



Appeal Decision

Inquiry held between 5 February 2025 and 6 March 2025

Site visits made on 5 and 7 March 2025

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Appeal Ref: APP/A1910/W/24/3345435

Land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Fairfax Strategic Land (Hemel) Ltd against the decision of Dacorum Borough Council.
 - The application Ref is 21/04508/MOA.
 - The development proposed is the erection of up to 390 dwellings (C3 Use), including up to 50% affordable housing and 5% self-build, a residential care home for up to 70-beds (C2 use), along with associated landscaping and open space with access from Leighton Buzzard Road.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 390 dwellings (Use Class C3), including up to 50% affordable housing and 5% self-build, a residential care home for up to 70-beds (Use Class C2), along with associated landscaping and open space with access from Leighton Buzzard Road at land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP in accordance with the terms of the application, Ref 21/04508/MOA, subject to the conditions in the attached schedule.

Applications for costs

2. The appellant has sought a partial award of costs against Dacorum Borough Council (the Borough Council) and Hertfordshire County Council on separate matters. Furthermore, the County Council has sought a partial award of costs against the appellant. These are the subject of separate decisions.

Preliminary Matters

3. The Gade Valley Communities Coalition, a combined objectors group (the Group) was granted Rule 6 status under the Inquiry Procedure Rules and participated in the Inquiry.
4. The planning application to which this appeal relates was made in outline, with all matters, except for access, reserved for future consideration. The submitted Master Plan is illustrative, whereas the Parameters Plan (Ref: 2037/PL03M) and highways plans (Refs: SK21611-04 Rev A and SK21611-05 Rev B) form part of the submitted details to be determined through this appeal.
5. An amendment to the description of the proposed development has been agreed between the Borough Council and appellant to reflect an uplift in the affordable

housing provision from 40% to 50%. As interested parties have had an opportunity to respond to that change in advance of the Inquiry sessions, I am satisfied that no prejudice would be caused by my acceptance of the revised description as the basis on which to determine this appeal.

6. An executed bilateral planning agreement and unilateral undertaking containing planning obligations relating to borough and county matters have been provided.
7. All documents submitted during the course of the Inquiry are listed in the attached Inquiry Document Schedule. I am satisfied that no one has been prejudiced by their acceptance as they are directly relevant and necessary for my Decision and the main parties have been given the opportunity to comment upon them.
8. The Borough Council has submitted a new Local Plan for examination since the Inquiry sessions concluded. The appeal site does not feature within that Plan. However, the new Plan has not yet reached a stage which can be afforded anything more than limited weight.
9. Since the appeal was lodged there have been revisions to the Framework and the PPG. The main parties have had opportunity to review and revise their evidence in response to this, including in respect to Green Belt matters, and the appeal is determined against that current national policy context.
10. It is common ground that the current housing land supply position stood at a maximum supply of 1.03 years at the base date of 1 April 2024 (Ref: CD4.11). This equates to a shortfall of 6,457 dwellings and is agreed by the main parties as representing a 'chronic undersupply of both market and affordable housing'. As such, the Borough Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st April 2024 to 31st March 2029.

Main Issues

11. The Borough Council's decision notice cites 9 reasons for refusal. However the areas of dispute between the main parties were not static and were supplemented by a further reason for refusal relating to landscape. Therefore, the main issues for this appeal are:
 - the effect on landscape character and appearance, including the natural beauty, wildlife and cultural heritage of the Chilterns National Landscape;
 - the effect on the ecological interests within the appeal site, neighbouring land and the Chilterns Beechwoods Special Area of Conservation;
 - whether the appeal site is a justified and suitable location for residential development, having regard to flood risk, the sequential test and mitigation;
 - whether the appeal proposal would secure accessibility by a choice of sustainable modes and highway safety;
 - whether or not adequate provision of community infrastructure would be secured to meet the requirements of the future residents of the appeal proposal;
 - the effect of the proposed development on the significance of Gadebridge Roman Villa Scheduled Monument (List Entry No 1015577); nearby Listed

Buildings¹; and the Piccotts End Conservation Area, with particular regard to their respective settings; and

- whether the appeal proposal is inappropriate development in the Green Belt, with particular regard to whether it meets both the definition of 'Grey Belt' land and the 'Golden Rules' set out in national policy, so as not to require very special circumstances to be demonstrated.

Reasons

Landscape Character and Appearance

12. The appeal site is mainly a collection of undeveloped grassed fields and woodland blocks which sits on one side of the Gade Valley, just beyond the built form of Hemel Hempstead New Town and the historic rural village of Piccotts End. It extends from the valley floor up one of its sides. In terms of its landscape character and appearance, the appeal site presents as countryside.
13. The appeal site sits within the periphery of the much wider Gade Valley Landscape Character Area (the LCA) and falls within the setting of the Chilterns National Landscape. It is not subject to any national or local landscape designations. The concept of a green 'wedge', 'corridor', 'buffer' or 'entrance' referred to during the Inquiry was demonstrated as having no policy status. Furthermore, I concur with the common ground reached that the appeal site does not comprise a valued landscape for the purposes of interpreting paragraph 187(a) of the Framework.
14. The existing character of the appeal site is very much influenced by surrounding built form of both the neighbouring town and village, the Leighton Buzzard Road and the more sporadic development further up the valley which straddles that route. The sensitivity of this landscape decreases as one moves down the valley towards Hemel Hempstead and past the site. As such, the appeal site is very much a transitioning area.
15. In terms of impact, the appeal scheme would introduce housing components and associated infrastructure where none currently exists. As with the development of any previously undeveloped site, there would be a considerable change to character and appearance at a site level.
16. The appeal proposal would be visible from the valley bottom on approach out of and towards Hemel Hempstead along Leighton Buzzard Road. Close up views of parts of the proposed development would also be captured from along a stretch of public footpath running through the north of the appeal site between Halsey Field and Leighton Buzzard Road, including at and around agreed viewpoints 07 and 08. The proposal would also be visible from medium to long range views from both Piccotts End and the valley's opposing slopes which are traversed by a network of Public Rights of Way.

¹ Listed Buildings: 'Piccott's End Mill House' (List Entry Number: 1251041); '138 Piccott's End' (List Entry Number: 1078040); '140 Piccott's End' (List Entry Number: 1051084); '142-148 Piccott's End' (List Entry Number: 1078041); '150 Piccott's End' (List Entry Number: 1051085); '130-136 Piccott's End' (List Entry Number: 1342208); 'Piccott's End Farmhouse' (List Entry Number: 1251040); 'Piccott's End House' (List Entry Number: 1078039); 'Gade Spring, Piccott's End' (List Entry Number: 1262990); '92 Piccott's End' (List Entry Number: 1342207); '94, 96 and 104 Piccott's End' (List Entry Number: 1049075); '95 and 97 Piccott's End' (List Entry Number: 1262989); '99 Piccott's End' (List Entry Number: 1251025); '101-105 Piccott's End' (List Entry Number: 1251026); 'Little Marchmont Marchmont House' (List Entry Number: 1078042); 'Outbuilding (former stables) to the north east of Little Marchmont' (List Entry Number: 1078043); 'Gate piers at Marchmont House' (List Entry Number: 1051053); 'Gaddesden Place' (List Entry Number: 1101253); 'Gaddesdon Hall' (List Entry Number: 1101228); and 'Grist House Farm complex' (List Entry Number: 1101227).

17. However, the submitted plans demonstrate that the appeal site could be developed in a manner that would give over half of it to green infrastructure provision. This would be a significant level that is in excess of the policy requirement and would incorporate planting and other landscaping measures as mitigation.
18. In terms of the extent of harm, the relationship of the parts of the appeal site to be developed relative to the topography and tree cover to be retained mean that similar to Hemel Hempstead, the developed components of the appeal proposal would not be visible as a whole, rather there would be glimpses and partial views of it.
19. The assessment of this appeal in landscape terms is in no way a beauty contest with the other development sites that have been drawn to my attention, including those referred to as 'North Hemel', 'Polehanger Lane', 'West Hemel' and 'Marchmont Farm'. However, it was demonstrated through cross-examination that the landscape objections had not been adequately contextualised in terms of how the landscape is likely to be in the future, as required by GLVIA (Ref CD 6.1).
20. Overall, the longer term effects of the glimpsed and partial landscape changes proposed would be successfully absorbed into the landscape. This is because the sensitivity of the landscape decreases as the Gade Valley approaches the appeal site and Hemel Hempstead beyond and becomes more enclosed. The juxtaposition between the appeal site and the neighbouring settlements is such that it would read as an extension to the Gadebridge part of Hemel Hempstead.
21. Furthermore, from my site observations, I do not concur with the Council's assessment of landscape harm post mitigation stage at Year 15. I observed that the effect on landscape character would initially be moderate adverse, lessening as landscaping matures to minor adverse by Year 15. There would be landscape benefits and enhancements from the reinforcement of existing boundaries through planting along the public footpaths that cross the site. Overall, the adverse effects would be both limited and localised in their degree and extent, principally along those public footpaths.
22. The appeal proposal would be located within a swathe of countryside which leads to and from Hemel Hempstead. However, a swathe, albeit narrower would be retained along the valley bottom in the form of a substantial green buffer. This approach mirrors the vision of Sir Geoffrey Jellicoe to the New Town development which sought to ensure that this Valley and the River Gade act as connecting features in terms of settlement morphology and support his 'city in a park' concept. The appeal proposal would reflect the character and appearance of the much wider mixed landscape context. They would provide some support to the qualities of the LCA and the setting of the National Landscape. I am satisfied that an appropriate balance has been struck in terms of landscape effects, such that an awareness of the wider landscape character and appearance would remain.
23. In terms of exercising my duty to seek to further the statutory purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Chilterns National Landscape, I am satisfied that the development of this part of its setting in the manner proposed would leave those specified characteristics of that National Landscape unharmed and would provide some support to its qualities.
24. In conclusion to this main issue, the appeal proposal would cause minor adverse harm to the landscape character and appearance of the area. However, this would

not transpose as harm to the natural beauty, wildlife and cultural heritage of the Chilterns National Landscape.

25. Policy CS25 of the Dacorum Core Strategy (2013) seeks to conserve and improve landscape quality, character and condition. In view of my findings, the appeal proposal conflicts with that policy. However, given my findings in respect to the National Landscape there is no conflict with saved Policy 97 of the Dacorum Local Plan (2004) or Policy CS24 of the Core Strategy.

Ecological Interests

- Habitats and species

26. The appeal site includes fields of pasture, woodland parcels and scrub habitat comprising neutral and modified grasslands; semi natural mixed and broadleaved woodlands; buildings, dense and continuous scrub, scattered trees and hedgerows. It falls within the geographic scope of habitats serving protected and unprotected species found both within and close to the appeal site².
27. Known protected species associated with land within and next to the appeal site have been identified through the Preliminary Ecological Appraisal and Phase 2 surveys as extending to a variety of foraging and roosting Bats, Badgers, Roman Snails and a small number of breeding bird species.
28. Whilst ecologically based concerns were raised by the Group, it was demonstrated through the round table discussion that the current features and value of the area have been adequately assessed and understood. The Presence/Likely Absence Surveys for reptiles and dormice *Muscardinus Avellanarius* do not identify any evidence that those species are found in this locality.
29. The submitted Habitat Creation and Management Plan provides specific details on the protection of retained habitats, as well as habitat and protected species enhancement measures. The potential for harm to the future water quality of the River Gade chalk stream from the site's outfall was also clarified. Should the proposed development be found to be acceptable overall, compliance with Condition No 14 would satisfactorily address that concern.
30. From what I have read and heard during the Inquiry, I am satisfied that the landscaping proposals for the final scheme would be appropriate and capable of including new or bolstered habitats within the appeal site through the likes of planted buffer zones, wildflower areas, waterbody, tree and hedgerow planting and the retention and enhancement of the chalk grassland in the north of the site.
31. The Group's concerns about the level of biodiversity net-gain were explored during the Inquiry. The planning application to which this appeal relates was submitted in advance of the mandatory biodiversity net-gain requirement coming into force. Nonetheless, a significant gain in natural habitat, including through new hedgerows would be secured. In qualitative terms the value of these new hedgerows would increase as they become established and there are measures proposed to ensure that this would be maintained in perpetuity. Based on the evidence presented, I find that the hedgerow trading rules have been met.

² Chilterns Beechwoods Special Area of Conservation (Ashridge Commons and Woods Site Of Special Scientific Interest and Tring Woodlands Site of Special Scientific Interest); Halsey Field Local Wildlife Site; Warner's End Wood Local Wildlife Site; and Meadow by the River Gade Local Wildlife Site.

32. Furthermore, there are no grounds to reduce the estimated biodiversity net-gain on the basis of the attenuation basins. The modified grassland and swales have the same core values, and both habitats are possible given the management of these within the attenuation basins would be the same as the surrounding grassland, such that they are interchangeable. The proposed biodiversity net-gain and its monitoring would be secured through the submitted legal agreement.
33. Whilst some disturbance to ecological interests of the appeal site and its surroundings could arise from the proposed changes in the short term, these would be localised. The appellant and Borough Council now agree that these can be mitigated to an extent that would be acceptable, subject to proposed planning obligations and conditions. The statutory consultees have not provided a counter view to this stance. The necessary ecological mitigation measures to address the potential for unacceptable negative ecological impacts can be front-loaded as part of the required phasing plan for the proposed development.
34. Should the appeal proposal be found to be acceptable overall, I am content that Condition Nos 7 and 8 would secure the implementation of an agreed site-wide Landscape and Ecological Management Plan. This would ensure that ecology and biodiversity needs are appropriately incorporated as part of the development and managed appropriately thereafter.
35. Condition No 15 would also ensure that the design of the proposed scheme does not include the root protection areas of trees T138 and T139. Furthermore, the proposed 20 metre buffer to be afforded to the ancient woodland that borders the site exceeds the requirements set out in the PPG. The details required by condition No 20 and 23 would control lighting treatment within the site and along the improved footpaths. Furthermore, buffers around sensitive parts of the site can be secured through condition. This would all avoid conflicts with wildlife.
36. The current challenges relating to the irresponsible use of neighbouring Halsey Fields Local Wildlife Site (LWS) by some of the existing community are understood. However, the direct effects of any further recreational pressure on that and the other nearby LWSs arising from the appeal proposal itself could be avoided through the provision of attractive accessible greenspace within the appeal site itself, as well as local signage, fencing, footpath improvement and maintenance. These mitigation measures could be secured as part of the implementation of the required Local Wildlife Site Improvement Plan, pursuant to condition No 20.
37. No compelling reasons were put before me to justify a departure from the conclusions of either the technical expertise of the Council or statutory consultees. Moreover, the appellant's ecological witness satisfactorily addressed the Group's concerns about fauna and flora through the written evidence, extensive round table discussion and subsequent technical notes (Refs: ID15 and ID26).
38. The evidence before this Inquiry demonstrates that overall the appeal proposal would provide net-gains for local biodiversity, including protected species, and establish coherent ecological networks which would be resilient to current and future pressures.
39. As the competent authority, having first applied the mitigation hierarchy, I am satisfied that the appeal scheme would not conflict with the provisions of the Wildlife and Countryside Act (1981).

