FORMER B&Q SITE, GREAT STONE ROAD, STRETFORD, M32 0YP

PINS REF: APP/Q4245/W/20/3258552

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT, ACCRUE (FORUM) 1 LLP

Introduction

1. Both national and local policy strongly support the principle of re-using sustainably located brownfield sites in order to meet local housing need. There is no dispute that the site of the former B&Q on Great Stone Road in Stretford, which is the subject of this appeal ('the Appeal Site'), is just such a site. That is, the Appeal Site currently lies vacant and derelict and has done since 2016. It makes no positive contribution to either local development needs, or to the character and visual amenity of the area. Rather, it makes a negative contribution to the street-scene and is in need of redevelopment[1].

2. The Appeal Scheme is the product of some 4 years of work by the Appellant and its consultants. During that period, the Appellant has held extensive pre-application discussions with the Council[2], it has engaged in an independent design review process before the Places Matter panel, and it has commissioned a vast quantity of technical input across a wide range of disciplines in order to meet the Council's concerns. Despite all of this, the Council resists the redevelopment of the Appeal Site.

3. The challenge to which the Appeal Scheme responds, is making optimal use of this vacant site, capitalising on its sustainable location, whilst ensuring that the amenity of future and existing occupiers is not prejudiced. The Appeal Scheme seeks to deliver 332 units of much needed housing, including 6.3% (21 units) affordable housing, alongside flexible space for use classes A1, A3, D1 and/or D2 and associated development. The quantum of this development is directly

[1] Agreed by Ms Harrison in XX (Design), Day 4.

[2] Ms Harrison accepted in XX on Day 4 that there had been a series of meetings, albeit she did not accept the characterisation of the engagement as 'extensive'. The full extent of engagement was related to her in XX. It is evidently extensive.

informed by the fact that the Appeal Site is situated in an area where the principle of residential development is supported and where the opportunity for transformational change has been identified[3]. This is all the more important in the context of Trafford's persistent under-delivery of housing and its lack of a five year housing land supply; something that the Council, remarkably, refuses to bear any responsibility for[4].

4. These closing submissions are structured around the main issues identified by the Inspector at the outset of the Inquiry. Some issues can be dealt with more quickly, being the subject of very little opposition by the other parties to the Inquiry and others are dealt with in more detail.

Preliminary Observation

5. Before turning to the substance of these submissions, it is first necessary to make preliminary observations on four matters. First, regarding the position of Lancashire County Cricket Club ('LCCC') in the context of this appeal; second on five year housing land supply, third, in terms of introducing the Appeal Site and the Scheme; and fourthly in respect of the reasons for refusal.

LCCC

6. LCCC submitted an objection dated 8 October 2020 to the application that is now the subject of these proceedings.[5] That objection raised five main issues, namely:

    a. The principle of development and, in particular, the alleged conflict with the strategic vision for the area and the emerging Civil Quarter Area Action Plan. LCCC made clear that residential development of any scale would be inappropriate on the Appeal Site, due to the incompatibility of that land use with the immediately adjacent cricket ground complex;

    b. Design, in particular with reference to the scale, massing, density and perceived dominance of the Appeal Scheme;

    c. Impact on LCCC's operations, both in respect of noise from cricket matches and music concerts, and the visibility of the Appeal Scheme from within the cricket ground and on television. This, it was alleged, would have a significant adverse impact on LCCC as a visitor, cultural and tourist attraction;

[3] See policy SL3 of the LPCS.
[4] Evidence of Ms Coley in XC and XX, Day 9.
[5] **CD F13.**

d. The detrimental effect on the fine turf practice facility caused by overshadowing; and

e. The interference with LCCC's site access and the significant risk posed to pedestrians accessing the cricket ground.

7. Having been granted Rule 6 party status, LCCC called only a single witness. That witness, Mr Fiumicelli, spoke exclusively to the issue of the noise impact of activities carried out at Emirates Old Trafford ('EOT'). LCCC did not call any witnesses to speak to any of its other concerns. On that basis, whilst the Appellant seeks to address the substance of LCCC's objections to the appeal in these closing submissions, it is significant that the cricket club considered it neither necessary nor appropriate to call any evidence on these issues. Not only does this speak to the level of concern *actually* held by LCCC, but it also means that to the extent its objection raises matters covered in the expert evidence called by the Appellant, LCCC has not challenged that evidence in any substantive way.

Five Year Housing Land Supply

8. This preliminary issue, must be taken at somewhat greater length.

9. It is common ground that the Council does not have a five year housing land supply, and has not had one since 2013.[6] At the close of the inquiry, the Appellant's position is that the housing land supply in Trafford is 3.30 years. The Council's position stands at 4.24. This section of the closing does not purport to respond to the Council's position in respect of each of the 22 sites that remain in dispute. Instead, it seeks to explain in general terms the flaws in the Council's approach to identifying sites for inclusion in its housing land supply, identifying particular sites where relevant by way of illustration.

10. It is important to recall at the outset the criteria set out in the NPPF for the inclusion of sites within the five year housing land supply. The NPPF makes clear that only sites that are "*deliverable*" should be included within the trajectory. The definition of "*deliverable*" in Annex 1 to the NPPF provides that, to be considered deliverable, "*sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the sites within five years."* The definition then provides two sub-categories, namely:

[6] Ms Coley, EiC, Day 7.

"a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, ***it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years****."* (emphasis added)

11. Where the requirement is for 'clear evidence' to be available before a 'Category (b) Site' can be included, mere assertions on the part of planning officers, unsupported by objective evidence, are clearly insufficient.

12. At the time of the Council's Statement of Case, and indeed in her proof of evidence, Ms Coley described the approach she had adopted to the identification of sites for inclusion as a '*cautious*' one.[7] That has proved to be a demonstrably inaccurate description of her and the Council's approach. Indeed, the Council surrendered four sites before the housing land supply roundtable session had even begun, in response to queries raised by the Inspector, and one subsequent site was surrendered during the session.[8]

13. In respect of the remaining sites within the Council's trajectory, the thrust of the Council's approach has been to ask the Inquiry to accept that development on a site is "*bound to happen"* or alternatively that, "*something will come along*". Time and time again, the Council's approach was to resort to its own conviction that a site would be delivered, even where there was no evidence, let alone clear evidence, in support of its position. In a large number of cases, there was no documentation put before the Inquiry at all, save for the proforma that Ms Coley and her team had typically filled in. Sites were relied upon where there was not even a planning application in prospect, or where the Council had recently refused applications and it was unknown whether a new application or appeal was in prospect. Thus the approach was hopelessly speculative.

14. One of the clear examples of the inadequacy of the Council's approach was in fact its treatment of the Appeal Site. Notwithstanding the fact that there is no extant application for planning

[7] Proof of Ms Coley at paragraph 6.2

[8] 94B Talbot Road, Stretford Memorial Hospital, Claremont Centre, High Road Depot and subsequently Former Bakemark UK.

permission for any alternative development on the site, let alone a full planning permission, the Council's approach has been to include the site within its five year housing land supply for 163 units. How the Council has reached a figure of 163 units is frankly a mystery. There is simply no evidence whatsoever that any application for such a development will ever be made. This example provides a clear illustration of both the Council's lack of rigour and its disregard for the policy requirement for clear evidence to support the inclusion of a site.

15. It is simply not sufficient for the Council to rely upon its own subjective views as to the deliverability of a site. The NPPF and PPG makes clear that what is required is "*clear evidence".* The Council's case, in essence, relies upon the gut feeling of Ms Coley.

16. Thus the Council's case on housing land supply is unsound. It is the position of Mr Hard, that the supply is 3.3 years, which is to be preferred.

Weight to Shortfall

17. In this context it as well to consider briefly the Council's position that the weight to be attributed to the shortfall should be reduced.

18. First, Ms Coley sought to argue that the responsibility for the shortfall lay with landowners and developers, rather than the Council, and that weight to shortfall should be reduced accordingly.[9] However, in cross-examination, Ms Coley was accepted that notwithstanding she put this same proposition to the Inspector at the Warburton Lane Inquiry, the Inspector did not reduce the weight to be attributed to the shortfall as requested. Indeed, she also agreed that the Inspector had been *correct* to refuse to reduce that weighting.[10]

19. Second, Ms Coley pointed to a number of sites to show that the direction of travel in respect of the shortfall in housing land supply is that it is reducing.[11] However Ms Coley accepted in cross examination that the Inquiry has no evidence whatsoever about these sites and whether in fact they will come into the supply in the next 12 months as Ms Coley suggests.[12] Again, Ms Coley sought to rely on 'her judgement'.[13] It is respectfully submitted that in the absence of anything more than a list of sites, no material weight can be accorded to a 'direction of travel' which Ms Coley claims to derive from it.

[9] Ms Coley's Proof, para 1.1.
[10] Ms Coley, XX, Day 9.
[11] Ms Coley's Proof, paras 1.6 and 6.3 – 6.5.
[12] Ms Coley, XX, Day 9.
[13] Ms Coley, XX, Day 9.

20. Third, Ms Coley sought to argue that not only was the housing supply position improving, but the housing requirement was set to reduce. She did so by reference to both the Greater Manchester Spatial Framework ('GMSF') and Places for Everyone strategic development plan document ('PFE').[14] Somewhat unusually, Ms Coley has sought to calculate what the housing land supply position would be if on the basis of the local housing requirements that those documents would impose.[15] This exercise was one wholly without point; the housing requirement is that produced by the Standard Method. Indeed, the GMSF was withdrawn without ever undergoing examination, and so cannot be relied upon to reduce the weight to be given to the *actual* shortfall in the context of this appeal. As for the PFE, this is not policy and it too has not yet been examined. As Mr Hard explained, there is simply no way of telling what the housing requirement of any of the nine local authorities will be until the conclusion of the examination of the PFE.[16] On this basis it is not appropriate to reduce the weight to be given to the shortfall.

21. As explained by Mr Hard, there is no justification to attribute anything short of substantial weight to the shortfall in housing land supply.

The Appeal Site and Scheme

22. The Appeal Site is a brownfield site of approximately 1 hectare in size. It currently comprises a large, derelict former retail unit with surface level car parking and associated structures, which was previously occupied by B&Q.[17] The retail unit has been vacant since January 2016.

23. To the north sits EOT, the home of LCCC. EOT comprises a main pavilion building, spectator seating around the field of play, as well as a number of more recently developed buildings including a hotel and hospitality and events building.

24. In terms of the adopted development plan, the Appeal Site is located within the 'Inner Area' on the adopted Trafford Local Plan Core Strategy ('LPCS') policies map (2013). Whilst not allocated for development itself, the Appeal Site is situated within the wider area known as the Lancashire County Cricket Club Quarter Strategic Location ('LCCC Strategic Quarter') under policy SL3. The aim of this policy is to deliver a major mixed-use development in this strategic location consistently with a 'brownfield-first approach'. It seeks to deliver a high quality visitor experience for visitors, balanced with a new residential neighbourhood centred around an improved stadium

[14] Ms Coley's Proof, paras 6.6 – 6.7.
[15] Ms Coley's Proof, paras 6.6 – 6.9.
[16] Mr Hard, XC, Day 9.
[17] A full description of the Appeal Site and its surrounds is set out in the Statement of Common Ground at paras 2.1.2 to 2.1.22.

at LCCC. Following a review of the housing land supply position in March 2020, the indicative figure of 400 new properties within this Quarter was increased to 2,800 within the wider area of the 'Civic Quarter'.

Outstanding reasons for refusal

25. At the opening of this Inquiry, the Appellant's submissions highlighted the significant extent to which the Council's case had grown, shrunk or otherwise evolved since the planning committee's resolution to adopt seven reasons for refusal in October 2020.[18] At that time, two of the reasons for refusal had been withdrawn, two had been modified and one additional reason for refusal had been adopted. The evolution of the Council's case did not stop there however. Within the first two days of the Inquiry, a further reason for refusal had been withdrawn, namely, reason for refusal one concerning the impact of the Appeal Proposal on LCCC's fine turf training facility. The Appellant's position on this issue is set out in detail at paragraphs 73 to 85 below.

26. At the close of the Inquiry, therefore, it is necessary to identify those reasons for refusal that remain outstanding. They are as follows:

> *"1. [Withdrawn during the course of the Inquiry]*
>
> *2. [Withdrawn]*
>
> *3. The proposed development would represent poor design as its form, layout, height, scale, massing, density and monolithic appearance are inappropriate in its context and would result in a building which would be significantly out of character with its surroundings. This would have a highly detrimental impact on the street scene and the character and quality of the area. This would be contrary to Policies SL3 and L7 of the adopted Trafford Core Strategy and the National Planning Policy Framework*
>
> *4. The proposed development would not provide a development plan policy compliant level of planning obligations in relation to affordable housing and education improvements to suitably and appropriately mitigate the impacts of the development. The applicant has failed to demonstrate that there is a robust viability case to demonstrate that the scheme could not offer a policy compliant level of obligations. The proposed development is therefore contrary to Policies SL3, L2 and L8 of the adopted Core Strategy and the Council's adopted Revised*

[18] **ID02**, paras 10 to 11.

Supplementary Planning Document 1 (SPD1) - Planning Obligations and the National Planning Policy Framework.

5. The proposed development by virtue of its height, massing, scale and layout would result in a poor level of amenity ~~and unacceptable living standards~~ for future occupiers of the development, by virtue of inadequate ~~daylight and~~ outlook in both apartments and amenity areas. The proposed development is therefore contrary to Policies SL3 and L7 of the adopted Core Strategy and the National Planning Policy Framework.

6. The proposed development by virtue of its height, massing, scale and layout would result in harm to the amenity of existing residential properties on Great Stone Road, and Trent Bridge Walk and other residential properties in the wider 'Gorses' area by virtue of ~~noticeable reductions in the amount of daylight and sunlight that they receive, and would also have~~ an overbearing impact ~~on these properties.~~ The proposed development is therefore contrary to Policies SL3, L3 and L7 and the National Planning Policy Framework

7. [Withdrawn]

8. Noise arising from concerts at Lancashire Cricket Club would have a harmful impact on the amenity of future occupants of the development and would likely lead to noise complaints, the consequence of which could be the curtailment of activities at Lancashire Cricket Club, contrary to the agent of change principle. An appropriate scheme of acoustic mitigation has not been properly investigated and would require significant and material changes to the design of the building. As such the development is contrary to Policies SL3, L5 and L7 of the adopted Core Strategy and the National Planning Policy Framework."

