

LAND AT UPNOR ROAD, UPPER UPNOR

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CLOSING STATEMENT ON BEHALF OF  
MEDWAY COUNCIL

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**I. INTRODUCTION**

1. That there is a significant need for housing in Medway is not in dispute. It is a factor that the Council had at the forefront of its mind when considering this application.
2. But the degree of housing need in Medway cannot obscure the significant and demonstrable harms that this proposal would cause. Those harms are multifaceted and irreversible.
3. The evidence at this Inquiry has demonstrated that these harms considerably and decisively outweigh the benefits of this proposal, including the delivery of housing.
4. These closings submissions adopt the following structure<sup>1</sup>:
  - 4.1. Main Issue 1 - Effect of the development on landscape character, appearance and function of the area;
  - 4.2. Main Issue 2 - Whether the development would be in a suitable location, with regard to local and national policy in relation to the location for residential development;
  - 4.3. Benefits of the Proposal – including (i) the delivery of housing; (ii) the delivery of affordable housing; and (iii) other benefits;
  - 4.4. The Planning Balance;
  - 4.5. Conclusions

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<sup>1</sup> The main issues are those identified by the inspector at the opening of this Inquiry

## II. MAIN ISSUE 1 - IMPACT OF THE PROPOSAL ON THE LANDSCAPE CHARACTER, FUNCTIONS AND VISUAL AMENITY

### Policy and Guidance: a valued landscape which is to be protected

5. National policy, development plan policy and applicable local guidance all speak unequivocally and with one voice. Each recognise that the character, visual amenity, and important functions of the landscape in which the appeal site is located must be protected.<sup>2</sup>
6. In terms of **national policy**, it is common ground between the parties that the Hogmarsh Valley - including, specifically, the appeal and its surrounding area - constitutes a “valued landscape” within the meaning of the NPPF.<sup>3</sup>
7. National Policy affords a greater level of protection to valued landscapes than it does to ‘ordinary’ countryside. Whereas the intrinsic character and beauty of all countryside is to be recognised<sup>4</sup>, it is valued landscapes which are to be “protect[ed] and enhance[ed]”<sup>5</sup>.
8. In terms of **development plan policy**, the Hogmarsh Valley is designated as an Area of Local Landscape Importance (ALLI), protected by Local Plan Policy BNE34. This designation reflects both the quality of the landscape character, and the important functions that it plays, as is clear from the wording of the policy itself (“*it does not materially harm the landscape character and the function of the area*” (*emphasis added*)).<sup>6</sup>
9. The landscape character of the Hogmarsh Valley is described in the supporting text as: “*Undulating, open farm land and distinctive wooded hilltops extending north from Frindsbury and Medway City Estate to Chattenden.*”
10. And the first two functions performed by the landscape are identified as follows:  

*“Forms a green buffer separating, and providing an attractive green backdrop for the built-up areas of Medway City Estate, Frindsbury, Wainscott, Lower and Upper Upnor and Chattenden” (*emphasis added*) and*

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<sup>2</sup> As Mr Chard agreed in XX(Day3)

<sup>3</sup> Main SoCG [CD1.5], para 1.5; Landscape SoCG [CD1.11], para 1.6

<sup>4</sup> NPPF, para 174(b)

<sup>5</sup> NPPF, para 174(a)

<sup>6</sup> CD5.1. See also the supporting text at 3.4.104-107

*“Provides an attractive setting for a major gateway within the borough – the Medway Towns Northern Relief Road, contributing towards a positive image of Medway.”*

11. As Mr Chard agreed<sup>7</sup> it is this character and these functions which are the *“identified qualities”* of the landscape for the purposes of NPPF, para 174(a), and which, by virtue of Policy BNE 34, *“the council will aim to protect”*<sup>8</sup>.
12. However, it is important to recognise that the value of the landscape is inherent. As Mr Etchells explained in evidence *“the designation reflects the [landscape’s] value, rather than creating it”*<sup>9</sup>. In other words, the designation derives from, and recognises, the inherent character and value of the landscape: its value does not derive from the fact of the designation.
13. In terms of **local guidance**, the Medway Character Landscape Assessment (“MLCA”) could hardly have been more specific about the objectives for the appeal site and its surroundings
14. Having recognised that a ‘key distinguishing characteristic’<sup>10</sup> of the Hogmarsh Valley is the *“open, gentle rolling arable farmland and distinctive elevated woodland backdrops – at Tower Hill”*<sup>11</sup>, it goes on to require that *“wooded and open farmed ridges hills and slopes to the...east [of the Hogmarsh Valley]”* be *“protect[ed]...from intrusive development”*<sup>12</sup>
15. Mr Chard agreed that the appeal site - being open arable farmland, located on the slopes of Tower Hill, which is in the east of the Hogmarsh Valley – forms part of, and contributes, to this key characteristic<sup>13</sup>: one which the MLCA specifically seeks to protect.
16. Similar themes are found in the Hoo Landscape Sensitivity and Capacity Study (“HLSCS”). In particular, the overall recommendations of the HLSCS include to *“protect the Hogmarsh Valley from built development and retain the area as a valued open space”* and that *“as a general principle, new development along...upper valley slopes should be avoided”*<sup>14</sup>.

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<sup>7</sup> Chard XX (Day 3)

<sup>8</sup> CD5.1, 3.107

<sup>9</sup> Etchells XIC (Day 2)

<sup>10</sup> CD5.13, p4 – explanation of the characteristics identified

<sup>11</sup> CD5.13, p62

<sup>12</sup> CD5.13, p63

<sup>13</sup> Chard XX(Day3)

<sup>14</sup> HLSCS, p72

## Impact on Landscape Character of the local area

17. The Council relies on, and commends to the Inspector, the assessment of Mr Etchells in respect of landscape impacts. This closing does not seek to replicate the detailed analysis undertaken in Mr Etchells' written and oral evidence. Instead, it simply highlights the key conclusions in his analysis, and cross-references to relevant parts of his evidence.

