

APPEAL BY BRANDON ESTATES LTD

APPLICATION REF: R/0186

COVENTRY STADIUM, RUGBY ROAD

CLOSING STATEMENT

ON BEHALF OF

SAVE COVENTRY SPEEDWAY AND STOX CAMPAIGN GROUP (SCS)

Introduction

1. I would ask that this Closing Statement be read alongside my Opening Statement.

Main issues

(1) Whether the proposed development forms inappropriate development in the Green Belt, the effect on openness and Green Belt purposes

2. SCS take the view that the proposed development constitutes “inappropriate development” in the Green Belt. Mr Carter did query the extent to which the whole appeal site is previously developed land but his main point, as to whether the exception in NPPF paragraph 149 (g) is applicable, is as to:

- (a) whether the development would have a greater impact on the openness of the Green Belt than the existing development;
or, if and insofar as it would meet an identified affordable housing need within Rugby Borough
- (b) whether it would cause substantial harm to the openness of the Green Belt.

3. NPPF paragraph 137 is an important starting-point: “The government attaches great importance to Green Belts. The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”
4. Openness can have visual as well as spatial aspects. Extracts from relevant, well-known and uncontroversial case law is set out at Appendix A (pp33-34).¹
5. A substantial part, indeed the majority, of the appeal site is open and free from buildings, the stadium buildings being set back well into the site. It is no accident that the appeal site was and remains included in the Green Belt.
6. This openness is apparent from Rugby Road in particular, as well as Speedway Lane. Whilst there is a ribbon of existing housing fronting Rugby Road, including bungalows as well as houses, (i) this covers only approximately half of the frontage; (ii) until the temporary security fencing was erected, open views along Rugby Road were afforded by existing accesses; and (iii) there is an (accurate) impression of openness behind.
7. The proposed development, which would be sited much closer (approximately 80m at its closest) to Rugby Road than the stadium buildings, would be very apparent from Rugby Road and Speedway Lane. Moreover the Council’s Landscape and Arboricultural Officer² referred to the removal of TPO oak trees along Rugby Road as leaving “a large 23 metre gap”, with “views being opened up into the site”. Screening landscaping (and/or the device of a dog leg in the proposed access road) can hardly be said to preserve openness.
8. The suggestion by Mr Chard that the proposed housing would be in keeping with and “consolidate the morphology of the settlement”³ of nearby Binley Woods was both misplaced and revealing: that settlement is not within the Green Belt; in addition the

¹ (i) openness is the counterpart of urban sprawl; (ii) openness is not necessarily a statement of the visual qualities of the land; (iii) consideration is not limited to a volumetric comparison, indeed less volume could have a greater impact on openness.

² CD 9.25.

³ Mr Chard at the Green Belt Round Table.

proposed development would be some 350 m from the defined settlement boundary. The proposed development would considerably add both to the amount of built development and the coverage of it on the appeal site and thus not safeguard (but instead suburbanise) the countryside⁴ beyond Binley Woods.

9. It is important, too, to bear in mind that the function of this part of the West Midlands Green Belt is in part to prevent Coventry, whose eastern bypass lies almost immediately to the west of Binley Woods, from merging with Rugby. Mr Carter drew attention to the fact that, if one were to draw a line between the city centre of Coventry and Rugby town centre, the appeal site would lie approximately half way along that line. That line continues to the east along the A428, passing through a number of settlements on the A428; and the appeal site is only 8 kms from Long Lawford (which Mr Carter referred to as “expanded Rugby”). This emphasises the sensitivity of this gap in the context of the proposed strategic-size development. Purposes (b) and (c) are thus of particular relevance in this case.

10. The Council’s planning officer in the present case appears to have been misled⁵ by the then applicant’s assertion⁶ that the development coverage of the site footprint of the buildings would be reduced by the proposed development from 4.35 ha to 4.1 ha.

11. Upon analysis this is clearly incorrect. Mr Carter provided statistics which suggest an increase both (i) in footprint and (ii) in coverage of the appeal site (and these figures have not been contradicted). The figures given in evidence are set out at Appendix B (page 35).

12. In addition reference has been made by SCS to the impact of floodlighting columns, 4 m high closely-meshed fencing around the 3G pitch, and other related paraphernalia.

⁴ it is not suggested that this is open countryside.

⁵ See CD6, para.s 5.4-5.5.

⁶ Based for example on CD1.7 Comparative Coverage Plan.

