



Department for  
Communities and  
Local Government

Nick Graham  
GVA Grimley Ltd  
Central Square  
Forth Street  
Newcastle upon Tyne  
NE1 3PJ

Our Ref: APP/P2935/A/14/2212989

15 December 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BARATT, DAVID WILSON HOMES NORTH EAST AND TEES  
VALLEY HOUSING  
LAND SOUTH OF A196, STOBHILL, MORPETH, NORTHUMBERLAND  
APPLICATION: REF 13/02416/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Pete Drew BSc(Hons), DipTP(Dist), MRTPI, who held a public local inquiry on 22-25 and 29-31 July 2014 into your clients' appeal against a failure by Northumberland County Council (the Council) to give notice within the prescribed period of a decision on an application for planning permission for a development of 396 houses (use class A3), access, landscaping and associated infrastructure on land south of the A196, Stobhill, Morpeth, Northumberland (application ref: 13/02416/FUL dated 9 August 2013).
2. On 17 February 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals for residential development of over 150 units or on a site of over 5ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with this recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

Christine Symes  
Planning Casework Division  
Department for Communities and Local Government  
3<sup>rd</sup> Floor, Fry Building  
2 Marsham Street  
London, SW1P 4DF

Tel 0303 444 1634  
Email [pcc@communities.gsi.gov.uk](mailto:pcc@communities.gsi.gov.uk)

## **Procedural matters**

4. The Secretary of State notes that the proposed development falls within the description of development at paragraph 10(b) of Schedule 2 of the Town and Country Planning (EIA) Regulations 2011, being an urban development project on a site exceeding 0.5ha (IR19). For the reasons set out in IR19-21, he agrees with the Inspector that the proposal is not EIA development and does not require an Environmental Statement (IR21).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. However, copies of these representations will be made available on written request.

## **Policy considerations**

6. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the saved policies in both the Northumberland County and National Park Joint Structure Plan (SP) (2005) and the Castle Morpeth Local Plan (LP) (2003) (IR23-24). The Secretary of State considers the development plan policies of most relevance to the appeal are those set out in IR22-23.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.
9. With regard to the emerging development plan, for the reasons set out in IR191-194, and having applied paragraph 216 of the Framework, the Secretary of State agrees with the Inspector that the emerging Northumberland Core Strategy (CS) can be given only limited weight at the present time (IR194); and, for the reasons in IR195, that extremely limited weight can be given to the Morpeth Neighbourhood Plan (NP) (IR195).

## **Main issues**

### ***Prematurity***

10. For the reasons set out in 196-203, the Secretary of State considers that the claim by Hepscoff and Morpeth Together that the proposals are premature has not been substantiated (IR204).

### ***Whether relevant policies for the supply of housing are out of date***

11. The Secretary of State has carefully considered whether relevant policies for the supply of housing are out of date. For the reasons set out in IR205-220, and in accordance with paragraph 49 of the Framework, he agrees with the Inspector that as the Council cannot demonstrate a 5-year supply of deliverable housing sites, relevant

policies for the supply of housing should not be considered up-to date, and that this includes LP policies C1 and MC1 which relate to settlement boundaries (IR221). The Secretary of State agrees with the Inspector at IR220, however, that those policies remain part of the development plan, albeit he considers that they attract very limited weight in view of the very marked shortfall of housing land supply which the Inspector identifies (IR212) as being as little as 1.66 years supply of housing for the City Region Commuter Area. Having applied paragraph 215 of the Framework, the Secretary of State considers that these LP policies are inconsistent with the housing supply policies in the Framework (paragraph 47).

### ***Character and appearance***

12. The Secretary of State has carefully considered the effect that the proposed development would have on the character and appearance of the area (IR222-247). For the reasons given in those paragraphs, he agrees with the Inspector that the development would harm the character of the landscape although, because of its relatively low landscape value, not to a significant extent (IR248). He also agrees with the Inspector's conclusion that the appearance of the area would be harmed to a significant extent, broadly along the A196 corridor that demarcates the northern boundary of the site (IR248). Like the Inspector, the Secretary of State recognises that the only impact would be on views within close proximity of the site and, in that sense, there would only be localised harm within the immediate area of the site, albeit by virtue of the size of the site that area is quite extensive (IR249). The Secretary of State has concluded that policies C1 and MC1 are not up-to-date but he acknowledges that there is tension between the proposed scheme and those policies, which seek to prevent development in the countryside beyond settlement boundaries, and the appeal proposal. He agrees with the Inspector that the proposed development would comply with LP Policies C4 and MC3 (IR250).

### ***Effect on the local road network***

13. The Secretary of State notes that the main parties continued discussions right up to and during the inquiry in order to reach agreement on this matter, and he agrees with the Inspector that this positive approach should be recognised (IR251).
14. For the reasons set out in IR251-258, the Secretary of State agrees with the Inspector that there is a high degree of certainty that the Morpeth Northern Bypass (MNB) will proceed and that in this most likely scenario the development, taken with existing commitments, should not be refused planning permission on transport grounds as the impact on the network would not be severe (IR264). He also agrees with the Inspector that there is no policy basis to support the contention that the development would negate the benefit of the MNB (IR264).
15. For the reasons in IR259-263, the Secretary of State agrees with the Inspector that, were the MNB not to proceed, the residual cumulative impacts of the proposed development would also not be severe; and that there are other significant material considerations that weigh heavily in favour of granting planning permission in this highly unlikely scenario (IR264).
16. Overall, the Secretary of State agrees with the Inspector's conclusion that, in terms of the effect on the local road network, the proposed development would not conflict with Development Plan Policy or the Framework (IR264).

### ***Effect on flooding and sewage systems***

17. Like the Inspector (IR269 and 277), the Secretary of State attaches great weight to the advice given by the statutory undertakers on these matters. For the reasons set out in IR265-278, he agrees with the Inspector, subject to the conditions set out in Annex A to this letter, that the effect of the proposed development on flooding and the sewage system would be acceptable; and that there are no cogent and compelling reasons to depart from the advice given by the statutory undertakers that cannot be addressed by the imposition of conditions (IR279).

### ***Whether existing schools have the capacity to accommodate children generated by the development***

18. For the reasons set out in IR280-289, the Secretary of State agrees with the Inspector's conclusion that there are sufficient spaces in the town's schools to accommodate the children who might come to live on this site if permission were to be granted, and that there is no basis to require contributions towards the provision of additional school accommodation (IR289).

### ***Affordable housing***

19. For the reasons set out in IR290-308, the Secretary of State agrees with the Inspector that, despite the weak policy basis to require such provision, the 119 affordable houses would make a positive contribution towards meeting the high demand for affordable homes in Morpeth, and that the proposed mix of properties is aligned with needs (IR309). For the reasons in IR290-308 also, the Secretary of State, like the Inspector, does not accept that only limited weight should be given to the affordable housing provision envisaged in the section 106 agreement and he attaches significant weight to the affordable housing offer (IR309).

### ***Sustainable development***

20. The Secretary of State has had regard to the Inspector's consideration of the New Homes Bonus payments and an uplift in Council Tax revenue (IR317). On the basis of the available evidence in this case, the Secretary of State agrees with the Inspector that the New Homes Bonus cannot lawfully be taken into account as a material consideration, as there is not a clear indication that the Council intends to use the receipts in a way which is material to the development being proposed. However, he disagrees with the Inspector's conclusion in IR317 that, pending the outcome of this appeal, the Council could not reasonably make firm plans for what the associated New Homes Bonus receipts might be used for. The Secretary of State considers that it was open to the Council to take a view on how it would use the funds if the appeal were to be allowed.

21. The Secretary of State has given consideration to the Inspector's remarks at IR310-315 which refer to 2 leading High Court judgments (*William Davis* and *Dartford*) and which set out the Inspector's view that paragraph 14 of the Framework requires a 2-stage test whereby the decision maker must assess whether a scheme is sustainable development before applying the presumption in favour of sustainable development (IR312). The Secretary of State observes that that Mrs Justice Patterson in *Dartford Borough Council v. Secretary of State for Communities and Local Government and Landhold Capital Limited* rejected elevating *William Davis* to a formulaic sequential approach to paragraph 14 of the Framework. However, having had regard to the

Framework as a whole, the Secretary of State agrees with the Inspector that the presumption in favour of sustainable development applies in this case, for the reasons given below.

22. For the reasons set out in IR316 and 318-329, the Secretary of State agrees with the Inspector that the proposed development would fulfil the economic role of sustainable development, and would contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place and at the right time to support growth (IR330). He agrees with the Inspector that this is a material consideration to which significant weight should be given in the overall balancing exercise (IR330).
23. For the reasons in IR331, the Secretary of State agrees with the Inspector that the proposed development would fulfil the social role of sustainable development, and he agrees that this is a consideration to which significant weight should also be given.
24. For the reasons in IR332-333, the Secretary of State agrees with the Inspector that, on balance, the proposed development would not fulfil the environmental role of sustainable development, and he agrees that, although in this respect there are some positive and neutral factors, the overall conclusion must be one of modest harm (IR334).
25. Overall, the Secretary of State agrees with the Inspector's conclusion in IR337 that the positive attributes of the development, in terms of economic, social and some limited environmental gains, outweigh the negative environmental impact, and that the proposal would be sustainable development. He has gone on to consider the planning balance below.

### ***Other Matters***

26. Like the Inspector, and for the reasons in IR343-344, the Secretary of State finds no basis to conclude that the proposed development would harm neighbours' living conditions (IR344). He also agrees with the Inspector that the potential impact on Stannington Station Road is not an adverse consideration that should weigh against the proposed development (IR347).

### ***Overall planning balance***

27. As indicated above, in deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. He has concluded at paragraph 11 above that as the Council cannot demonstrate a 5-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to date, in accordance with paragraph 49 of the Framework. Those policies include LP policies C1 and MC1, to which he has attributed very limited weight having applied paragraph 215 of the Framework. Whilst the Secretary of State has identified some tension between the appeal scheme and policies C1 and MC1 (paragraph 12 above), in view of the very limited weight which he attributes to those policies he does not consider that this tension amounts to a weighty material consideration in his determination of this appeal. As to other relevant policies in the development plan, the Secretary of State has identified no conflicts and, in common with the Inspector (IR339), he considers

that to be a highly significant finding. He has concluded that the scheme is in overall accordance with the development plan.

28. Given his conclusion that policies for the supply of housing are not up-to-date, the Secretary of State considers that paragraph 14 of the Framework falls to be considered. The Secretary of State has already set out his conclusions as to the scheme's sustainability and he has gone on to consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the scheme's benefits when assessed against the Framework as a whole.
29. The Secretary of State agrees with the Inspector that the proposal would provide a substantial amount of market housing in an area where the lack of a 5-year housing land supply means that housing policies in the Development Plan are out-of-date, and that these factors weigh significantly in favour of allowing the appeal (IR339). He also agrees that significant weight should be given to the economic benefits of the proposal, including direct employment and the multiplier effect in the local economy, and also to the social benefits, which include much needed affordable housing (IR339). Like the Inspector, the Secretary of State considers that, subject to imposition of a planning condition, the proposed development would improve the flooding situation downstream and that, whilst the improvement would be small, it is a positive factor that weighs moderately in favour of the appeal, as does the net benefit to ecology, and the provision of public access to a large proportion of the site (IR339). He also agrees with the Inspector that the Framework requires high quality design and that therefore this attribute of the scheme is not to be counted as an additional benefit (IR339). However, as noted at paragraph 27 above, the Secretary of State has found some tension with LP policies C1 and MC1, so he does not share the Inspector's view (IR339) that there is a complete absence of conflict with Development Plan policy.
30. The Secretary of State agrees with the Inspector that the proposal would harm landscape character, albeit not to a significant extent, and the appearance of the area, to a significant extent, but along a fairly localised stretch of the A196 corridor (IR340). He also agrees that the other factors examined are broadly neutral; and that the development should not be refused on transport grounds (IR340).
31. In conclusion, the Secretary of State agrees with the Inspector that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development (IR340).

### ***Conditions and obligations***

32. The Secretary of State has considered the schedule of conditions included within the IR, the Inspector's remarks at IR163-182 and 341, paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
33. The Secretary of State has also considered the documentation on the s106 Agreement, the Inspector's comments on these at IR183 – 188 and 341, paragraphs 203-205 of the Framework and the Guidance. Overall, he shares the Inspector's view that the provisions offered by the Agreement would accord with the tests set out at paragraph 204 of the Framework and Regulation 122 of the CIL Regulations and that no further contributions are justified in relation to school accommodation (IR1341).

## **Overall Conclusions**

34. The Secretary of State has concluded that, notwithstanding the conflicts identified above, the scheme remains in overall accordance with the development plan as a whole. He has also concluded that the material considerations in favour of the development outweigh the identified conflicts with certain policies in the development plan. He has concluded that the scheme amounts to sustainable development and he is satisfied that the adverse impacts of granting planning permission in this case would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development.

## **Formal Decision**

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your clients' appeal and grants planning permission for a development of 396 houses, access, landscaping and associated infrastructure on land south of the A196, Stobhill, Morpeth, Northumberland, in accordance with application ref: 13/02416/FUL, dated 9 August 2013.

36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

37. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

39. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

### Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall not be carried out other than in complete accordance with the following approved plans:
  - Site Location Plan GIS21912/01-01;
  - Presentation Layout NE-18-06K;
  - House Type Portfolio NE-18-09B; and,
  - Materials Plan NE-18-15B.
3. No development shall commence until samples of the materials identified on drawing No NE-18-15B, which are to be used on the external elevations of the dwellings hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be constructed other than in accordance with these approved materials.
4. No dwelling hereby approved shall be commenced until details of the provision of refuse and recycling storage for each dwelling, and a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority. The refuse/recycling area shall have a direct and level access from the street to the dwelling and be capable of accommodating the appropriate number of refuse/recycling bins. Thereafter, no dwelling shall be occupied until the refuse and recycling facilities for each individual dwelling has been provided in accordance with the approved details and implementation schedule.
5. Development shall not commence until a detailed scheme for foul flows has been submitted to and approved in writing by the Local Planning Authority, in consultation with Northumbrian Water. The scheme should:
  - specify that foul water from the development hereby approved shall be disposed of via a connection to the 450mm foul sewer within Coopies Field Industrial Estate downstream from manhole 3101; and
  - provide details of the treatment of foul flows from the development hereby approved.

The dwellings hereby approved shall not be occupied until the scheme for the treatment of the foul flows has been completed and commissioned in accordance with the approved details.

6. Development shall not commence until details of the implementation, maintenance and management of a scheme for surface water management using a sustainable urban drainage scheme has been submitted to and approved by the Local Planning Authority. The scheme shall be in broad accordance with drawing No MD0777.00.20 Rev C and designed to dispose and attenuate surface water up to the 1 in 100 year plus climate change event from the development and shall limit discharge from the development to 16l/s or 50% of the green field run off rate,



whichever is less, for all rainfall events. The scheme shall be implemented in accordance with the approved details, which shall include:

- i. a timetable for its implementation; and,
  - ii. a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
7. The building envelope of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise, affording an internal level of noise as follows, with windows closed and other means of ventilation provided:
- 35 dB (A) LAEQ (07.00 to 23.00 hours) in living rooms;
  - 30 dB (A) LAEQ (23.00 to 07.00 hours) in bedrooms; and
  - 45 dB (A) LAFmax not normally exceeded in bedrooms between 23.00 to 07.00 hours.
8. The dwellings of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise in the rear gardens of each dwelling, affording a maximum external level of 55 dB(A) LAeq.
9. Prior to the commencement of development, details of the reflective acoustic barrier proposed in the Revised Noise Impact Assessment (NVA/4210/12/3774 Rev A) (paragraph 5.06) shall be submitted to, and approved in writing by, the Local Planning Authority. The submission should include a plan indicating the location, extent, performance and maintenance of the proposed reflective acoustic barrier. The approved barrier shall be constructed prior to the occupation of the first nearest dwelling which it is designed to protect and shall thereafter be retained and maintained in accordance with the approved details.
10. Prior to the commencement of development, details of protective measures, which should include a suitable gas-resistant, heavy-duty membrane to be incorporated in the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The membrane shall thereafter be incorporated into the development prior to the construction of each of the dwellings hereby approved.
11. If during development contamination not previously considered is identified, then an additional method statement regarding this material shall be submitted to, and approved in writing by, the Local Planning Authority. No dwelling shall be occupied until the method statement has been submitted to, and approved in writing by, the Local Planning Authority, and measures proposed to deal with the contamination have been carried out.
12. No development shall commence until a fully detailed landscaping scheme, showing both hard and soft landscaping proposals (the detailed landscape planting plan must include at least one pond, the planting of locally native trees, shrubs, wildflowers and grasses of local provenance) has been submitted to and approved in writing by the Local Planning Authority. This shall include, where required, the planting of trees and shrubs including a fully detailed planting schedule setting out species, numbers, densities and locations, provision of cross site wildlife corridor linkages and sustainable urban drainage ponds, provision of screen walls or fences, the mounding of earth, the creation of areas of hardstanding, pathways etc, areas to be

seeded with grass and other works or proposals for improving the appearance of the development. The scheme shall be carried out in accordance with the approved drawings not later than the expiry of the next planting season following commencement of the development, or within such other time as may be agreed in writing by the Local Planning Authority. The landscaped areas shall be subsequently maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants, or areas of seeding or turfing comprised in the approved landscaping plans, which fail within a period up to five years from the completion of the development.

13. No development shall commence until a detailed landscape management plan, which shall provide details of the management of all landscaped areas within the site (other than domestic gardens), has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved plan shall be implemented in complete accordance with the approved details.
14. No development shall take place unless in accordance with the mitigation and recommendations detailed within the following ecological reports:
  - 'Stobhill, Morpeth, Northumberland: Initial Ecological Appraisal -Stage 1 Investigations -Draft 3', Quants Environmental Ltd, September 2013;
  - 'Stobhill, Morpeth: Breeding Bird Survey' John Thompson Ecology Services, June 2013; and,
  - 'Stobhill, Morpeth: Bat Survey Report', Quants Environmental Ltd, December 2013.
15. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars, including the Design and Access Statement [NE-18-12C, dated November 2013]; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
  - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
  - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
  - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with details to be submitted to and approved in writing by the Local Planning Authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.

16. Before development commences a detailed scheme for the provision of the children's play areas on the site shall be submitted to and approved in writing by the Local Planning Authority, including details of the play equipment, surfacing, boundary treatments and a timetable for the construction of the areas. Thereafter, the children's play areas shall be provided in the agreed locations, in accordance with the approved details and the approved timetable.
17. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of:
  - The parking arrangements to enable all vehicles associated with the construction to park within the site at all times;
  - Measures to help control and, where possible, reduce noise, dust and dirt emissions from the site during the construction;
  - Measures to help prevent the deposit of mud and debris on public highways by vehicles associated with the construction travelling from the site;
  - Excavations and earthworks to be carried out near the railway undertaker's boundary, to ensure that that no interference with the integrity of that property/structure can occur;
  - The erection and maintenance of fencing around the site;
  - Compound provision for the storage of plant and materials used during the construction; and,
  - The siting of construction accesses) where applicable.

Thereafter, the development shall be undertaken in accordance with the approved Construction Management Plan.

18. The areas allocated for parking and turning on approved drawing No NE-18-06K shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
19. Before development commences a fully dimensioned layout plan incorporating details in respect of road drainage, street and/or other external lighting, landscaping and boundary treatments (including details of a trespass proof close-boarded fence at least 1.8m in height at the eastern boundary of the development), together with a longitudinal section of the new road and details of construction of the carriageway, footpaths and accesses, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details pursuant to the agreed timetable and thereafter those features approved pursuant to this condition shall be retained and, where appropriate, maintained.
20. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied can be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
21. All road and associated works shall be to a standard eligible for adoption in accordance with the Northumberland County Council Manuals or as agreed in consultation with the Local Planning Authority.

22. No development shall commence until a scheme of highway works along the site frontage onto the A196 has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The scheme shall provide details for the provision of traffic calming measures and the relocation of the bus stop and its associated shelter on the westbound carriageway, in broad accordance with drawing 0887-SK-005 (Rev. A) prepared by WSP. Thereafter, the scheme shall be implemented prior to the occupation of the first dwelling hereby approved.
23. No development shall commence until additional site layout details in respect of pedestrian accessibility to bus stops, vehicle visibility splays and vehicle tracking, together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The details shall include:
- The location of pedestrian accesses from the development hereby approved to the bus stops on the A 192 and A 196;
  - An increase to the radius of the vehicle access junctions from the A196 to 15m;
  - The addition of block paving to cul-de-sacs; and,
  - Minor adjustments to internal road geometry.

Thereafter, the development shall not be constructed other than in accordance with the approved details, pursuant to the agreed timetable.

24. No later than six months before the occupation of the first dwelling of the development hereby approved, a full travel plan shall be submitted to and approved in writing by the Local Planning Authority. The full travel plan shall be in broad accordance with the WSP Framework Travel Plan dated 13 March 2014. The full travel plan, as approved, shall be implemented in all material respects, including establishment of the long term arrangements for appointment of a travel plan co-ordinator and ensuring that travel surveys are undertaken post occupation to ensure the future success of the travel plan, with such details as agreed to be necessary being submitted to the Council.

## Annex B

### Late representations received

Correspondent	Date
Dr Stephen Donaldson	14 July 2014
Joao Parreira	25 September 2014
Ian Lavery MP (on behalf of Dr Donaldson)	10 October 2014

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# Report to the Secretary of State for Communities and Local Government

by Pete Drew BSc (Hons), DipTP (Dist), MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 29 September 2014

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TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

NORTHUMBERLAND COUNTY COUNCIL

APPEAL BY BARRATT, DAVID WILSON HOMES NORTH EAST AND TEES VALLEY  
HOUSING

DEVELOPMENT OF 396 HOUSES (USE CLASS C3), ACCESS, LANDSCAPING AND  
ASSOCIATED INFRASTRUCTURE

LAND SOUTH OF A196, STOBHILL, MORPETH, NORTHUMBERLAND

Inquiry opened on 22 July 2014

Accompanied site visit convened on 31 July 2014

File Ref: APP/P2935/A/14/2212989

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## Abbreviations used in the Inspector's Report

AOD	Above Ordnance Datum
BREEAM	Building Research Establishment Environmental Assessment Methodology
BS	British Standard
CIL	Community Infrastructure Levy
CRCA	City Region Commuter Area
CSH	Code for Sustainable Homes
CS	Core Strategy
DCO	Development Consent Order
DoT	Department of Transport
DP	Development Plan
dpa	dwellings per annum
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
FRA	Flood Risk Assessment
FTE	full-time equivalent
GLVIA3	Guidelines for Landscape and Visual Impact Assessment Third Edition
ha	hectares
H & MT	Hepscott & Morpeth Together
IHT	The Institution of Highways & Transportation
LAP	Local Area for Play
LDS	Local Development Scheme
LEA	Local Education Authority
LEAP	Local Equipped Area for Play
LP	Castle Morpeth Local Plan
LPA	Local Planning Authority
l/s	litres per second
LTP	Local Transport Plan 2011-2026
LUC	Land Use Consultants
MNB	Morpeth Northern Bypass
NIMBY	Not in my back yard
NP	Neighbourhood Plan
pa	per annum
PAN	Pupil Admission Numbers
PTAL	Public Transport Accessibility Level
RSS	Regional Spatial Strategy
SoS	Secretary of State for Communities and Local Government
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoCG	Statement of Common Ground
SP	Northumberland County and National Park Joint Structure Plan
SSSI	Site of Special Scientific Interest
Suds	Sustainable urban drainage scheme
TPO	Tree Preservation Order
the Act	the Town and Country Planning Act 1990 (as amended)



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the 2004 Act	the Planning and Compulsory Purchase Act 2004 (as amended)
the Council	Northumberland County Council
the Framework	the National Planning Policy Framework
the Guidance	the Planning Practice Guidance
xx	cross-examination

**File Ref: APP/P2935/A/14/2212989****Land south of A196, Stobhill, Morpeth, Northumberland**

- The appeal is made under section 78 of the Act against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Barratt, David Wilson Homes North East and Tees Valley Housing against Northumberland County Council.
- The application Ref 13/02416/FUL is dated 9 August 2013.
- The development proposed is development of 396 houses (use class C3), access, landscaping and associated infrastructure.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.****Procedural Matters**

1. The Inquiry sat for 7 days on 22-25 July and 29-31 July 2014. I convened an evening session on 29 July 2014 to enable local residents who, by reason of work, family or other commitments, might not have been able to attend during the day. This was promoted in the local newspaper and was well attended. I made an accompanied site visit on 31 July 2014, which included visits to other housing sites in the town as well as the catchment of the Hepscoth Burn.
2. The SoS directed by letter dated 17 February 2014 that he would determine this appeal. The reason that was given for this is that the appeal involves proposals for residential development of over 150 units on a site of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. At its meeting on 20 February 2014 the Council's North Area Planning Committee resolved that, if it had been in a position to do so, it would have refused the planning application for the following reasons:
  - i. The development would be located in the open countryside, beyond the settlement boundary for Morpeth as defined in the Castle Morpeth Local Plan. The granting of a large scale housing proposal on this site would represent a significant variation to the established, and developing, strategy for Morpeth and would result in the urbanisation of a currently undeveloped greenfield site outside of the established settlement boundary. The harm that the development would cause would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework. Consequently the proposal would not represent sustainable development in the context of the Framework.*
  - ii. The proposed access arrangements to and from the site from the A196 road, and the internal layout of the site, would lead to conditions prejudicial to highway safety. Insufficient data has been provided to allow for a proper assessment to be made of the impact that the development would have on the local road network and whether the traffic impacts of the development would be severe. No appropriate strategy that considers access to and from the site by sustainable transport modes has been submitted. The development would, therefore, be contrary to one of the Core Planning Principles set out in the Framework and to Local Plan Policy H15.*

4. Attached to the end of this report are 6 lists of documents. The first is a list of documents that were submitted at the Inquiry and in this report I shall refer to them using the shorthand "DS", namely a *Document Submitted* at the Inquiry. The second is a list of documents that were circulated outside of the Inquiry and in this report I shall refer to them using the shorthand "DC", namely a *Document Circulated* outside of the Inquiry. Thirdly the parties established a list of *Core Documents* and in this report I shall refer to them using the shorthand "CD". Amongst the CD is a SoCG [CD39], which was agreed between the main parties, including H & MT, and which, amongst other things, lists the application documents [section 6]. There is also a revised SoCG on Transport [CD40], which was also agreed between the main parties, including H & MT. A Traffic & Highways Statement of Fact, signed by both main parties, was submitted at the Inquiry by way of an update [DS4]. A Landscape SoCG, signed by both main parties, was submitted at the Inquiry [DS5]. The proofs of evidence, appendices, rebuttals, addendums and summaries that have been submitted by the Council, Appellants and H & MT, respectively, are then listed.
5. In advance of closing the Inquiry the prospect that the transcript of a decided but, at that stage, unreported High Court judgment<sup>1</sup> would be released in the very near future, was canvassed. It was agreed that it would be necessary and appropriate to allow all main parties an opportunity to comment on the judgment and a period of 7 days was agreed to be adequate. As it happened the judgment was released on the afternoon of the day that I closed the Inquiry, whilst I was conducting the site visit. Accordingly The Planning Inspectorate wrote to the main parties [DC5] inviting views and I have taken account of the representations that were subsequently made [DC5 and DC6].

### The Site and Surroundings

6. The appeal site is located to the south of Morpeth which, the Inquiry was told, is the fourth largest settlement in Northumberland, and lies in the south-east of the County, approximately 15 miles to the north of Newcastle upon Tyne. The appeal site is outside, but adjacent to, the existing urban area of Morpeth. The appeal site abuts residential development on its northern and western boundaries, albeit that this lies on the other side of the main roads that demarcate those boundaries, namely the A196 and A192, respectively. These main roads meet at the Stobhill roundabout, adjacent to the north-west corner of the appeal site, and from there the A192 runs towards Morpeth town centre.
7. The appeal site comprises 17.15ha of undeveloped greenfield land, which is in agricultural, specifically arable, use. The Landscape SoCG records that the appeal site "*...is Grade 3b and 4 and therefore not considered to be Best and Most Versatile*"<sup>2</sup>. The appeal site is essentially one single parcel of land, although a ditch bounded by low hedging, which originates in roughly the centre of the site, dissects part of the field and runs broadly north-east towards the railway line that demarcates the eastern boundary of the site. This railway line is not currently used by passenger trains and the east coast main line runs broadly parallel to, but some distance to the west of, the A192.

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<sup>1</sup> That case is now known as *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).

<sup>2</sup> Source of quote: paragraph 15 of Landscape SoCG, DS5.

8. There are no public rights of way across the appeal site, although there are footways along both main roads. The topography of the appeal site is largely flat although it falls generally in a south-easterly direction, away from the roundabout, from almost 56m AOD to a low point of just over 50m AOD. It is common ground that surface water from the appeal site feeds into the catchment of the Hepscott Burn that runs through the village of Hepscott which lies, at its closest point, approximately 800m to the south-east.
9. The SoCG [CD39] records that there is an established tree-belt approximately 15m in width along the majority (380m of the total boundary of 620m) of the south-east boundary of the appeal site. My inspection revealed that this comprises a mix of semi-mature deciduous and evergreen species, including field maple, ash, beech and conifers. The appeal site is presently served by a field access from the A192 in the southern corner of the site, adjacent to the existing belt of trees. The Landscape SoCG [DS5] records the existence of what it calls species-poor hedgerows to the north, west and south-east of the appeal site. At present those hedgerows are typically up to 2m in height.
10. The Landscape SoCG records that the appeal site "*...is not covered by a landscape or landscape-related designation*"<sup>3</sup>. The site is not designated by any relevant national designation, such as a Conservation Area. The nearest SSSI is Willow Burn Pasture SSSI, approximately 3km to the east of the site, and there are no designated sites within 2km of the site. The Council has confirmed that the proposed development would not affect the setting of a listed building. However the SoCG confirms that both main roads adjacent to the site, the A196 and A192, are identified as '*landscape corridors*' in the LP.
11. The SoCG [CD39] records that Morpeth railway station is approximately 930m from the appeal site's northern boundary and says that there are 4 bus stops located immediately adjacent to the site. My site inspection confirmed that all of these bus stops, one in each direction on the A192 and A196, are served by shelters. Coopies Lane Industrial Estate, which is the town's main industrial area, is agreed to be "*...immediately to the north-east of the site*"<sup>4</sup>. The edge of Morpeth town centre is located approximately 1.2km to the north of the site's northern boundary, but there are local shops, including a post office, convenience store, pharmacy and newsagent, within the suburb of Stobhill.

## Planning History

12. The report to the Council's North Area Planning Committee on 20 February 2014 [CD33] lists the site's planning history. In 1991 an outline planning application [Ref CM/91/D/217] for residential and industrial park development on a 27 ha site was withdrawn. In 1993 an outline planning application [Ref CM/93/D/129] for a supermarket, petrol filling station and athletics arena was refused. Later that same year another outline planning application [Ref CM/93/D/507] for a supermarket and petrol filling station was also refused. In 2009 a planning application [Ref CM/20090291] for a 6,022m<sup>2</sup> supermarket and petrol filling station in the north-west corner of the site was refused and the SoCG [CD39] confirms that the rationale was one of highway impact.

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<sup>3</sup> Source of quote: paragraph 16 of Landscape SoCG, DS5.

<sup>4</sup> Source of quote: paragraph 2.6 of the SoCG, CD39.

13. The SoCG [CD39] continues by saying residential development of the site was considered at the LP Inquiry in 1998. The subsequent Inspector's Report notes that "*...the Council accepts... [the site] ...is sustainable in terms of proximity to services in Morpeth and that it has few landscape features of importance. It is also relatively close to the railway station. The land is of no great significance in agricultural terms - it is not best and most versatile land. Against these matters, there is concern that the site lies entirely in the open countryside and that it is prominent in the landscape with little or no containing features. The Council is concerned that development here could set a precedent for further southward encroachment, whittling away the gap between Morpeth and Hepscott. Nevertheless, in 1974 an Inspector concluded that an appeal concerning development in this location should be allowed albeit that conclusion was overturned by the Secretary of State.*"<sup>5</sup> This last point is plainly relevant to the site's planning history although no copy is available.
14. The Inspector's Report concluded "*It seems to me that, on balance, the land south of Stobhillgate should be given further consideration as a housing allocation for 210 dwellings. ...a compelling argument is that the site is capable of development within the Plan period irrespective of the provision of new roads for access purposes. The uncertainty of timing associated with, for example, the ABR or A1-SENLR would not affect progress with the site. This must be a factor to which serious consideration is given. I appreciate the Council's concern that a precedent might be said to be set for further expansion southwards. However, it was accepted that this was not a concern with the present site. I agree with the Council that there should be no reference to what the site might accommodate beyond the Plan period. There is at present no defensible boundary to the south of the site and the danger of coalescence with Hepscott is a matter which should be treated seriously in the longer term. The danger could be allayed...by the extent of the site being defined by landscaping as part of a planning application, and the Local Plan itself could ensure that further southward extension is prevented.*"<sup>6</sup> It should be recorded that the Council did not accept the Inspector's conclusion in this respect and no part of the appeal site was allocated in the adopted LP.

## The Proposals

15. The planning application, dated 9 August 2013, was made in full. It seeks planning permission for the development of 396 houses (use class C3), access, landscaping and associated infrastructure. The SoCG gives the breakdown of the proposed units to be: 10 no 1-bed homes; 128 no 2-bed homes; 136 no 3-bed homes; 108 no 4-bed homes; and 14 no 5-bed homes. Of the total, 30% would be affordable homes, comprising 119 dwellings and of these 22 would be apartments; 23 would be terraced houses; 10 would be detached houses and 64 would be semi-detached houses. The remaining 277 dwellings are broken down as 8 apartments; 28 terraced houses; 151 detached houses and 90 semi-detached houses. The affordable homes would be delivered by Tees Valley Housing, one of the joint Appellants, who are one of the leading social housing providers in this part of the country.

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<sup>5</sup> Source of quote: paragraph 5.17 xxiv) (f), page 95, CD5.

<sup>6</sup> Source of quote: paragraph 5.17 xxiv) (f), page 96, CD5.

16. The SoCG records that approximately 5.42ha of public open space, comprising areas of landscaping, tree planting, ponds and amenity open space, would be provided as part of the development, which represents 32% of the gross site area. The SoCG also records that there would be approximately 0.26ha (2,600m<sup>2</sup>) of play space, which would be distributed throughout the site in the form of LAPs, but focussed in the centre in the form of a LEAP.
17. The Presentation Layout [drawing No NE-18-06K] shows 2 vehicle accesses are proposed onto the A196 to the north of the appeal site. These would be linked by what is labelled as the *Main Boulevard Street* that would encircle the central areas of the proposed development, emanating from which would be cul-de-sacs that would serve houses around the periphery of the site. At the heart of the development a *Central Formal Green* is proposed that would be served by footways that permeate and encircle the development. These pass through the landscaped areas that would enhance the existing landscaped features of the site, such as the hedgerow and ditch that runs towards the north-east boundary of the appeal site. There are 2 central courts, proposed to the north and south of the central green, which comprise higher density terraced houses, but the majority of the housing would be more suburban in form.
18. A full schedule of the application documents and plans on which the SoS should determine the proposal is set out in section 6 of the SoCG [CD39]. Given that the Presentation Layout is somewhat unwieldy, by reason of its size, the Design and Access Statement provides a useful overview of the scheme. It includes diagrams showing how the design was arrived at, together with indicative plans showing the main movement corridors within the site and a useful summary of the proposed development.

### Environmental Impact Assessment

19. The development falls within the description of development at paragraph 10(b) of Schedule 2 of the Town and Country Planning (EIA) Regulations 2011, being an urban development project on a site exceeding 0.5ha. The Council issued a Screening Opinion, approved on 31 October 2013, which concluded "*...there are no likely significant environmental effects (positive or negative) arising from the development which will require the preparation of an EIA*"<sup>7</sup>.
20. The SoS has reviewed this conclusion and found that there would be some temporary effects in terms of noise and air pollution during construction phase, but this is not likely to be long term. The SoS found that there would be no likely significant long-term impacts in terms of noise, waste, contamination, flooding or complex construction. Any potential environmental impacts, which might include ecological matters, would be subject to mitigation as detailed in the appeal submission and no significant effects are likely. Consequently, whilst there might be some impact on the surrounding area as a result of this development, in combination with other nearby urban extension proposals, the SoS found that this proposal would not be of a scale and nature likely to result in significant environmental impact. On this basis, having taken into account the criteria in Schedule 3 to the Town and Country Planning (EIA) Regulations 2011, the SoS shared the Council's view that the proposed development would not be likely to have a significant effect on the environment.

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<sup>7</sup> Source of quote: Conclusion to Screening Opinion on page 6, CD32.

21. The SoCG [CD39] records the agreement between the main parties that the appeal proposals do not represent EIA development and that the submission of an ES is not required. Paragraph 3.11 of the SoCG says however that H & MT consider that the Screening Opinion undertaken by the Council fails to fully address the negative environmental effects of the development and that they will address the issues arising from this in their proofs of evidence. I have therefore reviewed the totality of the evidence put forward by H & MT to ascertain whether there is anything that would lead me to a different conclusion. However I find no reason to reach a different conclusion from the Council in this matter. I conclude that the proposed development is not EIA development and does not require an ES.

### Planning Policy

22. The DP includes the SP, which was adopted in February 2005, and the LP, which was adopted by the former Castle Morpeth Borough Council in February 2003. The only relevant saved SP Policy is S5, which proposes an extension to the Green Belt, but it says that the precise boundary should *be defined in Local Plans*. In the circumstances, as the Committee Report [paragraph 6.2, CD33] acknowledges, its only role is to establish the strategic framework for the preparation of the emerging LP. The introduction to the LP says "*The Plan is set in the context of the Northumberland County Structure Plan which was adopted in May 1996 and which addresses planning issues for the County and the provision of land for housing to the year 2006*" [my emphasis]<sup>8</sup>. It says that the LP "*...provides a statutory basis for the control, promotion and co-ordination of development for the period up to 1 July 2006*"<sup>9</sup>. This view is confirmed in the SoCG [CD39], which quotes from the report that was made to the Council's North Area Planning Committee on 20 February 2014 in support of an agreement between the main parties that the LP only provided for the development needs of the former District during the period 1991 to 2006.
23. Nevertheless the saving direction dated 31 August 2007 [CD4] confirms that a significant number of policies in the LP have been saved. The SoCG identifies the following saved policies to be relevant to the determination of the appeal, which will not be recited because they are set out in full in CD3:
- C1 - Settlement Boundaries;
  - C4 - Landscape Corridors;
  - C11 - Protected Species;
  - C13 - Wildlife Corridors;
  - C15 - Trees in the countryside and urban areas;
  - H2 – Phasing;
  - H15 - New Housing Developments;
  - R4 - Children's Play;
  - RE5 - Surface water run-off and flood defences;
  - RE6 - Service Infrastructure;
  - RE8 - Contaminated Land;
  - RE9 - Ground Stability;
  - MC1 - Morpeth: Settlement Boundary; and,
  - MC3ii) - Morpeth: Landscape Corridors.

