# FORMER B&Q SITE, GREAT STONE ROAD - PUBLIC INQUIRY

# CLOSING SPEECH ON BEHALF OF THE COUNCIL

1. The Council set out in opening what it would demonstrate during this inquiry and (with the exception of the turf issue) it has established all it set out to. The Inspector is referred back to that Opening.

## A: Design, scale, massing – character and appearance

2. The short and overwhelming point is this – the development is of far too great a scale, mass, height, width, depth and density presenting extremely large and inappropriate elevations entirely out of context. There is *no design or contextual cue* in the locality of for this scale, mass, height, density. Each element of the whole is discordant and in combination the proposals provide a development which is simply unacceptably large, inappropriate and out of place. The development is a very urban form in an inappropriate, transitional location. Discussions with the council foundered on scale[1] - the Council correctly not being prepared to accept this scale of development here.

3. The Proposals are not appropriate in their context, and do not enhance the character by appropriately addressing scale, density, heigh, massing, layout, elevation and landscaping contrary to L7 and the good quality neighbourhood requirements of SL3. That policy test appropriately encapsulates the requirements of NDG and NPPF124-130.

4. Ultimately this is a matter for the judgement of the inspector but the Council considers that the photomontages and the basic and agreed figures tell its story very eloquently for it. Whilst the above is the Council's case on this RFR it is necessary to consider some more detail.

*The Wrong Starting Point*

5. We now know that what was driving the scale of this development was, as the Council always suspected, Accrue's pre-set expectation that the site can accommodate as a minimum of "around 300" units[2]. That is the opposite of a design led approach and is wrong in principle. The 300 bears no relation to the site context or prevailing policy[3].

6. More importantly, that preconceived expectation drives all that follows and the simply excessive scale of this building. There is no evidence before the inquiry of any design

[1] As noted by CT/3.3

[2] XX of O'C based on what he understood his brief was - notably there was no response to this in Accrue's last minute letter. It fits with what was presented to the Places Matters panel – that this site had to deliver 300 or so units – see EiC of DH and Places Matter report.

[3] It seeks nearly as much here as policy provides (400) for the whole SL3 which is a much wider area. Of course that figure is now significantly higher but this short point demonstrates just how out of scale it is.

evolution/option testing before the basic design concept was set in the 433 scheme or any context led capacity assessment leading to the 300 figure[4].

*The Result of the wrong starting point*

7. That approach has caused and explains the fundamental flaws with this scheme – the sheer scale of what is proposed.

8. It results in an astonishingly high density (332d/ha) next to a low-density residential area (30-40d/ha) and with no policy support for such intensity of development. "Optimising" housing does not mean maxing out on density.

9. It has led to the Appellant seeking to maximise quantum through:
   a. an anti-contextual 26 storey tower – which was withdrawn immediately when the Appellant was challenged on it – it being obviously entirely inappropriate. The fact it was ever suggested does not reflect well on the Appellant or its team – it shows how extreme is the Appellants (and its teams) approach to and expectation of this site;
   b. a 433 scheme which was pushed all the way to committee with the support of the current Appellant team but in respect of which its own architect now concedes it was unacceptable. That was a necessary and inevitable but damning concession – how on earth did the Appellant and its team team get itself into a position where it would have got an unacceptable permission but for the Council standing up to it;
   c. so we have an expert team working under a totally unreal minimum quantum expectation imposed on it being prepared to promote and push for schemes which they do not and cannot now defend – that casts a long shadow over the rest of their evidence and the weight that can sensibly be attached to their judgments;
   d. the current scheme is just the latest (least worst) iteration of this – see Opening Speech para 2.

10. The determination to maximise development led to a design concept (originating with the 433 and in large part carried through) of perimeter development (close to and along most of each 4 boundaries) enclosing the site with two courtyards and a central limb.

11. That results in a development perimeter of around an astonishing 330m[5] with facades of very large scale bearing no relationship to any façade in the locality and much bigger than any of the blocks at Lancastrian House.

12. In every respect the scale of the façades have no design or contextual cue from anything in the locality. The scale of the facades is summarised in DH Appx H and is not in dispute

[4] And despite assertions that 300 was the minimum required to ensure viability there is nil evidence to that effect and it is inherently implausible.
[5] Less of course the 3 small gaps.

– and the detail has been added to the layout plan orally. The NW elevation is 5 – 7 storeys stretching 65m; the NE elevation stretches a total of 103m with a single 11m gap and ranges in height from 5 – 9 storeys; the SE elevation is 68 m long and 7 – 9 storeys just 3.8m from the boundary; the SW elevation is a total of 106.8m (with gaps of 14 and 13.8m) and heights ranging from 4/5 – 7.

13. The elevations individually are huge and when experienced in 3D will give an even stronger impression of the sheer unacceptable and out of keeping scale of this building in its context.

14. No amount of architectural detail or articulation can overcome this basic and fundamental point.

15. DH final comment in XX is correct – the sheer scale of the development is *so* out of context and *so* inappropriate to dictate refusal even with all the benefits (which are acknowledged) and even absent the other harms.

*The Correct Starting Point – Context Led Design*

*16.* The correct stating point is ensuring development is appropriate in its context, enhancing character by appropriately addressing scale, density, height, massing, layout, elevation and landscaping. That requires a thorough and accurate understanding of the context in which the development will sit - not the context 450m away.

*The Context*

17. There is common ground that the site is in a zone of transition – from 2 storey to larger scale development beyond. The question is what scale and form of development is appropriate as part of that transition. Where in the spectrum does this site come?

18. There are two starkly different approaches to the context. The Appellant has to look far afield[6] to find any design or contextual cue for this scale of development - for the simple reason that there are none in the environs of the site. The Council is concerned with the more immediate surroundings (as were the authors of the TVIAs for its CQ Masterplans and AAP). If, as the Council contends, the key contextual elements are in the immediately locality the Appellant's own logic for this scale of development here falls away.

19. The basic facts are not in dispute:
    a. to the SE and SW, the scale of existing development is ubiquitously 2 storey, suburban residential scale with front gardens and spacious settings;

[6] as epitomised by its repeated reference to the very wide area covered by the aerial at O'C/6

b. the site itself is a single storey warehouse[7] with a large footprint and large car park;
c. to the north-east, the nets beyond are single storey and the shop beyond 2 storey all before one gets to the (approx) 5 storey permanent stand a full 120m from GSR. The closest part of the development to the stand is about 3m AOD higher (1 storey) than that stand and the tallest part of the development is 7.5m higher (nearly 3 storeys) [O'C17 and O'C EiC]. The rest of LCCC does not exceed 6 storeys (or a maximum of 47.6m AOD - cp 53.025m AOD highest point of development). The massing of each LCCC building is not remotely comparable to the proposals and there are no remotely equivalent elevations [see DH Appx H]. The closest stand is 69m x 22m but with the cut away (cp 65m x 103m here) and all are broadly similar. They of course have a rather large green space fronting them. And of-course that is the iconic sports stadium which is appropriately a dominant feature (and not to be hidden as Mr Hann suggests);
d. to the north west, there is a very large car park and 150m beyond the edge of the site the 6 storey Lancastrian House with each block having a footprint of just 39m x 12m and separated from the next block by a 2 storey element 34m long. The elevations are just 6 storey x 39m maximum - compare the 5 – 9 storey x up to 103m here;
e. along Talbot Roads all the civic buildings are low rise – 2 – 4 storey (except the Council tower) and it is only beyond the Warwick Road junction that heights rise beyond 6 storey (6 – 11 – 7 – 10 storeys [DH Appx H]) culminating in the 15 storey Oakland House before heights diminish again going west towards the bowling green. The massing of these buildings is substantial – but none of their combined elevations are anywhere near the width and length of those of the proposals- see DH Appx H. The largest length of elevation is Oakland House at 96m is broadly the same as the largest elevation here but it has a depth of just 12m;
f. the K site is currently 5 – 6 storey and the proposals for it are carefully master-planned to not exceed the height of LCCC in the southern corner and then rising to the north and west across the site to the slim 20 storey tower opposite Oakland House. The massing of these buildings in the southern area are incomparably less than the appeal proposals with combined elevations and heights which are nothing like that proposed.

20. The overall context is entirely clear. The scale is suburban to the south west and rises in height (6 storey) and scale to LCCC and Lancastarian House but nothing like the scale of the proposal's massing; before taller buildings to the north and east in the much tighter/denser urban grain there a full 450m from the site. The development is at the extreme end of the scale even looking at the much wider context.

21. The TVIA's for the Council understand and reflect that pattern:

[7] But probably taller than a single storey dwelling and hence the XX of CT proceeded on the basis that 1 – 2 storey

a. the Civic Quarter Masterplan 2018 was assessed in [K1] with the accompanying figures in [K3]. The purpose (para 1.2) was to use the TVIA to establish an appropriate scale and form that tests and advances the footprint and massing framework for the proposed development blocks" – so as to guide future appropriate development (para 1.3). A standard methodology is applied and a range of relevant viewpoints used (K3 p14). The iterative process is described in [K1] para 1.59 to allow site constraints and opportunities to be explored to directly influence the plan with mitigation embedded. The idea (raised in re-exam of O'C) that this was just reflecting the Council's proposals is wrong. The Plan at H11 p46 was *the result of* that process and O'C correctly accepted that it was based on that independent expert analysis. It shows 4 – 6 storeys on the site. Having gone through that exercise the Leisure Quarter (p46) design principles noted that "the scale of development on the western boundary [including the site] must take into account the existing low rise residential development on the opposite side of [GSR] building heights will therefore *be most limited* in this Quarter" (of all the masterplan areas). That is entirely consistent with the overall context above;
b. Randall Thorpe ("RT") were then instructed to assess the AAP and assessed buildings of 2 - 4 storeys. RT's conclusions were consistent with Planit.

22. The attempt by Mr Taylor ("CT") to gain comfort from these TVIAs for his approach (a key theme of his evidence) is wrong – they were considering a much lesser scale of development and were clear as to the limited ability of this site to appropriately accommodate anything like this scale of development.

