be divorced from existing development..."*¹⁰²

13.158 This is a view that was echoed by the UDPR Inspector, whose judgement in 2006 was that Tingley Station would not be a suitable housing site as:

*"... it is greenfield land which is not well integrated with existing communities or particularly close to local services and facilities"*¹⁰³ and

¹⁰¹ It is unclear whether the sites can be either small or unidentified or must be small *and* unidentified. In my view, the latter is more logical. Either way, again, one would expect windfall to conform to the CS's spatial strategy.

¹⁰² B6 pp 1223-1238

¹⁰³ B7 pp 230-241

"Its history, character and location indicate its suitability for that [employment] purpose rather than for housing."

- 13.159 Even accepting that these Inspectors were not scrutinising the site for housing to the same degree that I have, their views chime with my own in relation to the site's obvious locational shortcomings. Whatever the Council's reasons for persisting with the site as PAS land, this designation does not, in my view, mean that any development proposal for it is automatically to be regarded as "sustainable".
- 13.160 It was argued that the appeal site is more sustainable than other sites that are being proposed for allocation through the SAP and that granting planning permission here would protect the Green Belt, sites within which are being proposed by the Council for development. This could be so but, as the Appellant was at pains to point out, the SAP can be afforded limited weight at present and such decisions are for the Inspectors examining the SAP. My focus is solely upon the proposal before me.
- 13.161 The appeal scheme would result in the loss of a not inconsiderable area of grades 2 and 3a Best & Most Versatile Agricultural Land. This, clearly, is not something to be welcomed but as the land is already earmarked for the possibility of longer term development, it is presumed that such loss would occur anyway. As such, it is not a matter that weighs heavily in the planning balance.
- 13.162 Morley Town Council went to some lengths to highlight what it regarded as a longstanding, unachievable housing requirement for Leeds, which has resulted in the Council being unable to demonstrate a five-year supply of deliverable housing land. Support for this argument was drawn from the Government's recent consultation document *Planning for the Right Homes in the Right Places*. Using the draft methodology therein results in a significant reduction in Leeds' housing requirement.
- 13.163 It may well be that this is an approach that is adopted in the future. At present, however, it is a consultation document that is open to change and, as such, I can give it little weight at the time of writing. Even if this was not the case, it would not change the fact that the adopted development plan has a housing requirement within it, which is the most up-to-date, tested, and, therefore, appropriate expression of the city's housing requirement. This is agreed between the main parties.

14. Planning Balance

- 14.1 I have found that the appeal proposal would not have adverse impacts upon highway safety or efficiency. Nor could it be considered as being premature in relation to the SAP. Nonetheless, I conclude that, having regard to local and national planning policy for the delivery and location of housing, the appeal site is not an appropriate location for the development proposed. The scheme would conflict fundamentally with up-to-date development plan policy for the location of new residential development, including in relation to PAS land, which I find to be consistent with the Framework.
- 14.2 In my judgement, although noting the Council's inability to demonstrate a five year supply of deliverable housing sites, these particular policies continue to

attract full weight. As such, I consider that the appeal proposal conflicts with the development plan when taken as a whole and that very significant weight should be attached to this conflict.

- 14.3 Nonetheless, on the basis of my assessment above [13.4-13.21], the scheme falls to be considered against the fourth bullet, first limb test at paragraph 14 of the Framework. In this context, the Appellant has suggested a number of benefits, which I address below.
- 14.4 In social terms, the scheme would deliver up to 770 dwellings, 15% of which would be affordable units secured by planning obligation. There can be no doubt that the Council is being proactive in seeking to increase and stimulate housing delivery in appropriate locations, through a range of initiatives including the Leeds Living programme and the use of permission in principle for brownfield sites. It may well be that this will result in a relatively swift increase in supply, but at the time of writing these strategies have yet to start delivering in any meaningful way.
- 14.5 I am also mindful that the undersupply is only about a year's worth of housing. Even so, this still amounts to over 6000¹⁰⁴ dwellings in an administrative area where, by the Council's own admission, the historic shortfall in delivery has been acute and housing under provision chronic¹⁰⁵.
- 14.6 Consequently, on the basis of my findings in relation to the Council's five-year housing land supply, I consider that significant weight should be given to the provision of new market and affordable dwellings.
- 14.7 In environmental terms it was suggested that the link road through the site and the mitigation proposed for M62 J28 would be of benefit in alleviating existing pressure on the wider highway network. This would be true if the proposal were to operate in isolation. Highways England confirmed, however, that their scheduled CRE project for M62 J28 is designed specifically to alleviate existing pressure anyway. In this context, the M62 J28 works associated with the appeal proposal would not do much beyond mitigating the traffic impacts arising from it.
- 14.8 The changes to the Thorpe Lane/Smithy Lane junction would address an existing crossing safety concern, notably of Morley Town Council, but, as with my considerations in relation to the appeal scheme's proposals for M62 J28, there is no compelling evidence before me that the crossing is, in fact, unsafe. As such this matter attracts very little weight.
- 14.9 The M62 J28 works would improve the current crossing facilities for cyclists and pedestrians but, as noted above, I am not persuaded that this would make the route a particularly more attractive proposition for either user group. It may make it better but there is no evidence of pedestrian safety issues at present and the works are only required because of the site's poor location in relation to local facilities. Again, therefore, I consider that this matter attracts little weight.