13. Whether considered in spatial and/or visual terms, therefore, SCS consider that the proposed development would clearly have a greater impact on, and cause substantial harm to, the openness of the Green Belt.
14. As Mr Carter pointed out, if the foregoing had been appreciated by the planning officer, the officer's recommendation may well have been different.
15. If it be accepted that the proposed development is therefore "inappropriate development" in the Green Belt, it is considered that "very special circumstances" have not been demonstrated – i.e. all the harms are not "clearly outweighed" by other considerations. If this view be taken, then great (negative) weight is to be attached to this breach of national and local policy.

(2) Whether the stadium is surplus to requirements having regard to national and local planning policies

16. As observed in Opening, neither SCS, the Council, White Young Green consultants nor any of the respective sports' governing bodies⁷ (and related organisations⁸) regard the site as surplus to requirements.
17. A central part of the Appellant's case is that both speedway and stock-car racing are in terminal decline. It was genuinely baffling⁹ to SCS that Mr Osborne, assisted professionally by Mr Hooper, should actively be seeking to promote a new site for speedway and stock car racing in the Swindon area if it were really believed that speedway and stock car racing are in terminal decline.

⁷ Speedway Control Board CDs 10.11 and 10.12; British Stock Car Association CDs 10.2-10.4 (BriSCA) & Oval Racing International (ORCi).

⁸ including the ACU, BSPL and BSCDA. See too, for example, CD 10.1-10.4, 10.6-10.12.

⁹ The question (XX of Mr Osborne, 28th September, at 2 hours 33 mins of 'YouTube' recording) as to whether a 'game' was being played simply reflected that natural bewilderment – already set out in Mr Carter's proof (and others, for example Mr Morris) yet not addressed in cross-examination of Mr Carter nor in examination in chief of Mr Osborne.

18. Mr Osborne, however, under XX denied that that was his belief. This was a very important denial: it undermines a central part of the Appellant's case that the appeal site is surplus to requirements.
19. Mr Hooper's position at this inquiry appears to be carefully crafted. After all he too is supporting the Swindon proposal. He states in his proof that speedway is "severely challenged"¹⁰ but even he is careful not to state that the same applies to speedway and stock car racing combined. It is highly pertinent to note that stock car racing had run alongside speedway at Brandon for 62 years and had therefore been an important factor in the ongoing viability of the stadium.
20. The stadium is plainly not surplus to the sport of speedway racing's requirements.
21. Mr Ford, a very successful speedway promoter at Poole, wishes to resurrect and promote the Coventry Bees; and Mr Eady did not contradict Mr Horton's statement¹¹ as to the need for this to occur in the Brandon/Rugby area; nor, under XX, did Mr Eady suggest that there was another venue in that area that could accommodate a speedway track. A requirement is of course most unlikely to be 'surplus' if it cannot be met elsewhere.
22. The stadium is plainly not considered surplus to speedway racing requirements by that sport's national governing body. This is not surprising, not only because of the close and long association of its history with speedway racing in the UK and the West Midlands but also because it has one of the best shale tracks in the country.
23. The West Midlands, a large and populous area, is likely to be devoid of speedway tracks if this appeal be allowed: the threatened closure of Birmingham Speedway follows the recent closure of Wolverhampton Speedway. Moreover, the appropriateness of the central location of the appeal site relative to the trunk road and rail network serving the UK is manifest.

¹⁰Proof, para. 52.

¹⁰ CD 10.18 Appendix 18.

24. As regards stock car racing, firstly the fact that it is not currently recognised as a sport by Sport England¹² does not preclude it from being a sport too, nor for that matter a recreation, also within the purview of NPPF para.99. Moreover, the test is whether an assessment has clearly shown that the land and/or buildings are surplus to requirements, whether sporting or recreational.
25. Secondly, the appeal site is the location of the “Wembley Stadium” of that form or racing (just as, for example, Silverstone is to Grand Prix motor racing).
26. Thirdly, only Hednesford Raceway would remain in the West Midlands yet that venue has severe restrictions over the number of events, days, and hours in which is permitted to operate.¹³
27. The foregoing analysis is entirely consistent with NPPF para. 98 which directs a decision-maker to consider both quantitative and qualitative issues in respect of the requirements for sport and recreation facilities.
28. The focus of ANOG¹⁴ is on participation in sports; the matters set out in paragraph 22 above are likewise participant-focussed; and any sensible application, by analogy, of the guidance in ANOG should, it is submitted, result in the conclusion that the appeal site is not surplus to the *participants’* requirements.
29. Obviously sports such as speedway and stock car racing need both venues and spectators. To focus on participants only without any regard to the spectators who support the sport would be inappropriate. Coventry Bees is an apt example of the inter-relationship between the location of a venue for participants *and* its spectators.