23. The short point is that independent experts have assessed appropriate scale on this site twice and have concluded 2 – 6 storey – there has clearly been the testing of appropriate heights here which CT claims not to have occurred (para 5.41).

24. CT relies heavily on the RT analysis claiming that somehow it supports his analysis and is consistent with it. The RT assessment is of a 2 – 4 storey development as shown at Fig 38 and CT Appx p80 – 83. Its assessment of change and impact is based on that scale of building. The claim that that scale of building is "very similar" to the current proposals is obviously wrong. The RT and Planit assessments are two independent assessments as to the acceptability of *much* smaller scale development.

*25.* The six storeys height limit is not an unevidenced diktat from the Council. A fundamental edifice of the Appellant's case is simply wrong.

*Designing the scheme*

26. There is no evidence before this inquiry of design iteration/concept testing before the two courtyards basic design concept was set. It is plainly the obvious way to maximise units (if

that is the aim – as it was here) and O'C was not able to point to any other way of getting 300 units on site (his angled scheme had too much unusable space).

27. The Site is a clear, 1 ha, fairly level site with the only constraint being level access to the west. There are no adjoining significant elevations to design round or overshadowing the site. There is ample flexibility here to design and orientate a scheme to deliver a high-quality neighbourhood as required by SL3. There is nothing in the site which dictates compromises on quality. It is an unconstrained site. There has been no design iteration which considers a range of smaller buildings appropriately orientated (as in K) and no evidence that doing so would inhibit an efficient use of the site or would be unviable (despite unevidenced assertions to the contrary).

*The Scheme*

28. The only changes from the scheme for 433 units have been to reduce the height and number of dwellings and to include two full height openings (both around 14m) to GSR; one 11m to the rear; and two double height walk throughs. The essential features in terms of scale are set out above. Whilst this is, of course, not *just* a numerical exercise the basic facts show a stark picture.

29. The photomontages, the basic dimensions and the comparison of dimensions with other buildings (none of which is challenged) tell the Council's case most eloquently for it – para 2 – 4 above are repeated. The Appellant studiously avoided cross-examining on the core substance of the Council's case – saying it was a matter of professional judgment. Yet all the matters raised point in the same direction.

*Places Matter*

30. The Appellant seeks to draw a lot of comfort from the Places Matter review. It cannot sensibly do so. Several witnesses talk of the strong support of Places Matter for the scheme and the design concept. That misses out the key fundamental issue raised by PM which coincides with the Council's basic concern.

31. Places Matter was presented with a lower scheme against the backdrop of being told that the site needed to deliver a significant quantum (300). They had the video which showed the site in its best possible light. Even in that context – with the bar being set very high in terms of quantum – and even having plans which showed three elements facing GSR they had fundamental misgivings with the design derived from the basic design concept:
    a. the meeting was to discuss "scale mass and *format";*
    b. PM was told the starting point was a scheme for "circa 300 units" (an invention of the developer – see above) with a landmark building (with no policy or contextual support for a landmark building here);

c. the height was being "guided by the planning reference of 6 storey office blocks [as if this was a blank cheque for 6 storeys across the site] (Lancastrian House) with the potential for additional height at the tramline; and

d. the "fundamental issue" (b) still to be resolved was whether the development was to be one building or a series of three or more – because that would impact the ability to "introduce more natural light to elevations and internal areas" – "the Panel's *clear view is that this development would benefit from being a series of separate buildings" (c)* - there is no ambiguity – that point is not addressed by varying rooflines or double height walkways (the "cuts" to (e) , and need to break up (o), the NE elevation were separate to this headline point). The Panel supported the Council seeking a placemaking approach (q) which "suggested separate blocks… and higher levels of liveability". (t) "Making a series of individual buildings engage more directly with GSR will have the beneficial impact of reducing the sense of one large mass…." And in conclusion the developer was encouraged "to break up the mass of the blocks to allow more sunlight…".

32. That fundamental issue has not been resolved and cannot be resolved with the basic design concept and whilst sticking to "around 300". On any fair reading, PM had fundamental concerns with the sheer mass of the development experienced as a single mass – that fundamental concern remains.

33. CT (and O'C to a lesser extent) sought to portray the slight amendments to the designs as 4 buildings. That is obviously wrong and was rapidly withdrawn when tested. The attempts to so portray it are however telling – they needed to show that the PM fundamental concern had been addressed but they obviously cannot do so. O'C sought to explain how he had gone far enough to meet the PM point – we do not know if they would agree because the current scheme never went back to them – but the Inspector will form his own view. The Council's position is that the basic design concept and the basic mass and scale of the block design remains as found objectionable by the Panel.

34. Just for the record, the Council had 27 hours' notice of the scheme which going to be put before PM with just a partial extract from the pack the panel was given and no walk-through video.

**B: Existing Residents: Overbearing – RFR6**

35. This is quintessentially a matter for the Inspector's assessment following the site visit. The Council's case in short is that the development by virtue of its sheer scale will be significantly overbearing particularly on the nearest properties in TBW and GSR.

36. *TBW:* He is specifically invited to consider the *current* relationship between: (1) TBW and Headingly Drive; and (2) the existing 6 storey media building which is at a broadly

equivalent distance to the relationship proposed. The inspector may consider that that relationship is overbearing.

37. The relationship with the proposed development will be at a similar distance but the façade far taller and longer and of course much more imposing when the two elevations can be seen – see the winter view in DH Appx D last page.

38. Providing a more overbearing relationship than the existing relationship with an iconic international stadium is obviously inappropriate.

39. The Appellant attempts to get some comfort from SPD4. But that is obviously not designed for this sort of situation (as appears to be agreed) and is in any event a purely mathematical exercise taking no account of the totality of the experience – the combination of height, width and depth. As to that mathematical exercise, in his analysis section Mr Hard *only* refers to the numerical exercise before reaching his conclusion. Of course, he then responds to the Council's Statement of Case but that is all written after his conclusion based just on the SPD4 numerical exercise.

40. GSR/the Gorse: The position is also harmful on GSR. The separation distance from the stadium is very significant – it is not understood how Mr Hard can gain any comfort from that existing relationship. The houses on GSR will be overborn by the full scale of this very large development – its large facades, significant height (at depth) and its overall sheer scale.

41. It is of course accepted that the further away one goes (Gorse Avenue) the lesser the impact. CT accepts that there are adverse impacts on residential and pedestrian receptors – CTP/7.3 – 7.4 – which can only be mitigated to some degree by landscaping.

42. These unacceptable impacts are a further result of the unacceptable scale and massing of the development.

**C: Future Residents: RFR5**

43. The scheme will provide a poor level of amenity for many future occupiers. Occupiers on the south-east elevation will look out a densely treed boundary and on the lower floors of the north-eastern boundary onto the Nets building. The key courtyards will be very heavily overshadowed most of the year. It appears that the necessary trees cannot be delivered as agreed to be required. 151 of the units face north.

44. *South-East elevation to Metroline:* On the south-east elevation all the flats at F0 – F3 will face on to a dense screen of trees. This is not a verdant, green, softening outlook which may be appropriate but a screen of trees close up. That same screen is relied on as largely

screening the development from TBW in summer [O'C/29]– precisely. It does so because it is visually largely impenetrable in summer. That is what the residents will be facing at 3.8m. All of the habitable rooms of a large number of flats will experience that outlook. It is plainly unacceptable. It is function of the basic design concept of filling to the site boundaries. There is no existing relationship of anything like that scale anywhere in the area.

45. The comparison with the K site is misconceived – there is no evidence of the internal arrangements of the relevant blocks and whether all the windows will be facing the tree line. This was an outline indicative masterplan only.

46. *North-East Elevation to Nets:* The Inspector will form his own view as to the acceptability of the relationship at the northern end of the north – east elevation.

47. *The Courtyards.* The Courtyards are a key part (and provide the largest single spaces) of the amenity space offer. They are a central feature of the design and prayed in aid as providing good spaces for the up to 500 residents.

48. The Courtyards are enclosed by tall built form along the whole of their south – eastern edge and along most of the south of their south-western edge (with the gaps being at northern most point of their south – eastern elevation). This is as bad as it gets in terms of layouts which create "sunless and unappealing"[8] and "grim and underused" amenity space (BRE para 3.3.2). This is a clear example of the "worst situation [of having] significant areas on which the sun only shines for a limited period over a large part of the year" (para 3.3.4). It only happens when "a long face of a building faces close to due north" (as here) such that there "will be an area adjoining the building which is permanently in shade at the equinox and hence all winter" (para 3.3.5).

49. There is no possible reason why this unconstrained site[9] needs to accept such unacceptable compromises but it is a function of the "around 300" requirement and the consequent design concept of two courtyards to maximise units.

50. The walk through (30th June at 6pm – one of the few times of year when sun will penetrate the southern most parts of the Courtyards) is not remotely representative of what will be the experience in these areas.

51. The BRE guide is telling - none of its guidance has been reflected in the design particularly under the heading orientation (para 3.1.6ff – referred to for amenity space in 3.3.2).

[8] BRE guide para 3.3.2
[9] XX of Mr Radcliffe

52. The very large areas affected (see DH Appx F) at all times of year comprise a very significant proportion of the limited amenity space available to residents and are central to the design concept and to liveability of the scheme. That limited space is supposed to serve multiple functions including meeting, relaxing, accessing, traversing and play. Most of it will be in unrelenting shadow most of the year. No sense check is required to conclude that the provision of most of the amenity space in courtyards of such orientation is unacceptable given the unconstrained nature of this site – compare BRE para 1.6.

53. But the limited "sense check" that has very belatedly carried out proves the Council's concern. It addressed such the central areas of such courtyards and, even then, the southern courtyard very significantly failed the rule of thumb. The standard is very low – just two hours of sunlight per day March 21st. The northern courtyard just passes but recall that that just means that 50% of the central area will receive 2 hours of sun per day at the equinox and less for 6 months of the year – the rest will receive even less than that. Just 11% of space in the central area of the southern courtyard meets that rule of thumb – a very poor fail of the rule of thumb. It is self-evident from the plans at [Hann Appx 5] that very significant further areas to the south of the courtyard would score even worse. Scant comfort can be drawn by the fact that there are spaces on the roof for those wanting sun or that when put into the pot with other areas more than 50% is achieved. Mere tick boxing the 50% over the site as a whole does not address the basic point – large parts of key elements of the limited amenity space will be sunless, grim, unappealing.