- Chilterns Beechwoods SAC

40. The appeal site is located approximately 3.8km south-east of the Chilterns Beechwoods SAC at its closest point. The qualifying features for this SAC comprise Asperulo-Fagetum beech forests, including the rare coralroot *Cardamine Bulbifera*; semi-natural dry grasslands and scrubland facies on calcareous substrates; and the *Lucanus Cervus* stag beetle.
41. The Conservation Objectives for this SAC are to ensure that the integrity of the site is maintained or restored as appropriate. They also seek to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features by maintaining or restoring the extent and distribution of qualifying natural habitats and habitats of qualifying species; the structure and function (including typical species) of qualifying natural habitats and species; the supporting processes on which qualifying natural habitats, and the habitats of qualifying species rely; the populations of qualifying species; and the distribution of qualifying species within the site.
42. The development proposals are not directly connected to, or necessary for the management of this European designated site. A number of the key threats and pressures listed within Natural England's Site Improvement Plan relate to site management issues. These are not related to potential impact pathways from the proposed development. Furthermore, the appeal site falls beyond the zone of influence relating to the impact of dust emissions, water pollution, lighting, vibration and site personnel/residents and habitat loss. There is an absence of recorded threat to the designated site from wastewater and an absence of connectivity to the designated site in terms of surface water/drainage and habitat loss.
43. However, the submitted evidence confirms that the appeal proposal would generate increased air pollution through atmospheric nitrogen deposition at the operational phase of the proposed development. Nonetheless, the nearby B440, a transport route that a proportion of residents are likely to take on a regular basis, is approximately 780 metres at its nearest point from Ashridge Commons and Woods SSSI component of the SAC. Therefore, air pollution in relation to the proposed development is considered unlikely to be significant either alone or in combination in relation to this route. This road is therefore scoped out from my assessment.
44. With regard to the A41, in view of the size of the area of the SAC within 200 metres of the road relative to the total area, and in view of the conclusions of other HRA assessments for neighbouring Local Plans, no likely significant effects are anticipated in relation to the Trings Woodlands SSSI component of the SAC, either alone or in combination.
45. The B4506 transport route also runs within close proximity to the Ashridge Commons and Woods SSSI. Current baseline data for air pollution in relation to the Borough Council's emerging local plan states that the area of the SAC that lies within 200 metres of the B4506 measures approximately 14.1% of the SSSI area and approximately 6.9% of the total SAC area. The submitted evidence demonstrates that the habitat within 200 metres of that route comprises lowland broadleaved, mixed and yew woodland. The available evidence also confirms that background pollution levels currently exceed the critical load. Any further reduction in air quality may therefore limit the ability of the SAC to maintain or restore its integrity, as set out in its Conservation Objectives.

46. However, apart from one unit of the SSSI, the remaining units falling within 200 metres of the B4506 are stated as being in favourable condition. One unit adjacent to the road, Tom's Hill, is categorised as unfavourable, recovering. The available evidence indicates that the nitrogen deposition trends relevant to this SAC are decreasing. Furthermore, the habitat falling within 200 metres of the B4506 is minimal in terms of overall habitat area.
47. For all of these reasons, I conclude that there would be no likely significant effects alone or in combination from any increase in air pollution arising from the appeal proposal.
48. In terms of the potential for recreational pressures, there is no basis to dispute the buffer of 7.5 kilometres as an appropriate zone of influence when considering the potential for significant effects to be caused by visitors to the SAC. This means around a half of the Ashridge Commons and Woods SSSI component of the Chiltern Beechwoods SAC lies within this zone of influence.
49. Nonetheless, around 40% of the appeal site area, equating to approximately 12 hectares, would be left as accessible green space that can be used by residents for recreational purposes. There are also a number of other sites³ within close proximity that could be used as alternative green space by future residents. I concur with the appellant's assessment of the likely impact on these. The 70 units within the care home are unlikely to create a significant increased footfall in the SAC given the age and reduced mobility of the residents. Moreover, from the evidence before me, the appeal proposal would contribute to an increase in visitors of less than 1%. The appellant's HRA evidence is consistent with the findings of the Borough Council's Topic paper supporting the emerging new local plan, which in turn is supported by Natural England.
50. However, without further mitigation there is still likely to be some recreational pressure from residents of the appeal proposal by virtue of the proximity of the appeal site to the SAC. In particular, increased public access poses a threat of disturbance to the dead wood associated with the Stag Beetle; and visitor trampling, disturbance and soil compaction that can directly harm the qualifying habitats. Other adverse impacts may arise from damage caused by visitor parking, dog fouling and nutrient enrichment, mountain biking, removal and disturbance of deadwood habitats, footpath widening by people, horses and bikes and associated loss of marginal/ride vegetation.
51. As the appeal proposal is not a proposed residential allocation within the Local Plan, it has not been accounted for as part of any HRA that supports that plan. The application of the policies in the development plan may contribute to limiting recreational pressure associated with new development. However, as the SAC is sensitive to recreational pressures this could increase as a consequence of the appeal proposal in combination with other plans and projects. Therefore, when assessed in combination with other plans and projects, without mitigation I cannot rule out likely significant effects of the appeal proposal on the Conservation Objectives, integrity and the favourable conservation status of the qualifying features of the Chilterns Beechwoods SAC at the Ashridge Commons and Woods

³ Shrubhill Common Local Nature Reserve; The Meadow by the Gade; Halsey Playing Field East; Water End Moor; Water End Meadows (Great Gaddesden); Heizzins Wood; disused railway line- Hemel Hempstead; Highpark Wood; and Brown's Spring and Hollybush Wood.

SSSI. Effective mitigation would therefore be required to avoid these harms and to ensure biosecurity.

52. The appellant and Borough Council agree that following the implementation of mitigation in the form of a suitable alternative open greenspace (SANG) contribution, there would be no significant residual effects on the integrity of the SAC; its conservation objectives; and the favourable conservation status of its qualifying features.
53. The size of the SANG has been calculated and agreed. The precise location of the SANG is yet to be secured. However, the options that are open to the appellant are contained in the submitted bilateral agreement with the Borough Council. That agreement also proposes a financial contribution towards Strategic Access Management and Monitoring (SAMM) measures. I am satisfied with the effectiveness of these mitigation proposals overall, and that the legal agreement as drafted would be effective in securing them.
54. In conclusion to my Appropriate Assessment, the likely significant effects on the Chilterns Beechwoods SAC can be effectively mitigated in a timely manner through the provision of the specific mitigation and monitoring proposals contained in the submitted legal agreement. Overall, there would be no residual harmful effects on the integrity of the designated SAC; its Conservation Objectives; and the favourable conservation status of its qualifying features in combination with effects associated with other plans and projects.
55. I am therefore satisfied that appropriate mitigation would be secured which would eliminate all reasonable scientific doubt that the appeal proposal would likely have significant effects which would adversely affect the integrity of this SAC during the construction or occupation phases. Therefore, the requirements of the Habitat Regulations (2017) are met.
 - Summary of ecological findings
56. In overall conclusion to this main issue, the appeal proposal would not harm the ecological interests within the appeal site, neighbouring land and the Chilterns Beechwoods SAC. Furthermore, the requirements of the Wildlife and Countryside Act (1981) and the Habitats Regulations 2017 are met.
57. Policy CS26 of the Core Strategy requires that development and management action would contribute towards the conservation and restoration of habitats and species; the strengthening of biodiversity corridors; the creation of better public access and links through green space; and a greater range of uses in urban green spaces. Saved Policy NP1 and Policies CS10 and CS29 of the Core Strategy seek to ensure that development proposals improve the environment, have regard environmental assets, preserve and enhance green gateways and wildlife corridors and minimise impacts on biodiversity whilst incorporating positive measures to support wildlife. Saved Policy 99 seeks to preserve trees, hedgerows and woodlands. Saved Policy 103 sets out the approach to sites of importance to nature and saved Policy 102 seeks to manage sites of nature conservation.
58. In view of my findings, given the proposed mitigation the appeal proposal does not conflict with any of those policies.

Flood Risk

59. In line with the Framework, the proposed development must be safe throughout its lifetime and not lead to increased flood risk elsewhere.
60. Subsequent to the appeal being lodged, common ground was reached in respect to flood risk and drainage matters (Ref: CD 4.7).
61. It has been evidenced that a very small part of the appeal site is at risk of flooding. Furthermore, my attention was drawn to the potential for flows to adversely impact on the integrity of the River Gade.
62. In terms of satisfying the sequential test in line with the Framework and PPG, the remaining dispute between the Borough Council and appellant essentially rests on the performance of 3 other sites in terms of whether they are 'reasonably available'.
63. My attention has been drawn to the Mead Realisations decision⁴. That decision makes it clear that there is a need for realism and flexibility on all sides when applying the sequential test. Furthermore, it confirms that the weight to be given to any failure to satisfy the sequential test can, and, in circumstances like those before me, should be reduced if the extent of the Borough Council's unmet housing needs means that land which is less sequentially preferable than the appeal site would inevitably be required (Ref: CD7.25).
64. The agreed capacity of the 3 remaining sites amounts to 32 dwellings against a shortfall in the area over the next 5 years of 6,547 dwellings per annum. So, even if I were to accept the Borough Council's interpretation and approach, many more lower ranking sites, akin to the appeal site would be required to meet future housing needs in the Borough. In any event, the evidence provided to this Inquiry confirms that there are no sequentially preferable drier sites free from surface water on this occasion.
65. Following the round table discussion, which included advice from a representative of the Lead Local Flood Authority, I am satisfied that the flood risk associated with the appeal site could be reduced through mitigation to a tolerable level and managed effectively through compliance with the conditions, suggested by the relevant parties. These would secure appropriate arrangements for flood storage, a drainage network and existing flow paths; and their management during the construction and occupation phases of the proposed development.
66. I am also satisfied that the integrity of the River Gade could be protected through the implementation of a suitable Construction Phase Surface Water Management Plan for the appeal site.
67. Therefore, the outcome of this sequential test is not a determinative exercise leading to a strong reason for refusal; rather, any risk of harm in the particular circumstances is a matter for the planning balance.
68. In conclusion to this main issue, having regard to the Framework, the appeal site is a justified, suitable location for the proposed development, on the basis that the proposed mitigation measures would be secured. There is no conflict with Policy 124 of the Local Plan, which predates the current national approach to flood risk.

⁴ R (Mead Realisations Ltd. & Redrow Homes Ltd.) v. Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 279 (Admin).

Accessibility and Highway Safety

69. The appellant has provided appropriate technical highway assessments and evidence which supports the appeal proposal in highway and accessibility terms. Consequently, the Local Highway Authority and Borough Council agree that the raft of traffic, transport and accessibility matters along with the methodology and outputs contained in the submitted Transport Assessment are acceptable.
70. Whilst the Group has concerns about the potential for increased congestion in and around Piccotts End, the Borough Council has not cited a highway capacity or safety reason for refusal.
71. Evidence of existing parking and traffic congestion including delays along Leighton Buzzard Road was provided by the Group. The Group did not call a highways expert or take the opportunity to cross-examine the appellant's highway witness. By the close of the Inquiry they had accepted that this matter does not amount to a free-standing reason for refusal.
72. The proposed access arrangements have been deemed safe by the Local Highway Authority and the submitted evidence does not demonstrate that the appeal scheme would exacerbate the existing situation to a level that would be unacceptable in terms of highway safety or the functioning of the local highway network.
73. The appeal proposal would address some of the existing concerns identified with the existing road network, particularly in terms of vulnerable users, which would also benefit existing residents in the area. Benefits include extensive pedestrian and cycle enhancements from the appeal site back into Hemel Hempstead; travel planning measures for occupants of the appeal proposal; agreed and costed bus service enhancements; and a new crossing point on Leighton Buzzard Road. These would be of benefit to both occupants of the appeal proposal and existing local residents.
74. Should the proposed development be found to be acceptable overall, these measures would be secured by a combination of planning obligations and conditions and would adequately mitigate the potential for the existing problems facing residents to be exacerbated by the appeal proposal.
75. The appeal proposal would secure adequate provision for alternative non-car methods through conditions and planning obligations. Coupled with its relationship with Hemel Hempstead, the appeal proposal would provide a genuine choice of transport modes and a well-connected and accessible transport system. Furthermore, safe and suitable access to the appeal site could be achieved for all users. It has not been demonstrated that there would be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios. The appeal proposal is therefore consistent with the Framework in highway and accessibility terms.
76. In conclusion, the appeal proposal would secure an appropriate level of accessibility by a choice of sustainable modes and would not pose a risk to highway safety. As such, it does not conflict with Policies 51, 54 and CS8 of the development plan in these regards.

Community Infrastructure

77. Collectively, the submitted bilateral agreement and unilateral undertaking contain planning obligations to provide open space and play areas; off-site sports facilities; NHS healthcare; primary school and special educational needs and disabilities provision; and the monitoring of all of these obligations.
78. Concerns have been strongly expressed by the Group and other interested parties in respect to the potential for further pressures to be placed on local healthcare and educational provision. In particular, parties shared their knowledge and experiences to date on what was portrayed to me as very stretched local health service provision.
79. Those experiences involve real people and are highly regrettable. However, they have occurred within an existing complex healthcare funding and provision context which the appeal scheme cannot reasonably be expected to solve or be penalised for. The current baseline position of local healthcare provision is a strategic matter to be grappled with, where necessary, outside of this appeal.
80. The financial sums that have been identified to support local healthcare and educational provision have been appraised and agreed by the Borough Council and County Council as being commensurate to the additional demand that can reasonably be expected to be generated from the future occupants of the appeal proposal. I have also borne in mind scheme viability and delivery along with the relevant authorities' responsibility and decision taking governing the future delivery of provision in the area.
81. Overall, the level of contributions for each of these health and educational related obligations is not disputed by the Borough Council or County Council. From the evidence before me, I have no cause to dispute the levels and sums for these obligations as calculated.
82. The obligations relating to educational and healthcare provision are of a level that seeks to support any net increase in demand arising from the appeal proposal. I address their conformity with the prescribed tests for planning obligations later.
83. However, in terms of weighting, as the proposed contributions to educational and health provision have been calculated to support demand from the appeal proposal, they are of neutral consequence to my assessment.
84. The proposed sport, recreation and play facilities could serve both the new residents and existing community. Therefore those obligations would be of wider public benefit and, as such, carry moderate favourable weight in my assessment.
85. In conclusion to this main issue, subject to the proposed planning obligations meeting the prescribed tests, adequate provision of community infrastructure would be secured to support the future residents of the appeal proposal.
86. In view of my findings the appeal proposal does not conflict with Policies 12, 13, 76, CS23 and CS35 of the development plan.

Heritage Assets

87. The appeal site immediately bounds the Gadebridge Roman Villa Scheduled Monument. It also falls just beyond part of the edge of Piccotts End Conservation

Area, whose focus is the village located on the other side of the Gade Valley to the appeal site. The appeal proposal also falls within the setting of a high concentration of listed buildings located within that Conservation Area.