Issues identified by the Inspector

27. At the opening of the Inquiry, the Inspector identified nine main considerations:

1) Whether the proposed development would preserve or enhance the character or appearance of Longford Park Conservation Area;

2) The effect of the proposed development on the character and appearance of the area;

3) The effect of the proposed development on LCCC, a non-designated heritage asset[19] and an internationally significant visitor attraction, cultural and tourism venue;

4) The effect of the proposed development on the fine turf facility at Lancashire County Cricket Club;

5) The effect of the proposed development on the safety of vehicular and pedestrian users of the access to Lancashire County Cricket Club and Great Stone Road, and the Club's ability to use its existing access;

6) Whether future occupants of the proposed development would have satisfactory living conditions, with regards to outlook;

7) The effect of noise on future occupants of the proposed development and whether, as a consequence, unreasonable restrictions might be placed on the activities at LCCC;

8) The effect of the proposed development on the living conditions of the occupants of residential properties on Great Stone Road and Trent Bridge Walk, with regards to overbearing in respect of height, scale and massing;

9) Whether or not the proposed development would make adequate provision in terms of affordable housing, a TRO review, a design certifier, and contributions for sports facilities and education, having regard to viability; and

28. It is worth noting at the outset that of these issues, in respect of four of them (namely, issues 1, 3, 4 and 5), there has been no expert evidence produced by the Council or LCCC and/or no substantive challenge to the Appellant's position.

Main Consideration 1: Heritage

29. The position in respect of heritage is now agreed[20] and there is no outstanding reason for refusal in respect of it. Putative Reason for Refusal 7, which related to the impact of the Appeal Scheme on Longford Park Conservation Area was withdrawn by the Council prior to the start of the Inquiry. This is notwithstanding that the Officer's Report concluded that this provided *"a clear reason for refusal"*.[21]

[19] The Appellant's position is that the Pavilion, and not the whole of LCCC, is the relevant non-designated heritage asset.
[20] See Heritage Statement of Common Ground dated 26 November
[21] Officer's Report (**CD D7**), para 154.

30. The agreed position is that the Appeal Scheme would not harm the Longford Park Conservation Area. As Dr Batho explains, this is because the Appeal Site makes no contribution to the significance of the asset. The minor change to the setting that will be caused by the Appeal Proposal will be viewed in the existing mixed urban context of the area.[22]

31. There are two other heritage assets that share some intervisibility with the Appeal Site; the designated Grade II Listed Trafford Town Hall and the LCCC Pavilion, a non-designated heritage asset. The agreed position in respect of both of these assets is that the Appeal Scheme will give rise to negligible harm, which is at the very most lowermost end of the spectrum of 'less than substantial' harm.[23] A full assessment of each of these assets is contained in Dr Batho's Proof[24], as well as in the Heritage Statement that accompanied the original planning application. As Dr Batho explained during the round table session, the impact on Trafford Town Hall results from the loss of glimpsed views across the Appeal Site from the footway over the railway bridge along Great Stone Road.[25] It is common ground that the public benefits of the Appeal Scheme outweigh the very limited harm to this designated heritage asset under paragraph 202 of the NPPF.

32. In respect of LCCC, Dr Batho explained that the only element of the cricket ground with heritage value is the Pavilion, which was built in 1895. The cricket ground as a whole has undergone extensive physical alterations, such that today it is a modern sports stadium. In this respect, the site does not contribute to the asset's significance. As Dr Batho explained, the immediate setting of the Pavilion will remain unchanged, with only glimpsed views of the Pavilion being lost through the Appeal Scheme. Even though the Council's witness demurred from certain aspects of Dr Batho's assessment, she concurs with him that the degree of harm to this non-designated asset would be negligible.

33. This agreed position means that there is no 'disapplication' of the tilted balance under paragraph 11(d) of the NPPF on heritage grounds, but that the very limited harm arising to Trafford Town Hall and the LCCC Pavilion should be weighed in the planning balance.

Main Consideration 2: Effect on character and appearance of the area

34. The design of the appeal scheme, and its resulting impact on the character and appearance of the area, underpins a large part of the Council's case at this appeal. Whilst the Council's objection to

[22] Dr Batho's Proof, para 6.1.14.
[23] Main Statement of Common Ground, para 6.1.86.
[24] See paras 5.1.2 – 5.1.3 in respect of Trafford Town Hall and paras 5.1.4 – 5.1.6 and 5.1.15 in respect of the impact on the Pavilion.
[25] Dr Batho's Proof, para 5.1.3. See also Exhibit 8 to the Statement of Common Ground, page 8 (**CD O3**).

the design figures most prominently in putative Reason for Refusal 3, it also underpins a whole range of other concerns about the scheme, such as the outlook of the proposed units, the overshadowing of the southern courtyard, the 'overbearing' impact on surrounding properties, and latterly, the Council's concerns about the existence of northerly facing units within the development. In essence, very many of the issues raised can be traced back to the Council's dislike of the quantum of development and its architectural form. The validity of these concerns, or lack thereof, is therefore central to the Council's overall objection to the scheme.

35. Given the centrality of design to the Council's case, it is striking that the Council's case at this appeal rests solely on the view of Ms Harrison who, by her own admission, is not qualified in urban design, architecture or landscape/townscape matters.[26] In this regard it is notable that the Council has at no stage carried out or commissioned a TVIA in order to assess the impact of the Appeal Scheme on the character and amenity of the area. As Ms Harrison accepts, she relies solely on her own judgment, drawing on the TVIA prepared by Randall Thorp – which assessment was prepared not in respect of the Appeal Proposal (which it does not consider), but instead in respect of an earlier iteration of the emerging Civic Quarter AAP which entirely predates it.[27]

36. By way of contrast, the Appellant's evidence has been provided by Mr O'Connell, a qualified and experienced architect and the very person with responsibility for the architectural design of the scheme, and Mr Taylor, a landscape architect with experience in the field of landscape and visual assessment. Mr O'Connell's Proof contains a range of visual representations of the Appeal Scheme.[28] Some of these images are verified views and some are not, however the accuracy of all images is accepted by the Council.[29] A full TVIA, prepared by Mr Taylor, was included with the Appellant's original application for planning permission and has since been supplemented by verified views as requested by the Council.[30] There is no challenge by Ms Harrison to a single one of the judgements reached by Mr Taylor in that TVIA; Ms Harrison has, in effect, simply ignored the assessment altogether.

[26] Ms Harrison, XX (Design), Day 4.
[27] Ms Harrison, XX (Design), Day 4.
[28] Mr O'Connell's Proof, page 20, Figure 24 shows the location of the views provided.
[29] Ms Harrison, XX (Design), Day 4.
[30] As explained by Mr O'Connell in his Proof, para 8.3.6.

37. Quite apart from the evidence of Mr O'Connell and Mr Taylor however, the Inquiry also has before it the view of four "*fully independent*"[31] experts in the fields of architecture, landscape architecture and planning.[32] This, it is respectfully submitted, is extremely important evidence.

38. The Places Matter design panel, which the Council itself recommends that developers consult[33], reviewed and provided feedback on an early iteration of the Appeal Scheme[34] in November 2019.[35] Whilst Ms Harrison, somewhat surprisingly, sought to denigrate the Places Matter Panel process in her Proof of Evidence, neither the independence nor the expertise of the members are in any dispute, nor is the fact that the Panel conducted a site visit so that they were fully familiar with both the Appeal Site and its surrounding context when reaching their findings.[36] Further, whilst the Council are apparently dissatisfied with the enabling session, it is agreed that no issue was raised by them at the time of the event (or subsequently).[37] Moreover, there is no dispute that the Council were given the opportunity to address the Panel directly and did so accordingly.[38] The complaint, which was originally to the effect that they had only "*24 hours' notice*" of the session, morphed into a complaint that they were provided with plans at insufficient notice, when it transpired that they had in fact had a week's notice of the event. However, that complaint also is unfair – the Council received the plans at the same time as the Panel, and the latter did not raise any issue. Further, this was not the first time the Council had seen a design of this type on this site; they had refused a previous scheme only a year before, and so cannot in any sense claim to have been 'unfamiliar' with the general proposal. All the same issues were in play.

39. The Council's attempts to detract from the clear feedback of the Panel are transparent; the Panel's feedback conflicts in various respects with the central tenets of the Council's case. Indeed, on all significant issues the Panel and the Appellant's consultants are agreed, and it is the view of Ms Harrison alone that stands as an outlier.[39] Whilst the Council now seeks to argue that it was based on a one-sided or distorted understanding of the wider context of the development, as noted above it is agreed that the Panel carried out its own site visit, such that it had a full understanding

[31] Ms Harrison's description, XX (Design), Day 4.
[32] The members of Places Matter Panel are listed in Mr O'Connell's Proof, para 7.3.3. They include a former President of RIBA and a member of RIBA's current National Council.
[33] Ms Harrison, XX (Design), Day 4.
[34] The design pack provided is at **CD K04.**
[35] That feedback is contained at **CD K05.**
[36] Ms Harrison, XX (Design), Day 4.
[37] Ms Harrison accepted in XX (Design) that no issues were raised at the time, Day 4.
[38] Ms Harrison, XX (Design), Day 4.
[39] This is accepted by Ms Harrison, XX (Design), Day 4.

of the site context.[40] The Panel's views therefore provide a weighty and important perspective to inform the Inspector's appraisal of the design.

40. There are six main issues relating to design, townscape and visual impact, as follows:

    a. Context and approach;

    b. Height;

    c. Density;

    d. Scale and massing;

    e. Site boundaries and coverage; and

    f. Townscape and visual effects.

41. These issues are dealt with in turn below. It should be noted that there is no dispute that in respect of the detailed elements of the Appeal Scheme, a condition can be imposed to ensure that the level of detailing shown on the illustrations will be delivered.[41] These elements were recognised as being "*successful*" by the Places Matter Panel, which recommended that these were retained in the final scheme.[42]

Context and approach

Approach to design

42. A fundamental concern underpinning much of Ms Harrison's dissatisfaction with the design of the Appeal Scheme is what she describes as the Appellant's 'quantum-led' or 'density-led' approach.[43] As Ms Harrison explains, she does not consider that the Appeal Scheme should be led by any pre-conceived ideas of how much development should be delivered on the site. Indeed, this reflects some of Ms Harrison's dissatisfaction with the Places Matter Panel; she does not consider it appropriate to brief the Panel on the wider policy context and development objectives for the site.

43. Adopting Ms Harrison's approach would require an approach to design and design policy in a vacuum from its wider context. Not only does this find no support in the NPPF or the National

[40] Ms Harrison, XX (Design), Day 4.
[41] Ms Harrison, EiC (Design), Day 4. This includes the detailing on the elevations and the reveals.
[42] **CD K05**
[43] Explained by Ms Harrison in XX (Design), Day 4. This is also reflected in her Proof, paras 4.18 – 4.25.

Design Guide, it would result in a wholly artificial exercise. It is inevitable that the context of a site will inform the development that is placed upon it and the design of that development.

44. The Appeal Site is a brownfield, derelict and vacant site in a sustainable location. The NPPF provides in principle support for making best and efficient use of such sites. It is situated within an area that is earmarked in local policy for significant development and change, including the creation of a new residential neighbourhood.[44] This wider context inevitably informs the nature, type and scale of development that is appropriate for the site, as does the fact that the Council cannot identify a five year housing land supply.

45. Indeed, this approach finds support in the views of the Places Matter Panel. Whilst the Council objected to the discussion of the wider context for the site, the Panel were keen to use the enabling session to *"explore… thoughts about the emergence of the current development proposition and the competing pressures on the site, as well as hearing about the wider regeneration plans, being guided by the 2018 Civic Quarter Masterplan".* Further, they recognised the need to maintain "*a viable development quantum*" in determining a final design[45]. This approach on the part of the Panel recognises that the design of the scheme cannot be considered in isolation and any attempt to do so should be rejected.

Site context

46. The position of the Council and that of the Appellant and its consultants fundamentally differs with regards to its understanding of the geographical context of the Appeal Site. Ms Harrison's firmly held position is that the Appeal Site is informed, principally, by low rise, two-storey residential dwellings on Trent Bridge Walk and the 'Gorses'.[46] The "*exception"* to this, she says, is the Lancastrian Office Centre which fronts onto Talbot Road.[47]

47. It is Ms Harrison's focus on the two storey residential development to the south of the Appeal Site that underpins her criticism of the TVIA, which she considers does not appropriately address the context of the site.[48] This is notwithstanding that the Council has neither carried out nor commissioned a TVIA in respect of the Appeal Scheme.

[44] Policy SL3 of the LPCS.
[45] Places Matter Letter (**CD K05**).
[46] Ms Harrison's Proof, para 4.2.
[47] Ms Harrison's Proof, para 4.2.
[48] Ms Harrison's Proof, para 4.35.

48. As shown in the evidence of Mr O'Connell, however, the Appeal Site stands at a threshold of transition between two storey housing to the south west and south east, and the large scale massing of the cricket stands and nearby office buildings.[49] Mr Taylor, who carried out the TVIA in respect of the Appeal Scheme explained that the context for the Appeal Site includes various different types of urban form, but that the "*dominant feature in the urban landscape"* is the buildings of EOT.[50]

49. As Ms Harrison accepted in cross-examination, the analysis in her Proof of Evidence altogether ignores the influence of the adjacent cricket stands at EOT.[51] Whilst the Inspector will form his own view as to from where the Appeal Site draws its character, it is notable that the principle of increasing height from the existing residential dwellings (for example in the 'Gorses' and to the south of the Metrolink line) towards EOT and beyond is the very principle reflected in the design of the Council's own development on the Former Kelloggs Site.[52] That proposal seeks to deliver six storeys (55m AOD) rising to twenty storeys (111m AOD) in the north east of the site.[53] Indeed, Ms Harrison accepted that what can be seen in the aerial photograph in Mr O'Connell's Proof is a transition to larger and larger development across the tramline and to the Kelloggs Site to the north.[54]

50. The difference of opinion in relation to where the Appeal Site draws its character from, and the relevance of the large buildings of EOT, underpins a number of the Council's objections in respect of the design.

<u>Height</u>

51. The lynchpin of the Council's case on height is its view that no more than six storeys is appropriate on the Appeal Site. This is the position that the Council has held unwaveringly since 2017.

52. What is striking, however, is the complete lack of any analysis or evidence whatsoever in support of this position. As Ms Harrison confirmed, the six storey cap originated merely as "*a planning judgment of officers"* made in 2017.[55] It was not the product of any analysis, evidence or expert architectural or townscape advice. Whilst Ms Harrison sought to present the TVIA of Randall

[49] Mr O'Connell's Proof, section 5 and para 7.1.3, the aerial photograph at page 6 and Figure 20 on page 16.
[50] Mr Taylor, XC, Day 5.
[51] Ms Harrison accepted that she had not drawn attention to this in her evidence, XX (Design), Day 4.
[52] See the Kelloggs Site approved maximum height parameter plan (**CD K35**).
[53] Kelloggs Site approved maximum height parameter plan (**CD K35**).
[54] Ms Harrison, XX (Design), Day 4.
[55] Ms Harrison, XX (Design), Day 4.