54. If the Appellant had taken the Places Matter objections requiring the site to be split into separate blocks seriously it could and would have been broken up creating a route for light from the south. The reason this was not done, of course, is linked to the "around" 300 requirement. The unacceptable position in the courtyards is a result of the scale, massing and layout and the basic design concept. It is unacceptable.

55. *Trees:* Further issues arise from CT's landscaping scheme. O'C correctly took an early design decision that all boundaries needed to be well-treed (O'C/7.1.1) -this was agreed to be both for external looking in and for internal looking out purposes.

56. There is inconsistency in the plans and photomontages on those trees particularly at the southern end of the north-west elevation and the western end of the north-east elevation. Some photomontages show large trees on the north-east elevation and some do not. The latest plans (the best CL has been able to come up and which are said to be "nearly there") show only small trees in that location. The answer there is that there is sufficient space to accommodate a mix of tree sizes and this gremlin in the plans can be sorted out at approval of reserved matters.

57. However, that does not appear to work on the north-west elevation. There is a 1.8m footpath (the minimum standard normally necessary to gain access to the wider footpath at the rear) running alongside a road and also the need for a retaining structure for the ramp down. The access and layout is not a reserved matter. The layout and footpaths are therefore fixed. The problem is that the latest plans properly understood show no space for trees. They cannot be placed in the minimum width footpath and there is no space for them between that footpath and the boundary. This point has been raised on the back of CT's plans and still not answered. On the material as understood by the Council, CT cannot deliver a line of large trees along that part of the elevation to soften the massive façade or to soften the outlook onto the car park.

58. *North Facing Elevation:* Mr Radcliffe was taken to this in evidence in chief and it is therefore permissible for the Council to comment on it[10]. All the flats on four elevations (the NE and NW external and the two NW to the Courtyards) are effectively north facing, will get no sunlight at the equinox and for more than 6 months of the year. That is a function of the basic design concept. As Mr Radcliffe's Appx H p256 table shows all the windows on these elevations are excluded from the APSH calculations for obvious reasons.

**D: Noise – RFR7**

59. The Council is just concerned with concert noise. The proposals were fixed before any consideration of concert noise. The Council broadly adopts (and does not repeat) the submissions of LCCC except where stated to the contrary below.

*Starting Point*

60. The location of a noise sensitive receptor is key to assessing noise impacts. A key requirement of the NPPF is that development has to be appropriate for its location – NPPF185.

61. The existing most NSP is TBW – it is around 200m from the nearest array[11] (DF/6.17) largely separated from the noise sources by a five storey stand, a large car park and railway line - see DH – appx H3 and O'C/6 aerial. Those houses are arranged so as to face away from the noise and residents can escape it.

62. The nearest façade of the proposal is just 50m or so (DF/7.14) with a clear line of site with all the habitable rooms of the upper floors having direct line of sight. There is no where for the residents to escape the noise by going into rear rooms.

[10] it is accepted that it is sunlight is not covered by the reason for refusal
[11] Accepted by JP in XX

*The Noise Surveys*

63. DF carried out a survey at 11m as close as practical to the proposed façade and with a direct line of sight (and sound) to the arrays on the side of the stage[12]. A direct measurement was taken of the noise over almost all of the concert and was then modelled to ensure consistency with the levels actually measured at the sound/mixing desk. We thus have actual measured and calibrated data for the noise levels a matter of meters from the façade.

64. JP asserts that they "could" (note – not would) have been disrupted by various extraneous noise sources (ambulances and similar) but DF has explained that this was not the case and there is no evidence of such in any of the data. JP then suggested they may be impacted by "localised factors". No explanation of what those could possibly be has been given but if there are those localised factors then they are at the façade and relevant to the development scenario. In fact, the data shows that there is no corruption by external sources – the noise measured moves consistently with the mixing desk and with the order of events on the stage.

65. The reason JP has to find fault with the DF survey is that he is totally convinced by his own survey and his own methodology and both cannot be right. But simply asserting "my survey is right" is no answer and throwing up obviously flawed points against the DF survey does JP no credit and casts the rest of his evidence in a very poor light. On a correct analysis, it is clear that it is JP's survey which is: (1) one of his survey points was almost wholly obscured from the noise source by built form; (2) more importantly his assessment relies on a complex methodology measuring back towards the source from the measurement location and not actual measurements close to the facade. JP's approach requires a number of assumptions to be made which are demonstrably incorrect and which have been demonstrated by DF and MR to be incorrect. The fact that there was no cross-examination of DF/MR on that dispute is telling. In short, concert noise from arrays acts like a line source close to and a point source beyond a particular point ("the Point"). JP's methodology is wholly dependent on knowing where that Point is but that would depend on a complete modelling of the arrays and their waves which has not been done. Far from "taking away uncertainty" [JP/Appx A 16th para] from DF's results; JP's approach introduces such uncertainty by relying on his own survey.

66. The proof in the final analysis is in the figures – when DF measured an actual 87db close to the façade, JP's model just generates 78db. It is 9 db out. The short point is that there

[12] JP would have preferred to have a location close to the proposed façade (XX by KG of JP) as DF has done. He was forced (by virtue of the fact that he made no attempt to liaise with DF) to adopt a seriously suboptimal location.

is a measured survey result very close to the façade, no reason to consider it has been corrupted in any way, and it does not rely on complex modelling based on unknown points. It can be relied on.

67. It shows what one would expect – far higher levels at this façade than at the façade of TBW at the same time.

68. The result is that there is a noise at the façade of 90db (once the 3db façade effect is taken into account) even when the concert was not using the full extent of the licence (a few dB below).

*The Licence*

69. The licence embodies a compromise 80db at TBW[13] as "the minimum that would allow viable concert entertainment at LCCG"[14]. The key properties are at TBW – if they are within the licence conditions experience shows that all the others will also be.

70. The essential features of TBW are that: (1) it is 200m from the main stage array; (2) it is almost entirely shielded by the stand and media centre with one tiny gap[15]; and (3) its habitable rooms face away from the stadia (originally to avoid railway noise but now have the fortuitous effect of providing a built-in mitigation of concert noise). When the front façade is at 77dB external (DF/30 table 1) the back elevations of all the habitable rooms are at least one (and in many cases 2) "category/ies" lower than at the front – 5 – 10db. Those features were all relevant to the setting of the 80dB (DF XX). This key point appears lost on the Appellant. Just because it may be 46db at the front tells one nothing of what the residents will experience in their living rooms at the rear.

71. The 80db licence is the highest of any for external concerts in the country[16]. The Licence is currently complied with[17]. Concerts can lawfully occur now without significant complaints.

72. It is common ground that, in accordance with the NPPG, it is necessary to take into account the full extent of that permitted under the Licence so here 7 concerts per annum up to 10.30pm with noise levels at the noise sensitive properties of 80dB.

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[13] Agreed to be the most NSP – if the licence is met there it will be met at the other NSP and elsewhere [DFP/29 FN2] – and agreed by JP in XX.
[14] DFP/12/3.4 -
[15] DFP/59 – Appx A Fig 1
[16] DF XX and now unchallenged with the exception of the one off in Teignbridge (84) for a local event where the residents affected were given free tickets and hospitality (DF EiC)
[17] Save for the three events for which we now have an explanation as to why there were so many complaints (to which MR referred); the number of complaints are limited.

73. In the event that the development is delivered there are two possibilities: (1) either the licence remains unchanged and is fixed by reference to TBW; or (2) it is updated to refer to the closest façade of the development. Especially if there were complaints the latter is obviously an available and possible option. If the licence remains as it is, then it will be complied with if the noise at the front façade of TBW is 80dB at which point the noise at the front façade of the development will be 89dB. If it is updated to refer to the development's façade, given the survey results it could not have a limit of 80dB and would have to be at at least 89dB. There has, very unsurprisingly, never been a licence with such an extremely high condition in it. The Deed even suggested 92db.

*The Relevant Standard*

74. There is a significant dispute as to the appropriate standard to be applied. For the avoidance of doubt whatever the correct standard is not central. The noise environment for residents is the central issue.

*COP95 (N9)*

75. JP does not apply BS8223 and instead points to COP95: see JP/6.6 - 6.7 as directed by the BS but he does not use that either.

76. The BS is up to date (2014) guidance and it tells one to go to COP95. COP95 is thus specifically incorporated as the approach to be applied to concerts. Indeed, that was the whole tenure of the XX of MR with him being very heavily criticised for not referring to it. JP describes COP95 as "the primary resource used to assess the impact of noise from open air concerts" (para 6.7).

77. Despite that being his position, he does not apply it apparently because he claims it does not provide any relevant assessment methodology [para 6.12] to identify "*unacceptable levels of disturbance" and thus* any potential significant adverse effects. Yet COP95 is specific to concerts (para 1.1) and its purpose is precisely to give guidance on how "such disturbance or annoyance can be minimised". It then sets out the music noise level ("MNL") which should not be exceeded.

78. The relevant provision is 15dB above background which is thus 73dB here[18]. JP accepted that there is no difficulty doing the exercise/measurement referred to in it.

79. COP95 is clear that an exception to that approach is where there is just one event per annum (Note 7 page 7) in which circumstances it has been found possible to have a higher limit value without causing "unacceptable level of disturbance" – but that is not this case.

[18] Agreed by JP in XX

80. *On his own logic* for not applying the BS, JP should have used the COP95. These proposals clearly cannot meet that standard. There is no "5dB" adjustment in COP95 "if necessary" as elsewhere. Further, COP95 emphasises that even if the 73 is met, "*unreasonable* disturbance may be occurring because of the low frequency noise": [COP95 para 3.4].

81. DF comes at this from a licence operator perspective. He said that COP should not be relied on but the licence condition instead. But the licence condition was set by reference to COP95 with some pragmatic leeway.