88. Although the appeal scheme would not fall within the scheduled area, the submitted evidence indicates that there is potential for associated below ground archaeological deposits and features to exist within the appeal site. Otherwise, I am satisfied that the heritage effects of the appeal proposal are limited to the respective settings of these designated heritage assets.
89. There is much commonality in the setting of these designated heritage assets. This setting has undergone significant change over time as its surroundings have evolved, particularly in respect to the construction and continued development of Hemel Hempstead, the laying of the neighbouring link road and the evolutionary changes to historic field patterns. Consequently, the wider landscape setting of these assets is a mix of countryside and urban features, the prevalence of which varies according to the vantage point taken.
90. The significance of a heritage asset is derived from the value of that asset to existing and future generations because of its heritage interest. The glossary of the Framework states that interest may be archaeological, architectural, artistic and/ or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or may be of neutral effect.

- Setting of Scheduled Monument

91. The Scheduled Area contains the remains of a Roman Villa and associated structures, including a Roman bath second in size to that located in the city of Bath. The Area extends into the adjacent Leighton Buzzard Road. All that remains of this heritage asset of the utmost national importance is buried below ground. In the absence of any interpretation facilities, its subterranean nature means it is hidden from view. As such, the Monument now presents as a grassed field situated between the contemporary built up edge of Hemel Hempstead and the historic village of Piccotts End. The submitted evidence confirms that the construction of the Leighton Buzzard Road provided opportunity to both understand and disturb this asset.
92. The common boundary between the Scheduled Monument and the appeal site is delineated by mature trees and hedgerow. Consistent with my site observations, the appeal scheme clearly falls within the immediate setting of this Monument by virtue of their immediate proximity to one another.
93. The two sites enjoy a common wider setting given their mutual intervisibility from medium and longer distance vantage points, particularly along Leighton Buzzard Road, Piccotts End and the network of public rights of way on higher ground along the other side of the Gade Valley. Moreover, the evidence before me confirms that the appeal site and other surrounding land within which the Monument is experienced would have played a role in accommodating the agricultural activities that supported this important heritage asset, including its likely former use as a Roman spa resort. Despite the evolutionary changes within its setting, the Monument's connection to the River Gade, other known local Roman sites and the surrounding countryside still endure. These features continue to make a positive

- contribution to understanding, appreciating and experiencing the historic interest of this important designated heritage asset, including the rationale for its location.
94. The historic archaeological significance of this Monument is mainly derived from its evidential and cultural interest. As it has not been fully excavated, it has potential to provide new information about the history and construction of the site and the people who used it. The Scheduled Monument is a heritage designation of the highest national importance.
95. Parts of the appeal site are elevated well above the Scheduled Monument. In terms of outward views up the Gade Valley, the undeveloped component of its setting would be reduced. Looking down and across the Gade Valley, views towards the Monument would continue to be experienced within a mixed urban and rural context. At no point would the entire proposed development be visible in view of the sloping topography and wooded blocks in and around the appeal site.
96. The submitted Parameter Plan and illustrative Master Plan demonstrate that a reasonable stand-off distance between the proposed built form and the scheduled area would be secured. Intervening vegetation could be bolstered through a carefully considered landscape scheme, the details of which would fall within the Borough Council's control. The ability to retain an undeveloped foreground along the valley bottom, albeit narrower than that which currently exists, has been demonstrated. Should this appeal be allowed, the reserved matters stage would manage the careful placement of the built form, public open space and sustainable urban drainage features.
97. The appeal scheme would not diminish the historic connection of the Scheduled Monument with the River Gade. Nonetheless, the extent to which this asset can be experienced, understood and appreciated within its remaining undeveloped countryside setting, which forms part of the rationale for its location, would be reduced. This further erosion of the Monument's remaining countryside context would not preserve its setting.
98. Such change would cause harm to the significance of the Scheduled Monument. However, crucially the existing setting is heavily influenced by urbanising development associated with the growth of Hemel Hempstead and the construction of Leighton Buzzard Road, as well as the loss of historic field patterns dating back to the occupation of the Villa. Although this Scheduled Monument is no longer legible above ground level, the ability to experience, appreciate and understand its significance through its setting would be reduced, although such harm would be of a very low level.
99. It has been demonstrated that appropriate mitigation can be secured through a suitably worded condition to adequately combat harm to the underground archaeological potential within the appeal site, including any relating to this Scheduled Roman Villa.
100. Nonetheless, in Framework terms, noting that such heritage assets are regarded as being of the highest significance, the appeal proposal would cause a very low level of less than substantial harm to significance.

- Setting of listed buildings

101. The Planning (Listed Buildings and Conservation Areas) Act (1990) (the Act) imposes a duty on me as the decision maker to give considerable importance and weight to the statutory duty to have special regard to the desirability of preserving a listed building or its setting; or any features of special architectural or historic interest which it possesses, when considering whether to grant planning permission for development which affects a listed building or its setting.
102. The significance of Grade II listed '138 Piccott's End'; '140 Piccott's End'; '142-148 Piccott's End'; and '150 Piccott's End' includes their historic and architectural interests as 18th to mid-19th century buildings which contribute to the understanding and appreciation of the historical development of the village. Each of these heritage assets is linked historically and visually to the wider rural agricultural landscape setting of which the appeal site forms part. The open and green character of the appeal site contributes to the significance of these listed buildings and grouping as a legible part of the historically dominant rural, agricultural economy and society for this area.
103. However, the level of that contribution is limited by the screening effects of the mature planting and intervening field boundaries, and also the later village expansion with the now relative visual prominence of the modern properties along the riverbank. I return to the impact of the appeal proposal on the significance of these designated heritage assets later.
104. The significance of Grade I listed '130-136 Piccott's End' includes its architectural and historic interest as a good and largely intact example of a vernacular range of timber framed cottages. Further historic interest of these buildings is derived from the interior wall paintings which demonstrate the political and religious motives of 16th century England. They also has an historical association with royal surgeon Sir Astley Paston Cooper. The immediate setting of these listed buildings is now closely confined to their domestic curtilage, however, in the past there would have been stronger functional and ownership links between the cottage and the wider working agricultural landscape, within which the appeal site sits. Their significance is now best appreciated from within its curtilage and its street frontage from Piccotts End Road.
105. Again, the open and green character of the appeal site contributes to the significance of these listed buildings as a legible part of the historically dominant rural, agricultural economy and society for this area. Nonetheless, the level of contribution that the appeal site makes to the significance of their setting is moderated by the sequential screening and filtering effects of intervening mature vegetation according to the seasons, and also the later expansion of the village with more modern housing nearby. I return to the impact of the appeal proposal on the significance of these designated heritage assets later.
106. Despite its subsequent alteration, the significance of Grade II listed 'Piccott's End Farmhouse' includes its historic and architectural interest as a timber framed farmhouse dating back to the 17th century. Its original function as a farmhouse and role as the principal domestic building of a modest holding reflect the predominantly agricultural economy and society of this area. Its setting has been altered by the erosion of ownership links with the wider working agricultural landscape of fields, the construction of Leighton Buzzard Road, and also the more modern domestic

buildings opposite. This heritage asset is best appreciated from Piccotts End Road and within its immediate curtilage.

107. The open green character of the wider countryside, including the appeal site, makes a positive contribution to the understanding and appreciation of the significance of the former farm complex given its former use and greater isolation has ceased. However, the extent of this contribution is limited by the changes in the use of this farmhouse and nearby later built development. Furthermore, the well-established field boundaries and tree groups also have a sequential screening effect that reduces the extent and number of public views between the farmhouse and the appeal proposal. I return to the impact of the appeal proposal on the significance of this designated heritage asset later.
108. The significance of Grade II listed 'Piccott's End House' includes its architectural interest as a late Georgian/ early Victorian villa which, despite its more suburban character, illustrates the relative wealth and importance of its owners. Despite its tall garden wall, the more extensively open and green landscape to both the west and east of the village contributes positively to the significance of this property. This heritage asset is linked historically and visually to the wider rural agricultural landscape setting of which the appeal site forms part.
109. However, it is the open green character of the remaining garden area as opposed to the wider countryside which is the key element of the setting of this heritage asset. I return to the impact of the appeal proposal on the significance of this designated heritage asset later.
110. The significance of Grade II listed 'Gade Spring, Piccott's End' includes its architectural interest as a good and largely intact example of a late Georgian / early Victorian 'polite' villa set within a countryside location. The Classical style of the house, and use of materials and detailing, is characteristic of the fashions of this period and also the type and status of this building. Historically, its presence and architectural confidence also illustrates the relative wealth, importance and taste of its owners. The private gardens and closer views from this area and the principal frontage along Piccotts End Road are key elements of its setting in heritage terms. The open and green character of the appeal site contributes to the significance of this listed building as a legible part of the historically dominant rural, agricultural economy and society context. This is reinforced by intervisibility enabled by the existing topography and particular orientation of the house relative to the appeal site.
111. However, the well-established intervening field boundaries and tree groups have a sequential screening or filtering effect on this intervisibility. I return to the impact of the appeal proposal on the significance of this designated heritage asset later.
112. The significance of Grade II listed '92 Piccott's End'; '94, 96 and 104 Piccott's End'; '95 and 97 Piccott's End'; '99 Piccott's End'; and '101-105 Piccott's End' includes their historic and architectural interest as houses dating from the 17th to mid-19th century which illustrate the growth of the southern part of the village. The houses are orientated to Piccotts End Road with their primary street frontages seen on the approach to and from the village core. This is the key aspect of their immediate settings that contributes to their significance. Their secondary rear elevations overlook former gardens and towards a well treed boundary. Their existing wider green landscape context remains largely open and allows for views

from the rear. There is a narrower approach along Piccotts End Road to appreciate their architecture. Those rural views contribute to the appreciation of their significance historically and aesthetically.

113. However, the main tree belt along the nearby common which records the historic west boundary of these properties, and the village also provides a relatively high degree of screening to views to and from these houses and the wider countryside to the west. Furthermore, the landscape to their west is compromised historically due to the modern period construction of the busy thoroughfare of Leighton Buzzard Road. I return to the impact of the appeal proposal on the significance of these designated heritage assets later.
114. 'Little Marchmont Marchmont House' enjoys Grade II* status, whereas the former stables and gate piers are Grade II listed. The significance of this closely associated grouping around the principal gentry house includes the architectural interests of the house itself, being a very high quality and largely intact example of a late 18th century small Neo-Classical traditional English country house, with some original interiors.
115. Their historic interest includes the direct association as the home of the 3rd Earl of Marchmont, and they illustrate the wealth, status and taste of the first owner and commissioner. The primary significance of the listed outbuilding and gate piers is derived from their association with the impressive Marchmont House with which they share group value. Due to its grand role, Marchmont House may have controlled a larger estate or extensive grounds. However, the close garden setting and views within contributes most strongly and positively to the appreciation of the significance of these assets. Beyond the historic boundaries of the grounds of the main house, which is now relatively well screened by established planting, the wider setting is largely characterised by an open and green rural landscape. This extended landscape, including the appeal site, contributes to the significance of these listed buildings as part of the largely rural countryside context that still remains from the time of its construction. This is appreciated in some reciprocal views between house and landscape.
116. The appeal site therefore contributes to the significance of these designated heritage assets as a modest remnant part of their wider open green landscape setting with links to the history and aesthetic appreciation of Marchmont House. This is reinforced by the degree of intervisibility. However, the contribution made by the appeal site to this particular setting is limited by the layered effect of a series of planted field boundaries which reduces the extent and number of views between main house and wider countryside; the particular orientation of the listed building grouping relative to the appeal site; and also the intervention of Leighton Buzzard Road and modern residential development of nearby Hemel Hempstead. I address the impact of the appeal proposal on the significance of these designated heritage assets below.
117. In terms of the heritage impact of the appeal proposal on of each of these designated historic assets, I find that the existing undeveloped green countryside character and appearance of the appeal site contributes to their respective significance as it is a legible part of the historically once dominant rural, agricultural economy and society for this area. As the appeal proposal would erode the countryside context of each of these designated assets, it would not preserve their respective settings. Nonetheless, the circumstances of each as set out earlier

mean that the proposed alteration to their wider setting would result in a very low level of harm to the contribution the agrarian landscape makes to their respective significance. In each instance, that harm would constitute a very low level of less than substantial harm.

118. Consequently, the appeal proposal would not preserving the setting of these particular buildings in line with the Act.

119. From my site observations and in line with the assessment of the Borough Council and appellant, I am satisfied that in line with the Act the appeal proposal would however preserve the setting of Grade II* Gaddesden Hall, Grade II* Gaddesden Place and Grade II Grist House Farm complex by virtue of the separation distances, topography and existing tree cover which would endure. As such, there would be no effect on their respective significance.

120. Finally, the significance of Grade II listed 'Piccott's End Mill House' includes its architectural interest as a polite example of the late 18th century architectural style. This building also has historical interest being the core of the once active Mill site and by virtue of its historic use, having strong connections with the River Gade. It also contributes to understanding the character of the village which is influenced by its historic role within a working agricultural landscape. This heritage asset is linked historically and visually to the wider rural agricultural landscape setting of which the appeal site forms part. However, the immediate setting of the Mill House has been significantly altered by development that has subsequently occurred immediately to the west and east which has further contributed to its sense of visual enclosure. Hence, the contribution of the appeal site to setting is presently limited and in line with the Act would not be harmed by the appeal proposal.

- Setting of Conservation Area

121. Key characteristics of the Piccotts End Conservation Area which contribute to its significance include the high concentration and interrelationship of buildings of historic and architectural interest; the linear settlement form which has grown organically along the River Gade Valley bottom; and its historic association with this river.

122. These features make a valuable positive contribution to its historic and architectural interests which define its character, appearance and the understanding and appreciation of the significance of the Conservation Area as a historic rural village.

123. As the appeal site forms a verdant undeveloped part of the wider mixed rural and urban setting of the Conservation Area, it contributes to the significance of that heritage asset as an element of its wider countryside setting. However, the extent to which it does so is limited given the size of the appeal site relative to the wider setting, distance from Piccotts End and the intervening topography, including the screening and filtering effects from established woodland and tree belts.

124. There are strong concerns that the proposal would have an urbanising effect on the rural character of this historic village and impact on the agricultural landscape and understanding of the local heritage assets. Indeed, the appeal proposal would result in the loss of part of that countryside component of the setting of this designated heritage asset. With the exception of where existing tree cover and undulating topography prohibit, views of the Conservation Area can be captured

from within the appeal site. Views from within the Conservation Area towards the appeal site are evident between buildings and from facing elevations and garden areas of properties. Views encompassing both the appeal site and Conservation Area are evident from within the valley bottom, including on approach along Leighton Buzzard Road and also from higher up the valley slopes.

