Pickerings Farm Inquiry

APPELLANTS' *CLOSING* SUBMISSIONS

Introduction

1. The Appellants' case is the determination which would be in accordance with the development plan when read as a whole would be to allow the appeals and material considerations do not indicate otherwise. Accordingly, the appeals should be allowed.
2. The Council's case is the determination which would be in accordance with the development plan when read as a whole would be to dismiss the appeals and material considerations do not indicate otherwise. Accordingly, the appeals should be dismissed.
3. However, if the Secretary of State agrees with the Appellants that the appeal proposals accord with the development plan when read as a whole, then as Mr Wood confirmed in answers in cross-examination, the Council does not contend that the appeals should be dismissed nonetheless because of material considerations. The Council does not have a second ("other material considerations") step in its case.
4. The Council's case stands or falls with the answer to the question of development plan compliance. If the Secretary of State agrees with the Appellants concerning the development plan, then the appeals should be allowed.
5. By way of contrast, the Appellants do have a second step in their case because in the event the Secretary of State agrees with the Council that the appeal proposals do not accord with the development plan when read as a whole, it is our case that material considerations (namely, the extensive public benefits the appeal proposals would bring, including the much needed 30% affordable housing) would indicate that the appeals should be allowed, nonetheless.

Context

6. The appeal sites are, in the view of the Council,[1] a strategically important location and allocation central to the achievement of the strategy in the Central Lancashire Core Strategy and the South Ribble Local Plan.

[1] Richard Wood Proof paragraphs 8.4, 8.5, 8.6

7. Pickerings Farm is the largest housing allocation in the Local Plan.
8. The appeal sites constitute the major part, some 67%, of a Strategic Site Allocation (appeal sites A and B are Allocation "EE" 78.25 ha; "A" 45.88 ha; "B" 6.39 ha; "A" and "B" 52.27 ha). Local Plan Policy D1 indicates 1,350 homes as the "estimated number of dwellings" for the allocation. The appeal applications ("A" up to 920 homes, "B" up to 180 homes) propose up to 1,100 homes, some 82% of the indicative number.
9. Sensibly, there can be no in-principle objection to the appeal proposals.
10. Consequently, in order for the conclusion to be reached that the appeal proposals do not accord with the development plan, (a) there would need to be a policy concerning a point of detail (rather than principle) which the appeal applications do not comply with, and (b) the breach in question means that the appeal proposals do not accord with the development plan *when read as a whole*. As is well-known, even in the event of noncompliance with a, or even a number of, development plan policies that does not necessarily mean the application does not accord with the plan when read as a whole. In other words, the point of detail whatever it might be would have to outweigh the appeal proposals' in-principle compliance with the development plan given the allocation.
11. In order to address the issue of accordance or not with the development plan it makes sense to address first the policies referred to in the reasons for refusal, before secondly checking whether there are any other development plan policies which bear on the subject.

<u>The Reasons for Refusal</u>

12. The Council refused both applications for identical reasons. There are 11 of them. Some overlap. One of them (RfR 9 concerning sporting provision) has been resolved and a way forward has been agreed between the Appellants and the Council to address RfR 8 concerning air quality. That leaves 9 RfR which the Inspector has grouped into main issues 1 – 4.

<u>1st main issue: masterplanning, design code, phasing, infrastructure delivery, and implementation programme</u>

13. The 1st main issue draws together RfR 5 and 6 which contend that the appeal proposals are contrary to Local Plan Policy C1.
14. RfR 5 states that the "*masterplan has not been formally agreed by [the] Council"* and that the masterplan *"does not meet the policy requirements".*
15. RfR 6 is that *"The submitted documentation provides insufficient detail on how the site will be delivered and no detailed phasing plan has been submitted and no programme of implementation has been agreed."*
16. Addressing RfR 5 first: LP Policy C1 a) does require "an agreed" Masterplan. It might have been thought from the RfR that the Council considered there to be a policy requirement for a Masterplan to be agreed before a planning application could be *submitted*. This was certainly the understanding expressed in emphatic terms by the Leader of the Council when he spoke at the inquiry. However, as confirmed by the Council during the inquiry, the policy does not dictate that the Masterplan has to be "agreed" separate from a planning application, nor that it can only be "agreed" by the Council. Put shortly, and as also confirmed by the Council, if the Secretary of State concludes in the appeal decision the submitted Masterplan is suitable then that would satisfy the policy.
17. With that in mind, the next issue which arises from RfR 5 is whether the submitted Masterplan [CD 1.16] "meets the policy requirements". As Dr Price confirmed in answers in cross-examination, "the policy" referred to is the policy specified in RfR 5 namely LP Policy C1.
18. What then does Policy C1 require with regards the Masterplan?
19. Policy C1 requires (*"must"*) the Masterplan to include the allocated and safeguarded land *"to Coote Lane"*. The Masterplan does. This is a straightforward matter of fact.
20. The safeguarded land in question is location "S2" in Policy G3 which provides:

> "Within the borough, land remains safeguarded and not designated for any specific purpose within the Plan period at the following locations: [..]
>
> Existing uses will for the most part remain undisturbed during the Plan period or until the Plan is reviewed. Planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land."

In other words, one cannot make a planning application now for e.g., housing development on the safeguarded land.

21. Policy C1 requires (*"must"*) the Masterplan to *"make provision for a range of land uses"*. The Masterplan does. This is a straightforward matter of fact.
22. Policy C1 says that the Masterplan is to be *"for the comprehensive development of the site."* Here *"site"* can only mean the allocated site.
23. Given that Policy C1 does not require a single planning application to be brought forward (even for the allocated land) it seems obvious that the underlying purpose of requiring a Masterplan is to ensure that as and when planning applications are made for the development of parts of the allocated site, which after all is in multiple ownerships, there is *an overall strategy for the wider area* which individual applications should be consistent with, so that the individual parts facilitate rather than inhibit or preclude bringing forward the greater whole. Dr Price and Mr Wood agreed with this in answers in cross-examination. The definitions of "Comprehensive Development" and "Comprehensive Masterplan" in the Glossary in Appendix 8 of the Local Plan[2] are entirely consistent with this agreed position.
24. The Masterplan which accompanies the two appeal applications is indeed "for the comprehensive development of the [allocated] site" in this, the agreed, sense. This too is a straightforward matter of fact.
25. There are no other "policy requirements" for the Masterplan set out in Policy C1.
26. Accordingly, as Dr Price agreed in answers in cross-examination the submitted Masterplan meets the requirements of the policy.
27. The Appellants do not contend that because the Masterplan meets the requirements of Policy C1 in that it includes the allocated and the safeguarded land, is for the comprehensive development of the site and includes the specified range of land uses, the Secretary of State *must* "agree" the submitted Masterplan. However that is *not* the point made in RfR 5. Instead, the RfR contends the Masterplan does not meet the "requirements" of Policy C1 (rather than it being unacceptable for some other reason) and, as seen, the assertion made in the RfR is plain wrong.

