Department for Communities and Local Government

Our ref: APP/C2741/W/16/3149489

James Hobson
White Young Green
Rowe House
10 East Parade
Harrogate
HG1 5LT

21 April 2017

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY PILCHER HOMES LTD
LAND OFF AVON DRIVE, HUNTINGTON, YORK, YO32 9YA
APPLICATION REF: 15/00798/OUTM

1. I am directed by the Secretary of State to say that consideration has been given to the report of Pete Drew BSc (Hons), DipTP (Dist), MRTPI, who held a public local inquiry from 6-9 December 2016 into your client's appeal against the decision of City of York Council ("the Council") to refuse planning permission for your client's outline application for planning permission for the proposed erection of 109 dwellings, in accordance with application ref: 15/00798/OUTM, dated 9 April 2015, on land off Avon Drive, Huntington, York.

2. On 3 August 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State has considered carefully the Inspector's analysis and assessment of procedural matters at IR6 and IR202-208. Like the Inspector, he concludes that, while there was a procedural defect, no party with an interest in the land has been prejudiced, and he considers that the appeal should be treated as valid and should be determined accordingly (IR209).

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Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

6. In this case the development plan consists of the saved policies from the Yorkshire and Humber Regional Spatial Strategy (RSS) to 2026, which was adopted in 2008. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR27.

7. The Secretary of State notes that there is no adopted Local Plan for the City. Whilst the Council has approved the City of York Draft Local Plan (DLP) (2005) for development control purposes, he considers that, as the DLP has never been adopted, it attracts very limited weight (IR219).

8. The Secretary of State notes (IR33-45) that the Council is preparing a Local Plan, which is expected to be issued for consultation in summer 2017 and to be adopted in late 2018. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the Inspector at IR45 that, as that the emerging plan is at such an early stage, it can only attract very limited weight.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement on Green Belt Protection dated 17 December 2015 (WMS).

Main issues

10. The Secretary of State agrees with the Inspector that the main issues are those set out at IR201.

Is the site within the general extent of the Green Belt?

11. The Secretary of State notes that the York Green Belt has never been identified in an adopted plan (IR210). He has carefully considered the Inspector's analysis at IR210-217 and agrees with his conclusions at IR218 that the RSS key diagram provides a firm basis for finding that the appeal site lies within the general extent of the Green Belt. Furthermore, in line with the Secretary of State's previous decision in the Germany Beck case (Ref: APP/C2741/V/05/1189897), he considers that the lack of a defined boundary is insufficient justification to arbitrarily exclude any site contained within the general extent of the Green Belt. He agrees with the Inspector at IR218 that there is no reason not to apply Green Belt policy unless or until an adopted LP defines the long-term Green Belt boundary.

The effect of the development on the purposes and the openness of the Green Belt

12. The Secretary of State has given careful consideration to the Inspector's assessment of the potential effect of the proposed development on the purposes of the Green Belt as set out at paragraph 80 of the Framework (IR220 – 250).

    a) Checking the unrestricted sprawl of large built-up areas: The Secretary of State agrees with the Inspector at IR223 that the proposed development would extend the existing built-up mass of the City which, to the south, extends as a fairly continuous suburban area to the city centre. Like the Inspector, he concludes that the proposed development conflicts with the first Green Belt purpose.

    b) Preventing neighbouring towns merging into one another: The Secretary of State has considered the Inspector's analysis at IR224-229 and agrees with his conclusion at IR228 that the proposal would not conflict with the second purpose of the Green Belt, because the existing features, primarily associated with the Ring Road, would ensure that Earswick and Huntington would not merge with one another.

    c) Assisting in safeguarding the countryside from encroachment: For the reasons given at IR230-233 the Secretary of State agrees with the Inspector that the proposed development would be a form of encroachment, which can be characterised to be advancement beyond existing bounds of development; and notes that the scheme is acknowledged to comprise "…significant built development on a currently undeveloped site". Like the Inspector, he concludes that the proposed development conflicts with the third Green Belt purpose.

    d) Preserving the setting and special character of historic towns: For the reasons given at IR234-236 the Secretary of State agrees with the Inspector that, as the site is very close to the Ring Road, the development would be evident to road users during the early stages before the landscaping was effective; when landscaping might not provide a complete screen in winter; and when street, traffic and dwelling lights were introduced. Like the Inspector, he concludes that the proposed development conflicts with the fourth Green Belt purpose.

    e) Assisting in urban regeneration, by encouraging the recycling of derelict and other urban land: For the reasons given at IR237-239, the Secretary of State agrees with the Inspector that a managed approach to releasing land for housing needs to be taken and that preventing Green Belt development is likely to encourage brownfield development. Like the Inspector, he concludes that the proposed development conflicts with the fifth Green Belt purpose.

13. The Secretary of State has given careful consideration to the Inspector's analysis on the effect of the proposed development on the openness of the Green Belt. For the reasons given at IR244-250 he agrees with the Inspector that the proposed development would give rise to a loss of openness of the Green Belt, considering that there would be built development where currently there is none.

14. The Secretary of State notes that there is no dispute between the main parties (IR242) that, should the Secretary of State find that the site is within the general extent of the Green Belt, the proposal would not fall within the limited categories of exceptions listed in paragraph 89 of the Framework.

15. The Secretary of State has given careful consideration to the Inspector's assessment about whether the proposal complies with saved RSS Policy Y1 (IR247-248). He agrees with the Inspector's conclusion that the proposal conflicts with this policy, and that moderate weight should be attributed to that conflict in this appeal. The Secretary of State also agrees with the Inspector's conclusion (IR249) that the proposal would conflict with Policy GB1 of the DLP, but that only very limited weight should be given to that.

The effect on the landscape character and setting of York

16. For the reasons given at IR251-257, the Secretary of State agrees with the Inspector that the proposal could deliver a more successful urban edge than that which presently exists and that the proposed landscape mound has the potential to more effectively screen views towards existing and proposed housing within a relatively short period. Although the development of the appeal site would change its character, this would be a continuation of the urban influence that is already evident in the area and in views from the Ring Road. Like the Inspector, he concludes that, subject to the imposition of the proposed conditions (see paragraph 20 below), the proposed development would not harm the landscape character and setting of York.

Very special circumstances

17. The Secretary of State has given careful consideration to the Inspector's analysis at IR258-268 on whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances to justify the proposal. He notes that there is a large shortfall in housing supply in York, which will take a number of years to address (IR259) and agrees that the contribution towards the housing shortfall attracts substantial weight in favour of the proposal. He agrees with the Inspector that the economic benefits (IR260) and the provision of affordable housing also attract substantial weight. He agrees with the Inspector that the benefits arising from the claimed absence of harm to the purposes of the Green Belt (IR262) attract no weight and accessibility to services and facilities (IR263) attracts very limited weight.

18. The Secretary of State agrees with the Inspector's conclusion (IR269) that no considerations of sufficient weight have been advanced to amount, either individually or cumulatively, to the very special circumstances that are necessary to outweigh the harm by reason of inappropriateness and other identified harm.

NPPF paragraph 14

19. The Secretary of State has given careful consideration to the Inspector's assessment and conclusions on the correct approach to take in applying paragraph 14 of the Framework in determining this case (IR270-274). He agrees that the final bullet point of paragraph 14 applies in this case because the Green Belt policies are not up-to-date; that the second indent of the final bullet point applies, because specific policies in the Framework indicate that development should be restricted, i.e. Green Belt is identified in footnote 9. He agrees that a balancing exercise would then need to be conducted. This is the approach that both the Inspector and the Secretary of State have taken and the Secretary of State considers that the decision making matrix does not require an assessment against the first indent of the second bullet point of paragraph 14 of the Framework.

Planning conditions

20. The Secretary of State has given careful consideration to the Inspector's analysis at IR183-192, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

21. Having had regard to the Inspector's analysis at IR193-199, the planning obligation dated 8 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR199 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

22. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with RSS Policies YH9 and Y1, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. The proposal would represent inappropriate development in the Green Belt; it would permanently reduce openness, and would conflict with four of the purposes of the Green Belt. These harmful impacts on the Green Belt attract substantial weight.

24. Turning to the benefits of the proposal, the Secretary of State considers that the provision of market and affordable housing and the economic benefits from construction attract substantial weight.

25. The Secretary of State has considered carefully whether these considerations amount to very special circumstances which clearly outweigh the harm to the Green Belt and other harm. He has also taken into account his WMS of 17 December 2015. He concludes that the considerations above do not clearly outweigh the harm to the Green Belt and any other harm, and that very special circumstances do not exist. The proposal is therefore in conflict with national policy on the Green Belt.

Formal decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the proposed erection of 109 dwellings, in accordance with application ref: 15/00798/OUTM, dated 9 April 2015.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

28. A copy of this letter has been sent to the City of York Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Merita Lumley

Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Pete Drew BSc (Hons), DipTP (Dist), MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 19 January 2017

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

CITY OF YORK COUNCIL

APPEAL BY PILCHER HOMES LTD

Inquiry opened on 6 December 2016

Land off Avon Drive, Huntington, York, YO32 9YA

File Ref: APP/C2741/W/16/3149489

Contents of the Inspector's Report

Abbreviations used in this report

AOD	Above Ordnance Datum
BS	British Standard
CIL	Community Infrastructure Levy
DCLG	Department for Communities and Local Government
DP	Development Plan
DL	Decision Letter
dpa	dwellings per annum
dph	dwellings per hectare
FRA	Flood Risk Assessment
FTE	full-time equivalent
ha	hectares
IR	Inspector's Report
LVIA	Landscape and Visual Impact Assessment
LDS	Local Development Scheme
LEA	Local Education Authority
LP	Local Plan
LPA	Local Planning Authority
pa	per annum
PINS	The Planning Inspectorate
RSS	Regional Spatial Strategy
SoS	Secretary of State for Communities and Local Government
SHMA	Strategic Housing Market Assessment
SoCG	Statement of Common Ground
S106	Section 106 agreement
TPO	Tree Preservation Order
the Act	the Town and Country Planning Act 1990 (as amended)
the 2004 Act	the Planning and Compulsory Purchase Act 2004
the Council	City of York Council
the DMPO	the Town and Country Planning (Development Management Procedure) (England) Order 2015
the emerging LP	the draft City of York Local Plan
the Framework	the National Planning Policy Framework
the Guidance	the Planning Practice Guidance
the draft 2005 LP	the draft 2005 Local Plan, incorporating the fourth set of changes
the Revocation Order	The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013
WMS	Written Ministerial Statement
xx	cross-examination

Appeal Ref: APP/C2741/W/16/3149489
Land Off Avon Drive, Huntington, York, North Yorkshire YO32 9YA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ["the Act"] against a refusal to grant outline planning permission.
- The appeal is made by Pilcher Homes Ltd against the decision of the City of York Council ["the Council"].
- The application Ref 15/00798/OUTM, dated 9 April 2015, was refused by notice dated 2 November 2015.
- The development proposed is erection of 109 dwellings.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The Inquiry sat for a total of 4 days from 6-9 December 2016. I carried out an accompanied visit of the site and surrounding area on 9 December 2016.

2. The appeal was recovered by the Secretary of State [SoS] for his determination by way of a direction dated 3 August 2016. The reason given for the direction is that the appeal involves proposals for significant development in the Green Belt. As a matter of record it is appropriate to state that a letter dated 21 September 2016 was sent in response to the direction that underlined that the Appellant's primary case is that the site is not within the Green Belt. However the letter from the Appellant's solicitor made clear that the Appellant does not formally dispute the direction and so I shall proceed to report the matter to the SoS in line with the direction.

3. In Appendix B to this report is a list of documents that have been submitted in relation to this appeal. Appendix B establishes a system of referencing that is used in the main report as follows: (i) documents submitted at the Inquiry [DS]; (ii) documents circulated outside of the Inquiry [DC]; (iii) Core Documents [CD]; (iv) appendices to proofs of evidence submitted on behalf of the Appellant [PEA]; and, (v) appendices to proofs of evidence submitted by the Council [PEC].

4. The application to which the appeal relates was made in outline form except for access, which is shown to be derived from Avon Drive. All other matters [appearance, landscaping, layout and scale] were reserved. The application was refused by the Council for 2 reasons, which relate to Green Belt and archaeology. However, following submission of an archaeological evaluation, the Council has confirmed that it no longer supports the second reason for refusal[1].

5. Notwithstanding the above the Council confirmed at the Inquiry that it would be appropriate to identify an additional main consideration to be the effect of the proposed development on the landscape character and setting of York[2]. This was not identified as a reason for refusal but the Council confirmed at the Inquiry that it "*should*" have been cited as an additional refusal reason [3].

[1] See paragraph 25 of the Council's Statement of Case at CD4.2.
[2] As referred to in paragraph 18 of the Council's Statement of Case at CD4.2.
[3] Mr O'Connell's answer to my question at the Inquiry.

6. An Agreement, dated 8 December 2016,was submitted under section 106 of the Act [S106 Agreement, DS19] and I deal with the contents and justification for this below. The S106 identifies 3 parties to be the freehold owners of the land to which the appeal relates, but this does not tally with the ownership certificates that were signed at application and appeal stage[4]. The Council initially sought a ruling that because it was admitted that the Certificates were incorrect that the application was invalid, such that there was no appeal to be determined. However the Appellant submitted that as the decision maker was the SoS, I had no jurisdiction to make such a ruling. In my view that submission had force and so the Inquiry continued without prejudice to the decision which the SoS might ultimately reach in the matter. The Council subsequently indicated that because it had entertained the application, and was to that extent complicit in the situation as it exists, it did not seek to take an opportunistic point. Nevertheless the point does fall to be considered by the SoS and so I shall address the matter in my conclusions.

7. In my pre-Inquiry note to the parties [DC4] I drew attention to the findings of the SoS in a decision dated 15 December 2014 at Morpeth, in which the SoS said: "…*the Secretary of State agrees with the Inspector that the New Homes Bonus cannot lawfully be taken into account as a material consideration, as there is not a clear indication that the Council intends to use the receipts in a way which is material to the development being proposed. However, he disagrees with the Inspector's conclusion in IR317 that, pending the outcome of this appeal, the Council could not reasonably make firm plans for what the associated New Homes Bonus receipts might be used for. The Secretary of State considers that it was open to the Council to take a view on how it would use the funds if the appeal were to be allowed*" [5]. The Council's written response says: "…*the Council cannot state at this time what any New Homes Bonus relating to the appeal site would be used for*"[6]. Reasons for that conclusion include the need to consult with residents with regard to the use of such monies and the absence of any assurance that the regime will continue in its present form if and when the development commences. In the circumstances the Appellant fairly conceded[7] that the New Homes Bonus is not a material consideration that weighs in favour of allowing this appeal.

The Site and Surroundings

8. The Statement of Common Ground [SoCG, DS11] records that the appeal site is broadly triangular in shape and extends to approximately 4.83 hectares [ha]. It comprises arable farmland with a relatively level topography, which is broadly between 16 and 17 m AOD[8]. The site is located adjacent to existing residential areas in Avon Drive to the south and Strensall Road to the west.

[4] At both stages the certificate A was signed to confirm that no party except the applicant/ appellant, respectively, was the owner of any part of the land to which the appeal relates.
[5] Source of quote: paragraph 20, appeal ref. APP/P2935/A/14/2212989.
[6] Source of quote: paragraph 4, DS8, which was tabled during the Inquiry.
[7] Mr Hobson conceded this in answer to my question.
[8] A full levels survey has been undertaken and is provided at Appendix 4 to CD 3.14. The levels across the majority of the appeal site are within this range although there are some exceptions, such as in the vicinity of the pond at the eastern end of appeal site.

9. To the north and east the site boundary is contiguous with the York Outer Ring Road [A1237], which comprises a single carriageway along this length. Running along the northern and eastern boundary with the Ring Road is a belt of trees and a loose but mature hedgerow. My site inspection revealed that the majority of the hedgerow is beyond the boundary fence, which would suggest it is within the highway. The hedgerow has been left to grow and has not been laid or otherwise managed beyond crude flailing to ensure that the highway signage on the trunk road is not obstructed. Conversely most of the trees that exist along that boundary are south of the boundary fence, which would suggest that they are within the appeal site. At the eastern end of the appeal site the large field that characterises the largest part of the site gives way to a treed area, which includes a depression surrounded by willows which is identified as a pond on the levels survey. Whilst there was no water in the pond at the time of my inspection there is no reason to doubt that it fills up during periods of heavy rain and functions as a seasonal pond.

10. To the south and west of the appeal site, the land use is primarily residential. To the south Avon Drive comprises largely of bungalows, which were constructed in the early 1980s, with 2-storey detached dwellings at the eastern end of Avon Drive. To the west, the properties on Strensall Road that back onto the appeal site comprise a single line of dwellings including both bungalows and 2-storey houses. My site inspection revealed that there are some relatively large gaps between some properties that permit views from Strensall Road towards the appeal site, for example there is a gap of approximately 12 m to the north of No 74 Strensall Road. However the other large gap on plan form between Nos 64 and 68 Strensall Road does not permit views because of a dense conifer hedgerow along that frontage.

11. To the north of the Ring Road the main parties agree that the environment is much more rural in character. However, when viewed from the roundabout at the junction of Strensall Road and the Ring Road, existing dwellings in Earswick are visible. The fire station that has been constructed to the east of that roundabout is largely hidden in views from the Ring Road, even in winter months, due to the depth of planting but, to the south, the housing in Avon Drive is perceived. The fire station tower is visible from the Ring Road above the vegetation to a limited extent. Views of housing from the arms of the roundabout are limited by the existing vegetation, which has been planted on earth mounds typically 1.5 m high. However clear vistas towards the existing houses are available along roads, notably to the south along Strensall Road towards Abbots Gate. There is a view of the bungalows on Riverside Crescent, which runs off Abbots Gate, from the Ring Road's bridge over the River Foss to the west of the roundabout.

12. A field access gate is located in the north-west corner of the appeal site, which provides access from Strensall Road. Views into the appeal site from this point are limited due to mounding and planting to the north of the field gate. Within the site are the remnants of an existing track, to the north of which is a simple ranch style fence that demarcates the area within which a water main crosses the appeal site, in a broadly east-west direction. The red line edge that defines the extent of the appeal site meets Avon Drive in 2 locations along the southern boundary of the site. These existing gaps are 25-30 m in width and currently comprise vacant grassland with a boundary of

small trees and shrubs, including a mature oak, continuing the line of the rear boundaries of the existing properties that front onto Avon Drive.

13. Strensall Road runs on a broadly north-south alignment and is one of the main arterial roads that link the suburb of Huntington and the settlements of Earswick and Strensall with York city centre, which lies approximately 5 km to the south. Strensall Road/North Moor Road is designated as a cycle route with cycle lanes provided on each side of the road which, the main parties agree, provides a cycle friendly way in which to gain access to York city centre. Given the relatively flat topography in the Vale of York cycling appears to be a realistic alternative to the private car and within the city centre itself I observed a relatively large number of cyclists every day.

14. The No 5/5A bus route runs along Strensall Road and there are bus stops in each direction on Strensall Road just to the north of its junction with Avon Drive. The bus route provides a frequent and direct service with York city centre, typically one bus every 15 minutes during the bulk of the day, Monday to Saturday. A less frequent service also runs in each direction from early in the morning, until relatively late in the evening and on Sundays. It is also possible to access shops and facilities at Monks Cross, to the south-east of the appeal site, by changing to the No 12 bus service.

15. It is common ground that there is a range of existing facilities in reasonable proximity of the appeal site. There is a local centre within 800 m of the site as well as other facilities such as play areas, doctor's surgeries and a sports and social club. Other health care provision [*My Health Care Centre*] and Huntington Primary School are located just beyond 800 m of the appeal site.

Planning History

16. There is no planning history on the appeal site prior to the application that is the subject of this appeal. Subsequent to the Council having refused this application, 3 further planning applications have been submitted on the site.

17. The first application [No 16/00318/NONMAT] appears to have been submitted as a non-material amendment to the original planning permission from 1979 for the development at Avon Drive, which was developed by the Appellant. It relates to the gap between Nos 33 and 39 Avon Drive, which is within the appeal site[9], but it was subsequently refused. The second application [No 16/00880/NONMAT], dated 4 April 2016, is of a similar nature and relates to the same relatively small part of the current appeal site. It too was refused in a decision dated 23 August 2016 [DS6].

18. A third application [No 16/01703/OUTM] was submitted to the Council on 6 June 2016 for the erection of 67 dwellings on the appeal site. That application was refused by the Council in a decision dated 28 October 2016 [PEC1.5] for one reason, which relates solely to Green Belt.

[9] Adjacent to what is proposed as the eastern access to serve the development that has been proposed as part of this appeal; see red line area on the submitted plan at CD3.4.

The Proposals

19. As already noted the application was submitted in outline with all matters except access reserved. In opening the Appellant made clear that the proposed access arrangements are shown on the "*Built Form Masterplan*" [CD3.1], and therefore includes 2 road access points onto Avon Drive. That is the Appellant's choice and so whilst the internal consultation with the Council's Highway Department has suggested that 2 access points into a development of this scale are unnecessary the appeal should be determined on the basis of the submitted plans. However the issue is capable of being controlled by a condition, which is discussed in the appropriate section below.

20. In all other respects the "*Built Form Masterplan*" is illustrative or, what the SoCG calls, indicative. It does however illustrate one way in which the appeal site might be developed and confirms that the site can comfortably accommodate 109 dwellings at what the Appellant calculates to be a density of around 33 dwellings per hectare [dph] on a net developable area of 3.3 ha. The "*Built Form Masterplan*" also breaks down the number of dwellings by size of units[10] although this too is only indicative at this stage. Helpfully however the Council has used this information to estimate the quantum of the financial contributions that it seeks pursuant to the S106 Agreement and I examine that further in the appropriate section below. The SoCG indicates that buildings would be 2-storeys in height, although some are proposed with dormer windows at roof level. This is capable of being controlled by a condition, which was discussed at the Inquiry and is also considered below.

21. The "*Built Form Masterplan*" shows the eastern end of the appeal site to be retained as a landscaped area. Whilst illustrative, this reflects the fact that the eastern end has a number of existing trees and so this part of the site is unlikely to be developed for housing. It also shows the housing set back from the Ring Road and what is shown as a public park between the houses and the Ring Road. This northern part of the appeal site is also unlikely to be developed for housing for a number of reasons, most notably the fact that a water main crosses this area.

22. The Appellant has provided a drawing entitled "*Landscape Proposals*" [CD3.3], which is purely illustrative. It is however useful in showing that the eastern end of the appeal site might be used to provide an attenuation pond without detracting from the sylvan character of that part of the appeal site.

23. At appeal stage the Appellant's Landscape Consultant, Mr Popplewell, has revisited the illustrative "*Landscape Proposals*", and provided a revised plan entitled "*Mitigation Measures*"[11]. This too is illustrative but shows a revised arrangement in the area between the proposed housing and the Ring Road. Amongst other things it is useful in identifying the line of the water main and demonstrating how a robust landscaped mound, potentially incorporating an acoustic fence, could be developed between the housing and the Ring Road.

[10] 33 affordable units [comprising 12 1-bed, 11 2-bed and 10 3-bed] and 76 market units [comprising 46 3-bed and 30 4-bed], which is a 30/70 split.
[11] At the end [p43] of the Landscape and Visual Impact Assessment in Appendix 1 [PEA2.1].