### *Sensitivity of the existing landscape*

18. As Mr Etchells explains<sup>15</sup>, the area of and immediately around the site retains an essentially rural character. Whilst there are detracting features in the vicinity of the site, including the row of houses on Castle Street - a single street of dwellings within a countryside setting - they do not fundamentally alter the character of the area. They certainly do not cause it to have urban, suburban or even urban-fringe character<sup>16</sup>. And whilst urban infrastructure (such as the Medway City Estate) is visible, including in views from the west, this infrastructure is detached from the site and its immediate surroundings. Indeed, as we will come onto consider, much of the importance of the Hogmarsh Valley lies in the relief it provides from the urban areas: providing an area which has a surprisingly rural character, given its proximity to the Medway Towns.
19. This assessment of the existing character of the area is consistent with the MLCA which, whilst noting the disruptions from the urban fringe and other features, concludes that the Hogmarsh Valley "*retains [a] rural character*". It is also consistent with the HLSCS which recognises that the area has a '*rural sense of place*'<sup>17</sup> and concludes that the "*area still retains rural character despite urban pressures*"<sup>18</sup>
20. Mr Etchells concludes that the **sensitivity** of the site and the surrounding area is **high**, being a combination of its medium-high quality, high value, and high susceptibility to the type of development proposed.<sup>19</sup> Whilst this is an assessment of the local landscape

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<sup>15</sup>JE Proof, para 3.4.15

<sup>16</sup> Whilst the MLCA identifies the landscape type of the Hogmarsh Valley as Type 2b 'Urban Fringe' this is not an accurate description of the site and its immediate surroundings. As Mr Etchells explains this classification was not the informed conclusions of the authors of the MLCA, - who concluded that the area "*retains rural character*" - but instead derived from the categorisation of the area within the much earlier Kent Gateway Landscape Assessment 1995. Furthermore, as MDC-6 indicates, the site in fact sits partially within the area categorized as R1(a) wooded hills and ridges.

<sup>17</sup> HLSCS, p20 the 'Function of area' line in the Landscape Sensitivity table. See also 'Sense of place' line in the same table which describes the "*the overall sense of place being 'intact and coherent and predominantly rural'*"

<sup>18</sup> HLSCS, p22 the 'Wildness, tranquillity and remoteness' line of the Landscape | Value table

<sup>19</sup> JE Proof, section 3.5, pp19-22

area<sup>20</sup> rather than the entirety of the Hogmarsh Valley, it is of some note that the authors of the HLSCS also – and entirely independently – concluded that the landscape sensitivity of the Hogmarsh Valley was high.<sup>21</sup>

### *Magnitude of change*

21. All parties are agreed that the proposed development would cause a significant change in the landscape character of the surrounding area. Mr Etchells concludes that there would be a **high** degree of change for the **site itself**, and **medium to high** for the **local landscape area**.<sup>22</sup>
22. Mr Chard concludes that there would be a medium magnitude of landscape change<sup>23</sup>, although this is in respect of the entire LCA18 character area. It stands to reason that, even on Mr Chard’s approach, the development would cause a greater magnitude of change when considered in relation to the local landscape area (i.e. consistent with the medium to high degree of change identified by Mr Etchells). Although Mr Chard was initially critical of Mr Etchells’ approach to assessing the local landscape area in XIC (as opposed to across the entirety of the character area), having been taken to the relevant passages of the GLVIA v.3<sup>24</sup> he conceded that Mr Etchells’ approach was consistent with guidance.<sup>25</sup>
23. In his assessment Mr Etchells highlights several features of the appeal site and proposal which both contribute to the magnitude of change, and explains why that change would be adverse.<sup>26</sup> These include:
  - 23.1. **The arable/agricultural use of the appeal site** – a key characteristic of the area, which would be lost;
  - 23.2. **Its locally prominent location on an elevated, west facing slope** –the slope of Tower Hill is both a key characteristic of the area, and a feature which means that any change would be readily visible in views from the west and north west;

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<sup>20</sup> i.e that area included with JE, Fig 3

<sup>21</sup> HLSCS, p20

<sup>22</sup> Etchells, para 6.2.4

<sup>23</sup> Appendix MDC-5, p4

<sup>24</sup> GLVIA, 5.2, and 5.15-5.16

<sup>25</sup> Chard XX(Day 3)

<sup>26</sup> JE Proof, para 5.1.1 and 6.2.3

- 23.3. **The currently attractive hillside, with wooded backdrop** – again a key characteristic which would be in part lost (the open slope) and in part harmed (the wooded backdrop);
- 23.4. **The scale and extent of the proposal** – a significant development of 72 dwellings, together with a children’s nursery. The proposal would at least double the number of dwellings in the immediate vicinity. As illustrated on ID1 it would extend built development for around 390m from the north-eastern corner alongside Upnor Road, to the proposed nursery in the south-west of the site.
- 23.5. **The significant and discordant extension of built development into an area which has an essentially rural character.** - As ID1 and the montages (VM1,2 and 3) illustrate, Castle Street is a relatively short row of houses, and is only in part visible in views from the west. The proposal would extend built development both southwards, in front of the currently wooded backdrop of Tower Hill, as well as westwards, down the valley slopes into the presently open fields.
- 23.6. **The significant change in the character of Upnor Road** - Mr Etchells and Mr Chard agree about the existing character of Upnor Road, with the latter describing the section of the road which runs to the north of the appeal site as having an *“intimate character, sense of seclusion and rurality”*<sup>27</sup>. However, it is undeniably the case that Mr Chard – who concludes that there would be a small magnitude of change and an overall ‘neutral’ effect on its character – has severely underassessed the change in character that would occur as a result of the proposal. This is no doubt in part at least because Mr Chard had, in undertaking his assessment, assumed that less than half the amount of vegetation would be removed to facilitate the access as is now agreed will be the case.<sup>28</sup> Any replanting would be limited to either side of the access road and would have to be set behind the sightlines<sup>29</sup>. When taken together with the road widening; the removal of vegetation leading to the bus stop, the introduction of the T-junction; the proposed lighting columns; and the introduction of built development, it is clear that, were this development to go

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<sup>27</sup> Chard Proof, para 5.8

<sup>28</sup> See ‘Upnor Access Existing Vegetation Plan’ shows that over 68m of vegetation will be lost. Mr Chard had assumed that approximately 30m would be removed: see Chard Proof, para 9.13 and Appendix MDC-5,p 1 “Upnor Road”

<sup>29</sup> CD2.108 – see legend.

ahead, this part of Upnor Road would no longer have an intimate, secluded, rural character.

### *Significance of Effect*

24. The overall landscape effects would be **high adverse** for **the site**, and **moderate to high** for the **local landscape area**. Although the latter would reduce over time as planting matures, the adverse effects would remain at **moderate** adverse effects from Year 15 onwards.<sup>30</sup> This is the average effect experienced over the local landscape area as a whole and, as Mr Etchells explains, constitutes a **permanent, and significant adverse effect on the local landscape area**.<sup>31</sup>

### Functions of the ALLI

25. As noted above, the importance of the local landscape is derived not simply from the quality of its landscape character, but also the important functions it plays.
26. As Mr Etchells explains in his evidence<sup>32</sup>, the proposal would have a significant adverse effect on a number of the functions which the Hogmarsh Valley ALLI performs.