[2] CD 5.2 original page 158, PDF page 164

28. What then is said in the Council's evidence concerning the acceptability or otherwise of *the Masterplan*? Very little. As confirmed by Dr Price in answers in cross-examination, many of his points relate to a criticism that the appeal applications do not include the entirety of the allocated site. This is demonstrated by his repeated refrain that the *applications* and the accompanying Design & Access Statement [CD 1.17] are not "comprehensive" *because <u>they</u> do not address the entirety of the allocated site*. Of course they don't – that is the role of the comprehensive Masterplan. Dr Price's central criticism is misplaced (a) as the RfR concerns the Masterplan, not the appeal applications and the accompanying DAS, and (b) as Dr Price confirmed in answers in cross-examination, Policy C1 does not require a single planning application to be brought forward for the land which it requires to be included in the Masterplan.
29. What of Dr Price's other criticisms *of the Masterplan itself?* These rest on a review carried out by him in his proof of evidence applying the "12 considerations" set out[3] in "Building for a Healthy Life" (CD 10.22) dated June 2020. One of the Appellants, HE, is one of the "partners" to this publication.
30. It is important to put Dr Price's analysis in its proper context.
31. First, there is no evidence to substantiate that any of the points he makes are points which *the Council* considers are ones which should lead to the Secretary of State not agreeing the Masterplan. None of Dr Price's points are mentioned in the officer's report, the RfR, the Council's Statement of Case or the exchanges of emails before the inquiry in which the Appellants sought clarification of the Council's case concerning the Masterplan.
32. Secondly, the use of BfHL was never raised as a point by the Council during the processing of the applications. This is unsurprising given that despite Dr Price's assertion that: "The use of BHL and its predecessor Building for Life is embedded in.."[4] the development plan and the Central Lancashire Design Guide SPD, as he agreed in answers in cross-examination, it is no such thing. His proof refers to CS Policy 17[5] which is a policy concerning the "Design of New Buildings" which mentions (in item "l") "achieving BFL rating of "Silver" or "Gold" for new residential development" as

[3] CD 10.22 original page 3, PDF page 2
[4] Dr Price's proof 4.0.1 page 12
[5] CD 5.1 page 104

something which design "will be expected to take into account". BFL is no longer in force and the current publication BfHL has dropped the gold, silver &c ratings system. So that's not very promising for Dr Price's thesis. There is nothing in the LP, which also predates BfHL, about the predecessor BFL. The SPD[6] which is ten years old (2012) mentions the predecessor document in passing and in any event is not a policy document. Neither the development plan nor the SPD advocate the use of BfHL (or its predecessor) as a way of auditing the masterplans required by various policies in the LP.

33. Thirdly, these points matter because BfHL recommends that "[t]he best way to use BHL is to use the **12 considerations as a starting point and for those involved to agree what is needed to secure a green light against each consideration**. It is particularly helpful if local authorities clearly explain what is expected to secure a green light against a particular consideration."[7] The Council has never sought to do this. This gives rise to the obvious problem of retrospectively applying BfHL as if it was some form of score sheet: (a) it is meant to be a collaborative "**design process structure, not a scoring system**",[8] and (b) if like the Council here, one has never sought to apply BfHL in a collaborative manner, it simply cannot be appropriate to seek to apply it now in the way Dr Price has.
34. Fourthly, and in any event, each of the "Considerations" has a page setting out "What's needed" for each of them in turn[9] none of which have been applied by Dr Price in his analysis. In effect, he has taken the "Considerations" as *headings* for his work and then worked out what without engagement with the Appellants he thinks might be a good idea for those of the "Considerations" he thinks are relevant. This is all very interesting but is not how BfHL works.
35. Fifthly, a theme of Dr Price's evidence is that he would have preferred more "detail" in certain respects. Mr Thornton considers the Masterplan provides sufficient detail and that there is a danger in putting more, or too much, detail in what is after all a

[6] CD 6.4
[7] CD 10.22 original page 8, PDF page 5. The emphasis is in the original document.
[8] Op. cit.
[9] CD 10.22 original pages 14, 20, 26, 32, 38, 44, 50, 56, 62, 68, 74, 80 PDF pp. 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41

strategic overall vision for the allocated site – the big pieces in the jigsaw puzzle if you will.

36. Sixthly, and in any event, Dr Price agreed in answers in cross-examination that all of the details he would have preferred to have at this stage could be secured by conditions, and, seventhly, importantly, that nothing in the Masterplan would preclude a satisfactory outcome applying BfHL.
37. Eighthly, as a matter of fact, the Masterplan *has* been audited applying BfHL by the independent design review team within HE and found to be satisfactory.[10] Dr Price rather churlishly said this was "unsurprising"[11] but he confirmed in answers in cross-examination that he did not challenge the independence of the process, and Mr Thornton explained in his oral evidence in chief just how rigorous the process was and that it was most certainly not the soft touch which Dr Price's language might be taken to imply.
38. Ninthly, none of the very few specific points made by Dr Price amount to anything of substance. (A) He expressed concern that *the applications* would not deliver the entirety of the CBLR as it crosses the allocated site – this subject is discussed extensively later on – but of course *the Masterplan* does include the entirety of the CBLR; Dr Price had no constructive suggestions to make concerning what the owners of part of the allocated site could do beyond making a CIL payment (estimated in this case at some £7.6m) to deliver the link road on that part of the allocated site which they do not control and / or (*if* needed) a new crossing over the WCML. (B) In any event, Dr Price's interest in the CBLR was related to two specific points. (i.) He saw the link road as the means by which to ensure the rural lanes are not used by cars from the development site but as he agreed in answers in cross-examination, there would still have to be physical measures employed even with the CBLR to inhibit cars from accessing the lanes from the development parcels of the allocated site, and he agreed that there must be engineering solutions to this issue which arises *from the allocation itself*. (ii.) Dr Price believed the CBLR would assist with the provision of a bus loop. That might or might not be the case, but in any event remember that the RfR concerns *the*

[10] As discussed by Adam Thornton in his proof of evidence at paragraphs 90 – 97, pages 33, 34
[11] Dr Price's proof of evidence 4.13.1 page 32

Masterplan which includes the entirety of the CBLR in any event. Also, the s106 planning obligation secures the provision of bus services.