24. In the context of the revised illustrative proposals for landscaping, whilst the SoCG records that the landscaped area between the housing and the Ring Road would incorporate footpaths linking the appeal site to the green space at the eastern end of the site, this would appear to be uncertain. The original "*Landscape Proposals*" do show a path running from the existing field gate to the attenuation pond at the far end of the site, including an area for play within that zone. However such an arrangement is not consistent with a robust landscaped mound because in that scenario there would not appear to be any interconnectivity with the housing or, if there was, that gap might allow views through and/or undermine the efficacy of any acoustic feature. However the S106 Agreement does require the provision of a pedestrian/ cycle path broadly parallel with the landscaped mound shown on the revised "*Mitigation Measures*" plan. Viewed in that light it is likely that the indicative layout would need to be fundamentally revised to accommodate this feature.

Planning Policy

25. The policies of the National Planning Policy Framework [the Framework] and advice in the Planning Practice Guidance [the Guidance] are particularly relevant to this appeal. Some of the provisions in the Framework that are relevant to this appeal have been identified as common ground[12]. The main parties agree that significant weight should be given to the Framework.

The Development Plan

26. The Development Plan [DP] for the area includes the Yorkshire and Humber Plan Regional Spatial Strategy [RSS] to 2026 [CD 2.3]. The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013[13] [the Revocation Order] revoked the RSS except for: (a) the policies of the RSS set out in the Schedule to the Order; and, (b) the Key Diagram of the RSS insofar as it illustrates the RSS York Green Belt policies and the general extent of the Green Belt around the City of York. This distinction confirms that the Key Diagram is not an RSS policy.

27. The Schedule to the Revocation Order identifies 2 policies: i) Policy YH9 is entitled "*Green Belts*" and says: "*C The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city*"; and ii) Policy Y1 is entitled "*York sub area policy*". It says: "*Plans, strategies, investment decisions and programmes for the York sub area should: C Environment 1. In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C. 2. Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas*". The main parties concur that there are no other relevant policies in the DP.

[12] Paragraph 4.3, DS11.
[13] Statutory Instrument 2013/117, CD 2.8.

28. The "*Strategic Environmental Assessment of the Revocation of the Yorkshire and Humber Regional Strategy*" was published by the Department for Communities and Local Government [DCLG] in January 2013 [DS12]. The Government agreed with the Council that policies related to the York Green Belt should be retained because of the potential for significant environmental effects from their revocation. However it is material to note that the Council only requested the retention of those parts of the RSS which were saved: "*…for up to 5 years or until York adopts its new local plan (whichever is the earliest)*"[14] [*my emphasis*].

29. Although the Strategic Environmental Assessment does not record the date on which the Council made those comments, even if taken from the date of publication it is reasonable to conclude that the 5-year period would expire in January 2018. By the date on which the SoS considers this report it is likely that the 5-year period that the Council envisaged to be the maximum time period within which it anticipated needing to rely on the RSS policies will have almost expired. Fortunately for the Council, the Government did not impose any such time limit in the Revocation Order. However this might suggest that after the Framework was issued in 2012 the Council had a clear expectation of having a clear basis for a defined Green Belt in place by January 2018.

The status of and weight to be attached to the draft [2005] Local Plan

30. For day-to-day development management purposes the Council rely on the draft 2005 Local Plan incorporating the fourth set of changes, which is otherwise known as the "*Development Control Local Plan*" [CD2.2, "the draft 2005 LP"]. The Introduction to the draft 2005 LP says that it represents the most advanced stage of the 1998 deposit draft City of York Local Plan, which was amended up to and including a fourth set of changes. In addition, and quite separately, it was also approved for the purpose of making development management decisions in the City of York, for applications submitted after the date of the Council meeting [12 April 2005]. The Inquiry was told the fourth set of changes were not the subject of consultation.

31. The SoCG records agreement between the parties that policies in the draft 2005 LP are not wholly consistent with the Framework, but disagreement as to the weight that should be given to the draft 2005 LP. However during cross-examination [xx] the Council conceded that only very limited weight could be given to the relevant provisions of the draft 2005 LP. It is noticeable that the SoS expressed this view in a decision in the Council's area as far back as 9 May 2007[15]. The passage of time since that date can only serve to reduce, rather than increase, the weight that it would be appropriate to attach to policies in the draft 2005 LP. The Inspector who dealt with the most recent appeal that is before the Inquiry took a similar view and attached very limited weight to the draft 2005 LP[16]. In the circumstances this is an appropriate descriptor of the level of weight that I consider should be given to the draft 2005 LP, including the Proposals Map [key excerpt at PEC3.1].

[14] Source of quote: page 55, DS12.
[15] See paragraph 12, appeal Ref APP/C2741/V/05/1189885/1189897, CD5.15.
[16] See paragraph 6, appeal Ref APP/C2741/W/16/3154113, CD5.17.

32. The SoCG does not contain a list of policies from the draft 2005 LP that are relevant to this appeal. However a list of relevant policies is to be found in section 2.2 of the report to the Planning Committee [CD3.15] and there is no reason to find that list is wrong or otherwise incomplete. The only policy that the Council allege the proposed scheme to be in conflict with is Policy GB1.

The emerging Local Plan

33. The evolution of the emerging Local Plan ["the emerging LP"] is briefly set out in the SoCG[17]. The most recent complete version of the emerging LP that is before the Inquiry is the publication draft version, dated September 2014 [CD 6.03]. However this version of the emerging LP did not progress to consultation stage because the Council resolved instead to review the overall level of the housing requirement. In the circumstances the SoCG identifies the relevant policies from an earlier version of the Plan, namely the Preferred Options version [CD2.11], which was released in April 2013[18]. On this basis, and notwithstanding the reference to the publication draft policies in the Committee report, it appears to be common ground that these are the policies from the emerging LP which are most relevant to this appeal.

34. The Council did undertake a consultation on preferred sites in July 2016 [CD2.17], which sought views on, amongst other things, the Strategic Housing Market Assessment [SHMA], the SHMA Addendum, the Windfall Allowance Technical Paper and the Sustainability Appraisal [CD2.16, CD2.16a, CD2.20 and CD2.21, respectively]. However the preferred sites consultation document does not purport to set out a full suite of emerging policies upon which interested parties could comment. The preferred sites document and the evidence base that underpins it are material considerations that are relevant to the determination of this appeal.

35. The Council issued a Local Plan Position Statement just before the Inquiry opened and a copy was subsequently provided at the Inquiry [DS7.1]. It explains that following the preferred sites consultation 2 factors have arisen that have led the Council to recommend to its Members that progression of the emerging LP should be delayed.

36. The first is that on 12 July 2016 DCLG released the Sub-National Household Projections [SNHP] for England, which updates the May 2016 release of the Sub-National Population Projections [SNPP], which the SHMA and SHMA Addendum took into account. The report to the Local Plan Working Group says the SNHP: "*…indicates a higher demographic starting point for York*"[19]. The second is that the Ministry of Defence [MoD] announced in November 2016 that they would be disposing of a number of sites, including 3 within the Council's area at Imphal and Queen Elizabeth Barracks, and Towthorpe Lines.

37. Reports were submitted to the Local Plan Working Group and the Executive on 5 and 7 December 2016 [DS7.2 and DS7.3, respectively], in the same

[17] Paragraph 4.6, DS11.
[18] See, amongst others, paragraphs 4.10, 4.12, 4.15, 4.17, 4.19, 4.22, 4.24 and 4.25 of the SoCG [DS11].
[19] Source of quote: paragraph 4, DS7.2.

week that the Inquiry was held. The Inquiry was advised that both meetings made resolutions in line with the recommendations contained in the respective reports. The upshot is that Council Officers have been instructed to undertake additional work, including a review of the Objectively Assessed Housing Need [OAN] in the SHMA, in the light of the SNHP, and to evaluate whether the MoD sites to be released represent reasonable alternatives.

38. The Local Development Scheme [LDS] anticipated[20] that the emerging LP would be the subject of a full consultation exercise starting in January 2017, with a view to submission of the emerging LP for examination in May 2017[21]. The LDS indicates that the Council would be in a position to adopt its emerging LP by the end of June 2018, which itself is outside the 5-year period referred to by the Council in its submission to DCLG in relation to the Revocation Order. However the Council now appear to concede that the timetable in the LDS will not be met. The report to the Local Plan Working Group says: "*It is anticipated that the additional work described including any potential consultation will extend the Local Plan Timetable by around six months*"[22]. In a similar vein the report to the Council's Executive says: "…*there could be a six month delay to the programme* [in the LDS]"[23].

39. Contrary to Mr Wood's suggestion I find no basis to conclude that the delay would be 'up to' 6 months. Indeed the very nature of the work, potentially including a revised housing requirement and a reappraisal of allocated sites, might suggest that 6 months is ambitious. Amongst other things I note that Mr Hobson's evidence in chief, that it would be a tall order to do all of the extra work within 6 months, was not challenged. However taking the Council's estimate at face value this would mean that the emerging LP would not be submitted for examination until the end of 2017 and adoption of the emerging LP could be delayed until the end of 2018. Mr Hobson said in answer to my question that adoption could be delayed until spring 2019. Given that the LDS anticipates that the examination would be completed in around 12 months[24] even this timetable for adoption might be optimistic.

40. I make one final point. As I suggested to Mr Wood the second bullet point of paragraph 157 of the Framework says that Local Plans should be drawn up over an appropriate time scale, preferably a 15-year time horizon. However, whilst the base date dictates a 20-year time horizon is being planned for, at the point that the emerging LP is likely to be examined, and subsequently adopted, there is likely to be less than 15-years to the end date of the LP. If it were necessary to revisit the time horizon of the emerging LP that would potentially be a significant source of delay. At a minimum it suggests there is limited scope for any further delay in the progression of the emerging LP.

[20] Figure 3.1a, page 9, CD2.18.
[21] The examination only starts with submission of the Plan to PINS for examination and hence the 3 month period identified in Figure 3.1a for the preparation of the submission documents should not come under the subtitle of "Examination" in the left hand column.
[22] Source of quote: paragraph 22, DS7.2.
[23] Source of quote: paragraph 32, DS7.3.
[24] Not including "Preparing Submission Documents" for the reason given above.

41. The SoCG records disagreement between the main parties as to the weight that should be given to the emerging LP: the Council says limited weight; the Appellant says very limited weight. The Inspector who dealt with the most recent appeal that is before the Inquiry attached very limited weight to the emerging LP[25]. However that was on the assumption that the Council would keep to the timetable set out in the LDS and adopt it by the middle of 2018 which, for the reasons set out above, appears to be unrealistic. As such it is difficult to conclude that Inspector's assessment of weight is inappropriate.

42. My view on this point is confirmed when the emerging LP is assessed against the 3 bullet points in paragraph 216 of the Framework. In terms of the first bullet point, the fact is that the latest complete version, dated September 2014, was not the subject of consultation and a finalised version has yet to emerge for consultation purposes or otherwise. As I have suggested the additional work on the OAN, together with reappraisal of allocated sites in the light of the newly identified MoD sites and the associated SA work, might suggest that the version of the LP that emerges for consultation, hopefully by the end of 2017, could be quite a different animal from the publication draft version. It might contain different housing numbers and allocations from those that were the subject of the preferred sites consultation.

43. Turning to the second bullet point, it is clear from the limited information before the Inquiry that there has been a significant level of objection to the emerging LP. In pure numerical terms the report to the Local Plan Working Group says: "*The Council received 2,309 responses from members of the public, interest groups and organisations and developers and landowners*"[26]. The report to the Executive also says: "*…over ten alternative OAN reports produced by consultants on behalf of landowners/developers have been submitted as part of the Preferred Sites Consultation*"[27]. So not only has there been a large quantum of objections, it would appear that some of these go to substantive elements of the emerging LP. Moreover it is evident that this level of objection has been received before the policies have crystallised.

44. Finally, turning to the third bullet point in paragraph 216 of the Framework, as Mr Wood effectively acknowledged in answer to my question, it is difficult to assess the emerging LP against this test when the policies have not been set down since the publication draft version, dated September 2014. To the extent that the Framework seeks to boost significantly the supply of housing, the fact is that the estimates of OAN that have been provided by consultants for the Council and developers, respectively, appear to vary by a significant margin[28]. Thus even before policies are the subject of consultation there is some basis to consider that the emerging LP, at least insofar as it quantifies the housing requirement, might not be consistent with a key objective of the Framework. This finding is actually underlined by the Council's decision to

[25] See paragraph 7, appeal Ref APP/C2741/W/16/3154113, CD5.17.
[26] Source of quote: paragraph 6, DS7.2.
[27] Source of quote: paragraph 32, DS7.3.
[28] GL Hearn have put forward a figure of 841 dpa which, over the 20-year period 2012-2032, equates to 16,820 dwellings, whereas at the other extreme NLP [CD2.19] have put forward figures of 1125 and 1255 dpa which, over the same period, equates to up to 25,100 dwellings. This is a difference of up to 414 dpa or 9,180 dwellings over the plan period.

reappraise its OAN in the light of the SNHP and the alternative estimates of OAN that have been submitted during the most recent consultation exercise.

45. For these reasons I conclude that at least until the emerging LP is submitted for examination that it would only be appropriate to attach very limited weight to the emerging LP. Even after the emerging LP has been submitted for examination, in the unlikely event that this occurs before the SoS determines this appeal, I find it to be highly unlikely that a greater attribution of weight should be given to the emerging LP policies apart from where the Council show that there are no substantive objections to an individual policy.

Supplementary Planning Guidance [SPG]

46. The reasons for refusal on the decision notice and, more generally, the report to Committee [CD3.17 and CD3.15, respectively] do not expressly refer to SPG. However there is limited reference to it in the SoCG[29] and extensive reference to it in what I shall describe as the Regulation 122 compliance note [DS13]. The Regulation 122 compliance note appends excerpts from 3 items of SPG: i) the "*Affordable Housing Advice Note*" [2005]; ii) SPG for developer contributions to education facilities [2005]; and iii) "*Commuted Sum Payments for Open Space in New Developments – A Guide for Developers*"[30], which is said to have been approved in 2007 and updated in 2014.

47. SPG is not a term that is defined in the Framework as it fell away with the demise of Planning Policy Statement [PPS] 12[31]. Annex 2 to the Framework defines Supplementary Planning Documents [SPD] to be documents which add further detail to the policies in the LP which, in turn, is defined to include: "…*old policies which have been saved under the 2004 Act*". The draft 2005 LP was never adopted and hence was not saved and so is not within that definition. So even if I were to apply the 'spirit' of the definition of SPD to what is manifestly SPG, rather than SPD, a strict interpretation would suggest that the SPG would not comply with the definition in the Framework. Notwithstanding the above no party has made any case that the SPG is not a valid material consideration in this appeal and I shall proceed on this basis.

48. For reasons previously identified it is now common ground that the policies in the draft 2005 LP should be given very limited weight in this appeal. Since the purpose of the SPG is to supplement policies in the draft 2005 LP it must follow that the greatest attribution of weight that it would be appropriate to give to all the relevant items of SPG would be very limited. However the SPG has effectively been revised 'on the hoof' in a number of material respects.

49. To take the example of affordable housing it would appear that the original 2005 LP Policy H2a required 50 % affordable housing made up of 45 % affordable rent and 5 % for discounted sale on all windfall sites in York. Lower targets were envisaged on allocated sites or where set out in Development Briefs, only where the developer could show, in essence, a lack

[29] See for example paragraphs 4.13 and 4.20, DS11, the latter, perhaps incorrectly, describing it as "SPD".
[30] Excerpts provided at Annexes 3, 4 and 6, respectively, to DS13.
[31] This was revoked and replaced by the Framework, as confirmed by footnote 1 and Annex 3 to the Framework.

of viability. However all of that appears to have been superseded by the Council's "*Affordable housing planning guidance – interim targets*"[32], which seek 30 % affordable housing on green field sites of more than 15 dwellings in line with the Written Ministerial Statement [WMS] of November 2014. The role of the "*Affordable Housing Advice Note*" is, even on the Council's own assessment, essentially limited to providing: "…*guidance and advice on how to include affordable housing in development schemes*"[33]. The SPG itself would therefore appear to have been almost entirely superseded. In these circumstances I attach extremely limited weight to all the SPG in this appeal.

50. The Council's "*Affordable housing planning guidance – interim targets*", whilst referring back to the SPG, appears to have effectively replaced the draft 2005 LP Policy H2a. It is based on fairly up-to-date evidence and is consistent with the WMS and the Guidance at least insofar as it sets out thresholds. In my view it amounts to a non-statutory policy document. In the circumstances I consider that, as a freestanding document, it should be given greater weight than the dated and largely superseded statutory policy. However it is a non-statutory policy document, which means that I attach very limited weight to the Council's interim planning guidance with regard to affordable housing.

Extent to which there is a common position in respect of housing supply

51. The SoCG records, at paragraph 5.10 thereof, that it is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites. However it is appropriate to record the Council previously took the opposite view in saying: "…*the Council will show that* [it] *has an emerging Framework compliant five year housing land supply*…"[34]. In the circumstances that are now agreed to prevail it is common ground that, applying paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date. It is further agreed that the weight to be given to relevant policies for the supply of housing is a matter for the decision maker.

52. The Council has not provided an estimate of its 5-year housing land supply. The position that it takes is encapsulated in an email from the Council's Forward Planning Team Manager that says: "*Given this emerging position in relation to both OAN and supply it is currently not possible to quantify a precise shortfall for the purposes of this appeal*"[35]. Pursuant to this rationale none of the Council's proofs of evidence deals in depth with this topic area.

53. In contrast Mr Hobson has provided a detailed paper on "*Housing Land Supply*" [PEA1.2]. The Council does not challenge this assessment nor accept it because work is ongoing as part of the emerging LP. Mr Wood did however agree that it would be appropriate to apply a 20 % buffer to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land, pursuant to the second bullet-point of

[32] Excerpt provided at Annex 2 to DS13, noting that the document expressly says that it supersedes the targets in the advice note, which derive from the 2005 LP.
[33] Source of quote: Annex 2 to DS13.
[34] Source of quote: paragraph 21, CD4.2.
[35] Source of quote: PEA1.7 [dated 1 November 2016].

paragraph 47 of the Framework. He further confirmed that it was appropriate to use the "*Sedgefield*" method to calculate housing land supply in the City.

54. In my view these assumptions are appropriate. Mr Hobson confirmed that the figures in his Table 1 [PEA1.2], for the 10-year period 2006-2016, have been taken from the City of York Annual Monitoring Report 2010-2013 and Housing Monitoring Update 2015/16. The Guidance says: "*The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle*"[36]. This 10-year period complies with that advice.

55. Table 1 demonstrates that when assessed against the former RSS target of 850 dpa [650 dpa prior to 2007/08] the Council has under-delivered in 8 out of the last 10-years. The Council has not suggested in this appeal that the RSS target is inappropriate: it appears to have used it in its own monitoring and it is not materially different from the OAN figure that it has recently identified, which is considered below. In my view, noting that at the end of that 10-year period 2006-2016 the number of dwellings delivered is over 31 % below that envisaged for that period by the RSS[37], Table 1 comprises evidence that there has been a record of persistent under delivery in the City.

56. Turning to the applicability of the "*Sedgefield*" method, the Guidance says: "*Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible*"[38]. The cross-reference ["*Related policy*"] is to paragraph 47 of the Framework, which sets out a key objective to be: "*To boost significantly the supply of housing*". In that context I consider that the Sedgefield approach aligns more closely with the Guidance and the Framework. This approach is consistent with the approach taken in other decisions that are before the Inquiry[39].

57. Mr Hobson has provided 2 different calculations of the 5-year housing land supply in the City based on the above assumptions but using 2 different estimates of OAN. What he has called "*York Assumed Position*" is calculated on the basis of its OAN of 841 dpa, which is the figure that GL Hearn has identified in its SHMA [CD2.16]. In contrast the Appellant's position is based on an OAN of 1,020 dpa, which is recommended by Dr Gomez in a report that has been commissioned by the Appellant in relation to this appeal [PEA1.1].

58. Based on these different levels of OAN, the Appellant calculates the 5-year housing land supply in the City of York to be between 1.9 years [Appellant's figure] and 3.8 years [based on the "*York Assumed Position*"]. It is material to note that this calculation adopts the Council's figure for windfalls [CD2.20] even though the figure of 152 dpa has only been achieved once over the past 7 years and once since the base date of the emerging LP period [2012]. It remains to be seen whether the Council's technical paper would constitute the compelling evidence that is required by paragraph 48 of the Framework.

[36] Source of quote: paragraph ID 3-035-20140306.
[37] Target over that period was 8,100, with completions of 5,569, resulting in a deficit of 2,531 which, when expressed as a % of the target, is over 31 %.
[38] Source of quote: paragraph ID 3-035-20140306.
[39] See in particular SoS paragraph 23 and IR8.30 of CD5.13 [Pulley Lane, Droitwich Spa].

However I am not in a position to form a definitive view because of the consensus between the parties as to the appropriateness of the figure of 152 dpa and the fact that the Council's technical paper does not identify the planning permissions concerned to allow any interrogation of its evidence[40].

59. It is material to note that the Appellant's estimate of OAN is less than the figures of 1,125 dpa and 1,255 dpa, identified in a report by NLP[41] that has been submitted to the Council as part of the recent consultation exercise into the emerging LP. It must follow that, applying those higher estimates of OAN, that the 5-year supply might be even less than the Appellant's estimate.

60. Given that the Council has not sought to quantify the housing land supply, my pre-Inquiry note drew attention to the case of *Phides Estates (Overseas) Ltd v SSCLG and Shepway DC* [2015] EWHC 827 (Admin). In that case Lindblom J held: "…*the weight given to a proposal's benefit in increasing the supply of housing will vary from case to case. It will depend, for example, on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision-maker must establish not only whether there is a shortfall but also how big it is, and how significant*"[42].

61. Mr Wood agreed my proposition that although the Council has been unable to quantify the size of the shortfall it can be categorised to be "*significant*". At its highest the unchallenged evidence before the Inquiry shows that there is no more than a 3.8 year supply of housing land in the City of York. However given that the Council has resolved to commission fresh work to examine its OAN of 841 dpa, noting the higher demographic starting point in the SNHP, it is likely that the true estimate of housing land supply is below this figure. It might even be below 1.9 years supply, based on NLP's estimate of OAN.

62. Mr Hobson, for the Appellant, preferred to describe the shortfall as being "*acute*". Even acknowledging that in 2015/16 the number of dwellings completed was above the RSS target, it might potentially require a similar level of delivery over the next 10-years to address the accumulated shortfall over the last 10-years. Even since the base date of the emerging LP period [2012] the shortfall is over 945 dwellings, which represents over one year of completions. So whether described as "*significant*" or "*acute*", it is clear that there is a large shortfall that will take a number of years to address.

The Case for City of York Council

63. The Council's case is neatly summarised in the only extant reason for refusal, which says: "*Policy YH9 and Y1 of the Yorkshire and Humber Plan – Regional Spatial Strategy to 2026 defines the general extent of the Green Belt around*

[40] As I suggested in my question to Mr Wood, the figures for "Very Small Windfalls" in the period 2006/07-2008/09 seem disproportionally high compared to subsequent years and there must be a suspicion that dwellings on garden land are included in Table 2 for that period. As the Council has not revealed the planning permissions that underpin those figures one is being asked to take the Council's figures on trust, such that the evidence base might be said to be incomplete to this extent. The Council might wish to address this going forward.
[41] PEA1.1, and a similar but not identical version is produced at CD2.19.
[42] Source of quote: paragraph 60 of judgement at: http://www.bailii.org/, *my emphasis*.