¹² motorsport is but UK Motorsport is the only recognised governing body. Stock car racing has its own governance arrangements. Mr Rees, representing the governing bodies of oval racing, indicated that it is in discussions with Sport England in order to secure recognition.

¹³ CD 15.5.3 page 9 (response to Sports Need Assessment Nov 2018); CD 10.18 (‘Errors and Untruths’ document Jan 2019) page 11.

¹⁴ Sport England’s Assessing Needs and Opportunities Guide for indoor and outdoor sports facilities.

30. NPPF paragraph 93(a) includes sports venues as community facilities. Paragraphs 93, 98 and 99 likewise together refer to

- the provision of social and recreational facilities [which] the community needs,
- taking into account the health and social well-being for all sections of the community;
- guarding against the unnecessary loss of valued facilities; and
- requiring robust and up-to-date assessments of the need for sport and recreation facilities (including quantitative or qualitative deficits or surpluses); and requiring replacement by equivalent or better provision in terms of quantity and quality.

Whilst participation in sport is of course a very important aim, the NPPF is concerned also with the provision of facilities for spectators who attend to support their team and thus to take part in social interaction which in turn contributes to well-being.

31. Policy LF1 of the NDP recognises the stadium as a valued¹⁵ community facility. It is not only valued locally, but nationally and indeed internationally as the many representations referred to in the officer's report to committee make clear¹⁶ and as the vast majority of the representations made clear in response to the notification of the appeal also attest.¹⁷

32. Mr Allen undertook an independent review of the respective claims of SCS and the Appellant in 2018/2019 and spoke to all concerned. Notwithstanding Mr Allen's previous view¹⁸ as to the declining interest in speedway and stock car racing, his view clearly changed having reviewed SCS's written representations and spoken to SCS and

¹⁵ Para. 10.4 of the NDP.

¹⁶ even though the representations themselves are not accessible to third parties.

¹⁷ Whilst some (but by no means all) adjacent residents state that they support the appeal proposal, it appears to be based, at least in part, to the completely unfounded and untrue rumour spread (according to the written representations by Mr or Mrs Timms, that Mr Hunter would use the car park as a lorry park for his Lancashire-based and northern England and Scotland-focused business if planning permission were not granted for the appeal proposal).

¹⁸ Apparently originally stated in respect of the Arena Essex application (undetermined and withdrawn on 23 September 2023).

the respective governing bodies. The evidence at this inquiry, in SCS's view, simply reconfirms the appropriateness of his conclusion.

33. What has been noticeable is the failure of KKP to address any of the many detailed points raised by SCS going back over (at least) 2 years. Some are now accepted but only after XX. Curiously, the witness called by the Appellant, Mr Eady, admitted that speedway and stock car racing was not his expertise and that he had not written the Speedway Viability Assessment nor its update.
34. Mr Eady's evidence was based on a lack of expertise, on assumption and on inadequate investigation, made worse for not having addressed any of the many points raised previously by SCS.
35. Mr Eady stated that much of KKP's information was derived from desktop research¹⁹. Whilst official sources (such as club websites) may have been relied upon for this information,²⁰ such information is of little use if it is not underpinned by a basic understanding of the sports.
36. Many factual errors in the original KKP Appraisal²¹ are found in the tables relating to the number of speedway/stock car fixtures raced, TV viewing figures, the number of operational tracks, etc; and these errors were pointed out in the SCS response.²²
37. For example, the appellant drew attention in Table 3.1 to the number of Coventry Bees fixtures, contrasting the year 2000 with 2013. In response, SCS highlighted the error in the figures (i.e. double counting postponed meetings and the number of fixtures in a given year being dependent on the team's performance and progression in the league and cup competitions.) These errors were not restricted to those two

¹⁹ "desk-based analysis" is expressly referred to in CD 2.58 page 8 and CD 3.2 paras 3.9 and 4.7.

²⁰ Moreover, the internet, whilst a valuable source of information cannot necessarily be relied upon to be accurate. For example: the Appellant's explanation for the closure of Wimbledon Stadium (CD 1.30 Para 2.36) was derived from the internet but the evidence provided by SCS (CD 10.18 App 29) in the form of a letter from the promoter at the time of closure gave a very different explanation.

²¹ CD 2.28.

²² CD 10.20.

years - the errors were made in the analysis of every year resulting in every figure in the table being incorrect.