39. (B) Dr Price believed the car parking strategy to be unambitious; he agreed in answers in cross-examination that this was not a point that the Council had ever raised before and in any event that it could be resolved by way of a suitably-worded condition; he was asked to give thought to what he wanted in order to address his concern but nothing has been seen from him since.
40. (C) Dr Price disagreed with the building heights parameter plan and somewhat perplexingly said that he disagreed with the Council's position on heights too but be that as it may, this matter has been resolved by way of an agreed condition on building heights.
41. Finally, Mr Thornton explained the Masterplan in his written and oral evidence on the basis of which the only sensible conclusions are that the process by which it was drawn up was thorough, inclusive, collaborative and extensive, and that the Masterplan itself is entirely suitable; it is more than fit for purpose.
42. Turning to RfR 6 this draws on those parts of Policy C1 that require *"a phasing and infrastructure delivery schedule"* and *"an agreed programme of implementation."*
43. The Appellants have submitted a schedule and programme to meet these requirements. It is found at Mr Alsbury's Appendix 2 and is dated July 2022. It was submitted in draft *"for discussion with [the Council]"*. The Appellants explained they would welcome any constructive comments the Council wished to make, but in any event as paragraph 1.3 of the document explains: *"The Appellants would expect there to be an obligation attached to each of the planning permissions which requires a fuller Delivery Strategy to be submitted and approved at an appropriate point before the development commences."* This latter point is secured by the s106 planning obligation.
44. The submitted schedule and programme does what the policy requires – it <u>is</u> "*a phasing and infrastructure delivery schedule"* and a *"programme of implementation."*
45. The *only* point raised by Dr Price on the schedule / programme related to the timing of the provision of the local centre which he considered should happen earlier than specified in the draft document. This has now been addressed in the s106 planning obligation. Dr Price confirmed in answers in cross-examination he had no other points. He did though commend the early delivery of green infrastructure.

46. To the extent the RfR makes the point about the programme not having been "agreed" (as in, agreed *by the Council*) the points made earlier on apply just as much here.
47. The Inspector's 1st main issue also refers to the design code. The last few words of Policy C1 refer to a design code. The Appellants have submitted a design code. As Dr Price agreed in cross-examination, none of the RfR criticise the design code.
48. In conclusion, contrary to RfR 5 & 6, the Masterplan, phasing and infrastructure delivery schedule and programme of implementation accord with the terms of LP Policy C1.

2nd main issue: whether or not the proposed development would have a severe adverse impact on the local highway network

49. This main issue combines RfR1 and RfR2 both of which contend that *"it has not been demonstrated that the proposed development would not have a severe adverse impact on the local highway network."* The phraseology is drawn from NPPF paragraph 111 which mandates:

> *"Development should only be .. refused on highways grounds if .. the residual cumulative impacts on the road network would be severe."*

50. The double negative in the RfR is telling. Neither RfR contends that there *would be* a severe adverse impact. Their wording is characteristic of the approach of LCC as county highway authority. Be that as it may, in order to contemplate the dismissal of the appeals on the basis that they would cause severe adverse impacts there would need to be clear evidence to substantiate that this would be the case. This is an important point. The RfR assert that because it has not been demonstrated that there would not be a severe adverse impact (the double negative) the proposals are "contrary to the requirements of para. 111 of the NPPF." The approach in the RfR is plain wrong. If LCC wishes the appeals to be dismissed because there would be a severe adverse impact it is for LCC to make good its case. The Appellants' evidence certainly does not substantiate there would be a severe adverse impact. The key issue is whether Mr Stevens' evidence does. The Appellants' case is that Mr Stevens' evidence does not.

51. RfR 1 & 2 also claim the double negative is contrary to "the requirements of" CS Policy 17 and LP Policy G17. The reference in both RfR to CS Policy 17[12] is mystifying as it says nothing at all about highways impact. Its inclusion is an example of sloppy thinking. LP Policy G17[13] does contain a proviso in its item "c)" that "The development would not prejudice .. the free flow of traffic" however (1.) this is inconsistent with NPPF 111 which sets the bar far higher ("severe" is a far more exacting requirement) and (2.) in any event, the Council does <u>not</u> invite the dismissal of the appeals on the basis that the proposals would prejudice the free flow of traffic; Mr Stevens contends that there is already congestion, rather than free flowing traffic, in the peak hours at the 5 junctions he is concerned about; that by 2035 this congestion would be a lot worse because of general traffic growth and committed developments regardless of the traffic from the proposals, which in turn would worsen the situation; given this, the reference to LP Policy G17 in the RfR is misplaced. In truth, this main issue turns on NPPF 111 and not the development plan.
52. The Framework does not define what it means by "severe" and so it is used in its ordinary meaning rather than as a term of art. The OED tells us "severe" means "very great". Mr Stevens agreed in answers in cross-examination with this approach.
53. Mr Axon considers that journey times are the appropriate way in which to gauge whether the proposals would cause a severe adverse impact. This approach has the ring of common sense about it. After all although a driver might or might not get the hump about encountering congestion at junctions en route, and might or might not be interested in their average speed, ultimately what counts is how long it has taken you to get from A to B.
54. In answers in cross-examination, Mr Stevens took what can only sensibly be described as an extreme position in which he repeatedly described journey times as "meaningless" as a way of gauging whether there would be a severe adverse impact. Whatever else might be concluded, it simply cannot be the case that an understanding of the effect of the proposals on journey times is beside the point. In this regard it is noteworthy that Mr Stevens' colleagues at LCC utilise changes in journey times, albeit via a different model to the one used by Mr Axon, in the County Council's planning

[12] CD 5.1 page 104
[13] CD 5.2 page 96 (PDF page 102)

application to report the effects of LCC's proposals to dual the A582. Their doing so gives the lie to Mr Stevens' position.

55. Mr Stevens' extreme position led him into difficulties in answers in cross-examination; originally he said that the *largest* increases in journey times (which range from a bit less than an additional 2 minutes on a journey of a bit over 13 minutes, to a bit less than 3 minutes on a journey of a bit more than 15 minutes) in the peak hours which would occur on only *one*[14] of the several routes assessed *would* constitute a severe (very great) adverse impact whereas the increases outside the peak hours of a minute or so *would not*; he then shifted his position to saying even the larger increases in journey times would not be severe; then he shifted again to a position which arose from an intervention by Mr Ponter that one couldn't tell from journey times whether impacts would or would not be severe, picking up his earlier comments made on several occasions that journey times are meaningless; until finally saying in relation to any of the increases in journey times: "***it would be unreasonable for me to say they are severe"*** [15]

56. The upshot of this is that if the Secretary of State finds Mr Axon's modelling of journey times to be a useful basis upon which to conclude whether there would be severe adverse impacts, the Secretary of State has Mr Axon's evidence that the changes in journey times would not represent a severe adverse impact however he does *not* have evidence from Mr Stevens expressing a contrary position. So if journey times are a helpful ("real life"[16]) metric, the Council makes no case concerning them in relation to NPPF 111.