York with an outer boundary about 6 miles from the city centre. The application site is located in the Green Belt as identified in the 2005 City of York Draft Local Plan. It is considered that the proposed development of up to 109 houses and associated infrastructure constitutes inappropriate development in the Green Belt as set out in section 9 of the National Planning Policy Framework. Inappropriate development is by definition harmful to the Green Belt. No 'very special circumstances' have been put forward by the applicant that would outweigh harm by reason of inappropriateness and any other harm, including the impact on the openness of the Green Belt and conflict with the purposes of including land within Green Belt. The proposal is therefore considered contrary to advice within the National Planning Policy Framework, in particular section 9 'Protecting Green Belt Land' and policy GB1 'Development in the Green Belt' of the 2005 City of York Draft Local Plan" [source: decision notice at CD3.17].

64. In that context the Council's closing submissions focus on establishing a route-map for the SoS through what is a relatively unusual policy context. The decision making framework applicable to the determination of the appeal is mandated by statute. Section 38(6) of the 2004 Act requires that the appeal is determined in accordance with the DP unless material considerations indicate otherwise.

65. The DP comprises the remnant part of 2 policies of the RSS: (i) YH9, Green Belts; and (ii) Y1, York sub area policy. The general extent of the Green Belt is shown on the Key Diagram. These policies are instructive; they set out how York's Green Belt boundaries are to be defined in the DP. This has not yet been done. It is common ground that the fact that it has not been done does not of itself alter the weight to be given to the policies. The policies were left untouched when the remainder of the RSS was revoked in 2013.

66. Policy Y1(C2) says plans etc should protect and enhance York's nationally significant historical and environmental character. It is common ground that a scheme that fails to achieve these aims would constitute a breach of the DP [Hobson xx]. Plainly, the DP does not provide a comprehensive basis against which to make development management decisions.

67. The Council has approved the draft 2005 LP for the purposes of development management. The policies of the draft 2005 LP are material to the determination of the appeal, although it is now common ground that very limited weight should be given to the policies of the draft 2005 LP.

68. The emerging LP is making good progress but remains some way from adoption. The Council's LDS anticipates adoption in summer 2018, but this might be delayed so as to allow the Council to consider the recent release of MoD sites and the latest DCLG population projections. There is no agreement between the parties as to the weight to be given to the emerging LP.

69. Given the position with the DP and the draft 2005 LP, the key policy consideration here is the Framework. This is a material consideration for the purposes of section 38(6), representing up to date central government policy. It is common ground that it is highly relevant and should be given full weight.

70. The primary issue between the parties is whether the appeal site is in the Green Belt. The Council says that it is; the Appellant says that it is not. It is common ground that the overarching test must be that the site be treated as a Green Belt site unless there is good reason not to: see for example the Inspector's Report [IR] 24.64 at CD 5.15[43].

71. The importance placed by the SoS on maintaining York's Green Belt can be seen both in the decision to maintain the GB policies in the RSS and also in appeal decisions. In terms of the SoS's position, there are 2 relevant appeal decisions before the Inquiry. In the first, dated 9 May 2007, at Germany Beck [CD 5.15], the SoS's approach is set out at paragraph 15: "*The Secretary of State … does not consider that the lack of a defined boundary is justification to arbitrarily exclude any site contained within the general extent of the Green Belt, as referenced by the NYCSP. Until such time that the detailed boundaries of the York Green Belt are defined in a statutorily adopted local plan or framework, she considers both sites should be treated on the basis that they lay within the Green Belt*."

72. In the second, dated 18 March 2015, at Brecks Lane [CD 5.14], the SoS's position is set out at paragraph 9: "*The Secretary of State has carefully considered the Inspector's comments at IR 186-199. He has had regard to the Inspector's remark that the York Green Belt boundary has never been identified in an adopted Local Plan (IR 186), but that none of the parties seek to claim that the application site does not fall within the outer edge of the Green Belt and he concurs with the Inspector that the site should be considered as within the outer edge of the Green Belt (IR 187)*."

73. With regard to the approach adopted by Inspectors it is relevant to note from the appeal decisions provided to the Inquiry that:

i. Germany Beck – Inspector Cullingford – report 2 March 2007 [CD5.15]: the Inspector proposed an overarching test, i.e. "*whether there is any reason not to apply Green Belt policy for the time being*", and examined this by reference to three matters: appropriateness, prematurity and precedent [IR 24.64]. The Inspector accepted that Green Belt policies can be applied in the absence of a detailed boundary: see paragraph 12 but concluded that was not appropriate here. However, as can be seen from the earlier quote the SoS rejected the Inspector's conclusions.

ii. Westview Close – Inspector Cullingford – 9 July 2013 [CD5.16]: the site must be: "*…tested against the Framework in relation to considerations of appropriateness, prematurity and precedent*" [see Decision Letter [DL] paragraph 8].

iii. Brecks Lane – Inspector Hill – report 18 March 2015 [CD5.14]: the Inspector concluded that the site lay within the general extent of the Green Belt and served a number of Green Belt purposes [IR 186-199].

iv. Land south of Strensall Village – Inspector Moffoot – 27 October 2016 [CD5.17]: the Inspector concluded that the fact that the Green Belt

[43] Note: the closing submissions [DS20] refer to paragraph 24.62, but this relates to whether the schemes green the residential environment and so I anticipate it should refer to 24.64.

boundaries have not been realised to date did not warrant exclusion of the site from the Green Belt and that the starting point should be an assessment of the appeal site against the 5 Green Belt purposes [see DL paragraphs 10 and 15].

74. It is common ground between the parties that in deciding whether the site is in the Green Belt it is relevant to look at the contribution the site makes to the 5 Green Belt purposes. This was Inspector Cullingford's "*appropriateness*" test and Inspector Moffoot's "*starting point*". It is also now common ground that it is enough for the site to make a material contribution to one of the five purposes [Hobson xx]. Considering the site against the 5 Green Belt purposes set out in paragraph 80 of the Framework:

i. Checking the unrestricted sprawl of large built-up areas. The development of the appeal site would extend the settlement of York further north. Keeping the site undeveloped would check that sprawl. It is common ground that there is a clear, defensible boundary between Avon Drive/Strensall Road and the appeal site. The fact that the Ring Road would provide a further boundary does not deprive the appeal site of that role.

ii. Preventing neighbouring towns merging into one another. The appeal site plays an important role in the separation of Earswick and Huntington. At its narrowest point the gap between the 2 settlements is only 140 m wide (building to building, slightly less boundary to boundary). Notwithstanding the boundary screening around the site the openness of the appeal site, and the role it plays in separating the two settlements is appreciable from public view points, including the Ring Road and along Strensall Road. That openness and the degree of separation would be materially diminished if the appeal scheme was built. The site plainly has a role in preventing urban areas merging into one another. The Appellant says that the appeal site has no role to play here as the proposed development would not extend further north than the northernmost house in Huntington. That is true, but it ignores the fact that it will very significantly increase the amount of built development along the edge of what is already a very narrow gap, in circumstances where it is common ground that: (i) the gap is very narrow; and (ii) it is important to the character of those settlements and of the area generally that this separation should be maintained [Mr Hobson xx].

iii. Assisting in safeguarding the countryside from encroachment. It is common ground that the development of the site would result in a material loss of openness. This is evident from paragraph 18 of the Appellant's opening submissions, which admit that: "*…there would be significant built development on a currently undeveloped site*" [source of quote: DS3]. Development on the appeal site would plainly constitute encroachment into the countryside: the appeal scheme proposes 100+ houses together with their associated infrastructure on what is currently open agricultural field.

Mr Popplewell came up with a new argument under xx, i.e. that the site, despite being an open agricultural field, is not part of the countryside, meaning that, by definition, building on it could not constitute

encroachment into the countryside. When shown the 1994 Inspector's report [CD2.22] he said that the site may have been countryside then, but the subsequent growth of trees along the northern boundary meant that it could no longer be described as countryside. He then revised that view, agreeing that it would be reasonable to conclude that building on the appeal site would constitute encroachment into the countryside. Mr Hobson's rather surprising view is that the site is open farmland but is not part of the countryside, which is a somewhat contradictory approach.

iv. Preserving the setting and special character of historic towns. In order to understand whether the appeal site has a role to play in relation to this Green Belt purpose, it is important to understand the purpose itself. The most important characteristic of Green Belt is openness, and it is this characteristic in particular which can, and in the present case does, allow Green Belts to preserve the setting and special character of historic towns. It is too simple to say that in order to serve this purpose it must be possible to see the town from the appeal site. Inter-visibility is not the test. Rather, a site can contribute to this purpose where it plays a role, together with the wider Green Belt, in ensuring that the setting/special character of the town is preserved. That is the case here, as Ms Priestley explains in her evidence [see also Mr O'Connell's proof of evidence at paragraph 7.11]. The appeal site's role here is its contribution to the sense of the City being surrounded by open fields separating it from neighbouring settlements.

v. Assisting in urban regeneration, by encouraging the recycling of derelict and other urban land. The restrictions imposed on Green Belt development do have this effect, as paragraph 80 of the Framework confirms. The site has a role to play in that regard. See the approach taken by Inspector Moffoot, at DL paragraph 13 [CD 5.17], and Inspector Hill at IR 196 [CD 5.14].

The Appellant's suggestion that this issue can only be resolved through the submission of viability evidence is misconceived. It is of course unusual to be considering this issue in the context of deciding whether a site is in the Green Belt, but it is common place in the context of deciding whether development would be harmful to the Green Belt. Neither party is aware of the issue being tested by reference to viability evidence. There is nothing to suggest that Inspectors Moffoot and Hill were presented with viability evidence as they would no doubt have referred to it in their decisions. Rather, and simply, the point is capable of determination as a general proposition, just as both appeal Inspectors have done. As Mr O'Connell says, developers tend to prefer green field sites because they tend to be cheaper and easier to develop than brown field sites. Restraining the development of green field sites encourages the development of brown field sites.

The fact that the Appellant may not want to develop elsewhere in the Borough if permission is refused [Mr Hobon's proof of evidence paragraph 9.10] is neither here nor there for the purposes of the determination of the appeal. The test, in effect, is whether the site has a role to play in encouraging urban regeneration, not whether it has a role to play in

encouraging the Applicant to invest in urban regeneration. Otherwise the site's Green Belt status might depend on the nature of the Applicant.

75. It is clear that the site does make a contribution to each of the purposes and it should therefore be treated as Green Belt. In any event, it would only be if the Inspector concluded that the site makes no meaningful contribution to any of the purposes that it could properly be concluded that the site does not play a Green Belt role. Finally, it is common ground that the fact that the site does not feature in the 2003 Green Belt appraisal/the 2011 Review is not determinative of the site's Green Belt status, as per Inspector Hill.

The consequences of finding that the site is within the Green Belt

76. If the site is in the Green Belt, which is the Council's position, that brings consequences as to the decision making framework. There are 3 key points to make as to the proper application of the Framework in the circumstances.

77. First, paragraph 14 of the Framework is not engaged: see the plain terms of paragraph 14 of the Framework which states that the second limb of paragraph 14, for decision-taking, is not engaged where policies in the Framework indicate that development should be restricted. This leads to footnote, 9, which lists Green Belt policies as being restrictive policies. To apply paragraph 14 of the Framework to a Green Belt case would plainly be unlawful. This is evident from the case of *Forest of Dean v SSCLG* [2016] EWHC 421 (Admin) [DS 20.2], in which Coulson J held that where restrictive policies are engaged, in that case paragraph 134 of the Framework, paragraph 14 of the Framework does not apply.

78. Second, it is necessary to consider paragraph 49 of the Framework. This provides that where, as in this case, an LPA cannot demonstrate a 5-year housing land supply: "*Relevant policies for the supply of housing should not be considered up-to-date*". It is common ground that the Council cannot demonstrate a 5-year housing supply.

79. It is also common ground that saved RSS policies are relevant policies for the supply of housing given the conclusions reached by the Court of Appeal in *Richborough Estates Partnerships LLP v Cheshire East Borough Council* [2016] EWCA Civ 168 [CD5.7]. Lindblom LJ held at paragraph 33 thereof: "*…the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt…*".

80. However, the Court of Appeal also confirmed that the fact that a housing supply policy may be out of date does not necessarily mean that the weight to be attributed to it should be materially diminished [see paragraph 46]. Lindblom LJ held at paragraph 47 that: *"There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF*".

81. The Appellant says that the Green Belt policies of the RSS must be given less weight because the Council cannot demonstrate a 5-year housing land

supply. That is simply wrong as a matter of law as the Court of Appeal judgement in *Richborough* shows. The Appellant also says that the weight to be attached to "*any breach of out of date policies (including a breach of out of date Green Belt policies)*" should be "*significantly reduced*": see Mr Hobson's proof at paragraph 2.14. The Council does not agree. The Appellant's approach is muddled and wrong as a matter of law, for the reasons set out below.

82. It is common ground that if the site is in the Green Belt then the proposed development is inappropriate development for the purposes of paragraph 87 of the Framework. In this circumstance the Government's position is that substantial weight must be given to that harm and to any other harm that the scheme causes, in line with paragraph 88 of the Framework. It is no part of the Appellant's case that in deciding whether there are very special circumstances it is appropriate to reduce the weight to be given to the harm to the Green Belt. This is because there is nothing in the Framework that would warrant the dilution of this clear policy requirement: paragraph 49 of the Framework applies to DP policies, not other policies in the Framework.

83. Thus, if the site is in the Green Belt the appeal should be determined on the basis set out in paragraphs 87-88 of the Framework, i.e. substantial weight to be given to the harm caused by the scheme, a strong presumption against the grant of permission, and the Appellant needing to demonstrate very special circumstances to justify the grant of permission. Paragraph 49 of the Framework does not change this policy requirement or the weight to be given to the harm the scheme would cause.

84. Third, there is no scope to introduce paragraph 14 of the Framework by the back door. It is necessary to deal with this point because the Appellant goes on to say that even if the site is in the Green Belt and even if the Inspector concludes that there are no very special circumstances to justify the grant of permission, the appeal scheme should be given permission unless the adverse impacts of granting planning permission would significantly and demonstrably outweigh its benefits, i.e. the test in paragraph 14 of the Framework should be applied[44].

85. In other words, the Appellant's case is that there is in fact no need to look for very special circumstances; if there are very special circumstances, great, but compliance with the test in paragraph 14 will do. So, on the Appellant's case showing very special circumstances is optional in a Green Belt case where an LPA cannot show a 5-year supply of housing. An extraordinary proposition and not one that the SoS could lawfully endorse.

86. As to applicable case law, to the extent that the Appellant is seeking to apply the presumption in favour of sustainable development outside of paragraph 14 of the Framework, this approach has been rejected by the High Court in 2 very recent judgements in November 2016. First: *East Staffordshire BC v SSCLG* [2016] EWHC 2973 (Admin) [DS20.3]; and second: *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin) [DS20.4].

[44] See the Appellant's opening submissions [DS3] at paragraphs 19-20 and Mr Hobson's proof of evidence at paragraph 11.2.

87. In short, with regard to the proper application of the Framework on the facts of this case, the appeal should be determined in accordance with paragraphs 18-219 of the Framework taken as a whole, which set out the Government's approach to sustainable development, as confirmed in paragraph 6 of the Framework. On the assumption that the site is in the Green Belt it would be unlawful to apply paragraph 14 of the Framework here.

88. In conclusion on the Green Belt issue: (i) the site is in the Green Belt; (ii) the proposed development is inappropriate development in the Green Belt, and is by definition harmful to the Green Belt; and, (iii) substantial weight should be given to the harm caused by the development's inappropriateness and any other harm the scheme causes.

Any other harm

89. As to "*any other harm*", this falls into 3 categories:

i. Openness. It is common ground that the scheme would adversely affect the site's openness. Openness is the Green Belt's most important attribute. Substantial weight should be given to this harm;

ii. 5 purposes. If the site is in the Green Belt by virtue of any/all of the 5 factors, the development of the scheme would cause harm to those factors. Any other conclusion would be irrational; and,

iii. Landscape and visual harm. There is a dispute between the parties as to the impact that the scheme would have on the character and appearance of the area, i.e. its landscape and visual impact.

90. There is no issue between the parties as to the methodologies used by the respective landscape experts, Mr Popplewell and Ms Priestley. Both experts have undertaken an assessment based on the *Guidelines for Landscape and Visual Impact Assessment*, 3rd edition. Mr Popplewell confirmed in xx that although he had undertaken a 'fuller' landscape and visual impact appraisal than Ms Priestley he did not contend that Ms Priestley's conclusions were unsound or any less reliable than his. The difference between the parties stems from the competing judgments reached by the experts. This will of course be a matter for the Inspector's own planning judgment, taking account of the evidence presented and the benefits of the site view. The Council's position is as set out in paragraphs 4.24-4.26 of the Committee Report [CD3.15] and more fully in Ms Priestley's proof of evidence.

91. In terms of context, it is useful to note that at the regional level, the site lies at the transition between two character areas: the '*Urban Landscape*' of the City of York, and '*Vale Farmland with Plantation Woodland and Heathland*'[45]:. The Appellant seeks to argue that the site has become isolated and visually detached from the wider countryside so now relates in visual terms to the adjacent homogenous post 1960's suburban housing estate immediately adjacent. However this assessment is irreconcilable with the Appellant's own Landscape and Visual Impact Assessment [LVIA] which states that: "*With*

[45] See Figure 3.1 of the *North Yorkshire and York Landscape Characterisation Project*, Chris Blandford Associates, May 2011 [CD 2.6].

regard to Landscape Character, the study area is assessed to have a medium sensitivity to change since, although it possesses some attractive individual elements, these do not necessarily complement each other fully. In particular, the southern site boundary comprises dense urban development with a sharp visual discontinuity between this and the adjacent open arable field" [*emphasis added*, source: PEA2.1].

92. The Council agrees with this view if "*relates in visual terms to*" means "*is seen in the context of*" the housing on Avon Drive that is fine. In plain English the site is open farmland on the edge of the built-up area of Huntington. Alternatively, as the Council's more detailed analysis confirms, the site falls within the "*Mixed fringe farmland*" character area[46].

93. Further, the City of York Heritage Topic Paper Update, September 2014 [PEC2.4] confirms that the open countryside surrounding York contributes to the landscape setting of the city. It emphasises the importance of the relationship between the city and its surrounding settlements, confirming that this relates not simply to the distance between the settlements but also the size of the villages themselves and the fact that they are free-standing, clearly definable settlements. It warns that the relationship between York and the settlements could be damaged by the growth of the City or the expansion of the villages. Understood in its proper context it is not difficult to see why the appeal scheme for 109 houses together with all its associated infrastructure: road, pavements, fences, lighting etc, plus of course all the residential activity and paraphernalia that will come with it, will have a harmful impact on the character and appearance of the area.

94. In terms of landscape impacts: (i) the site makes an important contribution to the physical and visual separation between the edge of the city core and Earswick; (ii) this would be lost with the appeal scheme: built development would replace undeveloped agricultural land and would bring the built envelope of Huntington northwards, significantly decreasing the sense of openness between Huntington and Earswick; and, (iii) the appeal site plays another important role in that it provides a buffer/green foreground in views towards Huntington from the Ring Road. This would diminish an important aspect of the city's character, which is appreciable from the Ring Road, i.e. being surrounded by green fields and being separated from outlying villages.

95. In terms of visual impacts: (i) the appeal site has some good screening along its northern boundary, although even with mitigatory planting this would be less effective in hours of darkness/winter months. Mr Popplewell said that the lighting on the site would be seen in the context of the lighting along the Ring Road, but the Ring Road is not lit until the approach to the roundabout; and (ii) as set out above, the site plays an important role in separating the city from its surrounding countryside and neighbouring settlements. The appeal scheme will be harmful in terms of its visual impact given that it will bring built development much closer towards public and private viewpoints, in particular the ring road, Strensall Road and Avon Drive. This impact will be all the starker during the hours of darkness and in winter months. Overall,

[46] Identified in the *York Landscape Appraisal, 1996, Environmental Consultancy University of Sheffield* [relevant excerpt in PEC2.3].

the Council says the scheme would have a significantly adverse landscape and visual impacts. These weigh against the grant of planning permission.

Other considerations

96. When the application was originally submitted no case was made for very special circumstances, and the argument was instead made that the site was not in the Green Belt. At appeal stage, the Appellant originally put forward 5 factors which the Appellant says taken cumulatively amount to the very special circumstances necessary to rebut the strong presumption against the grant of planning permission in the event that, contrary to the Appellant's case, it is concluded that the site is in the Green Belt. The Council does not consider that these factors, individually or cumulatively, constitute very special circumstances. Dealing with the 5 factor in turn, which Mr Hobson confirmed to represent a complete list:

97. (i) Housing supply shortfall. The Council's propositions are that: (i) very significant weight must be given to the Government's repeatedly affirmed position that a shortfall of housing is unlikely to justify the grant of planning permission in the Green Belt: see paragraph ID 3-034-20141006 of the Guidance and the WMS referred to by Mr Wood at paragraphs 5.7-5.9 of his evidence [CD6.06, CD6.07 and CD6.08]; (ii) the importance of Green Belt policy in the context of a shortage of housing land supply is also demonstrated by the way the Framework is structured. The site's Green Belt status excludes the application of paragraph 14 of the Framework which is otherwise engaged where there is a housing shortfall [see paragraph 49 of the Framework]; and (iii) it is common ground that the Council cannot demonstrate a 5-year supply of housing, and that significant weight should be given to the fact that the scheme would deliver much needed new market and affordable housing. However in the Council's carefully considered view this is not sufficient to justify the grant of planning permission here. In terms of approach, see Inspector Moffoot's decision [CD 5.17] at DL paragraphs 28-29, where the Appellant's case as to the shortfall of housing was essentially identical to that put forward by this Appellant.

98. (ii) Economic Benefits. There is no issue between the parties that the scheme would deliver significant economic benefits, but of course that needs to be seen in context. These are the 'usual' benefits that follow from the grant of permission for a circa 100 unit house scheme. The Government can be taken to be very much aware that new housing delivers economic benefits in formulating its policy position set out above, i.e. new housing, together with its associated benefits, is unlikely to justify the grant of permission in the Green Belt. The New Homes Bonus is not now in issue, to some degree weakening the Appellant's very special circumstances case as originally put forward: see Mr Hobson's proof at 10.13 to 10.15, where the New Homes Bonus is put forward as a factor to which significant weight should be given.

99. (iii) Affordable Housing. This is a subset of factor (i) albeit an important one. Again, the provision of new affordable housing is to be welcomed, but in the Council's view is not sufficient here to justify the grant of planning permission for inappropriate development in the Green Belt.

100. (iv) The purposes of the Green Belt. The Appellant says that the site does not make a contribution to any of the GB purposes, and that this is capable of weighing positively in favour of the scheme. However by this stage of the analysis, i.e. the search for very special circumstances, the decision maker will already have concluded that the site is in the Green Belt, and so does make a material contribution to one or more Green Belt purposes. It would of course be irrational for the decision maker to reach a different conclusion at the very special circumstances stage. Further, and in any event, the Appellant is in effect putting forward an absence of harm to the Green Belt as a factor capable of contributing towards very special circumstances: see paragraph 10.20 of Mr Hobson's proof of evidence. An absence of harm cannot itself be a factor contributing to very special circumstances. Mr Hobson reconsidered the matter under xx and conceded that this is a "*neutral point*" which did not weigh in favour of the scheme and so is not a factor that could count towards very special circumstances. The point is therefore no longer relied upon by the Appellant. It is important to remember that the Appellant's very special circumstances case is a cumulative one, i.e. the Appellant originally relied on all 5 factors put forward by Mr Hobson but now relies only on four factors.