125. However, from my site observations, the submitted Parameter Plan, illustrative Master Plan and landscape visualisations, the appellant has clearly demonstrated that the built components of the proposal would not be visible in their totality. Furthermore, an awareness of the development from within the Conservation Area, or against the backdrop of that asset would be of a similar vein to that of the sporadic pattern of buildings and tree cover that is characteristic of neighbouring Hemel Hempstead. Therefore any harm would be moderated by the nature of the proposals.
126. Despite changes in levels across the site, the design, appearance and materials of those parts of the development which would be on more exposed parts of the appeal site relative to the Conservation Area could be managed to assist with their sensitive assimilation at the reserved matters stage. Landscaping details and the treatment of the undeveloped areas could also be managed through the imposition of conditions and through the reserved matters applications to ensure that a sense of separation is maintained, and so that these areas do not have an overly manicured character and appearance.
127. I have found that the appeal scheme is a modest part of the rural setting of the Conservation Area. Overall, the rurality and agricultural connection of the Piccotts End Conservation Area with this wider setting would continue to support an appreciation of its significance as an historic settlement. Nonetheless, there would be some modest and low level erosion of its agrarian qualities although these would continue to be experienced, appreciated and understood.
128. Therefore, I find that the proposed reduction in the countryside setting would result in a very low level of harm to the experience, appreciation and understanding of the significance of the Conservation Area. Consequently, the appeal proposal would not preserve the setting of the Conservation Area. This change would cause a very low level of less than substantial harm to its significance.

- Heritage conclusions and balance

129. In overall summary, the appeal proposal would cause a very low level of less than substantial harm to the significance of Gadebridge Roman Villa Scheduled Monument; neighbouring Listed Buildings cited in footnote 1 of this decision (excluding Gaddesden Hall, Gaddesden Place and Grist House Farm complex); and the Piccotts End Conservation Area. The Borough Council has asserted that the concentration of all of these heritage assets elevates the weight that should be afforded to the identified less than substantial harm which they agree would arise. However, the Local Plan nor the Framework prescribe that I should do so.
130. Saved Policy 118 of the Local Plan deals with important archaeological remains. Saved Policy 119 seeks to manage development affecting Listed Buildings. Saved Policy 120 of that Plan addresses development in Conservation Areas. Policy CS27 of the Core Strategy seeks to protect, conserve and, where appropriate enhance setting of heritage assets. In view of my findings on this main issue, the appeal scheme conflicts with each of these policies.

131. Paragraph 212 of the Framework states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, significance of a designated heritage asset should require clear and convincing justification. As such, paragraph 215 of the Framework directs that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
132. As I have found less than substantial harm to the settings of various listed buildings and the Conservation Area, it is appropriate that I also assess the public benefits that would result from the proposed development.
133. By the close of the Inquiry there was common ground between the main parties that the contributions that the appeal proposal would make to the supply of market and affordable housing each carry very substantial weight, noting the evidenced historic chronic undersupply which exists. It is also common ground that the provision of care home accommodation is a benefit that carries substantial weight. It would meet the growing quantitative and qualitative needs of the ageing population and free up existing stock which could be suitable for families. I am satisfied that the submitted planning obligations would secure these benefits, and they carry significant favourable weight accordingly.
134. It is common ground that the economic benefits including job creation and local expenditure also carry significant weight. Furthermore, it is agreed that the public open space, play and sports provision and enhanced connectivity through footpath and crossing point improvements, cycle links and bus service enhancements are public benefits that each weigh moderately in favour of the appeal scheme. There is also a consensus that the implementation of the proposed Heritage Outreach Strategy is a public benefit of moderate weight that would enhance the community's understanding of the Scheduled Monument. Indeed, the Framework states that proposals that better reveal the significance of a heritage asset should be treated favourably.
135. The written and oral evidence that has been presented to me on those beneficial matters is compelling, and so there is no basis to disagree with any of those planning judgements reached.
136. The level of weight that should be attributed to the benefit of providing serviced self-build and custom build plots is disputed and rests between substantial and significant. There are no adopted policies to secure such provision.
137. The appellant has clearly demonstrated that the demand calculated by the Borough Council significantly under-represents true demand for this housing product. On the supply side, I concur that Community Infrastructure Levy (CIL) self-build exemption applications are not a reliable proxy for the actual level of the supply of this housing product. This is because the Borough Council's duty applies to the grant of development permission and the CIL Regulations provide a different definition of this housing product for their own distinct purpose.

138. The Borough Council has not clearly demonstrated that it had interrogated each permission against the definition in the Self-build and Custom Housebuilding Act (2015)⁵, whereas the appellant has. Furthermore, there is evidence of double counting across the base periods. Consequently, there is a substantial shortfall in supply the order of 156 units for the relevant accounting periods.
139. Overall, I am satisfied that the submitted planning obligation would secure this housing component of the appeal proposal which is a public benefit carrying substantial favourable weight here.
140. The planning application was submitted before the mandatory biodiversity net-gain requirement came into force. In view of my earlier findings the proposed level has been robustly calculated and exceeds that requirement. It is therefore a public benefit which weighs significantly in favour of the appeal proposal.
141. Consistent with paragraph 212 of the Framework I attach great weight to the conservation of the Gadebridge Roman Villa site commensurate to its primary status as a Scheduled Monument. However, the very low level of less than substantial harm to the significance of this important heritage asset is outweighed by the identified public benefits.
142. In line with the Act, I attribute considerable importance and weight to the preservation of each of the listed buildings assessed earlier. In line with paragraph 212 of the Framework, I attach great weight to the conservation of each of the assets, commensurate to the respective level of importance reflected in their listing status. However, the nature and level of all of the identified public benefits are of such that the very low level of less than substantial heritage harm to each asset is outweighed.
143. Furthermore, the very low level of less than substantial harm to the significance of Piccotts End Conservation Area is outweighed by the weight that I have attributed to the identified public benefits.
144. Overall, I find that all of those heritage harms are justified in line with the national policy approach to heritage. Consequently, there are no heritage matters which provide a strong reason for refusing the development proposed for the purposes of interpreting paragraph 11(d) i) of the Framework.

Green Belt

145. The appeal site falls wholly within the designated Metropolitan Green Belt around London. That general Green Belt washing over land in Dacorum is a small part of the Green Belt designation as a whole, and the appeal site constitutes a very small part of that located within the Borough. Furthermore, it does not have the effect of allocating or designating particular areas for particular spatial purposes. It has been demonstrated that despite falling within the Green Belt, the concept of a green 'wedge', 'corridor', 'buffer' or 'entrance' relied upon by the opposing parties has no bearing on the interpretation of current national Green Belt policy.
146. The Borough Council's Green Belt evidence base does not reflect current national policy and the PPG on Green Belt. Furthermore, it has been demonstrated that the findings of the Stage 2 Assessment (CD5.29) cannot be transposed across the

⁵ Definition inserted by section 10 of the Housing and Planning Act (2016) and amended by the Levelling-up and Regeneration Act (2023).

appeal site. This is because there would be no impact on the quality of the Chilterns National Landscape, either directly or in terms of its setting. In addition, the matters relied upon by the Borough Council in the Site Assessment Study (CD5.33) for discounting the appeal site have been demonstrated to be either incorrect or, with the exception of heritage and landscape matters, are common ground. Therefore, I give very limited weight to the Borough Council's reliance on the appeal site not featuring in the preferred sites allocations being advanced through the plan making process.

- Performance against purposes of Green Belt

147. Paragraph 143 of the Framework confirms that purpose (a) of Green Belt seeks to check the unrestricted sprawl of large built up areas. The appeal site is well-defined and well-contained by the Scheduled Monument, Leighton Buzzard Road, the existing built form of Gadebridge and a range of planted and topographical features. The submitted plans demonstrate that the site can be developed in a manner that would be consistent with the prevailing settlement pattern of the area which comprises pockets of development along the valley. Furthermore, the appeal site does not contribute towards constraining the unrestricted sprawl of Hemel Hempstead and would not cause Piccotts End to be submerged by urban sprawl.

148. Contrary to the Group's stance, this particular purpose does not extend to the matter of coalescence, which is dealt with by purpose (b). In any event, common ground has been reached that the appeal proposal would not conflict with Purpose (b) of Green Belt which seeks to prevent neighbouring 'towns' from merging into one another. As this would clearly not be the case here, I concur with that common stance.

149. I agree with the main parties that purpose (c) of Green Belt, which seeks to assist in safeguarding the countryside from encroachment is engaged here, as the appeal site is undeveloped countryside beyond any defined settlement boundaries. The changes within the site would have an influence on a relatively small area of countryside which from my site observations constitutes moderate harm in terms of its nature and extent.

150. The Group has maintained that purpose (d) is engaged to preserve the setting and special character of historic towns. However, whilst Hemel Hempstead is a town with a conservation area, it has developed as a New Town and the appeal site does not fall within the setting of that heritage asset. Moreover, Piccotts End is a historic village, not a town or part of one. As such, purpose (d) is not relevant to my determination. As the appeal site is not previously developed or other urban land, neither is purpose (e) of relevance.

151. Consequently, the appeal site is located in the Green Belt but comprises land that does not strongly contribute to relevant purposes (a), (b) or (d).

- Whether inappropriate development

152. For the purposes of plan-making and decision-making, the Framework defines 'Grey Belt' as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) of paragraph 143. Grey Belt excludes land where the application of the policies relating to the areas or assets in footnote 7 of the Framework (other

than Green Belt) would provide a strong reason for refusing or restricting development.

153. I have found that the appeal site comprises other land that does not strongly contribute to purposes (a), (b), or (d). Even though there is moderate harm to purpose (c), the evidence before this Inquiry does not indicate that the appeal site has a wider strategic role in the functioning of the Borough's Green Belt as a whole. Therefore, in utilising 'Grey Belt' land, the appeal proposal would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the Borough's development plan. This is in line with paragraph 155 (a) of the Framework.
154. Consistent with paragraph 155 (b) of the Framework, the undisputed housing land supply position and the mismatch in supply and demand for market homes, care homes, self-build and custom-build plots and affordable housing provision clearly evidence that there is a demonstrable unmet need for the type of development proposed.
155. In line with paragraph 155 (c) of the Framework, the appeal scheme would enjoy a sustainable location; whose accessibility credentials would be further improved through the proposed public transport, pedestrian and cycle enhancements which would be secured through planning conditions and planning obligations.
156. In terms of the performance of the appeal proposal against the 'Golden Rules' required by paragraph 155 (d) and defined in paragraphs 156 and 157 of the Framework, the appeal proposal would provide 50% affordable housing which would be secured through a planning obligation. The appeal scheme would deliver necessary improvements to local infrastructure through planning obligations. Furthermore, there would be new green spaces that would be accessible to the public, and new residents would be able to access good quality green spaces within a short walk of their home through on site provision and access to offsite spaces.
157. Consequently, in view of these findings the appeal proposal is a Grey Belt site which would meet the Framework's 'Golden Rules'. As such, it is not inappropriate development in Green Belt terms. Therefore, its location in the Green Belt does not provide a strong reason for refusing the development proposed for the purposes of interpreting paragraph 11 (d) (i) of the Framework.
158. In overall conclusion to this main issue, the appeal proposal is not inappropriate development. The very special circumstances required to justify Green Belt harm do not, therefore need to be demonstrated.
159. Policy CS5 of the Core Strategy sets out the types of development that would be permitted in line with previous versions of the Framework. As the appeal proposal falls beyond the scope of these, there is conflict with this policy.

Planning Obligations

160. The appellant has proposed a suite of planning obligations which the Borough Council is in agreement with. In addition to education and health provision, these cover the provision and management of open spaces, landscaping, play areas; a sustainable transport hub; and the monitoring of all of obligations proposed. The

submitted bilateral legal agreement and unilateral undertaking are the legal means to secure the proposed planning obligations.

161. However, the County Council raised concerns about the approach taken by the appellant in respect to liability in the drafting of the initially proposed trilateral legal agreement with the Borough Council and the appellant. As the County Council declined to enter into that original agreement, the appellant converted the content into a bilateral agreement with the Borough Council and a unilateral undertaking for obligations relating to the County Council's functions. A consensus between the appellant and the County Council on this matter could not be secured in the lead up to the Inquiry sessions.
162. The unilateral undertaking includes 'Option A' at Clause 6.2, which is the appellant's preference and is consistent with the approach taken by the Borough Council in respect to the bilateral agreement; and 'Option B' at Clause 6.3, which is that preferred by the County Council. A 'blue pencil' clause has been inserted at Clause 3.1.3 of the undertaking to enable me to adjudicate on this matter. This disputed matter was a source of discussion at the round table discussion on planning obligations. It remained unresolved by the close of the Inquiry and has generated applications for costs from both the appellant and the County Council against one another.
163. Regardless of my adjudication on this particular disputed matter, the appellant's actions are a reasonable means to ensure that they have been able to provide legal documents capable of securing the necessary planning obligations to support their proposals and so address the Borough Council's earlier reasons for refusal associated with them.
164. The County Council's approach has the effect of placing liability on individual property owners of the appeal scheme should the developer fail to comply with any of the obligations contained within the unilateral undertaking. The County Council have advised that this is to ensure that the public purse is not burdened by any non-compliance. This could amount to a considerable sum for those occupants, depending on the extent of any non-compliance. However, during the round table discussion the County Council stated that it would be highly unlikely that they would ever initiate that clause against property owners. Whereas the appellant stood very firm that there are other remedial courses of action open to the County Council should that scenario ever arise. They believe that the County Council's approach could have far reaching consequences on delivery from the outset in terms of securing grant funding opportunities to assist in the delivery of affordable housing and also the ability of prospective purchasers to secure mortgages.
165. Both the appellant and the Borough Council do not follow the approach of the County Council in respect to liability for the planning obligations contained within the bilateral agreement. I find that the County Council's preferred wording is not appropriate here because the references to limiting and restricting occupation of dwellings against individuals means that the County Council could in theory enforce against individuals.
166. Significantly, during the Inquiry my attention was drawn to the Chiswell Green Decision⁶ involving the County Council where their approach was clearly rejected by both the Inspector and the Secretary of State. In that case the County Council's

⁶ Document Ref: CD 8.28.

approach was found to be disproportionate, unreasonable and unrealistic. Crucially, the evidence before me, including costs submissions made by the County Council after the close of the Inquiry, does not lead me to justify an alternative stance to the Chiswell Green Decision.

167. Therefore, Clause 6.2.1 of the submitted unilateral undertaking, which does not place liability on the individual property owners, is that which shall take force for the purposes of implementing the submitted unilateral undertaking and ensuring future compliance with it.
168. The scope, nature and level of each planning obligation to be secured through the submitted legal agreements do not conflict with the local and national planning policy frameworks. I am satisfied that the Borough Council's submitted Compliance Statement demonstrates that each planning obligation is necessary to make the development acceptable in planning terms; is directly related to the development and; is fairly related in scale and kind to the development.
169. As such, each proposed planning obligation accords with the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations (2010) and the tests for planning obligations set out in the Framework and Planning Practice Guidance (PPG). Therefore, I have taken them into account in my assessment.