57. The results of Mr Axon's microsimulation modelling in terms of journey times are shown and explained for Routes A (the A582), B (Leyland Road) and C (the A6)[17] with optimised signal settings in Mr Axon's Rebuttal Proof paragraphs 1.90 – 1.105, pages 23 to 29, and for the other routes modelled (namely Route 6 from Penwortham Way to the A6 via Coote Lane; Route 7 the Penwortham bypass and Route 5 which is a route through Penwortham town centre) in the TA[18] without optimised signal settings, and

[14] The A582 as shown as "Route A" on Mr Axon's Figure MA-Rebuttal 1-12 on rebuttal page 28
[15] Thursday 30th August 2022 PM session YouTube video at 3:28:40 to 3:28:51
[16] Mr Axon's apt phraseology in his Rebuttal paragraph 1.87 page 23
[17] See footnote 14 reference for where these are shown
[18] The TA is CD 1.68 see variously original pages 57, 60, 61 PDF pages 63, 66, 67

finally Route 6 with optimised signal settings is found in Mr Axon's Rebuttal Appendix 2 at paragraphs 26 – 31, pages 43 – 45.

58. Mr Axon explained in his evidence in chief that the effects of the proposals should be looked at across the whole day rather than isolating (as Mr Stevens has) the peak hours. Even if there would be a large change in relative journey times (there wouldn't but were there to be) in the peak hours, this would not substantiate a severe adverse impact. As an inspector concluded and as the Secretary of State agreed in the *Hertford* decision *"..any additional delay however carries less weight as it is not the aim of policy to protect the convenience of commuting car drivers."*[19] The relevance of this observation is two-fold namely, first the Appellants ask for a consistent approach to be applied in deciding their appeals, and secondly, the observation is correct.

59. The modelled changes in journey times along the various routes whether across the day or simply in the peak hours are for the most part very small indeed, many are miniscule, and intangible; even the largest changes (which are limited to the peak hours on only one route) are modest and it would be an abuse of English language to describe them as very great / severe. Whether looked at in the round, as the Appellants suggest the Secretary of State should, or whether one isolates the peak hours, the impacts of the proposals simply cannot be characterised as severe.

60. Mr Stevens' various and serial criticisms of Mr Axon's modelling do not change the position. As Mr Axon explained in his evidence in chief, the largest difference in the inputs as between his modelling and Mr Stevens' concerns whether one should (as per Mr Stevens) or should not (as per Mr Axon) add "unknown" growth from TEMPRO. Mr Axon explained this accounted for a circa 15% difference between the traffic flows in his and Mr Stevens' analyses. The dispute about which base year to use (Mr Stevens, 2018 v Mr Axon, 2021) some 11%. How committed development trips are distributed some 3%, and trip rates from the proposals some 2%. Nothing else makes any real difference. Mr Axon has explained his position on all these disputes, and others besides, in his written evidence via his proof and rebuttal[20] and his oral evidence in

[19] CD 10.44 (18th November 2013) IR 10.44 PDF page 90, DL 24 PDF page 6; discussed in Mr Axon's proof p. 21

[20] Mr Axon's **proof** 6.15 – 6.22; Mr Axon's **Appendix 9** p.176 [PDF p.177] pp. 181 – 183 [PDF pp. 182 – 184] paras. 4 – 12; p.185 [PDF p. 186] paras 71 – 79; Mr Axon's **Rebuttal** 1.52 – 1.70 (pp. 15 – 17 / PDF pp. 18 – 20); 1.23 – 1.48 (pp. 7 – 14; PDF pp. 10 – 17); para. 65 (p.9 / PDF p. 11); 1.106 – 1.110 (pp. 29, 30 / PDF pp. 32, 33); Mr Axon's **Rebuttal Appendix 1** pp. 10 – 13 [PDF pp. 12 – 15] paras. 71 – 79; paras. 50 – 53 (p. 8 / PDF p.10);

chief, cross-examination and re-examination together with a written note on TEMPRO.[21]

61. It would not be right to conclude that NH's letter dated 28th July 2022[22] which states NH have no objection to the proposals analyses the disputes and sides with Mr Stevens. As Mr Axon explained in his Rebuttal[23] detailed responses had been provided to NH concerning all the points previously made by NH on Mr Axon's modelling; at no stage, even now, has NH commented on any of this additional analysis; instead it seems NH have simply although not entirely adopted inputs used by Mr Stevens so as to move on and reach their concluded position of no objection, that is no objection *even* relying on Mr Stevens' work.
62. *To the extent it is considered necessary to resolve any of these disputed matters,* the Appellants submit that Mr Axon's approach on each and all of them should be preferred to Mr Stevens'.
63. *However,* the bigger picture is more important in view of which it may well be considered unnecessary to resolve the disputes, fundamentally because whichever way they are resolved makes no real difference to the outcomes. This is because: (1.) as Mr Axon explained in his evidence in chief, the context is that there is a plus or minus tolerance of some 10% in the survey data, and daily variations in traffic are typically some plus or minus 15%; (2) Mr Axon has produced a sensitivity test[24] in which traffic flows in *both* the "without" and the "with" the appeal development scenarios have been increased by 10%; (3) Mr Axon has produced a sensitivity test[25] in which higher development trip rates, akin to those utilised by Mr Stevens, have been fed into the microsimulation model; (4) the results of these sensitivity tests show no change in the phenomenon concerning journey times namely that mostly the effect of the proposals would be barely registrable if registrable at all and even the largest effects would be nothing to write home about – they certainly could not be characterised as very great / severe; and (5) Mr Axon explained in his evidence in chief

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para. 66 (p.10 / PDF p.12); paras. 80 – 90 (pp. 13 – 16 / PDF pp. 15 – 18); paras. 91 – 98 (pp. 16. 17 / PDF pp. 18 / 19)

[21] CD XXXX

[22] Mr Axon's Rebuttal Appendix 4

[23] At his Rebuttal paragraphs 1.94 – 1.100 pages 26 - 27

[24] "Test 3" as reported in his Rebuttal Appendix 1 at paragraphs 139 – 148 pages 33 - 36

[25] "Test 2" Mr Axon's Rebuttal Appendix 1 paragraphs 133 – 138 pages 30 - 33

that the same outcome would arise even were all of Mr Stevens' points to be accepted.