38. Despite this having been pointed out in the SCS response²³ the chart was again reproduced in the Updated KKP Appraisal.²⁴

39. Again, as another example, Table 4.2²⁵ of the first KKP Appraisal refers to the number of teams competing in the BSPA leagues, purporting to evidence a decline in the total number of clubs in operation; but this table does not reflect the fact that several clubs operate more than one team - one at Premiership/Championship level, and one for development purposes in the National League. The lack of differentiation between clubs and teams was highlighted in the SCS response²⁶ yet, again, the table was simply reproduced in the Updated KKP Appraisal.

40. Conclusions have therefore been drawn by KKP based on a misunderstanding and therefore misrepresentation of 'desktop' data.

41. In re-examination, Mr Eady was asked for his opinion as to the effect on the overall trend should the errors be corrected. He asserted that there would be no change. It is submitted, however, that the extent and nature of the errors significantly undermines the credibility of this assertion.

42. It is clear that the Appellant has not engaged with the NGBs. This is a serious omission. Moreover, the Appellants were criticised in WYG's 2019 report²⁷ for not engaging with the NGB's, stating this "was an omission and would have painted a different picture in terms of needs and outcomes"; yet this omission was repeated in the revised submission.

²³ CD 10.20 pages 46-47.

²⁴ CD 3.2.

²⁵ CD 2.58.

²⁶ CD 10.20 Page 54.

²⁷ CD 15.1.2 Page 4.

43. A summary of SCS's response, as set out or given in the evidence, to the points referred to by the Appellant is set out in Appendix C (pp36-37). This shows that the assertion of decline is not borne out by the evidence.
44. The Appellant contends that viability is relevant to the issue as to whether facilities are surplus to requirements. The concepts are, however, different and therefore to be considered separately.
45. Viability is, in any event, addressed under the next main issue.

(3) Whether it is financially viable to reinstate the speedway stadium

46. Before coming to the detail of the evidence, I refer to the submission, set out in my Opening²⁸, that neglect of the stadium involving the commission of a criminal offence should not be rewarded by the granting of planning permission.
47. I referred to NPPF para 196 as an indication of government policy and there is no reason to suppose that government would take a different view to the operation of para. 99 (whether (a) or (c)).
48. I would also refer to Part 11 Class B of the Town and Country Planning (General Permitted Development Order 2015 which permits "*any building operation consisting of the demolition of a building.*" unless (see Class B.1)
- (a) "the building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support: ..."

²⁸ Para. 18 and footnote 18.

This is a clear indication of Parliament's view that the results of such actions or inactions of, here, an applicant/appellant should not be permitted to be relied upon by that applicant/appellant.

49. The courts also apply a similar principle (of not being permitted to benefit from, here, a grant of planning permission from one's own wrong, here repeated neglect of the stadium, confirmed by two criminal convictions) when interpreting a statutory provision, where a literal application of that statutory provision is relied upon by a miscreant: see, for example, the Supreme Court decision in the notorious case of Welwyn Hatfield BC v. Secretary of State for Communities and Local Government [2011] UKSC 15, in particular paragraphs 46, 50 and 54. That case concerned the interpretation of planning legislation where the factual context was a house secretly built within a permitted barn. There is no reason why a similar principle should not apply also to the interpretation of government policy.

50. SCS submit, therefore, that when applying the test in NPPF paragraph 99 (c) as to "whether the benefits [of the alternative sports and recreational provision] clearly outweigh the loss of the current or former use" that use is in effect to be regarded as viable: it does not lie in the mouth of the appellant to say otherwise. It is submitted that it is clearly open in law for a decision-maker so to proceed. The Council in Opening expressed the point in terms of not allowing the Appellant any credit in the planning balance. That is another way of reflecting the same point and the result should be the same.²⁹

51. Importantly, there is *in any event*, however, a real, as opposed to only a hypothetical, possibility that it will be financially viable for the appeal site to be purchased and use

²⁹ It is also submitted that, if, contrary to the view expressed above, viability were considered instead to be relevant to NPPF para.99(a), when applying the test in NPPF paragraph 99(a) as to whether "an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements" it is again open in law for a decision-maker to take the view that the open space, buildings or land use are not to be regarded as surplus by reason of the Appellant's neglect and any associated lack of viability.

of the speedway stadium to be reinstated, notwithstanding the Appellant's neglect; albeit, in the short term, without the use of the main grandstand.