¹⁰⁴ SoCG paragraph 7.10

¹⁰⁵ Mr Cyhanko XX

- 14.10 The provision of a bus gate to allow for a southbound bus stop on Dewsbury Road opposite Capitol Park may be of benefit to those who work there, but there is no reason to consider that the number of beneficiaries would be significant.
- 14.11 There may be some minor loss of habitat on the site but this would be largely sub-optimal and on balance the scheme would appear to offer greater opportunities for habitat enhancement (as noted in the Environmental Statement), which is a factor attracting moderate weight. It would provide for open space over and above that required by policy, but given its location away from other settlements the use of such would be of little benefit to anyone but the site's future residents. As such, I consider that this attracts very little weight.
- 14.12 There will be works to the public footpath network in the vicinity of the site. I have found these to be necessary, given the likely increase in usage upon them, and, as such, regard them as mitigation rather than a clear benefit¹⁰⁶.
- 14.13 In economic terms, the Government has made clear its view that house building plays an important role in promoting economic growth. In economic terms, the appeal scheme would provide some local construction jobs (including training) and some local investment during its build out. It could also result in some longer term expenditure in the local economy, but whether this would be manifested *very* locally is questionable. The site's locational shortcomings are such that there is no obvious local centre or settlement to which future residents would be naturally drawn, or with which they would naturally interact, such that an economic benefit might accrue there. I afford moderate weight to these benefits.
- 14.14 The development would generate New Homes Bonus (NHB) and Council Tax receipts for the Council. The former is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB and the local area has been established. The latter is a means of offsetting increased public expenditure in a local area arising from an increased population. As such, I consider that both attract very little weight as benefits in the planning balance.
- 14.15 Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when considered against the Framework when taken as a whole. In the circumstances I conclude that the proposal would not represent a sustainable form of development.

15. Recommendation - Appeal Ref: APP/N4720/W/17/3169594

- 15.1 For the reasons given above, and taking all other matters into consideration, I recommend that the appeal should be dismissed and planning permission be refused.
- 15.2 If the Secretary of State is minded to disagree with my recommendation, Annex C lists the conditions that I consider should be attached to any permission granted. The reasons for these suggested conditions are set out in

¹⁰⁶ While acknowledging that benefits and mitigations need not be mutually exclusive.

Section 11 of this Report. A consideration of the planning obligations is given at Section 12.

Richard Schofield INSPECTOR

Richborough Estates

ANNEX B: DOCUMENTS

Core Documents

See Files A to M (in hardcopy and on CD)

Documents Submitted to the Inquiry

- ID1 Fore Technical Note: Impact assessment of proposed changes to bus service 117
- ID2 Appellant's Opening Submissions
- ID3 Leeds City Council's Opening Submissions
- ID4 Morley Town Council's Opening Statement
- ID5 LCC Strategic housing land availability assessment 2017 Update
- ID6 LCC Five-year housing land supply statement 2017 update
- ID7 DfT Cycling and walking investment strategy 2017
- ID8 Stage 1 Road Safety Audit (RSA1) dated 23 November 2017
- ID9 Urban Leeds cycling map
- ID10 ELOR Plan extract (City Plans Panel)
- ID11 Housing Land Supply Tables – HMCA summary of key disputed sites
- ID12 WYCA – Report to Land and Assets Panel dated 13 October 2017
- ID13 DCLG - housing infrastructure fund supporting document for forward funding
- ID14 Super Output Area – Mid Layer Maps
- ID15 SAP report sheet
- ID16 Taylor Wimpey Trajectory extract from Environment Statement
- ID17 Woodside Quarry Newt Survey
- ID18 Woodside Quarry Committee Report
- ID19 Bellway email dated 1 December 2017 re Vickers Tank Factory, Leeds
- ID20 Map 28 of UDPR
- ID21 Map 23 of UDPR
- ID22 Highlighted parts of "Inclusive Mobility"/Street Design Guide/IHT /MFS extracts
- ID23 LCC 117 Bus Service Note
- ID24 SAP Minute 21 November 2017
- ID25 RSA1 Designer's Response dated 4 December 2017
- ID26 Transport Assessment Addendum (Following Road Safety Audit) dated 4 December 2017