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<sup>8</sup> Source of quote: Paragraph 2.1.1 of the LP, page 5, CD3.

<sup>9</sup> Source of quote: Paragraph 2.1.3 of the LP, page 5, CD3.

24. Paragraph 215 of the Framework says due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The SoCG records that all main parties subscribe to the view that the LP cannot be given full weight. I shall outline the position taken by the main parties as to weight in my summary of their cases, below, and express my view on the matter in my conclusions.
25. In February 2013 the Council issued a consultation document setting out the *Preferred Options* for the CS for the County of Northumberland. The Foreword to that document [CD6] explains that in summer 2012 the Council undertook extensive engagement on the CS *Issues and Options* document. This earlier work was taken forward into a further consultation document setting out the CS *Preferred Options for Housing, Employment and Green Belt*, which is dated October 2013 [CD7]. The SoCG records agreement between the main parties that the CS can only be given limited weight in this appeal given that it is at a very early stage of preparation and that it is the subject of unresolved objections [CD39, paragraph 4.13]. H & MT disagree with this view and in the circumstances I express my view on the matter in my conclusions.
26. Paragraph 7.12 of the CS [CD7] says it plans for the provision of 24,310 new dwellings in the County of Northumberland over the 20-year plan period from 2011-2031. Tables 7.1 and 7.2 break this down by area. The requirement for the Central Northumberland Delivery Area, which includes Morpeth, over the plan period, is 6,270 dwellings or 314 dwellings pa. Morpeth is identified in Table 7.2 as a main town within the Delivery Area and the equivalent figures are 1,500 dwellings or 75 dwellings pa<sup>10</sup>. The SoCG records the Council's position to be that this scale of housing delivery is necessary to meet the full, objectively assessed housing need. Table 7.4 of the CS identifies the affordable housing target for the Central Northumberland Delivery Area to be 30%. Paragraphs 9.76-9.85 of the CS set out the preferred approach to the settlement of Morpeth and proposes "*...that the majority of development should be located to the north of the town... [with additional] housing land for approximately 200 dwellings...to the south...*"<sup>11</sup>.
27. The SoCG observes that the CS proposes an extended Green Belt around Morpeth. However the appeal site is excluded from the proposed Green Belt extension and the SoCG draws attention to the following passage in the CS: "*In relation to the southern boundary, the preferred option would allow for some development during the plan period at South Loansdean and limited long term development potential, during the next plan period, south of the A196. It is considered that the preferred southern boundary would retain the rural character of the rising ground to the south and ensure continued separation between the town and Clifton and Hepscott*"<sup>12</sup>. The SoCG records agreement between the main parties that the CS envisages residential development at the

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<sup>10</sup> For completeness I should draw attention to footnote (a) to Table 7.2, which refers to working with the Morpeth Neighbourhood Plan Group in relation to how this figure will form part of the housing allocation for that larger area, which includes 4 adjoining parishes.

<sup>11</sup> Source of quote: paragraph 9.81, page 87, CD7.

<sup>12</sup> Source of quote: paragraph 8.27, final bullet-point, pages 64/65, CD7.



appeal site during the next plan period, from 2031. H & MT disagree and in the circumstances I express my view on the matter in my conclusions.

28. The SoCG does not deal with the NP, but I consider that it forms part of the emerging DP for the area and so it is a material consideration in this appeal. At present the NP is however at a very early stage in its gestation. An *Issues and Options Consultation Report* [CD8] was the subject of consultation for a 6-week period ending in October 2013. The results of that consultation are being taken forward in the preparation of policies, proposals and allocations. Although the *Issues and Options Consultation Report* anticipated that the draft NP would be the subject of a further round of public consultation in Spring 2014 that does not appear to have happened to date. The Inquiry was told that there would be a public consultation later this year. I express my view on the weight to be attached to the emerging NP in my conclusions.

### **The Case for Northumberland County Council**

29. The Council's putative reasons for refusal form the basis of the position that it adopts in this appeal but it also makes submissions on the application of paragraph 14 of the Framework. This means that its opposition to the appeal is not founded on: its effect on flooding and sewage systems; whether existing schools have the capacity to accommodate children generated by the proposal or contributions are required; whether existing residents' living conditions would be harmed by reason of noise and disturbance; or the weight to be attached to emerging policies and whether it is justifiable to dismiss the appeal on grounds of prematurity. The Council agrees that the need for affordable housing has been addressed by the submitted section 106 agreement.
30. The DP provides the starting point for the determination of this appeal and in this instance the key component is the LP, but it is conceded that this was not intended to regulate housing land supply beyond 2006. The Council agrees, moreover, that it is unable to demonstrate a 5-year housing land supply. It relies on the findings of the Inspector in the recent Loansdean appeal in this regard insofar as the Inspector found that the CRCA is the appropriate area of consideration in this context and that no buffer should be added<sup>13</sup>. The Council therefore accepts, in the context of paragraph 49 of the Framework, that the relevant LP housing policies, including C1 and MC1, are out-of-date and that weight should not attach to them. However it considers that the remaining LP policies are generally compliant with the Framework such that significant weight continues to attach to them. On this basis, as Mr Hollowood conceded in xx, the reference to a policy vacuum is overstated. It is however agreed that limited weight should be attached to the draft CS.

### ***Effect of the proposed development on the area's character and appearance***

31. The Council's case is that the appeal site is well-connected to the surrounding countryside, distinct and clearly separate from Morpeth. The development would significantly damage and not improve the transition between the settlement and countryside and would not represent a natural '*rounding off*' of Morpeth into urban fringe land. The development would, on the other hand, result in a substantial, prominent and irreversible urban intrusion into open,

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<sup>13</sup> See paragraphs 11, 12 and 20, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

intact, attractive, productive agricultural countryside and loss to the existing setting of Morpeth. It would also, importantly, impinge significantly and physically into the landscape that separates Morpeth from Hepscott.

32. The Council points to Mr Smith's Photomontage 1 in comparison to the existing photograph at Viewpoint 1A to illustrate the scale of change, its prominence and the serious adverse impact compared with the current character and views of the appeal site, noting that it says the bridge on the A196 over the railway, which represents the eastern end of the site, is 530m away. It says that this view would only be obtained if one assumed that the Road Safety Audit does not, as Mr Craig conceded in xx it might, result in increased hedgerow loss.
33. The Council says it is fundamental to the Appellants' case that the appeal site is part of a swathe of land around south-east Morpeth that should properly be considered to be urban/rural fringe land, as shown on Mr Smith's drawing No S/JNS/3. Mr Hollowood appeared to agree this description in xx after some, perhaps understandable, hesitation. The proposition that the appeal site is part of a swathe of urban fringe land informs and underlies Mr Smith's characterisation of the sensitivity of the local landscape as "*low*"<sup>14</sup>. In contrast PDP [CD31, page 14] and Mr Walker agree that it is "*moderate*".
34. The Council says that this plank of the Appellants' case should be rejected on the evidence for 5 reasons. First it is contrary to the Landscape SoCG [DS5, paragraph 17], where the main parties agree the appeal site "*along the north and west boundaries*" is visually influenced by the existing settlement only "*to some degree*". Second it is contrary to the LP Inspector's characterisation of the site as "*entirely in the open countryside*" [CD5, page 95], noting Mr Smith agreed in xx that there was no material change in physical circumstances since that report in relation to the north and west boundaries of the site. Third it finds no support in the Key Land Use Impact Study [CD13, CD14]. Fourth Mr Smith agreed in xx that it finds no substantial support in the Landscape and Visual Impact Appraisal [CD31], submitted on behalf of the Appellants. Fifth the site is in active agricultural use with no particular evidence that its use or enjoyment as a whole is affected by the presence of roads, footpaths and residential development alongside its northern and western boundaries. In the Council's view the appeal site remains a large tract of unspoilt countryside prominent in views along the entire northern and western boundaries of the site and the environs close thereto.
35. The concept of "*containment*" is a second major plank of the Appellants' case. This is contrary to what is seen on the ground and what the LP Inspector observed. The basis of his characterisation of the site as "*prominent in the landscape with little or no containing features*" [CD5, page 95] remains valid in physical terms, as Mr Smith agreed in xx, so far as the site's northern and western boundaries are concerned. Mr Smith further agreed in xx that there are prominent views of the appeal site from Choppington Road, but in reality the Council says they are more widely available and this would be even more so if the appeal site was developed as proposed. It describes Mr Walker's

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<sup>14</sup> Note: DS39 says Mr Smith characterises it as 'poor' but Table A14 actually uses the word 'low'; in substance the point of contrast is however still valid.

viewpoints and photographs as a clear and helpful evidence base from which to appreciate the site's appearance and its contribution to the area's character.

36. In the Council's view any attempt to draw parallels between the appeal site and the 'self-containment' that is evident at Loansdean simply serve to underline the prominence, openness and lack of containment of the appeal site. Yet Mr Smith was adamant that the site at Loansdean, where one boundary alongside the A197 is defined by pines, subject of a TPO, and a hedgerow, is as visible as the appeal site, which has 2 boundaries alongside the A192 and A196 separated by hedging and visible in forward views from open space around the roundabout and when travelling south on the A192. The Council anticipates that the site inspection would reveal the fallacy of this comparison. In its view the appeal site lacks precisely that self-containment that the Loansdean Inspector concluded mitigated the modest effect of that development on the character and appearance of that area<sup>15</sup>. Endeavours to draw comparison with the sites at St George's Hospital and land south-west of Northgate Hospital fail on the facts. Both are north of Morpeth and closer to services within it; one is part of a wider planned development in conjunction with the proposed MNB and the other is genuinely urban fringe in character.
37. The significance of the adverse impact of the proposed development in terms of landscape character and visual impact is underlined by its being proposed along 2 gateway routes into Morpeth, to use Mr Smith's description. The strategy in the emerging CS is designed precisely to avoid adverse impact on the character of the town "*or its gateways*" [CD7, paragraph 9.82]. Although Mr Hollowood refers to Morpeth extending in plan form further south along the western side of the A192, that housing is claimed to have little influence on the perception of the gateway in fact. Finally and separately, the proposed scheme would impinge physically on the landscape that separates Morpeth from Hepscott by virtue of a large area of open countryside being permanently lost.
38. In the Council's view attempts to draw support from identification of the site in the SHLAA and the terms in which it is described there are entirely without foundation. The SHLAA is about the availability, suitability and deliverability of land, rather than the sustainability of development proposals. The SHLAA is not intended to and has no planning status [CD10, page 3]. The proposed exclusion of the site from the Green Belt is also not an invitation to grant planning permission in the context that, as Mr Hollowood agreed in xx, the proposal is not for "*limited*" development of the site or for its development in the "*long term*", i.e. "*during the next plan period*", and is therefore contrary to the emerging strategy in the CS [CD7, paragraph 8.27].
39. For all of these reasons the Council says that this particular proposal for the development of this site now would conflict with important aspects of the Framework and cause really significant adverse effects on the character and appearance of this part of Morpeth.

### ***The effect of the proposed development on the local road network***

40. As Mr Ketley's evidence explains, the fact that Morpeth is a constrained town centre, with several roads and junctions operating under stress and at full

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<sup>15</sup> See paragraphs 47 and 86(iii), appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

capacity at peak times, alongside ambitions for significant housing and employment growth, are recognised as key parts of the justification for the MNB. Whereas Mr Hollowood in xx rejected the existence of a serious congestion problem, Mr Craig accepted in xx that there exists congestion in Morpeth that needs to be alleviated. In the context that the Government are willing to commit over £30m of public money to delivering the MNB on the basis of its understanding of highway conditions in the town and their effects, the Council says Mr Craig's view is to be preferred. It does not assist to deny or diminish the existence of the existing problem.

41. After considerable delay the respective highways experts agree that the WSP Paramics base micro simulation model is an acceptable representation of the congestion that is currently observed in Morpeth. The Council attaches particular weight to the AM and PM peak hour figures agreed during the course of the Inquiry; see in particular DS9. Although the results of the model are presented in seconds these are averages and not themselves peak delays and every second's delay represents an hour's delay spread across the network, as Mr Craig agreed in xx. Such congestion is harmful economically, to the local environment and globally in terms of greenhouse gas emissions [Mr Craig xx].
42. The Council considers that there is a high degree of certainty that the MNB will proceed, but of course there remains no guarantee that it will do so, as Mr Hollowood acknowledges<sup>16</sup>. The SoS should therefore properly consider the scenario that the MNB might not proceed, as Mr Craig accepted in xx. In that scenario, the proposed development would add 83 seconds, on average, to flows in 2021, which is agreed to represent an increase of 29% [DS18.1]. The output of the model demonstrates that the effect of the recently permitted Loansdean scheme on traffic flows is much less than the appeal site because of that site's location relative to the A1 and the mitigation proposed at Mafeking roundabout and in terms of signal phasing. The effect of the development on congestion in Morpeth in this scenario should, as Mr Jolley explained, properly be considered to be "severe" in terms of paragraph 32 of the Framework.
43. The highway network within Morpeth is recognised to be operating under significant stress due to its operating at or near capacity in key areas and junctions. The proposed development would add significantly to existing congestion. For the reasons Mr Jolley explains in detail it would also diminish the gains that the public investment in the MNB is intended to secure.
44. The agreed data shows, as Mr Craig agreed in xx, that in the 'MNB + Stobhill + Loansdean' scenario, flows in 2021 within the study area are predicted to be at their existing level, even allowing for a relatively modest contribution from the Loansdean development. The Council acknowledges this outcome would not be "severe" in terms of paragraph 32 of the Framework [Mr Jolley xx]. That outcome is only arrived at by negating an important part of the benefit of very substantial public investment by authorising development that does not accord with the planning strategy underlying it<sup>17</sup>. Notwithstanding that public investment would avoid an otherwise "severe" effect, the Council considers

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<sup>16</sup> Paragraph 8.18 of Mr Hollowood's proof.

<sup>17</sup> Mr Craig agreed in xx the DoT justification was founded on the CS.

that substantial weight should attach to the harm resulting from failure to realise this important part of the gains intended to be secured by the MNB.

***Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply***

45. Following *Tesco*<sup>18</sup>, the proper interpretation of national planning policy is a matter of law. In *William Davis*, the High Court accepted the submission of leading Counsel for the SoS "...that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development" because "It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development"<sup>19</sup>. The claimant's submission to the contrary in that case was central to their challenge and its rejection is therefore part of the ratio decidendi of the judgment and binding on the decision maker here<sup>20</sup>.
46. Mr Hollowood has referred to a number of other judgments and says that they conflict with *William Davis* but in the Council's view they do not. *Tewkesbury*<sup>21</sup> did not raise the issue of whether paragraph 14 of the Framework applied only to sustainable development and neither did *Colman*<sup>22</sup>. Both of these cases were referred to in *William Davis*<sup>23</sup> and neither was, clearly and rightly, considered by the High Court or leading Counsel to contradict or confound the proper interpretation of paragraph 14 of the Framework. *Stratford*<sup>24</sup> pre-dates *William Davis* but does not appear to have been cited. In the Council's view, since Mr Maurici appeared as Counsel for the SoS in both cases this was no error and in any event it says that *Stratford* does not bear on the proper interpretation of paragraph 14 of the Framework.
47. Mr Hollowood also referred to the judgment in *Dartford*<sup>25</sup>. In the Council's view however *Dartford* confirms that paragraph 14 of the Framework should be applied only to sustainable development. It draws attention to the following passage: "I agree with Lang J in her conclusion that it would be contrary to the fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development"<sup>26</sup>. The Council points to paragraph 55 of the transcript and says it recognises that judgments on sustainability and the application of an "additional presumption" at paragraph 14 of the Framework

<sup>18</sup> *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.

<sup>19</sup> Source of quote: paragraph 37 of the judgment of *William Davis Ltd and Jelson Ltd v SSCLG* [2013] EWHC 3058 (Admin).

<sup>20</sup> The ratio decidendi is the key legal reason for a judicial decision and as an administrative tribunal the SoS is bound to follow the ratio of a High Court judgment.

<sup>21</sup> *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin).

<sup>22</sup> *Anita Colman v SSCLG* [2013] EWHC 1138 (Admin).

<sup>23</sup> See paragraphs 33 and 35 of *William Davis Ltd*.

<sup>24</sup> *Stratford on Avon DC v SSCLG* [2013] EWHC 2074 (Admin).

<sup>25</sup> *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).

<sup>26</sup> Source of quote: paragraph 54 of the judgment of *Dartford* [DC5].

- are discrete<sup>27</sup>. Accordingly, in the Council's view, there is particular merit in clear separation and identification of these discrete issues in a SoS report.
48. The Council says the rejection, in *Dartford*, of the necessity for a formulaic, sequential or standardised approach to the determination of whether a development is, in fact, sustainable, falls short of a disagreement with the ratio of *William Davis*. It therefore commends the applicability to the current appeal of the *William Davis* approach. It says this is underlined by the terms of the SoCG [CD39, paragraph 5.8], which embodies it. It says that this is further underlined by the approach of the Inspector in the Loansdean decision [DC4], with which the Appellants seek consistency of decision making.
49. Mr Hollowood has also drawn attention to recent appeal decisions. The Council says that the Inspector's reasoning at IR8.20 of the Droitwich Spa appeals<sup>28</sup> is, with respect, seriously flawed for 3 reasons. First it is not necessary that paragraph 14 of the Framework should be expressly qualified because it applies only to sustainable development on its face, as per paragraphs 7 and 8 of the Framework. Second the content of the Framework as a whole provides the means by which sustainability is to be assessed. Third it is incorrect to contend that any, let alone 3, judges have disagreed with Lang J such that another interpretation is available. The Council observes that the SoS simply "notes" the arguments at IR8.20 and the observations of the High Court in *Dartford*, rather than expressing agreement with either<sup>29</sup>. Moreover since the SoS found that the proposed development was sustainable in any event the point did not fall to be determined. Turning to the Tewkesbury appeal<sup>30</sup>, the Council says the Inspector was incorrect to consider that it was appropriate to treat the factual narrative at paragraph 5 of the *Colman* judgment as if it were part of the Court's decision and to conclude that she was therefore entitled to choose between 2 conflicting authorities because there were none.
50. For all of these reasons the Council says that the SoS should determine the current appeal properly in accordance with the SoCG [CD39, paragraph 5.8] because: (i) this agrees with the approach that Counsel for the SoS advocated to the Court in *William Davis* and with which the Court agreed; (ii) *Dartford* has not subsequently disagreed or disapproved that approach; and (iii) it accurately reflects what the Framework says and what it is about.
51. In that context, the Council accept that the proposed development would be economically sustainable. So far as the social role of sustainable development is concerned, the Council has acknowledged that it does not have a 5-year housing land supply and that development of the appeal site would, as a matter of fact, contribute to boosting housing supply in accordance with paragraph 49 of the Framework. The Council also readily acknowledges that the provision of 119 affordable dwellings in an area of market and affordable housing shortfall serves to fulfil the social role of sustainable development. These roles are satisfied independently of consideration of the site and its location, and the effect of the development. The Council is however concerned about the effect of the development on the character and appearance of the

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<sup>27</sup> Source of quote: paragraph 55 of the judgment of *Dartford* [DC5].

<sup>28</sup> Appeal references APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426.

<sup>29</sup> Source of quote: paragraph 12 of the decision letter of the SoS dated 02 July 2014.

<sup>30</sup> Appeal Ref APP/G1630/A/13/2209001.

area and the local road network. In its view these concerns prevent the appeal proposal from properly being considered to be sustainable development.

***If the development is sustainable, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits***

52. The Council says that this is a different and wider-ranging balancing exercise from that involved in consideration of whether the proposal is for sustainable development at all.
53. Dealing initially with adverse impacts the Council says the site would cease to fulfil its current role, and the development would not respect the character of the area or the intrinsic character and beauty of this part of the countryside surrounding Morpeth, contrary to the fifth core planning principle in paragraph 17 of the Framework. The proposition that these impacts are agreed to be, for the most part, localised, as claimed by Mr Hollowood in chief, does not alter their ready public availability and magnitude. The Appellants have referred to increased public accessibility, but little weight attaches to that in the context that the character of the site would be transformed from rural to residential and the increased accessibility reflects or is part of that transformation.
54. The proposal fails to support reductions in greenhouse gas emissions and congestion by supporting a pattern of development that facilitates the use of sustainable modes of transport, contrary to paragraph 30 of the Framework. Mr Craig agreed in xx that proposals that do neither of these things are not to be encouraged. Contrary to Mr Hollowood's evidence in chief, the Council considers that the proposed development's contribution to delays in the "No MNB", as well as the MNB, scenarios has been clearly demonstrated.
55. The Council considers a further disadvantage of the proposal to be that it would not be within acceptable walking distance of local services. It is not readily apparent what bearing the quality of that provision compared with provision elsewhere, as opposed to the distances involved, might have upon the propensity to walk to it. The key points to be drawn from the agreed table [DS18.2] are that the site is some considerable distance from local services and that other permitted developments are very much closer, noting that particular circumstances attach to St George's Hospital and both sites in the vicinity of Northgate Hospital. The site is also not well served by public transport by reference to PTAL and less well-served than, say, Loansdean. It is also not well-served by off-site cycling infrastructure. This is contrary to the eleventh core planning principle in paragraph 17 of the Framework.
56. Turning to benefits the Council accepts that substantial weight should be given to both the contribution that the proposed development would make to housing land supply and the supply of affordable housing. That said the Council draws attention to the fact that it is actively releasing or supporting the release of substantial land for housing in Morpeth. It did not oppose the appeal proposals for 200 dwellings at Loansdean. It has recently granted planning permission for 255 dwellings on land south-west of Northgate Hospital [DS6] even though that land was allocated for employment purposes. It also draws attention to an impending application for 395 dwellings at St George's Hospital which, the Inquiry was advised, can proceed without the MNB. In the Council's view this demonstrates that it is effectively looking for

solutions, not problems, in accordance with paragraph 187 of the Framework. The stance that it has taken in continuing to resist this appeal is not, it says, symptomatic of an attitude contrary to that advice.

57. The Framework does not, however, adopt the provision of housing and affordable housing as an "*overriding objective*" and Mr Hollowood's suggestion that it does<sup>31</sup> undermines his contribution to a balancing exercise properly in accordance with paragraph 14 of the Framework. The Council accepts that economic benefits would flow from implementation of any planning permission that is granted on this site, although the benefits claimed in terms of new homes bonus and Council Tax should be discounted from this exercise. Mr Hollowood says that important weight attaches to flooding advantages and ecology net gains, but the Council does not agree that these add real force to the case in favour of granting planning permission in this particular case. The Foreword to the Framework makes clear, in effect, that development proposals should routinely feature a high standard of design and it is not considered, in that context, that the proposed design is such as to constitute a benefit.
58. On balance the Council considers that the adverse impacts summarised above are genuinely significant, have been demonstrated, and do significantly outweigh the benefits of the proposed development when viewed in their proper context. For all of these reasons the Council requests the SoS to dismiss this appeal.

### **The Case for Barratt, David Wilson Homes North East & Tees Valley Housing**

59. The proposed development has generated very strong feelings, which the Appellants acknowledge to be inevitable for a development of this scale and magnitude. However 3 strong points need to be made at the outset:
- i. It is not proper, lawful or appropriate for this Inquiry to seek to change Government policy. The vast majority of objections made at the Inquiry have completely ignored the realities of Government policy, which seeks to significantly boost the supply of housing. The Loansdean Inspector rightly described it as the "*overarching aim*" of the Framework<sup>32</sup>. The country is currently not building enough houses, which is a significant problem that the Government could not ignore. Since March 2012 the position of the Government has been clear: (i) every effort should be made to identify and then meet the housing needs of an area; (ii) the supply of housing should be boosted significantly; (iii) applications for housing should be considered in the context of the presumption in favour of sustainable development; (iv) LPAs must identify immediately developable sites sufficient to supply all the new homes that are needed over the next 5-years; and, (v) it is necessary to make sure that the reformed planning system provides enough land to build the houses that England's next generation so desperately needs<sup>33</sup>.
  - ii. There is a real issue in the UK currently where there is a perception that development is bad and harmful, but the Appellants consider that is

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<sup>31</sup> Paragraph 13.2 of Mr Hollowood's main proof of evidence.

<sup>32</sup> Source of quote: paragraph 31, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

<sup>33</sup> References are to: (i) paragraph 17 of the Framework; (ii) paragraph 47 of the Framework; (iii) paragraph 49 of the Framework; and (iv) & (v) Boles speech on housing in January 2013.



simply not true. Development can be and usually is a force for good. The excellent new shopping centre in Morpeth is given by way of example. New housing is equally important and every settlement in the country has evolved and grown over time largely to the benefit of that settlement. Morpeth is the fourth biggest settlement in Northumberland and yet only 14 houses have been built pa in the past 14-years. Simply put that is the reason why there are so many planning applications for housing at the moment. There is a great need because the pent up demand is enormous. The Government's planning policy is making the difference by making it a requirement to meet housing need.

- iii. This Inquiry has heard from the haves, ie those who have a house and live in comfort and security. Understandably and rightly the planning system is directed principally towards those who need houses, not those who currently have them. They have not been heard at this Inquiry but it is necessary to take account of their needs. The accepted evidence at the Loansdean Inquiry was of 18 applicants for every affordable housing unit locally. This cannot be ignored and burying one's head in the sand is not acceptable. Responsible and compassionate people, bodies and organisations need to stop talking and take action. It is necessary to think about those who are in rented accommodation, first time buyers, those starting a family, those who are homeless and those who wish to move closer to their families. Their needs are critical and need remedying the most. Those needs are accepted and recognised by the LPA and the Housing Officer, and should be given priority.
60. The Appellants acknowledge that this is a large development and yet a large development brings large benefits. These include the 396 houses, which will make a significant contribution towards housing need, 119 of which will be affordable houses, which will make a significant contribution towards affordable housing and meeting the compelling need which exists. In this broad context the Appellants address the case under 6 main headings.

### ***The legal and policy parameters that dictate the balancing exercise***

61. The first is a legal issue, namely how to apply the contents of paragraph 14 of the Framework to this development<sup>34</sup>. There are 2 rival interpretations, namely the approach in *William Davis* and that in *Dartford*, and the Appellants reject the Council's attempt to distinguish the cases. The Appellants strongly contend that the *Dartford* approach is correct for the following reasons:
- i. It is far more logical. It is simply inconceivable to create a sequential approach which requires paragraph 14 only to be activated once a judgment has been reached as to whether the development is sustainable. If that was the proper approach it is simply inconceivable that the Framework would not have said that; it would be bizarre.
  - ii. Paragraph 14 of the Framework is explicit that it applies to all development proposals, which are then tested for sustainability; it does not say it applies only to those that pass paragraph 7 of the Framework.

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<sup>34</sup> Note: since reference has already been made to all judgments and appeal decisions referred to under this head no purpose would be served in repeating those references here.

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- iii. The policies of the Framework which paragraph 14 refers to are clearly set out in paragraphs 18 to 219. Paragraphs 7 and 8 are therefore excluded by application of paragraph 14 and are not to be referred to in the balancing exercise.
  - iv. Paragraph 49 only refers to the application of paragraph 14, not 7 or 8.
  - v. The paragraph 7 preliminary stage is redundant in practice. As Mr Ketley accepted in xx everything that is considered in paragraph 7 would be considered under paragraph 14 so why do the same exercise twice?
  - vi. There are 4 High Court cases which endorse the *Dartford* approach, namely *Dartford*, *Stratford*, *Tewkesbury* and *Colman*. That is 4 High Court judgments rejecting the *William Davis* approach, which is a powerful majority in favour of this interpretation.
  - vii. There is the *Tewkesbury* appeal decision, which is an incredibly eloquent and correct interpretation of how paragraph 14 should operate.
  - viii. Finally the SoS decision on the Droitwich Spa appeal, dated 2 July 2014, draws on the Inspector's report which expressly rejects the *William Davis* approach and it is inconceivable that the SoS would not have said in terms if he disagreed with the Inspector's reasoning on this. Instead the SoS specifically draws attention to the *Dartford* case.
62. For these reasons the Appellants strongly endorse the view that the proposal needs to be considered in the context of paragraph 14 of the Framework. In order for the appeal to be dismissed the appropriate test is that 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. Even adopting the LPA's route Mr Ketley accepted in xx that even in the case of a development which was not sustainable it was still possible to grant planning permission after a balancing exercise, which in the Appellants' view must be the correct approach. It is therefore common ground that on either route there needs to be a balancing exercise. However the easy answer is to find the proposal to be sustainable.
63. In further submissions on this topic [DC6] the Appellants draw attention to what the judge in the *Dartford* case says at paragraphs 52, "*formulaic approach*", and 54, no "*sequential approach*", of the judgment. They point out that the Dartford Core Strategy has a policy that requires consideration of the sustainability of the site for housing development before the weighing of benefits and disbenefits but say that does not disturb the principles established by the judgment. In the Appellants' view the transcript rests on all fours with the submissions made in closing, namely that the test for dismissal is whether the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. In any event the Appellants submit that the proposals are sustainable development.

***The factors which are agreed by the principal parties to be in favour of the granting of planning permission***

64. Under the second key heading the Appellants identify 9 factors that the principal parties agree to be in favour of granting planning permission:

- i. ***There is a need for housing now to comply with the requirement for a 5-year housing land supply.*** The LPA accepts that (i) the DP is out-of-date; (ii) the policies in the DP relating to housing and settlement boundaries are out-of-date; (iii) the Council has no current 5-year housing land supply; (iv) the same weight should be applied to any deficiency in housing land supply, regardless of quantum [Mr Ketley xx, but endorsed by Mr Hollowood in chief]; (v) on this basis there is not compliance with advice in the Framework, including paragraph 47; and (vi) consequently, as the Council has acknowledged, substantial weight must be given to this factor in favour of granting planning permission. In the Appellants' view the weight to be given to this factor cannot be underestimated. In the context of a national housing crisis it is the overarching requirement of the Framework to significantly boost the supply of housing. This Council has completely failed to meet either that requirement or come forward with a DP to show how they expect to meet this requirement of policy. It must not be forgotten that there remains real uncertainty over new housing supply despite the grant of planning permissions in the recent past. Planning permission for 396 units would make a strong contribution to meeting that requirement.
- ii. ***There is a need for green field sites to come forward to meet that supply.*** The Inspector in the Loansdean appeal stated clearly that the development of greenfield sites was required to enable the 5-year land supply to be met and that there is no requirement in the Framework to prioritise brownfield delivery<sup>35</sup>. The LPA do not argue with that conclusion and Mr Ketley readily accepted in xx that in order to meet that need there would be a requirement to use greenfield sites. The Loansdean Inspector also contended that there is no reason why development should not come forward in south Morpeth in order to meet housing needs now. The Appellants say that must be correct. Moreover the acceptance of the need for greenfield consents is reflected in the decision the Council has recently made on the Persimmon site [DS6].
- iii. ***There is a need for permissions to be granted now.*** There is no alternative but to grant planning permissions now. The CS is at least 18 months from adoption, possibly longer in view of the need to start again in relation to employment provision in Morpeth in the light of the grant of planning permission on the Persimmon site. There is considerable work still to do on the CS and it is subject to many objections, which should not be underestimated. Housing needs to come forward now and substantial weight should be given to this factor.
- iv. ***There is a need for affordable housing to comply with the requirements of the Framework.*** There is no dispute between all 3 principal parties that there is a significant need for affordable housing in Northumberland. That was also the conclusion of the Inspector in the Loansdean appeal<sup>36</sup>. That is the strong view of the Council's housing officer [CD33] who supports the proposals and says that Morpeth is an area of high demand, low availability and low turnover of affordable houses. That need is critical. It is a key priority of the CS. Simply put

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<sup>35</sup> See paragraph 31, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

<sup>36</sup> See paragraph 33, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

there is a desperate and urgent need for further affordable housing in Morpeth and the whole of Northumberland. In that context H & MT claim that what will be provided here is not what is required. In the Appellants' view this argument should be set aside. The affordable housing provider that signed up on this scheme as a joint option holder is an approved partner of the Council. Noting that they are currently responsible for over 4,000 homes in the region, the proposition that they do not understand or know the requirements of those who seek affordable housing in this area is simply not credible. It is material that the same argument was made in the Loansdean Inquiry. The Inspector dealt with it succinctly in saying "*I have no reason to doubt that the proposed affordable housing would meet needs as identified by that organisation*"<sup>37</sup> [*Appellants' emphasis*]. It is also worth noting that the scheme offers 30% affordable housing despite the absence of a DP policy to require such provision, again as found by the Inspector in the Loansdean decision. His observation that "*...any affordable housing should be supported; the more so when it attracts the interest of an affordable housing provider*"<sup>38</sup> is, in the Appellants' view, trite but true.

- v. ***There will be benefits in terms of ecology.*** It is the agreed position of both main parties that the proposed mitigation measures and the creation of new habitats would mean that the environmental impact would be beneficial [CD39, paragraph 5.54, bullet-point 5]. In the Appellants' view this should be given significant weight.
- vi. ***There will be benefits in terms of design.*** The Framework confirms that design is important. The main parties agree that the appeal proposals represent high quality design, which is acceptable in terms of its proposed scale, layout, appearance, access and landscaping [CD39, paragraph 5.35]. It is agreed that the design of the proposed development is a material consideration in favour of the proposals and so it is submitted that significant weight be given to this benefit. Whilst the Council submitted in closing that it is not a benefit, having regard to the SoCG that is not fair. The issue between the parties is whether great weight should be given, not whether it is a material consideration.
- vii. ***There will be benefits in terms of flooding.*** Both main parties, together with the relevant statutory agencies, agree that the appeal proposals will reduce the risk of flooding in the surrounding area. The key point is that surface water run-off from the site will be reduced, in the Appellants' view significantly. There have been strong contrary views expressed at the Inquiry but without any substantive, forensic or qualified evidence in support. In the Appellants' view the reduction in run-off is unquestionably a benefit of the proposal and should be weighed in the balance in favour of the proposed development.
- viii. ***There will be benefits in terms of open space and landscaping.*** The proposals cover an area of 17.15ha of which 5.432ha, or 32%, would be public open space or landscaping. The provision of over 5ha of public open space is a distinct benefit of the scheme compared to the

<sup>37</sup> Source of quote: paragraph 34, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

<sup>38</sup> Source of quote: paragraph 36, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

current position where there is no public access to the site. This too is a benefit in favour of the proposal. Additionally a huge amount of planting is proposed. On the southern boundary in some places the area designated for landscaping would be as wide as 60m. In the Appellants' view that would be an incredible amount of land devoted to landscaping. On every side of the appeal site extensive planting is proposed, which would be of benefit to the development and the wider locality.

- ix. ***The proposal is sustainable development.*** It is the strong contention of the Appellants that the proposal is a sustainable development for 6 reasons: (i) in terms of economic sustainability the LPA accept that role is met. The development would generate significant economic activity for Morpeth and the whole County. The development would lead to very significant investment, the creation of jobs and the new homes bonus. All lead to a strong conclusion of economic sustainable development; (ii) in terms of social sustainability the LPA accept that the proposal meets that role and that must be right. The proposal would provide a supply of housing and create a high quality built environment that would be accessible to local services. In the Appellants' view it could not be more socially sustainable; (iii) in terms of environmental sustainability only a tiny point is made which alleges that the proposal does not comply in terms of landscape harm. Mr Ketley accepted in xx that there would be no harm to the built or historic environment. In terms of the natural environment there is no harm to flooding, ecology or biodiversity. Accordingly the sole issue is landscape harm; (iv) in that context the Appellants consider that, in undertaking the balancing exercise, that one factor should not lead to a finding that the development is unsustainable. They find the Council's view that it does to be perverse and simply not credible, particularly in view of Mr Walker's position that the harm is principally within 100 m of the site. The landscape harm could not be more local than is the case here and is no greater than on any housing scheme of this size; (v) what is required is a holistic and balanced assessment of all the factors to reach a judgment on sustainability. It cannot be right that one factor alone determines a conclusion of non-compliance. It is punitive in the extreme and turns the gist of the Framework, whose aim is to bring forward sustainable development, into a policy statement of refusal. It would be almost impossible for any large development of this magnitude to get a 100% pass rate, which the Council's approach demands; and (vi) finally one needs to look at the approach the LPA have taken at Loansdean and on the Persimmon site. In neither case has any allegation been made that either development would not be sustainable. The Council did not object to the Loansdean development and the issue was barely mentioned in the Officer's report on Persimmon [DS6]. It is therefore submitted that the Council's position here is contradictory.

### ***The factors which are alleged by the LPA to justify refusal***

65. Under the third key heading the Appellants say there are just 2 matters remaining which are alleged to justify refusal. Dealing initially with the harm to landscape caused by the proposal, the Appellants submit that this does not come close to justifying dismissal of this appeal for the following reasons:

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- i. The site currently has no access within it.
  - ii. The site has not got any landscape designations of worth or value on it either which reflects accurately the current value of it. Indeed there are no relevant designations either in close proximity to the site. Amongst other things there is no policy protection in either the LP or the CS for the gap between Morpeth and Hepscoth and this suggests that it is not worthy of retention. The Council's point about its intrinsic character and beauty does not, in the Appellants' view, reflect evidence at the Inquiry.
  - iii. The site falls within a character area which the retained landscape consultants of the LPA, LUC, concluded was the second least valuable in the whole County out of 108 areas. In the Appellants' view that is so telling and material.
  - iv. The site is accepted not to be needed for Green Belt in the CS.
  - v. The site is accepted to be suitable, available and deliverable in the SHLAA. It is unarguable that matters of landscape would have been considered in principle in making the judgment that the development of this site for residential was acceptable. An assessment of landscape impacts is specifically identified in the guidance which the Council assert they have complied with [CD43]. Moreover, on a related point, the SHLAA is also dependent on sustainability criteria and if that were not the case the SHLAA would be a waste of time because it would bring forward unsustainable sites.
  - vi. The site is accepted to be suitable for residential development in the longer term in the CS. Again a judgment in principle must have been reached that development could take place without unacceptable landscape harm.
  - vii. As Mr Walker conceded in xx, the longer distance views of the site post development do not justify dismissal.
  - viii. As Mr Walker also conceded in xx, any residential development of 396 units would materially alter views in the close vicinity of the site.
  - ix. The only impact is on views within the close proximity of the site. One of Mr Walker's views is from around 250m distant, but 5 out of 6 views are all within 100m of the site. On this basis the vast majority of harm to visual impact would be within 100m of the site.
  - x. This means that there is only a localised degree of harm within the immediate area of the site only.
  - xi. That harm must be viewed and accepted in the context that the need for additional housing in Morpeth requires both greenfield sites and sites beyond the settlement boundary, a point accepted by the Loansdean Inspector.
  - xii. The Appellants seek consistency with the Loansdean Inspector who, in their view, correctly concluded that harm did exist but that it was localised and not significant.