52. The inquiry heard evidence from Mr Hunter that he made an initial approach to buy the stadium in March 2017 but did not then pursue it as the Appellant's valuation was based on residential land value. Three years later, on 20th May 2020, Mr Hunter visited the site with a representative from Brandon Estates, witnessing the condition of the stadium which had at that time already been subjected to two major fires. Undeterred, Mr Hunter submitted a formal written offer to buy the stadium one week later on 27th May 2020. Mr Hunter was advised that his offer was being considered and asked for his patience in this matter.³⁰ To this day, this offer has not been rejected by the Appellant.

53. Mr Hunter told the inquiry that he was the Managing Director of Huntapac Produce Ltd, which has an annual turnover of £51.8m and, significantly, shareholder funds (i.e. equity) of £19.98m. He confirmed that he has access to the funds necessary to acquire the stadium and reinstate it for racing.

54. He also told the inquiry that he had met John Whalley and that he was open to the possibility of a consortium with Mr Whalley.

55. Mr Whalley is Managing Director of Nationwide Windows and Doors, based in Rugby. On 31 October 2022, Mr Whalley sent a letter to the Chief Executive of the Council outlining his background and his commitment to help with the rebuild of the stadium.³¹ More recently (9th August 2023), Mr Whalley sent an email to SCS expressing his willingness to form a consortium with Mr Hunter. He attached a copy of his latest filed accounts to that email.³² The accounts show Mr Whalley's company has a turnover of £44.5m, gross profits of £11.0m and shareholder funds of £6.1m.

³⁰ CD 15.5.14 page 5.

³¹ CD 15.5.12.

³² CD 16.2.3 App DC1 Page 22.

56. In summary, these two individuals, both Managing Directors of very healthy and profitable, long-established businesses, are committed, given the opportunity, to reinstating Brandon Stadium.
57. In addition to these credible individuals, it is apparent too that there are also many offers of financial or in-kind support from skilled trades, familiar with current building regulations, as well as from substantial businesses who are prepared to assist with the re-commencement of racing, including: West Midlands Golf Club; Mr Thomstone (Managing Director of Wykham Blackwell Timber Engineering Ltd, previously MD of Buildbase Ltd whose sponsorship advertising boards are still evident at the stadium); and Mr Harvey, Managing Director of Northeast Demolition Ltd.³³
58. In summary, Mr Hunter gave clear and uncontradicted evidence of his intentions regarding the purchase of the site, of his preparedness to fund the works necessary for the recommencement of the use, of his deep pockets and of his resolve, and of his openness too to work with a consortium.
59. As to the availability of the appeal site for purchase, it will obviously be necessary to await the outcome of the appeal, and the detail of the decision.
60. Mr Hooper conceded that, if compulsory purchase had to be considered by the Council because the landowner refused to sell, the market value of the site for which compensation would be payable might simply reflect the “existing use” value – i.e. on the basis that the site did not have, and could not obtain, planning permission for residential development; so compensation might indeed well be nil given that the existing use value would have to reflect, for example, the need for work to be carried out to the stadium and the need to pay for security.
61. The current refusal to sell, and the ongoing payment of £100,000 p.a. for the security of the site, would of course have to be weighed by the Appellant against the compensation receivable for compulsory purchase. It is quite possible too that the Appellant might decide, for example, to cut its losses and seek to offset the loss (the

³³ CD 15.5.12.

original price paid for the stadium) against a capital tax gains liability which would otherwise be payable in the then current tax year by other parts of the Investin Group of inter-related companies.

62. As to the cost of reinstatement of use, the SCS Schedule and its basis was explained by Mr Carter. SCS believe the costs put forward in Mr Carter's proof³⁴, informed by Mr Rees, Mr Lestrade and Mr Chapman, all of whom have extensive and relevant experience, are reasonable and would enable racing to resume on what has been referred to at the inquiry, if somewhat inaccurately, as a 'jumpers for goalposts' basis.

63. The Appellant refers to the Farrow Walsh Report.³⁵ Its frontpage is dated April 2023³⁶ albeit the inside page then says that the first issue is dated 09/05/23.³⁷ Despite this date it was only made available for the first time as an appendix to Mr Hooper's Proof³⁸ (it was not listed as a document in the Appellant's Statement of Case, which was submitted electronically with the appeal form, the latter being dated 12th May 2023³⁹).⁴⁰

64. Quite apart from the late disclosure of this evidence, SCS have not been able to carry out, and for that purpose commission, any survey work as a basis to check and/or question any of the findings of that report.

65. The report states⁴¹ that "The purpose [of] the survey was to visually examine the existing structural elements of the main grandstand, grandstand, terraces and provide commentary on the structural stability, condition of the property, condition of the structural and non-structural walls and determine the expected lifespan of

³⁴ CD 16.2.3.