Conditions

170. A schedule of planning conditions was agreed between the main parties during the Inquiry. I agree that following some extensive redrafting by the parties these now meet the prescribed tests set out in the Framework and PPG. These include several pre-commencement conditions which are unavoidable in view of the matters in question and the outline nature of the scheme and its individual components. The appellant has confirmed their acceptance of all of these conditions.
171. Condition Nos 1, 2 and 3 are necessary to define the scope of the planning permission and timescales which would assist in accelerating its delivery. Condition Nos 4, 5 and 6 are necessary in order to secure the agreement and implementation thereafter of an Archaeological Written Scheme of Investigation; the associated site investigation and post investigation assessments; and mitigation. Condition Nos 7 and 8 are necessary to ensure that a coordinated approach to the various interdependencies between the different components of the approved scheme is secured at the reserved matters stage. Condition Nos 9, 10, 11, 12 and 13 are necessary to ensure that site specific design, landscaping, layout and appearance matters are addressed as part of the reserved matters applications.
172. Condition No 10 is also necessary to ensure that an appropriate waste and construction management plan is implemented throughout the course of the development phase to safeguard the interests of local residents and environmental assets. Condition Nos 14, 15, 16, 18, 27, 28, 31 and 32 set out technical drainage requirements, management arrangements, mitigation and verification for each phase of development and are necessary in the interests of avoiding flood risk within the site and off site, including on the public highway.
173. Condition No 17 necessarily seeks to secure improvements to the local public rights of way network to encourage active travel and mitigate against the potential effects of increased footfall.

174. Condition No 20 necessarily seeks to secure mitigation measures in respect to any increased usage of neighbouring Halsey Field Local Wildlife Site, in line with the approved phasing plan timescales and as part of the implementation of the required Local Wildlife Site Improvement Plan. It is both necessary and reasonable that this Plan is approved by the Borough Council before the proposed development can commence. Furthermore, it is necessary and reasonable for this condition to acknowledge the importance of community engagement in devising this mitigation, including with the Friends of Halsey Field, as custodians of these important habitats.
175. Condition Nos 19, 21, 22 and 31 are necessary to ensure that the potential for contamination, including in respect to ground water and waterbodies, is avoided. These conditions adequately addresses concerns from interested parties about the future quality of their private water supply. Condition No 23 necessarily requires the implementation and retention thereafter of an agreed lighting strategy in the interests of safeguarding the habitat of local biodiversity interests and landscape character.
176. Condition No 24 requires the implementation of an agreed Construction Traffic Management Plan throughout the construction phase. This is necessary in the interest of highway safety and the living conditions of local residents. Condition Nos 25, 26 and 29 necessarily secure the implementation of an agreed detailed scheme for offsite highway improvement works and site accesses in accordance with the approved phasing plan in the interests of highway safety. Condition No 30 necessarily secures an appropriate visibility splay in the interest of highway safety, paying regard to the continued integrity of Tree ref: T139.
177. Condition No 33 is necessary to ensure that agreed tree protection measures are implemented during the development phases. Condition No 34 necessarily seeks to ensure that the approved landscaping scheme is managed until it is satisfactorily established, in the interests of local biodiversity and the character and appearance of the area.

Presumption in favour of sustainable development

178. The development plan policies which are most important for determining this appeal are listed in the Planning Statement of Common Ground (Ref: CD4.1). The Borough Council has accepted that of these most important policies, Policies 118, 119, 120 and CS27 should be deemed to be out of date as they do not reflect the current national heritage policy approach set out in the Framework and PPG. In addition, Policies CS25 and CS5 of the Core Strategy are not fully consistent with the approach of the Framework to landscape and Green Belt matters.
179. As such, I give limited unfavourable weight to the conflict with Policies CS25, CS27, 118, 119 and 120 of the development plan in terms of landscape and heritage matters. The conflict with the local Green Belt policy CS5 carries no weight as the appeal proposal has been found to be 'appropriate development' and so is justified in more recent Framework terms.
180. Moreover, those policies which manage the location of new housing should be deemed out of date by virtue of the current chronic shortfall in the housing land supply for the Borough. This means that 'the presumption in favour of sustainable development' set out in paragraph 11(d) of the Framework is engaged.

181. From my earlier findings on the relevant matters to this appeal listed in footnote 7 of the Framework, I am satisfied that the application of its policies that protect areas or assets of particular importance do not provide a strong reason for refusing this appeal proposal.
182. In terms of the adverse impacts of the appeal proposal, I have found a very low level of harm to the significance of the Scheduled Monument, the significance of some nearby listed buildings and the setting of the Piccotts End Conservation Area. I attribute a low level of weight to each of those harms.
183. Given the level of flood risk post mitigation and the inability of the Borough Council to demonstrate that it can meet the future housing needs of the area on sequentially preferable sites, this matter amounts to a very low level of harm to which I attribute a low level of unfavourable weight.
184. I have also found that landscape harm would be minor in its level and extent. That harm carries a very low level of unfavourable weight.
185. I also attribute very low unfavourable weight to the Borough Council's reliance on the appeal site not featuring in the preferred sites allocations being advanced through the new plan making process.
186. Furthermore, there is common ground between the main parties that the appeal proposal would cause limited harm from the loss of Best and Most Versatile Land. In view of the degree of loss set against the Framework's approach to this matter, there is no basis to disagree with that assessment. I attach a low level of weight to that harm.
187. In terms of benefits, I have found that the appeal proposal would make a very substantial contribution to the future supply of market and affordable housing in an area with a chronic and ongoing shortfall, the continued duration for which is unclear. These benefits each carry substantial weight in favour of the appeal proposal.
188. There would be substantial qualitative and quantitative beneficial contributions to the supply of care home accommodation and to the provision of serviced self-build and custom-build plots in a context of an ongoing undersupply which I attribute substantial weight to in favour of the appeal proposal.
189. Furthermore, significant economic benefits would arise during and post construction phases. There would also be significant benefit arising from the proposed biodiversity net-gain. These each carry significant favourable weight.
190. There would be a moderate wider public benefit from the outcome of the proposed Heritage Outreach Strategy; the measures which would encourage sustainable modes of transport; and also from the proposed provision of public open space, play and sports provision. I attribute moderate favourable weight to each of these benefits.
191. I now turn to the performance of the appeal proposal against the relevant key policies in the Framework in line with footnote 9 of that national policy. The appeal scheme accords with paragraph 66 which states that where major development involving the provision of housing is proposed, decisions should expect that the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures. The

counter stance advanced about the affordability of units is not a matter pursued by the Borough Council and a deviation from their position has not been substantiated.

192. In addition, as the appeal site is not isolated, it is consistent with paragraph 84 of the Framework in locational terms. The site's good accessibility credentials and the nature of the transport related components of the appeal scheme could facilitate journeys by alternative means to the motor car. As such, the appeal proposal is consistent with paragraphs 110 and 115 of the Framework which seek to actively manage patterns of growth to promote sustainable transport; limit the need to travel; offer a genuine choice of transport modes; provide safe and suitable access for all; and mitigate any significant impacts on the transport network.
193. Paragraph 91 of the Framework is not relevant to this appeal. However, the appeal proposal is also consistent with paragraph 129 of the Framework in making efficient use of land by taking account of the identified need for different types of housing and other forms of development; the availability of land to accommodate it; the availability and capacity of infrastructure and services; limiting future car use and securing well-designed, attractive healthy places.
194. Furthermore, the Parameters Plan, highways plans and illustrative Master Plan demonstrate that the appeal proposal would function well through its lifetime. Through the reserved matters stage the Borough Council has scope to ensure that it adds to the quality of the area; is visually attractive in terms of architecture, layout and landscaping; is sympathetic to local character; establishes a strong sense of place; and accommodates and sustains an appropriate amount and mix of development and supports local facilities and transport networks. It also provides scope through the reserved matters to secure the creation of a safe place which is inclusive and accessible; promotes health and well-being and a high standard of amenity; and where the quality of life, community cohesion and resilience are not undermined by crime and disorder. Consequently, the appeal proposal is consistent with paragraphs 135 and 139 of the Framework.
195. Overall, I find that the adverse impacts of allowing this appeal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
196. As such, the appeal proposal meets the 'presumption in favour of sustainable development' as set out in paragraph 11(d) of the Framework, to which I attach substantial favourable weight.

Planning Balance

197. As the starting point for my determination, section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that my decision must be made in accordance with the development plan unless material considerations indicate otherwise.
198. However, the weight which I attribute to the identified conflicts with the relevant development plan policies is reduced to the extent that they are consistent with the Framework. I have found that notwithstanding the conflict with the development

plan provisions, the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework is met. Furthermore, paragraph 158 of the Framework states that development which complies with the Golden Rules, as is the case here, should be given significant weight in favour of the grant of permission.

199. These findings outweigh the conflict with the development plan in this particular instance. Consequently, I conclude that a decision taken contrary to the development plan for the Borough is clearly justified.

Conclusion

200. For the reasons given above, the appeal should be allowed.

C Dillon

INSPECTOR

Richborough

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter referred to as 'the reserved matters') shall be submitted to and be approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than eighteen months from the date of this permission. The development hereby permitted shall commence not later than the expiration of two years from the date of this permission, or two years from the date of approval of the last of the reserved matters, whichever is later.
3. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan No. 2037/PL.01/C
 - Proposed Site Access Leighton Buzzard Road Forward Visibility Requirements Plan No. SK21611-04 Rev A
 - Proposed Site Access Leighton Buzzard Road Revised Roundabout Location Plan No. SK21611-05 Rev B
 - Parameters Plan No. 2037/PL03M
4. Prior to the submission of any reserved matters applications, an Archaeological Scheme of Investigation (WSI) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - an assessment of archaeological significance;
 - a programme and methodology of site investigation and recording as suggested by the archaeological evaluation;
 - a programme for post investigation assessment;
 - provision for the analysis of the site investigation and recording;
 - provision for the publication and dissemination of the analysis and records of the site investigation;
 - provision for the archive deposition of the analysis and records of the site investigation;
 - nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.
5. No part of the development hereby approved shall commence until the site investigation and post investigation assessment have been completed in accordance with the programme and timescales set out in the approved WSI and the provision or analysis, publication and dissemination of results and

archive deposition has been secured in accordance with it.

6. Prior to the submission of any of the reserved matters applications, a scheme for a Heritage Outreach Strategy ('HOS') shall be submitted to and approved in writing by the Local Planning Authority. The HOS shall detail the appropriate promotion of the heritage assets on and in the vicinity of the development hereby approved, including but not limited to:
- details of the proposed interpretation strategy of the scheduled Gadebridge Villa and its associated landscape, and including details of maintenance, the number, appearance, location and content of interpretation boards;
 - details of outreach activities to promote the results of archaeological excavation the site, both to the local historic groups and the local schools, the list of whom is to be specified in the HOS;
 - the identification of opportunities within the proposed landscaping areas to illustrate or incorporate historic environments features identified by the archaeological fieldwork; and
 - the timescales for fully implementing all of those measures.

The development shall be carried out in accordance with the approved details.

7. Prior to the submission of any reserved matters applications, a Master Plan and associated Site Phasing Plan shall be submitted to and approved in writing by the Local Planning Authority. Those Plans shall be consistent with the Illustrative Master Plan submitted at the outline stage (Ref: 2037/PL04AA) and in accordance with the approved Parameters Plan Ref: 2037/PL03M, and shall address, but are not limited to, the following matters:
- the sequencing of the individual development component phases relating to the provision of the proposed public open spaces; ecological mitigation, heritage investigation works and mitigation; SuDS provision; approved site accesses and associated off site highway works; and the delivery of market and affordable dwellings, serviced custom build and self-build plots, sustainable transport hub and the residential care home hereby approved;
 - the timing of the approved tree protection measures;
 - a 3m clear buffer of either side of any watercourse, the agreed details of which shall be implemented and retained in perpetuity;
 - a statement to demonstrate how account has been taken of the Design and Access Statement for the outline application hereby approved;
 - a design code to secure the parameters for the external design and appearance of self-build and custom build plots and the qualitative aspects of the proposed residential care home accommodation;
 - a detailed Site SuDS Phasing Plan which aligns with the approved phasing of the development. This shall ensure that each development phase does not exceed the prior agreed discharge rates for that particular phase; that source

control measures are installed within each phase to adequately address the phases own surface water runoff; and that each SuDS component is adequately protected throughout the development of the scheme. This Plan shall also show all exceedance routes throughout the site clearance and construction of the scheme;

- demonstrate that flood risk is not increased elsewhere or to the site itself; and
- demonstrate that the site will remain safe for all exceedance event flow routes for the lifetime of the development during rainfall which can cater for greater than design events or during any blockage. The Plan shall also demonstrate how properties within and off-site will be protected;

The subsequent reserved matters applications shall be consistent with all of the approved details.

8. Prior to the submission of any reserved matters applications, a site-wide Landscape and Ecological Management Plan ('LEMP') shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall describe how ecology and biodiversity will be incorporated as part of the development and managed thereafter. The LEMP shall refer to the recommendations set out in the Habitat Creation and Management Plan ('HCMP') (Revision 4) by the Ecology Co-op, including, but not limited to:

- outlining measures for traffic calming around the central woodland within the site to reduce the risk of collisions with badgers (section 3.1.1);
- the provision of new nesting bird opportunities comprising 35 swift nest boxes, 35 house martin nests and 35 house sparrow terrace boxes (section 3.4);
- clarifying the management of cut hay and the removal of cuttings as haylage (section 4.1); and
- confirming proposed woodland enhancement measures (section 4.2).

The LEMP shall also provide:

- a detailed timetable and programme of works;
- maintenance regimes, referring, but not limited to the recommendations set out in the HCMP.
- details of new habitat to be created on-site;
- details of the design, numbers and locations of bird boxes and integrated bat cavity boxes;
- treatment of site boundaries and/or buffers around water bodies;
- details of a locally specific biodiversity information pack (identifying, explaining and raising awareness of the sensitivities of, the central woodland, adjacent local wildlife sites and habitats and species of ecological importance) to be provided to residents of the scheme upon first occupation; and
- management arrangements, responsibilities and funding sources to be in place in perpetuity.

The development shall be carried out and maintained thereafter in accordance with the approved LEMP.

9. The following details shall be submitted for the written approval of the Local Planning Authority as part of the submission of the first reserved matter application for each approved phase of development:
- a Sustainability and Energy Compliance Statement which provides details on energy demand and supply, carbon emissions, waste and materials, water supply and demand and climate resilience. This Statement shall also provide details of measures to demonstrate and achieve a minimum on-site cumulative carbon emission reduction of 59.6% as per the Energy and Sustainability Statement by Love Design Studio (2021);
 - a Secure by Design Statement;
 - a Building for a Healthy Life Assessment; and
 - an Active Design Assessment.

All of the reserved matters proposals for each phase of the development shall comply fully with these approved details. The development shall be carried out in accordance with the approved details.

10. Prior to the commencement of each Phase of development, a Site Waste Management Plan ('SWMP') and a Construction Environmental Management Plan ('CEMP') for that Phase shall be submitted to and approved in writing by the local planning authority.

The SWMP shall, as a minimum, describe how materials will be managed efficiently and disposed of during the construction of the works, explaining how the re-use and recycling of materials will be maximised.

The CEMP shall set out, as a minimum, the proposed demolition, earthworks and construction methodology. The CEMP shall outline site specific measures to control and monitor impact arising in relation to construction traffic, noise and vibration, dust and air pollutants, land contamination, ecology and ground water. It shall also set out arrangements by which the developer shall maintain communication with residents and businesses in the vicinity of the site, and by which the developer shall monitor and document compliance with the measures set out in the CEMP. In addition to those commitments outlined within the CEMP shall include a commitment to require non-road mobile machinery that reasonably minimises air pollution emissions.