- xiii. In considering what would actually be seen post development, the Appellants submit that the design is of a high quality with substantial open space, which would be appropriate and restrained.
- xiv. Mr Walker also accepted in xx that there was significant room for additional mitigation through landscaping. The boundaries allow very large areas of landscaping and Mr Walker accepted that on every viewpoint the impact would be reduced in time over 15 years.
66. Turning to the harm caused by the increased traffic on the network, the LPA have 2 lines of attack. First if the MNB is not built it says the development would contravene paragraph 32 of the Framework and be severe in terms of impact. Second if the MNB is built then the allegation is that the benefits of the MNB would be lost and that justifies refusal. However the Appellants say there is no policy basis for this last contention in the LP, CS or the Framework.
67. The position of the LPA is that there is a high degree of certainty that the MNB will be built. No evidence has been called to contradict that position. Consequently even on the LPA's case paragraph 32 of the Framework is only contravened in the most unlikely future. It is a scenario which should be dismissed in any event because of 3 factors: (i) its high degree of unlikelihood; (ii) in that scenario the whole development strategy for Morpeth would be up in smoke and need to be revisited; and (iii) if that happens the arguments for this site become completely compelling as the evidence has shown that the only consequence of this development proceeding is a minor and trivial increase in journey times and therefore that only increases the justification for granting planning permission.
68. In the scenario where the MNB is built the Council's allegation is completely woolly because the benefits of the MNB will be lessened. The Appellants rhetorically ask where the policy justification for this ground of objection is. This question was put to Mr Jolley in an attempt to identify any policy basis for the argument but nothing was identified. This underlines that there is no policy justification for this position. There needs to be a distinction between arguments made to obtain funding for the MNB and planning policy which might justify dismissal of this appeal. It is the strongest possible submission of the Appellants that there is no policy justification for this argument. In any event express justification for the MNB is provided by its ability to cater for future growth and development traffic which includes this scheme. Rather than amounting to a breach of the justification for the MNB it is exactly what was envisaged which justified the arguments made by the Council to get funding.
69. In any event the actual delays that are forecast are tiny, less than one minute. The simple position is that the modelling results do not justify refusal for the following reasons:
- i. The only concern relates to one small part of a large network, namely Stobhill roundabout to Telford Bridge. There would be no impact on the rest of the network.
  - ii. The only impact alleged relates to journey time alone. There is no allegation relating to safety, capacity or need for infrastructure changes.

- iii. The current journey from the Stobhill roundabout to Telford Bridge takes less than 4 minutes which on Mr Jolley's own evidence is a reasonable time.
  - iv. The future journey time with both Stobhill and the recently consented Loansdean scheme is almost identical and again on Mr Jolley's own evidence this is a reasonable time.
  - v. What will happen is that a journey into the centre of one of the County's largest towns will take under 4 minutes to travel just over a mile by car. That is a completely reasonable time to travel such a distance in the AM peak hour, which is a period that is commonly recognised to be the worst case scenario for examining delay on any network.
  - vi. In other parts of the North-East that duration of time to travel such a distance during the school run period would be considered heavenly.
  - vii. The significant majority of people who are actually undertaking this journey are those who are either travelling to work or doing the school run. As the Inspector said in the Hartford appeal "*...it is not the aim of policy to protect the convenience of commuting car drivers*"<sup>39</sup>.
70. In reality there is simply no reasonable objection on this ground to the grant of planning permission, mindful that the test in the Framework is one of "severe" impact. In the Appellants' view this is simply not the case here. The benefits of the MNB upon the whole of the Morpeth network would still be material and significant compared to the proposed levels of traffic forecast in 2021.

***Other matters which need to be put into the planning balance***

71. Under the fourth key heading the Appellants identify 4 miscellaneous matters which are said to be material to this appeal.
72. The first, which is made by the Council and H & MT, is that the site is not that accessible. However the Appellants' strong contention is that the site is extremely accessible by alternative modes of transport. The LPA agree that the site is: (i) within an acceptable walking distance of the railway station [CD39, paragraph 5.27]; indeed this site is the closest emerging housing site to the railway station which is a huge advantage of this site; (ii) within an acceptable walking distance of schools [CD39, paragraph 5.27]; again the site is the closest to a primary school of all the sites; and (iii) in close proximity to employment opportunities [CD39, paragraph 5.27]; indeed the major employment area at Coopies Lane could not really be closer to this site. The only dispute is therefore in relation to accessibility to bus services and local shopping facilities. However on these 2 matters Mr Jolley readily accepted in xx that they did not justify dismissal of this appeal.
73. In terms of bus services: (i) qualitatively the bus services could not be closer to the site. Every single dwelling would be within 400m of one of the bus stops. There are 4 bus stops on the A192 and A196 which are, at most, 10m from the site; (ii) qualitatively the bus services allow access to Morpeth every

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<sup>39</sup> Source of quote: paragraph 14.45 of report APP/A0665/A/12/2179410 & 2179374, at Appendix B to Mr Craig's proof of evidence.



20 minutes on Service 2; (iii) qualitatively provide a school run to Chantry Middle School and allow access to Newcastle every hour on the southbound Service 44; (iv) qualitatively allow access to Cramlington every hour on the route 57a; (v) quantitatively the bus stops are served by 5 buses every hour; and (vi) there is no other proposed housing site in Morpeth which has more actual buses or the bus stops in closer proximity. It is a powerful combination and leads to a conclusion the proposal is very accessible by public transport.

74. In terms of accessibility to shops: (i) each proposed dwelling within the site is at worst within 1,200m of Sainsbury's, which is a state of the art local shop. It is an excellent convenience store and larger than ordinary; (ii) additionally there is a Premier shop, a Boots chemist, a Post Office and a corner shop all within an acceptable walking distance; and (iii) on any basis this can be considered to have excellent local provision within 1,200m of the site.
75. For these reasons the Appellants submit that the appeal site is excellent in terms of accessibility. It would enable prospective residents to get to local facilities by car, bus, rail, walking and cycling. On this basis it is said to pass the requirements of paragraph 35 of the Framework, which says that developments should be located to give priority to pedestrians and cycle movements, and have access to high quality public transport facilities. The Appellants reject Mr Jolley's reliance on PTAL in the context of Morpeth.
76. The second, which is made by H & MT, is that the development would cause additional flooding issues. H & MT make extensive and comprehensive allegations of harm in terms of both flooding and foul water, but in the Appellants' view this allegation is completely without foundation. Although the concerns of H & MT are understandable, given what has transpired in the past, the Appellants say the claims are misplaced. Amongst other things it is pointed out that Councillor Ashmore said he is not an expert in flooding.
77. In contrast 6 qualified, professional and reliable organisations and companies have expressed the view that the proposed development would be acceptable:
- i. First there was the professional judgment of M Design who are experts in flooding and hydrology. They are a professional consultancy with vast knowledge and experience. Their flood risk assessment is that the proposed development would be acceptable.
  - ii. The work of M Design was considered by the LPA who also have professional expertise, including a Suds Officer who knows all about Hepscott, who concluded that the development was acceptable. That is the second judgment reached by an expert in flooding that the proposal would be acceptable.
  - iii. Thirdly there was the consultation response of Northumberland Water who have vast experience in foul water by virtue of being the statutory undertaker for this geographical area.
  - iv. Fourth was the consultation responses of the EA who are the Government's statutory body dealing with flooding. They are one of the most knowledgeable and experienced bodies in the world in water and flooding. They were originally concerned about the proposal and so this was no rubber stamping exercise. Further work was done and the EA

- were satisfied on this basis that the proposal would be acceptable. That view was reached in December 2013.
- v. The Appellants then asked WSP to review the work undertaken by M Design in relation to flooding, for the purpose of this Inquiry. They came to the issue afresh. They did not carry out a FRA but a review of what was proposed. They concluded that the proposal would actually be beneficial in terms of flooding.
  - vi. Finally the EA were re-consulted and concluded that they had no further comments to make on the additional work undertaken [DS27].
78. Therefore there have been 6 different professional examinations of the effects of the proposed development on flooding and every single qualified and expert person has concluded that the proposal is acceptable, which contrast with the views of Councillor Ashmore. The Appellants regard his strong choice of words directed towards these professional assessments to be unfortunate. The allegation that the professional assessments have been incompetent is refuted. The professionals involved are obliged to reach judgments that are justified and there are consequences if those judgments are wrong.
79. The law on this is clear. A decision maker is obliged to give the views of statutory consultees, such as the EA, great weight. Reference is made to: (i) *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12, specifically paragraph 72 [DS40.2]; and (ii) *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406, specifically paragraph 110 [DS40.3].
80. Finally the Appellants say that this matter would be addressed in any event at a later date as a result of the 2 relevant and agreed conditions, which deal with surface water and foul water respectively. In the circumstances there is simply no informed basis for refusing planning permission on this basis. Although H & MT allege prejudice on the basis that the Appellants have not called a witness to deal with flooding it is said that no inference should be drawn because this is commonplace where issues are agreed between the main parties and there is no objection by a statutory consultee. By way of example the Appellants have also not called an ecologist.
81. The third, which is made by H & MT, is that there is not enough school capacity. The Council is the LEA for the schools within this administrative area. They can be considered to be '*the horse's mouth*'. The LEA's view is that there are sufficient spaces to accommodate the children who will come to live on this site and that judgment should be given overwhelming weight.
82. In order to make a lawful contribution the SoS needs to be satisfied that such a contribution is necessary. On the position of the LEA there is no requirement or necessity to make such a contribution. The Appellants therefore submit that it would not be lawful to make such a contribution in any event. Consequently, and correctly, no education contribution has been sought or offered.
83. It also shows that the concerns of H & MT are not reflected by the Officers who have the legal requirement to find spaces for children to be educated. That is a statutory requirement and cannot be underestimated. For all of these reasons there is simply no basis to contend that the LEA is wrong.

84. The fourth, which is made by H & MT, is that the development would prejudice the CS and NP. Since there is no contention by the LPA that the proposal would prejudice either the CS or NP, significant weight should be given to that conclusion. As Councillor Tebbutt said in closing, both plans are at an early stage. H & MT have persisted with this argument despite the conclusion of the Loansdean Inspector who concluded, in paragraph 27, that neither plan would be prejudiced by that proposal. In the Appellants' view that finding was correct and should be reiterated in this case. No evidence has actually been shown as to how there would be prejudice. Both plans are at a very early stage and are likely to be subject to significant change prior to adoption.

***The position of the rule 6 party and does it influence or change the planning balance***

85. Under the fifth key heading the Appellants say that whilst H & MT have very strong views they show a complete inability to adapt or change their evidence in the light of strong judgments that have been reached against them by the Inspector in the Loansdean appeal. That inspector found against H & MT on every single ground and yet they have not sought to amend their evidence to this Inquiry. The simple point is that all the points made by H & MT have been considered by the LPA who have objectively made judgments about those matters and only sought to oppose the development on the grounds of landscape and highways. None of the additional points raised by H & MT lead to a justification to dismiss this appeal.

***The conclusion on the planning balance***

86. The Appellants submit that it is clear that there are very strong factors which support the grant of planning permission. If the overriding objectives of the Framework are to mean anything and have actual teeth to bring about change in the supply of housing then it requires that this development must be granted planning permission. The only remaining grounds of objection of the LPA are the impact on the landscape and on highways. They inevitably amount to immediate change in the vicinity of the site and an average journey time of 4 minutes in the peak into the town centre post development. The simple truth is that both do not come close to justifying setting aside the overwhelming factors in favour of the proposed development.
87. The planning system demands difficult decisions. Of course it is difficult to grant consent because it will be against the wishes of some but the parameters of policy require now and as a matter of priority, more housing to be provided in this settlement and in the County as a whole. For all of these reasons the SoS is invited to grant planning permission in this case.

***The Case for Hepscott & Morpeth Together***

88. Hepscott Parish Council and Morpeth Town Council have been working together with others for almost 2 years in preparing a NP. Whilst happy to work together, they have reasonably concluded that they do not want the respective settlements to come too close together. Working with Morpeth Action Group, a community group who submitted a petition signed by 445 people at application stage, the respective Councils have formed an alliance known as H & MT to put forward the concerns of the local community at the Inquiry.

89. As a coalition of residents and elected representatives H & MT are deeply committed to the area, not for political reasons but out of genuinely belonging to, involvement with, caring for and knowledge of their community. H & MT take exception to the suggestion that has been made that local party politics have delayed the objective determination of the application. Whilst being committed to protecting and shaping the environment in which they live H & MT reject any claim that they are unrealistic or NIMBYs. Of the 10 main issues identified for discussion at the Inquiry [DC3] H & MT chose not to address the issue of noise and disturbance in its closing. The order which follows broadly reflects the importance of those issues for local residents.

***The effect of the proposed development on the local road network***

90. H & MT says that its concerns about congestion have been eloquently confirmed by those members of the public who chose to address the Inquiry. One expert stated that people only remember the worst, but one Mum who addressed the Inquiry reported that her young child had commented about the lack of delay whilst in the car going to school one day. It is the exception that proves the rule. Residents organise their lives around the pattern of traffic in Morpeth and know what the rules and the exceptions are.
91. The average AM peak hour journey time from the Stobhill roundabout to the Telford Bridge has been measured at 221 seconds. This figure does not reflect the experience of residents, especially in school time and in bad weather, both of which take up a significant proportion of the year. H & MT found that a straight run with no delays took 143 seconds at around 2100 hours on an evening where there was almost no other traffic on the road. Small increases in volume and breakdowns etc have severe impacts and cause gridlock, especially since no "rat runs" are available. Accordingly H & MP suggest that it is false to suggest the average peak time journey is only 221 seconds.
92. Witnesses repeatedly refer to the MNB, which is not and may not be approved. The SoS has to decide upon this appeal and, in due course, the MNB. It is perceived that the Appellants wish to take free advantage of major taxpayer funding, although to do so would significantly reduce the immediate benefit of the MNB and reduce its effectiveness within Morpeth over future years. The Appellants find this unimportant, claiming that cutting congestion in Morpeth was only one of the core aims of the MNB. The Appellants say the MNB was meant to benefit the whole town, but the LTP says "*The proposed Morpeth Northern Bypass is critical to the realisation of housing and employment growth ambitions in the North Morpeth Growth Area*"<sup>40</sup> [H & MP's emphasis]. It does not say anything about housing growth in the south of Morpeth.
93. The Appellants also consider that congestion is not a serious issue, despite the fact that the DoT's strategic case for the MNB recognises that "*Morpeth is a small town with a very constrained centre in which several roads and junctions operate at full capacity at peak times*"<sup>41</sup>. In addition it is claimed that the LTP identifies that part of the network from the Mafeking Roundabout to Telford

<sup>40</sup> Source of quote: paragraph 2.61, page 25, CD20.

<sup>41</sup> Source of quote: DoT Assessment of the MNB, at Appendix 2 to Mr Ketley's Rebuttal Proof.

Bridge to be "above capacity"<sup>42</sup>. Telford Bridge junction is said to be the second busiest junction in Northumberland, used by over 23,000 vehicles per day. In the view of H & MT "above capacity" is what it says and, wherever vehicles have to queue, environmentally unsustainable pollution is increased.

94. H & MT consider it would be impossible to create cycle lanes in both directions along the A192 due to the constrictions from the railway bridge, over Telford Bridge, through the town centre and beyond to both the Middle and High Schools. Mr Craig acknowledged that these constraints cannot be changed and said that if there is scope the Appellants would investigate the possibility of enhancing these routes. It was said that this could be investigated as part of a Travel Plan, but no money has been requested. Mr Craig admitted that, whatever the Travel Plan says, people would make their own choices regarding which mode of transport is most attractive to them. On a steep hill, such as that which characterises the route from the town centre to the appeal site, it is claimed that this is unlikely to be walking or cycling for any but the fittest or most daring. In addition, the agreed walking distances to the key facilities north of the river, including the Middle and High Schools, are way beyond what is accepted to be a maximum walking distance. All of this suggests that sustainable modes of transport are not attractive and that the most appropriate place for development is to the north of the town. The appeal proposals offer no transport improvements and would cause significant harm.

#### ***The effect of the proposed development on flooding and sewage systems***

95. This is considered to be of equal importance to the highway issue and indeed more so to those who have been affected by flooding. Paragraph 103 of the Framework says that when determining planning applications LPAs should ensure flood risk is not increased elsewhere. H & MT consider that this has not been robustly demonstrated during the Inquiry. The residents of Hepscoth have serious concerns about the increased flood risk which could be caused by the proposed development because they have already been flooded twice, in 2008 and 2012. This was despite supposed remedial work being undertaken by the EA to alleviate flooding in the catchment, which included 3 Suds and nearly 1km of new pipework. The Inquiry has heard of the real misery of flooding from victims, the people who have been flooded, and from a GP who spent years treating them. On this basis the decision maker needs to be very sure that the situation would not be made worse by allowing this appeal.
96. There have been 2 FRAs, the first by M Design and the second by WSP. H & MT assert that its case, that M Design's FRA is flawed, is strengthened by WSP's evidence and there appears to be no evidence that the latter has been accepted by the Council or the EA. In its view the presence of 2 FRAs is

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<sup>42</sup> Source of quote: Appendix 3 to H & MT's proof of evidence on Transport and Highways. It should be noted however that the source of this is said to be Figure 14 at Page 37 of the LTP [CD20], but that does not appear to be correct. It is possible that this extract derives from an earlier version of the LTP, because it is said to show the AM peak in 2008, or from another document that forms part of the evidence base that underpins the LTP; it is not clear. Whilst I have been unable to identify the source, the plan and key does appear to be self-evident for what it says on its face and so I am prepared to accept it at face value. The generic point, which is that the Mafeking Roundabout and Telford Bridge exceed capacity, is evident from other documents before the Inquiry, e.g. see Appendix 1 to Mr Ketley's rebuttal statement.

confusing, often contradictory and has never been explained. Both FRAs have serious flaws that are explained in detail in H & MT's written evidence.

97. The rationale underpinning the holding ponds and Suds is to prevent flooding, but the Appellants' plans and designs have to be robust and, under scrutiny, have to reassure people living downstream. In H & MT's view it is the job of specialists, including the designers, the EA and the Council, to do this. The evidence provided shows that the FRAs, the design and the models on which they are based are not sufficiently robust to do the job that is claimed or required. H & MT point out that none of the evidence presented at the Inquiry was contested and the various flooding experts did not attend. This is despite the identification of various errors and contradictions in the experts' reports. Since the EA and the Council did not identify these problems H & MT say that they failed to robustly examine the Appellants' plans and proposals.
98. H & MT consider that the automatic response appears to be that the specialists are believed, whether they are right or wrong. However if laymen can gather evidence by reading the submitted material in detail, checking facts, lifting manholes and observing water courses, it is rhetorically asked why the experts did not do so? H & MT have outlined their concerns with the flood reports at length. Amongst other things, evidence has been provided that the fireclay topsoil layer is 169 feet below ground, exceedance has not been covered and no solution has been offered to the known flooding of a sewage chamber. The so-called 'Master Plan' was supposed to give full details of Suds, but turned out to be a housing layout with no dimensions or storage capacities shown. Robust scrutiny of this information is, in the opinion of H & MT, crucial to the Inquiry, but appears to have been absent or at least fundamentally flawed.
99. Given the drastic effects of flooding, H & MT consider that these concerns have not been given enough weight. Flooding is not a side-show, despite the position taken by the main parties at the Inquiry, and is not something that can be fixed later. Proposals and plans must be credible in what is a full planning application. The people of Hepscott look to this Inquiry to protect them from more flood misery. H & MT are aware that there is a legal opinion that the views of consultees, such as the EA, should be given great weight and they do not suggest otherwise. However where there is compelling and uncontested evidence that material flaws in the flood information presented went undetected, H & MT consider this too should be given great weight.

***The effect of the proposed development on the character and appearance of the area***

100. Morpeth is an ancient market town in a rural setting. Part of its charm, for residents and tourists alike, is that Morpeth is well contained and it is possible to approach the town through the countryside and 'come upon' it suddenly, eg on approach from the south along the A192. LP Policies C4 and MC3 recognise the value of these approaches and it is submitted that these policies comply with the Framework and should be given appropriate weight.
101. H & MT believe that the appeal site is not urban fringe land in its 'scruffy' sense but that it is a greenfield site comprising irreplaceable agricultural land. The adjacent edge of the town is green and open in nature, with a playing field, wide green verges, mature hedges and trees. In that context H & MT

believe that the proposed development would constitute an unacceptable urban intrusion into the open countryside.

102. The Appellants argued that the development would not be widely seen and that most of the visual effects would be close to the site. It is acknowledged that this might be where most of the 'visual receptors' are, but the open, green prospect and rural influences are enjoyed by all who live and pass through the area and these would be changed forever. For these reasons H & MT consider that the proposal would give rise to significant harm.
103. The open countryside between Stobhill and Hepscott provides a green buffer between the respective settlements which is important to the identity of both. Mr Smith, for the Appellants, claimed that it is not the actual distance that counts but one's perception of it. H & MT says paragraph 80 of the Framework contains its only reference to sprawl and encroachment, and that passage uses the words to check, prevent, safeguard and preserve. At no point does it say that it would be appropriate to create the illusion that these actions have taken place. Erosion of the gap by a strategic 30% is highly significant and unacceptable, and approval could set an undesirable precedent. The CS proposes that the appeal site should be safeguarded land for limited development during the next plan period, after 2031, but it is claimed that the Appellants have focussed on the word development and disregarded the rest.

***Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required***

104. The provision of school places is a crucial aspect of sustainability, which is material to an assessment of whether the proposal can be considered to be sustainable development. Local residents are only too aware of the problems being experienced in relation to the lack of vacancies in the town's schools.
105. H & MT submit that the position in relation to Morpeth schools is anomalous and that the problems have not been appropriately addressed in planning terms by the Council's Children Services Department. H & MT claim that it is too simplistic to say that there are places available or that they would become available in schools within the Morpeth Schools Partnership. It is also inappropriate to fail to draw attention to the need for money to be spent on improvements and/or expansions to the schools that children from any houses that were built pursuant to any planning permission granted, would attend.
106. The Morpeth Schools Partnership extends as far as Rothbury, but allocating places in First or Middle Schools outside Morpeth to Morpeth children would be unacceptably disruptive and unsustainable. H & MT have shown that the only school within acceptable walking distance of the appeal site is Stobhillgate First School, which is a one-form entry school. As Morpeth grows each First School will inevitably offer places in its reception class to children from within its own catchment. According to the Council's own data Stobhillgate First School already has too many children living within its catchment. Morpeth Middle and High Schools are run by an Academy with its own admissions policy. Unless a child lives in Morpeth in time to secure a place in reception, that child could be refused admission and have to travel elsewhere in order to find a school place. This would be even more complicated for new residents to the town with several children who need admission to different schools. One member of the public who addressed the Inquiry spoke of a family new to Morpeth having to

take one child to school in Ponteland and her other children to schools in different parts of Morpeth.

***Whether the need for affordable housing can be addressed by a planning obligation***

107. H & MT says the Appellants did not submit details of the precise mix of affordable homes on offer until after H & MT raised its concerns. Despite the information now provided H & MT maintain that the scheme: (i) does not include the appropriate size mix of social rented or intermediate homes; (ii) the price level of intermediate housing is unlikely to be truly affordable; and (iii) the percentage of affordable properties cannot be guaranteed. For these reasons limited weight can be given to provision of affordable housing.
108. Of particular concern to H & MT is the huge under-provision of 1-bedroom properties in both the social rented and intermediate categories, with only 6 such affordable homes being offered in total. This is contrary to the identified need, which is 61% for social rented properties in March 2014, according to the Council's strategic housing data, and 40% for intermediate homes, according to the SHMA update.
109. H & MT has provided evidence of the price of current new build in Morpeth and, by reference to the SHMA, it says that even discounted to 70% of market value, new build properties in Morpeth would be above the entry level price range of those in need of affordable homes, as they represent such a high multiple of earnings. Unless the Appellants offer affordable sales prices equal to or below those shown in the SHMA they would not be available at affordable prices. H & MT also have concerns about the fact that delivery of affordable homes cannot be guaranteed on the grounds of viability. For these reasons it is submitted that only limited weight should be given to the affordable housing provision that is envisaged in the section 106 agreement.

***The weight to be attached to emerging planning policies and whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Guidance***

110. H & MT said that the LP began the strategy of sustainable expansion of Morpeth targeted to the north of the town, with the plan referring specifically to the majority of development taking place on the St George's Hospital site post 2006. This strategy has been pursued by the Council ever since, as demonstrated by their bid for funding for the MNB and the commitment of its own funds to that project. Working with the Council, the NP is pursuing the same strategy, which cannot therefore be characterised as new or emerging despite the fact that it acknowledges the CS and the NP are at an early stage.
111. The strategy of growth to the north of Morpeth is being implemented now, with the MNB awaiting consent from the SoS and experts referring to the high degree of probability that it will be delivered. The MNB is hugely significant and the growth associated with it will epitomise the sustainable growth that the Framework demands. Furthermore the Inquiry has been told that the planning application for Phase 1 of the site at St George's Hospital, which is not dependent upon the MNB, is to be submitted in mid-August 2014.



112. H & MT consider that approval of the appeal proposal would prevent the eleventh core planning principle in paragraph 17 of the Framework, which seeks to actively manage patterns of growth, to be carried out. Morpeth is a small town and too many developers trying to market new homes at the same time could be damaging and actually result in slow delivery. In addition H & MT refer to the Lock report [CD22], which contends that developing housing to the north and south of Morpeth would have service and infrastructure implications that could make it more difficult to combine efforts and financial contributions to deliver necessary new and upgraded infrastructure. H & MT consider that the need to upgrade the combined sewerage system and the Salisbury Street chamber is only one example of the infrastructure needed.
113. H & MT consider that development must be plan-led rather than developer-led and it considers that the proposed development is contrary to the growth agenda in paragraph 14 of the Framework when seen in the context of the planned growth for Morpeth as a whole. The strategy that has been planned since 2003 would be put in jeopardy if the appeal was allowed and it is submitted that the issue of prematurity has to be seen in that light.

***Whether relevant policies for the supply of housing are out-of-date***

114. H & MT say they regard this to be least important issue for residents, but I deal with it before the overall balance. Although the SoCG records that all parties agree that the Council does not have a deliverable 5-year housing land supply [CD39, paragraph 5.5], it also shows that for the CRCA the shortfall is 482<sup>43</sup>. Recent approvals, together with the impending application for St George's Hospital, means that a total of 1,075 new homes are in the pipeline. No contradictory evidence has been provided to the Inquiry despite new approvals being a material factor. Moreover H & MT point out that Morpeth is not the only main settlement in the CRCA. Furthermore the CS identifies 1,500 new homes for Morpeth, but this might be reduced because of the new population projections. Those homes are to be built over the plan period, up to 2031. For these reasons H & MT are not now convinced that there is no 5-year housing land supply or that housing policies in the LP are out-of-date.

***Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply***

115. H & MT have outlined in their proofs of evidence the reasons why it believes that the proposals do not fulfil any of the 3 roles of sustainable development. The walking distances that have been agreed between the main parties, the lack of cycle ways and the community's evidence of congestion, which is supported by the LTP, are all significant in demonstrating that the site is in an unsustainable location. By reference to paragraph 6 of the Framework, H & MT say that the presumption in favour of sustainable development only applies to development that can be demonstrated to meet paragraphs 18 to 219 of the Framework.

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<sup>43</sup> In closing H & MT quote a figure of 492 but, by reference to the table at paragraph 5.4 of the SoCG [CD39], the maths for the CRCA appear to be 1,320 less 838, which equals 482. As this actually puts their argument in a better light I have adopted this figure in the above text.

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***If so, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits***

116. H & MT submit that significant harm would be caused to the landscape, the road network and its users, and both the immediate and longer term effectiveness of the MNB as regards its role in reducing congestion in Morpeth. They also have concerns about flooding and sewage overflows and believe that the potential exists for yet more harm to result. In contrast H & MT do not believe that the affordable housing on offer is appropriate enough in terms of the size requirement and cost requirements to outweigh this harm.
117. For all of these reasons, taking account of the detailed evidence that has been put forward in their proofs of evidence, H & MT invite the SoS to dismiss this appeal. In seeking this outcome H & MT stress that local residents are the ones who have to live with the harmful consequences of the proposed development should it go ahead.

**The Case made by those who addressed the Inquiry in person**

118. Except where referenced below the following persons that addressed the Inquiry did so without making written statements. Accordingly what follows is, in many cases, the only record of what those people said. For this reason the subsequent summaries are quite full in order to fairly represent their evidence.

**i) John Lewis**

119. Mr Lewis read his statement [DS19] but also drew attention to other letters that he wrote at application and appeal stages [DC2.7]. He supports the reasons given by the Council and H & MT for opposing the scheme. He says that because the site is outside the settlement boundary for Morpeth the proposal was contrary to LP Policies C1 and MC1. He considers that the site and the surrounding countryside make a significant contribution to the setting and special character of Morpeth by reason of its openness on approach along the A196 and A192. This is highly valued by local residents, which is reflected in these approaches being designated as landscape corridors under LP Policies C4 and NC3. In Mr Lewis's view the proposal's scale would have a seriously detrimental impact on the character and appearance of these entrances into Morpeth. The previous applications on the site have been refused on policy grounds and this scheme would be urban sprawl that would erode the green gap and lead to the coalescence of Morpeth with Hepscoth.
120. The latest version of the emerging CS excludes the site from the proposed Green Belt and classifies it as "*white land*", to be considered for development at a future date, but Mr Lewis understands that there are many objections to this. The Civic Society, of which he is a member, together with other local bodies, has always taken the view that the inner boundary of the Green Belt should run along the A196. The Council is alleged to have said that "*...the new settlement boundary to the south would be identified in the NP*". The environmental capacity of Morpeth needs to be fully assessed and taken into account in the NP; development of the appeal site could prejudice this. In Mr Lewis's view until the CS and NP are available the proposal is premature as, if approved, it would have a major impact on the form, infrastructure and shape of Morpeth. The community response to the consultation on the NP supports the view that housing growth should be focussed north of the town.

121. In his experience the A192 and A196 are very busy roads. Given that he has been overtaken by vehicles exceeding the speed limit between the Stobhill roundabout and Hepscott it is no surprise that there have been accidents on this stretch of road, one of which was fatal. At peak times queues can stretch back from the centre to the Stobhill roundabout. The Mafeking roundabout is operating above capacity and congestion is a major problem at Telford Bridge. The proposal would exacerbate these problems and further detract from the quality of life of local residents. Although Mr Lewis understands the Highway Authority says that conditions can resolve any highway safety issues he is unclear how the concerns raised in the Committee report will be addressed. The proposal is also likely to exacerbate the use of the road through Hepscott as a cut-through, which is substandard by reason of bends and gradients.
122. Turning to the issue of flooding, Mr Lewis refers to the report undertaken by Chris Tyler for the Appellants, dated June 2014, and specifically to paragraphs 4.1.2 and 4.1.3 thereof. Mr Lewis considers that if flooding downstream is only reduced marginally in depth and extent, any failure in the system would cause major problems as the scheme relies upon the proposed Suds not failing in any way. It relies on the calculations being correct. The various ponds, swales and pipes would need continuous management and maintenance over the lifetime of the scheme. It also relies on no part of the downstream system becoming impaired, but there are open watercourses and culverts that have caused problems in the past. The Hepscott Flood Risk Study [DS23] found at page 18 that culverts and a ditch are in a poor condition. It also found that water backs up from Hepscott Road Bridge in high flow events. There are numerous interests in the catchment of the Hepscott Burn, including the EA and riparian owners, but a lack of overall co-ordination. On the basis that there is a genuine fear of flooding Mr Lewis considers that the precautionary principle should apply in addition to the identified conflicts with planning policy.

## **ii) Tom Smith, Morpeth Flood Action Group**

123. Mr Smith read Morpeth Flood Action Group's latest statement [DS31], but it should be noted that other documents have been submitted, including a further update [July 2014, DS25]. Mr Smith explained that the Group was opposed to the development due to what it considered to be the inadequate FRA and the similarly flawed Flood Risk Exercise. Flooding is a life changing experience, which can have devastating consequences for those affected. As well as severe impacts on health, the trauma can lead residents to leave the area which, in the case of homeowners, can result in the loss of a lifelong investment in property. Home values fall once property is flooded and house insurance can become unavailable. Such difficulties disproportionately affect older members of the community. Although the Inquiry is held in public, that openness is worthless if matters which are conditioned to be approved are then seen solely by Council officials and the Appellants. The community has vital local knowledge of flooding issues, which such a process would not draw upon. He says that if the appeal is allowed the entire detail of the drainage and flood mitigation measures should be available online to be publicly scrutinised and commented upon before approval is granted.
124. The update [DS25] details how, in the Group's view, the Appellants' drainage consultants have to date shown themselves to be unreliable in assessing flood risk. The micro drainage software employed by the consultants has been

criticised by the EA. The Appellants' consultants, WSP, describe the need to carry out additional 3D computer modelling of proposed flood mitigation measures. Morpeth Flood Action Group considers that is necessary when the FRA is so full of holes. Amongst other things the storage ponds and associated swales are considered to be below the capacity required to meet even the runoff figures proposed and the water level in the ponds would be higher when full than the field which they are supposed to drain. On this basis the proposed mitigation measures would not provide the required downstream flood risk protection because water will not flow uphill and the flood water storage facilities must drain the appeal site by gravity. It is the view of Morpeth Flood Action Group that its minimum capacity should be 26,000m<sup>3</sup>.

125. Mr Smith said that if planning permission was granted that conditions should cover such matters and restrict the run-off rate to 16l/s, as required by the Council's Suds officer. A Suds maintenance plan should be prepared for approval by the Council. Finally foul sewage from the site must be connected to the town's sewage treatment works, bypassing all existing, overloaded and surcharging sections of the network, including Salisbury Street.

### **iii) Karen Carins, Councillor and Chair of Stannington Parish Council**

126. Mrs Carins read her statement [DS17]. She raised concerns about the impact of the development on the local road network and specifically the prospect of additional vehicles using Stannington Station Road to gain access to the A1. Both ends of Stannington Station Road are only served by 'T' junctions, which become heavily congested at peak times. When the level crossing is closed long tailbacks build up in both directions with disturbance to residents from running engines. It is already a busy main road with 6,500 vehicles passing through but she was concerned that the development could add up to another 1,200 vehicle movements daily. She explained that the 40 mph speed limit is regularly exceeded but there is no traffic calming in place; 70 households and businesses open onto this road but there is not even a continuous pavement.
127. The Stannington Parish NP interactive transport map [DS17] identifies the areas of potential danger hotspots, including where accidents have occurred. The area of most concern in the Parish was Station Road where the conflict between horse riders, pedestrians, cyclists and vehicles is high. Although the MNB is in prospect she was concerned that Stannington Station Road would become the unofficial southern bypass. As its roots lie as a rural access to neighbouring villages it was not even designed for its current role and so if the proposed development goes ahead it represents a threat to the infrastructure, community and road users. This is the basis of the Parish Council's objection.

### **iv) Councillor Andrew Tebbutt**

128. Councillor Tebbutt agreed with the concerns expressed by others and paid tribute to the work of the H & MT team. He was chair of the Policy Committee in 2003 when it considered the LP, which was for the period 1991-2006. At that stage the Committee was thinking well ahead of 2006. After 2003 the Council worked hard on the next plan but the SoS stopped the plan from coming forward due to local Government reorganisation. The Council asked for an exemption to be granted but it was not, which has given rise to the policy vacuum that exists today. However even in 1998 the focus of policy was on

development to the north of the town. The junction at Telford Bridge is the second busiest in the whole County with some 23,000 vehicles per day.

129. Councillor Tebbutt accepted that the Council does not have a 5-year housing land supply but pointed out that the figure of 1,500 dwellings in the CS is for the period up to 2031. This figure includes dwellings already built such as 100 at The Kylins. However there were a lot of dwellings in the pipeline, including 200 at Loansdean, 255 at Northgate [Persimmon], 250 at Northgate [Taylor Wimpey], 350+ at pre-planning stage on land west of Lancaster Park, 390 coming forward in Phase 1 of the St George's Hospital site and at least 200 homes on the County Hall site. On this basis he suggested that there was the potential for approximately 1,750 houses to be provided 16 years before the end of the CS plan period. As such he said this proposal was unnecessary, premature and in the wrong place, and he described the housing land supply situation as a red herring. The NP was frustrated only by the lack of a CS.
130. In terms of any affordable housing that might be provided, Councillor Tebbutt maintained that it would not be affordable for those who need it. A 30% discount, even at £220,000, would leave the cost at £154,000, which in his view was £30,000 above the price that he considered to be affordable. Turning to education the development would generate 12 children per school year which, over a school life of 15 years, would be 180 children. Together with the permitted Loansdean development there would be some 270 extra children that needed to be educated in Morpeth. Although it was said not to be an issue the schools are full and any children in the system cannot be thrown out of the school that they are attending. This might mean children living on the development site might have to be transported to other towns in the area, such as Bedlington. There would also be 36 under 3's on the site when there are no facilities on site and all play groups are a long distance away. Funding for pre-school accommodation is required. By reason of the lack of education contributions and affordable housing he considers the proposal unsustainable.

#### **v) Harry Cone**

131. Mr Cone read his statement [DS30]. He said local services, including schools, doctors and dentists are full. He reiterated the concerns expressed by others regarding flooding and said that he had no faith in computer modelling of flood events. He was concerned the Council and the Appellants had not addressed some of the main issues at the Inquiry. He maintained that the roads were not adequate to cope with existing flows let alone those proposed and he criticised the highway modelling in terms of its outputs, which he said were not realistic. He said the MNB would have a minimal effect on approach from the south and given that walking was not a realistic option from the site he said the existing infrastructure could not cope with this scale of development.
132. Mr Cone said that the application flies in complete contempt of emerging plans for the area, including the NP, and that it was premature. He said the Appellants' approach, that the urgent need for housing in Morpeth should outweigh other concerns, was very cavalier and dismisses out of hand the concerns of thousands of residents. He provided a copy of the Morpeth Herald [DS30.2], which referred to a "*Development deluge*". In that context, noting that the Council was considering moving out of Morpeth, he questioned where the demand was for all of the houses currently being proposed. Turning to

business he said some 70% of existing housing lay to the south of the town and due to the traffic problems prospective residents would shop elsewhere.