Thorp[56] in respect of the AAP as "*supportive*" of this position, she accepted that nowhere in that document is there any analysis or consideration of what would be an appropriate height for development on the Appeal Site. Nor is this surprising; Randall Thorp were not instructed to engage with this matter. It is readily apparent from the TVIA itself that Randall Thorp's instructions were merely to assess the impact of a six storey development as envisaged by the Council.[57]

53. What is even more significant is the lack of support that the Council's six storey cap gained from the design, architectural and planning experts on the Places Matter Panel. The Panel, having considered directly the Council's six storey cap, expressed its "*clear view that a site of this significance feels right for development at this scale, height and massing."*[58] It went on to explain that "*[t]he Panel did not agree that there was any need to define a rigid datum at six storeys and that justification could be made to adjust this as outlined in more detail below".*[59] The Panel went on to explain that "*[g]reater height, than currently proposed, adjacent to the tramline is not considered an issue, especially if this maintains a viable development quantum, allows for breaking up the blocks and secures greater liveability".*[60]

54. This analysis shows that on the very first occasion that the Council's position was subject to independent scrutiny, it was found to be unjustified. Ms Harrison agreed that it is "*very relevant*" that two architects with a national profile, a landscape architect and a planner all consider that the Council's cap of six storeys is inappropriate.[61] Further, whilst Ms Harrison has sought to argue that the Appeal Site is not identified as a landmark site, she accepted that nowhere in the adopted development plan was any policy identifying sites as 'landmark sites'.[62] As Mr Taylor explained, his view, which was endorsed by the Places Matter Panel, is that the Appeal Site offers an opportunity to provide a corner piece to the masterplan area, anchoring the urban environment.[63]

55. What is clear is that the four industry experts comprising the Places Matter Panel, Mr O'Connell and Mr Taylor are unanimous in respect of their endorsement of the height of the Appeal Scheme,

[56] **CD K36.**
[57] Ms Harrison was unable to point to anywhere in the document where other heights were considered by Randall Thorp, XX (Design), Day 4.
[58] **CD K05**, page 3, point (a).
[59] **CD K05**, page 3, point (a).
[60] **CD K05**, page 4, point (r).
[61] Ms Harrison, XX (Design), Day 4.
[62] Ms Harrison, XX (Design), Day 4.
[63] Mr Taylor, XC, Day 5.

both in its wider context and in recognition of the significance of the site. It is only Ms Harrison, as a planner, who maintains that anything over six storeys is inappropriate.

Density

56. The Council objects to the density of the Appeal Scheme. Ms Harrison describes the scheme's density of 332 dph as "*superdense",* which she considers to be inappropriate in the context of low rise dwellings at around 30-40 dph.[64]

57. The Council's position on density is both vague and entirely unsupported by policy. Whilst 332 dph would be "*out of keeping*" with the low density residential development around the Appeal Site, the Council would be willing to accept "*high*" density development on the site, in recognition of the sustainability credentials of the site.[65] Despite being pressed on it, Ms Harrison found herself unable to indicate what she considered would be an appropriate density for the site, or even to define to what she meant by "*high"* density.[66] Ms Harrison accepted that neither her definitions, nor her opinion on what is and is not appropriate on the Appeal Site finds any basis in policy.[67]

58. Ms Harrison's only answer on this matter was that she considered insufficient weight had been given to the emerging AAP.[68] However she agreed that the AAP was not yet adopted policy, was subject to a number of outstanding objections and was yet to receive any comments from the examining Inspector.[69] It should only be attributed limited weight in any event (as Mr Hann confirmed).

Scale and massing

59. The Council's objection to the proposed scale and massing of the Appeal Scheme is closely related to its view on the extent to which the character of the Appeal Site is informed by the surrounding two storey residential development; the scale and massing of the Appeal Scheme is, in the Council's view, out of keeping with the low-rise residential development to the south. Furthermore Ms Harrison's position is that the Appeal Scheme will *"appear as a single mass"* rather than a series of separate buildings, as recommended by the Places Matter Panel.[70]

[64] Ms Harrison's Proof, para 4.46.
[65] Ms Harrison, XX (Design), Day 4.
[66] Ms Harrison, XX (Design), Day 4.
[67] Ms Harrison, XX (Design), Day 4.
[68] Ms Harrison's Proof, para 4.48.
[69] Ms Harrison, XX (Design), Day 4.
[70] Ms Harrison's Proof, para 4.28.

60. As shown in Mr O'Connell's Proof, the iteration of the Appeal Scheme reviewed by the Places Matter Panel comprised a single building with limited breaks along the north east elevation.[71] The Panel's feedback sought clarity on the fundamental issue of whether the Appeal Scheme was *"one building or a series of three, or more".*[72] The Panel's "*clear view*" was that the development would benefit from being a series of separate buildings.[73]

61. The design of the development has since undergone significant change; a complete break in the building form has been introduced between the block to the south east, and an exaggerated break introduced to add variation to the roofline further north.[74] The break is coupled with a double height opening in the façade. As Mr Taylor explained, in townscape terms (i.e. at street level) the proposed massing will read as three separate buildings,[75] reflecting the recommendations of the Places Matter Panel.

62. Ms Harrison sought to cling to the fact that the Appeal Proposals are in fact two buildings, rather than three. As a matter of plain fact, she is of course correct. However, her assessment is a blinkered and artificial one; it does not recognise the nuance of Mr O'Connell's design, and the extent to which it succeeds in providing the impression of a development which has been broken into three buildings. In fact, Ms Harrison herself concedes that "*The front façade of the development has been broken in to three blocks of development*…", whilst the breaks (full and partial) introduced to the north eastern façade following receipt of the Places Matter comments result in precisely the outcome that the Panel were advocating.

<u>Site boundaries and coverage</u>

63. The Council's position, as set out in Ms Harrison's Proof, is that the Appeal Scheme provides insufficient "*room to breathe"* for buildings of the scale and mass proposed.[76] This is on the basis that the built mass of the development occupies too much of the site, and that the boundaries are too tight. This position is somewhat surprising – indeed it is simply not credible – given that boundaries/site coverage are comparable (indeed superior) to the site coverage/boundaries proposed at the Council's *own* development on the Kelloggs Site. As shown in Mr O'Connell's Proof, the site coverage of the Appeal Site is some 40.9%.[77] The site coverage on the Kelloggs

[71] Mr O'Connell's Proof, pages 11 – 15, Figures 1 – 17.
[72] **CD K05**, page 3 point (b).
[73] **CD K05**, page 3 point (c).
[74] Mr O'Connell's Proof, page 12, Figures 3 and 4.
[75] Mr Taylor, XX, Day 5.
[76] Ms Harrison's Proof, para 4.2.
[77] Mr O'Connell's Proof, Figure 62 on page 39.

Site, which proposes taller buildings of up to 20 storeys than those on the Appeal Site, is approximately 41.1%.[78] With regards to site boundaries, those at the Appeal Site range between 3.8m and 11.9m.[79] By way of comparison, the site boundaries at the Kelloggs Site are, in some places, as narrow as 2.1m.[80] The comparison with the Kelloggs Site is not something that Ms Harrison had considered when forming her views.[81] Indeed, she simply had no answer when the Kelloggs Site was put to her.

64. Notwithstanding the measurements themselves told against her, the position adopted in Ms Harrison's Proof was that the development will feel "*cramped"* and result in a sense of *"over-filling"* or *"crowding"* of development within the space.[82] When pressed on the detail however, Ms Harrison struggled to make good her point:

    a. She agreed that the boundary at the south western façade, which provided an active frontage onto Great Stone Road, was suitable and indeed a benefit of the scheme;[83]

    b. The south eastern façade, which faces onto landscaping along the tramline and not onto built development, has a width of 3.8m. Ms Harrison accepted that the same boundary along the tramline in the Kelloggs Site, which the Council had found appropriate, was merely half that, at 2.1m;[84]

    c. Despite the separation caused by the presence of the LCCC car park, Ms Harrison maintained that the relationship between the north western façade of the Appeal Scheme and EOT would appear "*cramped";*

    d. Ms Harrison confirmed that her real concern in terms of the "*cramped*" feeling arose from the north eastern façade, despite accepting that there was a *"good provision"* of 5m deep gardens and walkway between a pedestrian and the built form of the Appeal Scheme.[85] Ms Harrison accepted that the image of this boundary contained in Mr O'Connell's Proof[86] did not portray a 'cramped' feeling, but that this viewpoint was distorted by virtue of being a birds' eye view. Ms Harrison's position fell away however when her attention was

[78] Mr O'Connell's Proof, Figure 63 on page 39.
[79] Mr O'Connell's Proof, Figure 62 on page 39.
[80] Mr O'Connell's Proof, Figure 63 on page 39.
[81] Ms Harrison, XX (Design), Day 4.
[82] Ms Harrison's Proof, para 4.3.
[83] Ms Harrison, XX (Design), Day 4.
[84] Ms Harrison, XX (Design), Day 4.
[85] Ms Harrison, XX (Design), Day 4.
[86] Mr O'Connell's Proof, page 13, Figure 9.

drawn to the image taken from ground level, which showed that the position was evidently a pleasant one[87].

65. The Inspector will form his own view on whether or not the site boundaries feel "*cramped*" having regard to the evidence of Mr Hard on overbearing. However, the Appellant considers that the video shown by Mr O'Connell in his evidence[88], in addition to the viewpoints contained in his Proof, demonstrate that this is clearly not the case. As shown in Mr O'Connell's Proof, the evolution of the design following the Places Matter feedback has sought to widen the edge around the development on the north eastern façade and incorporate more soft landscaping,[89] providing high quality edge and usable space around the development.

Townscape and visual effects

66. As noted above, the only TVIA before the Inquiry that assesses the townscape and visual impacts of this development, is that produced by Mr Taylor. That TVIA has been prepared by a qualified landscape architect in accordance with GLVIA 3; none of that is disputed.

67. The findings of the TVIA are set out in detail in Mr Taylor's Proof.[90] There is no dispute about either the findings in respect of sensitivity or those of magnitude of change. The overall effect of the Appeal Scheme is assessed to be 'moderate beneficial'.[91] Furthermore, the TVIA prepared by Randall Thorp in respect of the AAP supports both the judgments and the overall conclusion reached in the TVIA. This is notwithstanding that the development assessed by Randall Thorp was an unarticulated outline block representing a leisure centre and car parking use, rather than a fully articulated and detailed residential development.[92] It is only the Council, based on the view of Ms Harrison and unsupported by any technical analysis or assessment, that considers that the overall effect of the Appeal Scheme is adverse.

68. The images contained in the Proof of Evidence of Mr O'Connell, the accuracy of which is agreed, show clearly the extent of change that will be experienced from the tramline (CAM-08, 06 and 12), Great Stone Road (CAM-01, 03, 04 and 05) and the Gorses (CAM-13 and 02). For the reasons explained fully in the evidence of Mr Taylor, the Appeal Scheme would see the replacement of a derelict site with a strong urban form. Whilst the visual change is clear, that change will be positive

[87] Ms Harrison, XX (Design), Day 4.
[88] **CD K20**
[89] Mr O'Connell's Proof, page 14, Figures 14 and 15.
[90] Mr Taylor's Proof, section 5.
[91] Mr Taylor's Proof, para 5.20.
[92] The development assessed by Randall Thorp can be seen at page 80 of Mr Taylor's Appendices.

in terms of strengthening the local character and creating a new sense of place in and around the Appeal Site.

Conclusion

69. Far from conflicting with SL3 and L7 of the LPCS, the Appeal Scheme represents an architecturally interesting response to making best use of a vacant brownfield site.

70. The overall conclusion of the Places Matter Panel was clear; the overall architectural quality, proportions and details were considered "*successful*".[93] The height and scale of development on this site is both appropriate and consistent with the site's significance.[94] On these issues, which are central to the Council's case, Ms Harrison accepts that her view stands alone[95].

Main Consideration 3: Effect on LCCC

71. This main consideration is based on a putative Reason for Refusal 2, which has since been withdrawn. The Council's witness on townscape and visual impact matters, Ms Harrison, did not speak to this issue, and no evidence at all was provided by LCCC. The images of Mr O'Connell (which are not disputed) demonstrate the extent of the visual impact on EOT.[96] There is no adverse impact whatsoever.

72. This position on the part of the Appellant is uncontested by any evidence from any other party, and Mr O'Connell's and Mr Taylor's evidence was not questioned in cross-examination. Accordingly, the Appellant's case is unchallenged.

Main Consideration 4: Effect on LCCC's fine turf training facility

73. This main consideration stems from the Council's original Reason for Refusal 1. At the date of the committee meeting in October 2020, the Council adopted a reason for refusal that referred to the detrimental effect of the Scheme on both the fine turf training facility ('FTTF') and non-turf facility at LCCC. This reason for refusal was informed directly by the consultation responses received from Sport England, with the support the England Cricket Board ('ECB') as technical advisers[97].

[93] **CD K05,** page 4, point (k).
[94] **CD K05,** page 3, point (a).
[95] The only point remaining to the Council, was the complaint by Mr Forsdick QC, put in XX to the Appellant witnesses, that they 'had not gone back to Places Matter with their new design'. That is an entirely hollow point, which Mr Hard rejected in XC, explaining that it was entirely commonplace not to 'go back for a second bite'. Indeed, he confirmed that he had never know an applicant 'go back' in this way. This evidence was not challenged by Mr Forsdick in XX.
[96] Mr O'Connell's Proof, pages 21 – 26, CAM 09 - 11.
[97] Officer's Report (**CD D05**), para 297.

Notwithstanding the alleged impact on LCCC's facilities, however, LCCC chose not to call evidence on this issue but relied on the Council's evidence provided by the ECB.

74. Following the adoption of the reason for refusal, the Council confirmed on 17 November 2021 that the scope of the objection related solely to LCCC's fine-turf and not the non-turf training facility.[98] That impact was said to arise from the effect of overshadowing caused by the Scheme, which would interfere with light and temperature levels, necessitating the purchase and use of growth lights.

75. The witness that the ECB elected to send to the Inquiry to speak to the Council's reason for refusal was Mr Musson.[99] By his own admission, Mr Musson is not an agronomist and does not have technical expertise in turf.[100] Mr Musson does not, for example, have a FACTS[101] qualification,[102] nor was he able to correctly identify the broad type, correct product name or precise seed mix of the turf used on the FTTF.[103] Mr Musson was careful to make clear that he does not have the qualifications of, for example, Dr Iain James, who produced a 'technical report' in support of the ECB's position, or indeed the Appellant's witness Mr Collier.[104] Mr Musson instead sought to rely on the fact that he has intimate knowledge of the management of the FTTF at LCCC, not least because the ECB office at which Mr Musson has been based for the last four years is situated at the indoor centre at LCCC itself, overlooking the FTTF[105]. Mr Musson explained that he was both involved with the development of the FTTF and, quite literally, oversaw the two year construction process from his office at the indoor centre at LCCC.[106]

76. Notwithstanding that Mr Musson did not hold himself out as an expert in turf management, he nevertheless sought to give extensive evidence, which took up a considerable portion of the first day of the Inquiry.