64. Finally, before turning to Mr Stevens' own assessment, Mr Stevens describes in his proof[26] how Mr Axon's modelling shows on *one* of the routes (the A582) average speeds in *one* direction in the *PM peak hour* would reduce by 1mph (from 7.6 mph to 6.5 mph). Despite his view that changes in journey times are meaningless and cannot be used to assess whether there would or would not be a severe adverse impact, it has to be said, bizarrely Mr Stevens considered average speed was meaningful and answered in cross-examination that a change of 1mph in average speed along a (2 ½ miles) route *would* amount to a severe (very great) adverse impact. It is impossible to take this seriously. Mr Stevens' position lacks credibility. It is unbalanced to put it mildly. A change of this nature would be indiscernible.
65. Moving away from Mr Axons' analyses and turning to Mr Stevens', LCC has produced its own "standalone" modelling for 7 junctions of which Mr Stevens identified in his evidence in chief and confirmed in answers in cross-examination, 5 junctions are of concern to him. These are the junctions referred to in his proof of evidence tables 12 (p.94), 13 (p.96), 14 (p.97), 15 (p.99) and 17 (p.102).
66. Mr Stevens claimed the results reported in these tables substantiated that the appeal proposals would cause severe adverse impacts. Originally, Mr Stevens contended that the impact at all 5 would be severe but in cross-examination he confirmed that the impact on the Table 12 junction from the appeal proposals would be "slight" and not severe.
67. Despite Mr Stevens' assertion in re-examination that the Secretary of State should have "100% confidence" in the modelling results in reaching a view on whether there would be severe impacts, and that "100% reliance" should be placed on them, there are as put (*and agreed to*) in cross-examination of Mr Stevens a number of issues which tell against reliance on the results, and as Mr Axon explained in chief, the results cannot be relied upon at all, they are not fit for the purpose of assessing whether there would be a severe impact.

[26] 4.1.83 page 44

68. First, the 5 tables utilise either LINSIG (tables 12, 15 & 17) modelling which expresses results by reference to percentage Degree of Saturation or ARCADY (tables 13 & 14) which utilise RFC (Ratio of Flow to Capacity). Mr Stevens agreed in answers in cross-examination, once the degree of saturation reaches or exceeds 100%, the algorithm becomes unstable and does not produce a reliable indication of queue length. Similarly, as Mr Stevens agreed in answers in cross-examination, once the RFC reaches 1, the algorithm cannot cope, breaks down and does not produce reliable results for queues or delays. Mr Axon confirmed in his evidence in chief that once the models approach or reach 100% DoS / RFC 1, they break down and simply do not give sufficiently reliable results to judge whether impacts would be severe. A good instance of the instability referred to is seen in Mr Stevens' Table 14 where on one the arms of the junction in question the model throws up a queue of some 2 ½ miles (4 km) and a delay of some half an hour in the PM peak hour in year 2035 *without* the traffic from the appeal proposals. In the real world results like this are inconceivable.
69. This means that referring to the results in these tables which seek to compare the situation without, and then with, the traffic from the appeal proposals (basically, how much redder do the red entries become so to speak) is a fruitless task as one simply cannot rely on the degree of worsening which the tables show as occurring with the appeal proposals' traffic. And as one cannot rely on what the tables are saying the degree of worsening would be, one cannot rely on them to gauge whether whatever the impact would be, it would be severe / very great.
70. Secondly, as Mr Stevens agreed in answers in cross-examination the results shown in the 5 tables for 2035 *without the traffic to and from the appeal proposals* (the middle set of data in each table) show that interventions would be needed to address the issues at the junctions in question in any event, in other words, regardless of the appeal proposals. Mr Stevens explained in answers in cross-examination, the Table 12 junction has been identified for interventions and improvements (i.e. in any event) and that the dualling of the A582 would resolve the issues at the junctions shown in his tables 13 & 14. Basically at some point between now and 2035 something would need to be done anyway at all 5 junctions. It is not of course the responsibility of the Appellants to resolve these issues. Instead, applying NPPF 110 d) one would need to see whether there are cost-effective ways to mitigate *"any significant impacts from*

the development." The Appellants do not accept there would be such impacts at any of the 5 junctions in question *from the appeal proposals* and Mr Stevens has not suggested any cost-effective mitigation which satisfies the tests in regulation 122 of the CIL Regulations in respect of planning obligations, or NPPF 56 for conditions.

71. To cast the net wider, RfR 4 & 7 assert that the completion of the CBLR is "necessary" in order "to support" the appeal proposals. There is no evidence at all – not a shred – substantiating that a planning obligation requiring the Appellants to make a financial contribution towards the (small) part of the CBLR that they will not be building themselves and / or a new road bridge across the WCML would meet the tests in Regulation 122, nor that a condition, which one assumes would be in Grampian-style, relating to the completion of the link road including a new road bridge over the WCML would meet the tests set out in NPPF 56. The work in support of LCC's application to dual the A582 shows that even including more development (a larger number of homes) in the model than the appeal proposals promote[27], when comparing journey times without the completed CBLR and with it there is no tangible difference and certainly none which would justify requiring the Appellants to fund the completion of the CBLR including a road bridge over the WCML or holding back the development until these are in place.[28]

72. The position is exactly the same in relation to any claim that the Appellants should contribute towards, or the development should be held back until, the A582 dualling; again, see Mr Axon's report of the journey time differences in the without and with dualling scenarios.[29]

73. Thirdly, the standalone nature of the models in which each junction is modelled in isolation i.e. as if it existed without other junctions before or after it in one's journey necessarily assumes that there are no problems at any other junctions on the route despite the models for the other junctions showing congestion at each of them. This is unreal. It is certainly unrealistic. As was put to Mr Stevens in cross-examination "all the traffic arrives as if by magic at each junction", to which he answered "Yes, except

[27] As explained in Mr Stevens' proof paragraph 2.4.6 pages 11, 12. In answers in cross-examination he confirmed that modelling includes more homes at Pickerings Farm than the appeals propose.
[28] See the analysis in Mr Axon's proof with regards scenarios 4 and 5 at pages 70, 71, 74, 75
[29] Mr Axon's proof with regards scenarios 3 and 5 at pages 70, 71, 72

for the magic". This is another reason why the models cannot be relied upon to assess whether the appeal proposals would cause severe adverse impacts.

74. Fourthly, the standalone models use a synthesised peak. It introduces a curve ("the Trumpian [fake] curve"), which creates a peak for half an hour within the peak hour. In other words it artificially increases the traffic demand. As Mr Axon explained in his evidence in chief, in fact the surveys show a flat profile. The reported results in the tables in question are for this synthesised (i.e. made up) peak within the peak. The compounding effect of this provides another reason why the results cannot be relied upon to assess whether there would be severe adverse effects.
75. Fifthly, the models used by Mr Stevens do not allow for traffic to re-route in order to avoid congestion at the junctions in question. Mr Stevens expressed the view in answers in cross-examination that drivers should respect the "road hierarchy" but that misses the point, namely in the real world drivers (mostly relying on their sat-navs) take alternative routes to avoid problems on the network.
76. All these reasons apply regardless of whether Mr Stevens' inputs into the models are reliable i.e. regardless of whether his view about the matters in dispute between him and Mr Axon is to be preferred. As said earlier on, it might well be concluded that there is no need to resolve these disputes. This is even more so with regards Mr Stevens' work which is so fundamentally shot to pieces that the disputes about inputs are neither here nor there by comparison. One of the assumptions made in Mr Stevens' models is that all peak hour trips are to and from work; this assumption affects the routes and distances assumed in the model; it is, of course, an utterly unrealistic assumption; another assumption is that travel by car in the peak hours will return to the levels seen pre-pandemic in 2018 and continue without any reduction in reliance on the car all the way through to 2035, which necessarily assumes that all the efforts made and money spent on promoting sustainable transport has been and will continue to be completely in vain; this too seems unrealistic; but as said, points like this pale into insignificance in comparison to the utter unreliability of the models for assessing presence or absence of severe impacts and the degree of impacts.
77. LINSIG and ARCADY models may well have a useful role in designing junction improvements but they are simply not fit for purpose in the context of NPPF 111.