82. The proposals cannot comply with COP95. New development is being brought to a location which cannot meet the level set by the "primary resource".

83. Of course the licence is not fixed at COP95 levels but at 5db about the normal 75db for the pragmatic reasons given by DF including the fact that TBW habitable rooms face away from the noise source.

84. On JP's own case there is no other relevant standard.

*The British Standard*

85. MR has been clear throughout that he is concerned with internal noise standards. "I focussed on looking at the assessment of internal residential amenity" (answer in XX). He correctly accepted that BS does not expressly apply (para 6.9) but thought it was appropriate to apply as a matter of professional judgement in the absence of any other standard.

86. JP also thought as a matter of professional judgement that the BS should be applied to cricket noise despite it being specifically excluded in BS6.9. He used the T20 as to test the acceptability of the noise environment - the worst case (JP/3.1). The T20 is an event which is late afternoon and evening; up to 15000 crowd, "increased crowd noise, regular use of PA for musical "stings" i.e. 30 second bursts of music for boundaries, wickets to around 85B…Some games can be louder…[with] horns and musical instruments to generate near constant loud noise" [DF/13/3.4]. Those sorts of events are relatively rare and have clear parallels with concerts.

87. For the T20 (as the worst case) the residents are, on *JP's* case, entitled to an internal noise environment of 35dB. It is simply not understood why the residents would have to put up with a noise environment which is significantly worse that a T20 for a concert given the similarity of the events. Of course, a concert is louder but that provides no logical basis for applying a different standard. Instead, one would have to justify a departure from the standard on the facts. That has not been sought to be done here.

88. It is said the BS can be used for cricket because it is a continuous noise. That is simply not understood for a T20 – 4s/6s/wickets – "stings". The implicit assumption that this is similar to a "steady" source noise – BS p22 penultimate para – is contrary to the Appellant's own evidence on those noises.

89. The issue then is whether Note 3 of the BS applies to disapply the 35 level. The only examples of the "occasional events" are New Year's Eve and fireworks night. Those examples tell us how rare/ "occasional" the events must be and the nature of the events – namely culturally significant/ubiquitious events on dates when the public expects significant noise. MR's approach was correct. Seven concerts are not "occasional" – those 7 concerts (14 days) are limited to the summer months when people will want to be on their balconies or with windows open. They are of a different genus to those events envisaged in the BS.

90. The 5db BS leeway can be applied if appropriate to the BS 35db taking it to 40 but not to 46db.

*The Choice*

91. The professional judgement of MR is justified. He was concerned with internal noise. He considered it appropriate to use BS as a matter of professional judgement whilst recognising that it was designed for continuous noise sources. In making that judgement he had taken into account all relevant considerations – the nature of the noise including low frequency, the number of events and duration. He was criticised for not expressly stating that the noise was not at night but he had never sought to apply the night-time standard. Indeed, the only reason JP offered for not using BS was that "it is not a steady noise source in terms of duration or frequency. Fact it finishes at 10.30 is of huge significance - because disturbance at night only applies to sleep after 11pm"[19].

92. JP fails to identify any standard for internal or external to guide the inspector as to the acceptability of the noise environment – uniquely for concerts. He dismisses his own "primary resource" (COP95); applies the BS to cricket as a matter of judgement despite it being disapplied for sports but does not apply it for concerts; and says he cannot therefore apply any relevant assessment methodology to concert noise (para 6.12). That is incredibly unhelpful as well as wrong on his own case – on his case there is no credible basis for not using COP95 as the starting point.

93. It is wrong in principle to use the Licence as the standard as JP and DF appear to do – the latter from his perspective as a person operating under a licence; the former assuming the licence just applies to TBW and not, in the future to this façade. The licensing regime

[19] This may not be word for word but is the contemporaneous note taken at the time

is for controlling activities in and affecting existing development. Planning is the process for controlling new development. Those are conceptually different things - what one may have to accept given existing built forma and relationships between buildings does not mean that one has to accept that for new development. Even if the "standard" is the 80db in the Licence there are clear breaches of it.

*The Noise Environment*

94. Based on DF's survey the external noise at the façade when it was 77db at TBW was 87db (DFP/30). And, thus, if and when 80db at TBW – 90db at the façade. Thus:
    a. If the licence continues to be tied only to TBW and not the façade the noise will be 90db at the façade – subjectively double that at TBW façade, and way above any licence condition anywhere even temporary;
    b. If the licence condition is tied to the façade, it will either be massively breached or the noise from the concerts will have to be very significantly reduced making unstageable – see the reason for the licence being at 80 in the first place;
    c. Another way of putting this latter point is that if a licence imposed 80db at the façade of the development, the level at TBW when there was 80db at the development would be 70db or so. But concerts cannot occur when there is such a low limit at TBW.

95. As to internal noise, with all the built in mitigation the best that could be done is to secure a 46db internal noise environment (11db above the BS – equivalent to more than a subjective doubling). That is simply unacceptable – it is 11db above the BS standard for daytime. No other mitigation is possible with this design.

96. The Appellant has placed significant weight on 46dB already being experienced at TBW during concerts. The answer MR gave has been taken entirely out of context. The discussion with MR on this issue was around the internal noise levels when the external noise at the façade was 80db. The question put was thus plainly concerned with the internal noise levels on that side of the building – where there are no habitable rooms. It was not and cannot have been about the noise environment at the rear: (1) MR was not asked about the internal noise levels in the habitable rooms at the rear – we know that that the external noise at that façade is 5 – 10db lower than at the front; and (2) everyone knows that the standard attenuation from double glazing is XXXX and that is before one considers additional attenuation from further internal walls, doors, distance. The comfort the Appellant gets from MR's answer is misplaced. There is no evidence that when it is 80db at the front of TBW, the 35db from BS is exceeded in the rear rooms and no reason to think it would be.

97. The comfort drawn from lack of complaints is thus misplaced – no other residents experience anything like the noise environment to which these single aspect flats will be

exposed. TBW may have 46db internal at the front but the living rooms are at the rear – the residents of the development will have nowhere to escape the noise.

*Deed of Easement – part of a mitigation package*

98. The deed was necessary as part of a mitigation package. It was necessary but it cannot achieve what it sets out to achieve. It has been withdrawn but its contents are telling.

    a. 92dB! The deed sets a noise limit 12db above the level assessed by the Appellant and above the licence conditions. It is 12db above the highest permanent licence condition anyone could point to across the UK. There is no evidence from the Appellant that at 92db there would be an acceptable noise environment internally (or on the balconies). The fact that the Appellant has sought fit to provide protection to LCCC to that extreme level speaks volume.
    b. Permitting the Noise and preventing objections**:** The necessary and intended effect of the deed could not in any event be achieved so as to protect the LCCC. It is not possible in public law to prevent residents exercising their rights under the EPA 1990 to make statutory nuisance complaints or to prevent the Council from taking such action of its own volition. We were told we were wrong on this during the hearing and that the reasons why we were wrong would be set out in closing but now the Appellant has abandoned its defence of the efficacy of the Deed of Easement.

99. On the Appellant's own case properly understood and using the correct survey data, the proposed noise environment will be unacceptable. It will be around 90db external and 46db internal. The former is 17db above COP95; 10 above the highest licence condition in England and the later 11db above the BS. The fact there are not many complaints under the existing conditions is of no comfort. This development will bring many more people much closer to a much worse noise environment than any surrounding habitable rooms.

**E: Viability – Affordable Housing (RFR4)**

1. There are two key issues: (1) whether L2.12d applies and (2) costs.

2. As to L2.12d this development is of a wholly different scale, form and density to the generic typologies assessed in the Local Plan process underpinning the 10%. As ML shows it plainly performs differently from the 10% embedded in the Plan. L2.12d applies. If ML is correct, then there is no possible contrary argument to its application.

3. On costs, as noted in Opening KL's costs have varied wildly. There is no evidence, justification or logic for the 28% jump of which 20% is just because of a change in delivery model. KL seeks reassurance that his costs are about right from his benchmarking exercise but in that he has plainly used the wrong (unblended) benchmark. Using his own logic but the correct blend his costs are (as is obvious following his XX anyway) dramatically too

high. Correcting for that issue alone leads to 39% [J15] with the education contribution and naturally above 40% without.

*L2.12*

4. No evidence in chief has been led by the Appellant in respect of L2.12d, the issue being expressly reserved to submissions. The Council has no advance warning of what those submissions will be and reserves its position. The Council's position is embodied in two Advices to which the Inspector is respectfully referred and to which nothing can be added in the absence of knowledge of the Appellant's case – Mr Katkowski QC says that any reputable valuer will be able to tell if the development performs differently from the generic; I go one stage further and test "generic" by reference to the typologies assessed as part of the local plan process and incorporated by reference into it. ML has assessed the position consistent with both advices and has concluded that the development will perform differently.

5. ML set out his position on whether the development would perform differently in viability terms from generic development in detail and was not challenged on any of it. On the factual aspect the only conclusion on the evidence is that the development will so perform. Indeed that position appears to be confirmed by the Appellant's FVA [J3] at para 10.7 – land values will "greatly differ". SM was unable to point to any type of development where L2.12d would apply to this site but L2.12d cannot be contentless.

6. Mr Hann appears to proceed on the basis that because SM's assessment comes out at 10% this site performs generically similarly and therefore is not within L2.12d. But on that logic on ML's figures, the site clearly does not perform similar to generic sites and so on his figures but Mr Hann's logic L2.12d would apply.

*7.* The point of interpretation is important to the Council. It will not accept an interpretation of L2.12 which forces a justified 40% (or similar) viable scheme down to 10% because that would plainly be contrary to the words and purpose of the L2.12d. It is telling that SM was unable to point to any situation where L2.12d could apply at the site – that in itself shows one why his position cannot be correct. Policies cannot lawfully or sensibly be construed in such a way as to make them otiose or of no effect.