- ID27 Comparison by Fore of Existing and Proposed Pedestrian/Cycle Provision at M62 J28 dated 4 December 2017.
- ID28 Signed Highways Statement of Common Ground dated 4 December 2017 – Final
- ID29 LCC Note on Greenfield Status of Site dated 5 December 2017
- ID30 LCC Note on Education Matters dated 5 December 2017
- ID31 Timetable Bus and Coach – West Riding Automobile Co Ltd – September 1969.
- ID32 Saxton Cross Planning History Table 1 – From Proof of Evidence: Mr Clive Brook on behalf of Ogdens UDP "Saxton Cross" Hearing February 1996
- ID33 Secretary of State's Proposed Changes to Draft Revised Yorkshire & Humber Regional Spatial Strategy (RSS) dated 18 December 2007
- ID34 CIL Justification Statement re Appeal Reference APP/N4720/W/17/3169594.
- ID35 Appeal Decision re Land at Pear Tree Lane, Euxton, Chorley, Lancashire dated 30 November 2017
- ID36 Outer South Area Committee – Transport Conversation Update "Workshop" Monday 27 November 2017
- ID37 Project Sponsor Response to Designers response to RSA1 dated 13 December 2017
- ID38 Highways England Position Statement
- ID39 Mr Hodgson Supplementary Proof
- ID40 Off-Site Highway Infrastructure Joint Statement dated 18 January (Mr Hodgson Second Supplementary Statement appended)
- ID41 Morley Town Council statement submitted 22 January 2018
- ID42 Plan of Alternative Walking Distances
- ID43 Mr Cornfoot Response dated 5 January 2018 to Mr Hodgson Supplementary Evidence
- ID43A Mr Cornfoot Response dated 23 January 2018 to Mr Hodgson Second Supplementary Proof
- ID44 LCC Batch of Submissions sent to PINS on 18 December
- ID45 Investment Partnership for South Leeds – Investment Strategy June 2011
- ID46 Final Draft Conditions
- ID47 Fore Plan - Possible changes to M62 Junction 28 Including Pedestrian/Cycle Route without HE improvement scheme (Ref 3103 SK003 003 Rev B)
- ID48 TA 68/96 Assessment and Design of Pedestrian Crossings (Local Transport Notes 1/95 and 2/95)
- ID48A Extract (p81) from Providing for Journeys on Foot

- ID49 DMRB Vol 8 Traffic Signs and Lighting (TA 15/07)
 - ID50 DMRB TD 16/07 Geometric Design of Roundabouts
 - ID51 DMRB TD50/04 The Geometric Layout of Signal Controlled Junctions and Signalised Roundabouts
 - ID52 Extract from COBA Manual – Vol 13 Section 1
 - ID53 Agreed S106 draft
 - ID54 S106 Summary
 - ID55 High Court judgement (R v Rochdale MBC ex parte Milne 31 July 2000) decision
 - ID56 Hallam Land Management Ltd v Secretary of State for Communities and Local Government, Eastleigh Borough Council [2017] EWHC 2865 (Admin)
 - ID57 Fore Plan, Thorpe Lane Access – ref 3103 SK004 041
 - ID58 Morley Town Council's note on representations to the SAP
 - ID59 Morley Town Council Closing Statement
 - ID60 LCC Final Submissions
 - ID61 Draft Condition on coal recovery
 - ID62 Revised CIL Justification Statement
 - ID63 Appellant's Closing Submissions
- Documents received after the close of the Inquiry**
- ID64 Further draft conditions
 - ID65 Executed S106 Agreement