The development shall be undertaken in accordance with the approved details.

11. The landscaping reserved matters application for each phase of development shall include but not be limited to the following details:

- a Soil Resource Management Plan confirming the different soil types and the most appropriate re-use and methods for handling, storing, replacing and re-using displaced soil resources;
- an Arboricultural Survey and Impact Assessment in accordance with BS5837: 2012 which includes details of the measures to protect trees to be retained on and adjacent to the application site, details of the management arrangements and a program of continued tree maintenance and inspection for the lifetime of the development;
- plans to confirm how the provision of at least one tree per dwelling is to be provided, noting proposed ground levels, species and tree sizes;
- the existing and proposed finished site levels and external surface levels;
- hard surfacing materials;
- means of enclosure, including any retaining structures;
- soft landscape works which shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment);
- schedules of plants, noting ground levels, species, plant sizes and proposed numbers and densities;
- biodiversity enhancement measures with reference to an agreed Biodiversity Net Gain Management Plan;
- minor artefacts and structures including street furniture, bins, storage units, signs;
- proposed and existing functional services above and below ground, including drainage, power, communications cables, pipelines etc., indicating lines, manholes, supports;
- details of play equipment to be included in the Local Areas of Play ('LAP') and Enhanced Local Equipped Areas of Play ('LEAP'); and
- details and proposed management of retained historic landscape features.

12. The layout reserved matters application for each phase of development shall include but not be limited to the following details:

- full design of estate roads and cycle and pedestrian routes;
- a detailed scheme for the provision of car parking, powered two-wheeler parking, Blue Badge parking, active and passive electric vehicle charging points and cycle parking which accords with Dacorum Borough Council's Parking Standards Supplementary Planning Document (November 2020)
- the location of the refuse and recycling stores;
- the location of the private amenity, communal amenity and open spaces, street furniture, benches and public bins within the site; and
- a Flood Emergency Plan which demonstrates the availability of safe access and egress of all site users and residents up to the 1 in 100 (1%) plus climate change extent.

13. The appearance reserved matters application for each phase of development shall include but not be limited to the following details:

- the design and materials of covered and secure cycle parking for each dwelling and the care home;
- the design of the refuse and recycling stores;
- the proposed finished ridge and floor levels, noting that the finished ground floor levels of properties must be a minimum of 300mm above expected flood levels of all sources of flooding, including the ordinary watercourses, SuDS features and within any proposed drainage scheme, or 300mm above surrounding ground level, whichever is the more precautionary;
- details of the care home specification in accordance with Hertfordshire County Council's Service Provision and Place-Making Guide (Feb 2024); and
- 3D Massing and visuals including street scenes which include an assessment of landscape and visual impacts, comprising photographic montages and key views which have been previously agreed with the Local Planning Authority.

14. The development hereby approved shall be carried out in complete accordance with the approved 'Flood Risk Assessment, Surface Water and Foul Drainage Strategy' prepared by Hilson Moran (Document Ref. 21648-RP-IE-004, Final, Version 03, dated 08/11/21) and subsequent Technical Notes (TN), comprising: 'Additional Information to Address Herts CC Letter, dated 23 August 2024', 04/09/24; and 'Qbar Calculations', 10/09/24.

15. No development shall commence until the final design of the drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall include a surface water drainage system for each approved phase of development which shall include the following details:

- measures to limit the surface water run-off generated by the 1 in 100 year + 40% climate change event so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- the provision of soakage test results and test locations in accordance with BRE digest 365. All shared soakaways/infiltration/attenuation features must be located within public open space;
- if infiltration is proven to be unfavourable, then discharge should be into the River Gade at the Greenfield QBAR runoff rate for the site of 2.1 l/s/ha. Where an outfall discharge control device is to be used such as a hydro brake or twin orifice, this shall be shown on the plan with the rate of discharge stated;
- the provision of storage to ensure that there will be no increase in surface water runoff volumes for all rainfall events up to and including the 1 in 100 year + 40% climate change event and details as to how this is to be achieved;
- details to demonstrate an appropriate SuDS management and treatment train and inclusion of above ground features to reduce the requirement for any underground storage. All surface water management features shall be designed

in accordance with The SuDS Manual (CIRIA C753, 2015), including appropriate treatment stages for water quality prior to discharge;

- detailed designs, modelling calculations and plans of the drainage conveyance network to demonstrate how the system will operate during a 1 in 100 year + 40% climate change event. This shall include drain down times for all storage features and confirmation that no runoff during any such event would leave the application site uncontrolled for both free flowing and surcharged outfall or that it would interact with the existing overland surface water flow path;
- full detailed engineering drawings which include cross and long sections, location, size, volume, depth and any inlet and outlet features. These drawings shall be supported by a clearly labelled drainage layout plan showing pipe networks. The plan shall show any pipe 'node numbers' that have been referred to in network calculations and it shall also show invert and cover levels of manholes;
- a detailed design to intercept and dispose surface water separately so that it does not discharge from or onto the highway carriageway;
- details regarding any areas of informal flooding (those events exceeding 1 in 30 year rainfall event), shall be shown on a plan with estimated extents and depths demonstrating that these will remain safe for all users;
- details to demonstrate that all SuDS features are located outside of the existing northern surface water flood flow route, and the proposed diverted southern surface water flood flow route which impact the application site. These details shall include the proposed diversion of the southern surface water flow route and associated earthworks, culverts and outlet. They shall also include proposed ground levels, which will ensure that the site remains safe up to and including the design event of 1 in 100 (1%) AEP plus climate change event; that the flow path up to and including the design remains within the designed channels; and that flood risk is not increased to the application site or surrounding area;
- details of final exceedance routes, including those for an event which exceeds a 1 in 100 year + 40% climate change event. These shall include surface water exceedance which may enter the site from elsewhere in excess of the 1 in 100 (1% AEP) rainfall event + 40% climate change event; and
- a design which demonstrates that trees Ref: T138 and T139 (as shown in the Arboricultural and Planning Integration Report (20 August 2021)) and their associated root protection areas do not fall within the boundaries of the proposed SuDS basin.

The approved drainage details relating to each phase shall be fully implemented in accordance with the approved Site Phasing Plan.

16. The development hereby approved shall be carried out in accordance with the submitted Flood Risk Assessment dated 8 November 2021 (ref: 21648-RP-IE-004), and Appendix B (Annotated Scale Plan Showing Exact Distance of Roundabout from Top of Riverbank) from 'Response to Environment Agency Letter of 24 October 2023, Ref: NE/2021/133984/04 Concerning Riparian Issues' prepared by Hilson Moran, dated 2 November 2023 (ref: 231102 21648 EA

Response v02). The proposed roundabout shall be located outside of an 8 metre buffer zone from the top of the bank of the River Gade to the nearest edge of the proposed roundabout structure.

The approved mitigation measures shall be implemented in full accordance with the approved Site Phasing Plan and be retained and maintained thereafter throughout the lifetime of the development in accordance with those details.

17. Notwithstanding the details indicated on the submitted drawing Ref: SK21611-100/D, no works shall commence on any part of the application site until a Rights of Way Improvement Plan for the off-site and on-site Rights of Way improvement works has been submitted to and approved in writing by the Local Planning Authority. This Plan shall include information relating to the proposed footpath width along the course to be improved and the location, numbers and design of lighting, litter bins, dog bins, signage, fencing and gates.

The off-site rights of way improvement works shall be completed in accordance with the approved Rights of Way Plan and Site Phasing Plan.

18. Prior to the commencement of development details of the proposed off-site highway works to demonstrate that no ground level lowering shall occur within areas impacted by flooding shall be submitted to and approved in writing by the Local Planning Authority.

19. No development phase shall commence until full details and a Method Statement for interim and temporary drainage measures during the demolition and construction phases have been submitted to and approved in writing by the Local Planning Authority. This shall include a detailed Construction Phase Surface Water Management Plan for the application site. This information shall provide full details of who will be responsible for maintaining such temporary systems and demonstrate how the site will be drained to ensure there is no increase in the off-site flows, nor any pollution, debris and sediment to any receiving watercourse or sewer system. The site works and construction phase shall thereafter be carried out in accordance with approved Method Statement.

20. No development shall commence until a Local Wildlife Site Improvement Plan for off-site improvement works has been submitted to and approved in writing by the Local Planning Authority. This plan shall include information relating to community engagement (including but not limited to the Friends of Halsey Field in respect of Halsey Field LWS). The plan shall include information relating to the location, numbers and design of lighting, litter bins, dog bins, signage, fencing, gates and all such other improvements.

The off-site Local Wildlife Site improvements shall be completed in accordance with the details and timetable for those works contained within the approved Local Wildlife Site Improvement Plan and the Site Phasing Plan.

21. The development hereby approved shall not commence until a monitoring, maintenance and management plan in respect of contamination, has been submitted to, and agreed in writing by the Local Planning Authority. Such contamination shall include groundwater, soil and water body contamination. The plan shall also address the timetable of monitoring and submission of reports to the Borough Council. The development shall be carried out in accordance with those approved details.
22. No works involving excavations for the development shall be carried until a Foundations Works Risk Assessment detailing the foundation type and depths has been submitted to and approved by the Local Planning Authority. Where piling is to be used, these details shall include mitigation and or monitoring arrangements and a procedure to notify Affinity Water at least 15 days before commencement. The development shall thereafter be carried out in accordance with all of these approved details.
23. A development phase shall not commence until a Lighting Design Strategy ('LDS') has been submitted to and approved in writing by the Local Planning Authority. The LDS shall take account of Guidance Note 08/23: Bats and Artificial Lighting at Night (by the Institute of Lighting Professionals) and any necessary lighting requirements to secure road adoption or highway safety. The strategy shall:
- identify those areas and features on site that are particularly sensitive for bats and that could cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
 - show how and where external lighting will be installed, including street lighting and floodlighting through the provision of appropriate lighting contour plans and technical specifications, so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places; and
 - demonstrate how the proposed design, luminance and location of the proposed external lighting will minimise impacts on the landscape character of the area.
- All external lighting shall be installed in accordance with the specifications and locations set out in the LDS, and these shall be maintained thereafter in accordance with it.
24. A development phase shall not commence until a Construction Traffic Management Plan ('CTMP') for it and in accordance with the Construction Logistics and Community Safety ('CLOCS') Standard has been submitted to and

approved in writing by the Local Planning Authority. That Plan shall address the demolition, earthworks and construction stages for the relevant phase.

Thereafter the development shall only be carried out in accordance with the approved details. The Plan shall include the following:

- the construction programme;
- a clear access strategy, including construction vehicle numbers, type and routing;
- routes and wayfinding measures to ensure the effective management of construction vehicles that avoidance of conflicts with pedestrians, cyclists, public transport and existing and future residents;
- hours of operation;
- traffic management requirements;
- measures to control of dust and dirt on the public highway, including details of wheel washing facilities and cleaning of site entrance adjacent to the public highway;
- details of any works to or affecting Public Rights of Way within and in the vicinity of the application site. These shall demonstrate how safe and unobstructed access will be maintained at all times or be temporarily closed or extinguished.
- details of servicing and delivery, including details of site access, compound, welfare facilities, hoarding, construction related parking, loading, unloading, turning areas and materials storage areas;
- a plan showing the extent of hoardings, pedestrian routes and remaining road width for vehicle movements and proposed traffic management;
- details of public contact arrangements and complaint management;
- mitigation and monitoring arrangements in respect to potential environmental impacts including noise and vibration, air quality, dust, light and odour; and
- details of post construction restoration and reinstatement of the working areas.

25. Notwithstanding the details indicated on the submitted drawings, no on-site works above slab level shall commence on each development phase until a detailed scheme for the offsite highway improvement works as indicated on drawings set out below, and including the proposed width of the footpaths along their course to be improved have been submitted to and approved in writing by the Local Planning Authority:

- SK121611-04/A: Proposed Site Access Leighton Buzzard Road Forward Visibility Requirements;
- SK121611-05/B: Proposed Site Access Leighton Buzzard Road Revised Roundabout Location;
- SK21611-10/A: Off-site 3m Wide Pedestrian/Cycle Corridor Enhancements (Draft);
- SK21611-11/B: Off-site 3m Wide Pedestrian/Cycle Corridor Enhancements (Draft);
- SK21611-12/B: Off-site 3m Wide Pedestrian/Cycle Corridor Enhancements (Draft);

- SK21611-13/B: Off-site 3m Wide Pedestrian/Cycle Corridor Enhancements (Draft); and
- SK21611-14: Off-site 3m Wide Pedestrian/Cycle Corridor Enhancements (Draft).

The off-site highway improvement works shall be completed in accordance with the approved highway details and Site Phasing Plan.

26. Vehicular access to and egress from the adjoining highway shall be limited to the accesses shown on drawing Ref: SK21611-05/B only. Any other vehicular access or egress shall be permanently closed, and the footway and highway verge reinstated concurrently with bringing into use the new access in accordance with a detailed scheme to be submitted to and approved in writing by the Local Planning Authority.
27. Prior to first occupation of each approved development phase, a detailed Verification Report, appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the approved surface water drainage scheme, shall have been submitted to and approved in writing by the Local Planning Authority. The Report shall include a full set of 'as built' drawings and photographs of excavations including soil profiles/horizons, any installation of any surface water drainage structures and control mechanisms.
28. Prior to the first occupation of each development phase, the proposed drainage works, and a Management and Maintenance Scheme for the SuDS features, and drainage network shall be submitted to and approved in writing by the Local Planning Authority and fully implemented. The submitted details shall include:
- provision of complete set of as built drawings for site drainage;
 - maintenance and operational activities; and
 - arrangements for adoption or management by another body and any other measures to secure the operation of the scheme throughout the lifetime of the development.
29. Prior to the first occupation of any approved development phase, the proposed vehicular and emergency accesses shall be provided and thereafter retained at the position shown on the approved plan drawing Ref: SK21611-05/B (Proposed Site Access Leighton Buzzard Road Revised Roundabout Location).
30. Prior to the use of the access hereby approved, a visibility splay shall be provided in full accordance with the details indicated in pink cross hatching on the approved plan Ref: SK21611-04/A. That splay shall be maintained thereafter at all times free from any obstruction between 600mm and 2m above the level of

the adjacent highway carriageway and in line with the approved tree inspection and maintenance arrangements, with particular reference to tree ref: T139.