*FVA Inputs*

8. All inputs apart from costs are now agreed.

9. The route to that agreement is however telling. In short, the Appellant has put forward figures which were unevidenced and unjustified, ML has highlighted the flaws and the Appellant has finally moved to ML's position:

b. **<u>on BLV</u>**, SM's starting point was £3.5m [J3/10.21] based on a 50% premium over an inflated EUV based on no detailed evidence and not based on the DIY only condition but an open retail use. ML challenged both elements in [F8] in September 2020 and sought evidence from SM in support. Despite those criticisms SM stuck with his figures in the SoC [F4/p7] and rejected the criticisms at [F4/p14] seeking to uphold the 50% as a "matter of professional judgment". He was unable to explain on what possible basis a 50% premium could be justified. He relied on comparable evidence which ML correctly criticised - the new comparable simply confirmed the position ML had previously reached. He then dropped the EUV and the premium at proof stage dropping a staggering 55% from his former professional judgement to £1.6m and freeing up nearly £2m for AH[20]. ML was right from the outset. SM could provide no evidence to support his stance and he eventually gave up on it only when he had no other option. Had ML not challenged SM on this the inquiry would have proceeded on a fundamentally flawed basis;

c. **<u>on phasing</u>**, there was originally a single phase with consequent finance costs of about £4.46m. That single phase was on the basis of instructions from Accrue as to what they claimed were the constraints of the site. We cannot test that with them and they are silent on it in their letter but their instructions were clearly (and now admittedly) wrong. SM did not test the single-phase instructions at the time even though it is inherently implausible and the consequent finance costs extreme. The worst possible phasing assumption was relied on on Accrue's say so[21]. When ML challenged the single-phase, the Appellant responded that the savings from adjusting phasing would be more than offset by increased construction costs [J4 para 6.20 supported by a further costs plan]. That was plainly wrong. The Appellant has now adopted a phasing it previously told SM was not feasible and has saved £2m off finance costs (45% reduction) and, contrary to its earlier stance there is no claim of any offsetting by increased costs[22]. ML was right from the outset. Again if ML had not challenged the FVA this inquiry would have proceeded on a fundamentally flawed and self-serving assertion of Accrue. Accrue's assertions prove to be wrong when challenged;

d. **<u>on car parking spaces:</u>** the original valuation (£10k) was based on two comparables – bizarrely SM thought it appropriate to include spaces which were not sold (£nil) but were included with the flats in the valuation exercise. When pressed on comparables by ML, £20k (a 100% increase) was agreed releasing another £1m for AH. ML was right from the outset.

[20] As he agreed a reduction in BLV has the effect of falling straight through the assessment.

[21] We would have wanted to XX Accrue on this matter too – why were they telling their experts to adopt the worse possible phasing assumption.

[22] See XX of SM and reference to KLR section 3 – KL did not mention phasing in seeking to explain increase in construction costs. None of the elements have changed by reference to phasing. The increase in prelims is not claimed to be tied to phasing.

10. The result is that on all those matters raised by ML, SM has now agreed ML's position which, all things being equal should have delivered £5m more to AH – ample to deliver circa 40% AH and education. Further the above points are a complete answer to any question of ML's expertise.

11. HPI too has been very positive from a viability perspective since the FVA. The agreed position £382.50 psm is 12.5% above the former £340 and way ahead of the agreed costs construction inflation (BCIS) of 6.58%. The increase in GDV alone is £8.87m and all other things being equal should have provided much more leeway for AH (once cost inflation had been netted out). The Appellants also confirm that this is an area of transformational change – which is obviously strongly supporting viability here.

12. All of these elements are now agreed. The combined impact of those changes is a gross improvement in viability of £14m (against which needs to be set cost construction cost inflation).

13. If those changes are properly[23] plugged in to the assessment [J15] (based on BCIS costs which are higher than Rev D costs adjusted for inflation - £135/143 vs £155) they generate 39% including education.

14. Those changes in favour of AH were however accompanied by last minute fundamental changes to costs.

*Costs: Background to Fundamental Changes in Costs*

15. The FVA was submitted in June 2020 using £136psf [J3/p18] without any caveat and no suggestion that the cost was dependent on the delivery model chosen which is, for obvious reasons addressed below, irrelevant.

16. The £136psf was based on Rev D appended [MLP/ Appx F]. With contingency this equates to **£1535psm** (£143psf). Rev D refers to the type of contract as JCT D&B "probably" - and with no suggestion that the costs would be affected by the type of contract (as KL confirmed in XX[24]).

17. That cost estimates are made up mostly of BCIS elements but there are 8 big ticket "Element Unit Rate Estimate" based on KL's judgement. He confirmed in XX that at that time he was satisfied that they were the appropriate figures to use - and they were positively promoted to the Council as the basis on which to assess AH[25]. ML agrees with those figures having reviewed them against BCIS elements and the multiple other FVAs

[23] Not challenged in XX
[24] "form of contract does not affect what the rate is"
[25] All agreed in XX

he revies. KL confirmed that he was satisfied that that his "expert view was that they were the correct costs for those elements". There was no suggestion that there were "exceptionally low" nor any mention of the previous Rev A costs which had thus (correctly) been abandoned. There was no attempt to tie the Rev D costs to the delivery model and no claim that they were far lower than the costs which would be incurred under any other delivery model. It is notable that they were said to be costs based on "in house construction management delivery" [Rev G KL Appx A page 5] and we now know that that means Accrue's/PPGM costs – namely investment organisations with no internal delivery capacity, resources (cranes etc..) and no evidence of bulk buying discounts.

18. Fundamentally, until 3rd December 2021, the application and the appeal proceeded on the basis of that £135psf (adjusted equivalent to £1535) figure:
    a. in September 2020 [J8/5.22], ML accepted them for the reasons he gave – they were checked, were "in kilter" with other FVAs he had seen and thus seemed appropriate – there was no cross examination of him on this – two experts thus agreed on them;
    b. in the Appellant's Statement of Case the figure was repeated [J4 p5] with no caveats;
    c. in the Council's Statement of Case, ML adopted that figure in his appraisals [J14];
    d. at the Case Management Hearing there was no suggestion that the costs were to be changed or that there was to be a fundamentally new costs plan;
    e. ML was clear that he was told there was to be a new costs plan but had no hint of what the changes were or most importantly the sheer enormity of the changes – he was not challenged on that on the basis that he was forewarned of fundamental changes in the costs plan;
    f. he repeatedly chased for the new costs plan with no luck until an unfair (and apparently deliberate – Rev G had been finished on 18/11/21[26] and the inspector had stressed the importance of early provision[27] including in a follow up email when the Appellant was not providing the information) just 5 days before proofs – in straight and clear breach of the Inspector's clear indication at the CMH; and
    g. this was despite £1535 (with contingency) having been the figure promoted by the Appellant and agreed by the Council for almost 18 months.

19. And yet the Council is now criticised for not having a costs witness and its own costs report. Until 5 days before proofs it had no reason to engage a costs witness because it had agreed the figures put forward and because it had no indication that a fundamental change in approach (unrelated to costs or phasing – which would of course be within ML's expertise) was to be put forward. The fact that ML was able to secure written input at all

[26] It could of course been provided with a caveat that it was being checked and there may be Rev H.
[27] CMH Notes para 17 "By the end of 5 November the appellant is to confirm what their position is on viability, the extent and nature of any further work, including any alternative scenarios based on the Council's policy position . Timeframes should be clearly spelt out when this evidence will be shared *and so that adequate time is programmed to feed into a topic specific SOCG which allows for constructive dialogue. It is critical that this work is done in a timely manner so that proofs are focused and inquiry time is utilized."*

from Mr Wright in those circumstances is to their credit. The idea that somehow the Council had to find a costs expert who could produce a costs assessment in those 5 days and a proof is absurd.

20. In any event the Appellant's unfounded and unfair criticism is based on a misunderstanding of the role of Council's on FVA. Their role is not to produce competing FVAs or costs plans but to test (and where necessary challenge) the FVA and costs plans provided by the Applicant/Appellant. If they accept the FVA/costs plan they have no possible need or justification to instruct and call a witness on it. That was the position until 3/12/21.

21. The Rev G of 3/12/21 change was made without any explanation. One was promised in the proofs. In his proof, ML commented on the inability to comment on the basis of the information provided in Rev G [MLP/3.7; 6.3.2] as did Mr Wright who confirmed he would provide more detailed assessment when the "approach and methodology is explained": [MLP/Appx 8].

22. Despite promises in the letter providing Rev G and in SM/5.27 the reasons for the changes were not explained by KL in his proof. Indeed there was total silence on the changes from rev D and he proceeded as if his rev D had never existed – even though Rev D was his considered and expert view as to the appropriate costs at that time. The Council had nothing to go on.

23. SM sought to explain the costs changes in his proof by reference to changes in the market and phasing (SM/5.24) but: (1) he correctly does not claim that changes in the market encompasses changes to the Appellant's delivery model; (2) SM was wrong to claim the changes are due to phasing (as he now accepts) - the BCIS elements rose only with inflation and the (later) explanation by KL for the 8 elements changing had nothing to do with phasing; and (3) even on preliminaries the change from 12 to 15% we are told arose from the loss of the inhouse capacity of the Appellant under the new delivery model not from phasing changes. His explanation would justify a costs inflation factor to be applied – it does not come close to justifying the 28% shift seen. ML was therefore being told at this stage that the costs increases were due to inflation and phasing without any detail but could not follow that in the data provided.

24. We heard in XX from SM that he knew of the change in delivery model by 18th November - but he must be mistaken because his proof makes no mention of the change in delivery model and what he says is inconsistent with that being the reason for the changes.

25. We finally get KL's explanation for the changes in his rebuttal and then (attempted to be) bolstered well beyond the 11th hour by ID20 (Accrue's letter).

26. Even at that stage, KL provides just a few paragraphs making assertions as to the underlying cause of the change but providing no evidence or material to justify the costs now included or any attempt to explain the jump in the 8 elements, the externals or the preliminaries. There remains (despite Acrrue's last minute letter) no evidence to explain the source of the new figures on the 8 elements or justiifcation for the jump.