ANNEX C: RECOMMENDED CONDITIONS

APPROVAL OF DETAILS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) The development hereby permitted shall comprise no more than 770 dwellings and the convenience store shall comprise no more than 4000 square feet of retail floor space.
- 3) The development shall be carried out in accordance with the following approved plans: Red and Blue Line Location Plan 2011/116/808D; Dewsbury Road access arrangements 3103/SK001/024C; Thorpe Lane access arrangements 3103/SK004/01.
- 4) The development shall be carried out in general accordance with Parameter Plan: Green Space and Features 2011-116/47B; Parameter Plan: Land Use and Heights 2011-116/048B; Parameter Plan: Access and Movement 2011-116/049B; and Site Masterplan 2011-116/050A.

TIMING OF IMPLEMENTATION

- 5) Application for approval of all reserved matters for the first phase of development shall be made to the Local Planning Authority before the expiration of three years from the date of the approval of the first phase of ground works and site preparation, to include the link road between the two access points. Thereafter, applications for approval of all subsequent reserved matters relating to all additional phases shall be made to the Local Planning Authority before the expiration of two years from the date of approval of the reserved matters of the preceding phase.
- 6) The development of the first phase shall be begun within five years of the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be agreed for that phase, whichever is the later. All further phases shall be commenced within two years of the approval of the last reserved matters for that phase.

DWELLING MIX

- 7) The mix of any market housing for any phase of development authorised by this planning permission, including details of size and type, shall be agreed in writing by the Local Planning Authority as part of any relevant reserved matters application(s). Development of each phase shall thereafter be carried out in accordance with the approved mix.

ARCHAEOLOGY

- 8) No development shall take place until a programme of archaeological recording of the site has been implemented. This recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation in accordance with a written scheme of investigation which has

been first submitted to and approved in writing by the Local Planning Authority.

FLOOD RISK AND DRAINAGE

- 9) No development shall commence for each phase until a feasibility study into the use of infiltration drainage methods has been submitted to and approved in writing by the Local Planning Authority. The study shall detail the results of soakaway tests carried out in accordance with BRE Digest 365 and an appraisal of various infiltration systems that could reasonably be employed on the site.
- 10) No development shall commence for each phase until a drainage scheme (to include drainage drawings, summary calculations and investigations) for that phase informed by the feasibility study required by Condition 9 detailing the surface water drainage works and arrangements for their future maintenance has been submitted to and approved in writing by the Local Planning Authority. If infiltration systems are impractical due to ground conditions the allowable rate(s) of discharge, off-site, shall be agreed with the Local Planning Authority and a surface water attenuation system shall be provided which ensures that the allowable discharge rates are not exceeded for the 1 in 100 year event including an agreed allowance for climate change, which shall not be less than 30%. The works shall be implemented in accordance with the approved scheme before the relevant phase of development is brought into use or as set out in any approved phasing details.
- 11) No development shall commence for each phase until details of and a method statement for interim drainage measures during site works have been submitted to and approved in writing by the Local Planning Authority. The relevant site works and construction phase shall thereafter be carried out in accordance with the approved method statement.
- 12) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 13) Any reserved matters application shall include a report setting out details of the existing culverts within the site including their line/position and depth as well as an assessment of their structural condition, evidenced with a CCTV report, and a scheme for their re-opening to be approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented in full prior to the first occupation of any dwelling in the relevant phase of development. Where re-opening of a culvert(s) is not practicable the relevant culvert(s) shall be repaired/rehabilitated as necessary in line with details, previously approved by the Local Planning Authority, prior to the first occupation of any dwelling in the relevant phase of development. Appropriate easement widths shall be provided and retained alongside each culvert in accordance with details previously approved in writing by the Local Planning Authority
- 14) Finished floor levels of the dwellings and convenience store shall be at least 150mm above proposed site levels.

LAND CONTAMINATION

- 15) Development shall not commence until a Phase 2 Intrusive Site Investigation has been submitted to and approved in writing by the Local Planning Authority. Where remediation measures are shown to be necessary in the Phase 2 Reports and/or where contaminated soil or soil forming material is found to have been imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.
- 16) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease immediately. An amended or new Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.
- 17) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of the site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.
- 18) Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, public open space or for filling and level raising shall be tested for contamination and suitability for use. A methodology for testing these soils shall be submitted to and approved in writing by the Local Planning Authority prior to these materials being imported onto site. The methodology shall include information on the source of the materials, sampling frequency, testing schedules and criteria against which the analytical results will be assessed (as determined by risk assessment). Testing shall then be carried out in accordance with the approved methodology. Relevant evidence and verification information (for example, laboratory certificates) shall be submitted to and approved in writing by the Local Planning Authority prior to these materials being imported onto the site.