101. (v) Accessibility to service and facilities. There is no proper basis on which to conclude that the site's proximity to services and facilities is a factor which contributes towards very special circumstances. It is a factor which does not count against the grant of permission but it cannot sensibly be advanced as a factor that contributes to very special circumstances, any more than, by way of example, an absence of a highways or ecological objection could weigh positively in favour of the grant of permission. The Appellant does not advance any comparative analysis to suggest that allowing housing on this site would reduce the amount of miles travelled compared to housing being provided on any other site. This is therefore another neutral point.

102. As can be seen, 2 of the 5 factors relied on by the Appellant as amounting to very special circumstances do not even weigh positively in favour of the grant of planning permission. The economic benefits are those that come with a scheme of circa 100 dwellings. The Council accepts that the delivery of new housing is a material benefit but, as per the Guidance and repeated WMS, it does not amount to very special circumstances.

Conclusion

103. The Council's position is that planning permission should be refused because:
   (a) The site is in the Green Belt;
   (b) The development is inappropriate development and is therefore by definition harmful to the Green Belt;
   (c) The development is also harmful in terms of its impact on openness and on the character and appearance of the area;
   (d) Substantial weight should be given to the harm that the scheme causes by reason of its inappropriateness, its impact on openness and its landscape and visual impact;
   (e) There is a strong presumption against the grant of permission. Permission should not be given except in very special circumstances unless the harm

the scheme causes would be clearly outweighed by other material planning considerations;

(f) The scheme would provide significant benefits including the delivery of new open market and affordable housing, as well as the economic and social benefits that would flow from that delivery;

(g) On balance, however, the scheme would not deliver benefits that would clearly outweigh the harm that the scheme would cause;

(h) Very special circumstances do not exist; and,

(i) Paragraph 14 of the Framework is not engaged at any stage of the assessment process.

The Case for Pilcher Homes Ltd

104. The Council's opposition to the appeal scheme stems from its assertion that the appeal site lies within the Green Belt. If the Council is wrong on that count, it accepts [xx of Mr Wood and Mr O'Connell] that the appeal should be allowed and planning permission granted. Accordingly, as far as the Council is concerned the question of whether or not the appeal site is within the Green Belt is determinative of the appeal.

105. The Appellant's case can be summarised as follows: (i) the appeal site is not within the Green Belt. The DP is therefore silent when it comes to the determination of this appeal. Harm does not significantly outweigh benefits. The appeal should be allowed; (ii) if the appeal site is within the Green Belt, there are very special circumstances that justify the grant of permission for the development and the appeal should be allowed; and (iii) even if very special circumstances cannot be demonstrated, there should be some recognition given to the fact that the policies of the development plan are out of date, since there is no 5-year housing land supply, and that any breach attracts reduced weight. The only sensible way of recognising that fact is to ask whether or not harm significantly outweighs benefits. It does not, and the appeal should be allowed.

Preliminary Procedural Point

106. Before turning to the analysis which supports each of those propositions, it is necessary to address the procedural issue which arose during the Inquiry. The appeal form dated 29 April 2016 contained a Certificate A, which purported to certify that nobody except for the Appellant was, on the day 21 days before the appeal, the owner of any part of the land to which the appeal relates. This is incorrect. On 29 April 2016 three parties had[47], and still have, a freehold interest in the site, namely Lime Tree Homes Ltd, Pilcher

[47] The factual position is stated to be that prior to its transfer to Pilcher Homes Ltd on 30 March 2016, title No NYK218002 was owned by Robert Pilcher in his individual capacity. Pilcher Homes Ltd is wholly owned by Robert Pilcher [who attended the Inquiry throughout]. Title No NYK246279 was, prior to its transfer to Lime Tree Homes Ltd on 30 March 2016, owned by Robert Pilcher and Mrs JS Bryan, who is Mr Pilcher's sister. Lime Tree Homes Ltd is owned by Mr Pilcher and Mrs Bryan in equal shares. Mr Pilcher has himself owned title No NYK215205 since 1999. Although this statement could be tested by reference to Land Registry and Company House records, this position has not been disputed by the Council who appear to have had access to, at the very least, Land Registry titles during the Inquiry.

Homes Limited and Robert David Stanley Pilcher. The certificate completed at the date of submission of the application [CD3.5] was similarly erroneous.

107. Section 65(2) of the Act states that provision shall be made by development order for the purpose of securing that, in the case of any application for planning permission, any person, other than the Applicant, who is an owner of the land to which the application relates, is given notice of the application. Section 65(3) of the Act goes on to say that a development order may require an applicant to certify that the requirements of the order have been satisfied. The purpose of these provisions is to ensure that all owners of interests in the land are notified of the application.

108. Section 65(5) of the Act confirms that an LPA shall not entertain an application for planning permission unless any requirements imposed by virtue of section 65 of the Act have been satisfied. Similar wording is included in section 327A of the Act. Those provisions are expressly directed at the power of the LPA to determine planning applications.

109. The form of ownership certificates and notices and the related procedural requirements are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 [Statutory Instrument 2015/595, "the DMPO"]. In particular, Article 14 of the DMPO confirms that a certificate must be submitted to confirm that the owner notification provisions, set out in Article 13 of the DMPO, have been satisfied.

110. Section 79 of the Act governs determination of appeals. Its provisions impose no equivalent restriction on the SoS as those imposed by sections 65(5) and 327A of the Act on LPAs. Section 79(4) of the Act applies certain provisions of the Act, i.e. which relate to planning applications, so that they apply to appeals. Neither Section 65 nor Section 327A of the Act are so applied. Given the potential serious consequences of imposing such a restriction, express reference to that restriction would have to appear within section 79 if it was to be imposed. It could not be imposed in any other way.

111. Accordingly, the SoS retains jurisdiction to determine this appeal. Whilst a procedural defect may be objectionable if it causes prejudice, there is absolutely no suggestion of prejudice in this case. All owners: (i) are aware of the appeal, which is demonstrated by the fact that they have executed the S106 Agreement; (ii) are related through Robert Pilcher, one of the freehold owners; and (iii) wish to see the appeal proceed to a determination.

112. This approach is supported by reference to a recent planning appeal [Ref: APP/P2935/A/12/2188474] which, to the Appellant's knowledge, has not been the subject of a legal challenge. In that case Inspector Whitehead dealt with a similar issue with respect to an incorrect ownership certificate, and stated as follows: "*A certificate of ownership has been completed. Whilst the error on the certificate is serious, it does not render it no certificate at all or make the application a nullity. The application has been determined and an appeal has been submitted within the month deadline from the determination of the application. Although s65(5) of the Act provides that a local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of the section and the DMPO have been*

satisfied, I find that s79(4) of the Act does not mean that this applies to appeals to the Secretary of State" [DL paragraph 7, DS21.4].

113. The inspector went onto find that, as none of the parties were prejudiced, the determination of the appeal in his view would not undermine the purpose of section 327A of the Act. He therefore decided that there was a valid appeal to determine. It is the Appellant's submission that there is neither legal impediment nor prejudice caused to any party that would prevent the appeal from being determined on its merits.

Whether the Appeal Site is in the Green Belt

114. There are 2 bases advanced by Mr O'Connell in his proof of evidence to support the Council's assertion that the site lies within the Green Belt: (i) the appeal site lies within the general extent of the Green Belt as shown on the key diagram of the RSS; and, (ii) the appeal site is shown as lying within the Green Belt in the draft 2005 LP. The Council now accepts [xx of Mr Wood and Mr O'Connell] that neither argument provides a firm basis for finding that the appeal site is within the Green Belt. Although that recognition is belated, it is submitted that it is correct.

115. The 2 unrevoked policies of the RSS together with its key diagram comprise the DP for York. The key diagram shows York as a sub-regional city. It shows diagrammatically the general extent of the Green Belt around York. The inner edge of that general extent is marked by a dotted line, which is unlike the inner edge of any of the other Green Belts shown on the key diagram. There is reference to policy YH9C, which says the detailed inner boundaries around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. Those boundaries must also take account of the levels of growth in the RSS and should endure beyond the Plan period.

116. It is therefore clear that: (i) the unrevoked parts of the RSS do not say that the inner limit of the general extent of the Green Belt are coincident with York's existing urban edge; (ii) insofar as any indication can be taken from the key diagram, the general extent of the Green Belt does not coincide with York's existing urban edge[48]; and,(iii) insofar as the inner boundary has to take account of long term growth and development needs the inner boundary cannot be coincident with the existing urban edge. Accordingly, where, as here, a site is adjacent to the existing urban edge of York, the key diagram provides no basis for concluding that the site is within the Green Belt.

117. Although the Council's reason for refusal appears to place heavy reliance on the draft 2005 LP for the conclusion that the appeal site lies within the Green Belt, it provides no firmer foundation than the key diagram of the RSS. The initial version of the draft 2005 LP was first place on deposit in May 1998. That initial version contained very tightly drawn Green Belt boundaries on the basis that they would require early review in order to address post-2006 development requirements [Mr Wood, paragraph 3.13). In the vicinity of the

[48] However the Appellant concedes that it is not appropriate to conduct some sort of map analysis of the key diagram to establish whether a site is in the Green Belt [CD5.14].

appeal site that boundary was shown as running along the boundary of the rear gardens on Avon Drive.

118. The boundaries in that initial draft of the draft 2005 LP were based on draft boundaries prepared even earlier, in the early 1990's, that were contained in the draft York Green Belt Local Plan and Southern Ryedale Local Plan. It is clear that the development requirements extant at the time of production of those draft boundaries were development requirements contained in the first alteration of the Structure Plan approved as long ago as 1987.

119. The approach of adopting 'short term' Green Belt boundaries in the initial version of the draft 2005 LP, placed on deposit in 1998, did not find favour with the Local Plan Inspector [Mr Wood, paragraph 3.14], and its progress was placed on hold. The Council published a third set of changes to the draft LP which introduced significant safeguarded land. However, a change of administration meant a reversal of that change, the removal of any safeguarded land, and a return to the very tightly drawn boundaries within the 1998 initial draft [xx of Mr Wood]. That fourth set of changes was never the subject of public consultation, or examination, and yet it was adopted by the Council for development management purposes. It showed the site as lying within the Green Belt. The Council only now accepts, that an 11-year old document that was not consulted upon and not examined, which contains very tightly drawn Green Belt boundaries that were supposed to be the subject of early review, and prepared against the backdrop of development requirements from the mid-1980's should attract very limited weight.

120. Very limited weight was given to that document by the Inspector in the most recent of the various appeal decisions before this inquiry [CD5.17]. Contrary to the position advanced by the Council in its reason for refusal and proofs of evidence, no significant reliance should be placed on the draft 2005 LP in deciding whether or not the appeal site falls within the Green Belt.

121. The recent appeal decision concerning the site at Strensall [CD5.17] confirms that the proper starting point for answering that question is an assessment of a site's performance against the 5 purposes for Green Belt designation. That approach is consistent with the approach adopted in another post-Framework appeal decision [CD5.16] in which the Inspector tests the performance of a site at West View Close against Green Belt purposes. He also asks whether or not development would be objectionable on grounds of prematurity and precedent. That decision, which led to the grant of planning permission, was not challenged by the Council.

122. In the Inspector's Report on the Germany Beck decision, the Inspector adopts the same approach as he later took in the West View Close decision, testing the performance of the sites against Green Belt purposes and the issues of precedent and prematurity [IR 24.69, CD5.15]. At paragraph 15 of the SoS's decision, dated 9 May 2007, she disagrees on the basis that the lack of a defined Green Belt boundary was not sufficient justification to exclude arbitrarily any site contained within the general extent of the Green Belt.

123. Two consequential points need to be made: (i) the Appellant's case is that the appeal site at Avon Drive does not fall within the general extent of the Green Belt; and, (ii) the Inspector did not arbitrarily exclude the sites from the

general extent of the Green Belt in the Germany Beck case. He applied a series of rational factors that have been endorsed in the 2 post-Framework decisions referred to above [CD5.16 and CD5.17]. The Council accepts that the application of those factors is rational and not arbitrary [xx Mr O'Connell].

124. The Appellant's evidence is directed squarely at that question of whether or not the appeal site makes a material contribution to Green Belt purposes. The Council's evidence, as contained in Mr O'Connell's proof, is not, although the Council confirmed in its closing that it is now common ground that it is necessary to test it against Green Belt purposes. Instead, his references to Green Belt purposes proceed on the basis that it is already established that the appeal site falls within the Green Belt. As set out above, his 2 limbs for that premise, the key diagram of the RSS and 2005 Draft Plan, provide no such basis. Ms Priestley confirmed that her evidence does not address Green Belt purposes at all, whether in terms of contribution that the appeal site might make to those purposes or the impact of the appeal scheme on those purposes. Mr Wood's proof of evidence, the scope of which is said to be planning policy issues, does eventually get to the performance of the appeal site against Green Belt purposes in paragraph 4.20, but the analysis is limited to 12 lines and, for reasons elaborated upon below, is inadequate.

125. Before coming to that evidence, in 2003 the Council published a Green Belt Appraisal because is considered it essential to appraise the existing draft Green Belt boundaries in the unadopted York Green Belt Local Plan. Those boundaries had been the subject of the Inspector's Report in 1994 and were reproduced in the draft 2005 LP, which Mr Wood describes as very tightly drawn. They were prepared against the background of development requirements from the mid-1980's, and contained no safeguarded land.

126. The appraisal was prepared to aid in the identification of land which the Council believed should be kept permanently open [CD2.1, paragraph 1.1]. That is not to say that other land, not identified in the document, could not fulfil any Green Belt purpose, but the 2003 appraisal, updated in 2011 and again in 2013, was prepared in order to give, and does give, a clear indication of those areas of land which the Council considers perform a valuable Green Belt purpose. The appraisal and its updates, whilst not determinative, are clearly relevant to this appeal [xx Mr O'Connell] and should attract significant weight, as should the fact that the appeal site has never been identified as falling within any of the categories of land said to contribute to Green Belt purposes around York within those assessments.

127. Turning to each of the Green Belt purposes, in turn, there is no basis for concluding that the appeal site makes a material contribution to checking the unrestricted sprawl of a large built up area, or that the appeal scheme represents unrestricted sprawl of a large built up area. The appeal site adjoins built development to the south and west. To the north and north-east it is bounded by vegetation and the Ring Road. Accordingly, insofar as there is a risk of unrestricted sprawl in this part of York, it is checked by clear, permanent and substantial physical features.

128. The appeal scheme reinforces those features. It proposes more landscaping, including planting, mound and fence, to strengthen the boundary to the north

and north-east. It sets no precedent for more development, whether on the opposite side of the Ring Road or in the fields to the south-east of this site.

129. The Council's evidence fails to address either adequately or at all those important physical features. Mr O'Connell's contends that the appeal site will comprise unrestricted sprawl because: "T*here would be built development where currently there is none*" [paragraph 7.9 of his proof]. Mr Wood says: "The site is sizeable and projects significantly from the city's urban area into the open countryside" [paragraph 4.20 of his proof]. Neither contention comprises a proper analysis of whether or not this site makes a material contribution to checking the unrestricted sprawl of York's built-up area.

130. Mr Popplewell addresses the question of whether or not the appeal site makes a material contribution to the second purpose of preventing neighbouring towns from merging into one another. The question is addressed by reference to both map analysis [DS5] and an assessment of what is perceived on the ground. Both limbs of that analysis demonstrate that the appeal site makes no material contribution to the second Green Belt purpose. The map analysis shows that built development exists to the north of Avon Drive on both sides of Strensall Road. To the west, there is development extending up Strensall Road and westwards along Abbots Gate. The shortest distance between houses in Huntington and Earswick to the west of Strensall Road is 140m.

131. Mr Popplewell's Figure 5 [DS5] shows that there will be no shorter distance between houses to the east of Strensall Road post-development of the appeal scheme, and that built development will not extend northwards beyond the existing housing, which is adjacent to the appeal site, on Strensall Road. Within the 140m to the west of Strensall Road [DS5] there is the remnant of a field, mounding, planting and the Ring Road. Ms Priestley acknowledges in paragraph 5.9 of her proof of evidence that all those features combine to separate Huntington and Earswick. She said that position would be echoed on the eastern side of Strensall Road post-development of the appeal site.

132. By reference to the map analysis there is no reason to believe that the separation achieved on the western side of Strensall Road will not continue to exist on the eastern side of Strensall Road. As for the perception of continued separation between the 2 settlements, Mr Popplewell's evidence shows that the current perception from this part of the Ring Road is strongly influenced by existing roadside vegetation, which creates a sense of enclosure.

133. Ms Priestley agrees that: "*The existing vegetation along the north and northwest boundary of the site and along the other sides/arms of the ring road provide a distinct break between the outer urban edge of Huntington and the beginnings of the outlying village of Earswick*" [paragraph 8.3 of her proof]. The Appellant concurs. That is the position now, and will remain the position post-development, albeit with additional planting, mounding and a fence to strengthen that existing vegetation. The Council will have control over the density and type of landscaping, and there is no reason to believe that it would not be completely established within a period of 15-years after its introduction. Views of the appeal site are already restricted from the Ring Road. Views from Strensall Road are more restricted. In those views, which are glimpsed between existing houses, the appeal site makes no perceptible

contribution to the separation of Huntington and Earswick and the Appellant says a similar position prevails in respect of views along Avon Drive.

134. Neither Mr O'Connell nor Mr Wood materially advances the Council's evidence with regard to the second Green Belt purpose. Mr Wood's paragraph 4.20 merely contends that the site is located between Huntington and Earswick, the narrowest gap between the main urban area and any of York's satellite settlements. Mr O'Connell's analysis comprises an observation that the appeal site lies beyond the northernmost extremity of York's built up area, which is wrong, and then defers to Ms Priestley's proof [paragraph 7.10, Mr O'Connell]. On any view, their contentions fall well short of an adequate assessment of whether or not the appeal site performs a material role in preventing neighbouring towns from merging into one another.

135. A similar observation could be made with regard to their analysis of the third Green Belt purpose. Mr Wood's conclusion that the appeal site makes a material contribution to safeguarding the countryside from encroachment is based on a claim that the site is currently open and comprises agricultural land [his paragraph 4.20]. Consistent with that approach, Mr O'Connell says that there would be built development where currently there is none [his paragraph 7.9]. As an assessment of: (a) the extent of the site's contribution to the third Green Belt purpose; and (b) the impact of the appeal scheme on that purpose, those statements are of limited utility.

136. The evidence shows that the appeal site comprises part of what was once a larger field that has been truncated by the Ring Road. It is isolated from countryside on the opposite side of the Ring Road. It is isolated from any remaining countryside to the west of Strensall Road. Insofar as a short stretch of the site's southern boundary adjoins a field to the south east, there is no continuity, in any physical or visual sense, because of existing vegetation in that part of the appeal site. Along the majority of the appeal site's southern boundary there is the existing built development of Avon Drive, and along its western boundary, dwellings on Strenshall Road. Given its context, in terms of urban influences and isolation from the countryside, the appeal site makes no material contribution to the third Green Belt purpose of safeguarding the countryside from encroachment.

137. The fourth Green Belt purpose is to preserve the setting and special character of historic towns. The Council's position focuses on the setting of York as viewed from the Ring Road. Mr Wood contends that extending built development onto the appeal site would: "increase the urban character of the Ring Road, which has a generally open, rural character and contributes to the setting of York" [his paragraph 4.20]. Mr O'Connell's contention is that: "*key views from the Ring Road*" reinforce the setting of York, "*within a largely open rural surround*" [his paragraph 7.11].

138. None of the Council's witnesses has conducted any detailed analysis of the Ring Road and its character. Mr Popplewell has done the exercise and finds that there is no homogenous character along its northern half. Mr Popplewell has identified sections where there is a sense of openness. They do not include that part of the Ring Road around Strensall Road roundabout and adjacent to the appeal site. In this location the Ring Road has an enclosed, well-vegetated character with no real sense of openness.

139. Accordingly, whether or not the characteristic of openness from the Ring Road, i.e. significant areas of unbuilt land forming the foreground to built development, is important to the setting of York, that characteristic is not generated to any meaningful degree by the appeal site. Accordingly the scheme makes no material contribution to the fourth Green Belt purpose. No significant weight should be given to the appraisals appended to Mr Wood's .proof of evidence [PEC3.3-3.4] because it forms part of the evidence base to the emerging LP to which there are objections and to which only very limited weight can be given, and the change from 'amber' to 'red' is unjustified.

140. The last of the Green Belt purposes concerns the encouragement of recycling of derelict and urban land. The Council is currently promoting 'preferred sites', which include substantial green field draft allocations. It is also promoting the allocation of a whole range of brown field sites. In the context of York, the Council is satisfied that the allocation and development of green field sites will not undermine the delivery of those brown field sites. Mr Hobson's evidence confirms that progress is being made on significant regeneration sites within York city centre notwithstanding the fact that the Appellant is pursuing this appeal. That evidence supports the conclusion that the current undeveloped nature of the appeal site is exerting no influence on urban regeneration in York, and that the appeal site makes no material contribution to the fifth Green Belt purpose.

141. By contrast, Mr Wood's evidence does not extend beyond the general assertion that restricting development on green field sites encourages urban regeneration [his paragraph 4.20]. Mr O'Connell contends that the appeal scheme would divert development from more suitable and sustainable urban land without any evidence in support [his paragraph 7.12].

142. The Inspector's report on Brecks Lane said preventing development in that case was likely to encourage development on brown field land: "*…because there is likely to be a consequent impact upon viability of doing so*" [CD5.14 at IR196]. It is not known what evidence was before that Inspector on that issue. More significantly, that statement does not sit comfortably with the evidence in respect of York that is before this Inquiry showing that both green field and brown field sites are being promoted by the Council, with significant progress already being made on substantial urban regeneration projects. Whilst not determinative, it is relevant that this appeal site is owned by house builders and dismissal of this appeal will not cause those developers to seek a brown field development opportunity by way of an alternative.

143. In summary, the evidence before the Inquiry shows that the appeal site makes no material contribution to any of the Green Belt purposes. It is also agreed [xx Mr Wood and Mr O'Connell] that the appeal scheme is not premature; given its size and the embryonic stage of the emerging LP, it could not be premature. It is similarly agreed that the appeal scheme sets no precedent for any other development. For all of these reasons, the application of the factors identified by previous Inspectors and Mr Hobson lead to the conclusion that the site falls outside the Green Belt.

The Planning Balance if the Appeal Site is outside of the Green Belt

144. The planning balance to be applied in those circumstances is straightforward. Whilst the statutory requirement, to determine the scheme in accordance with the DP unless material considerations indicate otherwise, comprises the starting point, there are no DP policies against which to assess the appeal scheme. The Framework is an important material consideration. By reference to paragraph 14 of the Framework, the DP is clearly silent with regard to the determination of this appeal. Accordingly the presumption in favour of sustainable development should apply so that planning permission is granted unless harm significantly and demonstrably outweighs benefits.