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[98] Confirmed in an email from Debra Harrison to Matt Hard (WSP).
[99] Mr Musson accepted that it was "fair to say" that the ECB had elected not to put up Dr James but to put up Mr Musson instead.
[100] Mr Musson, XX, Day 1.
[101] Mr Collier explained in XC that this stands for Fertiliser Advisers Certification and Training Scheme.
[102] Confirmed by Mr Musson, XX, Day 1. Mr Musson was not familiar with what a FACTS qualification was.
[103] As Mr Collier explained in XC, the broad type is that of 'cool season' grasses (C3). Warm season grasses are those found in warm or tropical climates. Mr Musson's view, as expressed in XX, was that it was a warm season grass. The apparent basis for this understanding was that the seed mix was marketed for use for cricket, a sport which is played in the summer. Mr Collier identified that the precise seed mix used for the FTTF was Clementine, Monroe, Dickens and Chardin.
[104] This technical report is at Appendix 1 to Mr Musson's Proof.
[105] Mr Musson, XX, Day 1.
[106] Mr Musson, XC, Day 1.

77. However, by lunchtime on the second day the reason for refusal on which this consideration was based had been withdrawn by the Council.

78. As had become readily apparent to all those staying in the pitch side rooms at the Hilton Hotel located at EOT,[107] LCCC already own and use growth lights on the FTTF. This extraordinary revelation, which was apparently as much of a surprise to the Council and Mr Musson as it was to the Appellant, resulted in the prompt withdrawal of Reason for Refusal 1. Significantly, there was no cross-examination of Mr Collier's evidence pursued by either the Council or LCCC. As such, his evidence stands entirely unchallenged.

79. Not only did the 'growth rig discovery' undermine the "*central plank*" of the Council's case on reason for refusal 1[108], but it also demonstrated that Mr Musson had very little, if any knowledge as to how the FTTF is being managed[109] or indeed what equipment LCCC has at its disposal. When re-called to explain his position, Mr Musson admitted that he had, in fact, only visited his office at LCCC on three occasions since March 2020 and therefore had had *"virtually no physical presence there"* in the last two years.[110] Accordingly, not only does Mr Musson not have the relevant qualifications to proffer expert evidence in respect of the impact of the Appeal Scheme on the FTTF, he also does not have a basic factual understanding of the position.

80. As at the close the Inquiry, therefore, there is no longer an outstanding reason for refusal based on the impact on the FTTF. Notwithstanding this, however, LCCC has confirmed that it retains an objection on the basis of the impact of the Scheme on the FTTF. For this reason, the issue remains a live one for the Inspector to consider and the Appellant's position on this reason for refusal is set out below. As already noted above however, in this context it should be remembered that Mr Collier's evidence stands unchallenged. Mr Musson's evidence, if ever it could, certainly cannot now be given any weight.

<u>The Appellant's Case</u>

81. The evidence of Mr Collier is the only technical evidence given by a witness that appeared at the Inquiry. The fact of Mr Collier's technical expertise in this field is not a matter in dispute.[111] Indeed, Mr Musson himself explained that STRI is one of three specialist agencies that the ECB

[107] Photographs of the growth lights in use was provided by the Appellant at **ID05.**
[108] Mr Musson accepted that the need for a lighting rig was "the central plank" of his evidence.
[109] Mr Musson had originally claimed in XX that he had a *"very good understanding"* of operations at LCCC.
[110] Mr Musson, XX (re-called), Day 2.
[111] Mr Musson, XX, Day 1: Accepted that Mr Collier is an expert in this the field of turf, unlike himself.

itself recommends for those seeking technical advice.[112] It is, Mr Musson accepted, a well-established, experienced and knowledgeable organisation in respect of both fine turf and cricket.[113] Indeed, Mr Musson went as far as to describe them as "*unique"* in this respect.[114] This stands in stark contrast to Mr Musson's expertise on these matters.

82. Dr James, also of the ECB, provided what is described as a "*technical report*" appended to Mr Musson's Proof of Evidence. This document, at less than two sides long, was originally provided in response to the planning application. It is not a technical analysis or a Proof of Evidence. There is no dispute that there is nothing in the 'technical report' to demonstrate that Dr James understands what the spectrum is for lower and optimum growth potential for perennial rye grass. Nor is there anything that indicates that Dr James has considered this range in reaching his conclusions. There is no mention at all of the clearness index, nor even any indication that Dr James considers that the impact of reduced PAR would be harmful.

83. Neither Dr James nor Mr Musson has carried out any substantive analysis of the sort included within Mr Collier's Hemiview Report and his Proof of Evidence. That evidence shows a slight reduction in DLI and temperature during the winter months:

    a. In the month of November, there will be no change from 5 mol/m2/day;

    b. In the month of December, there will be a minor reduction from 5 to 3 mol/m2/day;

    c. In the month of December January, from 4 – 5 to 3 – 5 mol/m2/day;

    d. In the month of February from 8 – 9 to 7 – 9 mol/m2/day; and

    e. In the month of March from 16 to 15 – 16 mol/m2/day.

84. The thrust of what was (formerly) the Council's case centred on the impact of the reduced PAR on temperature. This approach wholly ignores the clearness index in Manchester, which ranges from 27 – 30% in winter months.[115] The effect of this is that sunlight will be diffuse such that there can be no overshadowing. Mr Musson's attempts to address this drew on his A-level physics qualification and his experience as an amateur gardener, before resorting to the explanation that it is simply "*so obvious and evident to the man on the street"* that he did "*not consider it worth*

[112] Mr Musson, XX, Day 1.
[113] Mr Musson, XX, Day 1.
[114] Mr Musson, XX, Day 1.
[115] Mr Collier's Proof, para 2.2.5.

dwelling on".[116] As Mr Collier has explained, any reduction in temperatures caused by the Appeal Scheme will be minimal and will not significantly change conditions for turf management or renovation during the winter months.[117]

85. Mr Collier's analysis clearly indicates that the impact of the Appeal Scheme will be negligible and that the Scheme complies with Strategic Objective OTO11 and policies SL3 and R6 of the LPCS.

Main Consideration 5: Highways

86. At no stage has the Council, as the local highway authority, raised an objection to the Appeal Scheme on the basis of highways and there is no reason for refusal relating to either highways or transport matters. This main consideration is derived from the representations submitted on behalf of LCCC, which alleges that the Appeal Scheme will have an unacceptable impact on the existing access to EOT, which will cause adverse road safety issues in terms of vehicular and pedestrian conflict.[118] LCCC's objection is supported by a report from transport consultants Axis.

87. As explained by Mr Davis in his Proof, the assumption underpinning LCCC's objection is incorrect and based on a misunderstanding of the plans of the proposed access.[119] Contrary to the assumption of LCCC and Axis, there is no proposal to introduce a raised curb to hinder vehicle movement in to and out of the access. The proposed works would simply resurface the access and footway, which will remain at the current footway level.[120]

88. During the course of the Inquiry, Mr Davis provided responses to the Inspector's questions. In particular, Mr Davis explained that there was no requirement in either national or local policy to carry out a road safety audit ('RSA') prior to planning permission being granted. The required works will be the subject of an agreement with the local highway authority under section 278 of the Highways Act and will be subject to an RSA at that stage.[121]

Main Consideration 6: Living Conditions of Future Occupiers of the Proposed Development

89. Main consideration 6 is derived from reason for refusal 5 and relates to the acceptability of living conditions of future occupiers of the proposed development, specifically in relation to outlook. At the time of the adoption of the reason for refusal in October 2020, it also contained a reference

[116] Mr Musson, XX, Day 1.
[117] Mr Collier's Proof, para 2.2.6.
[118] LCCC Statement of Case (**CD F26**), para 1.7.
[119] Mr Davis's Proof, para 2.6.
[120] Mr Davis's Proof, para 2.7.
[121] Mr Davis's Proof, para 2.11.

to the daylight and sunlight levels experienced by future residents of the development. On 8 December 2021, the Council confirmed that it would not adduce any expert evidence in respect of daylight and sunlight levels within the Appeal Scheme but that it remained a harm that the Council considered should weigh in the overall planning balance. For this reason, the outlook of the proposed developments and the daylight and sunlight levels are dealt with in turn below.

Outlook

90. The Council's objection to the Appeal Scheme on the basis of 'outlook' is confined to a total of 18 flats on the ground and first floors of the north east elevation that in some way overlook the boundary where the LCCC indoor cricket facility is situated, and the properties on the south east elevation.[122] Insofar as the outlook of all other proposed flats, no issue has been raised, save that – for the very first time – in her oral evidence Ms Harrison sought to complain about certain flats facing into the courtyards.

91. Taking the north eastern façade flats first, as explained by Mr Hann, it is inevitable and unavoidable that when designing a development in an urban environment, some dwellings will benefit from a better outlook than others. Those at upper floors will have wider views, whereas those at lower levels will be closer to adjacent land uses and other nearby buildings. This fact of itself does not render a development unacceptable in terms of amenity.

92. The outlook that will be experienced by these units can be understood from the Figure 15 in Mr O'Connell's Proof.[123] As can be seen from that image, the outlook of the ground floor apartments would be looking out over their own private gardens and landscaping and a public footpath beyond. The gardens themselves are elevated, such that the soft landscaping and the cricket school beyond will appear at a lower level.[124] The separation distance from the windows at ground and first floor level to the built form of the cricket facility would be c.12.5m, in excess of the distance that would be required under the Council's SPD4, which both parties have used as a benchmark guide.[125]

[122] Council's Statement of Case (**CD F21**), paras 4.173 – 4.174.
[123] Mr O'Connell's Proof, page 13, Figure 9.
[124] Mr O'Connell's Proof, para 7.5.3.
[125] It is agreed that SPD4 is not directly applicable to the Appeal Scheme, but both parties have used it in order to assess the adequacy of separation distances achieved.

93. When taken to these images, Ms Harrison in fact accepted that the ground floor flats would have an attractive aspect/outlook, looking out over their gardens.[126] She half-heartedly sought to maintain a position in relation to the four first floor units, but not with any conviction.

94. Turning to the units on the south eastern elevation, Ms Harrison's position is entirely undermined by the fact that whilst she complains about flats looking – at a distance of approximately 4m – towards the banks of trees on the western side of the tramline, the Council has been content to approve flats looking into the same bank of trees, on the western side of the same tramline, at a distance of only 2m at the Kelloggs Site. The fact is, the Council simply does not have a tenable case; an outlook onto a bank of trees is not unpleasant in an urban environment – on the contrary it is a positive. As the Council has itself recognised in relation to its own site.

95. Lastly, as regards the 'courtyard facing units', there is nothing in this point whatsoever. Had there been, then the alleged harm would have been identified in the Officer Report, the Council's Statement of Case, or at the very least Ms Harrison's proof. It would not have been dropped in, for the very first time, in her oral evidence. As Mr Hann explained[127], in fact the outlook into the courtyards is a positive one.

<u>Daylight and Sunlight</u>

Preliminary

96. Mr Radcliffe, who was originally instructed by the Appellant to prepare a report in respect of the proposed development and existing adjacent residential properties in March 2020, was the only expert before the Inquiry to speak to matters of daylight and sunlight. Ms Harrison, who spoke to daylight and sunlight matters on behalf of the Council does not purport to have any expertise on this topic. The nature of the dispute between the parties is, therefore, confined to the interpretation of the results produced by Mr Radcliffe and not in respect of any of the results themselves.

97. At the time of the Officer's Report, notwithstanding that the Council had had no expert input, the view of Ms Harrison (the officer reporting the application to the Committee) was that *"residents of the proposed development, particularly those at the lower floor levels would also suffer from substandard daylight and sunlight levels which are below the BRE guidance, which when assessed collectively is considered to result in an environment where occupiers would suffer from*

[126] Ms Harrison, XX (Living Conditions), Day 6.
[127] Mr Hann, XC (Living Conditions), Day 6.

inadequate levels of daylight and sunlight which would be detrimental to their residential amenity."[128] This concern was reflected in putative Reason for Refusal 5 and maintained in the Council's Statement of Case.[129]

98. It was not until sometime in November 2021 that the Council sought an independent 'peer review' of the Appellant's daylight / sunlight report from Watts Group Ltd. Five days after receipt of the peer review, which is dated 3 December 2021, the Council notified the Planning Inspectorate that it was to withdraw the reference to daylight and sunlight from reasons for refusals 5 and 6, on the basis that the Council no longer considered that they gave rise to reasons for refusal in their own right. This is significant; it indicates clearly that the only expert input that the Council obtained did not support its own concerns which underpinned the reasons for refusal. Indeed, the product of the review of the daylight / sunlight results for the proposed development is confined to four paragraphs in the review letter.[130] The thrust of those paragraphs are to advise the Council that it may wish to seek various additional pieces of information from the Appellant and to indicate that, notwithstanding Watts Group had not seen an overshadowing assessment of the proposed amenity areas, they would expect that they would not receive the amounts of daylight suggested by the BRE Guide.[131] This is very far from a ringing endorsement of the Council's reason for refusal.

99. Indeed, as confirmed by Ms Harrison, the Council made no requests for further information from the Appellant following the receipt of the peer review. The reason for this is clear; the Council was not sufficiently concerned about the daylight and sunlight levels within the Appeal Scheme to consider it necessary to do so.

100. During the course of the Inquiry, two issues have emerged as effectively comprising the Council's remaining case on daylight and sunlight, namely, (i) the number of northern facing units within the Appeal Scheme, and (ii) the inadequacy of sunlight levels experienced in the southern courtyard. The Appellant's response to these issues are set out below.

Results

101. As Mr Radcliffe explained, in assessing his results, the approach set out in the BRE Guidelines and endorsed in recent appeal decisions[132] is that the guidance as a whole should be interpreted

[128] **CD D7**, pdf page 53, para 255.
[129] **CD F21**, page 56 (pdf page 59), para 4.179 – 4.184.
[130] Ms Harrison's Proof of Evidence, Apx G, page G5 (pdf page 38).
[131] Ms Harrison's Proof of Evidence, Apx G, page G5 (pdf page 38).
[132] In particular, the Whitechapel Estate appeal decision (APP/E5900/W/17/3171437).

sensibly and flexibly.[133] Numerical guidelines provided are purely advisory and not to be interpreted rigidly, recognising the importance of the specific circumstances of each case.[134] It is reasonable, when assessing the acceptability of daylight results for a proposed development, to look to other approved schemes in the area.[135]

102. By way of comparison, Mr Radcliffe's evidence (which was unchallenged in this regard) presents three recently approved apartment schemes within Trafford, Sale Square, MKM House / Warwick Road and Wharf Road, all of which experience significantly worse levels of daylight and sunlight than those at the Appeal Scheme.[136]

103. Applying the approach endorsed in the BRE Guidelines and recent appeal decisions, Mr Radcliffe's conclusion is that overall, the daylight / sunlight levels in the Appeal Scheme are good, and do not give rise to harm. That conclusion is not disputed by either Watts or the Council; Ms Harrison conceded this in cross-examination.