133. Mr Cone said that the natural southern boundary for the town was the A196 and that development south of that road would constitute sprawl and give rise to coalescence. He said that this was not the first time that development had been put forward on this valuable prime agricultural site. He implored the SoS to dismiss this appeal for the valid reasons being advanced by residents.

**vi) Ian Campbell, Neighbourhood Plan advisor and Steering Group member**

134. Mr Campbell referred to the Morpeth Herald's lead title "*Development deluge*" [DS30.2] and said that the people of the town had been left bewildered and let down by the planning system. He explained that Morpeth Town Council, together with the adjoining parishes of Pegswood, Hebron, Hepscott and Mitford, were preparing a NP to manage future development and growth. He claimed that decisions made by the LPA and The Planning Inspectorate had undermined these efforts to achieve planned growth. The proposal for 396 dwellings was a large scale residential development and if it came forward in advance of the NP it would frustrate the emerging development strategy.
135. Mr Campbell quoted the first Core Planning Principle from paragraph 17 of the Framework, which says planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and NPs setting out a positive vision for the future of the area. He said the NP group is trying to undertake that exercise in order to maintain the town's strong identity and its vibrant town centre. The NP would become part of the DP and reflect the priorities of the local community over the next 15-20 years. However he acknowledged that because the NP is at too early a stage to be given weight a policy vacuum exists at present. He said that work on the NP was continuing and that a draft would be the subject of public consultation later this year.
136. Mr Campbell said the CS is at an early stage and could be given little weight. Nevertheless he saw the figure of 1,500 dwellings in the CS as indicative of the direction of travel and said that the same principle should be applied in terms of location. Paragraph 9.81 of the CS says the preferred strategy is for housing to the north of the town, including 1,000 dwellings on the St George's Hospital site. He emphasised that this allocation had been carried forward from the adopted LP which, in the supporting text, anticipated development in the period beyond the time horizon of the LP. He saw the St George's Hospital site as a sustainable urban extension in contrast to the recently approved Fairmoor site and the appeal site, both of which he described as piecemeal.
137. Mr Campbell said that whilst the Appellants had made great play of the Framework insofar as it sought to significantly boost the housing supply he said it was merely one amongst equals. He disputed it was an "*overarching aim*"<sup>44</sup>, as the Inspector had described it in the Loansdean decision.

**vii) Dr J Meth-Cohn, Chairman, Hepscott Flood Action Group**

138. Dr Meth-Cohn explained that Hepscott lies below the confluence of the Catch Burn and the Coal Burn, which serve a number of areas, including the A1 dual

<sup>44</sup> Source of quote: paragraph 31, of decision APP/P2935/A/12/2170840 etc, DC4.

carriageway, and would, in future, serve the Loansdean scheme. In 2008 a number of properties in Hepscoth were flooded, including his own, when water came off the fields in the area, including the appeal site. The Red House Burn overflowed and flooded a number of properties, starting with No 14 The Orchard. He said after 2008 work to alleviate the flooding was undertaken in the area, which included a number of leaky ponds [Suds] and a flood relief pipeline. In 2012 a number of properties in Hepscoth were again flooded and at that time the leaky ponds on the Red House Burn did not have flood water in them. He said the EA's relief structure was ineffective as he had monitored it and never saw water coming out of the pipeline, which he felt guilty about.

139. Dr Meth-Cohn said the culvert that served the appeal site did not cross the railway line to Red House Burn and so it would not benefit from the Suds scheme. He said the appeal site, at circa 55m AOD, was at a significantly higher elevation than Hepscoth, at around 40m AOD. In this context the main road through the village regularly flooded and he was trying to get the Council to deal with it. Due to climate change he suggested that the position was only going to get worse. He sought a cast iron guarantee that the Suds would be maintained, particularly in the light of the increase in hard surfaced area that was proposed. Moreover he suggested that there was an obvious solution to flooding associated with the Red House Burn, which was to direct the route of the water further along the railway line to connect to an existing ditch to the north-east of the village [DS29]. Either way he emphasised that no increase in water should be directed to Hepscoth and he expressed concern about the Loansdean decision which, he claimed, contains no maintenance requirement.

#### **viii) Joan O'Connor**

140. Joan O'Connor said she had worked in the new build industry in the local area for around 7 years and that her development had taken 4-years to sell at an average price of £250,000. The affordable housing was, in her experience, made available to people with family or work connections to the local area for a period of 12 weeks. She said that the help-to-buy scheme did not apply to such units. She said on the site she had worked on there had been no need for all the affordable housing; there were only 4 applicants pa. She said the "Rightmove" website currently recorded 244 properties on the market in Morpeth of which 171 properties were on the market for less than £250,000, 37 of which were on the market for less than £125,000. Given the lack of work in the area and the absence of business to support the proposed level of housing she said it would take years to sell the dwellings on the appeal site.
141. Joan O'Connor said that education was the driving force for people wanting to live in Morpeth, but that the existing schools in the town were at capacity. She knew a lady with 3 children under 10-years of age who had to take them to 3 different schools, including one in Ponteland. She said that whilst there was a need for extra housing it was not on the scale of that currently being put forward and any proposed should be at the northern end of the town to obtain easier access to existing schools as well as to benefit from the MNB. She said 800 houses were already under construction at Arcot Hall, near Cramlington.

#### **ix) Fred Dye, Councillor, Hepscoth Parish Council**

142. Mr Dye said that he spoke to an engineer who was worried by the proposal and said there was a need to establish who would be responsible for maintenance

of the Suds and who would pay for maintenance of the Suds. Mr Dye sought an assurance that the annual budget would be ring fenced and adjusted for inflation. He emphasised that the legislation to establish Suds bodies had not yet been passed. His other concern, as a former teacher at King Edward's School, was the level of traffic congestion. The traffic lights that were installed near Telford Bridge had made things worse and so they had to be removed.

**x) Derek Thompson, former Chairman, Morpeth Town Council**

143. As a resident of Stobhill, Mr Thompson said the A196 defined the boundary to the town and that this natural border should not be crossed in a reckless way. He was concerned that the scheme would result in a loss of agricultural land and hence a reduction in food production. He said there were a large number of applications for housing around Morpeth at the moment. He said that local schools were over-subscribed and that most of these, together with medical facilities, lay to the north of Morpeth, which meant that it was necessary to travel, invariably by car, across the town in order to access them. Housing on these fields would give rise to urban sprawl and there had been no attempt to integrate them into the community. He said that developers had not proposed to alter the geometry of the road network serving the appeal site and that the roads had not been built to serve this number of houses. He claimed that everyone wants to build '*quality*' houses in Morpeth and that these should instead be directed to other towns in south-east Northumberland. In summary he asserted that it was an inappropriate development that should be refused.

**xi) Paul Kidd**

144. Mr Kidd said he had been resident in Hepscott for 30-years. He was sceptical of the accuracy of the modelling exercise that had been undertaken. He was told that the output of the highway modelling was that one could drive from Stobhill to the Telford Bridge in 221 seconds, ie 3 minutes and 41 seconds. As a retired Magistrate he claimed this would cause one to break the law as the busy stretch of road included 3 roundabouts and 4 pedestrian crossings.

**xii) David Armstrong**

145. Mr Armstrong said that he had been a resident of Barmoor Bank for 30 years. He testified that, particularly during periods of inclement weather, queues tail back from the roundabout for approximately one mile. He indicated that if planning permission was granted that the congestion would be horrendous.

**xiii) Bob Robertson**

146. Mr Robertson re-emphasised the position taken by Morpeth Flood Action Group that there was a need to maintain any Suds. In terms of sewage he suggested that the system is overloaded and cannot cope with the existing flows. Any new development proposed needed to bypass the serious existing overflow.

**xiv) Michael Lamb**

147. Mr Lamb said he was Morpeth born and bred and that during his lifetime he had seen the level of traffic increase again and again. He attended the first day of the Inquiry and since then the Morpeth Herald had highlighted the housing schemes that have already been approved, including Loansdean and Northgate. With the St George's scheme in prospect it was not necessary in



his view to accept this proposal. On the issue of highways he pointed to the traffic lights at the Telford Bridge junction where the residents said the experts were wrong and so it proved. In the scenario that 1,500 houses are built in the town they cannot be pulled down if the experts' modelling is wrong. He questioned whether residents would be able to get appointments for doctors and dentists if this number of houses were built. He also rhetorically asked whether if some houses were affordable this meant others were unaffordable.

**xv) Chris Tuersley**

148. Mr Tuersley said he had been a resident of Kirkhill since 1963. His primary concern was the impact of the development on the environment. Although not part of the Green Belt the site was white belt and should not be built upon.

**xvi) Dr Anne Colver**

149. Dr Colver, a resident of Hepscott, was a GP at the Gas House Lane Surgery until 2011. Her neighbours had been flooded and had gone through a terrible experience. They had to evacuate their dwelling for 6 months and now had to experience the anxiety of whether the same thing might happen again. They would have problems if they wanted to sell their property but in the meantime they had high insurance premiums and a very high excess of around £40,000. In the light of that experience she said that the misery of flooding does not go away. In her view the solution put forward by the Appellants would not be adequate particularly if there was another period of relentless rainfall. She said expert advice should be taken and questioned the need for the houses.

**xvii) Jean Douglas**

150. Jean Douglas said that she recently moved to Hepscott and that during her attendance at the Inquiry she had been interested to learn how quickly she could travel into Morpeth. Her experience of travelling 3 times a day to drop off at a nursery and a school and then collect her children was different. Although she sailed through in summer at most times she did not get past Sainsbury's before queuing and she was often beaten by children walking. Although she left home by 0815 hours she had still been late for school at 0845 hours. Cars often turn around in the main road at Stobhill. On the approach from Loansdean the queue can be back to the Sun Inn and vehicles often block the Mafeking roundabout. Another 400 houses could give rise to 800 cars. Morpeth could be gridlocked. Moreover cars often use Stannington Station Road to gain access to the A1 and as she already finds it difficult to get onto the main road from Hepscott this situation would worsen. Finally when Hepscott floods the main stream does not cope with the water and it goes back up the drains. Although she has fitted non return valves she considers that she should not have to. Her neighbours have previously been flooded and for this and all other reasons advanced she hopes the SoS dismisses the appeal.

**xviii) Sandra Kennedy**

151. Sandra Kennedy said she was proud to have been a resident in the Stobhill Manor area of the town for the last 16 years. She endorsed the view of others that the traffic can be horrendous and that it can take 25-30 minutes to get into Morpeth from Stobhill. Her experience is that she drives in first gear from Sainsbury's due to 3 busy junctions along that stretch of road and vehicles can

only get onto the A192 if one lets them in; she described the junctions as accidents waiting to happen. In her experience the pedestrian crossing just to the south of Telford Bridge is used constantly in the peak period by parents with their children on their way to school and then by parents as they walk back home; she considered it was the source of the queuing on the network. At the Mafeking roundabout some drivers travelling north along the A197 avoid the traffic jam by going down the right hand lane and then executing a 360° turn but this exacerbates the waiting time for other drivers. She has had to wait 2 weeks for a doctor's appointment. She does her weekly shop in Morrisons because the Sainsbury's does not stock a full range of goods and prices are circa 30% higher. Although she tries to travel outside of the peak this still means additional trips into the town centre rather than within Stobhill.

#### **xix) Councillor Glen Sanderson**

152. Councillor Glen Sanderson is the County Councillor for an area that includes Hepscott and said that he appreciated the openness of the process. During the Council's consideration of the application he attended a site visit at 1400 hours in the vicinity of Collingwood School and was surprised at the amount of traffic using the road at that time. He considered this gave rise to highway safety issues. At a meeting where the application was considered over 100 people expressed genuine concerns about the impact of the development on the future of the town. Their concerns included the effect on the town, on traffic congestion, on schools, on flooding and on the separation between Morpeth and Hepscott, which would be lost as a result of development crossing the existing clear boundary onto green fields. In his view the proposal would have a serious impact on Hepscott, which would lose its identity and no longer be a discrete village. In conclusion he submitted that the proposal was inappropriate and that this was the wrong place for this scale of development.

#### **xx) Councillor Ian Lindley**

153. Councillor Ian Lindley is the County Councillor for an area that includes Stobhill. He observed that a punctilious note was being taken and hopes that the SoS listens to the views expressed. In his role as Councillor it was his job to listen to what was being said. He acknowledged that the proposed development had some good points, which included being well designed and with a good percentage of affordable housing. Nevertheless in his 7 years as a Councillor he had never come across an issue such as this where there was no divergence of opinion. In this case he said nobody had approached him to say this would be a good idea. In particular the main concern was the impact of the development on traffic flows by virtue of the appeal site being on the wrong side of town. He recalled that local people had been opposed to the traffic lights that were installed at the junction to the north of Telford Bridge from the start and that the modelling exercise in respect of that scheme had been totally wrong; he is unconvinced by the modelling here too. In his view the appeal should be dismissed for this reason in particular.

#### **xxi) Vivienne Rochester**

154. Vivienne Rochester said that she had lived in Morpeth all of her life as had her forebears. She had attended the opening of the Inquiry and got the impression that residents were being portrayed as backward looking and NIMBYs. However most residents simply care very much and very deeply

about Morpeth. She said that there had been quite a bit of house building in the town and nobody had been awkward or a NIMBY. However she said that the town's people don't want the proposed development because it was not right for the town, its people or for future generations. Once built she said that it could not be taken down again and that it would be left for the Council to sort out the problems that the proposed development would cause. People would have to put up with it but she stressed that it was "*our town*".

## **xxii) Richard Wearmouth**

155. Mr Wearmouth is a resident of Barmoor Farm, where his family has resided for 40 years. He said he is a director of a company involved in renewable energy and is Chairman of the local Conservative Party. He had observed the progress of the development proposal, including speaking at County Hall when the application was considered by the Council, as well as attending the Inquiry.
156. There has been a history of traffic problems, which arose largely because the majority of existing houses lie to the south of the river. This was compounded by features of the network, including the Mafeking roundabout and the railway bridge. The NP is attempting to address these problems by siting houses to the north of the town. However these problems would be compounded if this appeal is allowed. In particular secondary schools were all located to the north of the river. Traffic flows change through the seasons because of the weather and he has no confidence that the worst case scenario has been captured. He understood that the worst case baseline was a travel time from Stobhill to Telford Bridge of 11 minutes but that the peak time average was 221 seconds. However when it is raining residents have no alternative but to use their cars and the models have been unable to match the worst case peak journey times. In his view it was only just possible to undertake the journey from Stobhill to Telford Bridge in the model's average journey time.
157. Mr Wearmouth said he hoped the MNB would come forward but that the DCO is still being considered. In his view the MNB would not give rise to much benefit for northbound traffic along the link from Stobhill to Telford Bridge. In the circumstances he questioned what weight the SoS could give to the MNB in reaching a decision. The Council objected to the proposal on the basis of a severe cumulative impact, a conclusion with which he agrees. Moreover the parameters of assessment are a significant factor and in this case the traffic impact assessment has not taken account of the Loansdean decision. In his view this needs to be addressed and in its absence he does not see how it is possible to appreciate the potential for a severe cumulative impact as referred to in the Framework. Although the Appellants have referred to the SHLAA the cumulative impact on the highway network of the various sites identified therein has not been considered. So whilst the parameters of the model appear to have been discussed with the Council as the other emerging sites in the SHLAA have not been considered the appeal should be dismissed.
158. Turning to sustainability it can take him 30 minutes to drive from Barmoor into Morpeth and it would not be significantly less for the proposed estate. Most prospective residents would use their cars to gain access to Morpeth in his view because there are few services and facilities close to the appeal site. Amongst other things the main schools are on the north side of the town. For these reasons he considers that the proposal is not a sustainable development.

159. In terms of the debate between the main parties as to the applicability of PTAL, he noted Mr Hollowood had said PTAL was not used outside of London and BREEAM was not applicable to houses. Having asked one of his colleagues he was told that PTAL was part of the accreditation and that CSH was the relevant national standard, which was the domestic version of BREEAM, and on that basis he said the use of PTAL to assess the appeal site was appropriate.
160. In terms of the impact on the landscape, given the existing development at Barmoor if the proposed development were allowed it was claimed that the time that people would have to enjoy the open countryside would be halved to 14 seconds. The aim of the CS was to stop coalescence. The landscape corridor on the A196 was protected by a saved policy and the proposed development would not just physically impact on that corridor, it would have an impact on the town's setting and context, so as to render the corridor to be useless. On this basis there is a conflict with the policy. He did not agree with the claim that the landscape was not of great value but in any event this was not a reason to permit further damage. In his view the tree belt to the south should be removed because it is incongruous. Although the Appellants sought to use the CS to show that the site is outside of the Green Belt, as it is agreed that the CS can be given little weight the Appellants cannot have it both ways.
161. In terms of flooding Mr Wearmouth said this should have been addressed by the Appellants. During the 33 years that he has been living at Barmoor Farm the flooding on the Catch Burn has got worse possibly due to farming practices and new housing developments. Water has breached both sides of the Catch Burn below the Stobhill Manor development. He said there was a field drain into the Catch Burn at Barmoor Farm that drains the appeal site across the A192. For these reasons he said that it was not rational to grant permission.

### Written Representations

162. There were objections by local residents at both application and appeal stages. A total of 11 letters [DC 2.1-2.11] were received in response to the Council's letter of notification [DC 1] and further written submissions [DS17, DS19, DS25, DS30.1, DS31, DS32, DS33, DS34 and DS41] were handed in at the Inquiry, although some people spoke to these. All oppose the development. Generally the same points have been made to those that have been recorded above and these will not be repeated. Additional points include:
- i. An objection to "*...any further building of new houses in Morpeth*".
  - ii. The development is too large and would be an increase of over 5% in the number of homes in Morpeth, which is currently around 7,000.
  - iii. There are brownfield sites available that should be re-used first.
  - iv. The builders are trying to jump the gun as there is no immediate imperative in terms of housing demand in Morpeth and so the scheme should be rejected until the emerging DP has been adopted.
  - v. Unemployment in the area is 9.6 %.
  - vi. The scheme should not be considered in isolation.
  - vii. The shortest theoretical time to travel between Stobhill roundabout and the Telford Bridge is 128 seconds based on travelling 0.9 miles at a speed of 30 mph allowing for a 10 second period to negotiate Mafeking roundabout and slow down over the bridge towards the roundabout. This has been tested at a time when there were no other vehicles on the road and the actual recorded time was 130 seconds. However this

contrasts with a recorded journey time of 4 minutes and 26 seconds at a peak time when there was slow moving traffic over a distance of circa 150 m. The difference was down to congestion and so it is difficult to reconcile how a figure of 221 seconds has been arrived at by traffic consultants for peak time travel. The relationship between the number of vehicles and recorded traffic flow is far from linear. Moreover it is claimed that 20-30 minutes is the average commuting time for many.

## Conditions

163. Paragraph 206 of the Framework says that conditions should only be imposed where they meet 6 tests: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects. Although the Guidance has cancelled Circular 11/95 "*Use of conditions in planning permissions*" Appendix A thereof, which sets out suggested conditions, remains extant.
164. An Addendum, dated 8 July 2014, to the SoCG [CD39] lists 27 conditions that have been agreed between the main parties including, subject to 13 points which I propose to examine in what follows, H & MT. The first is the standard commencement condition, which is a requirement of the Act. The second identifies the approved plans, which is necessary in the interests of proper planning and for the avoidance of doubt. However it was agreed at the Inquiry that drawing No MD0777.00.20 Rev C, the "*Preliminary Drainage Scheme*", should be excluded from that list. Among other things the key on that drawing identifies preliminary drainage routes and it is annotated "*Pond locations, sizes and depths to be confirmed following detailed design stage*". Listing this as an approved plan would not be appropriate in those circumstances as the detail might change. It was further agreed that whilst drawing No NE-18-12A was submitted with the application since this shows "*Indicative Street Elevations*" [*my emphasis*] this should not be included on the list of approved plans.
165. The third and fourth seek to control noise, deliveries to and collections from the appeal site during the construction phase. However in my experience such conditions are likely to duplicate powers that are available to the Council under section 61 of the Control of Pollution Act 1974. On this basis the Council conceded at the Inquiry that these conditions would not be necessary. In reaching my view that such conditions duplicate existing powers I appreciate that the Council's Environmental Health Officer put these conditions forward<sup>45</sup>, but it is unclear whether the Council considered the other powers available.
166. The fifth suggested condition seeks a schedule and samples of the external materials proposed for the dwellings. However drawing No NE-18-15B, which is entitled "*Materials Plan*", includes a comprehensive schedule of external materials for each house type, including a specification of bricks, render and tiles. Since the schedule has already been provided it was agreed at the Inquiry that the condition could be restricted to require the submission of samples in the interests of the finished appearance of the development. The sixth suggested condition, which seeks details of refuse and recycling facilities, is necessary for the same reason and to ensure provision is made for up to 3 wheelie bins which, the Inquiry was told, each householder might want.

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<sup>45</sup> Memo dated 29 January 2014 submitted as part of the bundle with the questionnaire.

However I recommend that the first trigger is altered to commencement so that the facilities can be properly integrated into the proposed layout.

167. The seventh and eighth conditions relate to foul and surface water drainage, respectively, which are plainly necessary. H & MT argue that the Salisbury Street Chamber should be upgraded but for reasons discussed at length in my conclusions I agree with the Appellants that this has not been shown to be necessary. However it was agreed that suggested condition 7 be modified to make express reference to the need to consult Northumbrian Water. This should give some comfort on this issue because, as the Appellants indicated to the Inquiry, the proposal is wholly dependent on Northumbrian Water being able to accommodate the foul flows generated by the development. H & MT also seek the upgrading of the combined sewerage system in Hepscott but for reasons discussed in my conclusions I agree with the Appellants that this has not been shown to be necessary. There is no proposal to direct foul drainage into this system and so it is clear that such a requirement would be unlawful.
168. Turning to the detail of condition 8, it was agreed at the Inquiry that reference should be made to the "*Preliminary Drainage Scheme*", given its deletion from condition 2, in a similar way to which there is reference to a preliminary highways drawing in suggested condition 25. H & MT have suggested that the condition should refer to 16l/s "*or 50% of the green field run off rate whichever is less*" and for reasons that I discuss in my conclusions I consider that this additional clause is necessary. Subject to this clause it would not be appropriate to impose a condition to require a full study to be undertaken of the flooding situation in Hepscott because that would not be directly relevant to the development to be permitted. The catchment is much larger and the causes of flooding cannot be attributed solely to the appeal site.
169. Although I have considered the relationship between suggested condition 8 and the Estate Management Plan in the section 106 agreement I consider that these are largely complementary. The condition requires the implementation of the details as approved, including a management and maintenance plan for the lifetime of the development which, for the avoidance of doubt, I consider to be the period during which the approved houses remain standing. Point 16 of the Estate Management Plan requires the maintenance and management of any Suds facility constructed as part of the development. I consider the latter to be the more robust mechanism, which is capable of being enforced by injunctive proceedings in the event of a failure, to maintain the Suds facility. For this reason the equivalent management and maintenance clause in the suggested condition can be deleted because it duplicates the section 106.
170. Suggested condition 9 sets out sound attenuation standards for main habitable rooms in dwellings that front onto the main roads in the interests of prospective residents' living conditions. The standards derive from Table 5 of BS 8233: 1999 "*Sound insulation and noise reduction for buildings – Code of practice*". In the circumstances, noting that the levels have been modified to some extent from those put forward in the original response from the Council's Environmental Health Officer<sup>46</sup>, I find those suggested to be appropriate.

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<sup>46</sup> Memo dated 29 January 2014 submitted as part of the bundle with the questionnaire.

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171. Suggested condition 10 was put forward by the Council's Environmental Health Officer and its objective, to ensure that the gardens of all plots that front onto the main roads benefit from satisfactory sound attenuation, is not in dispute. The Inquiry was advised however that the dwellings would themselves provide the necessary attenuation and so it is the houses rather than the gardens that are being constructed. I shall revise the suggested wording to make this clear.
172. Suggested condition 11 seeks to deliver a similar objective by requiring details of the proposed reflective acoustic barrier to be agreed. Although there is an implementation clause I propose to add a retention and maintenance clause to ensure that the condition is enforceable. H & MT say that the reflective acoustic barrier should not compromise the landscape corridor. Although this might be a valid observation I find no reason to recommend that the condition should specify this as the Council would approve the scheme concerned. Further, the rationale for this condition relates to prospective residents rather than existing residents. There are a number of controls over any noise disturbance during construction phase, including statute, such as the Environmental Protection Act 1990 and the Control of Pollution Act 1974, and suggested condition No 20. Accordingly there is no reason to require the barrier to be provided before development commences.
173. Suggested conditions 12 and 13 were put forward by the Environmental Health Officer. There is no dispute that they are necessary to prevent any accumulation of oxygen deficient air, having regard to the geoenvironmental report, and establish a procedure in the event that contamination not previously envisaged is identified, respectively. H & MT say in respect of suggested condition 13 that if contamination is found existing residents should be notified. I accept that it might be prudent to do so, but the fact is that the suggested condition requires the Council to approve such details and so they are plainly the appropriate body to take this forward. In the circumstances I am not persuaded that it is appropriate to recommend revised wording in order to address this possibility, but the Council might wish to ensure that, at a minimum, it publishes any submission pursuant to this condition in a timely manner on the internet to facilitate public access and comment.
174. Suggested condition 14 requires details of hard and soft landscaping to be agreed in the interests of visual amenity and to enhance the biodiversity of the site. Suggested condition 15 requires a detailed landscape management plan, for areas other than domestic gardens, to be approved and thereafter implemented. At the Inquiry there was some debate as to whether the Estate Management Plan in the section 106 agreement covered this matter. However I consider that the condition and point 9 of the Estate Management Plan are complementary insofar as the former would establish the basis on which the latter would operate. Conversely if the former was deleted or not otherwise agreed it is unclear what maintenance would need to take place of any structural landscaped areas. Although I have considered point 15 of the Estate Management Plan this too is essentially a management and maintenance clause following implementation of those details which have been approved.
175. H & MT seek a minimum landscaped strip of 15 m in depth along the northern, western and southern boundaries of the site. However I find no reason to incorporate this as a requirement of suggested conditions 14 and 15. Both conditions require the details of such planting to be agreed with the Local

Planning Authority and so it is within the Council's control to require an appropriate belt of planting. The suggested conditions do not need to be made more prescriptive. Turning to tree management I have already identified the relevant provisions above but make clear that it is not within the gift of the SoS to protect the proposed tree planting by imposition of a TPO. If and when the tree planting is undertaken it might be open to the Council to protect it at some future date with a TPO if it was considered to be expedient at that time.

176. Suggested condition 16 requires development to proceed in accordance with the mitigation identified in the submitted ecological appraisal, breeding bird survey and the bat survey reports. This is necessary in the interests of maintaining and enhancing the biodiversity interests of the site. However it was agreed at the Inquiry that suggested condition 17, which restricts the period during which hedges and trees can be removed, duplicates statutory provisions contained in the Wildlife and Countryside Act 1981 (as amended). Indeed the reason for the condition says that all nesting bird species are protected by law, which is plainly a reference to those provisions. Although I recommend deletion of this condition what I propose is to add a reference to recommendations, as well as mitigation, in suggested condition 16 because the recommendations of the ecological report deal comprehensively with this issue.
177. I observed at the Inquiry that suggested condition 18 does not make much sense by requiring development to be in accordance with BS 5837:2012 "*Trees in Relation to Design, Demolition and Construction: Recommendations*". I hope it is fair to say that BS 5837:2012 sets out the approach to undertaking a tree survey, including categorisation and protection during the construction phase. It says, amongst other things, that a tree survey is usually the starting point for informing the layout. However, given that most existing trees are around the perimeter of the site I understand why the Council did not seek to apply this approach in this particular case. Accordingly I believe that the objective underpinning the suggested condition, as revealed by the reason, is to protect those trees that are to be retained during the construction phase. Accordingly I recommend adapting the model condition from the Circular for this purpose. There appeared to be no dissent to this approach at the Inquiry.
178. Suggested condition 19 requires details of the children's play areas to be agreed with the Council, together with implementation in accordance with a timetable to be agreed. Such a condition is necessary to ensure that adequate play areas are provided on site to meet the reasonable needs of prospective occupiers. It was suggested at the Inquiry that this condition results in some duplication with the Estate Management Plan in the section 106 agreement. However I consider that the condition and point 17 of the Estate Management Plan are complementary insofar as the former would agree the details and deliver the play areas whilst the latter would ensure that the areas thereby provided would be maintained and managed. In this case there is no equivalent maintenance and management clause in condition 19 and so the respective provisions sit happily together. In those circumstances I reject the view of H & MT that the condition should cover this matter. The named organisation is specified in the section 106 agreement.
179. Suggested condition 20 requires details of a construction management plan to be submitted and approved in the interests of neighbours' living conditions. Concerns have been expressed that vehicles attending the site outside of



normal operating hours might park on the highway and disturb neighbours. To address this it was agreed that it would be appropriate to add the words "*at all times*" to the end of the first bullet-point.

180. H & MT say that there should be a binding agreement in place to require the developer to repair any damage to the existing highway but I am not persuaded that this would be necessary. If there is damage to the highway and clear evidence that shows that the developer and/or its contractors are responsible then I have no reason to think that established mechanisms do not exist to recover any monies due. Ultimately this would be a civil matter between the respective parties and if it were not covered by insurance then civil proceedings might be in prospect. Condition 24 is also relevant insofar as it requires all works to be eligible for adoption and so there would appear to be some leverage if, for example, the existing site access point[s] had been subject to anything other than reasonable wear and tear.
181. The next suggested condition requires the parking areas to be retained for that purpose, which is necessary in the interests of road safety, but I shall extend this to turning areas and add precision by referring to the approved plan. The provision of such spaces in the first instance would be covered by condition 2. Suggested conditions 22 to 26, inclusive, all relate to various aspects of highway design and are necessary in the interests of highway safety. These conditions reflect, to a significant degree, the Revised SoCG on Transport [CD40]. H & MT say that some of these works should be completed prior to the first occupation of any dwelling. Although condition 25 contains such a clause I have reviewed the other conditions with this in mind and recommend insertion of a clause to require a timetable to be agreed with the Council. Having regard to comments made at the Inquiry by Councillor Tebbutt, I shall also make clear that the bus shelter needs to be moved to serve the bus stop.
182. The final suggested condition requires a travel plan to be submitted within 6 months of the occupation of the first dwelling. H & MT argue that the travel plan should be in place 6 months before any of the properties are lived in; I agree. It is entirely in prospect that the travel plan might require steps to be taken, at a minimum a welcome pack informing prospective occupiers of public transport options in the area, which in my view needs to be delivered to all prospective occupiers. There is a strong argument in my view that the first occupiers are more important because they might, in this respect, set the culture for the whole development. The suggested condition also fails to require anything other than submission of the travel plan, as opposed to its implementation and review, which are all necessary and quite normal requirements of such a condition. A clause to require its approval by the Council is also proportionate and perfectly normal. I comment elsewhere on the reality that this condition is not the appropriate mechanism by which to deliver monies towards off-site cycle lane provision or enhancement.

### **Section 106 Planning Agreement**

183. Paragraph 204 of the Framework says that planning obligations, which would include the section 106 agreement, should only be sought where they meet 3 tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development. The statutory basis for these tests is to be found in Regulation 122 (2) of the CIL Regulations 2010.

184. The Council confirmed at the Inquiry that the section 106 agreement has been drawn up on the basis of the Council's standard template for such agreements. On this basis, noting that it is an agreement rather than an undertaking, I have no reason to doubt its effectiveness in delivering its relevant provisions. The agreement contains 2 key provisions, which I propose to examine in turn.
185. The first relates to the provision of 30% affordable housing, being 119 units. What is labelled the "*Affordable Housing Plan*", which is an integral part of the agreement, identifies the dwellings concerned and this, in turn, enables a breakdown of the units by size to be ascertained. The definitions section of the agreement says that 83 dwellings shall be affordable rented units and 36 dwellings shall be intermediate units, which represents a 70/30 split; those terms are, in turn, defined. The second schedule to the agreement sets out phasing provisions relative to the number of open market dwellings that have been constructed. Although the agreement does not identify which of the affordable housing units are to be affordable rented units and which are to be intermediate units, covenant 2.7 of the second schedule requires such details to be agreed prior to the commencement of the development.
186. The fourth schedule sets out the allocation procedure which, in respect of the affordable rented units, would be through the Northumberland Homefinder Scheme. Turning to shared ownership units, clause 2.3 of the fourth schedule defines what is meant by the term "*Qualifying Person*" and this includes those with local connections, such as by reason of work or family. On this basis it is clear that priority is given, in the first instance, to local people. The identical provisions also apply to discounted market sale units. Although I questioned whether the restriction at clause 3.2.3 of the fourth schedule should contain a date I am content to be guided in this matter by the respective solicitors who drafted the section 106 agreement that this is not necessary [DS16].
187. The second requires an Estate Management Plan to be submitted no later than the date of commencement and says no dwelling can be occupied until it has been approved. The fifth schedule to the section 106 agreement sets out what the Estate Management Plan needs to cover and I have already had cause to touch on some of its provisions in my consideration of suggested conditions. Amongst other things it requires details of how the privately managed communal areas would be managed, including arrangements such as street lighting. It covers the installation and maintenance of street name plates. The second schedule to the agreement requires the development to be operated at all times in accordance with the approved Estate Management Plan.
188. A sum of £1,260 is identified for monitoring compliance with the deed and a sum of £525 is identified in respect of the negotiation, preparation and execution of the deed. Although the basis for these sums is not set out in the Council's evidence they appear to be self-evident and, as such, I have no reason to interfere in the quantum that has been agreed between the parties.

## Conclusions

189. My conclusions address the following main considerations:
- i. The weight to be attached to emerging planning policies and whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Guidance.
  - ii. Whether relevant policies for the supply of housing are out-of-date.

- iii. The effect of the proposed development on the character and appearance of the area.
- iv. The effect of the proposed development on the local road network.
- v. The effect of the proposed development on flooding and sewage systems.
- vi. Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required.
- vii. Whether the need for affordable housing can be addressed by a planning obligation.
- viii. Whether the appeal scheme represents sustainable development, to which the Framework's "*presumption in favour*" should apply.
- ix. If so, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
- x. The adequacy of the suggested planning conditions and the section 106 agreement.

190. In this section numbers in [square] brackets refer to paragraphs earlier in this report.

***Main issue (i): Part one - The weight to be attached to emerging policies***

191. I deal with this issue first because it has implications for other main issues. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the weight to be attached to such policies will depend on: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
192. In that context I deal initially with the weight to be attached to the CS. It is common ground between the main parties that the CS can only be given limited weight in this appeal in view of the fact that it is at an early stage of preparation and subject of unresolved objections [25]. The Council's recent decision [DS6] to grant planning permission on an area provisionally allocated for employment uses in the CS tends to reinforce that view [64 iii]. Moreover the evidence of H & MT itself is that "*...there is to be further delay, as the population projections used to date have been found to be overestimated*"<sup>47</sup>. This points to potentially significant changes to both employment and housing allocations in the CS. There might be a need to commission fresh evidence, identify another employment site, or sites, and consult on revised options.
193. The LDS [CD19] says that consultation would take place on the full draft CS in Spring 2014 but that does not appear to have happened. For the reasons set out above the timetable in the LDS, which envisaged adoption of the CS in Spring 2015, appears to be wholly unrealistic. Bearing in mind that the examination itself might result in main modifications, which would need to be

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<sup>47</sup> Source of quote: paragraph 5 of proof of evidence of Councillor Mrs Tebbutt entitled "Policy context".

the subject of further consultation, to anticipate that an examination might be concluded in one season, over winter, appears to be highly optimistic. I agree that adoption of the CS could easily be 18 months, or more, away [64 iii].

194. It is common ground that there are unresolved objections to relevant policies in the CS, although I have few details in terms of substance or quantum. It is also apparent that the preferred approach for the settlement of Morpeth is, to a significant degree, predicated on delivery of the MNB. If that does not happen, which is a matter I deal with elsewhere, the draft strategy in the CS might have to be re-visited. When the consultation on the full draft CS does take place there is the prospect of substantive objections being lodged at that stage. For all of these reasons I find no basis to attach anything more than limited weight to the CS at the present time. There are a number of factors that could lead to significant changes to the CS by the time it is adopted.
195. The LDS [CD19] anticipates that following adoption of the CS, a new LP would be progressed for the whole of the County, excluding the National Park area, which would include detailed land allocations and site specific proposals. The evidence that was given at the Inquiry focussed not on the emerging LP but on the NP. However the NP is at a very early stage of preparation [28]. It is material that Mr Campbell, who is advising the Town Council and others on the NP, said that it is at too early a stage to be given weight [135]. Applying advice in paragraph 216 of the Framework it is clear that extremely limited weight can be given to the NP at the present time because the policies, proposals and allocations have not even been published for consultation [28]. There appears to be no prospect of the NP being adopted prior to the CS.

**Main issue (i): Part two - The issue of prematurity**

196. The Guidance says: *"...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 [LP] 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. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft [LP] has yet to be submitted for examination or in the case of a [NP], before the end of the [LPA] publicity period. Where planning permission is refused on grounds of prematurity, the [LPA] will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process"*<sup>48</sup>.
197. The Council has not raised any issue of prematurity [29]. It made its position very clear in its Committee Report and in the SoCG [CD39, paragraphs 5.41 and 5.42, respectively]. H & MT's position, that approval of the appeal could

<sup>48</sup> Source of quote: paragraph reference 21b-014-20140306.