78. Finally, a few words about Mr Stevens' reference to LCC's "network management duty" as set out in section 16 of the Traffic Management Act 2004.[30] The duty is "to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives – (a) securing the expeditious movement of traffic .., and (b) facilitating the expeditious movement of traffic .." To which we make the submission, all very interesting but what's this got to do with these appeals? To put the point in straightforward terms, the decision on these appeals is the responsibility of the Secretary of State, who is not the subject of the (caveated) duty in section 16 and who will instead apply his national planning policy on the subject as expressed in NPPF 111 which sets the bar for a potential refusal high, at the level of severe adverse impact rather than in terms of whether "the expeditious movement of traffic" would be impinged upon.
79. In overall conclusion, relying on Mr Axon's analysis, the proposed development would not give rise to severe impacts on the road network. Even were one to apply the County Council's alternative analysis, this does not demonstrate the proposed development would cause severe impacts on the road network either.
80. If the Secretary of State disagrees and concludes there would be severe adverse impacts then as Mr Alsbury explained in his evidence in chief, the Appellants do *not* accept the appeals should be dismissed because of this. The language of NPPF 111 is "should only be refused .. if." It is *not* "it should be refused" as one finds e.g. in NPPF 91. The Appellants would argue in the eventuality of the Secretary of State concluding there would be severe adverse impacts that the next step would be for the Secretary of State to take whatever has been found to be a severe impact (e.g. a bit more delay getting through a junction in the peak hours) and weigh it against the considerable public benefits the appeal proposals would bring. In this balance of competing considerations, the Appellants submit the public benefits of 1,100 new homes of which 330 would be affordable homes would very readily outweigh any such impacts.

[30] See Mr Stevens' Rebuttal Appendix 1

3rd main issue: the effect of the proposed improvements to the Bee Lane bridge on the safety of pedestrians and cyclists

81. The 3rd main issue draws from part of RfR 3.
82. The RfR contends there would be conflict with CS Policy P17 and LP Policy G17. The former is irrelevant as it doesn't mention highways / pedestrian / cyclist safety. The latter does in that it says in its item c): "The development would not prejudice highway safety, pedestrian safety .."
83. NPPF 111 sets *"an unacceptable impact on highway safety"* as the threshold of refusal.
84. The language of NPPF 111 postdates the adoption of the LP and it is obvious there is a difference in how the local policy on the one hand and the national on the other seek to tackle the issue. This could be resolved if (as appeared to be suggested by Mr Ponter in cross-examination of Mr Alsbury) one says an "unacceptable" impact on safety would necessarily amount to "prejudice" to safety. That is fine. What would not be appropriate however would be applying any less exacting approach to the issue of safety than that set out in NPPF 111.
85. Bee Lane Bridge is currently used by pedestrians and cyclists and there is no separation between users. There have been no injury accidents in the last 5 years. The current position in safety terms is acceptable (as Mr Stevens confirmed in answers in cross-examination, as did Mr Axon in his evidence in chief).
86. Policy 7 of the Neighbourhood Plan[31] includes the Bee Lane Bridge as part of the "Penwortham Cycle and Walking Route" which is to be *"safeguarded for a dedicated circular route for cyclists and walkers."* In other words, as a matter of planning policy more use is planned to be made of the bridge (in its current form) by cyclists and walkers.
87. The appeal proposals would similarly lead to more use of the bridge by cyclists and walkers. There would be some (not much) additional vehicular traffic on the bridge too. Mr Stevens confirmed in answers in cross-examination that his concerns do not arise from additional cars but rather from additional pedestrians and cyclists.

[31] CD 5.6 page 15

88. The question which arises therefore is whether the increase in people walking and cycling across the bridge would change the currently acceptable situation into one where the position would be unacceptable in safety terms.

89. Mr Axon reports that currently the bridge accommodates around 10 pedestrians and 5 cyclists per hour.[32] With the development Mr Axon expects some 15 more pedestrians and 10 more cyclists per hour.[33] Mr Axon explained in his evidence in chief that these figures are a judgment by way of a high-level estimate based on the multi-modal assessment in the TA. The appeal proposals seek to encourage walking and cycling and as Mr Axon explained (again in chief) he'd be happy were the numbers to be considerably more than these estimates.

90. Mr Axon's professional judgment is that there would not be an unacceptable impact on highway safety were the bridge to be left as it is (i.e. without any improvements to it).[34] As he explained in chief, the character of the bridge would not change (from being acceptable in safety terms to being unacceptable in safety terms) with greater use by pedestrians and cyclists.

91. Mr Axon applies by analogy the guidance on "Quiet Lanes" which are minor roads, rural in character not necessarily in a rural area which are *appropriate for shared use* by walkers, cyclists and vehicles; they have low traffic flows (as in less than 1,000 vehicles per day) travelling in the main at below 35 mph along narrow road widths (less than 5 m); as Mr Axon explains[35] Bee Lane and its bridge fit the criteria for a Quiet Lane as usage is in the order of 250 vehicles a day, with a 30 mph speed limit and the carriageway is less than 5 m.

92. *However,* Mr Axon has advanced two options for changes to the bridge in the event that the view is reached that something must be done to improve the safety of the bridge, the latest of which is set out e.g. in his proof of evidence.[36] In essence, this would provide for the shared use of the carriageway by vehicles and cyclists and a separate footway for pedestrians with measures to protect the footway from encroachment by vehicles, and to protect the bridge parapets from collisions. The

[32] Mr Axon's proof p.84 at [8.32], derived from surveys over 3 days
[33] Op. cit. 8.33 page 84
[34] See e.g. Mr Axon's Rebuttal at 3.36 – 3.42 pages 37, 38
[35] For all of this see his Rebuttal at 3.39 – 3.41 page 38
[36] Mr Axon's proof page 28

arrangement envisaged would be similar to that found at the Coote Lane railway bridge to the south of Bee Lane.[37]