### *Green Buffer*

27. This is a spatial function. Its objective is to maintain a buffer – in particular, a “green”, i.e. a non-developed buffer – between the built-up areas of Medway City Estate, Frinsbury, Wainscott, Chattenden and the Upnors.
28. The appeal site currently makes a significant contribution to the Green Buffer function for the following reasons:
- 28.1. The southern part of the ALLI, in which the appeal site is located, plays a more valuable role in this respect than the northern part of the ALLI. It is this area of largely open land which separates the Medway Towns (including Medway City Estate, Frinsbury, Wainscott) from the Upnors. When the HLSCS explains that the Hogmarsh Valley which “[p]rovides [a] major benefit as anti-coalescent green buffer

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<sup>30</sup> Etchells Proof, para 6.3.7

<sup>31</sup> *Ibid.*

<sup>32</sup> Etchells, para 4.3.3 and 6.3.6

*between urban areas and the Upnors*"<sup>33</sup> it is referring to precisely the area of the ALLI in which the appeal site is located.

28.2. Within that area, the appeal site occupies a central and relatedly sizeable location – this can be seen most clearly from Figure 6 within the LVIA.<sup>34</sup>

28.3. Due to its elevated position the appeal site is prominent, particularly in views from the west (including from the edge of Wainscott and Frinsbury) – this is of significance because it means that the appeal site's contribution to the undeveloped buffer is readily perceptible.

29. The introduction of a new and significant area of built development on the appeal site would significantly diminish the Green Buffer function in this part of the ALLI. It would, on the Appellant's own case, create a new urban edge to the east of the Hogmarsh Valley.<sup>35</sup>

30. In spatial terms alone, it would have the effect of reducing the distance between the urban edge to the west (Wainscott/Finsbury) and the east (currently Upnor) from 900m to around 500m<sup>36</sup>. This is a significant reduction in green buffer. And it is a reduction that would be readily perceived, from viewpoints on the west of the current buffer, such as the footbridge over the A289 and the RS326 PROW.

31. The Appellant's response that the appeal proposal would not, as a matter of fact, lead to the coalescence of the Medway Towns and the Upnors is nothing to the point. It is a false logic to conclude that because there would not be coalescence of settlements there can be no harm to the green buffer function. A buffer would remain, but it would be significantly diminished in size, value and function from that which currently exists.

### ***Green backdrop***

32. The appeal site also contributes to the attractive green backdrop of the valley. This both by virtue of its open arable fields which form part of the green backdrop, and is readily apparent in views from the west and north west, but also by virtue of the clear and open views it enables to the wooded ridgeline at Tower Hill. It is noticeable that the MLCA

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<sup>33</sup> HLSCS, see the characteristics listed in paragraph 1.2.; the 'Function of area' line in the Landscape Sensitivity table, p20; and 'Key characteristics and issues' in paragraph 1.6.

<sup>34</sup> CD2.66

<sup>35</sup> Chard XX (Day 3)

<sup>36</sup> See Chard, para 10.25. In XX he accepted that the east-west width of the appeal site varied between 90-125m



identifies both the wooded hilltop and the farmed slopes to the east as being key characteristics of the area and worthy of protection.

33. The proposal would also significantly diminish this function.
34. The open, arable fields would be lost: replaced by built development. Notwithstanding the proposed planting (discussed below), the appeal site itself would no longer present as part of the green backdrop. Moreover, the built development on the southern part of the site would interrupt and partially obscure views to the wooded ridgeline at Tower Hill.

#### *Attractive setting for the A289*

35. Again, the site makes a significant contribution to this function – forming a part of the attractive setting to the road as it runs southeast from the Four Elms roundabout. In XX Mr Chard accepted that, notwithstanding the evidence in his proof, his LVIA was correct to record that the open nature of the site *“helps form an attractive setting to the gateway to the area as it contrasts with the more built up areas”*<sup>37</sup>
36. Although views for passing motorists are inevitably brief, the site is prominent in views to the southeast from the footbridge across the A289. The proposals – which would see the open, arable fields replaced by a significant amount of built development – would therefore also diminish this function.

#### **Visual amenity**

37. The Inspector will reach his own judgments on visual impacts of the proposal, having regard to the photographic material before him and, more importantly, his experience from the site visit. For this reason, the analysis of visual impacts in these closings is shorter than that in respect of other landscape impacts.
38. The Council relies on Mr Etchells analysis in his proof of evidence [**Etchells Proof, para 6.4.1-6.4.3 and Appendix C, Table 2**] on which he expanded in his oral evidence.
39. In summary, the Council considers the proposal would cause significant adverse visual effects for:

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<sup>37</sup> Chard XX(Day 3). He confirmed that this remained his view, and he stood by it, notwithstanding suggestions in his proof that the site did not contribute to this function

- 39.1. **Residents of Castle Street and Tower Hill House** – where the visual effects would range from **slight to high adverse** depending on the location of the properties
- 39.2. **Users of the PROWs** – in particular, footpaths RS125 and RS326, where **moderate to high adverse visual effects** would be experienced;
- 39.3. **Users of Local Roads** – in particular Upnor Road, where motorised users would experience **moderate to high adverse visual effects** and non-motorised users would experience **high adverse visual effects**.

#### Conflicting assessments: Mr Etchells and Mr Chard

40. A striking feature of this inquiry is the degree to which the landscape experts disagree about the effects of the proposal on landscape character, visual amenity and functioning of the area. These are not – as is usually the case – simply differences of degree. There are fundamental differences as to the nature of the effects: whether they would be adverse or beneficial.
41. As part of his analysis, the Inspector will have to come to a judgment about what weight to be given to these assessments.
42. The Council submits that the Inspector should place a significant weight on the assessment undertaken by Mr Etchells. He is an experienced landscape professional and a Chartered Member of the Landscape Institute. He is independent and regularly acts for both developers and local planning authorities in planning appeals. He has undertaken a comprehensive assessment which follows a transparent methodology. That methodology is consistent with the Guidelines for Landscape and Visual Impact Assessment, 3<sup>rd</sup> Edition (GLVIA v.3)<sup>38</sup> and was not criticised during his cross-examination. His assessment is rigorous and supported by reference to published material. He has drawn attention to all relevant parts of the MLCA and HLSCS and has not sought to selectively quote from those documents<sup>39</sup>. His conclusions are well-reasoned, balanced and not overstated.<sup>40</sup>

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<sup>38</sup> Etchells Proof, para 2.3.2

<sup>39</sup> It is to his credit, for instance, that expressly acknowledged that the MLCA categorized the Hogmarsh Valley as “Urban Fringe” and explained why this was not an accurate reflection of the current landscape character of the area.