- predetermine both [CS and NP] plan making processes, needs to be examined in the context of this advice. The first point to make is that the Guidance is clear that both a) and b) should normally be met. For the reasons discussed above [192-195] it is clear that neither the CS nor the NP can be said to be at an advanced stage. The CS has not been submitted for examination and I have given reasons why the timetable for examination of the CS in the LDS is not likely to be met. The policies, proposals and allocations in the NP have not yet been published for consultation. It is clear that criterion b) is not met.
198. Turning back to a) the development proposed is not so substantial, and its cumulative effect would not be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of development that are central to the emerging CS. In terms of scale, in the context of the 24,310 dwellings proposed in the CS [26] this scheme for 396 dwellings represents materially less than 2%. In terms of location this proposal is broadly consistent with the identification of Morpeth as a main town that, within the relevant Delivery Area, is envisaged to be the focus for growth. To the extent that phasing is addressed in the CS, I think it is fair to say that the priority is *"...to ensure that a five year supply of deliverable sites is maintained at all times"*<sup>49</sup>. The possibility of any cumulative effect needs to be seen in the context of that objective. For these reasons I consider that criterion a) is plainly not met insofar as it impacts upon the CS.
199. In relation to the NP, advice in the Guidance is clear that *"...plans must be in general conformity with the strategic policies of the Local Plan"*<sup>50</sup>. In this case the NP is working towards conformity with the emerging CS. In terms of scale, in the context of the 1,500 dwellings proposed for Morpeth [26], this scheme for 396 dwellings is significant. However in terms of location the NP rightly recognises that there are a range of factors that are likely to influence the location of housing in the town [CD8, page 47]. These include the MNB and the Loansdean appeal. Of the 5 development options identified in the Lock Report [CD22] the NP fairly says *"...that the analysis was used to present the case in favour of the MNB"*<sup>51</sup>. I note that option RES3 in the Lock Report, which extends to 16.34ha, broadly comprises the current appeal site [CD22, page 25 and Option E, Appendix A].
200. In its summary the NP finds *"A much more detailed and scored appraisal of each potential housing site should be carried out at a later stage of the plan, fully taking into account our HTG Guiding Principles"*<sup>52</sup>. Those principles include taking advantage of the opportunities presented by the MNB and prioritising previously-developed land. I comment elsewhere on the former, but in respect of the latter the NP's own analysis does not suggest that 1,500

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<sup>49</sup> Source of quote: paragraph 7.20 of the CS [CD7] under the title *"Phasing of new land for housing development"*.

<sup>50</sup> Source of quote: paragraph 3-040-20140306 of the Guidance.

<sup>51</sup> Source of quote: point 3, page 47, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

<sup>52</sup> Source of quote: under title *"Morpeth Summary"* on page 48, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

houses can be accommodated on such land that is currently deliverable<sup>53</sup>. The NP fairly observes "...additional greenfield housing allocations are inevitable"<sup>54</sup>.

201. In the circumstances I consider that the location of the identified quantum of dwellings is far from settled in the NP. Indeed I have already noted H & MT's suggestion that the quantum of dwellings might itself need to be revisited in the light of the changing household projections [192]. There is explicit recognition in the NP that Loansdean, and by inference other appeals, will be key to firming up other site allocations. So in terms of location the proposed development is not so substantial, and its cumulative effect would not be so significant, that a grant of permission would undermine the plan-making process by predetermining decisions that are central to the emerging NP.
202. Despite my reservation in terms of scale, particularly when taken with the outcome of the Loansdean appeal and other recent decisions such as DS6, it is clear that the prematurity argument does not justify dismissal of this appeal. In relation to the CS, I have given reasons why criteria a) and b) are not met. In relation to the NP criterion b) is not met and in those circumstances whilst I acknowledge that the scale of what is permitted, both individually and cumulatively, could be said to undermine the plan-making process, this is not a sound basis to find that the prematurity argument should succeed. In reaching this view it is material that the policy test, which is that refusal will seldom be justified at such an early stage in the process, establishes a high threshold. That basic rationale is what led the Inspector to reach a similar conclusion in the Loansdean appeal [see in particular, paragraph 27, DC4].
203. Although I accept that in an ideal world development would, or as H & MT put it "*must*", be plan-led, that is not a reason to impose what would amount to a moratorium on development. That would be completely at odds with the growth agenda set out in the Framework, as evident from the third core planning principle in paragraph 17 thereof. It says planning should proactively drive sustainable economic development to deliver, amongst other things, the homes that the country needs. The fact that the appeal is being pursued in the context of emerging plans cannot, of itself, render the proposal to be premature. A moratorium would be the antithesis of proactive delivery.

**Main issue (i): Overall conclusion**

204. On the first main issue I conclude that only limited weight can be given to the CS at the present time and that extremely limited weight can be given to the NP because its policies, proposals and allocations have not been published for consultation. In the circumstances I further conclude that H & MT's claim that the proposals are premature have not been made out crucially, in the case of the NP, because it is at such an early stage of preparation.

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<sup>53</sup> See Table on page 46 and commentary on page 47 of the NP, which identifies previously developed land for 524 dwellings excluding the green field element of Northgate Hospital.

<sup>54</sup> Source of quote: page 46, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

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**Main issue (ii): Are relevant policies for the supply of housing out-of-date?**

205. The Framework says: "*Housing applications should be considered in the context of the presumption in favour of sustainable development. 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*"<sup>55</sup>. For this reason this issue requires a judgment, in the first instance, as to whether the Council has a 5-year housing land supply.

**Housing land supply**

206. The Council has made its position in this matter very clear [30]. Indeed the SoCG is unambiguous in saying "*The appellant, H & MT and [the Council] agree that [the Council] does not have a deliverable five-year housing land supply*"<sup>56</sup>. Despite this H & MT appears to have changed its position in this matter [114] for reasons that I shall examine in what follows.
207. The Council relies on the findings of the Inspector in the recent Loansdean appeal [30] and when I asked Mr Hollowood about this matter he commended the Inspector's figures to me. However I was asked to take a view on the question of the buffer because, in Mr Hollowood's view, there is a strong argument for a higher, 20%, buffer. Perhaps because of the position that it took in the SoCG, H & MT do not provide detailed evidence on housing land supply that would lead me to dispute what appears to be a consensus between the main parties. My starting point is therefore the Inspector's findings in the Loansdean appeal. He found "*...the housing need for the CRCA is likely to be in the range of 430 to 480 dpa. To that must be added any previous undersupply, and an allowance for a buffer*"<sup>57</sup>. On balance, he found "*...conservatively, undersupply as being in neither positive nor negative figures at present*"<sup>58</sup>.
208. In identifying this range, the Inspector gave reasons for rejecting the RSS assessment, namely that it is of some age and open to doubt and criticism. That broadly reflects the advice in the Guidance, which says<sup>59</sup> "*Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested*". In that context the Inspector rightly makes the point that it is the job of, in this case, the CS to set out the housing needs for the housing market area. However, with the caveat that the most recent assessment has yet to be tested through the examination process, I attach significant weight to this calculation of housing need, which is now relied upon by both main parties.
209. In this context I turn to consider the one area that is in dispute between the main parties, namely whether the buffer should be increased to 20%. The Guidance says: "*The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in*

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<sup>55</sup> Source of quote: paragraph 49 of the Framework.

<sup>56</sup> Source of quote: paragraph 5.5, SoCG [CD39].

<sup>57</sup> Source of quote: paragraph 18, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>58</sup> Source of quote: paragraph 19, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>59</sup> Source of quote: paragraph reference 3-030-20140306.

*order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing.... The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle" <sup>60</sup>. The Loansdean Inspector found that "Supply has been above and below target on occasion, but to reach a position of a net oversupply in the CRCA (albeit over a period from 2004/05) does not seem to me to equate to a persistent issue even if most years recently have shown some undersupply. I therefore conclude, on the basis of the evidence, that a 5% buffer would be appropriate here" <sup>61</sup>.*

210. The Council's most recent publication on the subject says that for both the former Local Authority areas of Castle Morpeth and Tynedale, which together make up the CRCA, the annual housing requirement has not been delivered more often than it was achieved<sup>62</sup>. However in both cases it was achieved in 4 out of the 9 years between 2004 and 2013. Moreover, in aggregate, there was a surplus of 90 units over this period<sup>63</sup>, which in my view is of sufficient duration to give rise to a robust assessment of the local delivery record. I appreciate this involves an assessment against RSS figures but that was the DP for the majority of the period at issue. So whilst I acknowledge that the Council has, to its credit, seen fit to apply a 20% buffer to encourage choice and competition in the market for land<sup>64</sup>, I find no reason to contradict the very recent assessment of my colleague that a 5% buffer is appropriate.
211. The Inspector in the Loansdean appeal concluded that "*...on the basis of an annual need of 430 to 480 plus a 5% buffer, housing need in the CRCA can be conservatively assessed as being around 2250 to 2525 over 5 years" <sup>65</sup>. For the reasons set out above I have no basis upon which to fault this up-to-date assessment of need. Reflecting the position taken by the main parties at the Inquiry, this supplants the agreed position recorded in the SoCG [CD39, table at paragraph 5.4], which was based on the RSS requirement for the CRCA.*
212. Turning to supply, one of the figures quoted by the Inspector in the Loansdean appeal<sup>66</sup> appears to be identical to that set out in the SoCG [CD39, table at paragraph 5.4] insofar as the deliverable supply is quantified to be 838 units. In this case, because that figure is in the SoCG there is no need for me to go behind it, particularly as I note that the basis for that calculation is set out in CD9. What this does mean is that, in contrast to the position in the SoCG, the supply performance against requirement is much lower at between 33% and 37%<sup>67</sup>. The table at paragraph 5.4 of the SoCG records that for the CRCA, based on the RSS figure, there was a 3.17 years supply of housing. Adopting

<sup>60</sup> Source of quote: paragraph reference 3-035-20140306.

<sup>61</sup> Source of quote: paragraph 20, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>62</sup> Table 2, Northumberland Five Year Supply of Deliverable Sites 2013 to 2018, CD9.

<sup>63</sup> Table 2 of CD9 says there was an oversupply of 133 units for Tynedale but an undersupply of 43 for Castle Morpeth, which gives rise to an overall oversupply of 90 dwellings.

<sup>64</sup> Reflecting the advice in paragraph 47, second bullet-point, of the Framework.

<sup>65</sup> Source of quote: paragraph 21, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>66</sup> Paragraph 22, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4], noting that this was said to be the Council's figure and was not agreed in that case.

<sup>67</sup> Calculated as an expression of supply [838] against the 5-year requirement, 2250 to 2525.



the identical methodology for the revised figures established above leads me to find that there is as little as 1.66 years supply of housing in the CRCA<sup>68</sup>.

213. The basis of the revised position taken by H & MT at the Inquiry was the table at paragraph 5.4 of the SoCG, but it will be evident from what I have set out above that the position is now accepted by the main parties to have changed. In absolute terms the shortfall for the CRCA is, based on the agreed position of both main parties, something of the order of 1,412 to 1,687 units<sup>69</sup>, rather than 482 units [114]. That is why the Loansdean Inspector refers to the need for "*...a significantly increased housing supply for the CRCA, and for Morpeth, [being] required*"<sup>70</sup>. I acknowledge that a number of recent permissions have been granted, including at Loansdean [DC4] and the Persimmon site [DS6], and that other applications are pending, notably Phase 1 of the St George's Hospital site. Although reference has been made to other sites such as County Hall [129] I share the view of the Loansdean Inspector that little weight can be given to this. Amongst other things I note that "*...the county council is still to confirm its decision [to sell-off County Hall and that the decision is unlikely to be made until]...October*"<sup>71</sup>. For these reasons I find no basis to conclude this scale of under-provision has been made up. There might be the potential for anything between 1,075 [114] and 1,750 [129] dwellings in the pipeline, but that does not equate to a deliverable supply of the quantum now required.
214. I accept that Morpeth is not the only main settlement in the CRCA but I have not been provided with data for other settlements that would lead me to dispute the figure of 838 dwellings that has been agreed in the SoCG and which can be traced back to the Council's most recent publication [CD9]. Taken at face value, it is not even a figure that H & MT disputed in the SOCG. I fully appreciate and acknowledge that the figure of 1,500 dwellings in the CS might change because of the new population projections, but it is appropriate to proceed on the most up-to-date information available, which is reflected in the assessment of the Loansdean Inspector agreed between the main parties.
215. For these reasons I conclude on the first part of the second issue that, to adopt the language used in the Framework, the LPA cannot demonstrate a five-year supply of deliverable housing sites. I would further observe that whilst the shortfall in the CRCA would appear, on almost any measure, to be severe, reflecting what appears to be a consensus between the main parties it does not actually matter what the scale of the shortfall is [64 i]. This should be given significant weight in the overall balance. Applying advice in paragraph 49 of the Framework, as there is no 5-year housing land supply the relevant policies for the supply of housing should not be considered up-to-date.

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<sup>68</sup> The 3.17 years figure is derived by dividing 1,320 by 5 [years] = 264 pa and then taking the deliverable supply [838] and dividing that by 264 to = 3.17 years supply. The equivalent updated figures are, in a worst case scenario, 2525 divided by 5 [years] = 505 pa and then taking the deliverable supply [838] and dividing that by 505 to = 1.66 years supply. I acknowledge that the other end of the range is 2250 divided 5 [years] = 450 pa and then taking the deliverable supply [838] and dividing that by 450 to = 1.86 years supply.

<sup>69</sup> This range is established as 2250 less 838 = 1412 and 2525 less 838 = 1687.

<sup>70</sup> Source of quote: paragraph 17, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>71</sup> Source of quote: article "*Petition to be handed over on county HQ*", page 4, Morpeth Herald, Thursday July 24 2014 [DS30.2].

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**Relevant policies for the supply of housing**

216. The SoCG helpfully identifies 6 policies in the LP to be relevant policies for the supply of housing, namely C1, H1, H2, H16, MC1 and MH1, but the following sentence says H & MT do not agree policies C1 and MC1 are out of date [CD39, paragraph 5.7]. These policies relate to settlement boundaries. H & MT argue that such policies serve 2 purposes, namely limiting urban development and protecting the countryside; I agree. On this basis their argument is that such policies are not solely about housing and whilst the assessed housing need might change that requires a judgment about where along that boundary it would be most appropriate to sanction a release. H & MT say that the issue of protection of the countryside does not automatically go away.
217. H & MT point to 2 appeal decisions to support this view. The first is the first appeal decision on Loansdean, limited extracts from which are provided<sup>72</sup>. However it is clear that decision was quashed by order of the High Court; the Loansdean decision records "*...the fact that Appeal A is being redetermined means that the previous 'decision' has no status in law. I must determine the case again on the basis of the evidence before me, and the previous decision can play no part in my consideration*"<sup>73</sup>. So whilst I acknowledge the claim that The Planning Inspectorate only conceded on a technicality [relating to affordable housing] it is clear that Inspector Major approached the decision afresh, de novo. I have no reason to go behind that statement; I have not seen the file or the order of the High Court. Accordingly it would be wrong, as H & MT have, to cherry pick quotations from the first Inspector's decision. It would be wrong in law for me to take account of these limited excerpts.
218. The second appeal is however material. At paragraph 20 the Inspector says, unambiguously, that "*...the settlement boundary policies C1 (generally) and MC1 (around Morpeth) are 'relevant policies for the supply of housing'. Indeed, it is acknowledged that the settlement limit has been defined quite tightly around the town and that some appropriate re-configuration would be necessary to accommodate future growth...*" [my emphasis]<sup>74</sup>. I appreciate that he goes on to say this does not necessarily condone breaching those boundaries anywhere and that such limits do not just relate to the supply of housing. However the first of these entails a planning judgment about harm and the second must be read in the context of the quote set out above. For my purpose this does not assist H & MT. Indeed it strongly supports the view that LP policies C1 and MC1 are relevant policies for the supply of housing.
219. My view on this point is however categorically confirmed by recent judicial authority to which the Appellants have drawn attention. The judge held "*...the language of [paragraph 49 of the Framework] cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate*

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<sup>72</sup> Appendix 4 to H & MT's proof of evidence on "*Policy Context*".

<sup>73</sup> Source of quote: paragraph 2, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

<sup>74</sup> Source of quote: paragraph 20, appeal APP/P2935/A/12/2181035, Appendix 5 to H & MT's proof of evidence on "*Policy Context*".

*distribution and location of development*"<sup>75</sup>. The policy at issue in that case, EV2, had a broad remit and said "*planning permission will not be granted for development in the open countryside...*"<sup>76</sup>. It too was not solely about housing. An earlier judge had already reached the view that Policy EV2 was a relevant policy for the supply of housing<sup>77</sup>. LP Policy C1 is similar insofar as it says "*Development in the open countryside beyond settlement boundaries will not be permitted...*". In that context LP Policy MC1 defines the settlement boundary for Morpeth, the supporting text to which talks about controlling and directing pressure for large housing development. Having regard to judicial authority, the policies are, unquestionably in my view, policies for the supply of housing.

220. My only other observation under this heading is that I take exception to the Appellants' proposition that in the circumstances where paragraph 49 of the Framework applies that policies for the supply of housing should be given no weight. However they are, and remain, part of the DP. In my view the correct formulation is that, applying the test in section 38(6) of the 2004 Act, there is a material consideration, namely the Framework, which outweighs the conflict. It might result in the same outcome but it is the correct approach in my view.

### **Main issue (ii): Overall conclusion**

221. On the second main issue I conclude that since the LPA cannot demonstrate a 5-year supply of deliverable housing sites, all relevant policies for the supply of housing should not be considered up-to-date. Those policies include C1 and MC1, which relate to settlement boundaries, and I have given reasons to reject the contention of H & MT to the contrary.

### **Main issue (iii): Character and appearance**

#### **Background and areas of common ground**

222. As part of the evidence base for its emerging DP the Council commissioned LUC to undertake a Landscape Character Assessment of the County, which identified a total of 108 landscape character areas. The appeal site falls within landscape character type 39, "*Coalfield Farmland*", and specifically within sub-type 39c for the Stannington area. In respect of 39c the assessment says "*The character of this landscape is significantly modified and influenced by adjoining urban areas and their associated infrastructure. Several transport corridors run north-south through this landscape, including the A1, East Coast Main Line, A192, and another rail line. Scattered development east of the A1 gives a more urban fringe impression...*"<sup>78</sup>.
223. On the basis of this assessment LUC undertook a Key Land Use Impact Study [CD13]. Part D thereof [CD14] explored the relative value of Northumberland's 108 landscape character areas using a scoring system, from 1 to 5, against a series of criteria, such as rarity. Character area 39c scored 18 and was

<sup>75</sup> Source of quote: paragraph 47 of *South Northamptonshire Council v SSCLG and Barwood Land and Estates Limited* [2014] EWHC 573 (Admin).

<sup>76</sup> Source of quote: paragraph 38 of *Barwood Land and Estates Limited*.

<sup>77</sup> *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin), which was a challenge to one of my own decisions, to which reference is made in *Barwood Land and Estates Limited*.

<sup>78</sup> Source of quote: paragraph 4.402, CD15.

amongst the "lowest scoring landscapes", i.e. those "scoring 20 or less"<sup>79</sup>. The Appellants claim that it was the second least valuable in the whole County out of 108 areas [65 iii] and whilst that is not correct<sup>80</sup> I agree it was a low score. Mr Walker has referred to Part B of the Land Use Impact Study and whilst this has not been submitted as a Core Document I take his quotes at face value.

224. Part A of the Key Land Use Impact Study provides an analysis of settlements, including Morpeth. Under a title "*Sensitivity of landscape to change*", it says "*Rising ground to the south of Morpeth and the valley of the Coal Burn to the south-west are considered to be of slightly higher landscape sensitivity as they play an important role in allowing visual separation between Morpeth and settlements further south, including Hepscott...*"<sup>81</sup>. The Key to the Settlement Diagrams<sup>82</sup> identifies the orange shading to be an Area of Higher Landscape Sensitivity. Figure A2.18 identifies land to the south of the appeal site with orange shading and a figure, "4", which is a reference back to Guideline 4, which says "*Consider potential effects of development south of A196 on views and on the setting of Hepscott*"<sup>83</sup> [*my emphasis*]. Even if it might be said that Guideline 3 "*Seek to retain rural character of areas to the east and rising ground to the south*"<sup>84</sup> should also apply to the relevant orange shaded area on Figure A2.18, it is clear that development south of the A196 was, at the very least, being conceived of between the A196 and the orange shaded area. I consider that is not inconsistent with what the CS says, albeit with the caveat that it talks of *limited long term development potential*, post 2031 [27]. The main parties agree that what they call the indicative illustrative area of higher sensitivity [orange shading] covers only a small proportion of the proposed landscaped area at the south-eastern corner of the appeal site<sup>85</sup>. It is common ground that no housing is proposed in an area of higher landscape sensitivity.
225. The SoCG records<sup>86</sup> that the appeal site is not designated for its landscape quality in either the adopted LP or the CS and records that, in its Committee Report<sup>87</sup>, the Council accepted the site is little seen from the wider landscape. This conclusion drew, amongst other things, on the submitted PDP Landscape and Visual Impact Appraisal [CD31]. It concluded "*...that development would have a **slight/moderate** impact on landscape and a **slight** visual impact away from the immediate surroundings (where impact is predicted to be moderate). The main impact will be along the A192 and A196 road corridors. The visual analysis suggests that the visual impact on the settlement of Hepscott would be minimal due to topography and existing hedgerow screening*"<sup>88</sup> [*original emphasis*]. The main parties agree the PDP Landscape and Visual Impact Appraisal was not intended to be a full landscape and visual

<sup>79</sup> Source of quotes: paragraphs 3.12 and 3.6, respectively, CD14; this is a weighted score.

<sup>80</sup> Using the weighted scores character areas 36a [16] and 26a [17], both scored less than 39a [18], so it is in fact the joint third lowest scoring landscape; see Table D3.1, CD14.

<sup>81</sup> Source of quote: paragraph 2.267, CD13.

<sup>82</sup> Page A-6, CD13.

<sup>83</sup> Source of quote: Guideline 4, paragraph 2.269, CD13

<sup>84</sup> Source of quote: Guideline 3, paragraph 2.269, CD13

<sup>85</sup> Paragraph 9, DS5.

<sup>86</sup> Paragraph 5.47, CD39.

<sup>87</sup> Paragraph 7.40, CD33.

<sup>88</sup> Source of quote: paragraph 4.402, CD15.

impact appraisal but an initial overview of the scheme's potential effects, which was undertaken in 2012 before detailed proposals were formulated<sup>89</sup>.

226. Finally under this heading I observe that the Landscape SoCG [DS5] records agreement between the main parties on 2 important aspects of visibility. First that significant visual effects from the proposed development would largely be experienced in the areas close to the appeal site because the extent of effects on wider landscape character is limited by the extent of visibility. Second that the existing planting, which forms 70% of the south-eastern boundary of the appeal site, would gradually screen both the proposed housing and the existing settlement edge when viewed from viewpoints to the south.

### ***Effect on wider landscape***

227. I deal initially with the penultimate point, namely that significant visual effects would only be experienced in the areas close to the appeal site. During the accompanied site inspection I viewed the appeal site from the footpaths that run broadly east-west (i) to the north of Hepscott Red House and (ii) to the west of Hepscott<sup>90</sup>. In respect of these viewpoints Mr Walker says, in his summary of landscape and visual impact assessment, that less significant change would be evident from these distant views; Table 2 characterises the significance of visual impact when viewed from these points to be negligible or minor adverse. He conceded in xx that the longer distance views of the site post development would not justify dismissal of the appeal [65 vii]; I agree.
228. Whilst the Landscape SoCG refers to views as far south as Barmoor Farm<sup>91</sup> neither main party has identified this as a viewpoint, with the closest being Mr Smith's viewpoint 14, which lies some way to the north of Barmoor Farm. Taking account of the second point in [226], noting the scope for additional planting along the south-east boundary and Mr Smith's Photomontage 14, at most there would be glimpsed views of the proposed development over winter on approach towards the appeal site along the A192 from the south. In these circumstances it is appropriate to focus on views within close proximity of the appeal site. In reaching this view I have taken account of the other viewpoints identified by Mr Smith and Mr Walker in their respective proofs of evidence.

### ***Preliminary area of dispute (i) whether the appeal site is urban fringe***

229. In my view the appeal site should properly be considered to be part of the urban-rural fringe, i.e. the zone in which the town and countryside meet. Mr Smith's identification of the extent of what I shall call the urban fringe might be open to debate but I note that other boundaries where such a zone is not identified are largely characterised by physical features on the ground, eg the railway embankment to the east of the industrial estate<sup>92</sup>. H & MT believe that the appeal site is not urban fringe land in its scruffy sense but that it is a green field [101]. I agree on both counts but it does not alter my view that it should be described to be part of the urban fringe: an area where the town strongly influences the character of the countryside in both a visual and aural sense.

<sup>89</sup> Paragraph 12, DS5; the latter point evident from section 2.0, CD31.

<sup>90</sup> Viewpoints 07, 08 and 09 at Appendix 3 to Mr Walker's evidence.

<sup>91</sup> Paragraph 19, DS5.

<sup>92</sup> See S/JNS/3, appended to Mr Smith's proof of evidence.

230. I consider this finding is consistent with 3 documents that have been published or commissioned by the Council. The first is the SHLAA which, in respect of the entry for what is broadly the appeal site, says the site is "...close to busy roundabout" and there are "No significant barriers to the development of this urban fringe site"<sup>93</sup>. The former might be a statement of the obvious and a relatively minor point but it is recognition of the urban influence on the site. The second is LUC's broad description of the area to the east of the A1 in character area 39c [222], which it might be said to be too generalised but would apply to this edge of town site. The third is the Council's report on the Persimmon site, which identifies that site to have "...all of the characteristics associated with urban fringe land"<sup>94</sup>. Although I recognise the rationale that led the Council to make that finding, on approach to the Persimmon site from the town, along the A192, it appears somewhat detached from the urban area. My substantive criticism however is the apparent inconsistency in the Council's stance between the respective sites: the site is a long way from the edge of Morpeth compared to the appeal site. For these reasons I cannot accept the Council's submission that the appeal site is a large tract of *unspoilt* countryside [34] that is *distinct and clearly separate* from Morpeth [31].

### **Preliminary area of dispute (ii) landscape sensitivity**

231. Paragraph 5.39 of the GLVIA3 says the sensitivity of the landscape should be assessed by combining judgments of their susceptibility to the type of development proposed and the value attached to the landscape. In terms of value, the Committee report focussed on the landscape being highly valued by local residents<sup>95</sup>, which I do not doubt, but I attach greater weight to the Council's more objective Landscape Character Assessment. It found the area was influenced by the adjoining urban area and associated infrastructure and was one of the lowest scoring landscapes in the County [222, 223]. Turning to susceptibility the difference between medium and low, according to Table A3 of Mr Smith's evidence, is whether the landscape has *some ability* or is *generally able* to accommodate development without undue adverse effects respectively. The PDP report [CD31] does not use the term susceptibility and to the extent that Mr Walker's proof is a critique of the PDP report I do not find it particularly helpful as the situation has moved on significantly. In my view Mr Smith's analysis is to be preferred because his reasoning can be traced through the various tables in his appendices; there is a full, reasoned explanation for the overall value of sensitivity that is arrived at, in contrast to Mr Walker's proof.
232. In reaching his view in Table A14 that the landscape is of low sensitivity, Mr Smith acknowledges that the arable field, as a feature of the site and in terms of perception of openness, would have medium sensitivity. By reference to Table A12 those values derive from combining community value with high susceptibility. The overall sensitivity is derived by balancing these more positive factors against other negative factors, including the proximity of the urban edge in terms of noise, movement and verticality of urban forms. On

<sup>93</sup> Source of quotes: comments on suitability and deliverability, entry 3188, CD10; entry 3188 relates to a slightly different site area but includes a large part of the appeal site.

<sup>94</sup> Source of quote: paragraph 7.50, DS6.

<sup>95</sup> See paragraph 7.41, CD33.

balance, taking into account the low value attached to the landscape by what was the Council's own commissioned study, I accept Mr Smith's reasoning.

233. Dealing with each of the Council's reasons for arguing to the contrary [34] I comment below, dealing with each in turn:
- (i) I do not find it contrary to the Landscape SoCG because the term "*to some degree*" is a subjective one; the Appellants might have meant to a significant extent, the Council to a limited extent, the common ground was to some degree. Any alleged conflict is therefore a matter of interpretation.
  - (ii) I reject the claim that the Inspector characterised the site as "*entirely in the open countryside*". In my view it is clear from the quote in its wider context [13] that he is initially weighing the pros and cons, one of which is that there is concern that it is in the open countryside. The Inspector does not say from where that concern has arisen although a fair reading of the passage suggests to me that it was the Council's concern, but he does not say it is a concern he shares. Instead his own position is made clear over the page, in the original report, which is recited at [14]. In my view it is evident from the fact that the Inspector envisaged that landscaping of any development could be dealt with by planning conditions that this was not a concern he shared.
  - (iii) I reject the claim that the Key Land Use Impact Study is inconsistent with Mr Smith's position for the reasons outlined previously [224]. The Study conceived of development south of the A196, but not within an area of higher landscape sensitivity. To the extent that paragraph 5.40 of GLVIA3 talks about accommodating development without undue consequences for the achievement of landscape planning policies and strategies it is material that the appeal site is not designated for its landscape quality in either the adopted LP or the CS [225]. The fact that Figure 8.2 of the CS excludes the appeal site from the preferred option Green Belt is not an irrelevant factor, although I acknowledge that Green Belt is not strictly a landscape policy. In drafting the inner boundary it is inconceivable to me that the Council did not take on board the LUC advice that the inner boundary should be drawn quite tightly<sup>96</sup>.
  - (iv) I appreciate that Mr Smith takes a different approach to PDP but I have touched on one reason for this and noted Mr Walker's substantive criticism of PDP [231]. Amongst other things Mr Walker emphasises that the PDP study was not undertaken in accordance with the current version of GLVIA3. It is common ground that the PDP report was not a full landscape and visual impact appraisal [225]. For these reasons Mr Smith's analysis is to be preferred.
  - (v) My site inspection confirmed that the appeal site is in active agricultural use and so I accept that in a functional sense such use is unaffected by the presence of roads, footpaths and residential development along its northern and western boundaries. However, noting that there is no lawful public access to the appeal site, this point does not dissuade me of my earlier finding.

#### ***Preliminary area of dispute (iii) visual containment***

234. Turning to visual containment, Mr Smith points to a combination of the existing landform and vegetation to support his view that the appeal site is visually self-contained. However as he conceded in xx there are few if any containing features along the site's northern and western boundaries. So whilst my earlier comments about the Inspector's report apply [233 ii], I agree that the

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<sup>96</sup> Paragraph 4.32, Part B of LUC report, quoted at paragraph 2.43 of Mr Walker's proof.

appeal site lacks the self-containment that is evident at Loansdean. In the recent appeal the Inspector found the Loansdean site has "...*strong boundaries to the north (Loansdean housing) south (woodland) and east (the main road). The western and south-western corner is slightly more open, but here the land rises, adding a further element of enclosure*"<sup>97</sup>. This might be said to provide some explanation as to why Mr Smith does not identify it as urban-rural fringe.

235. Crucially, in contrast to the position at Loansdean, the A192 and A196 both have views towards the appeal site from public vantage-points, including the vicinity of the roundabout and when travelling south on the A192, that are not significantly screened or filtered by mature, protected trees, as is the case on the A197 at Loansdean. I acknowledge that a new roundabout and access is proposed to serve the Loansdean development [DS20], which would inevitably open up a new vista into that site but, noting the new planting proposed, this does not alter my view that there is a distinction between Loansdean and this site by reason of the former being self-contained and the latter not. However this conclusion needs to be read in the context of my earlier findings [228].

#### ***Preliminary area of dispute (iv) effect on gateways***

236. A fourth area of dispute between the Appellants and H & MT is the effect of the proposed development on the gateway routes into Morpeth. The first point is that I find no reason to dispute H & MT's claim that LP Policies C4 and MC3 comply with the Framework and should be given appropriate weight [100], which in my view should be significant weight. However the Council alleges no conflict with these policies. The key tests are set out in LP Policy C4, which says (i) development is encouraged, a relatively weak term, to include a landscaped zone with an average width of not less than 15 m from the edge of the highway and (ii) that no built development will be permitted in that zone. I acknowledge that the CS seeks to maintain the gateways but I have given reasons for attributing it limited weight [194] and so focus on the LP Policies.
237. Dealing with these in reverse order I am satisfied that no built development is proposed within 15 m of the highway. The closest plot, the dwelling on No 21, has its flank wall positioned at approximately 15 m back from the road side of the hedgerow. The Presentation Layout [drawing No NE-18-06K] shows the existing hedgerow would be largely unbroken, save for limited pedestrian access, and would be supplemented by additional planting. Whilst precise details of that planting is not before me, but would be agreed by the Council pursuant to discharge of a condition, there would appear to be scope for the new planting to restrict through views at the pedestrian access points onto this stretch of the A192<sup>98</sup>. At the roundabout another pedestrian access is proposed but at this point the landscaped area would be around 40m deep. Noting that the houses to the west of the A192 are obscured by planting I find no reason why, at the very least, views of the proposed houses would not be filtered over time. I acknowledge, however, this would depend on the mix and extent of the proposed landscaping and the precise maintenance regime of the hedgerow. For these reasons these proposals would deliver the underlying

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<sup>97</sup> Source of quote: paragraph 38, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

<sup>98</sup> This is most clearly articulated at the southern pedestrian access on the Presentation Layout but I note the second pedestrian access onto the A192 would be staggered.



policy objective of a green corridor on approach to the town along the A192. Once it has matured it would still be possible to approach the town through the countryside from the south along the A192 and 'come upon' it suddenly [101].

238. Turning to the A196 frontage, the Presentation Layout shows 4 gaps in the existing hedgerow. Two of these would be pedestrian accesses and there would appear to be some scope for planting to filter direct views through these gaps although the narrower width of the landscape zone, notably in the vicinity of plot 4, limits the scope to do this as effectively as on the A192 frontage. The other two gaps would include roads and footways. The eastern road access shows a gap of circa 40m in the existing hedgerow. It is plainly material that Mr Craig agreed in xx that the Road Safety Audit might result in increased hedgerow loss [32]. Although both road entrances show indicative planting, which would suggest that avenues are envisaged, the proposed houses would plainly be visible through the proposed gaps in the hedgerow, which would not be ameliorated by the proposed planting. I consider this point further below. Despite my finding that the housing would be far more visible on the approach along the A196 than it would be on approach from the south, along the A192, I find compliance with LP Policies C4 and MC3. Given the existing junction with Coopies Way, to the east of the railway bridge, which in my view signals the existence of the urban area to drivers on that approach to the town, I consider that it is appropriate that it should be this way around.

### ***Landscape Assessment***

239. The landscape appraisal is an assessment of the effect upon the landscape as a resource<sup>99</sup>. This section of my report should be read in conjunction with my earlier comments on landscape sensitivity [231-233]. Mr Walker and Mr Smith agree that the proposed development would have a negative or adverse effect, but they disagree as to whether this would be significant overall. Paragraph 5.56 of GLVIA3 says there are no hard and fast rules about what makes a significant effect. Figure 5.10 of GLVIA3 says loss of uniform, homogenous elements, features, characteristics and qualities, and effects on areas of degraded character and lower-value landscapes would generically be less significant. This is a lower value landscape the character of which is degraded by its urban fringe location and whilst in agricultural use it is essentially one homogenous field. In the circumstances I accept Mr Smith's view that the site's location, including the influence of existing movements, together with the community value of the site, ie the lack of formal landscape designations, and its relatively low landscape value, all point to a less than significant effect. Although I have given reasons why I do not agree with the visual containment point [235] in a broader context I have found that the landscape effects would be localised [228]. In my view that is the point that Mr Smith is making in the context of the landscape assessment distinct from an analysis of visual effects.

### ***Visual Impact Assessment***

240. The visual impact appraisal is an assessment of the effect of the proposed development on views and visual amenity<sup>100</sup>. This section of my report should be read in conjunction with my earlier comments on visual containment and

<sup>99</sup> Figure 3.4, GLVIA3.

<sup>100</sup> Figure 3.4, GLVIA3.

effect on gateways [234-238]. Whilst there is broad agreement between Mr Walker and Mr Smith as to relevant viewpoints that would be affected, broadly along the length of the main roads that adjoin the boundaries of the appeal site, I agree with Mr Walker that the impact on the open space to the west<sup>101</sup> of Stobhill Roundabout is an important vantage-point and that users of the public open space would have high sensitivity to change because the view would be part of their experience of the outdoor space. This was confirmed during my inspection. This viewpoint is said to be around 250 m from the site.

241. I have already given reasons why I consider the effect on the A192 corridor would, in broad terms, be less than on the A196 corridor [238]. Mr Walker says of his viewpoint 2, in the southern corner of the site, that receptors would include the upper storeys of residential properties, but I am not convinced that is correct. Mr Smith's appendix S/JNS/13 shows that even in winter the hedge on the western boundary of the A196 would largely screen views towards the appeal site. I further consider that residual views, after 15 years, from this vantage-point would reduce over time. There would, of course, be change but it would be less significant than from other viewpoints further to the north.
242. The other key difference between Mr Walker and Mr Smith relates to users of the footway parallel to the A196 over the railway bridge. I agree with Mr Walker that users of the footway would have high sensitivity to change because the view of the appeal site would be part of their experience of the environment along a continuous footway rather than an *isolated raised area*.
243. It is common ground that the proposed development would have significant negative, or adverse, visual effects. In my view these would extend from the A192, in the vicinity of Stobhill Roundabout, but including the area of public open space to the west, along the length of the A196 to, but including, the vicinity of the railway bridge. This frontage is of the order of 530m [32] but with the public open space this significant adverse visual effect could extend to an area approaching 800m in length. It would impact on residents, albeit principally from upper storeys, users of the footway and public open space, and other highway users, albeit that the sensitivity of drivers would be lower because they would be transient. Mr Smith's Photomontage 1 [S/JNS/4] is a fair representation of the scale of change at the Choppington Road junction with the A196 but at other points the built form would be even more exposed by virtue of the proposed gaps between the hedgerow and topography<sup>102</sup>. For this reason I cannot agree with Mr Smith's statement that significant visual effects for drivers would be limited to just views from Choppington Road.
244. In reaching this view I have taken account of the proposed mitigation but I have already found that this would be less effective on the A196 frontage [238]. However I would observe that there is greater scope for successful mitigation in the vicinity of the roundabout itself, and the area of public open space to the west, by virtue of the size of the landscaped area proposed on the north-western corner of the appeal site. The indicative landscaping opposite the entrance to Collingwood School on the Presentation Layout is less dense

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<sup>101</sup> Mr Walker's Viewpoint 5 is wrongly labelled east.

<sup>102</sup> The first point is explored at [238] and the second is a reference to the railway bridge.

and taken with the form of dwellings proposed in that part of the site there would appear to be less scope for mitigation in this area even after 15 years.