³⁵ Appendix 3 to Mr Hooper's proof.

³⁶ Front page a8.

³⁷ Ibid, page a9.

³⁸ Appendix 3.

³⁹ CD 11, Appendix 1, internal pages 19 – 26.

⁴⁰ Moreover, when Mr Hooper was requested to provide an affordable housing report which had not been referred to in the Appellant's Statement of Case but was referred to for the first time only in a Core Document List provided to the Rule 6 party only a day or two before exchange, with his customary sense of fairness he declined and said that it would no longer be a Core Document but become an Appendix to a proof instead.

⁴¹ Para. 1.1.2.

the structure.” The report was expressly⁴² limited in scope to areas which were not covered, unexposed or inaccessible.

66. The report’s author was not called to give evidence. The report describes the main grandstand as being constructed ‘around 1920’.⁴³ It was in fact constructed in stages almost half a century later as stated in Mr Carter’s rebuttal (CD16.2.6, Item 21); so (i) some further caution is required before unquestioning reliance is placed on it; (ii) significantly, given this phased construction, it *may* for example be possible to demolish those areas of the grandstand most seriously damaged by fire – the northern end (the restaurant section which is on stilts) and the southern end (the hospitality boxes and offices), leaving the central section as the subject of refurbishment. Both the restaurant area of the grandstand and the hospitality end of the grandstand were built as separate phases to the central section as is clearly evident in photographs before the Inquiry.⁴⁴ The structural engineers did not address this possibility.

67. The report may be said to give only a high-level picture, based on external observation. The Cost Report,⁴⁵ prepared by Rider Levett Bucknall, expressly⁴⁶ relies upon it so the Cost Report must be treated with similar caution. The Cost Report is dated July 2023 and was again included as an appendix⁴⁷ to Mr Hooper’s proof. Again, although July 2023 postdates the Appellant’s Statement of Case (SOC), the documents listed in the SOC were not updated by Mr Hooper; and again, SCS have not had the opportunity to commission a cost engineer’s report.

68. The Cost Report refers to a project which is not the proposal envisaged/advanced by SCS. In brief summary (see too Appendix D, pp38-39) it proposes demolition of the grandstand and replacement with a 1,000-seater stand (together costing over £5m), and reinstating facilities for greyhound racing. None of these are proposed by SCS.

⁴² para 1.4.1.

⁴³ Para. 2.2.1.

⁴⁴ See, for example, CD 10.19, Page 4 of Appendix 6.

⁴⁵ Mr Hooper’s Appendix 4.

⁴⁶ para 3.3.

⁴⁷ Appendix 4.

SCS also note that the Farrow Report does not expressly state that demolition of the grandstand is necessary.⁴⁸

69. Mr Osborne produced CD 5.15.50. He also assumed that the grandstand would be demolished.⁴⁹

70. Mr Carter, in his rebuttal of Mr Osborne's proof, made reference to this assumption, stating that the structural report falls short of saying demolition is required but accepted that it *might* prove to be necessary.

71. An analysis of the evidence before the inquiry in respect of CD 5.15.50 is set out in Appendix E (pp40-43).

72. It is submitted that it would be premature to conclude now that a viable return is not possible. SCS and others have not had the opportunity to investigate and survey the site in detail and on a positive, 'can-do' (as well as of course regulatory-compliant) basis.

73. Even if (and entirely without prejudice to SCS' case) it were to be found upon investigation that this "stage 1" use were not possible, then that would still leave exploration of bringing forward (as a single step) a new stadium; and for that purpose seeking funding (with a fully formulated business plan) from supporters, and grants from, for example, the national lottery and from the Mayor of the West Midlands.⁵⁰ It is notable that it was the Mayor who contacted SCS rather than vice-versa. There is

⁴⁸ The Farrow Walsh report, whilst identifying major issues with the grandstand, did not conclude that the grandstand needed to be demolished and even suggests (para 4.2.1) carrying out works to "limit further corrosion limiting capacity to support stand". Nor did it recommend demolition. Similarly, it did not conclude that any other buildings on the site were in a condition that made refurbishment impossible and therefore recommend demolition.

⁴⁹ Para 3.14.

⁵⁰ "I would be open to exploring how the West Midlands Combined Authority can use its funding streams to support the regeneration of the site, subject to the business case and our requirement of being the funder of last resort. In addition, I would be happy to instruct my team to work closely with the speedway club to assist them in any way we can."

clearly real interest in seeing a properly functioning stadium again. There is in-principle support from the Council too.