<sup>40</sup> By way of example, see Mr Etchells’ conclusion that the long term (i.e post Yr 15) landscape effects on the local area would be “moderate”. He did not seek to escalate that assessment. Rather, he explained why

43. In contrast, Mr Chard’s conclusions have an air of unreality about them, to put it mildly. He concludes that a proposal for 72 dwellings and a nursery on a greenfield site, in an elevated and prominent location, which he accepts contributes to the key characteristics<sup>41</sup> and functioning<sup>42</sup> of a valued landscape, would : (a) result in a “slight improvement” in the landscape character of the entirety of the Hogmarsh Valley character area<sup>43</sup>; (b) would have visual effects which range from negligible to moderate beneficial and are, “on balance an improvement”<sup>44</sup>; and (c) would either protect or enhance the landscape’s functions.<sup>45</sup>
44. These conclusions are, with respect, unjustifiable. They are the product of both a mischaracterisation of the baseline position, as well as an underassessment of the effects of the proposal.
45. In terms of the baseline position, Mr Chard’s analysis places great emphasis on Castle Street. Indeed, in examination in chief he was frank enough to acknowledge that “*if Castle Street did not exist, we would probably not be proposing development in this location.*”<sup>46</sup> He reiterated as much in cross-examination.<sup>47</sup>
46. On Mr Chard’s analysis Castle Street: (a) forms the “urban edge” of Upper Upnor<sup>48</sup>; (b) is “stark”, “harsh” and “abrupt”<sup>49</sup>; and (c) causes the Appeal Site to have “*a distinctly urbanised character and appearance*”<sup>50</sup>.
47. None of these claims withstand scrutiny.

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moderate adverse effect on the local landscape character area over the long term should be considered a significant adverse harm, having regard to: (i) the extent of the area affected; (ii) the fact that his scale of effects accommodates all potential developments (including up to, say, nuclear power points; (iii) that the site – which is sizeable of itself – would experience moderate to high adverse effects, even in the long run.

<sup>41</sup> Chard XX (Day 3). Accepted that the Appeal site formed part of, and contributed to, the key characteristics identified in the MLCA

<sup>42</sup> XX (Day 3). Accepted that the appeal site made a contribution to the Green Buffer, Green Backdrop and attractive backdrop to the A289, although he stopped short of accepting that the contribution was significant (which the Council contends it plainly is).

<sup>43</sup> Chard, proof, para 11.13

<sup>44</sup> Chard, proof, para 9.24

<sup>45</sup> Chard, proof, para 10.27-10.30

<sup>46</sup> XIC Chard (Day 2)

<sup>47</sup> XX Chard (Day 3)

<sup>48</sup> Chard Proof, paras 9.7, 9.24, 10.4 and 10.7(bullet 2). In XX Chard confirmed that he considered that, as it currently stands, the site forms the western edge of the Upper Upnor.

<sup>49</sup> Chard Proof, 6.20, Table 8.1 10.7, 10.16, 11.10

<sup>50</sup> Chard Proof, para 5.5, 5.17, 11.5

47.1. **Urban edge** - On any analysis, Castle Street does not form an urban edge, let alone the urban edge of Upper Upnor. This much is clear having regard to the following factors, all of which Mr Chard accepted were relevant to this issue:

- (1) The settlement boundaries - the settlement boundaries in the Local Plan for both Upper and Lower Upnor do not include - and are well removed from - Castle Street (notwithstanding that it was in existence at the time these boundaries were drawn)
- (2) Boundaries of the ALLI -the ALLI washes over Castle Street, with the eastern boundary at Upchat Road in Upper Upnor, some way to the east. Thus those responsible for the designation of the ALLI plainly did not consider Castle Street to form the urban edge to the east.
- (3) The wooded hilltop to the east of the Appeal Site - there is a sizeable wooded hilltop to the east which forms a strong buffer between the Appeal Site and Upnor (woodland which Mr Chard considers is the "principal provider of the green backdrop to the area"<sup>51</sup>).
- (4) Hogmarsh Valley and character area - as Mr Chard accepted, Castle Street and the Appeal Site are in the Hogmarsh Valley. Upper Upnor is not. It sits over the ridge-line, outside of the valley. This is reflected by the fact that whilst Castle Street is included in the LCA18 Hogmarsh Valley character area, Upper Upnor is not

47.2. **Appearance of Castle Street** - whilst Castle Street is undoubtedly a detracting feature<sup>52</sup>, as Mr Etchells explains, it is an exaggeration to describe its appearance as harsh<sup>53</sup>. In any event, the Castle Street houses only extend for roughly half of the Appeal Site. The proposal would significantly extend the spread and amount of residential development both along and down the slope, introducing a much larger scale and more intensive form of development into a local area which at the moment has a largely rural character, and is elevated and attractive.<sup>54</sup>

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<sup>51</sup> CHard para 10.25

<sup>52</sup> As Mr Etchells acknowledges, Proof paras 3.4.14 and 3.5.1

<sup>53</sup> Etchells, para 6.7.1(c)

<sup>54</sup> Etchells, para 3.5.9

- 47.3. **Character and Appearance of the Appeal Site** - Finally, the contention that the Appeal Site has *“a distinctly urbanised character and appearance”* is simply wrong. It is true that Castle Street is visible in views of the appeal site from the west and north west<sup>55</sup>. But to suggest that this single street of houses, which run for half the length of the appeal site, gives rise to an urbanised character and appearance is hyperbole of the highest order.<sup>56</sup>
48. In terms of the effects of the proposal, it is evident that Mr Chard’s assessment repeatedly mischaracterises the change that would occur. This can be seen from the following three elements of his analysis.
49. First, his contention that the proposal would *“create an instant sylvan appearance to the slope”*<sup>57</sup> with the effect that the *“wooded escarpment and green backdrop will be retained, extended and enhanced as part of the development proposals”*<sup>58</sup> is, with respect, pure fantasy.
50. Whilst a degree of tree planting is proposed (albeit it is telling that the only tree in the interior of the site – which the LVIA identified as being a *“notable specimen”* – is to be removed), if the proposal goes ahead the overriding characteristic of the Appeal Site will be of built development, as Mr Chard himself accepts.<sup>59</sup> As is clear from the visualisations – which represent 15 years’ worth of vegetation growth and which were specifically based on the landscaping strategy for the Appeal Site<sup>60</sup> – it cannot properly be maintained that the site would have a *“sylvan appearance”* (even at year 15, let alone instantly), or that the green backdrop would be *“extended and enhanced”*.
51. The reality of the effects of the tree planting were more accurately described by Hill Wood & Co, the authors of the landscape strategy who talked of the *“scattered tree planting”* which would have the effect of *“reduc[ing] the urbanisation of the subject site”*<sup>61</sup> : a far cry from the claims made by Mr Chard.