### ***Gap between Hepscott and Morpeth***

245. I broadly accept the Council's claim that the proposed scheme would impinge physically on the landscape that separates Morpeth from Hepscott by virtue of a large area of open countryside being permanently lost [37]. However I also accept the Appellants' claim that there is no policy protection in either the LP or the CS for the gap between Morpeth and Hepscott, which suggests, at least to this extent, it is not worthy of retention. The CS, together with its evidence base, strongly supports the view that development of the site is envisaged to some extent [224, 233 iii]. The Key Land Use Impact Study gives some basis to protect an area to the south of the appeal site, which would maintain a gap between Hepscott and Morpeth. This broadly accords with the inner Green Belt boundary identified in the CS. So although H & MT have referred to paragraph 80 of the Framework [103], this relates to Green Belt land. The appeal site is not Green Belt and neither does the CS propose it as such. In all the circumstances this reference does not assist the argument in any way.
246. I accept that the open countryside between Stobhill and Hepscott provides a green buffer between the respective settlements which is important to the identity of both [103]. However I consider that this scheme, which would unquestionably relate to the town even though it would be in the Parish of Hepscott, would not threaten the identity or character of the village. The belt of landscaping along the south-east boundary of the site, which would be strengthened as part of this scheme, would provide a clear and defensible boundary. My inspection revealed that the view from the footpath that runs to the west of Hepscott<sup>103</sup>, which would not materially change, is of an extensive area of pastoral landscape. Taken with the emerging policy framework, ie the proposed Green Belt, I attach very little weight to the alleged precedent effect.

### ***Other comments on the SHLAA***

247. I acknowledge that the Introduction to the SHLAA stresses that it does not determine whether a site should be allocated or granted planning permission. Nevertheless relevant DCLG Practice Guidance<sup>104</sup> sets out factors to be considered when assessing a site's suitability to include policy restrictions and effect upon landscape features. The comments on this site's suitability include reference to its location in the general extent of the Green Belt extension, but I have dealt with this above [245]; there are no comments on the landscape.

### ***Main issue (iii): Overall conclusion***

248. On the third main issue I conclude that the proposed development would harm the character of the landscape but, because of its relatively low landscape value, not to a significant extent [239]. However I conclude that the proposed development would harm the appearance of the area to a significant extent, broadly along the A196 corridor that demarcates the northern boundary of the

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<sup>103</sup> See viewpoint 09, Mr Walker's appendices.

<sup>104</sup> Paragraph 38, CD43.

site which, with the open space to the west of Stobhill Roundabout, would be an essentially linear area approaching 800m in length [243].

249. Nevertheless I accept that the only impact would be on views within close proximity, ie predominantly 100m, of the site and in that sense there would only be localised harm within the immediate area of the site, albeit that by virtue of the size of the site that area is quite extensive. Mr Walker conceded in xx that a residential development of 396 units would materially alter views in the close vicinity of any site [65 viii] and inevitably that must be correct.
250. No conflict with LP Policies is alleged in the first deemed reason for refusal [3 i] and whilst it does refer to the settlement boundary for Morpeth, I have found that policies C1 and MC1 are not up-to-date [221]. There is compliance with LP Policies C4 and MC3 [236-238]. Although the first deemed reason for refusal [3 i] alleges a conflict with the Framework that is in the context of the overall balancing exercise, which is a matter that I consider in due course. Nevertheless the harm must be weighed against any benefits of the scheme.

***Main issue (iv): The effect of the proposed development on the local road network***

***The updated position***

251. This is an area where the main parties have continued discussions right up to, and during, the Inquiry in order to reach agreement. This positive approach should be recognised. Whereas the second deemed reason for refusal [3 ii] included highway safety the main parties agree that this matter, in terms of access onto the A196 and the internal site layout, is now capable of being addressed by the imposition of planning conditions [CD40, section 3]. Although H & MT do not agree that the proposed access points onto the A196 can be dealt with by conditions [CD40, paragraph 3.2.2] they offered no substantive evidence on this particular issue that would lead me to find otherwise. I consider that as a direct consequence it is important to record that the only conflict with DP policy that was alleged in the deemed reasons for refusal, with LP Policy H15, no longer stands. The relevant highway criteria in that policy, notably v, x and xi, do not relate to the issue that remains between the main parties. My view on this point is consistent with the report to the Council's North Area Planning Committee<sup>105</sup>. In my view, whilst this point has not been particularly emphasised, I consider the fact that the Council now alleges no conflict with DP policy is a highly significant and material finding having regard to the statutory test in section 38(6) of the 2004 Act.
252. In terms of the impact of the proposed development on highways and traffic the SoS should note that section 5 of the Highways SoCG [CD40] has been overtaken to the extent that modelling of the network has been agreed and includes traffic arising from the recent Loansdean appeal [DS18.1]. The WSP Paramics base micro simulation model is agreed by the main parties to be an acceptable representation of congestion currently observed in Morpeth [41]. H & MT and others have expressed concerns about whether the outputs from

<sup>105</sup> See paragraphs 7.57-7.59 and contrast with paragraphs 7.60-7.61 [CD33]; paragraphs 7.62-7.63, whilst under the title of sustainable transport modes, are plainly a summary of the position taken on highway matters despite continuing the text under that title.

that model are a fair representation of existing journey times [91, 131, 144, 162], but it is important to recognise that these are averages. The Council's point that every second's delay in the model represents an hour's delay spread across the network [41] is an illustration of how the outputs should be viewed. For this reason, whilst I understand the scepticism with which residents viewed this exercise, particularly it would seem in the light of a failed experiment with traffic lights at the junction north of Telford Bridge, I have been given no good reason to find that I should not base my conclusions on the modelling exercise.

253. The Loansdean Inspector<sup>106</sup> did not have a great deal to say about highway issues but he did envisage that a minimal adjustment to the timing of the signal controlled pedestrian crossing close to Telford Bridge would minimise delay whilst having no perceptible impact on pedestrians<sup>107</sup>. H & MT dispute the latter point. It would appear that any adjustment to the timing of the crossing has yet to take place. I too observed the highway network at various times of day during the sitting period of the Inquiry and observed that the crossing was a significant cause of northbound queues, particularly in the AM peak. Among other things I note that the model was adjusted to take account of these signals being called every 45 seconds during part of the AM peak<sup>108</sup>. I recognise that my observations were only a snapshot and that the Inquiry sat after the schools had broken up for the summer holidays. I have no reason to doubt that highway conditions would be materially worse on a wet Monday morning in January after the local schools have gone back. Nevertheless, noting the view of one local resident who addressed the Inquiry [151], my limited observations would tend to reinforce the view that the Council might wish to review the timing of that signal controlled pedestrian crossing. I am not persuaded that modest change would deter walking to school. There are however no other obvious "quick wins" on the relevant part of the network.

### ***Scenario 1: Where the MNB goes ahead ["the bypass world"]***

254. The Council considers that there is a high degree of certainty that the MNB will proceed [42]. Notwithstanding the stance taken by Mr Jolley in his original substitute supplement statement [DS9], that the increase in journey times on the identified parts of the network would be severe, he conceded in xx that this would not be the case in the bypass world [44]. In light of this important concession I shall take it as common ground between the main parties that in the bypass world the proposed development, taken with Loansdean<sup>109</sup>, would not breach the test in the third bullet point of paragraph 32 of the Framework. There is no evidence before the Inquiry that would lead me to find otherwise.
255. It is common ground between the main parties that in the bypass world the key journey that has been modelled, from Stobhill roundabout, the junction of the A196 and A192, to Telford Bridge, over the River Wansbeck, would take the same amount of time in 2021 as it does now [DS18]. This is, of course, on the assumption that the appeal was allowed and that all the permitted houses

<sup>106</sup> Recognising the decision was issued at the end of the week before this Inquiry opened.

<sup>107</sup> Paragraph 68, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

<sup>108</sup> This was based on observations; see Page 2, DS4.

<sup>109</sup> Contrary to one local resident's claim [157] the revised model takes account of Loansdean and there is no good reason to take account of other sites in the SHLAA in this assessment.

were not only built but actually occupied by that date<sup>110</sup>. The Council's concern in this scenario is solely one of negating the benefit of the MNB [44]. However the Council has been unable to point to any planning policy to justify this stance and I agree with the Appellants' submission [68] that there is none.

256. The Council's rationale to obtain funding for the MNB is set out in its Best & Final Funding Bid document, which identifies 3 primary objectives for the scheme. The second was to "*Facilitate and provide access to allocated development sites and other strategic locations*"<sup>111</sup> [*my emphasis*]. The only allocated development sites in the LP are, and remain, to the north of Morpeth and so it is unsurprising that the text then refers to St George's Hospital and the then allocated employment sites. The other strategic locations are outside of Morpeth. The other relevant objective was to improve highway capacity and reduce traffic congestion in and around Morpeth. The supporting text says "*...modelling work demonstrates that the [MNB] would significantly improve the operation of the highway network in Morpeth by adding additional capacity and by facilitating or improving access to significant development in Morpeth*"<sup>112</sup>. It continues "*The scheme specifically facilitates access to the St George's Hospital site... (this is one of the five alternate development scenario identified for Morpeth in the...DLA report)*"<sup>113</sup>. This reference is to CD22 and it is material that it includes a development option, Option E, which includes the appeal site.
257. The DoT Assessment which, having regard to the date of the approval letter, must date from 2011 says "*The core objective of the scheme is to facilitate the desired level of growth (housing and employment)... Unlocking and improving the viability of development land is a major objective...a new core strategy is currently being developed and will be consulted upon shortly with 5 broad development options, all of which are based on the assumption that the road is in place and all dependent on it to some extent". The summary says "*The overriding objective of this scheme is to facilitate the significant new housing and employment development that is planned, although it will also relieve existing congestion in the constrained centre of Morpeth...If the scheme does not go ahead then the development plans for the area would have to be completely re-thought and reduced in scale*"<sup>114</sup> [*my emphasis throughout*].*
258. It is clear that a distinction must be drawn between these arguments, made to obtain funding for the MNB, and planning policy which might justify dismissal of this appeal. Moreover the DoT saw the *overriding* objective of the MNB to be to facilitate significant new housing development in Morpeth. Both the Council's funding bid and the DoT assessment proceeded on the basis that the appeal site was an option for the future development of the town; I have given reasons for attaching limited weight to the CS [194]. The DoT identified a second, but on my reading less important, objective to be relieving existing congestion. Although I acknowledge that by 2021, in the bypass world with

<sup>110</sup> It is worth making this point noting that the Appellants envisage delivering 65 houses p.a. with a start date in January 2015 [see Appendix IX to Mr Hollowood's proof of evidence] and hence 2021 is the earliest full year in which it is envisaged this scheme might be complete.

<sup>111</sup> Source of quote: section 1.2, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

<sup>112</sup> Source of quote: section 1.2, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

<sup>113</sup> Source of quote: section 1.5, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

<sup>114</sup> Source of quotes: pages 1 and 3 [albeit not numbered as such], respectively, in the DoT Assessment of the MNB, Appendix 2 to Mr Ketley's rebuttal proof of evidence.

developments, any gains in journey times arising from construction of the MNB would be lost when compared to the situation today, I consider that is not a fair comparison. The output from the model shows in 2021 if no development was built and the MNB was not constructed, a genuine "*do-nothing*" scenario, journey times for the AM peak would increase by approximately 43%<sup>115</sup>. In my view that is the correct comparison, which is a world where the bypass has delivered its overriding objective, to facilitate significant new housing, whilst also reducing congestion as it would have existed in 2021 in a "*do-nothing*" world. In that sense what is said to be a very substantial public investment would not be negated and would also deliver on its key underlying objectives.

***Scenario 2: Where the MNB does not go ahead ["the no bypass world"]***

259. Whilst the Council considers that there is a high degree of certainty that the MNB will proceed, I accept that it is appropriate for the SoS to consider the scenario that the MNB might not proceed [42]. In that scenario the Council points to an increase in journey times of 83 seconds in 2021, which is agreed to represent an increase of 29% [42]. Although that is correct the comparable figure, in the no bypass world with Loansdean and the appeal development, is agreed to be an increase of 79 seconds, which would represent an increase of 25%<sup>116</sup>. This is comparable to the figures used in my analysis of the bypass world and is the more likely alternative option. There is no evidence before the Inquiry to suggest the Loansdean permission would not be implemented. Indeed it is worth recording that the outputs in the bypass plus development without Loansdean world would unambiguously achieve both DoT objectives<sup>117</sup>.
260. An increase of 79 seconds, which is just over one minute compared to the 2021 "*do-nothing*" scenario, translates to an average journey time of 6 minutes and 35 seconds to travel from Stobhill Roundabout to Bridge Street. Evidence before the Inquiry suggests that the model predicts that the appeal development would give rise to 218 journeys<sup>118</sup> on the network in the AM peak in 2021. The highway experts for the main parties disagree as to whether this should be characterised as *severe* in terms of paragraph 32 of the Framework.
261. The only document that has been drawn to my attention that examines the approach to this test in the Framework is a report to the SoS in respect of 2 schemes for 300 and 350 dwellings at Hartford in Cheshire. The Inspector concluded that whilst there would be additional delay and congestion this would not be *severe*<sup>119</sup>. In reaching this finding he stated that "*The additional movements would...add an average of over 1 min to the typical 6 min am peak delay at the signals... Any additional delay however carries less weight as it is not the aim of policy to protect the convenience of commuting car drivers*"<sup>120</sup>.

<sup>115</sup> From 221 seconds to 316 seconds, i.e. a 95 second increase in journey times from Stobhill Roundabout to Bridge Street which, expressed as a % of the base figure, is a 43 % increase.

<sup>116</sup> See third scenario in DS18.1, i.e. with Loansdean journey times.

<sup>117</sup> See second scenario in DS18.1, which shows a reduction in journey times in 2021 from 221 to 209 seconds in the bypass world with appeal development but without Loansdean.

<sup>118</sup> Calculated as 3740 less 3522, Table 2.1, DS9, which does not include Loansdean.

<sup>119</sup> Paragraph 14.70, Report APP/A0665/A/12/2179410 & 2179374, at Appendix B to Mr Craig's proof of evidence.

<sup>120</sup> Source of quote: paragraph 14.45, Report APP/A0665/A/12/2179410 & 2179374.

262. Dealing initially with the factual matrix, in terms of journey time, I consider it to be broadly comparable to the situation here in the no bypass world [260]. Whilst paragraph 30 of the Framework says encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion, that is a subtly different point and one I consider below in terms of the site's accessibility. Nothing has been drawn to my attention that would lead me to doubt the correctness of my colleague's claim that it is not the aim of policy to protect the convenience of commuting car drivers. Indeed peak hour queues might be the trigger for a modal shift for regular commuters.
263. On this narrow basis I accept that in the no bypass world the proposal, together with Loansdean, would not breach the test in the third bullet point of paragraph 32 of the Framework. However even if this conclusion is open to debate the Appellants have put forward a number of convincing arguments [67]. First the converse of the Council's position, that there is a high degree of certainty that the MNB will proceed, is that this is a scenario with a high degree of unlikelihood. Second I agree that in the no bypass world the whole development strategy for Morpeth would need to be revised. The DLA report acknowledges that the "...development of the majority of land to the north of Morpeth depends on the [MNB] coming forward"<sup>121</sup>. Quite fairly the NP says "...the strategy [with its focus on north Morpeth] will clearly be affected if the bypass does not proceed"<sup>122</sup>; generic point at [199]. The LTP also recognises that it is critical to housing growth in north Morpeth. Third, in the no bypass world the arguments in favour of the appeal site would be compelling in view of the scale of the need [211]. Although I recognise that some other sites have since come forward, such as the Persimmon site [DS6], the fact is that the appeal site was the largest site identified by DLA to the south of the town.

#### ***Main issue (iv): Overall conclusion***

264. On the fourth main issue I conclude that there is a high degree of certainty that the MNB will proceed and in this most likely scenario the development, taken with existing commitments, should not be refused planning permission on transport grounds because the impact on the network would not be severe. There is no policy basis to support the contention that this would negate the benefit of the MNB. Although the SoS should consider the alternative scenario that the MNB does not proceed, I have given a reason for finding that the residual cumulative impacts of the proposed development in the no-bypass world would still not be severe. Moreover there are other significant material considerations that weigh heavily in favour of granting planning permission in this highly unlikely scenario. For these reasons I conclude that the proposed development would not conflict with DP Policy or the Framework.

#### ***Main issue (v): Effect on flooding and sewage systems***

##### ***Background to flood risk issue***

265. My starting point is to record that the main parties agree that the site is not at risk of flooding and that the proposals would reduce the risk of flooding in the

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<sup>121</sup> Conclusions at paragraph 3.04, first bullet-point, CD22.

<sup>122</sup> Source of quote: page 48, CD8.



surrounding area [CD39, paragraph 5.16]. H & MT and others do not agree with this finding [99, 122, 123, 131, 138, 142, 146, 149, 150, 152 and 161].

266. The position taken by the Council in this matter is based on the advice of its Drainage Officer<sup>123</sup> and that received from the EA, who withdrew its initial objection following a revised FRA. The EA said the FRA "*...has confirmed that the whole site currently drains to the small watercourse in the centre of the site. The FRA also demonstrates the greenfield runoff from the site at various storm event return periods using the IoH124 method. They have considered the predicted runoff rate during the 1 in 1 year storm and due to acknowledgement of existing flooding issues downstream, have halved it. They will therefore discharge surface water at a rate of 16.1l/s into the watercourse. This means that for every rainfall event from the 1 in 1 year to the 1 in 100 year event, the development will reduce the existing flows...* [It recommends the imposition of a condition and says that in order to discharge the condition information should include] *Confirmation of the capacity of the network including ponds and swales...* [and] *...An assessment of the watercourse downstream of the development*"<sup>124</sup>. This advice is unambiguous.
267. The position in respect of flood risk was dealt with in a comprehensive manner in the Council's report to the North Area Planning Committee<sup>125</sup>. Amongst other things the report records that the site is in Flood Zone 1, an area with a low risk of flooding, which is an appropriate location for new housing, such that the proposal was found to accord with LP Policy RE5 and the Framework. Although H & MT say that no sequential test has been carried out this test would not be appropriate for a development on a site with the lowest probability of flooding. H & MT also referred to the *Technical Guidance* in its proof but, as I pointed out [DC3], this was cancelled by the Guidance.
268. The Appellants have referred me to 2 legal authorities [79]. In the first it was held that the decision maker should give the views of statutory consultees "*... "great" or "considerable" weight. A departure from those views requires "cogent and compelling reasons" ...*"<sup>126</sup>. In the second it was held that the decision maker is "*obliged*"<sup>127</sup> to give the views of statutory consultees great weight. This is not a legal opinion but, whilst I note that H & MT do not defer from this view [99], is binding authority on this administrative tribunal.

### **Surface water**

269. Having regard to judicial authority [268] I am obliged to give the view of the EA, as the relevant statutory consultee, great weight and rhetorically ask whether there are cogent and compelling reasons to depart from its advice. A large number of points are raised, which I deal with in no particular order:
- i. *The 2 FRAs are contradictory.* The Appellants have explained that the WSP report<sup>128</sup> was a review of the FRA [77(v)]. I deal with the alleged

<sup>123</sup> Appendix 7 to the SoCG [CD39].

<sup>124</sup> Source of quote: Comment dated 2 December 2013, at Appendix 6 to the SoCG [CD39].

<sup>125</sup> Paragraphs 7.42-7.51, CD33.

<sup>126</sup> Source of quote: paragraph 72, *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12.

<sup>127</sup> Source of quote: paragraph 110, *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406 [2013] EWHC 12.

<sup>128</sup> Appendix II to Mr Hollowood's proof of evidence.

contradictions between the FRA and the WSP report below under various headings.

- ii. *There is no evidence the WSP report has been approved.* The EA has confirmed [DS27] that it has received the WSP report, has no additional comments to make and that its earlier comments [266] stand. At the Inquiry the Council did not dispute WSP's claim that it, the Council, has agreed the proposals to be adequate and would not increase flood risk elsewhere.
- iii. *H & MP have no confidence in the WSP report because a reduction of 16mm in Culvert B is barely measurable and within a margin of error.* The EA has confirmed that it is satisfied that flows would be reduced. Given the size of the catchment the quantum of the reduction might be modest, but it is still a reduction and the outflow would be capped in larger storm events. In view of the advice of the EA I can reject the possibility it is within the margin for error.
- iv. *The soil type is identified differently in the FRA and WSP's report and is incorrect.* The FRA says "...the soil types are predominantly heavy clays and as such completely unsuitable for infiltration and soakaways. A site investigation will be carried out to establish actual ground conditions"<sup>129</sup> [my emphasis]. The WSP report, which is dated June 2014, says "...the catchment consists of Brickfield 3 soils... these soils are described as being slowly permeable seasonally waterlogged fine loamy, fine loamy over clayey and clayey soils... This is confirmed by...borehole NZ28SW13 which shows the upper soil is Fireclay which would be highly impermeable"<sup>130</sup>. H & MT have produced a copy of that borehole record, which shows Fireclay to be at a depth of 169 feet<sup>131</sup>; it should be noted that this borehole lies south-east of the appeal site.

Revision D of the FRA was submitted on 29 November 2013 [CD39, page 26], which is after (i) the Archaeological Evaluation; and (ii) the Geoenvironmental Appraisal, which are both dated July 2013. No (i) says 15 trenches were dug across the site and defines what is then referred to as the "*Natural subsoil...*" in the rest of the report to be "...a yellow boulder clay..."<sup>132</sup>. H & MT say that sand was found in 6 trenches and loam in another, but of only one trench, No 15, was it said that the "*...natural subsoil in this trench was orange sand, very different to that seen elsewhere on the site*"<sup>133</sup> [my emphasis]. That trench is located close to the drainage outfall; the other references to sand in the Archaeological Evaluation are to narrow bands of sand<sup>134</sup>.

No (ii) provides the results of 18 Trial Pits and 8 Boreholes as well as permeability tests. The Appraisal concludes that there is "*...cultivated topsoil to depths of between 0.20m and 0.5m. This in turn is underlain by stiff and very stiff, medium and high strength glacial till to depths of between 1.0m and 2.80m. Glacial till is absent from the far eastern parts of the site where glaciofluvial sands were encountered below the topsoil... The glacial sand*

<sup>129</sup> Source of quote: section 3.2, M Design report No: MD0777/rep/001 Rev D.

<sup>130</sup> Source of quote: paragraph 2.4.5, Appendix H to WSP report at Appendix II to Mr Hollowood's proof of evidence.

<sup>131</sup> Appendix 1 to DS24.1.

<sup>132</sup> Source of quotes: paragraph 5.2 of Archaeological Evaluation, dated July 2013.

<sup>133</sup> Source of quote: paragraph 5.16 of Archaeological Evaluation, dated July 2013.

<sup>134</sup> See Figure 5 of Archaeological Evaluation, dated July 2013.

*present beneath the topsoil in the eastern parts of the site and below the glacial till elsewhere is typically loose to medium dense comprising a fine to medium sand. The full thickness of this stratum was not proven... Groundwater was encountered within the glacial sand at depths of between approximately 0.8 and 3.0m below ground level"*<sup>135</sup>. The report divides the site into 2 zones, to reflect the areas of glacial till and glacial sands; I estimate the latter, Zone B, to represent approximately 20% of the eastern end of the site<sup>136</sup>. Table 5.3 of the report presents the results of the permeability tests, which are focussed on the areas of sand. Whilst the results varied between boreholes they broadly confirm that the areas of glacial sand are pervious, ie permeable. Finally the Appraisal refers to a sandpit, picked up by H & MT, but drawing No C4975A/03 shows that it lies to the west of the A192 rather than on the appeal site.

The evidence from these site investigations suggests that the majority of the site comprises a layer of clay, which lies below the cultivated topsoil at a typical depth of around 0.4m. Although described as glacial till in the Geoenvironmental Appraisal the detailed records identify the predominant material to be clay and that is consistent with the Archaeological Evaluation. The layer of clay varies in depth between 0.5m and 2.1m, below which there is a layer of sand. However both site investigations reveal the presence of sand, to varying degrees, at the eastern end of the site. The extent of the sand is estimated to be more extensive in the Geoenvironmental Appraisal than the Archaeological Evaluation, but the former was more comprehensive. For completeness the other borehole record provided by Morpeth Flood Action Group lies to the north-east of the railway and in the context of the above the fact that it reveals predominantly sand down to circa 10m is not surprising.

The evidence arising from the site investigations does not appear to have been taken into account in the FRA, which is evident from the indication that investigations "will" be carried out; I find that surprising. Further the FRA's statement that the soil type is predominantly heavy clay might not be strictly correct. In reaching that view I acknowledge WSP's point that the presence of the land drains are indicative of heavier soils, but it is a rather subjective term. I think it is fair to say, however, that the appeal site is predominantly clay, albeit over a deeper layer of sand. Nevertheless the natural deposit of sand at the eastern end of the site does not appear to have been recognised or taken into account in the FRA. The WSP report, insofar as it refers to Fireclay, is not wrong, but to describe it as in the upper soil when it lies at a depth of 169 feet is in my view incorrect. The fact that WSP are drawing on such sources of evidence strongly suggests that they were not aware of, or not provided with, the Archaeological Evaluation or the Geoenvironmental Appraisal. I turn to the consequences of these findings in due course.

- v. *The FRA has not taken account of the drainage on the site.* The FRA says "As the site is greenfield there is currently no drainage on site"<sup>137</sup>. However Morpeth Flood Action Group points to evidence of tile drains being present and working. I accept there is a drainage pipe emanating from the existing drainage ditch. I agree that a "ceramic land drain" is revealed in Figure 6 of

<sup>135</sup> Source of quote: section 8.1 of the Geoenvironmental Appraisal, dated July 2013.

<sup>136</sup> See Drawing No C4975A/04 at Appendix A to the Geoenvironmental Appraisal.

<sup>137</sup> Source of quote: section 2.4, M Design report No: MD0777/rep/001 Rev D.

the Archaeological Evaluation and I note the reference to land drains elsewhere in the same report<sup>138</sup>. WSP say the FRA's reference to no drainage meant no surface or foul sewerage system. Morpeth Flood Action Group say that the presence of the tile drainage system suggests, if not confirms, that historic soil water levels were so high as to justify improving field drainage to improve yields. I accept that if the foundations are constructed to a minimum depth of 900mm, as recommended in the Geoenvironmental Appraisal<sup>139</sup>, that the land drains might be compromised. WSP say competent designers include details to show that land drains must be maintained if encountered during construction. On balance I do not regard this to be a significant point. As WSP point out the land drains increase the site's current permeability.

- vi. *There is evidence of pooling of surface water on the site, including in aerial and other photographs.* I acknowledge this evidence, including those said to date from June 2014<sup>140</sup>. However this might be said to be evidence of the site's impermeability, consistent with the existence of a layer of clay subsoil. The various aerial photographs and maps within the submission of Morpeth Flood Action Group [DS25] tend to show the ponding away from the eastern end of the appeal site, which might be said to be consistent with its geology.
- vii. *The WSP report has not provided detailed drawings or calculations.* The WSP report was a review of the FRA [77(v)]. In any event it was agreed at the Inquiry that it would not be appropriate to approve the Preliminary Drainage Scheme and so the details contained thereon, including the volume of the holding ponds, would need to be agreed following discharge of a condition.
- viii. *The WSP report has failed to realise that the outflow from the appeal site does not cross the railway to join the Red House Burn.* The photographs provided by H & MT<sup>141</sup> do not conclusively show that water from the appeal site does not cross the railway to the Red House Burn because there could be a crossing point unrelated to that manhole. No testing, eg using a harmless dye, has been carried out to demonstrate where the flows from the appeal site join the Burn. However this does lead me to question whether the assertions made in the WSP report are correct because, taken at face value, the photographs do appear to show there is no crossing point at point "K"<sup>142</sup>. If Councillor Ashmore is correct this would mean that the flows from the site would bypass the EA's flood storage area to the north-east of the railway line, although they would still go via the flood storage area to the south of the railway and potentially utilise the EA relief structures. I return to this point further in due course.
- ix. *WSP has wrongly assumed that flows along the railway would run north.* This comment was made in a late rebuttal statement by Mr Tyler<sup>143</sup>. Councillor Ashmore says by reference to the topographical survey that the railway has a spot height of 51.66m to the north-east of the appeal site and that the drain

<sup>138</sup> Paragraphs 5.8, 5.10, 5.12 and 5.13 of Archaeological Evaluation, dated July 2013; earlier quote taken from paragraph 5.8 of the same report, which relates to Figure 6.

<sup>139</sup> Page 19, Geoenvironmental Appraisal, dated July 2013.

<sup>140</sup> Appendix 1 to H & MT's proof of evidence on flooding and sewerage.

<sup>141</sup> Appendix 2 to DS24.1.

<sup>142</sup> See diagram at Appendix I to WSP report, at Appendix II to Mr Hollowood's proof of evidence.

<sup>143</sup> An addition to the main report, also at Appendix II to Mr Hollowood's proof of evidence.

discharge point has a spot height of 50.05m; I agree. Mr Tyler's claim appears to be wrong and all of the flows from the vicinity of the site would flow south.

- x. WSP has calculated the greenfield site runoff rate differently. WSP's report says that the impermeable area is slightly less than that calculated in the FRA and the inference is that this is down to a revision to the Master Plan, although an allowance for future extensions has also been made. The report says "*The Greenfield runoff for a 1 year return period event based on the development impermeable area is 24.2l/s (ReFEH Method)*"<sup>144</sup>. This method is claimed by WSP to be more robust. Councillor Ashmore says that as the FRA's equivalent calculation of 32l/s formed the basis of the 16l/s runoff that is advocated by the Council and the EA, should this not mean that the runoff figure should be reduced to 12l/s, ie 50% of the revised calculation? There might be some merit in this argument, but as the EA has confirmed that the WSP report does not change its stance [DS27] on that narrow basis I reject the claim. The 16l/s would still be a reduction, ie two thirds of the more robust calculation.
- xi. No mention of exceedance. The WSP report has addressed this matter and the exceedance pathways can be considered as part of discharge of any condition.
- xii. There is evidence that the loH124 model is inadequate and/or has limitations. I have noted the alleged criticism of this model by Defra/EA, the Journal of Flood Risk Management and Wallingford Hydro Solutions. However this is an area where I can have complete confidence in the advice of the EA because, if the EA thought that the model was inappropriate for any reason, including by reference to the size of the site, I have no doubt that the statutory consultee would have said so in forthright terms.
- xiii. The SAAR rainfall figures are out of date and take no account of changes to weather patterns as revealed by local meteorologists. This is another area where it is reasonable to have confidence in the advice of the EA because if they thought the SAAR database was out of date, or inappropriate for use in this geographical location, I have no doubt that the EA would have said so.
- xiv. The issue of Suds maintenance. In my view this has been satisfactorily dealt with in the section 106 agreement [169]. I acknowledge that the residents have little confidence in Suds because flooding occurred after they were put in on the existing watercourses, but this approach is recognised as good practice.
- xv. The FRA fails to address the flooding of the adjacent railway. H & MT refer to hearsay evidence that the railway acted as a river but I cannot attach much weight to this claim. Network Rail said there should be no increase in average or peak flows of surface water leading to its assets. Although I acknowledge the FRA is in dispute, the EA has accepted that would be the position.
- xvi. The building process would compact the soil and makes it more impermeable and no allowance is made for future extensions etc. I am not convinced there is a great deal in the compaction point, which in any event is likely to be a very short-term phenomenon, if it occurred at all. WSP say that an allowance has been made for future extensions when assessing permeability. No party has suggested a condition is necessary to remove permitted development rights.

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<sup>144</sup> Source of quote: paragraph 5.2.4 at Appendix II to Mr Hollowood's proof of evidence

- xvii. Morpeth Flood Action Group considers the floodwater storage ponds should have a capacity of at least 26,000 cubic metres. Although I have given reasons for accepting one premise, that the land drains might be compromised, I attach little weight to this calculation, which appears to be based on an arbitrary assumption about the existing tile drainage system. A second calculation [DS25] uses submitted data to arrive at an estimate of the storage attenuation requirement as 9,419m<sup>3</sup>, which is greater than that identified [8,591 m<sup>3</sup>] in the FRA. The basis for this calculation is set out and I attach it moderate weight. It tends to reinforce my view that the Preliminary Drainage Scheme, including the volume of the holding ponds, should not be an approved drawing as the parties previously suggested [164].
- xviii. Freeboard above ground levels. Morpeth Flood Action Group disputes the claim by WSP that the 600mm high freeboard would provide additional storage capability as it is said that this would result in water being above ground level. As I have made clear I do not propose to approve the Preliminary Drainage Scheme. There appears to be scope to re-model and enlarge the storage ponds to increase capacity in the event that there is any substance to this point. I reject the view that this is unconvincing because it would compromise the housing layout. Ponds 1 and 2, in particular, are at the periphery of the site and appear to offer considerable scope for enlargement if this were required. It remains in prospect that if these ponds were deeper that they would breach the layer of clay and thereby allow leakage into the permeable layer of sand. Pond 3 would appear to lie wholly within the area of sand at the eastern end of the site. Whilst it is said that planned water levels might damage the fabric of the proposed properties I have no doubt that the Appellants will ensure this is not the case as this would appear to potentially open them up to a civil liability.
- xix. References to other work that has not been produced. WSP has referred to other work, including 3D computer modelling. It is clear that other work would be required to discharge the suggested condition[s] and is required by the EA.
- xx. Floodwater from external sources. WSP says the swales have been designed to take overland exceedance flows from the surrounding road network. Morpeth Flood Action Group disputes whether this has been included in the calculations in the FRA, but I have no basis to find otherwise.
- xxi. There is a field drain from the appeal site into the Catch Burn at Barmoor Farm. This claim [161] does not sit easily with other evidence before the Inquiry and I attach it limited weight. Nothing that I saw during my inspection of the vicinity of Barmoor Farm convinced me of the veracity of the claim.

### **Summary of findings on flooding issue**

270. I acknowledge first that a significant amount of other material and information has been provided, specifically relating to Hepscott and the downstream system. However, whilst the statutory undertaker has sought an additional assessment of that watercourse, I must focus on the appeal site. Whilst H & MT say the people of Hepscott look to this Inquiry to protect them from more flood misery [99], in the context of this relatively large catchment, my role is very limited. My brief inspection of Red House Burn and Hepscott Burn, in the vicinity of Hepscott village, suggested that there are much more significant reasons for the flooding the village has experienced in recent years than are within my remit to address. On its approach to Culvert B, Red House Burn

appeared to me to be in very poor condition. The road bridge over Hepscoth Burn has been likened to a dam and I fully understand why. So whilst I have read the Hepscoth Flood Risk Study [DS23] and have sympathy for those who have been flooded it is simply not in my gift to resolve all of these problems.

271. Instead my role is to test the advice of the statutory undertaker and the assumptions that underpin that advice to ensure, as an absolute minimum, that flood risk is not increased elsewhere<sup>145</sup>. My review of the material has led me to identify 2 areas of concern. The main one [269 iv] is that both the FRA and WSP's report do not appear to have utilised evidence that the Appellants had themselves commissioned in order to provide more informed studies. The permeability of the existing soil is clearly a material factor in the assessment of the green field runoff calculations. The FRA uses a figure of 0.45<sup>146</sup>. Since the Appellants chose not to call a witness to deal with this topic I am unclear what effect this finding might have on that figure. This is a topic that I touched on with both Mr Smith and Councillor Ashmore. There are arguments both ways.
272. On the one hand WSP make the point that if the soil is more permeable than has been assumed, which it appears to be at least on part of the site, there would be an opportunity for infiltration Suds. I have already accepted this to some extent in my earlier comments, eg on the depth of water features. However if the existing runoff in the FRA was based, as appears to be the case, on the site being impermeable when it is less so, that might reduce the current runoff figure. It might mean that the calculation of circa 32l/s, which forms the basis of the reduced flow restriction advocated by the Council and endorsed by the EA, might be wrong; I put it no stronger than that. In considering the respective arguments the latter must be given greater weight if I am to be certain that flood risk would not be increased elsewhere. My view is actually endorsed by the very fact that in their final response WSP consider the possibility that existing flows might be less than 16l/s which, as Councillor Ashmore has observed, is not an argument that he has actually made.
273. Nevertheless I have given reasons for concluding the appeal site is underlain predominantly by a layer of clay [269 iv]. That suggests that any variation from the figure of 32l/s would not be of such magnitude that would lead me to find the issue cannot be dealt with by a condition. H & MT have advocated a clause that would cover this scenario, albeit that it was put forward on the basis of the WSP calculation. That is not the reason I recommend the need for the additional clause. Rather my reasoning is that further work, taking account of the existing site investigations and perhaps more if they are required, might lead to a finding that the existing runoff is materially less than 32l/s. WSP have already quoted a more robust figure of 24l/s and that too appears not to have taken account of the site investigations undertaken. In reaching this view I have considered whether there would be any injustice to the Appellants. However the clause was discussed at the Inquiry. Moreover if the additional work confirms the 32l/s figure then they would be in no worse a position. The extra work, including any investigations, is envisaged anyway.

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<sup>145</sup> Paragraph 103 of the Framework which also says that Suds should be given priority.

<sup>146</sup> See Appendix D to M Design report No: MD0777/rep/001 Rev D.

274. The second area of concern is the possibility, again I put it no stronger than that, of the outflow from the site not crossing the railway. However the EA has made clear that in order to discharge the condition that an assessment of the watercourse downstream of the development is required [266]. Whilst I have noted that if this claim is correct the flood storage area to the north-east of the railway would be bypassed, imposition of the revised condition would ensure that the level of runoff from the site would be reduced. Accordingly this is not a consideration that would lead me to revise the suggested condition further.
275. Having reviewed the submissions of H & MT, Morpeth Flood Action Group and other correspondence, and taken account of the views expressed at the Inquiry on this topic, I conclude that there are no cogent and compelling reasons to depart from the advice given by the statutory undertaker. Subject to the slight revision to the suggested planning condition that I have identified I can, to use H & MT's language [95], be very sure that the flooding situation would not be made worse by allowing this appeal, but would instead be improved.