*The Relevance of any change in delivery model*

27. Viability assessment is meant to be an objective exercise tied to market costs and values – not those specific to a particular delivery model. The delivery model said by a developer to be the one he will pursue is legally irrelevant to the viability exercise. The question is what can this site/development deliver not what can this developer deliver on his chosen delivery model. Planning permission runs with the land and is not tied to a specific developer or development model. The whole exercise of changing the outputs by reference to the claimed circumstances of Accrue is legally misconceived.

28. In any event, the Accrue letter gives the game away – the delivery model was with a view to enabling them to compete in the market – that means compete on costs too. That means at worst meeting BCIS – not have costs well above BCIS costs.

*The Changes and the Evidence to support them*

29. All the rest of what is said on this issue is without prejudice to the short but obvious relevance point above.

30. The changes took the costs psm on an equivalent basis to the **£1535** previously agreed to **£1963 (**both include contingency and are on a like for like basis)- a 28% increase and more than 20% above the agreed construction cost inflation figure of 6.58%. And that is so, even though they are the same build elements to the same specification in the same building in the same location. The change is literally incredible and is crying out for a detailed, evidenced, explanation.

31. However, the true picture is much worse than those headline figures suggest.

32. Whilst the BCIS elements moved in line with construction costs inflation (not dependent on KL's judgment] as ML agrees, the costs of all the elements dependent on KL's judgement (and for which there is no evidential back up at all) jumped by an astonishing and still unexplained 45% overall – a fact we only know because ML not KL identified it. And that is 45% above the figure KL previously put forward as his proper considered judgement as to the costs of those elements for the Accrue delivery model.

33. The costs of the 8 elements rose dramatically [MLP/section 6.1] – there is no consistency in the rises which itself throws further doubt on them but the increases included £2m on external walls (46%); £1m on windows and doors (47%); internal doors - £500k (97%); Wall finishes £1m (87%) and floor finishes £870k (61%). Taking just the most obvious the suggestion that a D&B contractor would pay 47% and 97% more for windows and doors is obviously wrong. KL had every opportunity to rebut MLP/section 6 by providing an evidence base for the assertions in Rev G - instead he chose to rebut a couple of minor typos and not address the substance of the points being made. If he had anything substantial to say or evidence to support his position it would have been attached to his rebuttal.

34. We are now told (very latterly and with no supporting evidence just Accrue's untested assertion) that these changes arise from the former inhouse delivery approach securing major economies of scale and cost savings compared with a D&B contractor. That makes nil sense and in fact should lead to the opposite result. It is the D&B contractors working on multiple large projects for different investors who have the ability to acquire significant volumes and to secure savings – that is after all their business model. They have the resources, skills, delivery experience, buying power which Accrue lacks and never had even when in JV with another property *investor* - PGIM. Any D&B contractor who tried to charge 45% more than a owner/developer could secure in house would be unable to compete (all agreed by KL in XX). There is no evidential base for the 45% difference – just KL's patently flawed and illogical assertion based on no evidence. How it can possibly be the case that established D&B contractors could charge 45% more than it would cost a first time new build developer is still unexplained and inexplicable. The suggestion that it was somehow for the Council to show why the changes were unjustified is flawed - the onus fell plainly on KL to justify the changes.

35. The same goes for external costs although they are relatively minor.

36. The jump in preliminaries (£2m) from 12 – 15% is similarly inexplicable. It is not at or around the median from BCIS – that is 12%. It is correct that on a very small sample in 2021, it rose to 15% but on a much larger sample in earlier years the figure is below 12%. The explanation given by KL for the jump however is that Rev D was based on the inhouse capability of the Appellant. That is obviously wrong. The proposition rests on the Appellant being a developer of major sites which has inhouse capability but that is not the case – despite all relevant witnesses being asked and despite Accrue providing a last minute letter, there is no evidence whatsoever of Accrue (or PGIM) having any internal development delivery skills, resources, construction teams, equipment or buying power[28].

[28] Despite this question being raised with multiple witnesses there is still no evidence of Accrue having any relevant internal delivery experience/resources etc..

37. No wonder KL had to ignore rev D and the changes from it in his proof going so far as to omit it from the table of revisions at para 6.1. More importantly he provides no evidence to support his "judgement" as to the new figures which are so dramatically out of kilter with what he positively promoted as accurate in rev D.

38. The Appellant cross-examined on the basis that the Council had never asked for further information and that that somehow absolves the Appellant of responsibility for demonstrating its dramatic change. It does not. In any event the Council did ask – see MLP and Wright letter.

39. In short, despite requests, there is no evidence to support the new figures for the 8 elements, the externals and the preliminaries in Rev G.

*Weight to be attached to KL's evidence*

40. KL's evidence can be accorded no weight. He dramatically changes key inputs with no explanation or evidence, ignores Rev D, proceeds on the unstated and completely implausible 45% change assumption and appears to take whatever Accrue tell him at face value.

*Benchmarking*

41. KL's figure for these purposes is £1787 psm[29] – that is the total costs divided by the *total* GIA including basement and commercial.

42. At Rev G, KL undertakes a benchmarking exercise against the BCISS for 6 storey + flats. The correct figure - ID18 – for median is £1723. KL (and SM) then get considerable repeated comfort from the alleged fact that the £1787 is between the median and the mean and closer to the median – see e.g KL para 4.2; 5.2; 7.5 and para 3.3 of Rebuttal.

43. Mr Wright showed that that comfort was misplaced because the benchmarking was against the wrong comparator – it was not like for like – top of page 2 of his letter.

44. BCIS reports basement parking, 6 storey flats and commercial spaces separately for obvious reasons – otherwise the costs psm of a development of flats with much cheaper commercial space and parking below would be being compared with the costs psm of just flatted developments serving to inflating the costs of the ancillary elements and deflating the costs of the flats. There is no evidence from KL even now that the BCIS 6 storey + makes such an elementary error as to include basement car parks or commercial. Mr Wright is clear that the 6 storey + "will not generally include these elements" - top of page 2.

[29] This is base build costs (£166 psf)

45. Mr Wright then carries out an exercise as to what is the correct blended BCIS figure to use as a comparator: MLR Appx A p2. There is no challenge to his expertise. His figures in that table are correct and not challenged. The correct blended BCIS comparator is £1609 psm.

46. That (and not the £1723[30]) is the correct figure to compare with the KL average cost of £1787 (across all the GIA). KL £1787 is 11% above £1609. We know that just a 5% change in costs releases £millions towards AH – see SM/6.5.

47. The result is hardly surprising – but the short point is that KL's unevidenced 45% jump in key elements of the costs takes his cost base well above the benchmark from which he previously gained comfort that his figures were right.

48. Another way of reaching the same point is provided by KL himself. If one is looking for the correct figure to compare with £1723 it is not £1787 but a much higher figure. On his case the basement car parking costs £135/$m^2$ (volunteered by him and positively asserted by him as showing he was right). But his approach attaches a cost psm to the car park of £1787psm (a difference of £1652psm). The result is that the cost of the car park is seriously exaggerated by £6.84m (£1652 x 3890 sq m of car parking) with that part of the total costs being wrongly transferred from the flats (which are thus undercosted by an equivalent sum in leading to his £1797. If the correct comparator is just with the flats (£1723) then the £1787 would have to be inflated by that £6.84m to make the comparison meaningful. KL's own figures thus prove the Council's point.

49. It is in any event noticeable that on the correct Q4 2021 £1723 figure [ID18] KL is £65 or 4% above it – enough to release around £2m to AH.

50. The Appellant was fully forewarned that the benchmarking was at the heart of the case - in Wright's letter and in Opening. It has provided no remotely convincing answer to the obvious and fatal flaw in its own methodology.

51. Mr Miles says that the key issue is what are the correct costs in Q4 2021 and that everything else is beside the point. The correct costs on BCIS are £1603psm, the claimed costs are £1787. There is no reasons for not using BCIS when KL's approach is so poorly evidenced and so internally contradictory. Use of the BCIS is supported by the NPPG. Absent any credible evidence on costs from KL, Mr Wright and BCIS are entirely consistent. ML was right to agree the earlier costs (Rev D) and there is no justification for changing them (other than inflation).

[30] This is the 6 storey + BCIS without the bldeend

52. KL says that nobody would build out at £156. That is wrong – this JV was going to build out at £135 which adjusted for inflation is £143.

53. It has been repeatedly suggested that the standard build model is D&B. The costs of those models are included in BCIS which reflects them. For the point to have any force there would have to be some credence to the claim that inhouse delivery can be 45% cheaper on key elements – there is none.

*Change in model wiping out AH*

54. We have seen that with SM's concessions and BCIS costs (higher than KL's original costs) this scheme can deliver 39% AH [J15]. That is all on SM's own figures and BCIS costs. SM's contention that 40% is never affordable in this area is belied by his own figures with the correct costs.

55. However, the most fundamental point is this – on the Appellant's current case 40% AH is wiped out and reduced to 6.3% *just because of what the developer says is its delivery model.* That makes no sense, defies the basic premise of FVA and must be rejected.

*The so called Sense Check*

56. The approach to viability changed considerably in NPPG 2018 with the RICS guidance finally catching up in 2021[31]. That change to BLV as EUV+ was specifically to avoid land value expectations pricing out AH[32].

57. Warburton Lane (Jan 2021 – L1) was the first time the Council had successful applied that new approach[33]. Whilst the industry has not yet fully got the message (see comment by RC in XX) through Warburton Lane (which ML regards as significant and regularly referred to in this context) the Council sought to establish a new expectation, methodology and output and the former approach of e.g. C&W's Mr Nesbitt was rejected[34]. Most of the permissions relied on predate Warburton Lane and the general acceptance of the true impact of the NPPG.

58. Since then of course SM asserts that there has been HPI of 12.5% - which serves to strongly improve viability (way above cost inflation). A new market is being created in Trafford as new build apartments developments are beginning to be sold. This has only happened recently.

[31] Agreed by SM in XX
[32] Agreed by SM in XX
[33] Agreed by SM in XX
[34] Agreed by SM in XX.