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<sup>55</sup>Chard Document B, Viewpoint 7, and 9

<sup>56</sup> If it is suggested that it is not simply Castle Street which gives rise to this characterization by Mr Chard, but the urban areas in the rear of these views this is to ignore: (a) that the value of the Hogmarsh Valley is the contrast it provides to these urbanised areas, in terms of its essentially rural and open character and (b) that Mr Chard has pinned his colours to the mast – it is Castle Street which, in his view, justifies the Appeal Proposal from a landscape perspective

<sup>57</sup> Chard, p45 Table 8.1

<sup>58</sup> Chard, para 10.29

<sup>59</sup> Chard Proof, para 10.2

<sup>60</sup> See Visualisations , final page

<sup>61</sup> CD2/65, p6, para 1.4

52. Second, the suggestion that “[t]he fingers of open space within the Appeal Site, extending up the slope, will enable the Hogmarsh character to permeate through the Appeal Site....”<sup>62</sup> is, on analysis, also entirely unsustainable. A key characteristic of the Hogmarsh Valley is the “open, gently rolling farmland and distinctive woodland backdrops”<sup>63</sup> which the MLCA indicates should be protected. Mr Chard agreed that the site currently formed part of, and contributed to, this characteristic.<sup>64</sup> Thus the Hogmarsh Valley character currently washes over the entirety of the Appeal Site. Post development this will no longer be true. The Appeal Site will no longer be open, or arable. On Mr Chard’s own analysis, built development would be the dominant characteristic.
53. The proposed areas of open space will not alter this change in character. As can be seen from the visualisations<sup>65</sup>, they will read as amenity space between built development. They may be attractive spaces for residents or visitors to relax on the ‘amenity grass’<sup>66</sup>, as any open space would: but it stretches credulity to breaking point to suggest that the open space would cause the Hogmarsh character to permeate the site. Indeed, it was notable that when pushed on this matter in cross-examination, Mr Chard altered his position, claiming that it was that open space along the eastern boundary (i.e. those on the lower slopes and less visible) that would be planted with vegetation found in the Hogmarsh Valley.<sup>67</sup> That might be so, but it is quite different from a claim that the character of the Hogmarsh Valley would continue to permeate the site. Plainly it will not.
54. Third, as explained above, Mr Chard’s conclusion that the proposal would have a “neutral effect” on the intimate, rural character of Upnor Road is unjustifiable. It is based on a significant underestimate in the amount of vegetation that would need to be removed (Mr Chard assumed 30m, the reality is nearly 70m), and ignores the road widening, the fact that replacement planting would be situated outside of the sightlines, and the extensive built development that would be visible to users of the road.
55. The reliability of Mr Chard’s evidence is further undermined by his inaccurate and highly misleading responses to the HLSCS. Two examples will suffice:

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<sup>62</sup> Chard Proof, para 9.9

<sup>63</sup> MLCA, p62

<sup>64</sup> XX Chard (Day 2)

<sup>65</sup> See, in particular, viewpoint 1

<sup>66</sup> See MDC-8

<sup>67</sup> This is consistent with what is shown on the Landscape Strategy Plan at para 1.5 where the lower slopes are shown as having an “encroachment of Hogmarsh landscape”

55.1. First, the response contends that the HLSCS “doesn’t mention views across the valley”<sup>68</sup>. This is wrong as a matter of fact. The “strategic viewpoints” identified in respect of the Hogmarsh Valley<sup>69</sup> include views from “Castle Street looking west” and the “Pedestrian bridge over the A289 – views looking north, south and east”.

55.2. Second, the response alleges that that the HLSCS assessment in respect of landscape sensitivity is “consistent with how we have analysed the character area in evidence”<sup>70</sup>. This is inaccurate and misleading. The HLSCS assesses that the sensitivity of Hogmarsh Valley is high<sup>71</sup> (consistent with Mr Etchells’ assessment of the local landscape character). It is therefore inconsistent with Mr Chard’s assessment of the sensitivity of the Hogmarsh Valley – which he says is medium<sup>72</sup>. This is, of course, unless Mr Chard’s position concerning the sensitivity of the landscape has changed since he gave evidence, and he now agrees with Mr Etchells.

56. In contrast to Mr Etchells’ assessment, Mr Chard’s assessment is unrealistic, inaccurate and unsubstantiated. Therefore, the Council submits that the Inspector should give Mr Chard’s assessment little, if any weight, in his consideration of the landscape and visual issues.

### **Conclusion on Issue 1**

57. The proposal would cause significant and irrevocable harm to the landscape character, visual amenity and important functions of a valued landscape. These harms must be given **substantial weight**, against the proposal.

## **II. MAIN ISSUE 2 - WHETHER THE DEVELOPMENT WOULD BE IN A SUITABLE LOCATION, WITH REGARD TO LOCAL AND NATIONAL POLICY IN RELATION TO THE LOCATION FOR RESIDENTIAL DEVELOPMENT;**

### **Contrary to the spatial strategies of both the existing and emerging local plans**

58. There can be little doubt that the proposed location for residential development conflicts with the development strategies of both the existing and emerging development plans.

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<sup>68</sup> BW Response 19.10.21 P2, Characteristics

<sup>69</sup> HLSCS p21 – Visual Sensitivity; Strategic viewpoints;

<sup>70</sup> BW Response 19.10.21 P3, Landscape Sensitivity

<sup>71</sup> HLSCS, p20

<sup>72</sup> MDC-5, p4

59. The existing local policy is established by the adopted **Medway Local Plan**. Policy S1 establishes the “Development Strategy” for that plan. The ‘development strategy’ of the plan is to “*prioritise re-investment in the urban fabric*”, and this is to include “*redevelopment and recycling of under-used and derelict land within the urban area.*”<sup>73</sup>. We are told that “*outward expansion into fresh land [i.e countryside]...will be severely restricted*”.
60. Mr Wilford accepted that the proposal is contrary to both of these elements of Policy S1.<sup>74</sup>
61. Furthermore, BNE25 establishes the policy position in respect of development in the countryside. It, in effect, establishes a two-part criteria for proposals coming forward in the countryside. As Mr Wilford accepted, to be in compliance with BNE25 it is necessary to meet both BNE25(i) and to fall into one of the categories identified in (ii)-(vi) (which in effect identify either allocated sites or appropriate uses in the countryside).
62. Mr Wilford agreed that the proposal did meet the second criterion (i.e it did not come within any of the categories identified (ii)-(vi)), and for that reason alone was in breach of BNE25.
63. However, Mr Wilford also accepted that the proposal did not meet BNE25(i) because it would not “*maintain...the character, amenity and functioning of the countryside*”<sup>75</sup>. This constituted a further breach of BNE25.
64. As a result of the failure to comply with the policy S1 and BNE25 Mr Wilford, realistically, accepted that the proposal was contrary to the development strategy of the existing plan.<sup>76</sup> According to the adopted plan, therefore, quite apart from the landscape impact, the proposal would not be in a suitable location for residential development.
65. The draft **pre-submission Draft Local Plan** constitutes the emerging development plan policy for the area. It establishes (in draft) a spatial strategy for the period 2021-2037. Policy S2 sets out the ‘Spatial Development Strategy’. It seeks to meet local housing needs (as established by the standard method) in full.
66. There are three main tenets to the strategy.