31. If, during any phase of the development, contamination not previously identified is found to be present on any part of the application site, no further development shall be carried out until a Remediation Strategy Report has been submitted to and approved in writing by the Local Planning Authority. The Strategy Report shall detail how the identified contamination will be addressed and include details of a robust pre and post monitoring plan to determine its effectiveness. The approved Strategy Report shall be fully implemented in line with the measures and timescales set out within it.
32. Where any ground level raising is proposed within the application site, details of suitable flood storage mitigation shall have first been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate that there is no loss in flood plain storage or impact on the flow paths. The approved measures shall then be implemented in accordance with the approved phasing plan and retained and maintained thereafter in perpetuity.
- No development, land raising, or obstruction shall occur within the area shown to be impacted by surface water flooding from the northern flow path up to and including the 1 in 100 (1%) AEP plus climate change critical storm as per the modelling carried out and contained within Appendix E of the Hilson Moran Technical Note dated 4 September 2024.
33. The approved tree protection measures shall be implemented in accordance with the approved Site Phasing Plan and thereafter retained until completion of the relevant phase of development. No vehicles, plant, materials or soils shall be driven or placed within any root protection areas.
34. Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority and maintained until satisfactorily established for the following five years.

(End of Schedule)

APPEARANCES

FOR THE APPELLANT:

Mr Simons and Ms Sage, they called:

Mrs Brockhurst
Mrs Ventham
Mr Stacey
Mr Moger
Mrs Venables
Mr Brown

Also participating through written evidence, the round table discussions and/ or site visit:

Mr Brookes
Mr Whitby
Ms Hargreaves
Mr Kitching

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson, he called:

Mrs Kirk
Mr Stickley

Also participating in the round table discussions and / or site visit:

Mr Havis
Ms Kitts
Ms Payne

FOR THE RULE 6 PARTY:

Mr Kolzelko, he called:

Cllr Mitchell
Mr Berry
Mrs Ramsden

Also participating in the round table discussions and/ or site visit:

Ms Hamilton
Mr Ridley
Mrs Ridley

HERTFORDSHIRE COUNTY COUNCIL

Participating in the round table discussions:

Mr King
Ms Nunn

LEAD LOCAL FLOOD AUTHORITY

Participating in the round table discussions:

Ms Waters

OTHER INTERESTED PARTIES

Speakers:

Cllr Guest
Cllr Hannell
Ms Brownsell (on behalf of Dacorum Health Action Group)
Ms Millest (on behalf of Piccotts End residents)
Mr Hassan
Mr Furnell
Cllr Bhinder

INQUIRY DOCUMENTS

- ID1 Appellant's list of appearances
- ID2 List of interested party speakers
- ID3 Site visit pack
- ID4 Appellant's opening statement
- ID5 Dacorum Borough Council's opening statement
- ID6 Combined Objectors Group's opening statement
- ID7 Archaeology overlay on Parameters Plan
- ID8 Note to Inspector on planning obligation documentation
- ID9 Draft bilateral agreement
- ID10 Draft unilateral undertaking
- ID11 Draft conditions
- ID12 Appellant's costs application against Dacorum Borough Council
- ID13 Interested parties' statements
- ID14 Dacorum Borough Council's costs response
- ID15 Biodiversity net gain note
- ID16 Weightings table
- ID17 S106 summary (Bilateral agreement with Dacorum Borough Council)
- ID18 S106 summary (Unilateral undertaking to Hertfordshire County Council)
- ID19 Appellant's costs application against Hertfordshire County Council
- ID20 Revised Community Infrastructure levy (CIL) compliance statement
- ID21 Note from Hertfordshire County Council on liability
- ID22 Note from appellant on liability
- ID23 Combined Objectors Group's closing statement
- ID24 Dacorum Borough Council's closing statement
- ID25 Appellant's closing statement
- ID26 Habitat Regulations Assessment Note
- ID27a Agreed draft conditions (tracked changes version)
- ID27b Agreed draft conditions (clean copy)
- ID28 Costs application against appellant by Hertfordshire County Council
- ID29 Hertfordshire County Council's costs application – supporting information (1)

ID30 Hertfordshire County Council's costs application – supporting information (2)

ID31 Appellant's response to Hertfordshire County Council's costs application

ID32 Hertfordshire County Council's response to appellant's costs application

END

Richborough



Costs Decision

Inquiry held between 5 February 2025 and 6 March 2025

Site visit made on 5 and 7 March 2025

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Costs application in relation to Appeal Ref: APP/A1910/W/24/3345435

Land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Fairfax Strategic Land (Hemel) Ltd for a partial award of costs against Hertfordshire County Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Fairfax Strategic Land (Hemel) Ltd

2. An application for a partial award of costs against Hertfordshire County Council on procedural and substantive grounds was submitted in writing. The application was made following the refusal of the County Council to exclude individual liability for all obligations, and notably the financial obligations entered into in favour of them under a section 106 legal agreement.
3. The applicant has submitted a detailed account of the interaction between the parties since July 2024.
4. In summary, the applicant highlights that in general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process. Unreasonable behaviour is claimed because firstly, this position was expressly considered and rejected by the Inspector and the Secretary of State in the recent Chiswell Green appeal decision¹. Secondly, the appellant states that the County Council refused to agree to a 'blue pencil' clause in a substantially agreed section 106 agreement to allow the applicant's alternative drafting on the exclusion of the liability to be considered by me, as the appointed Inspector.
5. The partial award sought relates to the costs of amending the initial legal agreement in order to respond to the County Council's position; the preparation thereafter of a unilateral undertaking with a blue pencil clause on liability given that common ground could not be reached; contacting the County Council in a bid to resolve the disputed matter; and resources to address the particular matter during the Inquiry sessions.

¹ Document Ref: CD8.28

The response by Hertfordshire County Council

6. The County Council's response was made in writing. In summary, argue that in citing examples of unreasonable behaviour from the Planning Practice Guidance (PPG), the applicant's costs application incorrectly refers to paragraphs that do not apply to the County Council. They believe that as no claim has been made under the correct paragraphs of the Planning Practice Guidance (PPG). Therefore, they believe that the appellant's costs should be struck out.
7. The County Council also submits that, as a procedural point, that the applicant has failed to make out a right to seek costs against the County Council in this matter where the County Council is not a Rule 6 party, the implication being that the appointed Inspector has no jurisdiction to award costs against them.
8. Furthermore, the County Council draws attention to the Tring case² which they believe supports their position on individual liability. Furthermore, the County Council argues that it has sought to follow the indication of the Chiswell Green Inspector and Secretary of State that such matters should not be left for determination by an Inspector.
9. The County Council states that had the applicant been prepared to negotiate an agreed form of wording at any point in the proceedings an agreed form of wording might have been reached. The County Council believes that it has reasonably sought to reach an agreed form of wording, and it has been the applicant's position, that it insists on the form of their preferred wording which is unreasonable.
10. It is submitted that the County Council has not acted unreasonably in seeking to ensure that the public purse is protected to, at the very least, the same level that it was protected in the Chiswell Green matter. They consider that there is nothing unreasonable in their approach and maintain that they have sought to negotiate an agreed form of wording, however, offers of negotiation have been consistently turned down by the applicant.

Reasons

11. The County Council is a principal party, being a statutory consultee whose functions and interests are matters that have been of direct relevance and have informed some of the planning obligations before this Inquiry. Moreover, the Inspectors' power to award of costs derives from section 250(5) of the Local Government Act (1972). This provides "the Minister causing an inquiry to be held under this section may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid and every such order may be made a rule of the High Court on the application of any party named in the order". It follows that the jurisdiction to award costs applies to any party "at an inquiry". The fact that the County Council was not a main party to the appeal is irrelevant. They are a party who participated in the Inquiry, having attended the round table discussion session.
12. Consequently, the applicant is entitled to have submitted their application for costs against the County Council. If that were not the case, then the County Council would have known not to have sought an award of costs on the same basis.

² Ref: APP/A1910/W/22/3309923

13. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Such costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
14. In general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process.
15. The PPG cites examples of unreasonable behaviour which may result in a procedural and of substantive costs award. Significantly, the examples cited in the PPG in both respects are non-exhaustive and give a flavour as to the types of behaviour which are candidates for being found unreasonable. This includes a lack of co-operation with the other party or parties; acting unreasonably with respect to the substance of the matter under appeal, including persisting in objections to a scheme or elements of a scheme which the Secretary of State or and Inspector has previously indicated to be acceptable or not determining similar cases in a consistent manner. Such behaviours can frustrate the appeals process and/ or cause unnecessary and wasted expense to another party regardless of the parties' status.
16. In this case, the proposed planning obligations themselves are not disputed in terms of scope and level. Moreover, they have been demonstrated, including through the use of the County Council's calculations and input, to be necessary to make the appeal proposal acceptable.
17. It is reasonable to expect that a principal party, particularly another local planning authority, will be aware that failure to secure such obligations can be determinative to a negative outcome at appeal and therefore poses a high risk to the appellant.
18. It is evident that despite being sought by the applicant, the County Council had not provided any comments on the drafting of the initial legal agreement before the submission deadline of 1 October 2024 which had been set by the Inspector appointed by the Secretary of State at that time.
19. It is part of the course with appeals that matters may remain in dispute throughout. I accept that a party is entitled to maintain a particular stance on the drafting of legal agreements.
20. Furthermore, the fact that another appellant may have chosen to agree with the County Council's approach to liability during another appeal does not necessarily obligate me to find likewise. In terms of the Tring Decision, the issue of individual liability was not a matter on which the Inspector or the Secretary of State was required to make a decision. The basis that appellant was prepared to accept the wording, or the consequences which flowed from that acceptance is not before me. The Inspector's report considers the substance of the various obligations in detail; it is in that context that he concludes the obligations meet the CIL tests. There is no indication that his conclusion extended to matters which were not discussed in the letter. Furthermore, there is no indication that the Secretary of State considered the planning obligations in that case in a broader sense than his Inspector; and that appeal was dismissed. In addition, there is no commentary on blue pencil clauses in that decision and, as set out above, the issue of individual liability was not considered by the Inspector or the Secretary of State.

21. As such, there is no basis for suggesting that the County Council's position on the blue pencil clause in this case is supported by the Tring decision. Whereas, in the more recent Chiswell Green case, which did include a blue pencil clause, it is clear that the Inspector's decision was made in the full knowledge of the County Council's position.
22. Consequently, the County Council has not demonstrated that its preferred approach to liability is reasonable and has been found so by the Secretary of State.
23. Nonetheless, it is not the stance of the County Council on the wording itself which is concerning here. Rather, it is the manner in which that unfolded and the consequences of that on the applicant's purse and Inquiry time that is. It is plainly unreasonable for a party to refuse to include a blue pencil provision to allow an Inspector to determine a disputed issue which could be determinative to the outcome of an appeal.
24. It is clear to me that despite the applicant's attempts both in the lead up to and during the Inquiry, the chronology of events before me demonstrates a clear unwillingness on the County Council's part to engage constructively with the applicant to employ a remedy to assist my adjudication, given the disputed matter ultimately related to the question of whether or not necessary planning obligations could be secured.
25. It is true that a bilateral legal agreement is not the only mechanism available to an applicant. However, the alternative unilateral undertaking avenue can potentially be less favourable to the appellant in terms of securing claw back on unspent sums at the very least. It was not an avenue that the Borough Council favoured.
26. The failure to provide legally compliant and enforceable planning obligations which meet the prescribed tests is a ground for dismissal regardless of the merits of an appeal scheme. Hence, the disputed issue is a matter that falls squarely within my remit. It was wholly unreasonable for the County Council to have effectively held the applicant hostage by declining to accept a blue pencil clause simply because it "is not an approach which the County Council wishes to put to the Inspector's discretion"³; and that is the case, whether or not that was the intention.
27. Furthermore, it is equally unreasonable for the County Council to have persistently insisted upon the drafting in a section 106 agreement in the knowledge that, in the more recent Chiswell Green Decision, the Inspector and Secretary of State indicated that the County Council's approach to liability is unacceptable, particularly given that legal agreement did include a blue pencil clause which allowed that adjudication to take place.
28. The County Council has provided no convincing reason for departing from the Chiswell Green Decision in this case. In that instance the County Council's approach was found to be disproportionate, unreasonable and unrealistic. In determining the appeal which gave rise to this application for costs, I also rejected the County Council's approach to liability for necessary planning obligations for the reasons set out in my Decision.

³ Communication between the County Council and Pinsent Masons on behalf of the applicant dated 21 January 2025.

29. The fact that the County Council indicated during the round table discussion that it had no intention of enforcing the obligations against individual occupiers only serves to heighten the level of unreasonableness displayed.
30. This all amounts to unreasonable behaviour on the County Council's part on both procedural and substantive grounds. This directly resulted in the need for the applicant to arrange for a subsequent unilateral undertaking to be drafted along with additional communication and professional support during the Inquiry itself. Whereas a more cooperative approach would simply have led to the inclusion of a blue pencil clause in the initial section 106 agreement and discussion of the disputed issue at the scheduled round table session.
31. For the reasons given above, unreasonable behaviour resulting in unnecessary and wasted expense has occurred in respect of the applicant being compelled to convert the draft section 106 trilateral agreement into a separate unilateral undertaking and bilateral agreement in order to secure necessary planning obligations for my consideration. Furthermore, that unnecessary wasted expense extends to the preparation and response to additional communication with the County Council and the professional resource in defending the remedial course of action proposed by the applicant during the Inquiry. There is no doubt that a partial award of costs is therefore warranted.

Costs Order

32. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hertfordshire County Council shall pay to Fairfax Strategic Land (Hemel) Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in being compelled to convert the drafted section 106 trilateral agreement into separate unilateral and bilateral agreements in order to secure planning obligations, including the expense of additional communication with the County Council and professional resource in defending the remedial course of action proposed by the applicant during the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.
33. The applicant is now invited to submit to Hertfordshire County Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Dillon

INSPECTOR



Costs Decision

Inquiry held between 5 February 2025 and 6 March 2025

Site visit made on 5 and 7 March 2025

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Costs application in relation to Appeal Ref: APP/A1910/W/24/3345435

Land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Fairfax Strategic Land (Hemel) Ltd for a partial award of costs against Dacorum Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Fairfax Strategic Land (Hemel) Ltd

2. The application for a partial award of costs on procedural grounds was submitted in writing. The applicant believes that the Council introduced an unexplained reason for refusal in relation to landscape character and appearance almost 10 months after the original decision notice, 1 week before proofs of evidence were due, despite having confirmed multiple times that there are no unacceptable impacts on the character and appearance of the landscape and visual environment.
3. The applicant has set down a chronology of the events they believe are relevant to their claim of unreasonable behaviour on the Council's part. They highlight that in adding landscape character and appearance to the list of main issues, the Inspector appointed at that time had reminded the parties of her power to initiate an award of costs against the Council.
4. The applicant has pointed out that even after the Council's landscape witness had visited the site and provided her report, the Council had remained of the opinion that it did not wish to raise landscape and visual issues as a reason for refusal.
5. The applicant has highlighted that during cross-examination, the Council's witnesses confirmed that there were no relevant 'on the ground' or policy changes to support the Council's position on landscape and visual matters. The applicant also draws attention to the fact that the Council's planning witness agreed that the Council reversed its position between July and September 2024; has offered no reason why; and that the consequence has been spending much inquiry time dealing with it. Moreover, they assert that Council's planning witness agreed the circumstance is a 'textbook' example of unreasonable behaviour described by the Planning Practice Guidance (PPG).