59. The "sense check" was not referred to in the Appellant's Statement of Case, Proofs or Rebuttals. ML was therefore denied the opportunity to properly address it or to put the examples into context. It was raised for the first time in XX of ML and then in EiC of SM.

60. Any meaningful "sense check" would require information on BLV of the sites, GDV assumed at that time; costs; abnormal costs (which are not a factor here); any fallback permissions; and the policy context (NPPG/RICS) at the time. SM's exercise did none of this and did not attempt to grapple with any of the site-specific details. The Inspector can gain no useful assistance from the exercise carried out in EiC and XX.

61. In any event the NPPG is clear that market evidence is a cross check only – treating it as creating some sort of benchmark results in entrenching the approach the NPPG was designed to reverse.

62. Further, almost all of the examples in the table predate Warburton Lane and the more robust approach of the Council following it – in the last 12 – 18 months (RC para 7.4). SM proceeds on the basis that 40% is unattainable based on the prevailing narrative in the industry but: (1) that prejudges the outcome of the FVA; (2) is the very reason why the Council has challenged the prevailing narrative.

*6.3%*

63. When SM's assessment was generating less than 5%, Mr Hahn and the Appellant's opening considered that 10% was the appropriate figure. It is included in the s.106. Now that SM has agreed a *higher* GDV the Appellant claims that the appropriate figure. Unsurprisingly Mr Hahn could not explain this illogical change in position. In any event the 6.3% was raised orally in evidence with no document to allow it to be tested. The correct figure on the Appellant's case is 10%.

64. Standing back, the Appellant's case is extraordinary. After a house price boom in an area of transformational change it contends that this site can only afford 6.3%. That is made even more untenable by the basic point that on its own former approach properly adjusted it would now be 40%.

*The Result*

65. On a correct analysis of the Appellant's figures, and properly accounting for costs which on KL's case need to be close to the BCIS median, the output is 39% with education and more than 40% without. That is on SM's own figures – his claim that no development in Manchester can deliver 40% is *on his own figures* plainly wrong.

*Delivery*

66. Accrue and its witnesses have stayed silent on delivery if 40% is the correct figure. That is no surprise. If they will deliver at 40% that proves the Council's case on viability; if they will not this site will become just the sort of site which RC refers to. The refusal to answer the question is telling.

67. More generally, the Accrue letter is very notable by what it does not address. Even at the 11th hour it has no answer to the fundamental points raised against its approach during this whole inquiry – Accrue's silence on all those matters agreed by Hann speaks volumes.

## F: Education - RfR4

68. The issues have narrowed significantly since proofs and there is a comprehensive SOCG setting out the base information and the issues between the parties. The alternative results are to be provided for in the s.106.

***Pupil Yield***

69. The aim of this part of the exercise is to work how many children can be expected to resident in the development. There is a dispute as to the correct methodology for assessing that but no dispute as to the output of the different methodologies.

70. The Council:
    a. undertook a detailed research exercise in 2014 based on 2011 census data (which was not limited to just "whole house moving" data) which yielded 3 children per academic year per 100 units (SBP6.1) equating to 21 per hundred units for primary school (SBP6.3).
    b. that overall yield is checked regularly to ensure it is accurate – SBP6.2. The last time it was checked was 2019 and Stretford was almost exactly 3;
    c. to check whether that was also applicable to new build flats, work has been done to assess that yield;
    d. fundamentally the random survey of 10 new build flatted developments (SBP6.12) shows a yield that is *far higher* than the 3 average
    e. some individual assessments of individual schemes near the site (and near popular schools as here) have revealed far higher figures - up to 7 times higher (SBP6.9 – 6.10);
    f. there is no evidence from any surveys that the figure of 3 is too high for Stretford generally or for new build flatted developments specifically and all the evidence points the other way;
    g. the short point is that the evidence shows that the yield of 3 for new flatted developments is likely to be a significant *underestimate*.

71. In that context, WSP submitted the Education and Health Capacity Assessment and adopted a different methodology but came up with higher figures – SBP6.5 and see M3.

72. JP adopts a wholly different methodology:

    a. which is used by Hertfordshire when there is no survey. Here (see above) there have been studies – the attempt to distinguish the work at SBP.6.12 from a "survey" is the dancing on the head of a pin. That work is a random survey. On JP's own case, Hertfordshire would not apply his methodology here when there is better data;
    b. he take data from the 2011 census for "whole family moving house" [6.2.4]. It is not just concerned with new build. His results have not been updated since 2011 and have not been backed up or informed by any recent survey. It is not specific to new build.

73. SB's approach is plainly to be preferred. The Appellant focusses on the fact that 2 bed must be lower than 3 – 4 bed but that is to ask the wrong question -the correct question is what is the yield from new build flatted developments in Stretford – the answer is clear – it is at least 3.

***The Places available***

74. The dispute here is also just about methodology. The outputs under the various methodologies are agreed.

*Council Methodology:*

75. The following encapsulates the Council's case:
    a. the latest government guidance on securing education contributions through development (M1) is clear that local methodologies are accepted (p4). It is necessarily implicit in that there can be a range of acceptable methodologies. It does not tie the methodology to SCAP;
    b. the methodology is not purporting to be SPD and there is no obligation to consult on it[35];
    c. it was adopted by members following detailed discussion at a scrutiny committee and proper process and is thus agreed to be the Council's lawful, extant policy of the Council on this precise issue – the only issue therefore is the weight to be attached to it here;
    d. whilst it has not until recently been applied in Stretford because there was no shortfall (although 2 sites have now contributed under it), it has been applied successfully and without challenge ubiquitously across the Council's area since its adoption yielding large contributions as required by the site specifics. It was not challenged by the Appellant's former advisers on this issue – WSP;

[35] Accepted by JP in XX

e. there is strong logic to it –
    i. it looks at the current snapshot and then *conservatively* allocates spaces to new committed development which is known to be coming forward (there is no dispute here on the current surplus - 344 – or the committed number (186);
    ii. it does not require any forecasting at all;
    iii. it does not require working out with certainty when the development will be completed – that is of course impossible anyway absent a binding obligation to build out and here is so uncertain as to mean forecasting to a fixed date is impossible;
    iv. it does not require forecasting beyond the SCAP period – which appears necessary given the Appellant's stance on condition 1 and which has not been done and could not be done -the children are not yet born;
    v. it avoids all the uncertainties re: further HK immigration, delay in GP registrations because of COVID (which is at present unknowable) and where we know September 21 forecasting is already out within a month - by half a class (SB9.5)
    vi. it avoids the increased uncertainty as one moves out beyond 3 years as revealed by the Council's own figures. The Government only scores accuracy of forecasts to 3 years for very good reason – the scope for significant uncertainty beyond that is obvious.

76. There might be an argument for departing from the methodology if there was evidence of a significant change in births over the coming years – but there is none – see SB Rebuttal appendix on ONS birth predictions. Births are predicted to be steady.

77. The question for the inspector in all those circumstances is whether there is any reason not to apply the Council's established, lawful and to date accepted methodology? There is none. It is an appropriate methodology - maybe not perfect but appropriate.

*Appellant's Alternative*

78. The fundamental premise of the Appellant's approach is: (1) that one can know with certainty the school year when the development will complete and thus deliver the children and that that year is within the SCAP horizon; and (2) one can slip the SCAP forecasts into the methodology without changes. Both assumptions are clearly wrong.

79. JP relies on SCAP data for 2025/6 data directly as an appropriate forecast without any adjustment:
    a. SCAP is carried out each year in May/June based for the next 5 years before all the children who will be entering primary school 5 years later are born and, here, based on GP registration data provided in April. It is thus wholly dependent on GP

registration data being accurate and up to date and correct extrapolation of births to September.

b. It then relies on models to extrapolate that population forward over the next five years to account for annual changes in migration and survival [see JP Appx 12].
c. It then has to carry out a forecast of future new build developments which may come forward over those 5 years and the yield from them. For SCAP that uses a *generic* approach SB/ rebuttal para 4.4 assuming all sites come forward and then applying a sliding scale. That sliding scale approach is no substitute for the very specific analysis that has underpinned the 186 and on SB's analysis SCAP significantly under-estimates the pupil yield from those sites – a difference of 78.

80. Whilst SCAP is a useful tool for place planning it has obvious significant drawbacks:
    a. It does not count but has to forecast children born between April and September;
    b. It does not address any one off boost in in migration in a year;
    c. It cannot address the difference between expected numbers and the real numbers that turn up at reception – we know that it was immediately 15 out here and that is ignored by JP's approach – that is just in one year. If that was repeated over 7 years it would serve to wipe out the surplus on which JP relies;
    d. It cannot take account of any delay in COVID registrations with GP or starting school; and
    e. Perhaps most importantly the quantum of education contributions will be entirely dependent on the year when the developer says it will complete the development.

*The SCAP Guidance*

81. Very belatedly (after evidence and rebuttals) JP places very extensive reliance on the SCAP guidance. If it was such a "trump card" it would have been relied on earlier but there is no mention of it at all at any earlier stage. The reason it is not a trump card is because it does not purport to dictate the appropriate methodology; was known about by SB and the choice was taken to adopt the methodology to which she speaks.

## G: 5 Years HLS

*The Approach to "Evidence"*

82. The NPPF is clear that for category 2 sites there must be "clear evidence" that housing completions will begin within 5 years. The NPPG states that for category 2 sites there is sa requirement for "further evidence" over and above the fact of their planning status. It then sets out what that further evidence "may" include. That list is not exhaustive – "for example" is used repeatedly. More importantly, the *form* of that evidence is not limited. Such evidence may come in many forms – it can be a letter from a developer, or a PPA but it can also be from the knowledge and experience of the Council's leading officers. Indeed, in many ways they are the best placed to provide such evidence – knowing the developers, their progress and lack of it, their attitude on that site elsewhere, their business model

(flipping sites or actually developing). Officers clear understanding gleaned from meetings can be the basis of the "firm evidence" require.