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<sup>73</sup> CD5.1, p12

<sup>74</sup> XX Wilford (Day 5)

<sup>75</sup> XX Wilford (Day 5). He accepted that there would be harm in this respect, albeit not a material harm which would trigger BNE34(i) and not to the level which the Council/Mr Etchells considered would be the case

<sup>76</sup> XX Wilford (Day 5)



67. First, it will prioritise regeneration, “making the best use of previously developed land and directing investment to urban waterfront and centre opportunity areas”. The primary focus for this element of the strategy is Chatham, with Strood and the Rochester waterfront also featuring.
68. Second, it will support development on the Hoo Peninsula, specifically up to 10,000 homes and related infrastructure focused around Hoo St Werburgh, which is to come forward in accordance with a masterplan for the area. This element of the strategy is supported by the significant amount of HIF funding which is designed to unlock sustainable development on the Hoo Peninsula.
69. Third, it supports development on defined allocated sites in suburban areas (Rainham) and smaller villages (Allhallows, Cliffe Woods, Hailing, High Halstow and Lower Upnor).
70. As Mr Wilford accepted, the current proposal does not fall within any of the elements of the spatial development strategy in the emerging local plan.
71. Moreover, it is clear from the emerging plan that the Hogmarsh Valley is identified as an area which is inappropriate for residential development (at least to any significant degree). The area is identified as a ‘Key Green Corridor’ on the key diagram<sup>77</sup>: as emerging / proposed Policy S2 explains the “*This green network informs the spatial strategy, separating urban Medway from the Hoo Peninsula ....*”<sup>78</sup> Lest there be any doubt that this green network includes the Hogmarsh Valley, the supporting text later explicitly confirms that “*The Hogmarsh Valley separates urban Medway from the Hoo Peninsula.*”<sup>79</sup>
72. It follows that the proposal is also contrary to the spatial development strategy of the emerging local plan: not only does it fall outside the areas where the plan is promoting residential (or any) development to meet housing needs, it is located within an area that the plan is specifically seeking to protect because of the role it plays in separating the urban Medway towns from the Hoo Peninsula.
73. According to the emerging plan, therefore, quite apart from the landscape impact, the proposal would not be in a suitable location for residential development.

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<sup>77</sup> Figure 1, P20 of pdf

<sup>78</sup> P23 of pdf

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### Weight to be given to this conflict

74. It is in the public interest to have plan-led development. National policy emphasises that the *“Planning system should be genuinely plan-led”*.<sup>80</sup>

75. The point was made in lucid and forceful terms by Sales LJ in *Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146 [CD6.8]

76. He explained:

*“A plan-led system of planning control promotes the coherent development of a planning authority’s area, allowing for development to be directed to the most appropriate places within that area, and enables land-owners, developers and the general public to have notice of the policies to be applied by the planning authority to achieve those objectives. It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission.”* At [6].

77. Sales LJ went on to explain that:

*“significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan led approach at all.”* At [40(iv)]

78. Granting permission for this proposal would be antithetical to the plan-led approach: it is a large development, which is contrary to the spatial strategy of both the existing and emerging local plans. This is a factor which must weigh against the proposal.

79. It is accepted that the weight to be given to this breach is tempered, to a degree, by both the housing land supply position and the relatively early stage of the Local Plan (albeit, as Mr Canavan explains<sup>81</sup>, the grant of substantial HIF funding in this case does single this case out from the norm, and underscores the deliverability of the Council’s vision for future development of its area). Accordingly, the conflict with the spatial strategies of both existing and emerging local plans must be given **moderate weight**.

### National Policy

80. As set out above the NPPF seeks to “protect... and enhance...valued landscapes”. Thus, the effect of national policy is to identify the Hogmarsh Valley as an inappropriate location for residential development, unless it is able to protect and enhance the

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<sup>80</sup> NPPF, para 15

<sup>81</sup> Canavan Proof, para 6.55

landscape of the area. For the reasons outlined above, this proposal not only fails to do so, but would cause substantial harm to the landscape character, visual amenity and functioning of this valued landscape.

### **III. BENEFITS OF THE PROPOSAL**

#### **(1) Delivery of housing**

##### *Extent of Shortfall*

81. As was explained in opening, that there is a significant need for housing in Medway is not in dispute.

82. However, the extent of the shortfall should not be overstated, as the Appellant has sought to do. The Council can demonstrate a housing land supply of 3.03 years.<sup>82</sup> This is a robust – perhaps even conservative – estimate of supply, noting the following:

- (1) It is based on figures derived from the Council’s December 2020 AMR, which is the latest published evidence on delivery.
- (2) It applies to a 5-year period of 1<sup>st</sup> April 2020 – 31<sup>st</sup> March 2025.
- (3) All sites included within the supply benefit from the grant of planning permission (and did so as at the date of the AMR), save for three sites which have a resolution to grant subject to section 106.<sup>83</sup>
- (4) Because the small sites (delivering 341 units) have fewer than 9 homes, they benefit from the presumption of deliverability.<sup>84</sup> The Appellants have produced no evidence, let alone the ‘clear evidence’ required, to rebut that presumption.
- (5) On the large sites, 5,310 of the 5,699 units on large sites benefit from full planning permission (and did so as at the date of the AMR).<sup>85</sup> As Mr Canavan explained in evidence<sup>86</sup>, this added to the small sites would mean that 5,651

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<sup>82</sup> CD1.5 SOCG, Table 7.01

<sup>83</sup> See Volume 2 of AMR

<sup>84</sup> NPPF, Annex 1

<sup>85</sup> 5,699 is the deliverable supply identified in the AMR (6,040, see Main SoCG, Table 7.1) less the units on small sites (341).