93. Mr Axon's evidence is that these improvements to the bridge would satisfactorily address any safety concerns (should the view be formed that leaving the bridge as it is would be unacceptable). [38]
94. The arrangement has been the subject of a Road Safety Risk Assessment by an independent assessor which concludes that it would be low risk which in the matrix used in the assessment means "Acceptable".[39]
95. Accordingly, the Appellants submit that either with the bridge as it is or with an improvement to it, there would not be an unacceptable impact on highway safety.
96. Mr Stevens takes a different view, he and Mr Axon disagree, however Mr Stevens confirms in his written evidence[40] and re-confirmed in answers in cross-examination that the safety issue (as he sees it) would be resolved by the provision of a separate bridge over the WCML for pedestrians and cyclists *(NB not for vehicles too)*. This is the cheapest of the options assessed by WSP.[41] The obvious point is that if the Secretary of State disagrees with the Appellants and concludes in favour of Mr Stevens' evidence then there is a solution. Should these circumstances arise then it would be open to the Secretary of State to issue an interim ("minded to") decision in which he gave time to the parties to agree either a Grampian-style condition or a section 106 planning obligation to address the point.
97. Turning to the effect on safety in terms of the use of the lanes, the concern relates to use of the lanes by vehicular traffic associated with the appeal proposals. Mr Stevens accepted in answers in cross-examination that this issue is not incapable of resolution. Mr Axon illustrates and discusses potential engineering solutions in his proof[42] and rebuttal[43] and explained in his evidence in chief that physical measures would make it extremely difficult for a small car to access the lanes from the appeal development and impossible for anything larger than a small car. In the unlikely event that measures

[37] See the photograph on page 28 of Mr Axon's proof
[38] See Mr Axon's Rebuttal at 3.50, 3.51, 3.53 – 3.59 pages 3 40
[39] See CD 10.84
[40] Mr Stevens' proof 4.2.46 page 58
[41] See Mr Lloyd's Appendix 7 option 1
[42] Appendix MA-3 pages 27, 28
[43] Page 44 at 3.92, 3.93

like these prove insufficient then (as of May 2022) the LHA can apply to the Secretary of State for the power under part 6 of the Traffic Management Act 2004 to enforce via fines 'moving traffic offences'[44]. (Such powers were only previously held by the police.)

98. Accordingly, the appropriate conclusion on the evidence is that there would not be an unacceptable impact on highway safety in the lanes.

4th main issue: whether or not the proposal makes adequate provision for highways improvements, with particular regard to the Cross Borough Link Road and the Bee Lane bridge

99. This main issue is a synthesis of points raised in RfR 3, 4, 7, 10 & 11.

100. In relation to the Bee Lane bridge, as discussed above, the improvements already referred to would be adequate for all users of the bridge.

101. Turning to the CBLR: the link road is a leftover from very different times, it was first thought of some 50 years ago. The Appellants would do a great deal to deliver the remaining part of it. The issues which arise are (1) whether development plan policies require the Appellants to secure the delivery of the small part of the road itself which the Appellants would not build as part of the appeal proposals and / or a new road bridge over the WCML; (2) in any event, whether requiring an additional financial contribution from the Appellants towards the delivery of the small part of the road itself which the Appellants would not build as part of the appeal proposals and / or a new road bridge over the WCML would meet the tests of Reg. 122 of the CIL Regulations; (3) in any event, whether a Grampian-style condition to hold back the building of homes on the appeal sites pending the completion of the entirety of the

[44] In England and Wales, moving traffic offences are defined in law in Schedule 7 of the Traffic Management Act 2004 (as amended). They include: incorrectly driving into a bus lane; stopping in a yellow box junction; banned right or left turns; illegal U-turns; going the wrong way in a one-way street; ignoring a Traffic Regulation Order (TRO).

CBLR including a new road bridge over the WCML would meet the tests set out in NPPF 56.

102. Beginning with (1) the LP policies referred to in the RfR which relate to the CBLR are Policies A1, A2 & C1. Policy A1 is a general Developer Contributions policy. Unsurprisingly, it does not refer to the CBLR or a bridge over the WCML. It adds nothing to the tests which would need to be applied in the case of a planning obligation by Reg. 122 of the CIL Regulations and in the case of a planning condition by NPPF 56.

103. LP Policy A2 which is the specific policy in the LP concerning the CBLR, "protects" land from physical development for the delivery of the CBLR, part of which (shown diagrammatically on the Policies Map) runs through the Pickerings Farm allocation. And that's all that is required by <u>policy</u> in the Local Plan. Paragraph 4.21 of the supporting text in the Plan explains this section *"will be provided through developer contributions".* As a matter of law, supporting text cannot impose requirements on developments.[45]

104. Neither the policy, nor the supporting text (not that it could anyway) requires the developer of *part of the allocated site*, even a large part of it as per appeal application "A", to build or pay for *the whole* of the stretch of the CBLR as it passes through the allocated site, let alone a new bridge across the WCML (which is one of the options, the other is improving the existing [Bee Lane] bridge, mentioned in paragraph 6.11 of the supporting text in the Local Plan).

105. LP Policy C1 does not mention the CBLR / WCML bridge.

106. Paragraph 6.11 of the supporting text to the policy refers to the CBLR and that it "could include a new bridge crossing the [WCML] or improvements to the existing bridge." There is no reference in the supporting text to this / these being provided either directly by the developers of the whole or parts of the allocated site, or indirectly via financial contributions from them. As previously submitted, even had there been such references they would have been legally ineffective because if a development plan wishes to require something from the developer of a site, it must do so in a policy on the point, it cannot do so in supporting text.

[45] R (Cherkely Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567

107. The key point to take from the LP policies referred to in the RfR and the supporting text to the policies is that *none of them address the situation we find here where the applications are for part of the allocation only.*

108. In terms of the appeal applications, the Masterplan safeguards a route for the CBLR as it would cross the allocated site. The appeal schemes would deliver, as in build, those parts of the road – some 1.08km - as it crosses appeal site "A"[46] at a cost to the Appellants of over £5m. This would amount to some 89% of the CBLR as it crosses the larger, allocated, site, leaving in the order of 130 metres to be built on the in-between land. In anyone's book this should amount to a substantial contribution to the delivery of the CBLR. The appeal schemes would also pay an estimated £7.6m in CIL which could, of course, to some or other extent be spent on delivering the rest of the CBLR including for example paying for or contributing towards a new bridge over the railway.

109. It is a travesty to suggest that the Appellants aren't doing their bit towards delivering the CBLR. They are.

110. In conclusion on (1) the development plan, *there is nothing in the development plan which requires the Appellants to do more towards the delivery of the CBLR than they propose to do.*

111. Turning to (2) CIL Reg. 122: given that the Appellants cannot deliver the CBLR across land which is not in their ownership, the only potential way in which a s106 planning obligation could work would be via making a financial contribution. As already discussed in relation to highways issues, there is no evidence to substantiate that the Appellants should make an additional financial contribution towards the provision of the rest of the CBLR (i.e. the part they will not be building themselves) and / or a new road bridge over the WCML. Even had there been something in the LP to support a requirement for an additional contribution from the developers of part of the allocated site (as we've seen there isn't) as a matter of law one would still need to apply the tests in CIL Reg 122. A requirement for a contribution like this would not meet the three tests in CIL Reg. 122. Nor is there any basis for saying that it is necessary in the sense meant by Regulation 122 of the CIL Regs. for the entire[47] length of the

[46] It doesn't impinge on appeal site "B"

[47] Or indeed any part of it.