COAL RECOVERY

- 19) No development shall commence for each phase until a report assessing the potential to recover any coal present within the boundary of each phase has been submitted to and approved in writing by the Local Planning Authority. The report shall include a strategy detailing how any coal present should be recovered prior to the development of each phase and the coal shall be recovered in accordance with that strategy unless it is demonstrated to the Local Planning Authority's written satisfaction that:
 - It is not economically viable or environmentally acceptable to do so; or

- The benefits of delivering the development in a timely manner outweigh the benefits of extracting the coal; or
- The potential for coal recovery would not be sterilised by the development.

ECOLOGY

20) No development shall commence for each phase until a Construction Environmental Management Plan (CEMP:Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP:Biodiversity shall accord with the mitigation measures put forward in the ES Ecology Chapter 8 paragraphs 81 to 88 inclusive 91 and 92 and Table 8.8 and include the following:

- Risk assessment of potentially damaging construction activities;
- Identification of "biodiversity protection zones";
- Measures to avoid or reduce impacts during construction on all identified biodiversity features, including a scheme for the use of protective fences, exclusion barriers and warning signs;
- Location and timings of sensitive works to avoid harm to biodiversity features, including nesting birds;
- The times during construction when specialist ecologists need to be present on site to oversee works; and
- The role of a responsible person (Ecological Clerk of Works) and details of lines of communication to them;

The approved CEMP:Biodiversity shall be implemented throughout the construction period strictly in accordance with the approved details.

21) No development shall commence for each phase until a Biodiversity Enhancement & Management Plan (BEMP) has been submitted to and approved in writing by the Local Planning Authority in accordance with all the Additional Mitigation and Enhancement Measures shown in Table 8.9 and paragraphs 95 and 96 in the ES Ecology Chapter 8. The BEMP shall include details of the following:

- Aims and Objectives of enhancement and management
- Appropriate management Actions for achieving the Aims and Objectives
- Description and evaluation of biodiversity features to be managed and enhanced;
- Extent and location/area of proposed enhancement works on appropriate scale maps and plans;
- Ecological trends and constraints on-site that might influence management;
- Details of the specialist ecological management body or organisation responsible for implementation of the BEMP;

- Details of the legal and funding mechanisms by which the long-term implementation of the BEMP will be secured;
- An annual work programme (to cover an initial five-year period); and
- An ongoing monitoring programme including how contingencies and remedial measures will be identified, agreed and implemented where the results from the monitoring show that the Aims and Objectives of the BEMP are not being met.

The BEMP shall thereafter be implemented as approved, being reviewed and updated every five years.

Each year for the first five years of the BEMP a progress report shall be sent to the relevant Local Planning Authority officer reporting on progress of the annual work programme and confirming required Actions for the next 12 month period.

- 22) No development shall commence for each phase until a Method Statement for the control and eradication of Himalayan Balsam, Japanese Knotweed and Giant Hogweed (the "Target Species") has been submitted to and approved in writing by the Local Planning Authority. The approved Method Statement shall thereafter be implemented in full. The Method Statement shall include post-treatment monitoring of the site to ensure a continuous 12-month period of time occurs where none of the Target Species is identified growing on the whole site. If any Target Species is identified as growing on-site during the 12-month monitoring period then treatment shall resume and continue until a continuous 12-month period with no Target Species occurs.
- 23) No development shall commence for each phase until a Plan has been submitted to and approved in writing by the Local Planning Authority detailing the numbers, specification and location of integral bat roosting features and bird nesting features (for species such as House Sparrow, Starling, Swift, Swallow and House Martin) to be provided within buildings and elsewhere on-site along with details of their installation. The Plan shall be implemented in full for each phase and no dwelling shall be occupied until any bat roosting features and/or bird nesting features indicated for it have been installed in accordance with the Plan. Each feature shall be retained thereafter.