The response by Dacorum Borough Council

6. The Council's rebuttal was made in writing. In it, the Council states that the landscape issues were raised as a concern from the very outset in the Officer Report [CD 2.2] which clearly identifies landscape and visual concerns in a number of places and in terms strong enough to suggest a separate reason for refusal. The Council points out that these concerns were followed through in the Council's Statement of Case [CD3.2] and the harm was afforded substantial negative weight.
7. The Council advises that they do not benefit from in-house landscape expertise and needed to have the landscape findings set out in the Officer Report reviewed by an expert. Due to the Council's concerns, landscape was intended to be the subject of evidence at the Inquiry with witnesses to be called on both sides.
8. The Council argues that the first Inspector appointed was content for the matter of landscape character and appearance to be the subject of evidence without a formal reason for refusal being added. They draw attention to the fact that the note of the first Case Management Conference held on 2 August 2024 acknowledged that landscape was possibly going to be a main issue for the Inquiry, subject to ongoing discussions, despite there being a no dedicated landscape or character and appearance reason for refusal at that time. The Council maintains that following email exchanges, the position on 23 August 2024 was that landscape was to be a topic for discussion at the Inquiry with evidence from both the main parties but without a landscape reason for refusal. The Council maintains that was not an unreasonable position and, importantly, it appeared to have been acceptable to that Inspector.
9. The Council points out that the subsequent Inspector appointed required that a landscape reason for refusal be submitted to the Inquiry in the circumstances. The Council believes that had they not done so, its concerns about the landscape and visual impact of the proposals would have gone unaddressed at Inquiry.
10. The Council maintains that their landscape evidence was shared soon after it was produced and that it built upon the advice note of their landscape witness. The Council also highlights that the applicant's landscape witness was instructed to prepare landscape evidence and appear at the Inquiry as early as Spring 2024. At that point she had already reviewed the Officer Report and the submitted Landscape Visual Impact Assessment, having been first approached by the appellant in January 2024. The Council argues that it is therefore clear that the applicant was preparing evidence and intended that their landscape witness would attend the Inquiry long before the supplementary landscape reason for refusal was issued.
11. Overall, the Council maintains that it is not unreasonable to have introduced a late supplementary reason for refusal in the circumstances and given what then preceded, it could not have been a surprise the appellant. Nor does the Council consider that such an action has resulted in unnecessary or wasted expense.

Reasons

12. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

13. Article 35(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that where planning permission is refused, the notice must state clearly and precisely their full reasons for refusal, specifying all policies and proposals in the development plan which are relevant to the decision. This is reiterated by the PPG.
14. The Planning Inspectorate's Procedural Guide: Planning Appeals – England requires the submission of a full statement of case containing all the details and arguments and must set out both the planning and legal arguments which the Local Planning Authority is putting forward as to why they consider planning permission should be refused.
15. Furthermore, the PPG cites examples of unreasonable behaviour as including the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not have arisen; and prolonging the proceedings by introducing a new reason for refusal.
16. My predecessors clearly responded to the situation concerning landscape character and appearance matters as it was put to them at the time. Indeed in recognising the interplay between this supplementary matter and some of the formal reasons for refusal, clarity was sought on the scope of the Council's case. Crucially, in accepting landscape as a main issue in the appeal, my immediate predecessor did so having warned the Council of the potential for costs being awarded against them.
17. The Council clearly introduced a supplementary reason for refusal on landscape character and appearance grounds. They did so in the knowledge that the PPG requires any decision notice to include a full and precise articulation of its reasons for refusal and the risk of costs being awarded against them. This action was taken by the Council despite the Landscape Statement of Common Ground having initially confirmed that there were no unacceptable impacts on the character and appearance of the landscape and visual environment.
18. Moreover, the supplementary reason for refusal was introduced at a date substantially beyond the date the decision notice was published and well within the period leading up to the previously scheduled inquiry sessions.
19. By the point of my appointment to the Inquiry, landscape and visual considerations had been accepted by the main parties as a main issue for the appeal; witnesses corralled; and all evidence prepared on that basis to be presented under cross-examination.
20. By then, the Council's revised stance had already caused the applicant's witness to upgrade and expand upon what would otherwise have been able to be a much more narrowly focused written proof evidence in response to matters pertaining to the setting of heritage assets, the Green Belt and the statutory duty for National Landscapes.
21. Furthermore, the change in the Council's position led to 2 full days of evidence giving and cross-examination and time was expended in preparation for that and the site visit. After hearing this and conducting my site visit, I concluded that the appeal proposal would cause limited and localised harm to landscape character and appearance which will not transpose as harm to the Chilterns National Landscape. Whilst an unfavourable matter for the planning balance, it is not an

issue which has been determinative to the appeal. In that sense, my findings are not inconsistent with the Council's initial assessment outcome which informed the scope of the original reasons for refusal set out in the decision notice.

22. For all of these reasons, unreasonable behaviour resulting in unnecessary and wasted expense has occurred in respect of the preparation and giving of evidence relating to the matters pertaining directly to the supplementary landscape character and appearance reason for refusal and a partial award of costs is therefore warranted.

Costs Order

23. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough Council shall pay to Fairfax Strategic Land (Hemel) Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the appellant responding to the supplementary landscape character and appearance reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Dacorum Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Dillon

INSPECTOR



Costs Decision

Inquiry held between 5 February 2025 and 6 March 2025

Site visit made on 5 and 7 March 2025

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Costs application in relation to Appeal Ref: APP/A1910/W/24/3345435

Land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hertfordshire County Council for a partial award of costs against Fairfax Strategic Land (Hemel) Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed.
-

Decision

1. The application for an award of costs is refused.

The submissions for Hertfordshire County Council

2. The costs application was submitted in writing. The application was made following the appellant's refusal to include individual liability for all obligations, and notably the financial obligations entered into in favour of the County Council under a section 106 legal agreement.
3. In summary, unreasonable behaviour is claimed because the County Council considers that there has been a resistance to, or lack of co-operation on the appellant's part in providing information, discussing the application or appeal in relation to the drafting of a section 106 agreement.
4. The County Council believes that the appellant has sought, by maintaining its position, to place additional unnecessary expenditure on the public purse.
5. They also claim that the appellant has provided information to the appeal about the disputed liability clause that is manifestly inaccurate or untrue.
6. The partial award sought relates to the costs in the negotiation and preparation of documents pursuant to section 106 of the Town and Country Planning Act (1990). This includes the costs of preparing for and attending the round table session.

The response by Fairfax Strategic Land (Hemel) Ltd

7. The response was made in writing.
8. In summary, the appellant draws attention to the fact that in general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process.

9. The appellant notes that the County Council's costs application was first advertised by email on 6 March 2025, the day after the round table at which the planning obligations were discussed. The prospect of an application was not aired at the round table session and nor did they inform the appointed Inspector that they were going to make a costs application before closings were heard, as envisaged by Planning Practice Guidance (PPG).
10. The appellant asserts that the costs application is simply an attempt to re-air the points which the County Council made at the round table session and does not disclose any unreasonable behaviour on the appellant's part and as such the costs claim against them should be refused.
11. In particular, the appellant highlights that given the County Council's claim is based on a procedural ground and the alleged unreasonable behaviour must relate to behaviour in relation to completing the appeal process. However, the substance of the County Council's claim focusses on substantive matters regarding the merits of the appellant's position on the section 106 legal agreement.
12. The Appellant points out that contrary to the County Council's assertions, that they have engaged in negotiations on the section 106 agreement since July 2024 and have submitted drafts of it to the inquiry in accordance with the Inspector's timetable, including in circumstances where the County Council had failed to provide comments in time. The appellant firmly maintains that there has been no lack of cooperation insofar as negotiations are concerned, nor did they refuse to negotiate wording on the disputed clause. The applicant considers that this is amply demonstrated by both parties' submitted chronology.
13. The appellant firmly maintains that there has been no resistance to, or lack of cooperation in relation to the disputed point of liability. They draw attention to the fact that they have explained their position many times; equally, the County Council maintained its position throughout negotiations. The appellant highlights that the County Council failed to mention the relevant Chiswell Green Decision¹ or to consider its position in light of that. It is argued that the fact the parties have been unable to reach agreement on the matter of individual liability does not mean that the appellant has behaved unreasonably.
14. The appellant argues that in order to make out substantive unreasonableness, by analogy, the County Council will have to demonstrate that the appellant's position in relation to individual liability had no reasonable prospect of succeeding and is unarguable. They maintain that it is irrelevant that other developers may have accepted the County Council's position on other appeals; the question is whether the appellant's stance on this appeal was unreasonable. They argue that simply cannot be the case, in light of the Chiswell Green Decision and the findings of the Inspector and Secretary of State concerning the County Council's standard wording in that case.
15. The appellant reaffirms, as explained at the round table session, that the County Council's preferred wording is not appropriate here because references to limiting and restricting occupation of dwellings against individuals does not make it clear whether or not the County Council could still enforce against individuals. They point out that there is no confirmation from mortgage lenders that the market position is not as the appellant has set it out. They also point out that in any event, now the

¹ Ref: CD 8.28

unilateral undertaking contains a blue pencil clause, they are entitled to put forward its preferred wording.

16. The appellant firmly states that as to the inclusion of a 'blue pencil' clause, the County Council is attempting to elevate a passing observation of the Inspector in the Chiswell Green appeal into a procedural rule. The appellant highlights that there is no bar to parties who are unable to agree a particular provision of a section 106 raising the matter before an Inspector at an inquiry regardless of whether that provision concerns substantive obligations or other provisions.
17. The appellant maintains that the purpose of a round table session is for each party to present its position, to allow the Inspector to determine the issue, not an attempt to reach agreement on the wording of the section 106 obligation. The blue pencil clause is the mechanism by which the Inspector may make that determination.
18. The appellant states that for the purpose of this appeal, it has to be assumed that the County Council will enforce any planning obligation to which it is party. If the developer sells dwellings in breach of its obligations, it is for the County Council to take enforcement action at that stage against the land owner (whether the original developer or its successor) and thereby protect itself from any risk. However, the County Council's indication that it would not, in fact, seek to enforce against individual occupiers means that their argument about placing additional unnecessary expenditure on the public purse goes nowhere.
19. The appellant maintains that it accepts that it is liable to pay the County Council's reasonably incurred costs and provided an undertaking to that effect, up to the sum of £12,000, on 21 January 2025. They dispute that they have refused to provide any increased undertaking since 7 January 2025. They confirm that the County Council's request was not accepted for the reasons set out in the note provided to the Inquiry² and the County Council has not provided any satisfactory explanation as to why the extensive increase in costs sought is justified.
20. In terms of the argument that the County Council is entitled to its costs of preparing for and attending the round table session, the appellant states that the County Council was not summoned to the inquiry and so section 250(2) Local Government Act 1972 has no application here. The County Council attended the round table session to explain its position to the Inspector, which it voluntarily and properly did. The appellant points out that the first time that wording was discussed was at the round table session. It is untenable to the appellant to suggest that their behaviour necessitated the round table session.
21. The appellant points out that there is no rule that a party who attends a round table session in these circumstances should have its costs met by the appellant at a planning inquiry, and for good reason: such a rule would prevent the fair negotiation of planning obligations by incentivising appellants to agree to unsatisfactory wording to avoid further costs exposure.
22. Finally, the appellant argues that the application made by the County Council against them is a further example of unreasonable behaviour on the part of the County Council.

² Ref: ID8

Reasons

23. In general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process. They normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
24. The Appeals section of the PPG states that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It cites examples of unreasonable behaviour which may result in a procedural costs award against a local authority. This includes a lack of co-operation with the other party or parties. The examples cited in the PPG in both respects are non-exhaustive.
25. In assessing the appellant's separate costs claim of unreasonable behaviour on the County Council's part, I have found that the chronology of events before me demonstrates a clear unwillingness on the County Council's part to engage constructively with the appellant to reach a compromise to assist my adjudication on the disputed point. In determining the appeal which gave rise to this application for costs, I rejected the County Council's approach to liability for necessary planning obligations for the reasons set out in my Decision. Had the appellant not been tenacious in its resolve to provide a legal agreement with the particular blue pencil clause, then appeal would have failed, and delivery of much needed housing would have been delayed.
26. Given the basis of the County Council's own application for costs against the appellant, the alleged unreasonable behaviour must relate to behaviour in completing the appeal process. However, the substance of the County Council's claim focusses on the merits of the appellant's position.
27. From the chronology put before me it is clear that the appellant has engaged in negotiations on the legal agreement since July 2024 and has submitted drafts of it to the Inquiry in accordance with the Inspectors' timetable; including in circumstances where the County Council had failed to provide comments in time. In doing so, there is no evidence of a lack of cooperation on the appellant's part insofar as negotiations are concerned, including in relation to the disputed point of liability.
28. The appellant has explained their position many times; equally, the County Council maintained its position throughout negotiations. It is part of the course with appeals that matters may remain in dispute. I accept that a party is entitled to maintain a particular stance on the drafting of legal agreements.
29. However, the County Council has not demonstrated to me that the appellant's position in relation to individual liability had no reasonable prospect of succeeding and is unarguable. The fact the parties have been unable to reach agreement on the matter of individual liability does not in itself mean that the appellant has behaved unreasonably, particularly in light of the findings of the Inspector and Secretary of State on the Chiswell Green Decision concerning the County Council's standard wording.

30. The County Council has attempted to elevate a passing observation of the Inspector in the Chiswell Green appeal into a procedural rule. However, there is no bar to parties who are unable to agree a particular provision of a legal agreement raising the matter before an Inspector at an inquiry, regardless of whether that provision concerns substantive obligations or other provisions.
31. Furthermore, the County Council has not demonstrated that the fact that other developers may have accepted their position on other appeals, given the apparent differences between the Tring³ and Chiswell Green Decisions, is a basis to claim unreasonable behaviour on the appellant's part. Other section 106 agreements may make different provisions regarding individual liability. However, the motivation of an appellant to agree to the County Council's wording; what subsequent 'workarounds' were required; and the issues that drafting may have caused on financing of the site or for individual purchasers, have not been disclosed to this Inquiry.
32. The County Council was not summoned to the Inquiry and so section 250(2) Local Government Act 1972 has no application here. The County Council attended the round table session to explain its position to me, which it voluntarily and properly did. There is no rule that a party who attends a round table session in these circumstances should have its costs met by the appellant at a planning inquiry, no doubt for good reason.
33. The purpose of a round table session is for each party to present its position, to allow the Inspector to determine the issue. Whilst at times concessions will be made, it is not an efficient use of Inquiry time to rely upon such sessions as the arena for reaching agreement on a technical matter such as the wording of a legal agreement. Rather, the blue pencil clause is a pragmatic mechanism by which the Inspector may make that determination based on the evidence put before them. As such, the County Council's attendance was not a result of any unreasonable behaviour on the appellant's part.
34. The appellant accepts that they are liable to pay the County Council's reasonably incurred costs and provided an undertaking to that effect. It is simply a case that the County Council has not provided any satisfactory explanation as to why the extensive increase in cost sought thereafter is justified. That is not an unreasonable expectation of the appellant.
35. For all of the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense for the County Council as applicant has not occurred and an award of costs is not warranted.

C Dillon

INSPECTOR

³ Ref: APP/A1910/W/22/3309923