CBLR as it crosses the allocated site and / or a new road bridge over the WCML to be delivered in order for the appeal proposals not to cause a severe impact on the road network.

112. Mr Lloyd was asked in cross-examination what more the Council requested the Appellants to do in relation to paying towards the delivery of the CBLR; he answered "Nothing."

113. Turning to (3) a Grampian-style condition with regards the CBLR: for similar reasons as already explained, there is no evidence to substantiate that a condition of this nature would meet the tests in NPPF 56.

114. That leaves some miscellaneous points to deal with as follows.

115. (A) Dr Price was asked in cross-examination whether he had applied his mind to the Council's and LCC's ability to ensure the delivery of the rest of the CBLR by the use of CPO powers (if required) and CIL funds. He answered that he hadn't. Later on, Mr Wood gave evidence that he had been told by the Council that it was intended to use CIL funds towards the provision of the dualling of the A582 rather than the CBLR. It wasn't clear whether this included future CIL funds like the £7.6m the Appellants would pay and any CIL payment from the developers of the rest of the allocated site should this come forward, as to which Mr Alsbury said in answers in cross-examination this would bring the overall sum "close to £10m"[48]. Assuming the Council does have in mind using currently-held *and* future CIL funds to contribute to the A582 dualling rather than the CBLR, (i.) that's for the Council to decide of course but it does tell us a great deal about how unimportant the CBLR must be to the Council if they truly do intend not to spend CIL funds on it; put simply, the Council cannot have it both ways and contend that the delivery of the full CBLR is critical and yet also maintain that they would not try and delivery the rest of it when they have the funds to do so; and (ii.) in the event the appeals are allowed and most of the rest of the CBLR is built across appeal site "A", it would be open to the Council at any time in the future to change their minds and use CIL funds towards paying in whole or part for the last little bit of the link road and / or a new road bridge over the WCML. *This is for the Council to sort,*

[48] And of course, should the parcel of land which is in-between the parts of the CBLR the Appellants would construct come forward for development then it must surely be the case that the applicant would either propose or be required to provide the missing short stretch of the link road.

it is not the Appellants' responsibility. The Council is not a powerless bystander in this situation.

116. (B) RfR 11 is downright peculiar. Neither of the LP policies referred to in it (A1 and C1) require the Appellants to submit "viability evidence .. to enable an assessment of whether necessary infrastructure can be provided to support this important housing allocation." The RfR is mystifyingly opaque. Mr Lloyd speculated whether the Appellants on the one hand and the developers of the rest of the allocation on the other would be able viably to fund the rest of the CBLR. Doubtless, all very interesting but this has nothing to do at all with whether the appeal proposals accord with the development plan.

117. (C) Much time has been spent at the inquiry by the Council's witnesses and Mr Ponter on exploring various chapters in the history leading up to the adoption of the LP (e.g. statements made in the examination process; the LP inspector's report) and the appeal applications (e.g. earlier versions of the masterplan). As Mr Alsbury said about this in chief "so what?" Nothing in the history can add to or change what the development plan does and does not require. The Appellants are either required *by the development plan* to do more towards the delivery of the CBLR or they are not. The Appellants submit the development plan does not require them to do any more than they propose. If the Secretary of State agrees then nothing in the history of the matter has any bearing at all on this. Nor can it conceivably be argued that if the Appellants are right that the development plan does not require any more from them, the history amounts to a material consideration which would indicate the appeals should be dismissed (and of course, Mr Wood confirmed the Council does not rely on material considerations, the Council's case turns entirely on the meaning and effect of the development plan). Finally, nothing in the history could make a planning obligation for an additional financial contribution compliant with Reg. 122 of the CIL Regs or a Grampian-style condition compliant with NPPF 56.

<u>Other development plan policies</u>

118. So far these submissions have addressed the development plan policies referred to in the RfR. There are other relevant development plan policies. These are reviewed by Mr Alsbury (see his proof at paragraphs 8.5 and 8.9, and the tables in-

between, pages 39 – 41). The Appellants' case is that the appeal proposals accord with all these other policies. The Council has not argued to the contrary.

Public benefits

119. The appeal proposals would bring with them extensive public benefits. These are discussed by Mr Alsbury in his proof of evidence under the headings of Economic, Social & Environmental.[49] There are 17 multi-faceted benefits in all. Mr Wood confirmed in answers in cross-examination that he takes no issue with any of the benefits. So, the list is agreed. The difference between Mr Alsbury and Mr Wood concerns the weight to be given to the (agreed) benefits. Using a three step scale of limited, moderate, significant, Mr Alsbury gives significant weight to most of the benefits (11 of the 17) and moderate weight to a few (5 of the 17) and in one instance, limited weight albeit in his evidence in chief he explained he had reconsidered and thought more weight was warranted for this benefit (on site job creation). Overall, Mr Alsbury gives significant weight to the benefits. In contrast, Mr Wood explained in answers in cross-examination that he gives significant weight to the social benefits (which include the new market homes and the new affordable homes) but only limited weight to the economic and environmental benefits; he did not express a view as to the overall weight of all the benefits taken together and in the round.

120. The Appellants submit that in those instances where there is disagreement, Mr Alsbury's individual weightings, and his overall cumulative weighting, should be accepted by the Secretary of State. The provision of 1,100 new homes of which 330 would be affordable homes, for which there is an acute and pressing need[50] is a hugely worthwhile public benefit in its own right.

121. The additional household expenditure of some £12.7m pa bringing with it some 156 FTE jobs, at least 10% biodiversity net gain, resolving local flooding and drainage issues, and providing extremely generous green infrastructure which would benefit the wider community are among the stand-out benefits of very real substance.

Overall conclusion

[49] Section 7 pp. 35 – 38

[50] See Mr Alsbury's proof at 7.2 b) on page 36 and his Appendix 6

122. In overall conclusion, the determination which would be in accordance with the development plan (when read as a whole) would be to allow both appeals. Material considerations do not indicate otherwise than this. Should the conclusion be reached, contrary to the Appellants' case, that the appeal proposals do not accord with the development plan then in those circumstances material considerations, and in particular the extensive public benefits would indicate otherwise such that the appeals should be allowed nonetheless.

Chris Katkowski KC

Constanze Bell

9th September 2022

Kings Chambers