74. As to the viability of speedway and stock car racing, Mr Eady's evidence was again seriously deficient.

75. In oral evidence Mr Eady⁵¹ stated: *"We've taken all the available evidence and data and used that in the absence of other information – the fact that data and evidence is limited, we've taken what is there and done our best with that to ensure that what we present, what we think, is a realistic picture of the situation"*.

76. Mr Eady did not provide any evidence of his own related to viability specific to Brandon Stadium and instead stated⁵² "...this report does not look to determine whether the now closed speedway track at Brandon Stadium was a viable enterprise ... but is predominantly informed by consideration of the sporting trends and analysis of consultation with and information supplied by other providers nationally".

77. Yet when discussing "National Trends" (Section 4.1) the author states that attendances for either domestic or international events are not published and difficult to obtain and goes on to say: "As such, it is accepted that in preparing this report KKP is unable to provide a full picture in terms of trends".

78. When Mr Eady referred to "information supplied by other providers nationally", the only sources he referred to were:

- CEO Gaming International
- Owner Swindon Robins
- Former Chairman BSPA
- Co-ordinator SCB

⁵¹ 22nd September, YouTube recording at 2Hrs 45mins.

⁵² CD 3.2 Para 5.2.

79. It became apparent that Mr Eady was unaware of who any of those people were although he did accept that the Owner of Swindon Robins and Former Chair of the BSPA are one and the same person (Terry Russell).
80. In the SCS response⁵³ to the original 2021 Speedway Appraisal⁵⁴ it was pointed out that Mr Russell had denied speaking to anyone regarding Coventry Speedway and had expressed his view that Coventry was one of the best supported clubs in the sport and could operate successfully notwithstanding the current economic challenges.
81. Similarly, SCS pointed out that Mr Vatcher (the current SCB Co-ordinator) had no recollection of a conversation with KKP.
82. Moreover, and again a point made in the SCS response to the 2021 Appraisal, Mr Eady (or rather, the author of the KKP reports) does not attribute any of the content of the report to any of the individuals referred to. Despite making this point, the updated Appraisal similarly does not attribute any of the comments to any of the individuals.
83. In the absence of attendance figures from any track other than Arena Essex Mr Eady referred to attendance figures at that venue. These figures, which indicated attendances had fallen to an average of just 340 in 2017, appeared in the Arena Essex planning application and were copied, along with swathes of other 'evidence' and pasted into the original KKP Appraisal in the section entitled 'National Trends'. In response to the original Appraisal, SCS pointed out that the fall in attendance was not surprising as Arena Essex in 2017 had dropped down to the National Development League; and further expressed significant concern that 'evidence' had simply been copied from the undetermined⁵⁵ Arena Essex application and then been presented as representing a national trend.

⁵³ CD 10.20 Page 42.

⁵⁴ CD 2.58.

⁵⁵ Now a withdrawn application.

84. Despite pointing this out, the Arena Essex information was reproduced in the Updated 2023 Appraisal without any caveat.
85. It may be observed that Mr Osborne has been Swindon stadium owner for many years and Poole stadium operator for many years also. As such, his staff managed the turnstiles at both venues and the Appellants had every opportunity to produce figures to demonstrate a decline (if such were true) in attendances at those two venues.
86. It is first important to look at the past evidence.
87. The evidence suggests that the speedway and stock car racing was viable⁵⁶ at the time of the Appellant's acquisition of the site from the then owner (Mr Sandhu). Mr Rees mentioned the significant investment that Mr Sandhu had made in the stadium since becoming owner in 2003.
88. The documentary evidence before the inquiry also suggests that the enforced sale of the stadium to the Appellant in 2015 was related to Mr Sandhu's other business interests alone. Mr Horton also ran speedway racing viably, even taking into account the repayment of the price paid for the acquisition of the speedway promotion rights from Mr Sandhu (from 2012 to 2016). Mr Sandhu retained promotion rights for the stock car racing until closure.⁵⁷
89. Despite the Guest Wilson (accountant's) letter and Mr Horton's accounts being in evidence⁵⁸, Mr Eady made no reference to either.
90. Mr Carter gave evidence as to stock car attendances and referred to speedway attendances at Brandon in 2016. This is discussed further below but it is consistent with viability at the time both for the promoters of racing and for the stadium. This was the conclusion too of Mr Allen in WYG's report to the Council in 2019. Quite apart from the attendance figures for 2016 referred to above for Brandon, Mr Carter

⁵⁶ Guest Wilson.

⁵⁷ Carter evidence (Sports issues) and CD10.20.