PUBLIC OPEN SPACE

- 24) No development shall commence for each phase until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of 80sqm of on-site public open space per dwelling. The scheme shall include details of the siting, laying out, landscaping, maintenance and long term management of the public open space. Any formal open space shall be accommodated within the red line boundary shown on the Red and Blue Line Location Plan 2011/116/808D and any open space located within the area defined by the Blue Line boundary on the same plan shall be informal open space only and shall not contain play equipment or other structures. The public open space shall be provided in accordance with the approved scheme prior to completion of each relevant phase of development in accordance with the approved scheme and shall be retained as public open space thereafter.

HIGHWAYS

- 25) Notwithstanding the details on the approved plans reference 3103/SK001/024C and 3103/SK004/001 for the access arrangements at Dewsbury Road and Thorpe Lane final details of each junction design, which shall be broadly in accordance with the approved plans, shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development. The site access works shall be implemented in accordance with the details approved by the Local Planning Authority before the first occupation of any dwelling or the convenience store on the development and shall thereafter be retained and maintained.
- 26) Prior to first occupation of development the details of a connecting road between the site access points shown on approved plans 3103/SK001/024C and 3103/SK004/001 capable of accommodating appropriately sized public transport vehicles and stopping facilities shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented as approved.
- 27) Before the first occupation of any dwelling or the convenience store on the development the approved off-site highway works for widening of footways along Thorpe Lane shown on plan reference 3103/SK005/001 shall be implemented in full and shall thereafter be retained and maintained.
- 28) Before the first occupation of any dwelling or the convenience store on the development the approved off site highway works for widening of the footway along Dewsbury Road for the creation of a shared cycleway and footway lane as shown on plan reference 3103/SK006/001A shall be implemented in full and shall thereafter be retained and maintained.
- 29) Before the first occupation of any dwelling or the convenience store on the development, or other programme of implementation to be first agreed in writing by the Local Planning Authority but no later than occupation of the 50th dwelling, the approved off site highway works at the junction of M62 Junction 28 Tingley Roundabout shown on plan 3103/SK003/004B shall be implemented in full. In such circumstances that Highways England's Congestion Relief Fund scheme is not progressed, the approved off site highway works at the junction of M62 Junction 28 Tingley roundabout shown on the approved plan 3103/SK003/003B shall be fully implemented before the first occupation of any dwellings or convenience store on the development, or other programme of implementation to be first agreed in writing with the Local Planning Authority but no later than occupation of the 50th dwelling.
- 30) Before the first occupation of any dwelling or the convenience store on the development, or other programme of implementation to be first agreed in writing by the Local Planning Authority but no later than occupation of the 50th dwelling, the approved off site highway works at the junction of A650/A654/Smithy Lane shown on plan 3103/SK007/001A shall be implemented in full.
- 31) No development shall commence for each phase until details of cycle/motorcycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. Details shall include the location of the facilities and the methods of securing the cycles/motorcycles. The facilities

shall be provided in accordance with the approved details prior to occupation of the relevant phase of development and be retained thereafter.

- 32) One Electric Vehicle Charging Point (EVCP) shall be provided at each dwelling before that dwelling is occupied. One in ten unallocated parking spaces shall also be provided with an EVCP upon construction. Two EVCPs shall be provided at the convenience store before it commences trading. All EVCPs shall be retained and maintained thereafter.

CONSTRUCTION MANAGEMENT

- 33) No development shall commence for each phase including any site preparation works (including spine roads and other service infrastructure) until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The Statement shall detail provision to be made for:

- means of access to the site during construction;
- areas for the parking and turning of construction vehicles and vehicles for site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- measures including wheel washing facilities to prevent mud and other such material migrating onto the public highway from construction vehicles;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from construction works; and
- routing of construction traffic including measures to minimise any delay for road users on both the local and strategic road network.

The approved Statement shall be adhered to throughout the construction period.

NOISE MITIGATION

- 34) Before the occupation of any dwelling in a particular phase, a scheme for protecting future occupiers from road noise and noise from the Highways England depot shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved prior to occupation of any affected dwellings and shall be retained thereafter.
- 35) Construction activities shall take place only between 0800 - 1800 Monday to Friday and 0800 - 1300 Saturdays. No construction activities shall take place on Sundays and Bank Holidays.

EXTERNAL LIGHTING

- 36) No development shall commence for each phase until a scheme of external lighting has been submitted to and approved by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved scheme. No additional external lighting shall be installed unless approved in writing by the Local Planning Authority.

(End of recommended conditions)

Richborough Estates



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.