Courtyards

104. The first of the two points now relied on by the Council relates to the alleged unacceptability of the levels of sunlight experienced in the southern courtyard.

105. The BRE Guidelines provide, by way of *"a check",* that *"it is recommended that at least half of the amenity areas… should receive at least two hours of sunlight on 21 March."*[137] As Mr Radcliffe explained in evidence in chief, the correct approach to applying this guidance is that adopted in the Proof of Evidence of Mr Hann,[138] namely, to look at the amenity space in the round in order to assess whether the sunlight levels achieved are sufficient. In this regard, there is no dispute that there is a total of 3,579 sqm of amenity space within the Appeal Scheme; the roof terrace (of which 100% achieves the target sunlight levels at 21 March) is 1,330 sqm, the northern courtyard (of which 52% achieves the target sunlight levels) is 1,085 sqm, and the southern courtyard (of which 11% will experience 2 hours of sunlight on 21 March) is 1,164 sqm. Mr Radcliffe endorsed the conclusion set out in Mr Hann's Proof that there are plenty of areas that experience the target sunlight levels, which are open to use by the residents of the Appeal Scheme, and that in total it is 61% (more than half) of the amenity areas which meet the BRE recommended level. The fact

[133] BRE Guidance (**CD Q3**), page 1 (pdf page 11), para 1.6.
[134] BRE Guidance (**CD Q3**), page 1 (pdf page 11), para 1.6. Whitechapel Estate appeal decision, Mr Radcliffe's Apx D, para 108.
[135] Whitechapel Estate appeal decision, Mr Radcliffe's Apx D, para 111.
[136] Mr Radcliffe's Proof, section 4.3.
[137] BRE Guidance (**CD Q3**), page 18 (pdf page 28), para 3.3.7.
[138] Mr Hann's Proof, paras 9.1.15 – 18.

that the southern courtyard does not meet the target levels in itself does not render the provision of sunlit amenity space inadequate and does not result in harm that must weigh against the development. In particular, as Mr Hann explained, the sunlight levels experienced is only one of many criteria that are relevant to assessing the quality of amenity areas, such as the presence of shaded areas, the safety of the space, its layout and design in terms of hard landscaping, soft landscaping and its overall usability.[139]

106. The Council's late attempt to focus attention on one particular area of amenity space is wholly artificial, and smacks of desperation.

Northern Facing Units

107. The Council's second (and entirely new) argument related to the existence of 'northern facing' units. This complaint is based on an attempt to interpret a passage of the BRE Guidance in isolation. As Mr Radcliffe explained, the "*aim*" set out in the BRE Guidance to *"minimise the number of dwellings whose living rooms face solely north, north east or north west"* is concerned with avoiding units that experience inadequate levels of daylight and sunlight. In circumstances where the (undisputed) results demonstrate an (undisputed) conclusion that the sunlight/daylight results are adequate, there is no 'free-standing objection' to the existence of northern units.[140] Indeed, if the presence of northern units were so objectionable in planning terms, they would not be present in the design of almost every new large-scale apartment development, including that promoted by the Council on the Kelloggs site.

Conclusion

108. Overall, the results of the daylight / sunlight report demonstrate that the overall levels within the proposed development would be good, both internally and those experienced by the amenity areas. As such, not only is there is no conflict with policies SL3 and L7 of the LPCS or the NPPF, but there is no harm to amenity arising from the daylight / sunlight levels to weigh against the Appeal Scheme in the planning balance.

Main Consideration 7: Noise

109. The adoption of Reason for Refusal 8, which relates to the impacts of noise, was an evolution in the Council's case in the run up to the Inquiry. From the Officer's Report in October 2020 until

[139] Mr Hann, EiC, Day 7.
[140] Mr Radcliffe, EiC, Day 6.

December 2021, the Council's position, as confirmed in the Statement of Common Ground[141], was that there was no objection to the Appeal Scheme on the basis of noise arising from operations at EOT. This position was informed by the consultation response from the Council's own Environmental Health Officer ('EHO') provided in response to the planning application, which made clear that he had no objections to the Appeal Scheme on grounds on noise. This position, which was wholly consistent with the EHO's response to the 2018 scheme, was seemingly accepted by the Council.

110. It was not until the Council notified the Planning Inspectorate on 8 December 2021 that it became apparent that the Council was to amend its position. This is notwithstanding that it had been aware of the substance of LCCC's objection since October 2020. At an urgent committee meeting convened on 9 December 2021, the Council's planning committee resolved to add 'noise' to the list of putative reasons for refusal.

111. It is, however, important to note the scope of the Council's reason for refusal; it is confined solely to the impact of noise from concerts held at LCCC; it does not refer to cricket noise. Dr Robinson confirmed in cross-examination that he was satisfied that the impacts arising from cricket noise could be adequately managed by way of condition and that it was no part of his case that the noise from cricket matches would result in internal noise levels in breach of the applicable British Standard.[142] This is just one of many respects in which the Council's position differed from that of LCCC, which, until the opening of the Inquiry, maintained that noise arising from both sources would give rise to an unacceptable level of amenity for future occupiers of the Appeal Scheme. It should be noted, however, that counsel for LCCC confirmed on Day 2 that LCCC were now satisfied that the impact of cricket noise internally could be dealt with by condition. There is, therefore, no outstanding dispute relating to the impact of cricket noise on the internal living conditions of future residents. Notwithstanding this, Mr Fiumicelli's evidence to the Inquiry was that it was his view that the impact arising from cricket noise on the balconies of the proposed development was a sufficient basis on which to refuse the application for planning permission. This issue is dealt with at the end of this section of the closing.

112. It is also worth noting at the outset of deliberations on this issue, the planning harms that the reason for refusal identifies; it refers to the harmful impact on amenity of future residents, and

[141] Dated 27 October 2021.
[142] Dr Robinson, XC, Day 2.

the likelihood of noise complaints.[143] It is the complaints that the reason for refusal alleges "*could*" lead to the curtailment of activities at LCCC, contrary to the 'agent of change' principle.

113. Before considering the detail of the main issues that arise in respect of concert noise, it is helpful to sketch out an overview of the Appellant's case in this regard:

a. There is no nuisance currently caused by any of the operations, including the holding of music concerts, at EOT. This position is agreed by both the Council (Dr Robinson and Ms Harrison) and LCCC (Mr Fiumicelli);

b. The internal conditions at the new dwellings within the proposed development will be better than the internal conditions at existing properties.

i. This was a matter confirmed expressly by Dr Robinson; and

ii. It was not disputed at any point by Mr Fiumicelli.

On this basis, it must follow that there would be no nuisance at the proposed development caused by LCCC's operations.

c. The terms of LCCC's licence would not be breached. The licence held by LCCC refers to specific properties, which do not include the proposed development;

d. In circumstances where:

i. There is no nuisance at existing properties which currently experience a worse level of noise than that which will be experienced in the proposed development; and

ii. It is accepted by both Mr Fiumicelli and Dr Robinson that there is no link between the number of noise complaints received and the decision to review the licence conditions;

There is no reason to believe that a review of LCCC's licence will be triggered.

114. The substance of this position is considered in more detail in respect of the main issues below.

[143] Updated putative reasons for refusal are at **ID 06.**

Relevant Guidance

115. Much debate at the Inquiry centred around the applicability and relevance of various standards and guidance. This concerned, in particular, the relevance of British Standard BS8233: 2014 ('the BS')[144] and the Noise Council's Code of Practice on Environmental Noise Control at Concerts (1995) ('the Pop Code').[145]

116. With regards to the BS, the evidence of Mr Fiumicelli and that of Dr Robinson is fundamentally at odds. Whilst Mr Fiumicelli, who has extensive experience carrying out noise assessments for open air music concerts, explained that the BS was neither relevant or helpful[146], Dr Robinson, who has no such experience, maintained that it was the appropriate standard to apply. Whilst Dr Robinson accepted that the BS was *"not necessarily designed"* for the purpose of assessing concert noise, he said that *"there is nothing else"* to use for these specific circumstances.[147] Dr Robinson confirmed that it was his view that it was a reasonable approach to the Appeal Scheme to expect that the BS is achieved at all times and for all events.[148] Despite the apparent importance of the BS to Dr Robinson's evidence, it became readily apparent that he had substantially misquoted it in his Proof, including by adding his own interpretation of the instances in which the BS need not be met.[149] Notwithstanding Dr Robinson's misquoting of the document, however, he accepted that the guidance was generally concerned with "*steady noise sources*" and the levels provided based on "*annual average data*".[150]

117. When taken to the BS in cross-examination, however, Dr Robinson accepted that the BS clearly directed the reader away from the document towards the Pop Code for the purposes of assessing "*other noise sources*" such as those arising from entertainment.[151] In his oral evidence he sought to place reliance on the Pop Code, but this was wholly lacking in credibility. When questioned on the point Dr Robinson conceded that he had made *not a single* reference to the Pop Code in either his long list or short list of relevant guidance documents – notwithstanding he

[144] Not contained in the Core Documents for copyright reasons.
[145] **CD N09.**
[146] Mr Fiumicelli, XX, Day 3.
[147] Dr Robinson, XX, Day 2.
[148] Dr Robinson, XX, Day 2.
[149] Dr Robinson, XX, Day 2. Dr Robinson's transposition of the guidance in his Proof at para 5.2 is as follows: "*These internal levels are based on annual average data and do not have to be achieved in all circumstances, such as fireworks night or New Year's Eve (ie, recurring annual events that are experienced by everyone*". The text of the guidance is "*These levels are based on annual average data and do not have to be achieved I all circumstances. For example, it is normal to exclude occasional events, such as fireworks night or New Year's Eve*" (pdf page 31), note 3.
[150] Dr Robinson's Proof, para 5.1 – 5.2. Dr Robinson, XX, Day 2.
[151] BS, page 21 (pdf page 27), section 6.9.

claimed to be familiar with it. Whilst he attempted to explain why this was, it is readily apparent that Dr Robinson was either wholly unaware of the Pop Code, or alternatively did not regard it as important when preparing his Proof. This is perhaps not surprising given that the Pop Code deals specifically with the assessment of noise levels from music concerts; an area where Dr Robinson accepts he lacks prior experience.

118. As Mr Fiumicelli correctly explained, the BS acknowledges on its face that it is not designed as a benchmark for assessing noise that is not "*continual and steady"* in nature, such that it is not relevant or helpful for the exercise of assessing concert noise.[152] This explanation is entirely consistent with the approach position of Mr Patterson, who explained in his Proof that "*noise from concerts and one-off events is not covered in the scope of BS8233:2014 which is aimed at continuous noise sources".*[153]

119. With regards to the Pop Code, Mr Fiumicelli explained that whilst he was very familiar with it, he did not consider it of assistance. Mr Fiumicelli's view, which echoes that of Mr Patterson's, was that it is simply guidance, which is now some 25 years old and, in any event, has been shown to be "*unduly restrictive".* Mr Fiumicelli explained that there are numerous instances where the licence limits for events exceeded that provided in the Pop Code. Further, what is common ground between all three experts is that the Pop Code, which would suggest a limit of 65 dB at the facade[154], is not currently complied with by events at EOT.

<u>LCCC's Licence and Existing Internal Noise Levels</u>

120. Insofar as they are relevant for the purposes of this appeal, the conditions on LCCC's events licence are as follows:

a. LCCC may hold up to seven concerts per year at a capacity of up to 55,000;

b. No more than four events with a capacity of more than 5,000 may be held within a four week period, without the written consent of the Council; and

c. The noise levels must not exceed 80 dB LAeq, 15 min at the facades of the properties identified in the licence, namely, 23 – 37 Trent Bridge Walk, 30 Great Stone Road and 19 Barlow Road.

[152] Mr Fiumicelli, XX, Day 3.
[153] Mr Patterson's Proof, para 6.6.
[154] This is based on the guidelines in Table 1, page 6 of the Pop Code (**CD N09**).

121. There is no dispute that previous music concerts held at EOT have attracted noise complaints. Indeed, Mr Fiumicelli sought in his evidence to explain the reason behind the two concerts in 2016 attracting significantly higher levels of complaints than any of the other concerts in the last seven years put together. That was, Mr Fiumicelli explained, a result of the particular atmospheric conditions that meant that the noise could be heard some 8 to 10 miles away from EOT.[155] Leaving aside those concerts in 2016 and the Foo Fighters in 2017, Mr Fiumicelli agreed that there were remarkably few noise complaints arising from concerts at EOT; indeed over the last five years there have been a total of seven complaints.[156] Mr Fiumicelli was keen to explain that this was the case, because of the *"very very weak correlation between noise and complaints",* such that one must treat complaint numbers, and their distribution, "*with more than a pinch of salt".*[157] Dr Robinson's position was, similarly, that you always get "*one or two*" noise complaints[158]; thus the idea of 'no' noise complaints is not a realistic one.

122. A further matter of common ground between all three experts is that the occurrence of noise complaints does not result directly in a review of the licence terms. There is no dispute that even the occurrence of very high numbers of noise complaints has not led to a review of LCCC's licence, notwithstanding that it is open to the public to initiate one. Indeed, Mr Fiumicelli explained that it was because of the *"very crude relationship"* between actual noise levels and complaints that it is insufficient that someone "*picks up the phone to complain*", what is required is an "*objective assessment*" in order to determine whether or not there is a nuisance.[159]

123. It is significant to note in this context that all three parties agree that there is currently no nuisance caused by events held at LCCC.

<u>Noise Levels at the Proposed Development</u>

124. Both Mr Fiumicelli and Mr Patterson have carried out noise modelling from the same music event, held at EOT on 25 September 2021. Whilst Dr Robinson has not carried out any modelling of his own, the position adopted in his evidence is that he considered Mr Fiumicelli's modelling results to be superior.

[155] Mr Fiumicelli, XC, Day 3.
[156] Mr Patterson, Apx C, pages C2 – C3 (pdf pages 14 – 15).
[157] Mr Fiumicelli, XX, Day 3.
[158] Dr Robinson, XC, Day 2. Confirmed in XX.
[159] Mr Fiumicelli, XX, Day 3.

125. The results of Mr Fiumicelli[160] and Mr Patterson's[161] modelling are set out in full in their evidence. Those results differ in respect of the levels modelled at the façade of the Appeal Scheme during what is agreed to be the loudest portion of the concert. Mr Fiumicelli's modelling produces levels of up to 86 dB LAeq, 15 min[162] and Mr Patterson's produces levels of up to 78 dB LAeq, 15 min[163]. On the basis of Mr Patterson's evidence, but not that of Mr Fiumicelli's, 80dB LAeq, 15 min is not exceeded at any point at the façade of the Appeal Scheme.