### ***Foul water***

276. Northumbrian Water is the statutory undertaker for this area, both supplying water and dealing with the sewerage system. Its position is set out in a letter to the Council dated 21 November 2013. It says that whilst the Sewage Treatment Works at Morpeth is operating at full capacity, construction works are currently taking place that are scheduled to be completed by December 2014. In these circumstances Northumbrian Water put forward a Grampian condition to deal with this issue, to ensure that the development does not commence until the upgrade works have been completed. In addition, as a result of capacity issues in the area, it sought a condition that would see foul flows directed to, or downstream from, a manhole within the Coopies Lane Industrial Estate, to the north-east of the appeal site. Subject to imposition of these conditions it raised no objection to the proposed development. This advice was recited in the report to the North Area Planning Committee and the Council has confirmed that it raises no issue with regard to this issue [29].
277. Having regard to judicial authority [268] I am obliged to give the view of this statutory consultee great weight and rhetorically ask if there are cogent and compelling reasons to depart from this advice. A number of points are raised:
- i. *The issue has not been dealt with in a robust and detailed way and dealing with the matter by condition damages public credibility.* Whilst brief the FRA proposed an on-site pumping station that would connect to the adopted sewer. If the statutory consultee had any concerns about this proposal it would have raised an objection. It is Government policy to impose conditions where the relevant tests are met [163]. The Guidance says "...statutory consultees can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms"<sup>147</sup>, which is precisely what has happened. If the details submitted are dealt with in a candid way I fail to see why that damages public credibility when that is the Government's preferred approach.

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<sup>147</sup> Source of quote: paragraph 21a-016-20140306 of the Guidance.



- ii. *The Sewage Treatment Works is over capacity and no connection can be made in Stobhillgate.* These points are recognised by the statutory undertaker who, nevertheless, raised no objection subject to conditions.
- iii. *The connection point lies 400m to the north across a railway line and embankment.* I have no doubt the statutory undertaker recognised these problems in recommending conditions. I fail to see why a pipe crossing the railway in the vicinity of the A196 bridge, which would take pumped sewage to the connection point, would be unfeasible. Alternatively, noting the preliminary route of foul drainage on the Preliminary Drainage Scheme, it is in prospect that a pipe could be laid under the railway. The Network Rail response said "...sewage effluent should be handled in accordance with Local Council and Water Company regulations"<sup>148</sup>. Whilst an easement would be required this is anticipated in the response from Network Rail to the extent that it says that approval must be obtained from the Network Rail Asset Protection Team.
- iv. *It connects to a dual system and travels via Salisbury Street chamber, which has an unresolved sewage surcharge system.* It is clear from the email exchange submitted at the Inquiry<sup>149</sup> that the statutory undertaker is aware of the problem with the Salisbury Street chamber. I have been given no sound reason to conclude that the statutory undertaker did not take this factor into account in making its recommendation that conditions could deal with this issue. The response of the statutory consultee [276] recognises that works are in progress to address known problems with the sewage system.
278. Having reviewed the submissions of H & MT, Morpeth Flood Action Group and all other correspondence, and taken account of the views expressed at the Inquiry on this topic, I conclude that there are no cogent and compelling reasons to depart from the advice given by the statutory undertaker.

***Main issue (v): Overall conclusion***

279. On the fifth main issue I conclude that, subject to the imposition of largely agreed planning conditions, the effect of the proposed development on flooding and the sewage system would be acceptable. There are no cogent and compelling reasons to depart from the advice given by the statutory undertakers that cannot be addressed by the imposition of conditions.

***Main issue (vi): Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required***

280. My starting point under this head is to record that the main parties agree that there is sufficient schools capacity within Morpeth to accommodate the children that would be generated by the proposal and, as such, a contribution is not required [CD39, paragraph 5.20]. H & MT do not agree with this conclusion.
281. The position taken by the Council in this matter is based on the advice of its Early Years and School Organisation Manager, who said "*Our analysis of the partnership forecasting data indicates that there are sufficient places available*

<sup>148</sup> Source of quote: Email dated 9 September 2013 to the Council, which forms part of the bundle attached to the Council's questionnaire response.

<sup>149</sup> Appendix 3 to DS24.1.

*in Morpeth Town to accommodate those children that may be generated by a new-build development of this size. It is possible that there may be a temporary squeeze on capacity at the local school, Stobhillgate First School, however there are places available in other schools within the partnership where pupils can be accommodated"*<sup>150</sup>. This advice is unambiguous.

282. The advice was considered by the Council in the report to the North Area Planning Committee. It reported this advice and, amongst other things, it added "*Children's Services have forecast that for every hundred houses built, this would generate approximately 3 children per primary class (21 across 7 year groups) and 2 children per secondary class (14 across 7 year groups). A development of this size would also be built in phases, meaning that ... not all 396 dwellings would be built and occupied over a short period, and the number of children generated by the development would be staggered over a number of years. The admissions policy of the Council also means that local children would get priority and, that once a child enters reception class, then they are virtually guaranteed a place in the middle schools and high school. On the basis of this evidence, therefore, it is considered that the children generated by the development of the new 396 dwellings could be accommodated within the existing schools in the town"*<sup>151</sup>.
283. H & MT has provided a supplement that sets out current PAN at the town's schools. The information is said to be sourced from the Council or from recent direct enquiries. It was not challenged at the Inquiry and so I have no reason to doubt its accuracy. Amongst other things I note that Mrs Tebbutt, the author of the document, is a County Councillor and an LEA appointed Chair of Governors at one of the town's first schools. For these reasons I acknowledge that she is well placed to make the observations on this topic that she does.
284. Morpeth has a 3 tier school system. King Edwards VI High School and the town's 2 Middle Schools, Newminster and Chantry, are run by an Academy known as Three Rivers Learning Trust. The High School is said to meet its PAN every year and currently appears to exceed it. With the exception of year 6 at Chantry, both Middle Schools roughly appear to meet their PAN. I accept that the position at the nearest first school, Stobhillgate, is not straightforward. The bold data provided might suggest that there are more children living in its catchment than its PAN, but the figures suggest that in 3 out of the 5 classes its PAN is not currently met; in 2 years there is spare capacity for 7 children. This might suggest there is some capacity and in saying this I note that it is accepted that parents are entitled to choose to take their children to other schools in Morpeth, even when the first school is rated as outstanding. The picture at other first schools is, I hope it is fair to say, mixed. Whilst Morpeth First School "*Goosehill*" appears to meet its PAN fairly routinely, there appears to be capacity in Abbeyfields, Lancaster Park and St Robert's RC schools<sup>152</sup>.

<sup>150</sup> Source of quote: Email dated 29 October 2013, reproduced at Appendix XI to the proof of evidence of Mr Hollowood.

<sup>151</sup> Source of quote: paragraph 7.81, report to the North Area Planning Committee, CD33.

<sup>152</sup> In 2013/14, the academic year for which a full breakdown is given, Abbeyfields had 264 pupils out of a PAN of 300, Lancaster Park had 138 pupils out of a PAN of 150 and St Robert's RC had 130 pupils out of a PAN of 150.

285. The overall picture for first schools that emerges from the full data that has been provided for the academic year 2013-2014 is that across the 5 first schools in Morpeth for which data is provided there were 80 spare places<sup>153</sup>. I acknowledge that this is only a snapshot in time and that the distribution of places is uneven both geographically and across the years. However, based on the limited information before me, I consider that analysis to be of some use.
286. I have no reason to doubt the advice of Children's Services that for every 100 houses there would be 3 children per primary class. So, on this basis the development [around 400 houses] can reasonably be expected to generate [4 x 3] 12 children per class which, across the 5 year life of the first school<sup>154</sup>, would generate circa 60 children. Since the data provided identifies around 80 spare places this would tend to support the Council's position. Based on this data not all of the children could be accommodated at Stobhillgate, but that is consistent with the views expressed in the consultation response. The existing spare capacity in the town's first schools appears to be consistent with the admission by H & MT that, as part of the evidence gathering process for the NP, the Council said "*...one existing First School could be closed down and no new (extra) schools would be required in the Plan period*"<sup>155</sup>. Although the town might reach a tipping point, given the scale of new developments that appear to be proposed, I am not convinced that point has yet been reached.
287. Turning to the Middle and High Schools, I acknowledge that the unchallenged data would suggest there is little or no capacity at present. However H & MT acknowledge that the Trust's admissions policy says "*...any child who has spent two years in one of the pyramid's First Schools can transfer to the Academy's Middle Schools...[and]...any child in the Academy's Middle Schools is able to transfer to the High School*"<sup>156</sup>. I have given reasons for finding that there is adequate capacity in the town's first schools and so based on the current admissions policy that would suggest those children would then, by right, be able to attend the Middle and High Schools. I accept that if a family with an older child took up residence of a house that, because they might not have attended a first school, they might not be able to gain access to the Middle and High Schools. However, it appears to me that any family moving into Morpeth, eg into existing housing, might be in that position, which is a consequence of the Trust's admission policy. Over time that situation should resolve itself because, say 10 years post development, children born and then living in the houses might be expected to be fully integrated into the town's school system. The phasing of the development is also material under this head [282].

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<sup>153</sup> Abbeyfields had [300-264] 36 spare places; Lancaster Park [150-138] 12 spare places; St Robert's RC had [150-130] 20 spare places; Stobhillgate had [150-142] 8 spare places; and Goosehill had [300-296] 4 spare places. Accordingly 36 + 12 + 20 + 8 + 4 = 80 places.

<sup>154</sup> The data presented by H & MT for each first school relates to years 0-4, hence 5 years. Although I have noted that Children's Services refer to "7 year groups" [see quote at 282 above] I assume that this includes pre-school nursery. The report [CD33] is clear that every 100 houses would generate 3 children per primary class and so that is the figure I have used.

<sup>155</sup> Source of quote: paragraph 5.4 of the proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability".

<sup>156</sup> Source of quotes: paragraph 5.5 of proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability"; note quotes recited in reverse order.

288. I have considered whether the data, which suggests that there is no spare capacity in the Middle and High Schools, should lead to a finding that financial contributions might be justified towards expanding these schools. However H & MT acknowledge that these schools have a catchment that is much bigger than Morpeth and extends as far as Rothbury [106], which is around 20 miles away by road, to the north-west of Morpeth. On this basis this does not appear to be a question of the schools having insufficient capacity but rather another aspect of the Trust's policy that it wishes to draw on a wide catchment in order to ensure that it meets its PAN. As H & MT fairly acknowledge "*The quality of the schools means, however, that they are extremely popular and attract children from a wide area beyond the actual catchment. This is in line with government policy about parental choice, so is not something unusual, inappropriate or readily changed*"<sup>157</sup>. On that basis it is not surprising the schools are "*often over-subscribed*"<sup>158</sup>, but that does not lead me to find they have no capacity to accommodate children generated by the development.
289. I accept the Appellants' submission that the LEA's judgment must be given overwhelming weight [81] and that unless the legal tests are met [183] any such contribution would be unlawful [82]. On the sixth main issue I conclude that there are sufficient spaces in the town's schools to accommodate the children who might come to live on this site if permission were to be granted. Since there is no basis to require contributions towards the provision of additional school accommodation it would be unlawful to seek such monies by virtue of being contrary to the test of necessity that is common to paragraph 204 of the Framework and regulation 122 of the CIL Regulations 2010.

**Main issue (vii): Can the need for affordable housing be met by the section 106 agreement?**

**Background**

290. The main parties agree that the 119 affordable homes that would be delivered by the section 106 agreement [185] would help to meet the affordable needs in Morpeth and that the mix of properties is aligned with needs. It is also common ground that this is a benefit of the proposal to which significant weight should be attached [CD39, paragraph 5.45]. H & MT do not agree that the affordable element of the proposal aligns with need [107].
291. The position taken by the Council in this matter takes account of the advice of its Housing Enabler, who said "*Morpeth is an area of high demand, low availability and low turnover of affordable homes. It is a desirable and sustainable location for new affordable homes... One of Strategic Housing's main objectives is the delivery of affordable housing in areas of need and demand. To achieve this objective we expect that 30% of homes on development sites are affordable. This equates to circa 119 affordable homes... The mix and tenure should reflect our current housing needs evidence base. Sources are Homefinder statistics, 2012 Northumberland County Wide Housing Needs Survey and Sub-Area Report... In line with the*

<sup>157</sup> Source of quote: paragraph 5.2 of proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability".

<sup>158</sup> Source of quote: first page of proof of evidence of Councillor Mrs Tebbutt entitled "Schools Information".

*2012 Sub-Area Survey, a suggested mix is 70% affordable homes for rent and 30% intermediate homes... The homes for rent should be predominantly two bedrooms, with a smaller element of one bedroom homes and circa 4 number four bedroom homes. The intermediate housing should be a mix of one and two bedroom homes...*<sup>159</sup>. It then goes on to refer to (i) the 2012 Northumberland County Wide Housing Needs Survey; and (ii) the 2012 Northumberland Housing Needs Survey Sub-Area Housing Report. In respect of (i) the Survey shows that 1,910 new affordable homes are required in the County over 5 years, 2012-2017, [382 pa]; and (ii) the Report shows that 670 new affordable homes are required in the CRCA over those 5 years [134 pa].

292. As part of the consultation response the Housing Enabler provided Homefinder information as at July 2013, which recorded 323 out of 367 households on the Morpeth register sought 1 and 2-bed properties. H & MT have provided the same information as at March 2014, which recorded 216 out of 242 households on the Morpeth register sought 1 and 2-bed properties. However the banding priority adds a further layer of complexity to this fluctuating picture and as at March 2014, the most recent data before the Inquiry, 51 out of 54 households in Band 1, the highest level apart from one homeless household, sought 1 and 2-bed accommodation. For Band 2, the next highest, 65 out of 80 households sought 1 and 2-bed accommodation and the remainder 3 and 4-bed dwellings.
293. Tees Valley Housing, the joint Appellant, provided a statement to the Inquiry. It says, following discussions with the Housing Enabler, the affordable housing mix would be: 6 x 1-bed apartments; 16 x 2-bed apartments; 56 x 2-bed houses; 9 x 2-bed bungalows; 28 x 3-bed houses; and 4 x 4-bed houses. So, in percentage terms, this means approximately 73% of the affordable units would be 1 and 2-bed accommodation, with 27% being 3 and 4-bed units. The statement goes on to say "*We are flexible as to which affordable homes are developed as rented and which are developed as Shared Ownership. As agreed with the Housing Strategy Team at the Council this will be agreed in more detail in due course*"<sup>160</sup>. This explains why, although there is a 70/30 split proposed in the section 106 [185], there is no detail of which is which.

### ***Analysis of the affordable housing offer against need***

294. There is no relevant saved LP policy in respect of affordable housing [CD 39, paragraph 4.10]. The saving direction [CD4] confirms that LP Policies H8 and H9 are saved, but the first relates to one specific site in Morpeth [St George's Hospital] and the second to local needs housing [CD3, page 76]. I have given reasons for attaching limited weight to the emerging CS [194]; CS Policy 3 seeks 30% affordable housing across Northumberland, including the Central Delivery Area [26]. In view of the rather weak policy basis for requiring 30% affordable housing I have no doubt this is a positive attribute of this scheme.
295. Paragraph 7.33 of the supporting text to CS Policy 3 refers to the partial update to the SHMA [CD11] which, together with a Housing Needs Study undertaken in 2012, provides the evidence base for the 30% "*target*". It says

<sup>159</sup> Source of quote: Comments from Strategic Housing, dated 4 September 2013, at Appendix 8 to the SoCG [CD39].

<sup>160</sup> Source of quote: page 3 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.

that the SHMA update slightly amends the tenure mix to 65% social rent and 35% intermediate housing. This is the first point that is taken by H & MT. However the SHMA update is dated October 2013, which post-dates the consultation response quoted above [291]. The Committee report did not flag this change [CD33, paragraph 7.24]. Accordingly the Appellants proceeded, in my view quite reasonably, on the basis of the advice that had been given by the Housing Enabler, which was correct on the date it was given. In practical terms the difference would not be significant. In my view it is more important to ensure delivery of affordable housing than to ensure a precise tenure mix given that it has, self-evidently, changed on the basis of very recent analysis.

296. My view is supported by the SHMA update insofar as it records that the 2012 Northumberland County Wide Housing Needs Survey “...recommended a mix balance of 67:33 between social rent and intermediate housing”<sup>161</sup>. I have not been provided with that document but have no reason to doubt that the 2012 Sub-Area Survey, as referred to in the Housing Enabler’s comments, sought a 70/30 split. The SHMA update says “At County level we recommend a minor rounding to a 65:35 tenure mix balance and believe that a target around this level should now be considered” [*my emphasis*]<sup>162</sup>. The clear message is that this is an aggregate figure, at County level; that the target is not prescriptive; and that it is a recommendation from consultants to the Council, noting that the SHMA update is itself a consultation draft. Indeed a key driver for the change appears from paragraph 10.3.5 of the SHMA update to be site viability. Although I acknowledge that Table 16-3 identifies a 65/35 split for the Central Delivery Area, I find no reason to conclude this is set in stone. To the contrary the clear message I take from the SHMA update is the need for a flexible approach based on site viability and the need to review what is delivered. For these reasons I attach limited weight to the discrepancy between the 70/30 split that would be delivered and the 65/35 split sought in the SHMA update. It is also relevant that, in its statement, Tees Valley Housing talks about the 30% intermediate housing as being a minimum. Although not guaranteed it has the prospect of obtaining funding to deliver more intermediate housing.
297. H & MT then point out that the SHMA update says that the targets for future property size in the social rented sector is 75% 1 and 2-bed, and 25% 3 and 4-bed properties [CD11, paragraph 16.1.10]. For intermediate housing the update says the target is 40% 1-bed and 60% 2-bed [CD11, paragraph 16.1.13]. H & MT points to a “*discrepancy*” between this information and the mix of social rented units sought by the Housing Enabler in the consultation, but it is again material to point out this was sent before the SHMA update.
298. H & MT’s claim that the increased demand for smaller units, which they say is evident from the Homefinder information, might be related to welfare reform appears to have support in the SHMA update. It arrives at the 75% figure for 1 and 2-bed social rented units based on an assumption that welfare reform would free up 3-bed stock [CD11, paragraph 10.4.2]. The next paragraph is however significant in saying “...*the need for four bedroom homes is the most difficult to address. These waiting list households must already be occupying a smaller property and therefore currently over-crowded and are a priority needs*”

<sup>161</sup> Source of quote: paragraph 10.3.6, page 72, SHMA update [CD11].

<sup>162</sup> Source of quote: paragraph 10.3.7, page 72, SHMA update [CD11].

*group*" [*my emphasis*]<sup>163</sup>. In my view this reveals the need to look not just at the overall figures but, of equal significance, consider need as reflected in the priority given to applicants via the Homefinder assessment. H & MT only have a snapshot; the Housing Enabler is best placed to make that assessment and so the flexibility built into the section 106 agreement is a positive attribute.

299. In this context I turn to consider the offer in terms of mix. What is common between the comments of the Housing Enabler and the SHMA update is that all the intermediate housing should be 1 and 2-bed units and so for the purpose of my analysis I shall assume the 36 intermediate units would be 1 and 2-bed. In order to deliver the social rent split in the SHMA update this should mean that 62, out of 83 rented units, should be 1 and 2-bed properties and hence that, overall, 82% of the affordable units should be 1 and 2-bed dwellings<sup>164</sup>. However, as I have noted, the actual split that is offered is 73% 1 and 2-bed units [293]. Perhaps reflecting what the SHMA update says is a priority needs group, the Housing Enabler specifically asked for 4, 4-bed houses. On this basis if one takes them out of the equation it might be said that the mix does not reflect the SHMA update insofar as too many 3-bed houses are proposed and not enough smaller, specifically 1-bed dwellings, appear to be proposed.
300. Although I acknowledge that this analysis is my own, I think it is fair to say that this fairly reflects the complaint made by H & MT in its proof of evidence on affordable housing. In that proof of evidence H & MT have taken a broader view of need by including Band 2R from the Homefinder figures but perhaps their key complaint is that there would be an under provision of 1-bed units compared to need [108]. H & MT hypothesise that this mismatch between what is offered and what is needed has the potential to give rise to a situation where those units cannot be let or sold. It points to recent examples in the County where developers have offered to provide affordable housing in order to secure planning permission but then applied to reduce the affordable offer.
301. In my view these complaints are unfounded for a number of reasons. First the SHMA update is a consultation draft and so the weight to be attached to it is very limited. Second, on its face the SHMA update finds that it would not be appropriate to attempt very prescriptive targets for social rent property size for each Delivery Area<sup>165</sup>. Its finding as to future mix, 75/25, assumes that welfare reform frees up 3-bed stock. However Table 8-1 shows that in 2012/13 there were over 1,000 households on the waiting list for 3-bed properties and that even if no new need arose it would take "*Two and a half years to address the 3-bedroom stock requirement*"<sup>166</sup>. Moreover the SHMA update area analysis found that "*The main size of property required in the Central Delivery Area by existing households moving is 2 and 3 bedrooms*"<sup>167</sup> [*my emphasis*].
302. Third, I have given reasons why the Housing Enabler is best placed to give advice in this matter and so I attach significant weight to the fact that the

<sup>163</sup> Source of quote: paragraph 10.4.3, page 72, SHMA update [CD11].

<sup>164</sup> 75% of 83 rented units [offered via s106] = 62, plus the 36, 1 and 2-bed intermediate units = 98 units, expressed as a percentage of 119 [the total affordable offer] = 82%.

<sup>165</sup> Paragraph 16.1.11, CD11.

<sup>166</sup> Paragraph 8.2.5, CD11.

<sup>167</sup> Paragraph 14.2.2, CD11.

Council agree that the mix of properties is aligned with needs [290]. Finally the fact that Tees Valley Housing is a joint Appellant reassures me that the affordable housing offer would be delivered. Moreover its statement says the fact that they are in a 50:50 partnership "*...has meant that our strategy has been able to be more closely aligned to housing need... Tees Valley Housing controls the delivery of the affordable housing*"<sup>168</sup>. By virtue of the fact that Tees Valley Housing is a Charitable Registered Provider of Social Housing I attach significant weight to this unambiguous statement.

***Other points raised by H & MT on the broad topic of affordable housing***

303. H & MT have raised a number of issues relating to matters that in my view have now been overtaken by the terms of the section 106 agreement. This includes questions of definition, such as intermediate homes, but the Council confirmed at the Inquiry that the agreement is based on its standard wording and I am satisfied that there is no discrepancy with the Framework. Amongst other things H & MT also question the phasing of the development but again the section 106 agreement sets this out clearly [185] and it is reasonable. Finally it is said that Tees Valley Housing could decide to use any of the plots for affordable housing but the section 106 plan identifies the affordable units.
304. H & MT identify anomalies between the statement from Tees Valley Housing and the Planning Statement [CD46]; I agree. However it is clear that the former should take priority as it is more up-to-date. I have no reason to doubt that as this is a 50:50 venture that Tees Valley Housing could deliver 119 affordable units and 79 of the lower value open market properties. Even if this might be wrong the terms of the section 106 agreement are clear and so I can be satisfied this would not affect the delivery of the affordable housing units.
305. H & MT say, by reference to recent house price data, that the price level of intermediate housing is unlikely to be truly affordable. However, as H & MT acknowledge, the Appellants have not indicated price levels for any of the proposed homes and so neither they nor I can reach an absolute conclusion as to their affordability. What is clear from the section 106 agreement is that the discounted market sale units would be sold at not more than 70% of the market value. The shared ownership units would also allow local people to obtain a first step on the property ladder whilst paying a rent on the balance.
306. Tees Valley Housing's statement says it "*...has to ensure that any intermediate affordable products such as shared ownership or intermediate rent will be affordable for those who need assistance to get onto the housing ladder. This will ensure that any element of the affordable housing which is of discount market sale housing is at values which are affordable for those in housing need. This is particularly important in areas of high market values such as Morpeth where discount market sale at say 75% of market value will not be affordable for most families in housing need compared to lower value areas*"<sup>169</sup>. I have given a reason for attaching this statement significant weight.

<sup>168</sup> Source of quote: page 2 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.

<sup>169</sup> Source of quote: pages 3 and 4 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.



307. In my view the points raised by H & MT under this heading comprise a much wider critique of the country's housing problem than is possible to address in my report. Macro-economic factors such as the Bank of England's base rate, mortgage availability and mortgage multipliers are beyond my remit. What I would observe is that the SHMA update provides some evidence that some of those in need would appear to have the ability to justify, using a 2.9 or 3.5 times multiplier<sup>170</sup>, the quantum of loan that might be required. Table 14-5 of the SHMA update records that 7.2% of all concealed households in the Central Delivery Area had an income of over £43,921 in 2012, re-weighted for 2013; a concealed household is someone living within a household who wants their own accommodation. This could for example be a young couple, both working, who live at home with one of the couple's parents. This evidence leads me to doubt H & MT's claim that the cost of intermediate housing would not be truly affordable<sup>171</sup>. H & MT say they welcome the provision of affordable housing in Morpeth and that many people in the community are thinking of the needs of their children, but its stance on this issue does not sit easily with that claim.
308. More generically the Appellants' remedy to the concerns raised by H & MT about affordability is clear. They say "*...there is a critical imbalance between the supply of and demand for new homes in Morpeth. The significant under-delivery of new homes has resulted in: i) House prices which are already significantly above average and which are growing at a faster than average rate; ii) Rents which are significantly above average; and iii) Very low affordability, which is worsening at a faster than average rate*"<sup>172</sup>. The report concludes that as a result working age families and children have been forced to leave town. The long-term solution to issues of affordability is therefore seen to be increased housing supply, both in terms of market and affordable housing. That theme is at the core of the Framework, as is evident from the third bullet-point of paragraph 17 and, amongst others, paragraph 47. I have dealt elsewhere in this report with the broader issue of housing supply [206].

### **Main issue (vii): Overall conclusion**

309. On the seventh main issue I reject the contention of H & MT that only limited weight should be given to the affordable housing provision that is envisaged in the section 106 agreement [109]. In my view, particularly given the weak policy basis for seeking a 30% contribution, the 119 affordable houses, which I am satisfied would be delivered, would make a positive contribution towards meeting the high demand for affordable homes in Morpeth. For the reasons discussed in detail I endorse the consensus between the main parties that the mix of properties is aligned with needs [290]. I am in no doubt that it would be appropriate to attach significant weight to the affordable housing offer.

<sup>170</sup> For single and dual income households, respectively, as per paragraph 5.1.2 of CD11.

<sup>171</sup> Using the 3.5 x income multiplier and the minimum concealed household income of £43,921 in this range gives rise to a potential mortgage of £153,723, which is above the prices quoted in Table 3-3 of the SHMA update [CD11], allowing for a 30% discount as set out in paragraph 28 of H & MT's proof of evidence entitled "*Affordable Homes*".

<sup>172</sup> Source of quote: paragraph 2.12 of report entitled "*Qualitative Housing Need in Morpeth*", at Appendix VI to Mr Hollowood's proof of evidence.

**Main issue (viii): Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply**

**The legal parameters**

310. This is an evolving area of law. Having regard to the distinctions made by Counsel for the Council [46], at the present time I consider there are arguably 2 leading High Court judgments, namely *William Davis* and *Dartford*. Having taken account of the submissions of both main parties [45-51 and 61-63] the key is the consensus between both judges that the presumption in paragraph 14 of the Framework should only apply to sustainable development [45, 47]. Patterson J in *Dartford* employs strong language in rejecting the prospect that the presumption could apply equally to sustainable and non-sustainable forms of development, saying it *would make a nonsense of Government policy* [47]. This is part of the ratio and hence binding on an administrative tribunal [45].
311. In my view paragraph 14 of the Framework explains what the presumption means, including for decision-taking. However in order for the presumption to apply there has to be a sustainable form of development. To take an extreme example if that were not the case, in an area like Northumberland where there is a deficient housing supply, a large housing scheme could come forward on the edge of a small, remote village. Taking the approach advocated by my colleague<sup>173</sup> one would apply the test in the second bullet-point and consider whether the unsustainable nature of the development outweighed the benefits. With respect that cannot be correct. In my view it would be entirely illogical to apply a presumption in favour of sustainable development to a development that was inherently unsustainable. Paragraphs 6-10, inclusive, which are under a title "*Achieving sustainable development*" in the Framework, would serve no purpose if, in fact, it was a presumption in favour of development<sup>174</sup>. This does however mean that an assessment of accessibility is an inherent part of the assessment of whether the proposed development would be sustainable.
312. I have noted the Appellants' arguments against this approach [61]. I agree that life might be simpler if there was not a 2-stage test, which requires an assessment of whether a scheme is sustainable development before applying the presumption, but that is my reading of the Framework. Although paragraph 6 thereof refers to paragraphs 18 to 219 as constituting what sustainable development means in practice it should be noted from the *Contents* that sections 1-13 are all under the title "*Achieving sustainable development*". The economic role, for example, is elaborated upon beginning with section 1, paragraphs 18-22. Paragraphs 6-17 set out the 'big picture' which is the context for the detailed policy that follows. This initial section starts by setting out the Government's view of what the UN Resolution means in England, but continues with a recitation of the statutory approach [paragraphs 11-13] and establishing a set of 12 core planning principles. On the Appellants' approach paragraphs 7 and 8 serve no purpose. Again that cannot be right: they are the key to an understanding of what is sustainable. My view is supported by reference to Patterson J in *Dartford* "...it is clear that

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<sup>173</sup> Paragraph 11, APP/G1630/A/13/2209001.

<sup>174</sup> This is the position taken in paragraph 8.20 of Report APP/H1840/A/13/2199085 etc.

*the Inspector reached an overall conclusion, having evaluated the three aspects of sustainable development, that the positive attributes of the development outweighed the negative. That is what is required to reach an eventual judgment on the sustainability of the development proposal"*<sup>175</sup> [*my emphasis*]. The reference to three aspects of sustainable development can only, in my estimation, be a reference back to paragraph 7 of the Framework.

313. Paragraph 49 of the Framework says if there is not a 5-year supply relevant policies for the supply of housing should not be considered up-to-date. I accept that links back to application of the second bullet-point, for decision taking, of paragraph 14. However the first sentence of paragraph 49 merely says that housing applications should be *considered* in the context of the presumption in favour of sustainable development. Conversely it does not say that the presumption in favour of sustainable development applies to all planning applications for housing. It is necessary to consider whether it does apply and if the development is sustainable, relevant DP policies would be out-of-date. If the development is not sustainable however the presumption would not apply.
314. It is said that the paragraph 7 preliminary stage is redundant in practice but, whilst I note Mr Ketley's concession, I am not convinced that this is correct. I agree with the Council's submission that application of the second bullet-point of paragraph 14, for decision taking, is a different and wider-ranging balancing exercise from that involved in assessing whether a proposal is sustainable development [52]. Finally I note what the SoS said in paragraph 12 of the Droitwich Spa decision letter<sup>176</sup> but the issue simply did not arise on the facts. The SoS was able to point to that part of the Inspector's report in which he gave reasons for finding that the proposed development was sustainable.
315. Before turning to make an assessment of whether the proposed development would be sustainable, whilst I note that paragraph 48 is a summation of the case for the First Defendant, the SoS, it is worth recording that submission. It was said that "*Sustainable development is about seeking an overall net positive contribution to economic, social and environmental gains together*"<sup>177</sup> [*my emphasis*]. Inherent to that view is that development can still be sustainable even where there are some negatives, ie one of the three dimensions is not fully met, as long as the overall position is a net positive. In that case the concern was the social dimension<sup>178</sup>, here it is environmental. This was a submission made for the SoS and this is a view that I subscribe to. The conclusion of Patterson J [see quote, 312] fully endorsed that submission.

### ***The economic role of sustainable development***

316. The Council accept that the proposed development would be economically sustainable [51]. I accept that the development would generate significant economic activity for Morpeth, lead to significant investment and the creation of jobs [64 ix]. The SoCG records that the main parties agree the proposals would deliver a range of economic benefits and reference is then made to the submitted Economic Statement. When the Council appeared to question the

<sup>175</sup> Source of quote: paragraph 54 of the transcript in *Dartford*, at DC5.

<sup>176</sup> Dated 02 July 2014, Ref APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426.

<sup>177</sup> Source of quote: paragraph 48 of the transcript in *Dartford*, at DC5.

<sup>178</sup> See paragraph 50 of the transcript in *Dartford*, at DC5.

basis of that Statement an explanation was given<sup>179</sup>. This was not challenged at the Inquiry. I therefore attach significant weight to the Appellants' estimate that the appeal scheme would generate, amongst other things: 71 construction jobs pa; 107 jobs in the supply chain; £6.5m pa of gross value added, which is a measure of economic output, during construction; 53 additional FTE jobs in the local area; and additional gross expenditure of £7m in shops and services.

317. I have excluded consideration of 2 factors from this list, namely New Homes Bonus payments of circa £4m and an uplift in Council Tax revenue of over £650,000 because the Council challenge whether these should properly be considered to be material considerations. In particular it refers to a Note on the New Homes Bonus Scheme prepared for the House of Commons Library<sup>180</sup>. The Government's position is set out in that note and says that in some cases the New Homes Bonus could lawfully be taken into account where there is a direct connection between the intended use of the Bonus and the proposed development. Mr Ketley conceded in answer to my question that this might be applicable in this case. The difficulty is that pending the outcome of this appeal the Council cannot reasonably make firm plans for what that money might be used for because it cannot be certain that it would be received. In all of these circumstances the SoS is invited to conclude that these financial provisions are not a material consideration that should be taken into account in this appeal.
318. H & MT disagree that the appeal proposals are economically sustainable. It says, in short, that it is the wrong type of land in the wrong place and at the wrong time. However whilst I note the eighth core planning principle there is no longer a focus on previously-developed land. It is common ground that the full potential of the former St George's Hospital site can only be realised with the MNB but in any event I have already noted that the NP recognises that the town's development needs cannot be met on previously-developed land [200]. The main parties agree that there is a need for green field sites to come forward to enable the 5-year land supply to be met and that there is a need for planning permissions to be granted now [64 ii, iii]; I agree on both counts. I deal with accessibility below, but note here the site's proximity to the town's industrial estate, which appeared to me to have several sites available and/or in need of redevelopment. With the loss of the allocated employment site at Fairmoor [DS6] that aspect of the CS will need to be re-visited. To say that there might be increased commuting is arguably a reason against housing in Morpeth [full stop]. Such an approach flies in the face of the Framework<sup>181</sup>.
319. For H & MT the use of land at the right time would seem to involve an embargo on housing development pending progression of the putative DP. However, as I have found, that too conflicts with the Government's approach [203]. Finally in terms of infrastructure, H & MT have advanced various arguments to the effect that the town's infrastructure cannot cope. However I disagree, specifically in terms of roads [264], sewage [278] and schools [289]. A key advantage of the proposed development is that it is not reliant on the MNB. I find no basis to conclude that the construction of the Loansdean-Stobhill Link

<sup>179</sup> See Appendix 1 to Mr Hollowood's Addendum to his Proof of Evidence.

<sup>180</sup> Appendix 4 to the rebuttal Proof of Evidence of Mr Ketley.

<sup>181</sup> See amongst other things the Ministerial foreword and, in particular, that development means growth; it says "*We must house a rising population, which is living longer...*".

Road, however desirable, should be a pre-condition for approval of any further development to the south of the town or that contributions should be sought.

***Accessibility: is it the right place, including by reference to local services?***

320. The revised SOCG records that the Council's position on this issue has changed over time [paragraphs 5.25-5.30, CD39]. In the original, signed SoCG, dated 19 March 2014, the Council agreed that the site was in a sustainable location. This reflected its EIA Screening Opinion which said "*The site is easily accessible using several modes of transport, including bus links and being within a 10 minute walk of the town's railway station. Local education and shopping opportunities are within walking distance of the application site*"<sup>182</sup>. The Committee Report also found "*It is accepted that future occupants of the site would have good access to local services and facilities and, in particular, bus and train services that may be reached on foot*"<sup>183</sup>. The Council's position remains that the site is within an acceptable walking distance of Morpeth railway station and schools, including Stobhillgate First School and Nursery<sup>184</sup>. It also agrees that it is within close proximity of employment opportunities.
321. The dispute between the main parties is therefore whether the appeal site is well served by regular bus services and within an acceptable walking distance of local shopping facilities. However on these 2 matters Mr Jolley accepted in xx that they did not justify dismissal of this appeal [72]. The agreed table [DS 18.2] shows that there would be 5 bus services per hour passing the site which, relative to other proposed housing developments around the town, is much better than most, equal top with St George's Park. There are bus stops with shelters on both main road frontages of the site [11]. The layout is such that these would be accessible by pleasant footways divorced from the roads. It is conceivable that a bus route could loop around the internal site layout<sup>185</sup>. The most regular bus service [No 2] runs every 20 minutes during Monday to Saturday daytime, and every hour in the evening and at weekends<sup>186</sup>.
322. During the Inquiry a qualitative point evolved and it was suggested that the Loansdean site was better placed to take advantage of the express bus service that runs direct to Newcastle down the A1. That might be correct<sup>187</sup>, but the agreed table [DS 18.2] shows that the appeal site is by far the closest housing site to the railway station. As I found, the train service between Morpeth and Newcastle is fast, just over 20 minutes but less at some times, and regular, with at least one service per hour, including in the evening, with some Sunday services<sup>188</sup>. The train service is faster than the express bus service and total journey times, allowing for walking or cycling to the railway station/bus stop, would be comparable. This adds up to the best of both worlds at the appeal

<sup>182</sup> Source of quote: Page 6, EIA Screening Opinion, CD32.

<sup>183</sup> Source of quote: Paragraph 7.19, CD33.

<sup>184</sup> Mr Jolley's proof makes the point that the railway station is within the preferred maximum walking distance, distinct from acceptable, but paragraph 5.27 of the SoCG says what it says.

<sup>185</sup> I acknowledge that this has not been proposed at this stage but the layout could facilitate this and it could be a future option for some local bus services.

<sup>186</sup> See Table DB2, Mr Craig's proof of evidence.

<sup>187</sup> See comparative timetables at DS22.

<sup>188</sup> See Table 3.3 of the *Sustainable Transport Appraisal* [CD49] and Table DB3, Mr Craig's proof of evidence.