145. The Council's reason for refusal contains no allegation of harm beyond that to the Green Belt. Mr O'Connell's proof of evidence refers to: "Other Harm to the Green Belt" [at paragraph 7.13]. Neither contains a clear freestanding allegation of harm to landscape character and visual amenity. Despite the absence of any such allegation in the refusal reason, Ms Priestley's evidence advances an allegation of harm to landscape character and visual amenity.

146. Mr Popplewell has conducted a full LVIA [PEA2.1]. Both parties refer to a variety of landscape character assessments. All of them, whether national, county-wide, or city-wide, recognise the presence of settlement in the area in which the appeal site is placed.

147. At the finest grain, the Council's study of 1996 [PEC2.3] confirms that the appeal site sits towards the outer north-western limit of an area called mixed fringe farmland within which there is low quality agricultural land, a small scale field pattern, and the influence of York's urban edges. That assessment concludes, in the section headed 'Pressures for Change', with reference to new development being potentially: "…*less intrusive and more appropriate here than in other more rural and open areas*…". The 1996 assessment aptly describes the appeal site. It is heavily influenced by urban development, such as housing and the Ring Road, and comprises low quality agricultural land, isolated from the countryside. Its character is not such that any significant harm would be caused by development of the appeal scheme.

148. Mr Popplewell's evidence confirms that the appeal proposal will deliver a more successful urban edge than that which presently exists, and so, in that sense, will generate a benefit in landscape character terms. As for visual amenity, Mr Popplewell's analysis, including the zone of theoretical visibility, shows just how visually contained the site is, in particular, from public vantage points including the Ring Road, Strensall Road, and Avon Drive. Whilst a significant impact will be felt on views from a small number of private dwellings, there will be no significant impact from any public vantage point. Accordingly, such harm as there might be to landscape character and visual amenity is limited and the Council advances no other element of harm.

149. The benefits of the scheme comprise the delivery of market housing where there is a serious shortfall, in the range of 1.9 to 3.8 years. That contribution should carry significant weight. The scheme will deliver 30% affordable housing for which there is a pressing need. The SHMA recorded an annual requirement of 573 units. Its addendum recorded an increased level of need to 627 affordable dpa. To put that into perspective, it is roughly 70% of the

entire housing requirement currently promoted by the Council as part of its emerging plan. The construction process will generate 46 FTE jobs throughout the 3-year build period. New housing will generate local spending. Services and facilities that are likely to benefit from that spending are accessible from the proposed development by sustainable modes of transport.

150. Any limited harm to landscape and/or visual interests falls well short of significantly and demonstrably outweighing the appeal scheme's benefits, and as such, the appeal should be allowed. The Council agrees [xx of Mr Wood and Mr O'Connell] that in circumstances where the appeal site is found to fall outside of the Green Belt, then that balancing exercise falls in favour of the appeal scheme and that planning permission should be granted.

The Planning Balance if the Appeal Site falls within the Green Belt

151. If the Appellant's primary case is not accepted, and it is concluded that the appeal site falls within the Green Belt, then once again, the starting point is the statutory requirement that this appeal is determined in accordance with the DP unless material considerations indicate otherwise. The Framework is an important material consideration. In turn, an important component of the Framework is its section 6, which has at its heart, the need to significantly boost the supply of housing. The mechanisms by which paragraph 47 seeks to achieve that end include the requirement imposed on LPAs to identify 5-years' worth of deliverable housing sites together with a buffer. It is common ground that this requirement is not being met in York.

152. Paragraph 49 of the Framework confirms that relevant policies for the supply of housing should not be considered up to date in the absence of a 5-year supply of land for housing. The Court of Appeal in the case of *Richborough Estates Partnerships LLP v Cheshire East Borough Council* [2016] EWCA Civ 168 confirms that a 'wide' interpretation is to be given to the words 'Relevant policies for the supply of housing' and that it includes: "…*policies for the Green Belt*…" [paragraph 33, CD5.7]. Accordingly, in this case, relevant policies for the supply of housing include the only policies of the DP, the unrevoked RSS Green Belt policies, which are deemed out of date.

153. In accordance with paragraph 14 of the Framework, and in circumstances where relevant policies are out of date, the presumption in favour of sustainable development means that planning permission should be granted unless harm significantly outweighs benefits or specific policies in the Framework indicate development should be restricted. Footnote 9 gives examples of specific policies and includes: "…*land designated as Green Belt*".

154. The terms of the Framework's Green Belt policy is contained in its section 9, notably paragraphs 87 and 88. The Appellant accepts that harm to the Green Belt is caused through inappropriateness and loss of openness, because there will be built development where currently there is none, notwithstanding the limited perception of that loss obtained from around the site. The Appellant's analysis of the site's performance against Green Belt purposes supports the conclusion that there would be no harm to any of those purposes. Whilst it is accepted as a matter of logic that if the decision maker reaches this stage that they will have found that the site makes a contribution to Green Belt purposes, it does not follow that the scheme will cause harm to that purpose.

155. Weighed against that harm are the scheme's benefits. They comprise social and economic benefits, including the provision of both market and affordable housing where there is a pressing need for both, as well as the generation of jobs, spending in local services and facilities, and housing from which easy, non-car access can be made to those, and other, services and facilities.

156. Whilst the Guidance says that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm so as to constitute very special circumstances, this appeal proceeds on the strength of benefits that go beyond the provision of market housing where there is a pressing need. It encompasses a number of other benefits. Taken together they are sufficient to clearly outweigh the Green Belt harm, and such harm to landscape and visual amenity as is caused by the scheme, and thereby generate very special circumstances to justify the grant of planning permission.

157. In that planning balance, to establish the existence or otherwise of very special circumstances, no account has been taken of the fact that the policies which trigger that exercise, i.e. the unrevoked Green Belt policies of the RSS, are deemed out-of-date and may attract reduced weight as a result. That the weight given to those policies, together with any breach, may be reduced in light of the fact that they are out of date is confirmed by the Court of Appeal: "*The purpose of the footnote [9], we believe is to underscore the continuing relevance and importance of these NPPF policies where they apply. In the context of decision-taking, such policies will continue to be relevant even "where the development plan is absent, silent or relevant policies are out of date". This does not mean that development plan policies that our out-of-date are rendered up-to-date by the continuing relevance of restrictive policies to which the footnote refers. Both the restrictive policies of the NPPF, where they are relevant to a development control decision, and out-of-date policies in the development plan will continue to command such weight as the decision-maker reasonably finds they should have in the making of the decision*" [paragraph 39, CD5.7, but see also paragraphs 46 and 47].

158. Factors that may be relevant to the level of that reduction include the degree of housing shortfall and the action being taken by the Council to address the problem [paragraph 47, CD5.7]. In this case, the degree of shortfall is substantial, and progress being made to address the issue, i.e. the production of an adopted LP, is painfully slow; the estimated adoption in the middle of 2018 in the LDS has already slipped by around 6 months.

159. If the Green Belt planning balance results in a finding that there are no very special circumstances and, in accordance with the Council's case, the decision-making process stops, with dismissal of the appeal, there will have been no consideration at all of the reduced weight that the RSS Green Belt policies might attract. That is a failing.

160. Mr Hobson's evidence aims to provide the solution to that failing. If it is found that harm to the Green Belt and other harm is not outweighed by other factors, i.e. no very special circumstances, then that breach of policy, which attracts a reduced level of weight, is weighed against other factors. If it fails to significantly and demonstrably outweigh those other factors, then that should lead to the grant of planning permission. The Appellant submits that should be the outcome in the scenario that its main arguments otherwise fail.

161. The Council advances no other course for taking into account the fact that the out-of-date policies of the DP which, in this scenario trigger the application of the Framework's Green Belt policy, may attract reduced weight. By adopting the Council's approach, that potential for reduced weight is never applied. The Appellant does not seek to apply any freestanding presumption in favour of sustainable development outside of the confines of paragraph 14 of the Framework. It is submitted that there is no infringement of the principles set out in the very recent judgements. Mr Hobson's evidence seeks to remain within the confines of that paragraph, whilst at the same time, recognising the fact that the Green Belt policies of the DP should attract reduced weight.

The Case for Pilcher Homes Ltd: Conclusion

162. It is the Appellant's primary position that the appeal scheme falls outside of the Green Belt, harm does not significantly and demonstrably outweigh benefits, and planning permission should be granted. If, contrary to the Appellant's case, the appeal scheme is found to lie within the Green Belt, then the Appellant maintains that very special circumstances exist to justify the proposed development. Failing the demonstration of very special circumstances, it is necessary to give effect to the fact that the RSS Green Belt policies attract reduced weight. That can only be done, within the confines of paragraph 14 of the Framework, by asking whether harm, i.e. breach of Green Belt policy, significantly and demonstrably outweighs the benefits. It does not, and planning permission should be granted.

The Case made by those who addressed the Inquiry in person

163. Councillor Orrell and 2 local residents addressed the Inquiry in person. Whilst Mrs Paterson did provide a transcript, Councillor Orrell and Professor Hartley only provided a bare outline of what they said. Accordingly the following is a fairly full record of the points made by interested parties at the Inquiry.

Professor Hartley

164. Professor Hartley opposes the scheme for the reasons set out in a paper which was submitted at the Inquiry [DS9] as well as 2 emails submitted at application stage [dated 3 and 8 June 2015, within the bundle at CD3.18]. He claimed that local residents had not been consulted by the Appellant and that they had been ignored. He initially claimed that the site notice had not been properly displayed, but in response to my question he withdrew that allegation. He claimed that he would be living on a traffic island if planning permission were granted. He observed that the previous application for 67 houses had been considered by the Planning Committee and it had not taken the Committee 4-days to determine that application.

165. The Council had repeatedly told Professor Hartley that the appeal site was within the Green Belt. In his role as an emeritus Professor of economics at the University of York, having been involved in the cost benefit appraisal of a number of high profile projects, Professor Hartley suggested that the price that was paid for the land would have reflected its Green Belt designation. From the outset the Appellant would have known that it was Green Belt and despite attempts to re-draw the boundary over the last 30-40 years no rational justification has been advanced to support the Appellant's assertion

that the site is not within the Green Belt. Professor Hartley asserted that the appeal site is one of the few open areas left in Huntington.

166. Professor Hartley said it was necessary to consider the need for affordable housing in the context of the York housing market as a whole, but this had not been mentioned by the Appellant. There are a number of major housing schemes being progressed in York that needed to be taken into account. He doubted that the Appellant was trying to replace Rowntree as the City's philanthropist. Since there is no information about the price that the dwellings would be sold for he questioned whether any of the houses would be affordable. He also rhetorically asked whether the land might be sold once planning permission had been granted, whether this might result in a windfall gain and what sanctions exist if the land were to be sold at a profit.

167. Professor Hartley suggested that the release of the MoD sites might result in a sudden increase in housing supply in York, because of the sites' potential to deliver small new towns. He stated that the Green Paper had earmarked the sites for housing. He speculated that due to the MoD's funding problems the sites might become available even sooner than the Council anticipated.

168. Having attended the first 2 days of the Inquiry Professor Hartley was struck by the continued references to what weight should be attached to various factors. This appeared to be a matter of personal judgement. In his view a lot of weight should be given to his evidence and he said that high weight [9/10] should be given to the Council's policy papers.

169. He was also struck by the reference to economic costs and benefits and the Appellant's claim that the benefits substantially outweigh the harm. However he rhetorically asked what the benefits were and how highly they are valued. He also wanted more information on the harm. He said there would be costs to local residents, such as noise and pollution during the construction phase, which needed to be taken into account before a conclusion was reached.

170. Professor Hartley alluded to the claim made in opening for the Appellant with regard to the number of construction jobs that the scheme would create and said the evidence did not convince him as an economist. He said 46 FTE jobs over 5-years suggested to him that the scheme would give rise to 9 jobs per annum, which would not be very much. He speculated that his cumulative spending over a nominal 100 years might support 3 jobs. In contrast construction jobs would be a one-off and when built those jobs would cease. It was unclear how many of the construction jobs would be for local people. Accordingly he suggested that the Appellant needed to identify the economic benefits, as well as costs, more clearly and say how highly valued they are.

171. Finally in respect of landscape, Professor Hartley submitted that high weight should be attributed to this factor. He said the site appeared open to him and to others. He said that from his first floor windows he has far reaching views towards the Yorkshire Wolds, 15-20 miles away. He suggested that anyone who thought the visual impact of the site was impaired had not been there. Traffic travelling from east to west on the Ring Road formed a semi-permanent traffic jam on the approach to the roundabout from the A64, which meant road users saw the appeal site as an open field.

Mrs Paterson

172. Mrs Paterson opposes the scheme for the reasons set out in a paper which was submitted at the Inquiry [DS17] as well as 2 emails at application stage [dated 1 June and 18 September 2015, within the bundle at CD3.18]. She said the site feels like countryside and one sees pheasant, deer and foxes on it. What one experiences living on Avon Drive is that one is at the edge of the countryside: it is unnecessary to consult an encyclopaedia to define it because your eyes tell you. The green space acts as a backdrop to the fabric of daily life and is not an inert or wasted space, or a degraded landscape awaiting the blessing of development. She said green spaces are not conscious of themselves, but their importance lies in their connection and relationship to human beings, and their contrast to development. She did not seek to argue that the Green Belt should be preserved for its own sake and said green is not a luxury but a human necessity. Harm to the Green Belt should not be assessed in isolation, but rather its impact on humankind.

173. The site is not an isolated and enclosed landscape, but is connected to open fields and agricultural land to the east, an arm of which feeds into it from the east, parallel to the Ring Road. It is a surviving remnant of agricultural farmland that connects with other larger areas, which themselves remain part of the surrounding countryside. It is not insignificant in terms of its value to residents and from their perspective it is not a low-quality landscape.

174. Having attended most of the Inquiry she considered that the issue of visibility has somehow acquired disproportionate importance, perhaps because in the Appellant's interests it is fixable. Although the debate has centred on the vantage of the Ring Road and Strensall Road, visibility from Avon Drive is not merely fleeting, but permanent. Screening development does not make it disappear. Screening suggests that there is something undesirable about development and so it is screened in an attempt to make it more palatable.

175. There is nothing undesirable or unacceptable about housing except when it is in the wrong place, i.e. inappropriately sited. When sites are developed, it also remains common knowledge that they were once open spaces, even Green Belt sites, irrespective of whether they are hidden from view. The sense of increasing housing density does not disappear even when one cannot see it, because discomfort is not only experienced visually.

176. Screening a housing development on a Green Belt site that could have been accommodated on a brown field site does not justify it, nor right its inappropriateness. In this regard the Council have identified a list of preferred sites, which displays a sound and reasoned consistency. The Council has sought to avoid coalescence and maintain separation of communities to preserve their distinct identities. Mrs Paterson considered that the Council has been consistent in this regard and that there are many examples around York, including communities on both sides of the Ring Road.

177. The 140 m distance between housing in Huntington and Earswick, west of Strensall Road, has been the subject of debate, but there is no requirement or obligation to mirror this east of Strensall Road. These communities have not coalesced and the extent of housing south of the Ring Road resembles more a jutting headland than a broad swathe of housing. The proximity of

the housing to the Ring Road to the west of Strensall Road does not generate an obligatory or binding precedent for development to the east of it. She observes that there is countryside straddling many parts of the Ring Road.

178. The Council has sought to restrict incremental urban sprawl into green areas and are not misguided in its endeavour to protect and preserve Green Belt land. It is a national concern that requires careful management against the backdrop of current housing demand. It is desirable not to unnecessarily alter the features and character of historic cities such as York. It is a major tourist attraction and its character is part of its appeal. Therefore, in opposing this appeal, Mrs Paterson does not seek to 'serve notice' on development, but draws a line in sacrificing more Green Belt at its altar.

Councillor Orrell

179. Councillor Orrell opposes the scheme for the reasons set out in a paper which was submitted at the Inquiry [DS18] as well as a statement made jointly with Councillors Cullwick and Runciman at application stage [submitted with the questionnaire]. He said reference has been made during the Inquiry to the Council's failure to adopt a DP over the years. He said the draft 2005 LP did not get adopted because the Government changed the rules and the Council had to start again. One of the key purposes of the DP was to confirm the extent of the Green Belt and whilst other areas had been allocated for development it had always been proposed to retain this site as Green Belt. The emerging LP was, he said, at an early stage. However if the MoD had not made the announcement when it did the emerging LP would have been ready in the spring and could have been advanced quickly from that point.

180. In terms of coalescence, Abbots Gate and Riverside Crescent were built 30 years ago. However policies change over time. If the appeal were to be allowed to be determined by what has happened in the past then this would have a compounding effect, which would be to the detriment of the area.

181. Finally the Appellant has made its case that there is a need for affordable housing in York. Whilst the proposed scheme is for 30 % affordable housing it is only an outline scheme and the Appellant could argue for a reduction. Councillor Orrell said that one scheme that he was aware of had argued this and the affordable housing contribution had been removed completely.

Written Representations

182. Copies of consultation responses comprising 70 items of correspondence are provided [CD3.18] and an index arranged in alphabetical order is included with the Council's questionnaire. The issues raised in that correspondence are summarised in paragraph 3.24 of the report to the Planning Committee [CD3.15]. In addition paragraph 3.25 of the report to the Planning Committee records that a petition was received containing 295 signatories and a copy of the petition is included with the Council's questionnaire. Comments were also made by a number of external consultees, including Huntington Parish Council, Julian Sturdy MP, the Environment Agency, Yorkshire Water, Foss Internal Drainage Board, Highways England and the Police [Designing Out Crime Officer]. The issues raised in that correspondence are summarised in

paragraphs 3.16-3.23 of the report to the Planning Committee [CD3.15] and a useful numerical index is included with the Council's questionnaire.

Conditions

183. The Council submitted a list of suggested conditions at the Inquiry [DS14], which evolved out of discussions between the parties but in respect of which there has not been agreement. This list formed the basis of a discussion at the Inquiry to which local residents were able to contribute. I have assessed the suggested conditions in the light of advice contained in the Guidance and where necessary in the interests of precision and enforceability I have revised some of the conditions. In this context the conditions listed at Appendix C should be imposed for the reasons set out therein and having regard to my observations below which, noting the list [DS14] is not always sequentially numbered, addresses the conditions in the order that they appear in that list.

184. Reflective of the fact that the Appellant relies on the details of access shown on the "*Built Form Masterplan*", this needs to be identified as an approved drawing in addition to the red line plan, subject to making it clear that the only details being approved on the "*Built Form Masterplan*" relate to access. Allied to this the Appellant agreed at the Inquiry that an additional condition should be imposed to require the precise details of the eastern access to be agreed with the Council to cover the possibility of restricting certain vehicles. I appreciate that the Highway Authority envisaged that the eastern access would be the main route for vehicles and whilst that might prioritise cycling and walking this advantage is outweighed in my view by the fact that it would introduce additional traffic movements into the quiet enclave of Avon Drive.

185. The trigger for some conditions, e.g. for materials, is suggested as being one month from commencement, which is intended to reflect the need to move away from pre-commencement conditions. However an alternative trigger of restricting development above foundation level would allow greater flexibility for the developer without compromising the objective of controlling the appearance of the dwellings. However I accept that in other instances one month from commencement remains appropriate, e.g. for the design of the footpaths and cycleways, together with details of the proposed junctions.

186. I have revised the suggested condition with regard to 'cycle parking areas' to make clear that this should comprise secure cycle storage for each dwelling. Although the need to jointly agree a dilapidation survey of existing highways is an unusual condition in my experience, there is a clear logic to it and it would provide a baseline against which any subsequent dispute can be assessed. It was agreed that measures to ensure that no mud is deposited on the highway might include wheel washing, as requested by local residents.

187. I have revised the suggested condition with regard to the need to review the ecological survey so that the trigger is 2-years from the date of approval of the ecological measures, rather than from the date of the 'planning consent'. As an outline planning permission has been sought it is quite possible that any grant of planning permission would not be implemented within 2 years, whereas discharge of the condition in relation to an ecological design strategy might take place contemporaneously with any reserved matters application.

This still respects the underlying objective to ensure the ecological position has not materially changed at the point where the development commences.

188. As discussed at the Inquiry I have revised the suggested condition in respect of lighting to make sure that the effect on the Ring Road is considered. As flagged at the Inquiry I see no reason why 4 separate conditions have been advanced with regard to drainage and I have combined these in order to avoid duplication. In line with the discussion at the Inquiry I have also made the condition with regard to landscape mitigation adjacent to the Ring Road a pre-commencement condition, as I was invited to do by the Appellant. There is a consensus that these works would need to be delivered before housing. However, because landscaping is a reserved matter, there is no need for the suggested condition with regard to detailed landscaping at this stage.

189. I have tightened up some of the references to British Standards [BS], including reference to year where appropriate. As flagged at the Inquiry I have also identified the relevant standard for noise within dwellings. The resulting condition is more narrowly focussed on works to dwellings but should take account of the related condition with regard to an acoustic noise barrier, which would protect external areas, including gardens. Plainly if, as seems likely, the acoustic barrier is agreed to run along the landscaped mound then this would also need to be delivered at the earliest opportunity.

190. I have revised the suggested condition that sought to require a charging point for electric vehicles at each dwelling so as to exclude flats or properties without a garage or driveway, which are the only 2 scenarios envisaged in the suggested wording. I have combined the 2 suggested conditions in respect of archaeology, without losing any point of substance. I have also revisited the suggested condition with regard to security to reflect the very narrow remit envisaged in the Guidance, which merely says: "*designing for security of site layout remains a valid planning consideration*" [49]. As noted at the Inquiry the WMS from March 2015 refers to Part Q of the Building Regulations, which came into force on 1 October 2015 and covers the physical security of new dwellings. To the extent that the suggested wording might purport to cover individual dwellings, e.g. by reference to 'Secured by Design', this would not now be appropriate.

191. There was some debate at the Inquiry as to whether there was a need for a condition that restricts the number of dwellings to the 109 applied for. In my view the Council would be entitled to decline to register an application for reserved matters that comprised more than 109 dwellings on the basis that it was materially different. However the Council's argument that a scheme for less than 109 dwellings might be capable of being registered but would not deliver the full benefits of the permitted scheme is a good reason to impose such a condition. I note that the Appellant raised no objection if it were considered that such a condition was necessary.

192. Finally at the Inquiry I asked whether a condition was required to restrict the height of any dwellings and the Council agreed it was necessary. The SoCG confirms that it is envisaged that the development would be 2-storey, but it

[49] Source of quote: paragraph ID 56-002-20160519.

envisages the possibility of dormer windows. The condition that I propose would ensure this eventuality is covered and was canvassed at the Inquiry.

Section 106 Planning Agreement

193. Although the absence of a mechanism to deliver affordable housing and the required financial contributions was not identified as a reason for refusal[50], it was clear from the Council's proofs of evidence, if not its Statement of Case, that it sought a legal agreement to address these matters. In advance of the Inquiry, The Planning Inspectorate [PINS] asked the Council to clarify the number of obligations which had been entered into on or after 6 April 2010 which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which the Council sought an obligation [DC3]. In response the Council submitted a Community Infrastructure Levy [CIL] Regulation 123(3) Compliance Statement [DC5].

194. At the start of the Inquiry the Council's CIL Regulation 123(3) Compliance Statement was discussed. It says, in short, that less than 5 obligations have been entered into since 6 April 2010 which are worded in such a way that would enable contributions secured to be applied to pre-school providers, Joseph Rowntree School, Huntington Sports Club and bus stops on Strensall Road[51]. It does say that more than 5 obligations have been entered into since 6 April 2010 which are worded in such a way that would enable the contributions secured to be applied to Huntington Primary Academy and this is the reason the Council does not seek a contribution to primary education. I been given no evidence nor reason to doubt the Council's claims that less than 5 obligations have been entered into in respect of each project or type of infrastructure for which it now seeks such financial contributions.