126. Mr Fiumicelli sought to attack the Holtz assessment on the basis that (i) the modelling used point source propagation method, rather than line source, (ii) it omitted the loudest part of the concert, namely, the last 9 minutes and (iii) it is based on data from position 2, which captured only a very short period of the concert.

127. In respect of point (i), Mr Patterson explained that his modelling models noise towards the modelling point from a fixed calibration point using a point source propagation method. As explained in his Rebuttal, using this method actually results in a higher noise level at the façade of the Appeal Scheme (assuming a propagation loss of 6 dB to the calibration point, rather than 3 dB with line source propagation).[164] Mr Patterson's approach, therefore, models a worst case scenario position. In respect of points (ii) and (iii), it is common ground that the loudest portion of the whole concert was the last 15 minutes of the headline set. Mr Patterson explained that he stopped recording 9 minutes before the end of the concert in order to avoid his recording being distorted by the presence of people shouting in close proximity to the microphone. It was on this basis that Mr Patterson was confident in the data that he had collected, notwithstanding that it was taken from a short portion of the concert.

128. Standing back, however, the simple point is that there is no dispute that the terms of the LCCC licence would not be breached if noise levels in excess of 80 dB LAeq 15 min were experienced at the façade of the Appeal Scheme. The Appeal Scheme is not one of those properties identified within the licence, and could not be so identified without a licence review. It is further agreed that the mere existence of noise complaints is insufficient to trigger such a review. In this respect, whether or not 80 dB LAeq 15 min is exceeded at the façade of the Appeal Scheme is neither here nor there.

[160] Mr Fiumicelli's Proof, pages 29 – 30, Table 1.
[161] Mr Patterson's Appendix E, page 8 (pdf page 15), Table 1 and pages 10 – 11 (pdf pages 17 – 18).
[162] Mr Fiumicelli's Proof, para 6.9, Table 2.
[163] Mr Patterson's Proof, para 5.17, Table 4.
[164] Mr Patterson's Rebuttal, pages 4 - 5, Figures 1 and 2.

129. The key question is therefore whether the *internal* noise levels would be such that it would constitute a nuisance for residents of the Appeal Scheme. Only in these circumstances would a licence review be necessary.

130. In this context, it is significant that Dr Robinson *expressly* agreed in cross-examination that the internal noise levels at the worst affected properties on Trent Bridge Walk will be higher than those experienced within the Appeal Scheme.[165] This is primarily a product of the acoustic glazing which is to be provided as mitigation. Mr Patterson confirmed the type of glazing that will be used, Rw=38dB glazing, and Dr Robinson confirmed that it would have the mitigating effect for which Mr Patterson contended – reducing internal levels to a *maximum* of 46/45dB, when concert noise is at its very loudest. It is this inclusion of highest quality acoustic glazing which provides such substantial mitigation in terms of concert noise, and serves to address the noise issue.

131. As regards Dr Robinson's concession that the Appeal Scheme would perform better (in noise terms) than existing properties at TBW, it should be remembered that his conclusion is based on his own calculation of the internal noise levels at the Appeal Scheme on the basis of Mr Fiumicelli's modelling. He was not re-examined on this point.

132. Significantly, Mr Fiumicelli did not at any time dispute this proposition. This is particularly important in circumstances where it is common ground that at the properties on Trent Bridge Walk, there is currently no nuisance. As a matter of logic, if there is no nuisance at the properties that are worst affected in terms of internal noise level, there can be no nuisance at the Appeal Scheme, which will be less effected because internal noise levels will be lower. Notably, Mr Patterson explained that he broadly agreed with Dr Robinson's internal noise levels, which on his calculation were 45 dB LAeq 15 min, and agreed that the internal noise levels at Trent Bridge Walk would be higher.[166]

133. In circumstances where noise levels would be <u>lower</u> than those experienced at existing properties, where it is agreed there is no nuisance, it is unarguable that a nuisance would arise at the Appeal Scheme so as to justify a change in LCCC's licence conditions.

<u>Acceptability of Concert Noise Levels Taking Account of Proposed Mitigation</u>

134. Notwithstanding the logic of the agreed position as set out above, the Appellant's position is that considered in all the circumstances, there can be no sensible argument that the events at

[165] Dr Robinson, XX, Day 2.
[166] Mr Patterson, EiC, Day 3.

EOT would constitute a nuisance. Whether or not there is a nuisance turns on a range of factors, including the nature of the interference, the length and frequency of the interference and the predictability of any events.

135. Major events at EOT are limited by the licence to a maximum of 7 per year, in addition to sound check days. In reality, there has never been more than 2 to 3 concerts in any one year. On each occasion, on Mr Fiumicelli's own modelling (as agreed by Dr Robinson), the worst case internal levels would be around 46 dB LAeq 15 min. As Mr Patterson explained, this level of noise is broadly equivalent to the noise levels experienced when standing 1m away from a fridge, or the background noise levels in a library.[167]

136. Further, it is crucial to note that the noise generating activities would be confined to the day time (i.e. before 23:00 hours). This is significant because it means that there can be no argument that concert noise may give rise to sleep disturbance or related health impacts.[168]

137. Taken in the round, the events at EOT will not give rise to a nuisance such that the terms of LCCC's licence will be reviewed. Whilst this refers directly to private law nuisance that may arise as between LCCC and the future residents of the Appeal Scheme, it applies too to the statutory duties on the Council to investigate and prosecute statutory nuisances under the Environmental Protection Act 1990. In circumstances where no nuisance arises, the Council's duties will not be engaged.

138. By way of summary, the Appellant's case, as set out above, is as follows:

a. It is common ground between all parties that there is no nuisance currently experienced as a result of events held at EOT;

b. The internal noise levels within dwellings in the Appeal Scheme will be lower than those experienced at the existing worst affected properties.

i. This was a matter confirmed expressly by Dr Robinson; and

ii. It is not a matter that has been disputed at any point by Mr Fiumicelli.

[167] Mr Patterson, XC, Day 2. The background levels for a library are set out in BS8233:2014, Table 6. The approximate sound level of a fridge is not contained in the documents before the Inquiry, but is an accepted and common noise level.

[168] This is a factor identified in the PPG as a relevant factor to determining the amenity impact of noise (**CD G3**).

iii. On this basis, there would be no nuisance caused by LCCC's operations at the proposed development.

c. It is common ground that the terms of LCCC's licence would not be breached. The licence held by LCCC refers to specific properties, which does not include the proposed development. No amendment could be made to the terms of the licence without going through a licence review process;

d. In circumstances in which:

i. There is no nuisance and will be no nuisance when the proposed development is occupied; and

ii. It is accepted by both Mr Fiumicelli and Mr Robinson that there is no real link between the number of noise complaints received and the decision to review the licence conditions;

There is no basis on which to assume there will be a review of LCCC's licence.

Cricket Noise

139. The final matter that to address in this context is the impact of cricket noise. As set out above, it is common ground between all parties that the internal noise levels resulting from cricket noise can be acceptably dealt with by way of condition. The outstanding point of dispute relates solely to noise levels from cricket matches experienced by residents of the Appeal Scheme *on their balconie*s.

140. Mr Fiumicelli's evidence was that in particular when the livelier forms of cricket were played, the use of outdoor amenity space for the apartments facing EOT would be compromised.[169] There are three points to make in response to this.

141. First, it is important to keep in perspective the frequency of 'livelier' forms of cricket and, in particular, the frequency of events that are likely to be heavily attended. As Mr Fiumicelli accepted, for a considerable number of the types of cricket match listed in his evidence, attendance is low.[170]

[169] Mr Fiumicelli, XC, Day 3.
[170] Mr Fiumicelli, XX, Day 3.

142. Second, there are a total of 3,579 sqm of outdoor amenity space provided within the Appeal Scheme for the use of residents. This includes roof top terraces and the northern and southern courtyards. As Mr Fiumicelli explained, the noise levels at ground level in particular would be substantially screened by the development itself, such that the noise levels would be about 20 dB lower.[171] There are, in addition, a number of public parks within walking distance of the Appeal Scheme. These includes Seymour Park and Gorse Hill Park. As such, residents of the development who did wish to avoid the use of their balconies during the noisier forms of cricket would have a range of alternative outdoor amenity spaces on their doorsteps.

143. Taking the frequency of these particular events and the alternative outdoor amenity areas available to residents of the Appeal Proposal together, the impact on the amenity of occupiers would not be unreasonable.

Main Consideration 8: Impact on Residents of Great Stone Road and Trent Bridge Walk

144. As with issue 6, this consideration arises from a putative reason for refusal that has since been amended by the Council. Reason for refusal 6, which relates to the impact of the Appeal Scheme on the amenity of existing residents of Great Stone Road and Trent Bridge Walk, as amended only refers to the "*overbearing"* nature of the Appeal Scheme. The original reason for refusal, which referred to the unacceptable impact on the daylight / sunlight levels experienced, was amended by the Council following receipt of the peer review of the daylight / sunlight report produced on behalf of the Appellant. Whilst the Council's position is now that this effect does not give rise to a reason for refusal in its own right, the Appellant's position in respect of it is dealt with briefly below.

<u>Overbearing</u>

145. The Council's case is that the height, scale and massing of the Appeal Scheme will result in an overbearing impact on properties on Great Stone Road, Trent Bridge Walk and 'the Gorses'. The extent to which such an impact arises depends primarily on the separation of the properties from the built form of the Appeal Scheme, as well as the less tangible perception created for occupiers of those properties.

146. With regards to separation, both the Council and the Appellant have considered the recommended separation distances in the Council's SPD4, which relates primarily to residential

[171] Mr Fiumicelli, response to Inspector's question, Day 3.

extensions. There is no dispute that the guidance would be met in this instance[172]; the closest properties on Trent Bridge Walk would be separated from the development by 41.1m, in excess of the 36m separation that the guidance would require from the tallest point of the development.[173] Within this separation 'area' lies the Metrolink line and dense tree screening. The closest properties on Great Stone Road are set over 34m from the proposed development; well in excess of the 21m that would be required by SPD4.[174]

147. Clearly, such distance calculations are not in themselves determinative; planning is not a 'mathematical exercise', and it is evident that SPD4 was not drafted directly with this development scenario in mind. However, the standards/figures are certainly relevant; so much is evident from the fact that whilst Ms Harrison had elected not to reference them in her evidence before the Inquiry, she had included them both in her report to committee and the Council's Statement of Case. The fact that the development would not offend the SPD is a matter to which real weight should attach.

148. Ultimately the Inspector will visit the site, have regard to the Appellant's visual evidence and determine for himself whether he considers the effect would be "*overbearing";* however the Appellant's position is that it would not be. In a context where the nearest building is currently the vast mass of the EOT cricket stadium and where the built form of the Appeal Scheme will be well separated from the nearest properties, well-articulated and architecturally interesting to the eye, there is no basis whatsoever to conclude that the impact of the Appeal Scheme would be considered overbearing.

149. It is respectfully submitted that this conclusion is borne out not only by the images in Mr O'Connell's evidence – all of which depict a proposed scheme which represents a 'changed' view, but one which is changed for the better – but also by the fact that *not a single* resident has complained that the development would be overbearing. Ms Harrison sought to suggest in cross-examination that this fact was irrelevant. It plainly is not. The Appellant would never suggest that it is determinative, but it is plainly relevant, and serves to undermine this last remaining vestige of the Council's 'amenity' case.

[172] Council's Statement of Case, para 4.203 (**CD F21**).
[173] Mr Hard's Proof, para 4.1.23.
[174] Mr Hard's Proof, para 4.1.24.

Daylight / sunlight

150. It should be noted at the outset that the withdrawal of the reference to daylight / sunlight in the putative reason for refusal was as a direct result of the peer review report dated 3 December 2021 commissioned by the Council.

151. The expert evidence in respect of the Appellant's results is unanimous in finding them not only acceptable, but demonstrating very good levels of daylight and sunlight.

Main Consideration 9: Planning Obligations

152. This main consideration specifically refers to affordable housing, a TRO review, a design certifier, contributions for sports facilities and education. Three of these issues are no longer in dispute. Those that remain in dispute are (i) the level of affordable housing and (ii) education contributions. The Appellant's case on these two issues are set out in turn.

Affordable Housing

153. The Appeal Scheme would deliver 6.3% affordable housing, which equates to 21 units. Whether or not this is a 'policy compliant' level of affordable housing turns on the interpretation and application of policy L2:12 of the LPCS. The policy identifies three market locations in respect of which different affordable housing contributions apply; namely, cold, moderate and hot. For developments that are considered to perform differently to generic developments within a specified market location, the affordable housing contribution falls to be determined by a site specific viability appraisal and will not normally exceed 40%.

154. The policy is, as Mr Miles observed, very poorly worded. It admits of no clear interpretation and there is huge uncertainty as to what should be regarded as 'generic' development in this context. However, the simple point is that in the present case the viability appraisal carried out by Mr Miles demonstrates that the Appeal Scheme performs at broadly the same level to development tested at the plan-making stage and therefore is properly considered 'generic'[175]. Thus the 'cap' to affordable housing provision should be 10%, given market conditions in this cold market location.

155. That said, the Appellant comes before the Inquiry with a viability assessment which confirms precisely what level of affordable housing the Appeal Scheme can support, whilst remaining

[175] In this regard see the proof of Mr Miles at paragraph 11.1.26. The Botanic Gardens scheme at Talbot Road which went to committee in January 2021 was at a density of 450-550 dph, flatted, and was deemed to be 'generic' and so attracted an affordable housing contribution of 10%.

viable. Thus the Inquiry can and should determine affordable housing provision by reference to that assessment.

Viability

156. The issue of affordable housing provision hinges on the question of viability. That question, in turn, hinges on the matter of construction costs.

157. In this context, it is first appropriate to stand back and take stock of the evidence that the parties have provided to the Inquiry.

158. For the Council, the evidence has been given by Mr Lloyd. He is not a qualified surveyor, or even planner. Nor is he a member of a relevant professional body like the RICS, or even the RTPI. In addition, and importantly for the purposes of this Inquiry, he is not a qualified costs consultant, and he does not work in the construction industry.

159. This position can be contrasted with that of the Appellant. Mr Miles is both a qualified surveyor and a planner, as a member of both the RTPI and RICS. His evidence aligns with that of Mr Latham, who is both MRICS and also a qualified costs consultant, with some 30 years' experience in the construction industry, providing guidance to the public and private sector as to what it will cost to construct development. Indeed, he is currently providing costs input into development viability analysis for the neighbouring authority, Manchester City Council.