- site in the sense that there is excellent access to a fast, frequent train service into Newcastle together with a choice of bus services to a range of destinations [73]. Cycling to and from the railway station is a realistic option via Coopies Lane, a suggested route, or using the on-road cycle lane on the A192<sup>189</sup>.
323. Turning to local shopping facilities the agreed table [DS 18.2] shows that in relative terms the appeal site performs relatively poorly, the furthest point in the site being 1,200m from the local convenience store. However it is a big site and my earlier point about off-road footways that permeate the site is relevant [321]. Table 3.2 of the IHT "*Guidelines for Providing for Journeys on Foot*" [CD44] says 1,200m is the preferred maximum in order to walk to such facilities. On this basis this does not count against the proposal. My view is confirmed by the fact that Mr Jolley agrees that the pharmacy and convenience store are within an acceptable walking distance of the centre of the site<sup>190</sup>.
324. A qualitative point was also brought out at the Inquiry in relation to the local shopping facilities. However I consider there is nothing in this point. In my view the appeal site would have a good choice of local shopping facilities, including a corner shop, Post Office, Sainsbury's Local and Boots Pharmacy. The distance of 200m for the Loansdean site assumes that the permission is implemented as a food store, but it is an open A1 use or A2/A4/D1 use. The alternative would be further, 1,300m, from that site. Both Northgate and Persimmon rely on the Londis shop at the Jet filling station, although there is a farm shop on the same site. St George's Park would be further, 1,370m, from the nearest convenience store [DS 18.2]. When viewed in this relative context I consider that the local shopping facilities would be comparatively good here. The local shops might be more expensive but that is the price of convenience and such stores might only be used for '*top-up*' shopping, not a weekly shop.
325. H & MT says that the appeal site is poorly related to the upper schools. The main parties have only agreed figures for the middle schools [DS 18.2] which records that all of the proposed housing sites around Morpeth would be more than 2,000m from that school. This is what Table 3.2 of the IHT guidelines says is the preferred maximum walking distance from schools. In a relative sense this does not count against the appeal site. Moreover the evidence is that both middle schools are served by an extension of the No 44 bus service at opening and closing times, allowing direct travel by bus to these schools<sup>191</sup>.
326. The high school is said to be within 800m of the bus station<sup>192</sup> and so could be accessed by a combination of bus travel and walking. Although direct cycling is conceivable in terms of distance, the topography and absence of safe routes for children might suggest this would be unlikely. The Morpeth NHS centre is located approximately 500m from the bus station<sup>193</sup> and could be accessed by a combination of bus travel and walking; the walk would be relatively flat. The town centre, with its excellent range of shops and services, is more than 800m from the appeal site, which Table 3.2 of the IHT guidelines says is the

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<sup>189</sup> See plan on page 14 of the *Sustainable Transport Appraisal* [CD49], noting that the cycle lane runs for only part of this route on the A192.

<sup>190</sup> Paragraph 2.2.1 of Mr Jolley's Transport Rebuttal Proof.

<sup>191</sup> Paragraph 4.5.18 of Mr Craig's proof of evidence.

<sup>192</sup> Paragraph 4.5.19 of Mr Craig's proof of evidence and I accept that it is of this magnitude.

<sup>193</sup> Paragraph 4.5.20 of Mr Craig's proof of evidence and I accept that it is of this magnitude.

preferred maximum walking distance, but that would appear to apply to all of the housing sites considered<sup>194</sup>. The evidence is that there are 5 bus services per hour, Monday to Saturday daytimes, between the appeal site and the town centre and published journey times are less than 10 minutes. In my view this makes it a realistic alternative to reliance on the private car for this journey.

327. For these reasons I consider there are a range of transport modes available to prospective residents in order to gain access to local services and facilities. Although I appreciate that the majority of key services and facilities are on the north side of Morpeth, given the excellent bus service between the appeal site and the bus station/town centre the appeal site would be far from inaccessible.
328. In this context I shall deal briefly with the PTAL analysis. Northumberland is a big rural County. The appeal site is on the edge of the fourth largest town in the County [6], within an acceptable walking distance of a mainline railway station with a good service [322] and served by 5 bus services per hour [321]. In the context of this County there can be few locations available for this scale of new housing with better access to the public transport network. Mr Jolley acknowledged that he has not undertaken a comparative assessment but I suggest that had this been done using the PTAL methodology that over 99% of the County would have very poor accessibility. PTAL was developed by a London Borough for use in London where, in my experience, public transport operates to a much higher quantitative and qualitative standard than other parts of England, particularly outside of the major conurbations.
329. In answer to my question Mr Jolley said that PTAL methodology underpinned the BREEAM assessment. I accept this but Mr Hollowood said that BREEAM was primarily used in relation to the construction of commercial buildings. CSH, which is a BREEAM scheme, is normally used in England to assess residential development<sup>195</sup>. CSH rates new-builds for categories of sustainable development, including energy and CO<sub>2</sub> emissions, surface water run-off, water, materials, waste, pollution, health and wellbeing, management and ecology, but would not necessarily cover public transport accessibility. So, whilst I have no reason to doubt that PTAL has been used outside of London, I am far from convinced the exercise undertaken by Mr Jolley is of assistance in this particular appeal. Finally it is worth recording that, in my experience of currently undertaking an examination of a DP in London, the London Plan envisages that "*Suburban*", i.e. relatively low density, housing such as that proposed, is appropriate to come forward in areas with a PTAL rating of 0-1<sup>196</sup>. For these reasons I attach very limited weight to this analysis. In the context of Northumberland it does not lead me to find that the appeal site would be poorly related to public transport. Such a finding would be counter-intuitive when the Council acknowledges that the appeal site is within an acceptable

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<sup>194</sup> This distance is not agreed on DS18.2 and it is conceivable that part, but by no means all, of St George's Park would be within 800 m of the town centre, plus it is up a steep hill.

<sup>195</sup> It is a Government owned national standard that is based on BRE Global's scheme.

<sup>196</sup> See Table 3.2 of the London Plan, the notes to which define suburban as "*...areas with predominantly lower density development such as, for example, detached and semi-detached houses, predominantly residential, small building footprints and typically buildings of two to three storeys*", which in my view aptly describes what is proposed on the appeal site.

walking distance of one of the only mainline railway stations in the County [322] and served by 5 bus routes per hour serving various destinations [321].

### ***Overall conclusion on the economic dimension of sustainable development***

330. For all of these reasons I consider that the proposed development would fulfil the economic role of sustainable development. It would contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place and at the right time, ie now, to support growth. In my view this is a material consideration to which significant weight should be given in the overall balancing exercise.

### ***The social role of sustainable development***

331. The Council acknowledges that the proposed development would be sustainable in a social sense insofar that it does not have a 5-year housing land supply and the proposed development would contribute to boosting housing supply [51]. The Council further agrees that the provision of 119 affordable dwellings in an area of affordable housing shortfall serves to fulfil this role [51]. I consider this would help to meet the needs of present and future generations and have given reasons to attach significant weight to the affordable housing offer [309]. The main parties agree that the proposed development would represent high quality design [CD39, paragraph 5.35] and H & MT have not expressly deferred from this view. Although the scheme would comprise a high quality environment it would not be an outstanding or innovative design and so it would not be appropriate to attach great weight to this material consideration. The fourth core planning principle at paragraph 17 of the Framework says that planning should *always seek to secure high quality design* and so it is a required attribute. I have already found that local services would be accessible [327]. For these reasons I consider that the proposed development would fulfil the social role of sustainable development and in my view this is a consideration to which significant weight should also be given.

### ***The environmental role of sustainable development***

332. The Council is concerned about the effect of the development on the character and appearance of the area and the local road network [51]. I have given reasons why I do not share its concerns as to the latter [264]. However the agreed evidence shows that in all scenarios the development would add to the length of queues on the network [DS 18.1] and in that sense there would be an increase in congestion and greenhouse gas emissions. To that extent the scheme would not minimise pollution or help the adaptation to climate change, but I have given reasons why the site is well related to public transport [322]. On balance, noting the housing supply situation [215], this is a neutral factor.
333. I acknowledge that there would be no harm to the built or historic environment [64 ix]. However I have given reasons why the proposed development would neither protect nor enhance the natural environment [248]; there would be a loss of a large arable field. The Appellants' *Ecological Appraisal* found however such arable land "...is homogenous in the wider area and is assessed as being of relatively low ecological value"<sup>197</sup>. On balance the *Ecological Appraisal*

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<sup>197</sup> Source of quote: paragraph 4.1, Conclusions, *Initial Ecological Appraisal*.



concludes "*Overall a positive benefit to wildlife is envisaged due to the use of integrated mitigation and habitat design*"<sup>198</sup>. In the circumstances I agree with Mr Hollowood's claim that the appeal proposals would deliver net ecological gains in terms of tree and hedgerow planting, creation of water features, including ponds, and other elements of landscaping. This new habitat has the potential to result in medium to long term enhancements to biodiversity, which would outweigh any short-term loss, such as that arising from the loss of habitat suitable for farmland bird species, eg skylark and meadow pipit. There would also be environmental benefits arising from the landscaping and habitat creation by virtue of the provision of a large area of public open space [64 viii].

334. However on balance I consider that the proposed development would not fulfil the environmental role of sustainable development. Although I have identified some positive factors and some neutral factors, the overall conclusion must be one of modest harm, which informs the weight that I attach to this factor.

**Main issue (viii): Overall conclusion**

335. In the Council's view the environmental concerns prevent the appeal proposal from being considered to be sustainable development [51]. The Appellants submit that it would be almost impossible for any large development of this magnitude to get a 100% pass rate, which the Council's approach demands [64 ix]. I agree; the overall position merely needs to be a net positive [312, 315]. Moreover it is instructive to look at the approach the SoS has taken in broadly comparable situations.
336. The Droitwich appeals related to 34.63 and 12.3ha, respectively, of green field land<sup>199</sup>. The Inspector deals with the environmental aspects of sustainability in one paragraph [8.22]; indeed it is more accurate to say that he dealt with the environmental *benefits*. The SoS refers to this and the other 2 paragraphs that deal with the other 2 dimensions of sustainable development in finding that Appeal A was sustainable in terms of economic, environmental and social benefits<sup>200</sup>. I do not have the SoS decision for Hartford but the Inspector recommended approval of both appeals, the second of which was on 34ha of agricultural land, but this did not prevent the Inspector from finding that the development would be sustainable<sup>201</sup>. Given that the DP is out-of-date [221] it is inevitable that housing to meet the need must be allowed on green field sites [318]. The Council has itself adopted this approach in the very recent past and concluded "*...that the development [255 dwellings on 9.72 ha of agricultural land] would be sustainable in terms of its environmental role*"<sup>202</sup>. In this context I agree that the Council's position here is contradictory [64 ix].
337. Having evaluated the proposed development against the three dimensions of sustainable development I conclude on the eighth main issue that the positive attributes of the development, in terms of economic, social and some limited environmental gains, outweigh the negative environmental impact. This leads me to find that the proposal would be sustainable development to which the

<sup>198</sup> Source of quote: paragraph 4.2, Recommendations, *Initial Ecological Appraisal*.

<sup>199</sup> See paragraphs 1.9 and 1.13 of Inspector's report APP/H1840/A/13/2199085 etc.

<sup>200</sup> See paragraph 12 of SoS decision APP/H1840/A/13/2199085 etc

<sup>201</sup> See paragraphs 3.7 and 14.37 of Inspector's report APP/A0665/A/12/2179410 etc.

<sup>202</sup> Source of quote: paragraph 8.3, DS6; other references are to paragraphs 2.1 and 2.2.

Framework's "*presumption in favour*" should apply. This conclusion is broadly consistent with that arrived at by my colleague in the Loansdean appeal<sup>203</sup>.

**Main issue (ix): The overall planning balance**

338. Paragraph 14 of the Framework enjoins the decision maker to grant planning permission, where relevant policies in the DP are out-of-date, 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. This is a loaded dice and by its use of the words '*significantly and demonstrably*' it is clear that any adverse impacts need to outweigh the benefits by an appreciable amount rather than just marginally. The reason for that shift in the planning balance is that an objective of the Framework is to boost significantly the supply of housing by, amongst other things, ensuring that a 5-year supply is in place. The Council has taken issue with my colleague's description of it as an "*overarching aim*"<sup>204</sup> but, at a minimum, it is a key policy objective.
339. The proposal would provide a substantial amount of market housing in an area where the lack of a 5-year housing land supply means that housing policies in the DP are out-of-date [215, 221]; these are factors that weigh significantly in favour of allowing the appeal. Significant weight should be given in the overall balancing exercise to the economic benefits of the proposal, including direct employment and the multiplier effect in the local economy [316, 330]. I have also found that significant weight should be given to the social benefits, which include the benefits of much needed affordable housing [309, 331]. Subject to imposition of a planning condition the proposed development would improve the flooding situation downstream [275] and whilst the improvement would be small this is a positive factor to which I attach moderate weight. There would be a net benefit to ecology but given the potential short-term loss of habitat this is a factor to which I attach only moderate weight [333]. The provision of public access to a large proportion of the site is also a factor to which I attach moderate weight [333]. The Framework now requires high quality design and on this basis I consider this attribute of the scheme is not a benefit [331]. The absence of conflict with DP policy is however a highly significant finding [251].
340. Set against these positives is my conclusion on the third main issue that the proposal would harm landscape character, albeit not to a significant extent, and the appearance of the area, to a significant extent, but along a fairly localised stretch of the A196 corridor [248, 249]. The other factors which I have examined are broadly neutral and, in particular, on the fourth main issue I found that there is a high degree of certainty that the MNB will proceed and in this most likely scenario the development, taken with existing commitments, should not be refused on transport grounds because the impact on the network would not be severe [264]. On balance I conclude on the ninth main issue in this appeal that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development [339].

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<sup>203</sup> See paragraphs 70-75 of decision APP/P2935/A/12/2170840 etc, DC4.

<sup>204</sup> Source of quote: paragraph 31 of decision APP/P2935/A/12/2170840 etc, DC4.

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**Main issue (x): Conditions and planning agreement**

341. Earlier in this report I critically examined the 27 conditions put forward in the Addendum to the SoCG [CD39], which formed the basis of a discussion at the Inquiry and gave reasons for my findings [163-182]. On the tenth main issue, if the SoS were minded to grant permission, I recommend that this be on the basis of the conditions set out in Annex A to this report. For the reasons identified [183-188] the section 106 agreement is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010. No further contributions are justified in relation to school accommodation [289].

**Other matters**

342. Ahead of the Inquiry I identified a further main issue [DC3], to be whether the proposed development would harm the living conditions of existing residents by reason of noise and disturbance. This was having regard to paragraph 5.24 of the SoCG [CD39], which records that H & MT believe that the impact of the noise caused by extra traffic generated by the proposal, during and after construction, on existing homes, such as those at Barmoor Bank, to the south of Stobhill roundabout, have not been considered.
343. It is clear to me that the impact of the proposed development on the living conditions of existing residents has been considered by the Council during its consideration of the application. The Council received advice from its Environmental Protection Officer, which included recommendations on construction phase. The report that was made to the Council's North Area Planning Committee on 20 February 2014 included sections entitled "*Impact on neighbouring residential amenity*" and "*Noise issues*". Paragraph 7.64 of the report gave reasons for finding no conflict with relevant LP Policy H15.
344. Even if it might be said that the Committee report was in some way deficient in not making express reference to the impact of traffic noise, in particular on the living conditions of existing properties in the area, I find no basis to conclude that the proposed development would harm neighbours' living conditions. Many of the existing dwellings are set back from the main roads. Although I acknowledge that those at Barmoor Bank front onto the A192 traffic noise is already likely to have an impact on residents' living conditions. It has not been shown that this proposal would increase the volume of traffic passing along this route to the extent that this would be unacceptable in terms of noise and disturbance. In the unlikely event that issues were to arise during construction phase I have already referred to the range of statutory powers that the Council has in order to deal with issues of noise and disturbance to residents [172].
345. At the Inquiry I picked up on a point in the *Sustainable Transport Appraisal* [CD49] insofar as it says "*An on-road cycle lane is provided along the A192 in a southbound direction, between the Mafeking roundabout and the Shields Road junction. It is considered that sufficient road width is available that this could be enhanced by provision of an on-road cycle lane in the northbound direction*"<sup>205</sup>; I agree. Moreover I consider that there might be scope to extend the on-road cycle lane up to Stobhill roundabout, which could run in both directions along this length of the A192. I explored this point with Mr

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<sup>205</sup> Source of quote: paragraph 2.1.13 of the *Sustainable Transport Appraisal* [CD49].

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Craig who suggested it might be capable of delivery via the travel plan, but in the conditions session the Appellants suggested this was unlikely; I agree.

346. I acknowledge that this was not offered as part of the section 106 agreement because the Council sought no such contribution, which in itself is perhaps surprising, and so the absence of a relevant contribution should not count against the proposed development. However I raise this point because such provision would further enhance the sustainability credentials of the appeal site. In the event that planning permission is granted the Council might wish to consider whether the New Homes Bonus could be used in part, where there was a robust travel plan already in place, to deliver such an enhancement.
347. Local residents and others have raised a number of other points and I do not propose to address all of them. However I will touch briefly on the potential impact on Stannington Station Road. I do respect the Parish Council's concern that the proposal might give rise to increased traffic using that road as an unofficial southern bypass in order to gain access to the A1. However I must be guided in this matter by the expert evidence before the Inquiry, which is that there is no outstanding highway safety issue. Network Rail were consulted and made no adverse comment in relation to the use of the level crossing on the east coast mainline. Accordingly I am satisfied that this is not an adverse consideration that should weigh against the proposed development.

### **Overall conclusion**

348. For the reasons discussed at length above, having regard to all other matters raised, I conclude that the appeal should be allowed.

### **Recommendation**

349. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex A.

*Pete Drew*

INSPECTOR

**APPEARANCES**

## FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, Counsel

Instructed by Neil Masson, Solicitor,  
Northumberland County Council.

He called

Thomas Walker BA Hons, Dip LA, MA, CMLI, AoU  
Partner, Gillespies LLP.  
Chris Jolley BSc, CEng, MICE  
Technical Director, Mott MacDonald.  
Mark Ketley BA, Dip TP, MRTPI  
Acting Strategic & Urban Development Manager,  
Northumberland County Council.

## FOR THE APPELLANTS:

Sasha White QC

Instructed by GVA Grimley Ltd.

He called

Jeremy Smith BSc (Hons), Dip LA, CMLI,  
Executive Director SLR Consulting Ltd.  
Roland Craig BSc, FIHT, MILT, Technical Director  
WSP.  
Stephen Hollowood BSc (Hons), Dip TP, MRTPI,  
MCABE, AoU, Senior Director GVA Grimley Ltd.

## FOR HEPSCOTT AND MORPETH TOGETHER:

Councillor Philip Ashmore  
Councillor Mrs Joan Tebbutt  
Councillor Mrs Alison ByardHepscott Parish Council.  
Morpeth Town Council.  
Morpeth Town Council [who gave no oral  
evidence but put questions to one witness].

## INTERESTED PERSONS [THOSE WHO ADDRESSED THE INQUIRY IN PERSON]:

John Lewis MRICS MRTPI (Retd)	Hepscott Parish Councillor.
Tom Smith	Morpeth Flood Action Group.
Karen Carins	Stannington Parish Council.
Councillor Andrew Tebbutt	County Councillor.
Harry Cone	Local resident.
Ian Campbell	Neighbourhood Plan advisor.
Richard Wearmouth	Local resident.
Dr J Meth-Cohn	Chairman, Hepscott Flood Action Group.
Joan O'Connor	Local resident.
Fred Dye	Hepscott Parish Councillor.
Derek Thompson	Local resident.
Paul Kidd	Local resident.
David Armstrong	Local resident.
Bob Robertson	Local resident.
Michael Lamb	Local resident.
Chris Tuersley	Local resident.
Dr Anne Colver	Local resident.

Jean Douglas	Local resident.
Sandra Kennedy	Local resident.
Councillor Glen Sanderson	County Councillor.
Councillor Ian Lindley	County Councillor.
Vivienne Rochester	Local resident.

### **i) DOCUMENTS SUBMITTED AT THE INQUIRY [DS]**

- 1 List of appearances on behalf of the Council.
- 2 List of appearances on behalf of H & MT.
- 3 Section 106 agreement dated 18 July 2014.
- 4 Traffic & Highways Statement dated 18 July 2014.
- 5 Landscape Statement of Common Ground.
- 6 Report to North Area Planning Committee on 17 July 2014 in respect of application No 13/02105/OUT on land south west of Northgate Hospital [Persimmon scheme] submitted by the Appellants at the Inquiry.
- 7.1- Bundle of legal authorities comprising: (i) *Anita Colman v SSCLG* [2013]
- 7.4 EWHC 1138 (Admin); (ii) *Stratford on Avon DC v SSCLG* [2013] EWHC 2074 (Admin); (iii) *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin); & (iv) *William Davis Ltd and Jelson Ltd v SSCLG* [2013] EWHC 3058 (Admin).
- 8 Draft costs application submitted by the Appellants during Inquiry opening.
- 9 Substitute Supplement to agreed Traffic & Highways Statement submitted by the Council at the Inquiry.
- 10.1- Appeal decisions [Ref APP/Q3305/A/12/2186794 and
- 10.2 APP/L3815/A/13/2206796] submitted by the Council at the Inquiry.
- 11 Draft timetable submitted by the Council at the Inquiry.
- 12 Opening statement on behalf of the Appellants.
- 13 Opening submissions on behalf of the Council.
- 14 Opening statement on behalf of H & MT.
- 15 Revised timetable submitted by the Appellants at the Inquiry.
- 16 Email dated 22 July 2014 regarding absence of date in clause 3.2.3 of the fourth schedule of the section 106 agreement, submitted by the Council at the Inquiry.
- 17 Statement on behalf of Stannington Parish Council submitted by Councillor Karen Carins at the Inquiry.
- 18.1- (i) Updated journey times; (ii) agreed distances to services and facilities;
- 18.3 and (iii) Site Context Plan, all submitted by the Appellants at the Inquiry.
- 19 Statement of John Lewis MRICS, MRTPI (Retd).
- 20 Loansdean Landscape Masterplan submitted by the Appellants at the Inquiry.
- 21 Excerpts from the Transport Assessment for Northgate Hospital submitted by the Council at the Inquiry.
- 22 Selected bus timetables, comprising express service via Loansdean and equivalent service via appeal site, submitted by the Council at the Inquiry.
- 23 Hepscoth Flood Risk Study submitted by Mr Lewis at the Inquiry.
- 24.1- Statements of Councillor Philip Ashmore submitted at the Inquiry entitled
- 24.2 (i) "*Update and response to Applicant's Comments*"; and (ii) "*Summary of Proofs of Evidence*".
- 25 Statement of Tom Smith submitted during the Inquiry entitled "*Morpeth Flood Action Group response to Flood Risk Assessment and Flood Risk Exercise*".
- 26 Plan submitted by Mr Lewis showing his property in relation to the bypass

- culvert and other drainage features in the vicinity of Hepscoth.
- 27 Email dated 14 July 2014 from the Environment Agency to WSP.
- 28.1- Summary proofs of evidence submitted by Councillor Joan Tebbutt to the
- 28.4 Inquiry in relation to: (i) Policy Context; (ii) Affordable Homes; (iii) Transport and Highways; and (iv) Sustainability.
- 29 Plan submitted by Dr Meth-Cohn to the Inquiry showing point at which a flood relief pipe running along the railway could link to an existing ditch.
- 30.1- Presentation to Inquiry made by Harry Cone together with a copy of the
- 30.2 Morpeth Herald dated 24 July 2014.
- 31 Further statement of Tom Smith submitted during the Inquiry entitled "*Barratt Stobhill housing development conditions*".
- 32 Letter from "*A concerned old citizen*" submitted at the Inquiry.
- 33 Letter from Stuart J Brock submitted at the Inquiry.
- 34 Letter from Stephen Byard submitted at the Inquiry.
- 35 Permeability note from Councillor Philip Ashmore submitted at the Inquiry.
- 36 Proposed agenda for accompanied site visit, including plan.
- 37.1- Mr Lewis's suggested amendments to agenda for site visit, with attached
- 37.2 plan.
- 38 Closing submissions on behalf of H & MT.
- 39 Closing submissions on behalf of the Council.
- 40.1- Closing submissions on behalf of the Appellants together with transcripts of
- 40.3 (ii) *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 and (iii) *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406 (Admin).
- 41 Letter from Mrs Julia Macphail submitted at the Inquiry.

## ii) DOCUMENTS CIRCULATED OUTSIDE OF THE INQUIRY [DC]

- 1 Letters of notification including a list of persons to whom they were circulated.
- 2.1- Bundle of letters from interested parties that were submitted to The
- 2.11 Planning Inspectorate in response to the original letter of notification.
- 3 Inspector's handout circulated in advance of the Inquiry.
- 4 Appeal decision dated 17 July 2014 in respect of Land at South Loansdean, Morpeth [Ref APP/P2935/A/12/2170840 and APP/P2935/A/13/2208237].
- 5 Email dated 1 August 2014 from The Planning Inspectorate to all main parties inviting comments on the judgment in *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).
- 6 Submissions made on behalf of the Appellants on the *Dartford* judgment.
- 7 Submissions made on behalf of the Council on the *Dartford* judgment.

## iii) CORE DOCUMENTS [CD]

- CD1 National Planning Policy Framework.
- CD2 Planning Practice Guidance.
- CD3 Castle Morpeth Local Plan (February 2003).
- CD4 Castle Morpeth Local Plan Saving Direction (31 August 2007).
- CD5 Castle Morpeth Borough Council Local Plan Inspector's Report (June 1999).
- CD6 Northumberland Local Development Plan – Core Strategy Preferred Options (February 2013).
- CD7 Northumberland Local Plan – Core Strategy Preferred Options for Housing, Economy and Green Belt (October 2013).

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- CD8 The Morpeth Neighbourhood Plan Issues and Options Consultation Report (September 2013).
  - CD9 Northumberland Five Year Supply of Deliverable Sites 2013 to 2018 (October 2013).
  - CD10 Northumberland Strategic Housing Land Availability Assessment 2013 to 2018 (October 2013).
  - CD11 Northumberland Draft Strategic Housing Market Assessment Update and Delivery Area Report (October 2013).
  - CD12 Northumberland Strategic Land Review (October 2013).
  - CD13 Northumberland Key Land Use Impact Study Part A: Landscape Sensitivity at Settlement Edges (September 2010).
  - CD14 Northumberland Key Land Use Impact Study Part D: Landscapes Potentially Requiring Additional Protection (September 2010).
  - CD15 Northumberland Landscape Character Assessment: Part A, Landscape Classification (LUC, August 2010).
  - CD16 Natural England's National Character Area 12: Mid-Northumberland (2013).
  - CD17 Natural England's National Character Area 13: South East Northumberland Coastal Plan (2013).
  - CD18 Northumberland Local Development Scheme (December 2008).
  - CD19 Local Development Scheme 2013 to 2016 (October 2013).
  - CD20 Local Transport Plan 2011 – 2026 (2011).
  - CD21 Castle Morpeth Borough Council Local Development Framework draft Core Strategy (June 2008).
  - CD22 Sustainable Growth Scenarios for Morpeth (August 2011).
  - CD23 Outline Water Cycle Study (May 2012).
  - CD24 Statement of Community Involvement (7 August 2013).
  - CD25 Statement of Community Involvement: Addendum (November 2013).
  - CD26 Presentation Layout (drawing ref. NE-18-06K).
  - CD27 Transport Assessment (July 2013).
  - CD28 Traffic Modelling Technical Note (11 November 2013).
  - CD29 Traffic Modelling Technical Note Response to Northumberland County Council (5 December 2013).
  - CD30 Framework Travel Plan (13 December 2013).
  - CD31 Landscape and Visual Impact Appraisal (2013).
  - CD32 EIA Screening Opinion (30 October 2013).
  - CD33 Officer Report to the North Area Planning Committee (20 February 2014).
  - CD34 Appellants' Statement of Case (24 January 2014).
  - CD35 Northumberland County Council Statement of Case.
  - CD36 H & MT Statement of Case (21 May 2014).
  - CD37 Statement of Common Ground (19 March 2014).
  - CD38 Statement of Common Ground on Transport Matters (23 May 2014).
  - CD39 Revised Statement of Common Ground, including H & MT comments (11 June 2014).
  - CD40 Revised Statement of Common Ground on Transport, including H & MT comments (17 June 2014).
  - CD41 Guidelines on Landscape and Visual Impact Assessment (GLVIA3, LI and IEMA, March 2013).
  - CD42 Strategic Gap and Green Wedge Policies in Structure Plans (originally ODPM, now DCLG; 2001).
  - CD43 Strategic Housing Land Availability Assessment: Practice Guidance (July 2007).



- CD44 Guidelines for Journeys on Foot (2000).
- CD45 William Davis Ltd & Anor v Secretary of State for Communities and Local Governments & Anor [2013] EWHC 3058 (Admin) (11 October 2013).
- CD46 Planning Statement (7 August 2013).
- CD47 Economic Statement (7 August 2013).
- CD48 Sustainability Statement (7 August 2013).
- CD49 Sustainable Transport Appraisal (1 November 2013).
- CD50 Response to comments received from Northumberland County Council Highways Department (28 November 2013).
- CD51 Technical Note on Highway Capacity provided to NCC (6 May 2014).

#### **iv) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF THE APPELLANTS IN ADVANCE OF THE INQUIRY**

- 1 Proof of evidence of Stephen Hollowood with 11 appendices with summary, to which I have added the late rebuttal of Mr Tyler [to Appendix II].
- 2 Addendum to the proof of evidence of Stephen Hollowood with one appendix.
- 3 Rebuttal proof of evidence of Stephen Hollowood with 3 appendices.
- 4 Proof of evidence of Roland Craig with Figures DB1-DB10 and 5 appendices, together with summary.
- 5 Addendum to the proof of evidence of Roland Craig with one appendix.
- 6 Proof of evidence of Jeremy Smith with 6 appendices and drawing Nos S/JNS/1-S/JNS/16, together with summary.

#### **v) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF THE COUNCIL IN ADVANCE OF THE INQUIRY**

- 1 Proof of evidence of Mark Ketley with 4 appendices, together with summary.
- 2 Rebuttal proof of evidence of Mark Ketley with 5 appendices.
- 3 Proof of evidence of Thomas Walker with 7 appendices, together with summary.
- 4 Proof of evidence of Chris Jolley with one appendix, together with summary.
- 6 Rebuttal proof of evidence of Chris Jolley with 3 appendices.

#### **vi) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF HEPSCOTT & MORPETH TOGETHER IN ADVANCE OF THE INQUIRY**

- 1 Proof of evidence of Councillor Mrs Tebbutt entitled "*Transport and Highways*", which incorporates 5 appendices.
- 2 Proof of evidence of Councillor Mrs Tebbutt entitled "*Policy Context*", which incorporates 13 appendices.
- 3 Proof of evidence of Councillor Mrs Tebbutt entitled "*Affordable Homes*", which incorporates 6 appendices.
- 4 Proof of evidence of Councillor Mrs Tebbutt entitled "*Sustainability*", which incorporates 12 appendices.
- 5 Proof of evidence of Councillor Ashmore entitled "*Flooding and Sewerage*", which incorporates 3 appendices.
- 6 Proof of evidence of Councillor Mrs Tebbutt entitled "*Schools Information*".

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**ANNEX A: List of suggested conditions in the event of planning permission being granted**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall not be carried out other than in complete accordance with the following approved plans:
  - Site Location Plan GIS21912/01-01;
  - Presentation Layout NE-18-06K;
  - House Type Portfolio NE-18-09B; and,
  - Materials Plan NE-18-15B.
3. No development shall commence until samples of the materials identified on drawing No NE-18-15B, which are to be used on the external elevations of the dwellings hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be constructed other than in accordance with these approved materials.
4. No dwelling hereby approved shall be commenced until details of the provision of refuse and recycling storage for each dwelling, and a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority. The refuse/recycling area shall have a direct and level access from the street to the dwelling and be capable of accommodating the appropriate number of refuse/recycling bins. Thereafter, no dwelling shall be occupied until the refuse and recycling facilities for each individual dwelling has been provided in accordance with the approved details and implementation schedule.
5. Development shall not commence until a detailed scheme for foul flows has been submitted to and approved in writing by the Local Planning Authority, in consultation with Northumbrian Water. The scheme should:
  - specify that foul water from the development hereby approved shall be disposed of via a connection to the 450mm foul sewer within Coopies Field Industrial Estate downstream from manhole 3101; and
  - provide details of the treatment of foul flows from the development hereby approved.

The dwellings hereby approved shall not be occupied until the scheme for the treatment of the foul flows has been completed and commissioned in accordance with the approved details.
6. Development shall not commence until details of the implementation, maintenance and management of a scheme for surface water management using a sustainable urban drainage scheme has been submitted to and approved by the Local Planning Authority. The scheme shall be in broad accordance with drawing No MD0777.00.20 Rev C and designed to dispose and attenuate surface water up to the 1 in 100 year plus climate change event from the development and shall limit discharge from the development to 16l/s or 50% of the green field run off rate, whichever is less, for all rainfall events. The scheme shall be implemented in accordance with the approved details, which shall include:
  - i. a timetable for its implementation; and,

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- ii. a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
7. The building envelope of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise, affording an internal level of noise as follows, with windows closed and other means of ventilation provided:
- 35 dB (A) LAEQ (07.00 to 23.00 hours) in living rooms;
  - 30 dB (A) LAEQ (23.00 to 07.00 hours) in bedrooms; and
  - 45 dB (A) LAFmax not normally exceeded in bedrooms between 23.00 to 07.00 hours.
8. The dwellings of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise in the rear gardens of each dwelling, affording a maximum external level of 55 dB(A) LAeq.
9. Prior to the commencement of development, details of the reflective acoustic barrier proposed in the Revised Noise Impact Assessment (NVA/4210/12/3774 Rev A) (paragraph 5.06) shall be submitted to, and approved in writing by, the Local Planning Authority. The submission should include a plan indicating the location, extent, performance and maintenance of the proposed reflective acoustic barrier. The approved barrier shall be constructed prior to the occupation of the first nearest dwelling which it is designed to protect and shall thereafter be retained and maintained in accordance with the approved details.
10. Prior to the commencement of development, details of protective measures, which should include a suitable gas-resistant, heavy-duty membrane to be incorporated in the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The membrane shall thereafter be incorporated into the development prior to the construction of each of the dwellings hereby approved.
11. If during development contamination not previously considered is identified, then an additional method statement regarding this material shall be submitted to, and approved in writing by, the Local Planning Authority. No dwelling shall be occupied until the method statement has been submitted to, and approved in writing by, the Local Planning Authority, and measures proposed to deal with the contamination have been carried out.
12. No development shall commence until a fully detailed landscaping scheme, showing both hard and soft landscaping proposals (the detailed landscape planting plan must include at least one pond, the planting of locally native trees, shrubs, wildflowers and grasses of local provenance) has been submitted to and approved in writing by the Local Planning Authority. This shall include, where required, the planting of trees and shrubs including a fully detailed planting schedule setting out species, numbers, densities and locations, provision of cross site wildlife corridor linkages and sustainable urban drainage ponds, provision of screen walls or fences, the mounding of earth, the creation of areas of hardstanding, pathways etc, areas to be seeded with grass and other works or proposals for improving the appearance of the development. The scheme

- shall be carried out in accordance with the approved drawings not later than the expiry of the next planting season following commencement of the development, or within such other time as may be agreed in writing by the Local Planning Authority. The landscaped areas shall be subsequently maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants, or areas of seeding or turfing comprised in the approved landscaping plans, which fail within a period up to five years from the completion of the development.
13. No development shall commence until a detailed landscape management plan, which shall provide details of the management of all landscaped areas within the site (other than domestic gardens), has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved plan shall be implemented in complete accordance with the approved details.
  14. No development shall take place unless in accordance with the mitigation and recommendations detailed within the following ecological reports:
    - 'Stobhill, Morpeth, Northumberland: Initial Ecological Appraisal -Stage 1 Investigations -Draft 3', Quants Environmental Ltd, September 2013;
    - 'Stobhill, Morpeth: Breeding Bird Survey' John Thompson Ecology Services, June 2013; and,
    - 'Stobhill, Morpeth: Bat Survey Report', Quants Environmental Ltd, December 2013.
  15. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars, including the Design and Access Statement [NE-18-12C, dated November 2013]; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
    - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
    - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
    - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with details to be submitted to and approved in writing by the Local Planning Authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
  16. Before development commences a detailed scheme for the provision of the children's play areas on the site shall be submitted to and approved in writing

by the Local Planning Authority, including details of the play equipment, surfacing, boundary treatments and a timetable for the construction of the areas. Thereafter, the children's play areas shall be provided in the agreed locations, in accordance with the approved details and the approved timetable.

17. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of:
- The parking arrangements to enable all vehicles associated with the construction to park within the site at all times;
  - Measures to help control and, where possible, reduce noise, dust and dirt emissions from the site during the construction;
  - Measures to help prevent the deposit of mud and debris on public highways by vehicles associated with the construction travelling from the site;
  - Excavations and earthworks to be carried out near the railway undertaker's boundary, to ensure that that no interference with the integrity of that property/structure can occur;
  - The erection and maintenance of fencing around the site;
  - Compound provision for the storage of plant and materials used during the construction; and,
  - The siting of construction accesses) where applicable.

Thereafter, the development shall be undertaken in accordance with the approved Construction Management Plan.

18. The areas allocated for parking and turning on approved drawing No NE-18-06K shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
19. Before development commences a fully dimensioned layout plan incorporating details in respect of road drainage, street and/or other external lighting, landscaping and boundary treatments (including details of a trespass proof close-boarded fence at least 1.8m in height at the eastern boundary of the development), together with a longitudinal section of the new road and details of construction of the carriageway, footpaths and accesses, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details pursuant to the agreed timetable and thereafter those features approved pursuant to this condition shall be retained and, where appropriate, maintained.
20. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied can be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
21. All road and associated works shall be to a standard eligible for adoption in accordance with the Northumberland County Council Manuals or as agreed in consultation with the Local Planning Authority.

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22. No development shall commence until a scheme of highway works along the site frontage onto the A196 has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The scheme shall provide details for the provision of traffic calming measures and the relocation of the bus stop and its associated shelter on the westbound carriageway, in broad accordance with drawing 0887-SK-005 (Rev. A) prepared by WSP. Thereafter, the scheme shall be implemented prior to the occupation of the first dwelling hereby approved.
23. No development shall commence until additional site layout details in respect of pedestrian accessibility to bus stops, vehicle visibility splays and vehicle tracking, together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The details shall include:
- The location of pedestrian accesses from the development hereby approved to the bus stops on the A 192 and A 196;
  - An increase to the radius of the vehicle access junctions from the A196 to 15m;
  - The addition of block paving to cul-de-sacs; and,
  - Minor adjustments to internal road geometry.

Thereafter, the development shall not be constructed other than in accordance with the approved details, pursuant to the agreed timetable.

24. No later than six months before the occupation of the first dwelling of the development hereby approved, a full travel plan shall be submitted to and approved in writing by the Local Planning Authority. The full travel plan shall be in broad accordance with the WSP Framework Travel Plan dated 13 March 2014. The full travel plan, as approved, shall be implemented in all material respects, including establishment of the long term arrangements for appointment of a travel plan co-ordinator and ensuring that travel surveys are undertaken post occupation to ensure the future success of the travel plan, with such details as agreed to be necessary being submitted to the Council.



## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.