<sup>86</sup> XIC (Canavan) Day 5

(93.5%) of the total supply (agreed to be 6,040) would benefit from presumption of deliverability. Again the Appellants have produced no evidence, let alone the 'clear evidence' required, to rebut that presumption.

(6) The Council had not sought to include in its deliverable supply – as it would have been entitled to do – any sites which do not benefit from the grant of planning permission (such as those emerging allocations in the emerging Local Plan ). It has avoided doing so to ensure a robust supply.

83. The Appellant's contention that the 5yr supply is only 2.54 years should be rejected. It stems from the flawed premise that when using the local housing need figure (arrived at by the standard method) to calculate the housing requirement, it is necessary to incorporate "deficit from the base-date", which they identify to be 2018<sup>87</sup>. This is wholly misconceived because:

- (1) When using the local housing need figure ("LHN") to calculate the housing requirement for the purposes of 5yrHLS, there is no "base-date" from which a deficit could have accrued. This is because the LHN is updated annually.
- (2) The Appellant's identification of a 2018 "base-date" is entirely arbitrary. It is neither the base-date of the existing or emerging local plan. It appears to have been identified on the basis that this is when the concept of LHN was introduced into the NPPF. But this doesn't establish a base-date.
- (3) Importantly, the annual update of the LHN – and in particular the affordability uplift which is applied using the Standard Method (SM) - is used as a proxy to capture the effect of any earlier shortfall in housing delivery. This is explained in the PPG which states in terms that *"the affordability adjustment is applied to take account of past under delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately."* The PPG goes on to state that it is only "[w]here an alternative approach to the standard method is used, [that] past under delivery should be taken into account."<sup>88</sup>
- (4) As Mr Canavan astutely observed, the passage of the PPG on which the Appellant seeks to place reliance (and which Mr Warren put to him in cross-

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<sup>87</sup> Wilford Proof, para 5.15.

<sup>88</sup> Paragraph: 011 Reference ID: 2a-011-20190220

examination)<sup>89</sup> does not support their position. All it does is to indicate that the 5 yr HLS requirement will be over and above the local housing need figure – this is because of the need to add a “buffer”. This is the 5%, 10% or 20% buffer which is required to be added by NPPF, para 74. It has nothing to do with shortfall. The reference to “*any shortfall*” within that paragraph of the PPG simply reflects the fact that when the 5yrHLS is calculated against the strategic housing requirement in a local plan (which is not updated annually) rather than LHN, there may be a need to factor in shortfall from the base-date of that local plan. That is not the case here.

84. It follows that the Council’s calculation of housing land supply is to be preferred and should be considered a robust estimate of future supply.

*Weight to be given to the delivery of housing in light of the shortfall*

85. The Council accepts that, in light of the significant shortfall in 5-year housing supply, **significant weight** should be given to the delivery of housing.

86. Once again, however, the Appellant seeks to overstate its case. They focus largely, if not solely, on historic under-delivery – a factor which is in any event captured in the local housing need requirement, by virtue of the affordability ratio uplift. In doing so, the Appellant ignores the significant steps that the Council are taking to meeting housing needs, both in the short-term and strategically.

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<sup>89</sup> See Wildford Proo, para 5.14 *To ensure that there is a realistic prospect of achieving the planned level of housing supply, the local planning authority should always add an appropriate buffer, applied to the requirement in the first 5 years (including any shortfall), bringing forward additional sites from later in the plan period. This will result in a requirement over and above the level indicated by the strategic policy requirement or the local housing need figure*

*Buffers are not cumulative, meaning that an authority should add one of the following, depending on circumstances:*

*5% - the minimum buffer for all authorities, necessary to ensure choice and competition in the market, where they are not seeking to demonstrate a 5 year housing land supply;*

*10% - the buffer for authorities seeking to ‘confirm’ 5 year housing land supply for a year, through a recently adopted plan or subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework), unless they have to apply a 20% buffer (as below); and*

*20% - the buffer for authorities where delivery of housing taken as a whole over the previous 3 years, has fallen below 85% of the requirement, as set out in the last published Housing Delivery Test results.*

Paragraph: 022 Reference ID: 68-022-20190722

87. This factor is relevant to the weight to be given to housing delivery from this scheme, as well as the weight to be given to development plan policies.<sup>90</sup>
88. In the short term, this has meant granting a large number of permissions for sustainable residential development on unallocated sites outside of current development boundaries.<sup>91</sup> This has included granting permissions for sites within ALLIs – albeit crucially only where the developments in question would neither radically alter the character, nor undermine the functioning, of the valued landscape.
89. Notwithstanding the inevitable lag between grants of permissions and the provision of actual houses of the ground, the Council’s positive approach to these applications has garnered real results: the number of dwellings completed in 2019/20 (1,130) was the highest ever number of residential completions since Medway became a Unitary Authority in 1998. And the number of units under construction last year was still higher (1,629).<sup>92</sup>
90. More fundamentally, through its emerging Local Plan the Council is seeking to meet its strategic housing needs in full. As Mr Canavan explained<sup>93</sup>, the emerging plan is projected to deliver sufficient housing sites to exceed the requirement for the local plan period. <sup>94</sup> These housing sites have largely been drawn from the 2019 SLAA which identified a capacity of 29,244 homes on suitable, available, and achievable sites, well in excess of the housing requirement for the local plan period. It did so without any reliance on delivery from the Appeal Site, which formed part of an area assessed in the SLAA to be unsuitable.<sup>95</sup>
91. This alone exposes as a fallacy the proposition that, despite the considerable harms it will bring, this proposal is needed if Medway is to meet its housing needs.

## **(2) Delivery of Affordable Housing**

92. The Council also accepts that **significant weight** should be given to the delivery of affordable housing given the large degree of affordable housing need in the area

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<sup>90</sup>See *Gladman Developments Limited v SSHCLG* [2021] EWCA Civ 104 at [27]. See also Canavan Proof, paras 6.576-6.58

<sup>91</sup> See Canavan XIC and Proof, para 6.21 and 6.23

<sup>92</sup> Canavan XIC and proof, paras 6.23

<sup>93</sup> Canavan XIC (Day 4)

<sup>94</sup> 26, 962 homes for the period 2021 to 2037 (1, 586 LHN x 17 years)

<sup>95</sup> CD5.10

93. However, the affordable housing need of the area must be seen in its context, and should not be over-stated, as the Appellants have sought to do.