160. Clearly, the credentials of the respective witnesses should not (and will not) 'dictate an outcome' in and of themselves. However, given the relative 'real world' experience of the individuals who have given evidence before this Inquiry, it is respectfully submitted that there would need to be very good reason to depart from the evidence of those suitably qualified experts who have been called by the Appellant to assist the Inquiry.

161. The only further point to make at this juncture is as regards the Council's complaint about its being 'unfairly treated' as regards the costs construction issue. The Inquiry will recall in this regard that Mr Forsdick QC suggested to the Appellant's witnesses that it had not had the opportunity to present evidence on this topic. Such suggestion is wholly misconceived, and entirely misleading.

162. The facts, so far as relevant, are as follows:

    a. the Council knew, from at least early in November 2021, that the Appellant would be relying upon a revised construction costs estimate.

b. At that time the Council already had all the plans/sections/layouts that had been provided to Mr Latham. As he pointed out, there was nothing to stop the Council from undertaking its own assessment.

c. However, the Council elected not to produce any assessment, and indeed not even to approach a costs consultant until 3 December when the Mr Latham's elemental unit cost plan was shared with the Council.

d. At that point, it appears they then approached Mr Wright of Monaghans. However, when he indicated that he would not/could not appear at the Inquiry in January 2022, Mr Lloyd confirmed that he did not approach any other costs consultant to check if they might be available instead. Not one.

163. In these circumstances, it is not in any way reasonable for the Council to complain about the quality of evidence before this Inquiry. The Council chose not to commission its own elemental costs plan. It also chose not to instruct any costs qualified witness to attend the Inquiry. It was entitled to make those choices. But it has to stand by them. If the Council has no credible costs case, it has only itself to blame.

164. Turning to the substance of the matter, Mr Latham has provided an elemental unit cost assessment (Rev G). It is common ground between the parties (agreed by Mr Lloyd in cross-examination) that the issue before the Inspector is whether the Rev G costs assessment is fair and reasonable. In light of the 'angle' pursued by the Council in its evidence and cross-examination of Mr Latham, that is important. Significantly, it is not a question of comparative analysis between Rev G and previous, historic assessments. Rather, the question is one of whether the Rev G appraisal stands as reasonable, assessed on its own merits.

165. The evidential position as to that issue – i.e. the reliability of the Rev G appraisal – can be put very briefly, in the following terms:

a. The Rev G assessment was prepared by an individual who, as the Inquiry has seen, is an experienced costs professional.

b. In terms of criticism actually levelled at the substance of the assessment (as opposed to complaints based in comparisons with historic appraisals)

i. Mr Lloyd agreed that neither he nor Mr Wright (Monaghans) had requested any of the analysis, which underpinned that assessment since it had been provided.

ii. Mr Lloyd also agreed that neither he nor Mr Wright had challenged any of the elemental rates in that assessment.

c. Thus there is no substantive challenge to its contents.

166. Importantly, Mr Lloyd further agreed that:

a. There was sufficient information on the design of the proposal (sections, elevations, layouts and so on) to undertake a scheme specific, elemental assessment of the type undertaken by Mr Latham; and that

b. such elemental unit assessment was more accurate than a functional area analysis of the type set out in Mr Wright's second letter.

167. However, notwithstanding these matters, the Council had elected to rely on a three line functional area analysis prepared by an individual who did not come before the Inquiry to defend his position.

168. The Rev G Appraisal, is comprised of a large number of separate elements, all individually quantified and costed. The prices for those various rates/quantities generate a global figure of £1,787sqm. This is as compared to the figure of £1,609 sqm produced in the letter from Mr Wright, which is constructed of the three lines of functional area analysis rates.

169. The rate generated by Mr Latham's detailed assessment, compares very closely (+£12) with the 4Q 2021 median rate generated by the BCIS on 23 October 2021, in respect of apartment developments at 6+ storeys (£1,775sqm). It is only slightly more distant from the median rate generated at the end of Q4, at £1,723sqm (+£64). It is also well below both mean rates (i.e. the BCIS rate as at 23 October and that at the end of Q4 (these being £1,891 and £1,843 respectively[176]). Thus Mr Latham's assessment is not only robust on its own account – having regard to the careful analysis which underpins it. Rather, it is also robust when benchmarked against BCIS rates.

[176] Briefly on this issue of mean rates, the Inquiry will recall that Mr Lloyd sought to denigrate the use of mean figures by Mr Latham. That was unwise. Notably, as Mr Lloyd accepted in cross-examination, Mr Wright provides no support for Mr Lloyd on this issue, despite him having raised it with Mr Wright expressly. Further, when the relevant BCIS guidance was in fact examined, it showed that the only concern existing in relation to use of mean figures, related to scenarios when sample sizes were small. Mr Lloyd conceded he did not know what the sample size was in this instance, and admitted he did not even know what a small sample would be. Mr Latham on the other hand, confirmed that the sample size was 95, and that this was not a small sample. Thus reliance on the mean as well as the median is wholly justified.

170. This is as compared to the three line analysis provided in Mr Wright's letter. At £1,609 he does not sit comfortably between the median and the mean as Mr Latham does. Rather he sits £114 below the median rate on which he relies.

171. The Council's only answer to this, is to suggest that the BCIS rate identified by Mr Latham, is not an appropriate yardstick. There is absolutely no credibility in this assertion whatsoever.

172. It was suggested by the Council that the BCIS rate identified by Mr Latham was one that could only be applied to the residential element of the scheme; it could not be applied to other parts of the development, such as the undercroft parking, which should be assessed by reference to different rates specific to their function.

173. Mr Latham, backed by 30 years of construction experience, explained clearly that this was not the case. He stated in terms that the BCIS rate was not specific to the residential units, but embraced the flatted developments as a whole. This was his firm view, and one which was shared by all other costs consultants, so far as he was concerned. By way of support for this proposition, he pointed to the fact that the psm rates varied from £1,154 all the way to £5,400. This huge spread in pricing is only consistent with the figures embracing not only the residential units, but also whatever other features (parking, swimming pool, green roofs, etc) were included in developments reported. Thus the undercroft parking provision in the Appeal Proposal is already 'baked in' to the BCIS rate. It does not require any separate analysis.

174. For the Council, Mr Lloyd accepted[177] that he 'did not know' what the BCIS rate included, but still sought to argue that the rate was one which would exclude the undercroft parking. In so saying, he was entirely reliant on the letter from Mr Wright. However, that letter did not express a position on the specific question as to whether 'apartment rate' also included non-residential elements, and Mr Wright was not available to the Inquiry to question. Thus the Council's position is wholly inadequate, and the correct – and indeed only reasonable – conclusion for the Inquiry to draw is that Mr Latham is correct.

175. Finally on this issue, it is appropriate to move to the sense check applied by Mr Miles. Of all the comparable developments cited by Mr Lloyd in table at paragraph 7.4 of his main proof, the average provision of affordable housing in those schemes which had actually been permitted was 7%. Not the 39% for which Mr Lloyd contends at this Inquiry, but 7%, less than one percentage point above the rate for which Mr Miles contends on the basis of his viability assessment. The

[177] Mr Lloyd, XX, Day 9.

Council sought to recover this issue in examination of Ms Coley, but as she herself confirmed, all bar one of the permissions issued had been granted after she and her team had 'changed the game' in terms of financial contributions in 2017.

176. The simple fact here is that the Appellant has provided a detailed costs assessment which is not subject to any substantive criticism. The Council has provided no such costs plan. The Appellant's assessment shows that provision of 6.3% (21 units) can be made (or else 1.5% (6 units)) if the primary education contribution is payable. This is entirely in accord with other developments permitted by this authority. The figure of 39% cited by the Council is wholly without precedent and is based not on a detailed costs assessment but on a three line general analysis prepared by an individual who did not attend the Inquiry. The credibility of the respective positions is stark.

Comparative Exercise

177. It is for this reason that the Council has sought to muddy waters and misdirect the Inquiry by continually emphasising the difference between the Rev G and Rev D assessments. This 'comparative issue' can be dealt with shortly.

a. The Appellant has not simply 'increased' its costs from Rev D to Rev G. Rather, moving to Rev G it is moving back to the model which it had originally adopted in the form of Rev A.

b. The explanation for this change in approach is clearly set out, both in the rebuttal evidence of Mr Latham and the letter provided by Accrue, following complaint by Mr Forsdick.

c. There is absolutely no reason to doubt that explanation. Indeed Mr Lloyd confirmed in cross-examination that he had no evidence to set against the explanation that Mr Latham had provided.

d. It is not incumbent on the Appellant to 'prove' that it will be delivering the site on the 'developer model' – which model Mr Lloyd expressly confirmed was the orthodox form of delivery. Rather, if the Council wished to assert that there as going to be a departure from the norm – it would be for *them* to prove it.

e. The Council say that 'delivery model' should be irrelevant. That is fine. But if it is to be disregarded, the assumption must be that development will proceed on the 'orthodox' model. To assume that development will be delivered on a basis that is unorthodox, and which entails assumptions about lower construction costs, would render most developments unviable at a stroke.

178. For this reason, the Council's 'comparative exercise' is wholly without merit, and should be disregarded. The Appellant had not, until the end of last week, understood that the factual issue of how the Appeal Scheme would be delivered was in dispute. Once it did so, it provided written confirmation of that delivery model.

Conclusion

179. For all these reasons, the Appellant's position on construction costs, and therefore on viability, is sound. Accordingly, it follows that the correct figure for provision of affordable housing is 6.3% (or 1.5%).

Education

180. At the time of the Officer's Report, the Council sought some £641,973 by way of primary education contribution and no secondary education contribution.[178] This was subsequently revised to require an additional secondary contribution of £721,776.

181. By the time that evidence was heard on education matters, the position had narrowed significantly; the Council had conceded its position on secondary education and no longer sought any contribution[179]. Further, the outstanding dispute in respect of primary education had narrowed in scope to two issues. It should be noted that the narrowing of the dispute renders much of the written evidence of Ms Butters (on behalf of the Council) and Mr Powell (on behalf of the Appellant) out of date.

182. The outstanding points of dispute are as follows:

a. The appropriate pupil yield to apply to the Appeal Scheme; and

b. Whether it is appropriate to use the current numbers on roll, or the forecast number on roll to determine whether or not there will be a shortfall in places such that an education contribution is required.

183. These issues are considered in turn below.

[178] CD D07.
[179] Education SOCG, para 2.2.

Preliminary

184. As explained by Mr Powell[180], in order to determine whether an education contribution is required, there is a 'demand' side and a 'supply' side. In respect of the demand side, the question is what demand arises from this particular Appeal Scheme. It is agreed that in order to meet the tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 ("CIL Regs"), it is necessary, as far as possible, to accurately forecast the pupil yield from the Appeal Scheme.[181] The issue of pupil yield is a 'demand' issue.

185. In respect of the 'supply' side, it is necessary to determine whether a shortfall in school places will arise. It is agreed that, as a matter of principle, a shortfall cannot be caused by the Appeal Scheme unless it arises after the Appeal Scheme starts generating pupils.[182] In this regard, a number of key matters are agreed, namely, the level of surplus that it is reasonable for the Council to maintain (namely, 5%)[183], the list of relevant schools[184] and the capacity of those schools[185]. The only outstanding issue in respect of 'supply' is whether current numbers on roll or forecast numbers on roll should be used to determine whether there will be sufficient places to accommodate the pupils from the Appeal Scheme. It should be noted, however, that both the numbers on roll now (October 2021) and the forecast numbers on roll up to 2025/2026 are agreed.[186] There is, therefore, no dispute about the figures themselves.

Pupil Yield

186. The Appellant's approach to assessing the pupil yield of the Appeal Scheme is based upon data from the 2011 Census. Mr Powell has derived a yield rate for one bed, two bed and three bed dwellings in order to determine the number of pupils likely to be generated by the Appeal Scheme. The Council's approach, whilst similarly based on the 2011 Census data, uses a blanket yield rate of 3 pupils per year group per 100 dwellings, that it applies to all dwellings over 1 bed.

187. For this reason, the Council's approach fails to produce an education contribution that is related to the particular nature of the proposed development (both in terms of the type of the development and its scale), in two respects.

[180] Mr Powell, EiC, Day 7.
[181] Ms Butters, XX, Day 7.
[182] Ms Butters, XX, Day 7.
[183] Education SOCG, para 2.6.
[184] Education SOCG, para 2.3.
[185] Education SOCG, para 2.4 and the table below para 2.7, which sets out the PAN capacities.
[186] Table below para 2.9.

188. First, it is agreed that as a matter of common sense, larger dwellings are more likely to yield more pupils than smaller dwellings.[187] Indeed, this is borne out by census data.[188] Applying the Council's approach, if the Appeal Scheme proposed that all dwellings over 1 bed were to be four bed houses, rather than two and three bed flats, the yield of the Appeal Scheme would not change. The blanket approach allows no recognition of the particular type or size of property, beyond excluding all 1 bed properties.

189. Second, the yield rate used by the Council of 3 pupils per year group per 100 homes derives no meaningful support from the evidence presented in Ms Butters' Proof of Evidence. Ms Butters' "*sense check"* provided by the admissions data from 2019 includes within it all types of housing. As such, it reflects data from larger flats and houses than the Appeal Scheme, which has only 33 3 bed dwellings. Notwithstanding this, however, the yield rate derived from the admissions data for Streford is less than that used by the Council for the Appeal Scheme (2.9436).

190. With regards to the other developments referred to by Ms Butters in her Proof, she accepted that the data produced in respect of 37 Seymour Grove[189] was produced because it was a *"particularly high example"* of a pupil yield (the rate being around 12 pupils per year group per 100 dwellings), and not because it is representative. Similarly, the data on Acre House in Sale discloses a yield rate of around 10 pupils per year group per year using the Council's approach.[190] It was put to Ms Butters (although she did not accept it) that this development also demonstrates a particular high, and not a representative, pupil yield.

191. Ms Butters further produced evidence on a "*recent study of 10 apartment developments across Trafford".*[191] As explained by Mr Powell, this evidence cannot be described as a "*survey*" and is far from capable of providing a robust basis on which to identify an appropriate yield rate. Indeed, although there is no evidence or data in support of this *"study"* produced in Ms Butters' Proof, she explained in evidence that only four of these developments were from the Stretford school planning area,[192] which includes at least one instance, namely 37 Seymour Grove, that Ms Butters herself accepted was "*particularly high"* and not representative. What this does indicate is that the yield rates of the other three properties must be sufficiently low as to offset this outlier in reaching an average yield rate of 4 pupils per year group per 100 dwellings. Notwithstanding

[187] Ms Butters, XX, Day 7.
[188] Mr Powell, Proof of Evidence, para 6.2.7.
[189] Ms Butters, Proof of Evidence, para 6.9.
[190] I.e. counting only dwellings of 2 bed and above.
[191] Ms Butters, Proof of Evidence, para 6.11.
[192] Ms Butters, XX, Day 7.

the very small sample size used, Ms Butters was not able to provide any information on the other three developments, which would be necessary in order to assess whether or not the developments were comparable to the Appeal Scheme. Given that even Ms Butters was not in a position to explain whether and to what extent these developments provided a useful comparison[193], it is readily apparent that the Inspector is not able to rely on them either.