195. The other contributions that it seeks, including a travel pass or contribution to a bicycle, a public shared pedestrian/cycle path along the northern boundary of the site and on-site open space and an equipped play area, are considered to be site-specific mitigation to which the pooling restriction in Regulation 123(3) does not apply. There is no reason to dispute this assertion.

196. For the purpose of discussion at the Inquiry my pre-Inquiry note [DC4] identified a separate main issue to be: Whether, in addition to affordable housing, a financial contribution is justified in order to offset the effect of the proposed development on: (i) sustainable transport measures; (ii) off-site sports pitch provision; and, (iii) education. In response to this, the Council provided a CIL Regulation 122 Compliance Statement indicating that the provisions of the S106 Agreement were: necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development [DS13].

[50] In my experience many Councils do identify this as a separate reason for refusal, then set out what is required in order to overcome it in a statement or proof, before confirming that the reason has been addressed if and when a legal agreement is submitted. This approach has the advantage that if no legal agreement is submitted then the issue is clearly flagged as a substantive issue at appeal. The Council might wish to adopt such an approach in future.
[51] Section 6 of DC5 says Huntington Road, but this was corrected orally at the Inquiry.

197. I have reviewed the obligations included within the S106 Agreement having regard to the submissions made by the LPA. At no stage has the Appellant disputed that the obligations sought meet the statutory tests, which are also set down in paragraph 204 of the Framework. Despite the concerns I have expressed about, and the extremely limited weight that I consider should be given to, the SPG, it is clear that this scale of housing development would impose additional pressures on infrastructure in the area. There is no other basis on which it is possible to assess those effects and so, in principle, the obligations appear to meet the first 2 tests.

198. Although the policy basis for the obligations is weak at the local level, the proposed development would have an unacceptable effect on the area and fail to deliver the identified benefits of the scheme, e.g. in terms of affordable housing, without the S106 Agreement. Amongst other things whilst the Local Transport Plan [CD2.23] is not part of the DP and contains no provisions that are directly related to the transport obligations being sought, the Council has drawn attention to Policy T7 of the emerging LP, which provides a policy basis for the travel/highways obligations, including the pedestrian/cycle path.

199. The estimates of quantum[52] [DS16.1/2] break down what the £50,000 towards bus stops improvements would be used for. They also indicate that just under £70,000 might be sought towards off-site sports contributions and around £240,000 might be sought towards education. These sums appear to fairly and reasonably relate in scale and kind to a housing scheme of this magnitude. Accordingly, for all of the above reasons, I conclude that the S106 Agreement is consistent with paragraph 204 of the Framework and CIL Regulation 122 and I have attached weight to it in coming to my conclusions.

Inspector's conclusions

200. From the evidence before the Inquiry, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

201. Following the submission of the signed and dated S106 Agreement and the consensus[53] that if the site is within the Green Belt the proposal would be inappropriate development, I consider the main considerations are as follows:

i. Whether the application, and hence this appeal, was valid;

ii. Whether the appeal site is within the general extent of the Green Belt;

iii. If so, the effect of the development on the openness of the Green Belt and the purposes of including land within it;

iv. The effect of the proposed development on the landscape character and setting of York;

[52] Which depend in part on the final mix of dwellings, e.g. a 1-bed flat is not going to give rise to an impact on education in the area because there are no bedrooms for children.
[53] See, amongst other things, paragraph 5.12 of the SoCG [DS11].

v. If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal; and,

vi. Whether the decision making matrix then requires an assessment against the first indent of the second bullet-point for decision-taking in paragraph 14 of the Framework and, if so, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole[54].

i. Validity of the application and hence this appeal

202. The question of whether the application was valid is a matter of law, which will be for the SoS to determine. However in my view, having been advised at the Inquiry that there is no judicial authority on the statutory provisions that state an LPA *shall not entertain* an application where any requirements imposed by section 65 of the Act have not been met[55], the approach taken by Inspector Whitehead is commended to the SoS. That appeal decision is still available on the Portal[56] and given its date, if there had been a High Court challenge it is reasonable to conclude that would have been heard by now, such that the appeal decision would no longer be available if that decision had been quashed and the appeal were awaiting redetermination.

203. Adopting that approach to the facts of this case, it is clear that a certificate of ownership has been completed at application and appeal stage. The LPA has acknowledged that it did entertain the application by registering it as having been validly made [6]. That is perhaps understandable because it had no reason to doubt the Certificate A at that stage: it is not reasonable to suggest that an LPA should conduct checks with the Land Registry or otherwise in order to test any declaration made. Were it not for the obvious inconsistency with the S106 Agreement it is doubtful the issue would have been identified.

204. In the absence of judicial authority I have examined Inspector Whitehead's view that section 79(4) of the Act does not mean that section 65(5) of the Act applies to appeals to the SoS. Section 79(4) says: "*Subject to subsection (2), the provisions of sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5 shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for planning permission which falls to be determined by the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71*" [*my emphasis*].

205. Against that background there is no dispute that the DMPO is the relevant development order. Article 36 concerns notice of appeal and says: "*Articles*

[54] This consideration reflects the submissions at the Inquiry and the dispute between the main parties as to the decision making framework within which the appeal should be assessed.
[55] The Appellant's indication to this effect at the Inquiry appears to be corroborated by the commentary at P65.11 of the Encyclopedia of Planning Law and Practice.
[56] https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=2188374

13 and 14 apply to any appeal to the Secretary of State under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) as those articles apply to applications for planning permission". Article 13(1) says: "*…an applicant for planning permission must give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of the land to which the application relates, or a tenant— (a) by serving the notice on every such person whose name and address is known to the applicant*" [*my emphasis*]. Article 13(7) says: "*…the "prescribed date" for the purposes of this article, is the day 21 days before the date of the application…".* Article 14(1) then says: "*Where an application for planning permission is made, the applicant must certify, in a form published by the Secretary of State or in a form substantially to the same effect, that the relevant requirements of article 13 have been satisfied*".

206. Having undertaken an electronic search of the DMPO I am satisfied that it does not expressly refer to section 65(5) of the Act and, for completeness, neither is there express reference to section 327A of the Act. Accordingly whilst section 65 of the Act is expressly referred to in section 79(4) of the Act the relevant development order only engages certain requirements of section 65 of the Act and, crucially, does not provide that the SoS shall not entertain an appeal where any requirements imposed by section 65 of the Act have not been met. For this reason I accept the Appellant's submission that section 79 of the Act does not impose an equivalent restriction on the SoS and, whilst I have considered the possibility, I am satisfied it is not imposed via the DMPO.

207. In contrast to the circumstances prevailing in Inspector Whitehead's appeal, no notice has been served on the other interests in the land at any stage. However there is still a sound basis to find that no prejudice would be caused to those interests who were not served. Apart from the Appellant company the undisputed evidence before the Inquiry is that there are 2 other freehold interests. Mr Pilcher attended the whole Inquiry and is the personification of the Appellant company. He is plainly aware of the appeal and, amongst other things, has signed the S106 Agreement in his capacity as a Director of Pilcher Homes Ltd, in his personal capacity as a freeholder and, it would appear, in his capacity as mortgagee [he has signed it 4 times on pages 37/38, DS19].

208. The other freehold interest is that of Lime Tree Homes Ltd, which I have no reason to doubt is owned in equal shares by Mr Pilcher [hence Mr Pilcher has signed the S106 Agreement in that capacity too] and his sister. I have reviewed the attendance sheets that were completed on each day of the Inquiry and there is no evidence that Mrs Bryan attended the Inquiry at all. However she has signed the S106 Agreement in her capacity as a Director of Lime Tree Homes Ltd and, it would appear, in her capacity as a mortgagee [she has signed it twice on pages 37/38, DS19]. It would therefore be irrational to conclude that she, as both a Director of Lime Tree Homes Ltd and a mortgagee, is not aware of the proposed development and the appeal.

209. In the circumstances the SoS can be satisfied that whilst there has plainly been a procedural defect at both application and appeal stage, no party with an interest in the land, including both freeholders and mortgagees, have been prejudiced. In the circumstances proceeding to determine the appeal would

not undermine the purpose of the statutory provisions. There is no reason to doubt that all parties with an interest in the land wish to see the appeal proceed to a determination and the SoS is invited to proceed accordingly.

ii. Whether the appeal site is within the general extent of the Green Belt

210. The York Green Belt has never been identified in an adopted LP. In recognition of this situation the RSS was only partially revoked so as to retain the RSS York Green Belt policies and the general extent of the Green Belt shown on the key diagram. However it is common ground that the specific inner boundary is not defined on the key diagram or anywhere in the DP [paragraph 5.4, DS11]. In those circumstances 2 bases are advanced by the Council as to why the appeal site lies within the Green Belt: (i) the RSS key diagram; and (ii) the draft 2005 LP. In the alternative appeal precedent has established 3 factors that can be used to assess whether a site is in the Green Belt: (i) an assessment against Green Belt purposes; (ii) prematurity; and, (iii) precedent. However the main parties agree that prematurity and precedent are not engaged in the circumstances of this appeal [143].

The RSS key diagram

211. Although the key diagram identifies an indicative inner boundary for the York Green Belt, in contrast to other cities, it would be wrong to equate this to a geographical feature, such as the Ring Road. A key diagram is not a policies map[57] and is not reproduced from, or based on, an Ordnance Survey map. Insofar as the key on the diagram refers to "policy YH9C" the annotation, shown as an inner ring on the diagram, is confirmation that the detailed inner boundaries should be defined to establish the long term development limits, as required by that policy. It would therefore have been inappropriate for the general extent of the Green Belt to directly abut the urban area of the sub-regional City of York, as depicted for comparable cities on the key diagram, such as Wakefield. The key diagram is intended to be indicative because RSS Policy Y1 requires the inner boundary to be defined at the local level. This does not mean that the 'white land' within the inner ring is not designated as Green Belt, because the key diagram is indicative, not based on geography.

212. The SoS has considered this issue on a number of occasions and in my view has taken what might be said to be a precautionary approach to whether a site is within the general extent of the Green Belt. That precautionary approach is in fact evident from the direction itself [2]. Although there was a consensus between the parties in the most recent appeal [paragraph 9, CD5.14], the SoS took a more robust view than the Inspector in the Germany Beck decision, where his report said that those sites should not be regarded as being within the general extent of the Green Belt. The SoS said: "*…she does not consider that the lack of a defined boundary is sufficient justification to arbitrarily exclude <u>any</u> site contained within the general extent of the Green Belt, as referenced by the NYCSP. Until such time that the detailed boundaries of the York Green Belt are defined in a statutorily adopted local*

[57] As defined in Regulation 9 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

plan or framework, she considers both sites should be treated on the basis that they lay within the Green Belt" [paragraph 15, CD5.15, *my emphasis*].

213. Plainly the reference in that quote to the "NYCSP" is to the Structure Plan, which is no longer saved. However IR24.63 of the report to which those comments relate confirms that the policy position was almost identical in the sense that the relevant NYCSP policy E8 identified the general extent of the Green Belt. The outer edge was to be about 6 miles from York city centre and there was: "…*no clue at all as to where the inner boundary should be*"; the key diagram showed the policies and proposals diagrammatically, not on an Ordnance Survey base. So whilst it has to be acknowledged that the findings of the SoS were expressed by reference to the NYCSP, I consider that those sentiments apply equally to the RSS Policies and key diagram.

214. In my view the continuing applicability of the approach that the SoS took in 2007 is confirmed by paragraph 79 of the Framework, which identifies an essential characteristic of the Green Belt to be its permanence. Paragraph 83 of the Framework also emphasises that a Green Belt boundary should only be altered in exceptional circumstances through the LP process. Given the very clearly stated position taken by the SoS I would not lightly recommend any departure from that stance without a very good reason.

215. IR24.64 of the same report [CD5.15] identifies the key test to be: "…*whether there is any reason not to apply Green Belt policy for the time being*". The Council claimed that was common ground [70] and that assertion was not disputed in closing for the Appellant. Whilst I regard it as unfortunate that the same debate is being played out almost 10-years after that view was expressed I consider the SoS's finding in the decision dated 9 May 2007 is consistent with the application of that test. The test remains appropriate.

216. The only appeal decision before the Inquiry in which an Inspector has taken the view that any site was not within the general extent of the Green Belt is written by the Inspector with whom the SoS disagreed in 2007 [CD5.16]. Any appeal decision is, of course, fact sensitive and I note that scheme was for just 8 dwellings. The Inspector reporting on Brecks Lane distinguishes it on that basis [IR 191, CD5.14] and that distinction applies equally here.

217. Where I do respectfully disagree with Inspector Cullingford is with his statement that: "*Clearly, the Regional Strategy does not condone every undeveloped scrap of land between the built up area and 'an outer edge' 6 miles from the city centre being designated as Green Belt; the unrevoked policies are clear and even the Key Diagram indicates areas of 'white land' within the 'ring of green'*" [paragraph 8, CD5.16]. However I consider that is exactly what the RSS key diagram does do. To suggest that the 'white land' indicates an area where Green Belt does not apply is to conflate an indicative diagram, which is designed to inform the emerging LP, with one having a geographical expression. As part of the emerging LP the Council could decide to allocate all of its required housing to the south of the City, in which case a tightly defined boundary to the north might be justified. In practice it will be more nuanced but I consider, pending adoption of an LP, it is appropriate to apply Green Belt policy for the time being on a precautionary basis. In the circumstances, whilst the appeal decision can be clearly distinguished in

terms of scale, the rationale that underpins at least this part of the decision is not a reason not to apply Green Belt policy to this site for the time being.

218. In summary, whilst I acknowledge the concessions in xx [114], I consider that the key diagram provides a firm basis for finding that the appeal site lies within the general extent of the Green Belt. In line with the SoS's previous rationale, the lack of a defined boundary provides insufficient justification to arbitrarily exclude any site contained within the general extent of the Green Belt. There is no reason not to apply Green Belt policy for the time being, i.e. unless or until an adopted LP defines the long-term Green Belt boundary. I consider that such a finding is entirely consistent with a plan-led system.

The draft 2005 LP

219. I concur with the Appellant that the reason for refusal [63] appears to place heavy reliance on the draft 2005 LP for the conclusion that the appeal site lies within the general extent of the Green Belt [117]. In my view the Council places too much reliance on the draft 2005 LP both in this respect and more broadly. The Appellant has shown that the Green Belt boundaries depicted on that Proposals Map [PEC3.1] reflect development requirements identified in the 1980s [118, 119]. The detailed inner boundary of the Green Belt thereby defined does not therefore accord with the requirement of RSS Policy YH9C because it does not accommodate the long-term development needs of York. There is a consensus that very limited weight should be given to the relevant provisions of the draft 2005 LP [31]. In the circumstances, I share the Appellant's view that no significant reliance should be placed on the draft 2005 LP in deciding whether or not the site falls within the Green Belt [120].

An assessment against the 5 Green Belt purposes

220. In the circumstances of this appeal my starting point for the assessment of whether this site is within the general extent of the Green Belt is the RSS key diagram. To this limited extent my approach differs from that of Inspector Moffoot [121]. However where there is a dispute between the parties as to whether a site lies within the general extent of the Green Belt, it would be appropriate to assess the site against the 5 Green Belt purposes. This is common ground between the parties [74, 123]. However before turning to examine these I deal briefly with the appraisals the Council has undertaken in order to identify land that should be kept permanently open [125, 126].

221. The site was not identified as specifically contributing to any Green Belt function in the "*City of York Local Plan: The Approach to the Green Belt Appraisal*" [CD2.1, 2003]. However, whilst this document identifies the most valuable areas of Green Belt, including those which prevent coalescence, it leaves large areas of countryside around the City, including the appeal site, undefined. It does not follow that some of those areas are not important or that all of the remaining land within the general extent of the Green Belt is necessarily suitable for development or that it serves no Green Belt purpose.

222. Ms Priestley agreed in xx that the 2003 appraisal, together with the reviews in 2011 and 2013, are all relevant and that taken together it is evidence that the Council looked at the issue of coalescence 3 times in 10 years, but did not identify the site as being a valuable area of Green Belt to serve that or any

other purpose[58]. However again it does not follow that the appeal site serves no Green Belt purpose in relation to the City of York. The fact that these studies did not identify the appeal site as being a valuable area of Green Belt is not a reason not to apply Green Belt policy for the time being. This approach is consistent with Inspector Hill's report [IR189-190, CD5.14].

223. I therefore turn to assess the site against the 5 Green Belt purposes, in turn: (i) Checking the unrestricted sprawl of large built-up areas. The development of the appeal site would extend the existing built-up mass of the City which, to the south, extends as a fairly continuous suburban area to the city centre. Evidence before the Inquiry confirms that the Avon Drive development and the Ring Road have both been developed in the late twentieth century even with the principle of a Green Belt in place over that timeframe. This Green Belt purpose is therefore in issue and the proposed development would conflict with this purpose. The fact that the Ring Road and the proposed planted mound might provide a boundary post-development does not mean that the appeal site does not serve this function at the present time [74i].

224. (ii) Preventing neighbouring towns merging into one another. The Council's appraisal says this is about: "…*retaining the separate identity of towns*" and that by: "…*maintaining a several mile strip of open countryside*" one is able to: "…*maintain separate communities and a sense of place*"[59]. In contrast the existing separation distance between Earswick and Huntington is relatively small: approximately 140 m. It is agreed that the proposal would not extend further north than the northernmost house in Huntington [74ii, 131]. Noting that the map analysis [DS5] is conducted on the basis of an indicative layout, which might have to change [24], the SoS can be satisfied that the minimum measurable gap between Earswick and Huntington would not be reduced.

225. On the ground, dwellings within Earswick and Huntington can be seen from the roundabout on the Ring Road, but the existing dwellings on Avon Drive can also be perceived, at least in winter, from the Ring Road to the east [11]. To the west of the roundabout Ms Priestley acknowledges existing features, including mounding, planting and the Ring Road, combine to separate these settlements, and that this could be echoed, post development, to the east [131]. This would, if anything, reinforce what Ms Priestley has called the "*distinct break*" between Earswick and Huntington [133], because over time the proposed landscaped mound could reduce views of housing. Mr Popplewell says that over time this change would be beneficial; in pure visual terms, distinct from landscape character terms, I agree.

226. I acknowledge that the Inspector who considered the site as part of the LP examination in 1994 found that it was important to the character of the settlements of Earswick and Huntington, and the area more generally, that their separation be maintained [paragraph C50.8. CD2.22]. However his particular concern would appear to have been "*visual coalescence*". In my view that point no longer arises. The landscaping along the Ring Road is such that it filters views of the existing housing in winter, no doubt screening it in

[58] The reviews in 2011 and 2013 are "*Historic Character and Setting Technical Paper*" [CD2.5] and the "*Historic Character and Setting Technical Paper Update*" [CD2.9], respectively
[59] Source of quotes: paragraph 2.2, CD2.1.

summer, and the proposed landscaping would reinforce that. At the same time the planting to the north of the Ring Road is an effective screen towards Earswick as even the fire station tower is barely visible in winter months [11].

227. Given the proposed scheme merely envisages an acoustic fence on a circa 1 m high mound surrounded by planting there is no reason to find it would "*appear contrived and alien*" [paragraph C50.8. CD2.22]. This only serves to underline that the appearance of the site has changed markedly in 20 years. Whilst the Inspector was also concerned about the possibility of an elevated carriageway being constructed as part of an upgraded Ring Road, that no longer appears to be in prospect; only a road widening scheme is proposed[60].

228. In summary, the development of the appeal site would not conflict with the second Green Belt purpose, because existing features, primarily associated with the Ring Road, would ensure that Earswick and Huntington would not merge with one another. The proposed landscaped mound would enhance the visual separation. The respective settlements would still have a separate identity, community and sense of place, which are relevant criteria that the Council have identified in their own appraisal.

229. Finally I note that even the Council identifies Earswick as a village; see quote from Ms Priestley proof of evidence at [133]. The Framework expressly refers to neighbouring towns, rather than villages [or settlements, paragraph 11, CD5.17]. I consider there is a much clearer distinction between a village and a town, than between a town and a city, which might comprise a large town or merely be distinguished by virtue of having a cathedral. Whilst not conclusive this reinforces my finding on the second Green Belt purpose.

230. (iii) Assisting in safeguarding the countryside from encroachment. Under this heading I deal initially with the question as to whether the site is countryside, noting that it is common ground that the site is "*arable farmland*"[61].

231. The Inspector's conclusion in 1994 is unambiguous: "*Development of the objection site would be seen as an encroachment into the countryside…*" [paragraph C50.8. CD2.22]. Whilst trees and hedgerows are higher, which restrict views from the Ring Road in summer, I am far from convinced that this alters the assessment that the land is countryside. To the contrary trees and hedgerows are an inherent characteristic of a rural area. The fact that the ribbon of development along Strensall Road can be seen less clearly on approach from the east along the Ring Road underlines my view that, to the extent that there has been change since 1994, it reinforces a finding that the site is part of the countryside. It is also perceived as countryside from other public vantage-points, such as the gap to the north of No 74 Strensall Road [10] and the large gaps between dwellings along Avon Drive itself [12].

232. The Appellant argues that there is no continuity in any physical or visual sense with the land to the south-east [136]. In the sense that the trees and vegetation have become more established it might be correct to say that there is limited visual connectivity but, for reasons set out above, that does

[60] See Mr O'Connell's proof of evidence at paragraph 8.3.
[61] Source of quote: paragraph 2.1, DS11.

not mean it is no longer countryside. In terms of physical connection, the observations of Mrs Paterson, who referred to pheasant, deer and foxes on the site, underlines that it is still connected to the wider countryside [172].

233. In my view it is unarguable that the proposed development would be a form of encroachment, which can be characterised to be advancement beyond the existing bounds of development. Indeed the Appellant appears to make no such claim; amongst other things the proposed scheme is acknowledged to comprise: "…*significant built development on a currently undeveloped site*"[62]. Accordingly I am in no doubt that the proposed development would conflict with the third purpose of including land in the Green Belt because it would fail to assist in safeguarding the countryside from encroachment.

234. (iv) Preserving the setting and special character of historic towns. This purpose clearly applies to the City and would appear to be a main reason why there is a need for a Green Belt around York; see policy wording of YH9C and Y1C [27]. However there can be no dispute that there are no views of the Minster across the appeal site and that it does not form part of a wider countryside setting in which the City is seen, at least beyond the rear of the dwellings in Avon Drive. This purpose would only be infringed on a site such as this if it were said that the site plays a role, together with the wider Green Belt, in ensuring that the setting or special character of York is preserved.

235. The Council's appraisal, in not identifying the appeal site, has interpreted this purpose in a very narrow way [section 8, CD2.1], but I am not convinced this is appropriate. When viewed from certain parts of the Ring Road green fields, even where they do not permit views of the City's skyline, make a positive contribution to the City's setting and special character. Whilst this section of Ring Road does have an enclosed character due to trees and hedgerows, the openness of the field is evident in winter through the hedgerow. It continues the character of more extensive areas of countryside, e.g. on the eastern approach to the appeal site, in which the Ring Road passes through a more expansive rural landscape. To this limited extent the site does contribute to a meaningful degree to the wider setting and special character of York.