- (1) The starting point is that national policy does not require, or even expect, Councils to meet their affordable housing needs in full. This was true under the original NPPF (*Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 at [32]-[37]) and, remains the case under the current NPPF. As Dove J explained in *Kings Lynn* “*This is no doubt because in practice very often the calculation of unmet affordable housing need will produce a figure which the planning authority has little or no prospect of delivering in practice.*” (at 35).
- (2) Dove J’s expectation is true of Medway. It is wholly unrealistic to expect the Council to deliver its assessed affordable housing need in full (744 affordable dwellings per annum)
- (3) Medway has set itself, in its Housing Strategy, a target which it considers achievable of 204 affordable dwellings per annum.<sup>96</sup> In the last 5 years it has met 89% of that target.<sup>97</sup>
- (4) In this case the Appellant is offering to secure a policy-compliant level of affordable housing. It is doing simply what policy requires, and no more.

### (3) Other Benefits

94. Save for the net improvement in biodiversity and the provision of a nursery which can be given **moderate** weight, the other benefits which the Appellant claims are either of limited weight (e.g. economic benefits from construction jobs); simply meet policy expectations and therefore are neutral (e.g provision of public open space); or not material at all (e.g New Homes Bonus<sup>98</sup>).

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<sup>96</sup> CD5.18

<sup>97</sup> CD5.7 AMR 2020, p39 Gross Affordable Completions 2015/16-2019/20 = 909.  $909/1020 = 0.89$

<sup>98</sup> Although local finance considerations, such as the new homes bonus, are capable of being a material considerations, it is only so far as the financial considerations are material to the application: s.70(2)(b) of TCPA 1990. As the PPG ( Paragraph: 011 Reference ID: 21b-011-20140612) makes clear these can only be material considerations where it is shown that it would help to make the development acceptable in planning terms. This has not been done in this instance

95. These are matters set out in Mr Canavan's proof<sup>99</sup>, which were expanded upon in his oral evidence. They are not repeated here.

## VIII. PLANNING BALANCE

### *The Development Plan*

96. The proposal is fundamentally at odds with the development plan in a number of respects.

97. As has already been highlighted above, there is a breach of both **Policy S1** and **BNE25** which should be given **moderate weight**.

98. More significantly, for the reasons set out in respect of issue 1 above, the proposal is in conflict with **Policy BNE34**. This is a fundamental breach given that the proposal would cause considerable harm to the landscape character, visual amenity and functioning of the ALLI. The economic and social benefits of the scheme do not come close to outweighing this harm.

99. This policy should be given full weight because:

- (1) As Mr Chard agreed, the conclusions of the MLCA supports the continuing validity of the functions of the ALLI, and therefore provides an evidence base for the policy restriction;
- (2) As Mr Wilford recognises<sup>100</sup>, the policy is not a general restraint policy - it only prohibits development where material harm is caused, and where that harm is not outweighed by economic and social benefits of the proposal. It therefore incorporates an internal balance.<sup>101</sup> That being the case, the housing land supply situation does not provide any proper basis for reducing the weight to be given to this policy,
- (3) BNE34 is consistent with national policy, specifically NPPF, para 170 which required the protection and enhancement of valued landscapes, such as the ALLI.

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<sup>99</sup> Canavan Proof, paras 7.87.24, and XIC (Canavan) noting that Mr Canavan explained that he had increased the weight to be given to the nursery provision having heard the Appellant's evidence.

<sup>100</sup> Wilford Proof, para 3.14

<sup>101</sup> Wilford Proof, para 3.19



(4) Finally, in the most recent appeal decision on this issue – Orchard Kennels<sup>102</sup> - the inspector gave detailed and cogent reasons for giving the policy full weight. The Inspector is invited to follow this decision (and, in accordance with the principle of consistency in decision making, would be required to give reasons if he wished to depart from it).

100. The only reason Mr Wilford gave for reducing the weight to BNE34 (and even then, only to moderate) was because, in his view, there was only partial compliance with the NPPF on the basis that BNE34 does not establish a criteria-based approach. However, as he accepted in cross-examination, the NPPF does not require a criteria-based approach to be adopted. To the contrary it requires plans to protect and enhance valued landscapes (NPPF174) and to distinguish between the hierarchy of internal, national and locally designated sites (NPPF175): which is exactly what the local plan does (including BNE34).<sup>103</sup>

101. In light of the fundamental conflict with development policy, which is to be given full weight, the breach of **Policy BNE34** should be given **substantial weight**.

102. Despite Mr Wilford’s entirely unrealistic protestations to the contrary, the proposal is plainly in breach of the development plan as a whole.

### ***NPPF***

103. While the proposal finds support from some policies in the NPPF with which it would be consistent – chief amongst them, the objective of significantly boosting the supply of housing<sup>104</sup> - it would fail to protect, let alone enhance, a valued landscape, **contrary to NPPF, para 174(a)**

### ***The tilted balance***

104. It is accepted that, due to the lack of a five-year housing land supply and the housing delivery test result, the tilted balance would be in play (i.e. NPPF, para 11(d)(ii)). Thus, as a matter of national policy, the decision maker is required to ask: “would the adverse

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<sup>102</sup> **[CD6.4]** See paras 24-29. Note that the inspector also gave reasons for disagreeing with the position adopted in the *Gibraltar Farm* appeal **[CD6.1]**, a much earlier appeal prior to the 2019 NPPF

<sup>103</sup> It would appear that Mr Wildford’s criticism may have been based on the 2012 NPPF which at para 113, in the equivalent paragraph to what is now NPPF 175, stated that “*Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged.*” **This is not found in the current version of the NPPF and is no longer government policy.**

<sup>104</sup> NPPF, para 60

impacts of granting permission significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”?

105. It is settled law that, in answering that question, the decision-maker is entitled to have regard to the policies of the development plan: *Gladman Developments Limited v SSHCLG* [2021] EWCA Civ 104 [CD6.10] Indeed, at para.60 Lindblom LJ went as far as to state:

*“It is clear, therefore, that a complete assessment under paragraph 11d)ii, in which “adverse impacts” and “benefits” are fully weighed and considered, may well be better achieved if relevant policies of the development plan are taken into account. This is not a substitute for discharging the decision-maker’s duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. It is integral to that process.”*

106. In this case the answer to the titled balance question is clear-cut.

107. The significant adverse impacts on the landscape character and visual amenity of the area, as well as the functioning of the ALLI; taken together with the breaches of both development plan and national policy, and the consequent harm caused to the public interest in the plan-led system, significantly and demonstrably outweigh the benefits of the scheme, chief amongst them the delivery of housing.

## **IX. CONCLUSION**

108. It follows from the above that material considerations do not outweigh the breach of the development plan. Accordingly, the Council invite the Inspector, applying section 38(6) Planning and Compulsory Purchase Act 2004, to refuse planning permission and dismiss the appeal.

**Robert Williams**

**CORNERSTONE BARRISTERS**

**25<sup>th</sup> October 2021**