192. Indeed, whilst Ms Butters did not accept that the Council's present approach was not robust, the Council's own document, 'Trafford's Educational Background for Housing Developments' explains that *"the same yield is applied to apartments until a robust formula based on actual apartment data can be derived".*[194]

193. Standing back, the Council's application of a blanket yield to all dwellings over two bed is neither robust, nor capable of producing a contribution that is fairly and reasonably related in scale and kind to the development.

Relevant Year

194. The Appellant's position is that in order to determine whether a shortfall in school places will arise at the point in time that the Appeal Scheme starts generating pupils, it is necessary to look at the Council's school capacity planning ('SCAP') forecasts. It is the Council's position, however, that it is not appropriate to use the SCAP forecasts in this manner, but that you should look at a 'snapshot' provided by the current numbers on roll in order to determine the level of surplus places that will remain. The Council's position is flawed in three main respects.

195. First, the Council's position that SCAP forecasts cannot and should not be used for the purpose of determining education contributions ignores altogether the very purpose of SCAP forecasts, namely, school planning. They are prepared in order that the local education authority can determine how many school places must be provided in future and make resourcing decisions accordingly. Indeed, the SCAP forecasts reflect all new developments granted planning permission for this very purpose.[195] It makes no sense that SCAP forecasts, which are used by the local education authority for the purposes of school planning generally are ignored for the purpose of ascertaining the school planning implications of a particular development.

[193] Ms Butters explained that she would need more information on the developments in order to determine the extent to which they were comparable to the Appeal Scheme, or whether they supported the yield used by the Council.
[194] Ms Butters, Appendices, pdf page 10.
[195] Ms Butters confirmed in EiC that all recent planning permissions are accounted for in the SCAP forecasts.

196. Second, despite the Council's position that its SCAP forecasts were prepared in accordance with the Department for Education's guidance, Ms Butters did not appear to be aware that that guidance clearly envisaged SCAP forecasts being used for the purpose of *"agreeing contributions… from housing developers"*[196]. Ms Butters was forced to accept that the guidance clearly envisaged that SCAP forecasts were to be used for this very purpose. Furthermore, Ms Butters agreed, the reason that the DfE guidance on 'Securing Developer Contributions' did not contain any similar indication was that it was expressly not intended to "*override or replace*" any aspect of the SCAP guidance that pre-existed it.[197]

197. Third, the use of current number on roll could not possibly produce an education contribution that meets the tests in regulation 122 of the CIL Regs. The unchallenged evidence contained in Mr Latham's Proof of Evidence is that the first phase of the Appeal Scheme will be completed in Autumn 2024, with full completion by summer 2026.[198] On this basis, the appropriate forecasts are those for the years 2024/2025 and 2025/2026. It is agreed that, as a matter of common sense, any shortfall that arose before the Appeal Scheme generated pupils could not be the result of the Appeal Scheme.[199] As such, any education contribution required to remedy such a shortfall would be neither directly related to the development nor necessary to make it acceptable in planning terms. The consequence of the Council's approach of using numbers on roll as at October 2021, is that the vast majority of the pupils used to assess the 'supply' will never be in the school at the time that the 'demand' arises. It is therefore meaningless to consider whether a shortfall would arise on the basis of those figures, as any shortfall could not possibly be the result of the proposed development.

198. Whilst Ms Butters sought to raise a range of alleged issues with using the SCAP forecasts, she also sought to demonstrate quite how accurate Trafford's forecasts are.[200] Many of the points raised by Ms Butters as to why SCAP forecasts couldn't be used are either misplaced, or disclose a misunderstanding in the way that these forecasts work. The occurrence of an increased rate of migration from Hong Kong in 2021 has been, for example, factored into the 2021 SCAP forecasts by an amendment to the migration rate. This increased rate is, therefore, now 'baked in' to the SCAP forecasts and will continue to be reflected in future forecast years. It is somewhat surprising

[196] Education SOCG, Appendix 1, pdf page 3, third bullet.
[197] Ms Butters, XX, Day 7. CD M1, pdf page 4.
[198] Mr Latham's Appendices, page 7.
[199] Ms Butters, XX, Day 7.
[200] Ms Butters, Proof of Evidence,

that the Council seek to denigrate the use of SCAP forecasts for future school planning, when this is precisely the purpose that they are prepared for.

199. In any event, Ms Butters agreed that if the Inspector considered it appropriate to use forecasts rather than current numbers on roll, on the basis that those would produce the more accurate assessment, the only forecasts presented in the evidence before the Inquiry are the SCAP forecasts.[201] The Council has not produced alternative forecasts that take account of its alleged issues with the SCAP forecasts.

200. It is common ground that if the Inspector adopts the methodology of Mr Powell, which uses the Council's own SCAP forecasts, no primary education contribution is due.

Summary of Position

201. The Appellant's position is that £nil is owed by way of education contribution. The Council's position is that £739,639 is owed by way of primary contribution only.

Planning Balance

202. As at the close of this Inquiry, the picture in terms of the overall planning balance is a distinctly different one to that when the Officer's Report was written in October 2020. At that time, the Council were maintaining seven reasons for refusal. As things now stand, there are only two reasons for refusal that have not been either amended or totally abandoned; one of which is resolved through the terms of the Appellant's unilateral undertaking. Indeed, Ms Harrison expressly accepts that the harms on which the Council now relies are "*very, very much reduced*" from what they were previously. As such, there is a very significantly more limited list of harms to be weighed in the planning balance.[202]

203. In this regard, five 'harms' that the Council identified in its reasons for refusal have now fallen away:

    a. The suggestion that the Appeal Scheme would have a dominating adverse impact on EOT, has been abandoned in its entirety. The Council now accepts that no harm to the cricket ground will arise (so that RfR 2 has been withdrawn)

[201] Ms Butters, XX, Day 7.
[202] Ms Harrison, XX, Day 10.

b. The concern regarding impact of the Appeal Scheme on the Longford Park Conservation Area, is also not pursued. In accordance with the legislative framework[203] and paragraph 199 of the NPPF, this was a matter that attracted 'considerable' or 'great' weight. The agreed position between the parties now is that the Appeal Scheme will cause no harm to the heritage significance of the asset; (so that RfR 7 has been withdrawn)

c. The Council had alleged that the Appeal Scheme would achieve inadequate levels of daylight and sunlight for the proposed apartments, resulting in unacceptable standards of amenity. On the basis of the Council's independent peer review, it now agrees that the internal light levels in the Appeal Scheme are acceptable and consequently the reference to daylight and sunlight has been removed from RfR5. This was a matter to which the Council previously attributed substantial weight;[204]

d. The perceived impact of the Appeal Proposal on the amenity of existing residents on Trent Bridge Walk and Great Stone Road, included impacts on daylight and sunlight levels. As with RfR 5, the reference to daylight and sunlight levels has been removed altogether and the Council now accepts that no harm would arise in respect of daylight and sunlight. This too is a matter to which the Council previously gave substantial weight;[205]

e. Furthermore, at the time that Ms Harrison wrote her proof her position was that substantial weight ought to be attributed to the failure to demonstrate that a policy compliant level of affordable housing would be delivered.[206] However, Ms Harrison now accepts that whatever finding the Inspector reaches in respect of the amount of affordable housing that the Appeal Scheme can afford, it is that level of provision that will be required. On this basis, she accepted in cross-examination that there would be no harm caused, as distinct from her former position that the harm generated should be accorded substantial weight.

f. Similarly, Ms Harrison also agreed a revision to her position regarding the education contribution. She agreed that the Unilateral Undertaking would engage to give effect to whatever finding the Inspector reached in relation to the need (or lack of need) for that contribution. Accordingly, she accepted that this issue also gave rise to 'no harm', in

[203] Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.
[204] SOCG Addenda, page 8.
[205] SOCG Addenda, page 8.
[206] SOCG Addenda, page 8.

circumstances where she had previously contended the existence of harm, and accorded substantial weight to it.

g. Finally, Reason for Refusal 1 (which alleged harm to the fine turf and non-turf training facilities by reason of overshadowing), has been withdrawn by the Council during the course of the Inquiry. The evidence of Mr Collier stands unchallenged and the Council no longer allege that any harm would result from the Appeal Scheme. This was another harm to which Ms Harrison agreed that the Council had previously attributed substantial weight.[207] Indeed, she volunteered that *"putative reason for refusal 1 was a significant part of the harm"* caused by the Appeal Scheme.[208]

204. The alleged harms that were previously identified in the putative reasons for refusal represented fundamental planks of the Council's case. Whilst Ms Harrison desperately sought to characterise the remnants of the Council's case as demonstrating *"substantial harm"*,[209] in reality, only the following four issues remain. The Appellant does not accept either the existence of the harms, or the weights attributed to them, but records them here for completeness:

a. The Council maintains that the design of the scheme and its impact on the character and appearance of the area is a harm. It is said that this should be given substantial weight.

b. The Council alleges that the Appeal Scheme will have an 'overbearing' impact on residents of Great Stone Road and Trent Bridge Walk. This objection, which previously provided a side-piece to the technical concern relating to daylight and sunlight levels has been forced into centre stage when those issues fell away. Whilst this matter was something to which the Council attributed substantial weight at the time of the Statement of Common Ground Addenda, Ms Harrison accepted in cross-examination that even on her own case, the weight had been reduced to moderate.

c. The Council has a concern that the southern courtyard would not, when considered in isolation, meet the criteria in the BRE Guide for sunlight levels as at 21 March. This approach is not endorsed by Mr Radcliffe, the only daylight/sunlight expert to give evidence before the Inquiry. This concern, taken together with the Council's objection to the number of north facing units and the outlook of some 18 apartments, is the sum of the outstanding concerns about future amenity of occupiers. Whilst the Council

[207] SOCG Addenda, page 8.
[208] Ms Harrison, XX, Day 10.
[209] Ms Harrison, XX, Day 10.

previously attributed substantial weight to the allegedly unacceptable levels of amenity proposed, Ms Harrison now considers that the outstanding concerns should be attributed only limited weight.

d. The final strand to the Council's case is its belated objection in respect of concert noise. In her Proof, Ms Harrison attributed this matter substantial weight. However, in light of Dr Robinson's acceptance that the levels within the proposed development would be better than those currently experienced at other nearby properties, Ms Harrison conceded that this weight must – even on the Council's own case – reduce to moderate.[210]

205. In addition to these matters, there is a further issue to weigh in the balance. Notwithstanding Ms Harrison does not rely on it, the Appellant confirms that some weight must be accorded to the negligible harms caused to Trafford Town Hall and the Cricket Ground. As the former is a designated heritage asset, even though the harm is negligible, considerable weight and importance should attach. Only very limited weight should be accorded to the negligible harm to the non-designated asset.

206. Balanced against this are the benefits of the Appeal Scheme. The following benefits are those that are agreed between the Council and the Appellant:

a. The delivery of an appropriate mix of market housing in circumstances where not only has the Council no five year housing land supply, but where there has been an acknowledged historic and enduring failure to do so. It is common ground that this attracts substantial weight.[211]

b. The delivery of 21 units (on the Appellant's case) of affordable housing; this is a matter that is agreed to attract substantial weight in light of the significant and ongoing need for affordable housing in Trafford.[212] This factor is of particular significance, because whereas the Council now agrees that whatever level of affordable housing comes forward it should be accorded substantial weight, Ms Harrison had previously argued that only limited weight should attach to the affordable housing provided.

c. The benefit of regenerating an underutilised brownfield site and providing an active frontage along Great Stone Road, which is also agreed to attract substantial weight;

[210] Ms Harrison, XX, Day 10.
[211] Accepted by Ms Harrison, XX, Day 9. See Statement of Common Ground Addenda.
[212] Accepted by Ms Harrison, XX, Day 9.

d. A £30,000 contribution to improving the pedestrian crossing at Talbot Road and Great Stone Road, which is agreed should attract moderate weight;[213] and

e. The economic benefits of the Appeal Scheme, the scale of which are not disputed.[214] This includes £11.4 million in GVA, additional household expenditure of around £8.5 million per annum and 186.6 person years of temporary construction jobs. The Council consider this attracts moderate weight whereas the Appellant, consistent with paragraph 81 of the NPPF, affords it considerable weight.

207. Even on the Council's case, and not taking account of the additional benefits identified by Mr Hann,[215] including the increase in green infrastructure and biodiversity on the site, additional cycle parking, provision of public open space, the harms identified fall far from significantly and demonstrably outweighing the very significant benefits of the Appeal Scheme. On the basis of the Appellant's evidence, the only harms arising are

i. the very minor harm to the amenity of future occupiers resulting from the very few instances where proposed daylight and sunlight levels would fall below ideal; and

ii. the negligible harm caused to the heritage significance of Trafford Town Hall, and to the non-designated cricket ground.

208. The Appellant firmly rejects the Council's evidence that the Appeal Scheme is of poor design, which is now the core – indeed only remaining substantive thread – of the Council's case. It also rejects the proposition that the development would result in adverse amenity for future or existing nearby occupiers. On this basis, not only does the Appeal Scheme accord with the development plan, taken as a whole,[216] it delivers substantial benefits that are not even remotely close to being outweighed, let alone significantly and demonstrably so.

Conclusion

209. As Mr Hann explains, the Appeal Scheme complies with the development plan and the NPPF, both in terms of particular policies and the wider aims and objectives of those documents.

210. From the outset, the Council's approach to the Appeal Scheme has been to identify as many obstacles as possible to the redevelopment of the Appeal Site. This is surprising in circumstances

[213] Accepted by Ms Harrison, XX, Day 9.
[214] Confirmed by Ms Harrison, XX, Day 9.
[215] These are set out in full in section 13 of Mr Hann's Proof.
[216] Which must be the starting point: section 38(6) of the Planning and Compulsory Purchase Act 2004.

where there is no dispute as to the principle of development on the site. This was evident in October 2020 when it identified seven putative reasons for refusal and has been borne out by the evolution of its case. Only two of the Council's original seven reasons have even survived the course of the Inquiry unchanged.

211. In essence, the Council's case is that it wants to see development on the Appeal Site, but not this development. However it is this development that falls to be considered by the Inspector. The Appeal Scheme responds to the need to make best use of a vacant and derelict brownfield site in a sustainable location. This is all the more important in light of the recognised persistent and enduring housing land supply shortfall in this borough. The response is one that strikes a balance between the need to optimise the quantum of development on the site, deliver a viable development, whilst ensuring appropriate standards of amenity for future occupiers and existing nearby residents.

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11th February 2022

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