236. As the site is so close to the Ring Road the presence of development would be evident to road users for a number of reasons: i) it would be visible during the early stages of development before the landscaping was effective; ii) it might be visible in winter when, even post-development, landscaping might not provide a complete screen; and iii) its presence would be evident at night, due to the existence of street lights, lights from the dwellings and activity, such as car headlights. The Ring Road is not lit other than at the roundabout. For all these reasons I conclude that the proposed development would conflict with the fourth purpose of including land in the Green Belt.

237. (v) Assisting in urban regeneration, by encouraging the recycling of derelict and other urban land. In the most recent SoS decision it was found that: "…*preventing development here, and on other Green Belt sites, is likely to encourage development of brownfield land because there is likely to be a consequent impact upon viability*" [paragraph 12, CD5.14]. The Appellant

[62] Source of quote: paragraph 18, DS3.

suggests it is not known what viability evidence was before that Inspector, but I agree with the Council that if such evidence had been tabled it would have been expressly referred to in the Inspector's report; IR 196 confirms it was not [74, 142]. It would therefore appear that the SoS was expressing a general proposition, which applies equally to the circumstances of this appeal. The simple logic of Inspector Moffoot is inescapable [paragraph 13, CD5.17].

238. I acknowledge that the emerging LP has identified a range of green field and brown field sites and that as a matter of logic the Council must have satisfied itself that the former will not undermine delivery of the latter [140]. However it would appear [from IR 196, CD5.17] that exactly the same argument was advanced in that case. The SoS agreed: "…*that a managed approach to releasing land for housing needs to be taken*" [paragraph 12, CD5.14]. No argument has been advanced that would lead me to recommend that the SoS should take a different view, despite the absence of viability evidence.

239. Finally, noting that the Appellant concedes the point is not determinative, I agree that the fact that dismissal of the appeal would not cause the Appellant to invest in urban regeneration is not determinative [74v, 142]. In effect, the test is whether the site has a role to play in encouraging urban regeneration, not whether it has a role to play in encouraging the Appellant to invest in it. For these reasons I conclude that the proposed development would conflict with the fifth purpose of including land in the Green Belt.

Overall finding on the second main consideration

240. On the second main consideration, I conclude that the appeal site falls within the general extent of the Green Belt on the RSS key diagram. The lack of a defined boundary provides insufficient justification to arbitrarily exclude any site contained within the general extent of the Green Belt [212, 218]. Whilst no significant reliance should be placed on the draft 2005 LP in deciding whether or not the site falls within the Green Belt [219], my view that the site is within its general extent is reinforced by the conclusion that the site serves a number of Green Belt purposes [223, 233, 236, 239].

241. Mr Hobson conceded in xx that it is enough for the appeal site to make a contribution to one of these purposes and so even if there might be some doubt about, by way of example, the extent to which it serves the fifth purpose, the SoS can be satisfied that the site would meet at least one such purpose. This finding is consistent with the Inspector's conclusion in 1994 that: "*The site fulfils important Green Belt <u>functions</u> and should remain permanently open*" [paragraph C50.10. CD2.22, *<u>my emphasis</u>*].

242. The main parties agree [82, 154] that, should the SoS find that the site is within the general extent of the Green Belt, the proposal would not fall within the limited categories of exceptions listed in paragraph 89 of the Framework. Paragraph 87 of the Framework says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework also makes clear that substantial weight should be given to any harm to the Green Belt.

243. The main parties further agree that, should the SoS find that the site is not within the general extent of the Green Belt, then the DP is silent because the

only policies in the DP concern the Green Belt [27]. In that scenario the SoS should apply the presumption in favour of sustainable development and go to the first indent of the second bullet-point of paragraph 14 of the Framework. It is common ground that in that scenario the balancing exercise falls in favour of granting planning permission, because there are no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole [150].

iii. Effect of the development on openness and purposes of the Green Belt

244. Paragraph 79 of the Framework says that the fundamental aim of Green Belt policy is keep land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The main parties agree [89, 154] that there would be built development where currently there is none. Moreover those dwellings would be 2-storeys in height and some are proposed with dormer windows at roof level [20]. The proposed development would give rise to a loss of openness for these reasons.

245. Although the Appellant asserts that there would be a limited perception of that loss from around the site, I disagree. It would be evident from public vantage-points between houses, such as the gap to the north of No 74 Strensall Road and the large gaps between dwellings along Avon Drive itself. In any event the test for openness is not one of public visibility.

246. As set out above, the site serves 4 Green Belt purposes and I reject the claim that the scheme would not cause harm to those purposes. Perhaps the clearest example is the third purpose. The proposed development would be an encroachment into the countryside, which would be permanently lost by the built development. It would compromise that purpose and cause harm. I accept the Council's submission that any other conclusion would be irrational [89]. Whilst the appeal site has not been identified as a valuable area of Green Belt [221, 222] it is nonetheless a Green Belt site for the reasons discussed above and, as such, should be given significant protection.

247. In the circumstances I find a conflict with RSS Policy Y1 which relates, among other things, to investment decisions. The proposed development would be a significant investment decision, which the Appellant has estimated to be £15.45 m in construction costs alone[63]. These are required to (2) *Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas* [*my emphasis*]. I have given reasons why the proposed scheme would conflict with the fourth purpose of including land in the Green Belt and therefore not preserve the historic setting of York. Whether it is an important open area involves a qualitative judgement and whilst I acknowledge that the site was not identified by the Council as a valuable area of Green Belt, the Framework says that keeping land open is the fundamental aim of the policy. Viewed in that light this site is an important open area that makes a positive contribution to the wider rationale for having a Green Belt around York. The conflict with RSS Policy Y1 is consistent with Mr Hobson's concession [66].

[63] Paragraph 10.10 of Mr Hobson's proof of evidence.

248. It is common ground that, following the Court of Appeal case of *Richborough*, this Green Belt policy is a relevant policy for the supply of housing [79, 152]. It is also agreed that the Council cannot demonstrate a 5-year supply of housing [51] such that RSS Policy Y1, which is a relevant policy for the supply of housing, should not be considered to be up-to-date. To reflect this, the weight to be given to the policy should be reduced, but the weight to be applied is a matter for the decision maker. Whilst there is a large shortfall in housing supply that will take a number of years to address [62] the particular purpose of this restrictive policy is consistent with the Framework. As I suggested to Mr Hobson, it might be different if this was a counterpart policy, which merely protected the land as countryside because it was outside of the settlement boundary. Such a policy might not be consistent with the Framework's objective to boost significantly the supply of housing. However because RSS Policy Y1 is a Green Belt policy, applying paragraph 215 of the Framework, I attach moderate weight to RSS Policy Y1 in this appeal.

249. I also find a conflict with Policy GB1 of the draft 2005 LP. However, since it is common ground that only very limited weight should be given to it [31], this identified conflict does not alter the overall finding on this issue.

250. On the third main consideration, I conclude that the proposed development would harm the openness of the Green Belt and the purposes of including land within it. Paragraph 88 of the Framework again dictates that substantial weight should be given to this Green Belt harm. As a result I find a conflict with RSS Policy Y1, and have given reasons why I attach moderate weight to that policy, as well as Policy GB1 of the draft 2005 LP.

iv. The effect of on the landscape character and setting of York

251. This was not identified as a reason for refusal [5]. The Council, in seeking to advance this as a main consideration at appeal stage, has not alleged that it would give rise to a conflict with: (i) policies from the draft 2005 LP, including GP1, which sets out a number of criteria, including that a proposal should, at a minimum, respect the local environment; (ii) emerging LP policies; or (iii) the Framework, including the fourth bullet-point of paragraph 58. It is also agreed that if the site is not in the Green Belt that planning permission should be granted [104]. Implicit to such a concession is that the adverse impacts, which in that scenario are essentially restricted to 'landscape harm', would not significantly and demonstrably outweigh the benefits. It follows from the above that this appears to be something of a makeweight reason.

252. The Council contends that the site lies at the transition between 2 character areas and when assessed at the macro scale that might be correct[64]. However I consider that it is clear from the relevant excerpt from the York Landscape Appraisal that the site falls wholly within Landscape Character Type 10[65]. The appraisal finds that new development would be "*more appropriate here*" than in other areas. Whilst undertaken 20-years ago, in

[64] Figure 3.1 [PEC2.6] is at a scale where 1 cm = 5 km, and whatever conventional scale that equates to it renders it very difficult to drill down and look at an individual site.
[65] The urban area of Huntington is quite distinctively shown on Map 6 [DS10], which in my view leads one to a clear conclusion that the site lies within Landscape Character Type 10.

the non-Green Belt world of pure landscape appraisal it is hard to disagree with that conclusion.

253. The Appellant's LVIA demonstrates that the zone of visual influence extends little beyond the edge of the appeal site[66]. Whilst my site inspection suggested that views into the appeal site were available from the Ring Road along the majority of the northern boundary, I consider that this was as a passenger and would only likely be possible in winter. Ms Priestley fairly conceded in xx that the hedgerow was a significant screen in summer months. To this limited extent the zone of visual influence might be under-represented in the LVIA but this might be a reflection of when it was done [not later than 18 October 2016, as per the date on the plan] and whether the author was driving at the time[67].

254. It follows that the rear of the existing dwellings in Avon Drive, and to a lesser extent Strensall Road, are visible from the Ring Road, albeit through the hedgerow and only in winter. The boundary between the appeal site and the rear of the properties in Avon Drive is described by Mr Popplewell as a "*sharp visual discontinuity*" [91]. It serves to emphasise the open character of the appeal site. In terms of both character and visual continuity the main field on the appeal site is a link to the more extensive fields that lie to the east.

255. However, again in pure landscape appraisal terms, I find it difficult to argue with the Appellant's contention that the appeal proposal could deliver a more successful urban edge than that which presently exists [148]. The robust landscaped mound proposed [23] has the potential to more effectively screen views towards existing and proposed housing within a relatively short period. Although development of the appeal site would change its character, in line with the York Landscape Appraisal this would be a continuation of the urban influence that is already evident in the area and in views from the Ring Road.

256. My site inspection confirmed why the Council would seek to resist the form of development that has taken place in the Clifton Moor area of the City. The houses on the estate to the north of Manor Lane, backing onto the Ring Road, are highly visible from passing traffic due to the inadequacy of the hedgerow to provide a screen and, more than anything, their siting so close to the road. However I reject the suggestion that this form of housing development would be replicated on the appeal site. Due to a combination of a landscaped mound, the need to avoid development on the line of the water main [21] and the proposed pedestrian/cycle path [24], the houses would be sited much further back from the Ring Road than those served off Manor Lane.

257. On the fourth consideration I conclude that, subject to the imposition of the various conditions that are considered elsewhere [182-192], the proposed development would not harm the landscape character and setting of York.

[66] See drawing No 2696/2 within the LVIA [PEA2.1].
[67] R11 viewpoints might suggest repeated glances towards the appeal site but do not, based on my site inspection, relate to obvious gaps in the hedgerow or tree cover, notwithstanding the suggestion of the latter from the outline of trees on the appeal site on that plan.

v. Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal

258. The Appellant advances 5 other considerations, which Mr Hobson confirmed to be a complete list [96]. I propose to briefly examine each in turn:

259. (i) Housing supply shortfall. This has been explored at some length [51-62]. There is a large shortfall that will take a number of years to address and so whether the shortfall is described as "*significant*" [the Council] or "*acute*" [the Appellant], this is a factor to which I attach significant weight. This reflects the attribution of weight that the Council asserts to be common ground [97].

260. (ii) Economic Benefits. The Council has confirmed that it agrees that the scheme would deliver significant economic benefits [98]. These include 46 FTE jobs during each year of the 3-year construction phase [149], and I accept the construction costs of £15.45 m would result in a multiplier effect in the economy, focussed at the local level, but potentially spread more broadly. Once the dwellings are occupied those residents would increase spending in the local economy and I accept the argument that the resulting increase in housing supply would allow a better match between labour and employment, which would benefit York's economic competitiveness. However the New Homes Bonus is now acknowledged not to be a consideration [7] and I also reject the claim that the section 106 monies are a positive benefit because they merely offset the effect of the development, e.g. on the local schools. Nevertheless I attach significant weight to these economic benefits overall.

261. (iii) Affordable Housing. The S106 would ensure that the scheme will deliver 30% affordable housing and there is no reason to doubt the Appellant's view that there is a pressing need for affordable housing in York. The SHMA recorded an annual requirement of 573 affordable units and the SHMA addendum found that this level of need had increased to 627 dwellings [149]. However, whilst the Appellant says this is 70 % of the housing requirement in the emerging LP, the SHMA explains why such an analysis is too simplistic[68]. Nevertheless the Council says significant weight should be given to the fact that the scheme would deliver much needed affordable housing; I agree. In the circumstances I attach significant weight to this consideration.

262. (iv) The purposes of the Green Belt. I have already given reasons why the proposal would contribute to 4 Green Belt purposes and so I disagree with the Appellant's claim insofar as it underpins reliance on this consideration. In any event, an absence of harm cannot itself be an other consideration that could be said to weigh in favour of the scheme. Mr Hobson accepted in xx

[68] Paragraph 19 of the Executive Summary says: "…it is not appropriate to directly compare the need identified in the analysis with the demographic projections – they are calculated in different ways". This is further explained in the box on page 115 of 208, which says: "The identified affordable housing need represents 69%-73% of the need arising through the demographic projections. However, in considering this relationship, it is important to bear in mind that the affordable housing needs model includes existing households who require a different size or tenure of accommodation rather than new accommodation per se. Furthermore, many households secure suitable housing within the Private Rented Sector, supported by housing benefit" [all taken from CD2.16].

that this is a "*neutral point*" which did not weigh in favour of the scheme and so it would appear that this other consideration is no longer relied upon by the Appellant [100]. In the circumstances I attach no weight to this factor.

263. (v) Accessibility to service and facilities. This too, whilst a factor that does not count against the grant of planning permission, is fundamentally an absence of harm, rather than another consideration that could be said to weigh in favour of the scheme. There is no comparative analysis to show that this site is a more sustainable location than other sites that might be available in the City. Indeed to the extent that the appeal site has not been identified in the emerging LP whereas, following a Sustainability Appraisal [34], other sites have been, this is little more than a neutral point. Whilst I am prepared to accept that it is a positive factor that weighs in the scheme's favour, it is only appropriate to attach it very limited weight.

264. It is clear from Mr Hobson's proof of evidence[69] that the case advanced is based on a cumulative case that, taken together, these other considerations amount to the very special circumstances that are required. However I have given reasons why I attach no weight to the fourth consideration that is advanced and why it is appropriate to attach the fifth very limited weight.

265. Accordingly the focus is on the first 3 other considerations. The Guidance is clear that: "*Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt*"[70]. The Framework, at paragraph 47 first bullet-point, makes clear that LPAs should ensure that their LP meets the full OAN for market and affordable housing, which is reiterated in the Guidance[71]. So, insofar as the Guidance refers here to unmet housing need, I consider that it encompasses both market and affordable housing. My view is confirmed by reference to the SHMA, which says the Guidance: "*…is very clear that housing need refers to the need for both market and affordable housing*"[72] [*my emphasis*].

266. In reaching this view I have taken account of the contrary view of Inspector Hill [IR219, CD5.14]. However this part of the Guidance does not just refer to open market housing, but to unmet housing need, including for travellers sites. Although the fifth bullet-point of paragraph 89 of the Framework identifies limited affordable housing to be an exception, this too is an open market housing scheme which would provide for an element of affordable housing. That does not materially alter my assessment that the Guidance is referring here to housing need generically. Whilst not conclusive I note that the SoS considered housing, then affordable housing and only then considered that Guidance [paragraphs 19, 20 and 22, respectively, CD5.14].

267. So whilst I have given reasons to attach significant weight to the first and third other considerations that are advanced, the Guidance, corroborated by reference to WMS [see in particular CD6.06, CD6.07], strongly indicates that

[69] See, in particular, paragraphs 10.1 and 10.23, but also confirmed in xx.
[70] Paragraph ID 3-034-20141006.
[71] Paragraph ID 3-040-20140306.
[72] Source of quote: paragraph 9 of the Executive Summary [CD2.19].

unmet housing need is unlikely to give rise to very special circumstances. Although I have taken account of the magnitude of the shortfall [259], the need for affordable housing [261] and the fact that 'unlikely' does not mean it can never outweigh, in the circumstances of this case my judgement is that, cumulatively, these 2 considerations do not clearly outweigh the identified harm. Alternatively, if I am wrong in finding that the reference in the Guidance to unmet housing need encompasses both market and affordable housing, this scheme does not offer anything, in terms of affordable housing, beyond that which would normally be sought in the Council's area. For this reason this would not change my overall conclusion on this issue.

268. This leaves the second consideration, economic benefits. Whilst the Council is somewhat dismissive of these in saying they "*are the 'usual' benefits*" [98] there is a grain of truth in that characterisation. It is inconceivable that, in saying that unmet need would be unlikely to outweigh Green Belt harm, that the Government was unaware that such housing developments would not bring economic benefits such as those that are advanced in this case. So I consider it is fair to conclude that the policy position is effectively that new housing, *together with its associated economic benefits*, would be unlikely to outweigh Green Belt harm in order to constitute very special circumstances.

269. For these reasons I conclude that no considerations of sufficient weight have been advanced that amount, either individually or cumulatively, to the very special circumstances that are necessary to outweigh the harm by reason of inappropriateness and the other identified harm. For these reasons, having regard to all other matters raised, I conclude on the fifth consideration that there are no considerations sufficient to clearly outweigh the conflict with the DP overall, together with the harm to the Green Belt and the other harm.

vi. Whether the decision making matrix then requires an assessment against the first indent of the second bullet-point for decision-taking in paragraph 14 of the Framework and, if so, proceed to conduct that exercise

270. The Appellant says that in the conventional Green Belt balance, which I have undertaken above, no account has been taken of the fact that the policies which trigger that exercise are deemed out-of-date [157]. However section 38(6) determines that the DP is the starting point. I have assessed my findings on the third main consideration against the key RSS policy for decision taking and, as part of that exercise, it is necessary to assess the weight to be given to that policy. It follows that I disagree with this claim.

271. The sequence in the Framework determines that, in an appeal such as this, paragraph 49 of the Framework dictates that housing applications, and by extension appeals, *should be considered in the context of the presumption in favour of sustainable development*. The Council appears to suggest that paragraph 14 is not engaged [97] but paragraph 49 says the presumption should be applied in housing appeals. For decision-taking this is set out in paragraph 14 of the Framework and the final bullet-point applies in this case because the Green Belt policies are not up-of-date. However the second indent applies because specific policies in the Framework indicate that development should be restricted, i.e. Green Belt is identified in footnote 9. One then proceeds to the balancing exercise that I have conducted above, in

line with section 9 of the Framework, and if no very special circumstances are identified the decision-making process stops, with dismissal of the appeal.

272. The approach that the Appellant advocates does not end there but, to use the words that Mr Hobson used in chief, a finding that there are no very special circumstances "*throws you into paragraph 14*". When asked about this Mr Hobson said the trigger for that exercise was paragraph 49 of the Framework. It might that it is be being said that one does a freestanding Green Belt exercise, against section 9 of the Framework, before going to paragraph 14 of the Framework and hence just apply the presumption in favour of sustainable development once. However because of footnote 9 such an approach would go no further, because one would have applied the presumption in favour of sustainable development, as required by paragraph 49 of the Framework, but found that specific policies indicated that development should be refused.

273. However my impression is that the Appellant seeks to apply the presumption in favour of sustainable development twice, the first time to go to the Green Belt exercise, the second time to go to the first indent of the final bullet-point of paragraph 14 of the Framework [153, 160]. As I suggested to Mr Hobson, such an exercise would overlook the crucial word "or" between the first and second indents. Even if that impression might be wrong, the Appellant's closing not being explicit as to the route that the SoS is being invited to take, applying the presumption in favour of sustainable development does not lead one to the first indent of the final bullet-point of paragraph 14. Footnote 9 unambiguously dictates that the first indent is not engaged in a Green Belt case. In the circumstances this is not an approach to decision-making that I am able to recommend to the SoS. In reaching this conclusion I have taken account of the Appellant's arguments that have been presented [157-161], together with all other evidence before the Inquiry, including CD5.14.

274. For these reasons I conclude on the sixth consideration that in the Green Belt the decision making matrix does not require an assessment against the first indent of the second bullet-point for decision-taking in paragraph 14 of the Framework. It follows that I do not intend to proceed to conduct that exercise because, in line with the submissions that have been made by the Council [85-87], I consider that it would be an unlawful approach.

Overall conclusion

275. For the reasons discussed, having regard to all other matters raised, I conclude that the appeal should be dismissed.

Overall recommendation

276. I recommend that the appeal be dismissed. If the SoS is minded to disagree with my recommendation, Appendix C comprises a list of the conditions that I consider should be attached to any planning permission that is granted.

Pete Drew
INSPECTOR

APPENDIX A:
LIST OF APPEARANCES AT THE INQUIRY

FOR THE LOCAL PLANNING AUTHORITY:

Robert Walton, Counsel	Instructed by City of York Council.
He called:	Kevin O'Connell, BA (Hons), Dip TP, Senior Planning Officer, City of York Council. Esther Priestley BA (Hons) LA CMLI, Landscape Architect, City of York Council. Richard Wood MRTPI, Director Richard Wood Associates Ltd.

FOR THE APPELLANT:

Ian Ponter, Counsel	Instructed by Nabarro Solicitors.
He called:	James Hobson BA (Hons), MRTPI, Director WYG. Martin Popplewell BSc (Hons), MA, MLI, Director Rosetta Landscape Design.

INTERESTED PERSONS [THOSE WHO ADDRESSED THE INQUIRY IN PERSON]:

Professor Keith Hartley	Local resident.
Mrs Felicity Paterson	Local resident.
Councillor Keith Orrell	Councillor for Huntington and New Earswick Ward.