*The Sites*

83. It is not proposed to go through the sites covered in the round table.

84. There are however some points of principle:
    a. irst, if the developer has every intention to bring forward a site ***but*** the Council is not yet content with the design or AH that cannot be a reason for counting that site out. The fact the developer may have to come up with a better design or a better AH offer does not remove their basic motivation to bring the site forward as embodied in the progress on it to date. It is a rare site indeed where an application is so straightforward that officers are content on a first pass (and that is the point of pre-application discussions – to iron these issues out early);
    b. Second if RC knows that a particular developer has a track record of "getting on with it" and have acquired a site for development then that itself is strong evidence that the site will be delivered;
    c. Third a request from an applicant for a delay to determination of a couple of months to resolve issues of AH / design etc. should be seen as making a site *more likely* to be delivered within 5 years not less as this demonstrates a clear intention on the developer's part to obtain an implementable permission.

85. The following sites epitomise these evidential issues (put forward as examples only):
    a. As to the appeal site, the Appellant says it is keen to deliver. It will have to make good on its investment. The site has been purchased for development. Accrue will either have to come back with a more appropriate scheme or flip the site to a developer who will.
    b. *Stretford Mall* - this is a site central to the Council's own investment programme with more than an aspiration to develop – there is a clear strategy and policy of the Council to bring it forward assisted by the £17m of Future High Streets Funding and with a development team put in place in order to do so. This is an example of the assertive action being taken by the Council (and eventually accepted by MH in xx) and RC's clear knowledge and understanding of this site should carry significant weight.
    c. *Warwick Road South* – here we have a site subject of a full planning application soon to be determined where MH's only argument for non-inclusion is that 'Members might still refuse it'. Indeed they might, but this does not make it undeliverable. The positive steps taken during the application process which seek to resolve the issues and which were explained by RC at the round table (and are the reason the Committee date has moved backwards) represent clear evidence that the developer is seeking and will continue to seek an implementable permission. RC also said at the round table this was a developer with a strong track record of delivery.

d. *Sale Masonic Hall* – a site here which demonstrates a previous refusal of permission is not a bar to delivery in 5 years. The applicant (a Registered Provider with a track record of delivery) has had a refusal contrary to officer recommendation in June 2021 and intends to submit a revised scheme, agreed by officers in February 2022. The evidence shows pre-application discussions are well underway.
e. *94a Talbot Road* – the developer has a strong track record of delivery. There can be no dispute to this. The relied on to demonstrate delivery are adjacent to this site at 86 and 88-92 Talbot Road as stated by RC in the round table session and this site will complete the set. There is also clear evidence of pre-application discussions progressing positively.

86. RC has adopted a suitably cautious approach. She has not included the para 6.2 sites even though she is strongly of the view on what she knows that they are clearly going to be pursued in the short term. And her knowledge of the market, the developers and their intentions is second to none.

*The Wider Issue – the Weight to be attached to the shortfall*

87. Mr Hard correctly accepted in XX that all the following are potentially relevant to the weight to be attached to the shortfall:
    a. the reasons for the shortfall;
    b. the steps being taken to address the shortfall;
    c. the extent of the shortfall;
    d. the current direction of travel on the shortfall; and
    e. the future trajectory of the shortfall.

*The Cause of the Problem*

88. RC has given extensive unchallenged evidence as to the cause of the problem – repeating what was in the Council's SoC. There is no evidence or rebuttal from the Appellant on any of that.

89. Mr Hard (finally) stated (in EiC) that he did not agree with her but gave no rebuttal or reasons why. Earlier though he had said "not entirely developers fault; it is what it is". His proof simply stated that he had "no regard to complaints" about developers (3.1.63)

90. On the unchallenged evidence the cause of the current position is the approach of landowners to gaming sites rather than delivering. It is not the Council's fault.

91. It is correct that the Inspector in Warburton Lane did not attach weight to this factor – she was afterall refusing permission and did not need to bottom that issue out – "whatever the reason…". RC remains convinced that the point is relevant (Hard accepts it

is potentially relevant) and there is no challenge to the facts here. The Inspector is not in any way constrained by the approach of the Warburton Lane inspector on the facts there.

*The Steps being taken to address the shortfall*

92. Mr Hard (finally) was forced to accept the inevitable. The Council is doing everything it can do to address the shortfall; was already doing everything required by its action plan (under the HDT); and that *there was nothing it could or should be doing that it was not already doing*. His extreme reticence in accepting this obvious point demonstrates its central significance.

93. The fact that the Council has enough land, is granting (much more) than enough permissions (3200 – 3300 per annum against a requirement of around 1652, is entering into JVs and proactively bringing forward sites, encouraging others to bringing forward sites, providing the infrastructure (Carrington Relief Road and WGIS) tells us that the Council can be relied on to resolve the issue - if necessary by seriously "upping the anti" against landowners (threat of CPO).

94. Government policy cannot possibly be understood as meaning that *in such circumstances,* further permissions should nonetheless be granted for otherwise unacceptable developments.

*The Extent of the Shortfall*

95. Trafford has ample land to deliver well in excess of its housing requirement. The issue is not about allocating enough land or granting enough permissions. Since Warburton Lane, the shortfall has improved (on RC 4.24years) by 76% (and on Mr Hard's figures by 37%). The ADT has also jumped from 58/61% at that time to 79% now – taking the HDT result out of the presumption and into the 20% and action plan which in fact makes no difference because the 20% was already being applied and the action plan recites the extremely proactive plan that the Council was already implementing. The "very serious shortfall" [L1/143] is no more. The weight to the shortfall is inevitably influenced by its scale – and here the weight is thus much more limited than previously.

*The Direction of Travel*

96. At the time of Warburton Lane the trend remained downwards [see Hard appx 1] with the issue being what about was being done to reverse it. Now the trend has been reversed. Having dropped to 2.4 years it is now up to between 3.3 and 4.24 years. Using just the 3.3 years, nearly a year has been knocked off the shortfall in just a year. The direction of travel is clearly already strongly in the right direction and that is highly material to the weight to be attached to the shortfall.

*The Trajectory*

97. Table 6.3 of RC's evidence (p18) has not been subject to any rebuttal or cross-examination as to the detail. No requests for details of the sites in it has been raised by the Appellant[36]. If any requests had been made, RC could have provided chapter and verse. Indeed she was clear that the only reason many of these were not in the 5 year HLS was because she could not satisfy the "deliverability evidence" test in respect of them – even though she knows that they will be and are coming forward strongly. The list is backed up by the detail in her proof on the SLs sites. The short point is that the HLS position in Trafford is about to be transformed. RC claimed as much at Warburton Lane and she was right – there has already been a dramatic turnaround. She is right looking forward – in a years time there is every reason to suppose there will be well in excess of a 5 year HLS. This too is highly relevant to the weight to be attached to the current shortfall.

*The standard method*

98. All this is in the context of the standard method. The Council does not dispute that the standard method applies as a matter of policy. However the weight to be attached to it is impacted by the context. The former Local Plan requirement was 578 [MH/3.1.9]; the current standard method is 1377 plus 20%. The GMSF including the 20% would have had a much lower figure; the PFE is proposing a much lower figure. There may be a battle between councils as to these figures but none of them are suggesting anything like 1652. On all other figures in previously promoted or now being promoted plans the Council would have an ample 5 year HLS. It is in the unfortunate position that the GMSF was not pursued through no fault of its own and that the PFE has not yet progressed sufficiently through no fault of its own. It is thus being judged against an artificially inflated benchmark at this snapshot in time.

*The result*

99. Irrespective as to that last point, the overarching position is that there is a shortfall due to the approach of landowners and developers, the Council is doing everything possible to secure delivery, the shortfall is much lower than previously, it is on a rapidly improving trend and the trajectory looking forward is extremely positive.

100. The tilted balance applies as a matter of policy (not law). The weight to be attached to it is for the decision maker. The combination of circumstances here dictate that a low weight be attached to it.

[36] Note that on KL, the Council cross-examined on the basis that he had not provided details of the 8 elements *despite requests;* on the table 6.2 point the Appellant said it could not XX because details had not been provided even though no requests had been made.

## H: Heritage

1. The Inspector has clearly considered this in detail recently and it is not considered that anything can usefully be added at this stage to the round table discussion.

## I: Conditions and s.106

2. At the time of writing it appears that all issues have been addressed save for condition 1. The Council has tried to assist the Appellant, in the very limited time available, on the last minute changes to its unilateral but the onus lies squarely on the Appellant to ensure its unilateral is legally robust and enforceable.

3. On condition 1 there appears to be a disconnect between the education and 5 yr HLS assumptions and the condition proposed by the Appellant. There is no need for more than 6 months to submit the landscape condition. The threat of JR does not require an extended time because s.91(3B) gives that extension automatically in the case of challenge.

## J: Planning Balance

4. All the factors which go into the balance are now before the inspector and no useful purpose would be served by going through each element or its weight here.

5. The benefits are fully acknowledged. They would however be delivered by any appropriate scheme here and it is no part of planning policy that development which is so inappropriate and so out scale based on no design or contextual cues can somehow be permitted (even under the tilted balance) because of such benefits.

6. The planning balance is not a numerical exercise of counting the substantial, moderate and limited harms and benefits and applying some sort of equation to them. It is again telling that the 1 hour 10 min XX of DH on Planning Balance there was not one question on the core issue in this case - scale and massing – it being expressly flitted over. Yet DH's final answer in XX made the core and central point consistent with what the Council's case has always been (as summarised in para 2 of the Opening). "The design, scale, layout and massing is so out of context; so inappropriate that the harm for design outweighs the benefits"[37].

7. The Appellant was at pains to stress in the 5 year HLS round table that it was not criticising the Council for rejecting inappropriate design (in terms of scale and mass in the wrong location). This is a case where the scale, massing, layout etc… are so unacceptable that they significantly and demonstrably outweigh the benefits.

[37] This may not be a precise quote but records the gist of what she said.

## J: The Result

8. The appeal should be dismissed. It is respectfully submitted that the case against is overwhelming.

9. Finally, I would like to thank the programme officer and the technical team for ensuring this inquiry has run smoothly in difficult circumstances and you Sir for making sure we have got through huge volumes of material in the time allotted.

David Forsdick QC

10th February 2022