APPENDIX B:
LIST OF DOCUMENTS BEFORE THE INQUIRY

i) DOCUMENTS SUBMITTED AT THE INQUIRY [DS]

1 List of appearances on behalf of the Appellant.
2 Council's letter dated 3 November 2016 to advise of the date of the Inquiry, including a list of persons to whom it was circulated.
3 Appellant's opening submissions.
4 Opening submissions on behalf of the Council.
5 Drawing entitled "*Figure 5 – Site Context*", which was submitted by the Appellant at the Inquiry.
6 Decision notice for application No 16/00880/NONMAT, dated 23 August 2016, which was submitted by the Council at the Inquiry.
7.1-7.3 Local Plan position statement, report to Local Plan Working Group and report to the Executive on 7 December 2016, respectively, which were submitted by the Council at the Inquiry.
8 Document entitled "*Response on behalf of City of York Council to the Inspector's pre-Inquiry Note in respect of the New Homes Bonus*", which was submitted by the Council at the Inquiry.
9 Document entitled "*Points to be raised*", which was submitted by Professor Hartley at the Inquiry.
10 Map 6 from York Landscape Appraisal, which was submitted by the Appellant at the Inquiry.
11 Signed Statement of Common Ground, dated 6 December 2016.
12 Strategic Environmental Assessment of the Revocation of the Yorkshire and Humber Regional Strategy, which was submitted by the Council at the Inquiry.
13 Document entitled "*A Compliance Note by City of York Council regarding the Planning Obligations contained in the draft s106 Agreement in relation to the appeal and in light of Regulation 122 of the Community Infrastructure Levy Regulations 2010*" , which was submitted by the Council at the Inquiry.
14 List of suggested planning conditions "*Draft 2*", which had a measure of agreement between the parties, but was tabled by the Council.
15 Schedule of amendments to referencing of Core Documents in James Hobson's proof, which was submitted by the Appellant at the Inquiry.
16.1-16.2 Estimates of level of contributions for: (i) bus stop improvements and offsite sports contribution; and (ii) pre-school and secondary education, which were submitted by the Council at the Inquiry.
17 Statement of Mrs Paterson.
18 Document setting out points for discussion, which was submitted by Councillor Keith Orrell at the Inquiry.
19 Signed Section 106 Agreement dated 8 December 2016.
20.1-20.4 Closing submissions on behalf of the Council, together with transcripts from (i) *Forest of Dean v SSCLG* [2016] EWHC 421(Admin); (ii) *East Staffordshire BC v SSCLG & Barwood Strategic Land* [2016] EWHC 2973 (Admin); and (iii) *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin), which are referred to therein.
21.1- Closing submissions on behalf of the Appellant, together with bundle of

21.4 documents referred to therein, comprising: (i) excerpts from sections 65, 79 and 327A of the Act; (ii) excerpts, comprising Articles 13 and 14, from the Town and Country Planning (Development Management Procedure) (England) Order 2015; and (iii) and appeal decision dated 13 August 2013 [Ref APP/P2935/A/12/2188374].

ii) DOCUMENTS CIRCULATED OUTSIDE OF THE INQUIRY [DC]

1 Original letters of notification including a list of persons to whom it was circulated.
2.1- 2.3 Correspondence from interested parties that was submitted to The Planning Inspectorate [PINS] in response to the Council's letter of notification.
3 Email from PINS to City of York Council regarding compliance with CIL Regulation 123.
4 Inspector's pre-Inquiry note, which was circulated in advance of the Inquiry.
5 CIL Regulation 123 Compliance Statement dated November 2016 and submitted to PINS on that date by the City of York Council.

iii) CORE DOCUMENTS [CD]

CD1. NATIONAL POLICY

1.1 National Planning Policy Framework [March 2012].
1.2 National Planning Practice Guidance.

CD2. REGIONAL AND LOCAL POLICY

2.1 City of York Local Plan: The Approach to the Green Belt Appraisal [February 2003].
2.2 City of York Draft Local Plan, incorporating the fourth set of changes [April 2005].
2.3 The Yorkshire and Humber Plan: Regional Spatial Strategy [RSS] to 2026 (saved policies) [May 2008].
2.4 City of York Local Development Framework [LDF] Statement of Community Involvement [December 2007].
2.5 City of York LDF Historic Character and Setting Technical Paper [January 2011].
2.6 North Yorkshire County Council: North Yorkshire and York Landscape Characterisation Project [May 2011].
2.7 City of York LDF: Core Strategy Submission Draft [June 2011].
2.8 The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013.
2.9 City of York Historic Character and Setting Technical Paper Update [June 2013].
2.10 City of York Heritage Topic Paper [June 2013].
2.11 City of York Local Plan Preferred Options [June 2013].
2.12 WYG Representations to the York Local Plan Preferred Options [July 2013].
2.13 City of York Site Selection Technical Paper [June 2013].
2.13a City of York Site Selection Technical Paper Addendum [September 2014].
2.14 City of York: Open Space and Green Infrastructure [September 2014].

2.15 City of York Local Plan: Further Sites Consultation [June 2014].
2.16 City of York Council Strategic Housing Market Assessment [June 2016].
2.16a City of York Council Strategic Housing Market Assessment Addendum [June 2016].
2.17 City of York Local Plan: Preferred Sites Consultation [July 2016].
2.18 City of York Local Development Scheme [July 2016].
2.19 City of York Objective Assessment of Housing Needs Technical Report [July 2016].
2.20 City of York Local Plan: Windfall Allowance Technical Paper [July 2016].
2.21 City of York Local Plan: Preferred Sites Consultation Sustainability Appraisal [July 2016].
2.22 York Green Belt Local Plan: Report on Objections to the Plan - Inspectors Report [January 1994].
2.23 Local Transport Plan 2011-2031 [LTP3].

CD3. APPLICATION DOCUMENTS

3.1 Built Form Masterplan: Drawing Number HG2398/011 [11 February 2015].
3.2 Planning Statement: Document Reference: HG2398/JR/AY [30 March 2015].
3.3 Landscape Proposals: Drawing Number 1 [March 2015].
3.4 Redline plan of the development site: Drawing Number: HG2398/0001 [8 April 2015].
3.5 Application Form for the erection of 109 dwellings [9 April 2015].
3.6 Design and Access Statement [March 2015].
3.7 Statement of Community Involvement produced by Signet Planning [March 2015].
3.8 Planning Noise Assessment: Document Reference DC1616-R1 [February 2015].
3.9 Phase 1 Environmental Assessment: Project Number 7412 [January 2015].
3.10 Transport Statement: Document Reference jgv/13021/TS/v1 [March 2015].
3.11 Tree Survey [February 2015].
3.12 Great Crested Newts Survey: Document Reference 49343424 [June 2012].
3.13 Historical and Archaeological Desk Based Assessment [January 2015].
3.13a Archaeological Geographical Survey: Document Reference ARC/1683/604 [November 2015].
3.14 Flood Risk Assessment and Drainage Strategy: Document Reference 11935-5000 Rev 1 [March 2015].
3.15 Committee Report relating to planning application reference 15/00798/OUTM [22 October 2015].
3.16 Minutes from Planning Committee meeting [22 October 2015].
3.17 Refusal of Outline Planning Permission Notice relating to planning application 15/00798/OUTM [2 November 2015].
3.18 Consultee responses to the Planning Application.
3.19 Archaeological Trail Trenching [5 January 2016].
3.20 Phase 1 Habitat Survey and Ecological Appraisal [June 2015].

CD4. APPEAL DOCUMENTS

4.1 Appellant's Statement of Case [April 2016].
4.2 Council's Statement of Case [18 July 2016].
4.3 Third party representations to appeal.

4.4 Draft Statement of Common Ground dated May 2016.

CD5. CASE LAW / LEGISLATION / RELEVANT APPEAL DECISIONS

5.1 *R. (oao Smech Properties Ltd) v Runnymede BC* [2016] EWCA Civ 42.
5.2 *R. (oao Timmins) v Gedling BC* [2016] EWHC 220 (Admin).
5.3 *R. (oao Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404.
5.4 *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466.
5.5 *Cheshire East BC v Secretary of State for Communities and Local Government* [2016] EWHC 694.
5.6 *Dartford BC v Secretary of State for Communities and Local Government* [2016] EWHC 635 (Admin).
5.7 *Richborough Estates Partnership LLP v Cheshire East Borough Council also known as Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ 168.
5.8 *Tandridge DC v Secretary of State for Communities and Local Government* [2015] EWHC 2503 (Admin).
5.9 *Pertemps Investments Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 2308 (Admin).
5.10 *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1173 (Admin).
5.11 *Secretary of State for Communities and Local Government and others v Redhill Aerodrome Limited* [2014] EWCA Civ 1386.
5.12 *South Bucks District Council v Porter* (FC), 1 July 2004 (House of Lords).
5.13 *R v Secretary of State for the Environment, Transport and the Regions ex parte O'Byrne* [2002] UKHL 45.
5.14 Appeal decision: Brecks Lane, Strensall (Ref: APP/C2741/V/14/2216946) [18 March 2015].
5.15 Appeal decision: Germany Beck, Fulford, York (Ref: APP/C2741/V/05/1189879) [9 May 2007].
5.16 Appeal decision: West View Close (Ref: APP/C2471/A/13/2191767) [9 July 2013].
5.17 Appeal decision: Land south of Strensall village, Strensall YO32 5XB (Ref: APP/C2741/W/16/3154113) [4 October 2016].
5.18 Appeal decision: Land at Pulley lane, Droitwich Spa (Ref APP/H1840/A/13/2199085) [2 July 2014].

CD6. CITY OF YORK DOCUMENTS

6.01 North Yorkshire County Council: Structure Plan Third Alteration [adopted October 1995].
6.02 Local Plan Preferred Options: consultation [June/July 2013].
6.03 City of York Local Plan Publication Draft [September 2014].
6.04 Employment Land Review (ELR) [July 2016].
6.05 City of York Local Plan Heritage Impact Appraisal [September 2014].
6.06 Written Ministerial Statement by Local Government Minister (Brandon Lewis) [July 2013].
6.07 Written statement to Parliament by the Parliamentary Under Secretary of State for Communities and Local Government (Brandon Lewis) [January 2014].

6.08 Planning Minister, Brandon Lewis, wrote to the Chief Executive at the Planning Inspectorate about Strategic Housing Market Assessments [December 2014].
6.09 Written ministerial statement by Brandon Lewis [December 2015].
6.10 Inspector's Report in relation to the appeal for the proposed university campus (APP/C2741/V/05/1189972) [May 2007].
6.11 Secretary of State decision in relation to the appeal for the proposed university campus (APP/C2741/V/05/1189972) [May 2007].
6.12 Appeal decision: Elvington Aerodrome appeal (APP/C2741/A/08/2069665) [January 2009].
6.13 Release from CLG of the 2014 based sub national household projections [July 2016].
6.14 Brecks Lane Appeal Site location plan - Brecks Lane, Strensall (Ref: APP/C2741/V/14/2216946) [March 2015].
6.15 Appeal decision: Land south of Strensall village, Strensall YO32 5XB (Ref: APP/C2741/W/16/3154113) [October 2016].
6.16 *Wychavon District Council v SSCLG & Anor* [2016] EWHC 592 (Admin).
6.17 *Gladman Developments Limited v Daventry District Council and Anor* [2016] EWCA Civ 1146.

iv) APPENDICES TO PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF THE APPELLANT [PEA]

1.1-1.7 Appendices 1-7 attached to the proof of evidence of James Hobson.
2.1-2.3 Appendices 1-3 attached to the proof of evidence of Martin Popplewell.

v) APPENDICES TO PROOFS OF EVIDENCE SUBMITTED BY THE COUNCIL [PEC]

1.1-1.6 Appendices 1-6 attached to the proof of evidence of Kevin O'Connell.
2.1-2.6 Appendices 1-6 attached to the proof of evidence of Esther Priestley.
3.1-3.7 Appendices 1-7 attached to the proof of evidence of Richard Wood.

APPENDIX C: LIST OF SUGGESTED CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED

1. No development shall start until details of the appearance, landscaping, layout, and scale (hereinafter called “the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.

Reason: In order that the LPA may be satisfied as to the details of the development and to comply with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

2. Application for approval of the reserved matters shall be made to the LPA not later than the expiration of three years beginning with the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Act.

3. The development hereby permitted shall be carried out in accordance with the following approved drawing Nos: (i) HG2398/001; and (ii) HG2398/011, but the latter only insofar as it shows the details of access.

Reason: For the avoidance of doubt, in the interests of proper planning and to ensure that the development is carried out only as approved by the LPA.

4. No development above foundation level shall take place until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details.

Reason: So as to ensure the development has a visually cohesive appearance.

5. Within one month of the commencement of the development fully detailed drawings illustrating the design and materials of roads, footpaths, cycleways and highway verges shall be submitted to the LPA for approval in writing. The development shall be carried out in accordance with the approved details.

Reason: In the interests of highway safety.

6. Notwithstanding the details of the eastern access shown on drawing No HG2398/011, prior to the construction of that access fully detailed drawings showing what steps are proposed to restrict the use of this access for certain types of vehicles shall be submitted to the LPA for approval in writing. The development shall be carried out in accordance with the approved details and any restrictive measures shall be retained for the lifetime of the development.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the LPA.

7. Within one month of the commencement of the development details of the two junctions between the internal access roads and the public highway at Avon Drive shall be submitted to the LPA for approval in writing. No dwelling shall be occupied until the junctions have been constructed in accordance with the approved details.

Reason: In the interests of highway safety.

8. Within one month of the commencement of the development details of secure cycle storage for each dwelling, which might comprise identified space within a garage or shed where available, shall be submitted to the LPA for approval in writing. No dwelling shall be occupied until the secure cycle storage for each dwelling has been provided in accordance with the approved details. The identified areas shall be retained for cycle storage for the lifetime of the development and shall be used for no other purpose.

Reason: To promote use of cycles thereby reducing congestion on the adjacent roads and in the interests of the amenity of neighbours.

9. No development above foundation level shall take place until details of the parking and manoeuvring of vehicles to serve each dwelling have been submitted to and approved in writing by the LPA. The areas shown on the approved plans for parking and manoeuvring of vehicles shall be constructed and laid out in accordance with the approved plans prior to the first occupation of each dwelling to which it relates, and thereafter such areas shall be retained for the lifetime of the development and shall be used for no other purpose.

Reason: In the interests of highway safety.

10. No development shall take place until a dilapidation survey of the highways adjoining the site has been jointly undertaken with City of York Council and the results of that survey have been agreed in writing with the LPA.

Reason: In the interests of the safety and good management of the public highway, the details of which must be recorded prior to the access to the site by any construction vehicle.

11. Prior to the commencement of any works on the site, a detailed method of works statement identifying the programming and management of site clearance, preparatory and construction works shall be submitted to and approved in writing by the LPA. Such a statement shall, at a minimum, include the following information:
    - the routing that is proposed for use by the contractors, including main arterial routes, and the steps proposed to avoid the peak network hours;
    - timings for construction vehicles to arrive/depart the site;
    - where contractors are proposed to park;
    - where materials are proposed to be stored within the site;
    - the measures that are proposed to ensure that no mud/detritus is dragged out over the adjacent public highway; and,
    - publicly available contact details.

The development shall be carried out in accordance with the approved method of works statement.

Reason: To ensure that the development can be carried out in a manner that would not be detrimental to the amenity of local residents, free flow of traffic or safety of highway users. The details are required prior to commencement in order to ensure that they are in force at an appropriate point in the development procedure and during the whole of the construction phase of the development.

12. No dwelling to which this planning permission relates shall be occupied unless or until the carriageway basecourse and kerb foundation to the new estate road and footpath to which it fronts, is adjacent to or gains access from, has been constructed. Road and footway wearing courses and street lighting, in accordance with the approved lighting strategy, shall be provided within three months of the date of commencement of the construction of the penultimate dwelling of the development.

Reason: To ensure appropriate access and egress to the properties, in the interests of highway safety and the convenience of prospective residents.

13. No development shall take place until an ecological design strategy (EDS) addressing mitigation and enhancement has been submitted to the LPA and approved in writing. The EDS shall include the following:
    a) Purpose and conservation objectives for the proposed works.
    b) Review of site potential and constraints.
    c) Detailed design(s) and/or working method(s) to achieve stated objectives.
    d) Extent and location/area of proposed works on appropriate scale maps and plans.
    e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
    f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
    g) Persons responsible for implementing the works.
    h) Details of initial aftercare and long-term maintenance.
    i) Details for monitoring and remedial measures.
    j) Details for disposal of any wastes arising from works.

    The EDS shall be implemented in accordance with the approved details and timetable and all features shall be retained in that manner thereafter.

Reason: To meet the requirements of paragraph 118 of the Framework which states that when determining planning applications an LPA should aim to conserve and enhance biodiversity including by encouraging opportunities to incorporate biodiversity in and around developments. The EDS is required prior to commencement of development to ensure that appropriate ecological mitigation measures are in place throughout the construction period.

14. If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 2 years of the date of approval of the EDS, it shall be reviewed and, where necessary,

amended and updated. The review shall be informed by further ecological surveys commissioned to: (i) establish if there have been any changes in the presence and/or abundance of great crested newts; and, (ii) identify any likely new ecological impacts that might arise from any changes.

Reason: In the interests of protecting protected species.

15. Where the survey results referred to in condition 14 indicate that changes have occurred that would result in ecological impacts not previously addressed in the approved scheme referred to in condition 14, the original approved ecological measures shall be revised and new or amended measures, and a timetable for their implementation, shall be submitted to and approved in writing by the LPA prior to the commencement of development. The development shall be carried out in accordance with the ecological measures and timetable approved under this condition.

Reason: To take account of changes in the distribution or abundance of mobile protected species on site.

16. No development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP) in respect of biodiversity has been submitted to and approved in writing by the LPA. The CEMP shall include the following:
    a) Risk assessment of potentially damaging construction activities.
    b) Identification of 'biodiversity protection zones'.
    c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
    d) The location and timing of sensitive works to avoid harm to biodiversity features.
    e) The times during construction when specialist ecologists need to be present on site to oversee works.
    f) Responsible persons and lines of communication.
    g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
    h) Use of protective fences, exclusion barriers and warning signs.

    The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the LPA.

Reason: To secure practical measures to avoid or reduce impacts to biodiversity features during construction, as appropriate to the scale of development. The details are required prior to commencement in order to ensure that they are in force at an appropriate point in the development procedure and during the whole of the construction phase of the development.

17. Within one month of commencement of development a lighting scheme ["lighting strategy"] shall be submitted to the LPA for approval in writing. The lighting strategy shall:
    - Identify those areas/features on the site that are particularly sensitive for wildlife, together with key vantage-points from the Ring Road; and,

- Show how and where external lighting is proposed to be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be demonstrated that there would not be a negative impact on wildlife and to ensure that views of the external lighting would be restricted when viewed from the Ring Road.

All external lighting shall be installed in accordance with the specifications locations and timetables set out in the lighting strategy, and these shall be maintained thereafter in accordance with the approved lighting strategy.

Reason: To contribute to and enhance the natural and local environment by encouraging good design to limit the impact of light pollution from artificial light on nature conservation in line with the Framework.

18. No development shall take place until details of the proposed means of foul and surface water drainage, including details of any balancing works and off site works, have been submitted to and approved by the LPA. The site shall be developed with separate systems of drainage for foul and surface water on and off site. No dwelling shall be occupied prior to completion of the approved foul drainage works and, unless otherwise approved in writing by the LPA, there shall be no piped discharge of surface water from the development prior to the completion of the surface water drainage works in accordance with the details that have been approved.

Reason: In order to ensure satisfactory foul and surface water drainage of the site and ensure that no surface water discharges take place until proper provision has been made for its disposal.

19. Unless otherwise agreed in writing by the LPA, no building or other obstruction (including new tree planting) shall be located over or within 7.5 (seven point five) metres either side of the centre line of the large diameter raw water main, which crosses the site.

Reason: In order to allow sufficient access for maintenance and repair work at all times and protect the pipe from tree root infestation damage.

20. No development shall take place until a scheme for landscape mitigation adjacent to the A1237 has been submitted to and approved in writing by the LPA. Any earthworks and fencing details that form part of the approved scheme shall be implemented before any other development operations commence on site. The associated mitigation planting shall be implemented within one year of the commencement of the landscape mitigation works.

Reason: In the interests of the finished appearance of the development and to ensure that the landscape mitigation takes effect as soon as possible.

21. The reserved matters application shall include a tree survey, an arboricultural impact assessment and an arboricultural method statement of all trees on the site and immediately adjacent to the site in accordance with BS 5837: 2012. It should identify those trees to be retained and those to be felled and include details of tree protection during development operations. The documents shall include details of the following where they occur near existing trees: existing

and proposed levels; existing and proposed surfacing; and the locations of existing and proposed underground service runs.

Reason: To ensure the retention and protection of existing trees that are desirable and/or suitable for retention before, during and after development and to allow an accurate assessment of the compatibility of the detailed development proposals with existing trees which are the subject of a tree preservation order (TPO) and/or make a significant contribution to the amenity of the area and/or development.

22. No development above foundation level shall take place until a scheme has been submitted to and approved in writing by the LPA to demonstrate that the internal noise level within the dwellings hereby permitted conform to the standard identified by BS 8233:2014, taking account of all known sources of traffic and other noise. The work specified in the approved scheme shall be carried out in accordance with the approved details prior to first occupation of the dwellings hereby permitted and retained thereafter as approved.

Reason: In order to ensure the occupiers of the approved dwellings enjoy satisfactory living conditions.

23. No development shall take place until details of an acoustic noise barrier to protect the residential gardens and other external areas in the development hereby permitted have been submitted to and approved in writing by the LPA. These details shall include the construction method, height, thickness, acoustic properties and the exact position of the barrier. The barrier shall be erected in accordance with the approved details before the first occupation of any dwelling and shall be maintained thereafter for the life of the development.

Reason: In the interests of the living conditions of prospective residents and having regard to the stated objective of incorporating such an acoustic feature into the planted mound, which needs to be delivered at an early stage in the interests of the character and appearance of the area.

24. All construction and demolition works and ancillary operations, including deliveries to and dispatch from the site shall be confined to the following hours: Monday to Friday 08.00 to 18.00, Saturday 09.00 to 13.00, and not at all on Sundays or Bank Holidays.

Reason: In the interests of the living conditions of existing residents.

25. In the event that contamination is found at any time when carrying out the approved development, the contamination shall be reported in writing immediately to the LPA. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared and shall be submitted to the LPA for approval in writing. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to the LPA for approval in writing.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can

be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

26. Prior to the occupation of each dwelling, other than a flat or property without a garage or driveway, a 3-pin, 13-amp electrical socket shall be provided at each dwelling, other than as defined above, in accordance with the following:
    - For all garage spaces: provision in a suitable location to enable the charging of an electric vehicle using a 3m length cable. Any socket provided must comply with BS1363 or an equivalent standard and be suitable for charging electric vehicles; and,
    - For all driveways: provision of an electrical socket which is suitable for outdoor use, located in a suitable position to enable the charging of an electric vehicle on the driveway using a 3m length cable. Any socket provided must comply with BS1363, or an equivalent standard and be suitable for charging electric vehicles. It should also have a weatherproof cover and an internal switch should be also provided in the property to enable the socket to be turned off.

Reason: To promote sustainable transport through the provision of recharging facilities for electric vehicles.

27. No work shall commence on site until the applicant has secured the implementation of a programme of archaeological work (an open area archaeological excavation and subsequent programme of analysis and publication by an approved archaeological unit) in accordance with a specification supplied by the LPA. This programme and the archaeological unit shall be approved in writing by the LPA before development commences. No dwelling shall be occupied until a full report on the archaeological excavation has been submitted to and agreed in writing by the LPA.

Reason: The site lies within an Area of Archaeological Interest which contains Romano-British features and the development would affect these important archaeological deposits which must be recorded prior to their destruction. The information is sought prior to commencement to ensure that the programme of works is initiated at an appropriate point in the development procedure to avoid the irrevocable destruction of non-designated heritage assets. As the site is of archaeological interest a report on the archaeological excavation is required to disseminate the results of the archaeological investigation.

28. The details submitted pursuant to the reserved matters application shall incorporate measures, in terms of external design and layout, to minimise the risk of crime and disorder, and the application shall be accompanied by a statement that sets out the rationale for the measures that have been included. The identified measures shall be implemented in accordance with the approved details before the first occupation of any dwelling in that part of the site and shall be maintained thereafter for the life of the development.

Reason: In the interest of community safety, to reduce the fear of crime and to prevent crime and disorder, having regard to the Guidance.

29.The development hereby permitted shall comprise 109 dwellings.

Reason: For the avoidance of doubt in order to deliver the full benefits of the scheme.

30.All dwellings shall be less than 3-storeys in height.

Reason: In the interests of the living conditions of existing residents and to maintain the character and appearance of the neighbourhood.

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.