⁵⁸ CD 10.18.

has particular experience of stock car racing including its governance, as well as regular attendance at tracks throughout the country.

91. Mr Ford is a successful speedway promoter at Poole (this seemed to be common ground); and both he and Mr Hunter are keen to come together at Coventry. Mr Ford had no doubt that he could achieve a profitable return of the Coventry Bees, starting in the Championship league. He has 30 riders contracted to him. This is plainly more than sufficient to service both Poole and Coventry (each would have a team of 7 riders). Mr Ford referred to the need for some 1,200 spectators attending speedway events at Coventry. Given the level of attendance for both speedway and stock car racing at Brandon in 2016, this does not appear to be unduly optimistic; indeed it also sits well below any 'bounce' in numbers over the first season.
92. Mr Ford did not accept the "Notional P&L Data"⁵⁹ prepared by Mr Osborne with input from Mr Park (speedway). He said that he had been told the figures provided by Mr Park, who is associated with Swindon Speedway, related to the Swindon venture. Although Mr Osborne said that there had been a discussion with Mr Ford's son (perhaps on the same basis), Mr Ford clearly still actively runs the business side of Poole speedway. He has given oral evidence to the inquiry and been cross-examined. Mr Rees also expressly referred to, and acknowledged, Mr Ford's integrity in his evidence to the Inquiry.
93. Mr Osborne referred to figures related to stock car racing, stating that the source of those figures was Craig Robinson. Mr Robinson's involvement with stock car racing is not on an affiliated BriSCA or ORCI basis, so is not regulated by the governing bodies.
94. Mr Osborne referred in his written evidence⁶⁰ to the costs of staging a meeting, including prize money, staff, and first aid/ambulance attendance, as being between £4,000 - £8,000 and the admission price being £20. He also referred to additional revenue streams from which the promoter benefits: local sponsorship, programme

⁵⁹ CD 15.5.57.

⁶⁰ para.5.5.

sales, merchandise sales and video streaming. In addition, he referred to income from food and beverage sales. These figures were, and are, not disputed by SCS.

95. Where SCS disagree with Mr Osborne's/Mr Robinson's figures is as to the level of attendance. The suggested figure of 600 may be appropriate to non-regulated stock car racing, but it is not accepted that this would be appropriate for 'mainstream' stock car racing at Brandon/Coventry.

Mr Carter's evidence was that stock car attendances at Coventry averaged 2,500 in 2016⁶¹ (and 3,500 if the attendance at the World Final were included in that average); and that 765 different drivers competed. For speedway, 170 different riders competed that year and the average attendance figure was 1,700.⁶² (The consistency of this with the viability of both racing and the stadium has been noted above.)

96. Under XX Mr Carter stated his source for Brandon as the turnstile manager and offered to provide written data. Mr Rees also confirmed the attendances (3,000) at Odsal, Bradford; and the rental levels (£3,500) achieved for the stock car meetings he had promoted at Brandon. None of these figures were disputed.

97. Gate receipts alone, resulting from attendance levels given in evidence by Mr Carter for BriSCA F1 events, offset by the costs of staging a meeting, demonstrate the viable nature of stock car racing. It is not surprising therefore why stock car racing ran alongside speedway at Brandon for 62 years.

98. As to the Notional P&L data, Mr Osborne recognised that it was an "amalgam", and assumed that the stadium owner was also the speedway promoter. Notably:

⁶¹ On a simple basis, $2,500 \times £20 = £50,000$ revenue, without sponsorship, merchandise, food and beverage. Craig Robinson estimated £8,000 to stage the meeting. It can readily be seen that the owner of the stadium (and stock car promoter, as Mr Sandhu was) would derive a substantial profit from stock car racing.

⁶² It is of course frustrating that more data is not available; but even turnstile data would have to be treated with caution: it might not have included riders/drivers' teams, family members or sponsors' guests.

- (i) the assumed attendance figures are too low; plainly if higher attendances are achieved, a positive cash flow would result (Championship league);
- (ii) Mr Ford gave evidence as to the considerably higher level of sponsorship and sales of merchandise achieved by him at Poole. These 2 items alone would provide more than a 20% return on the total costs set out in that document;⁶³
- (iii) the P&L does not include the revenue from stock car meetings nor any sharing of costs with stock car racing.

99. In conclusion, it is considered that there is a real, as opposed to theoretical, possibility that it would be financially viable to reinstate the speedway stadium both in the short and/or long term and for speedway and stock car racing to be viable.

(4) Whether there is an identified need for the alternative sports stadium provision proposed

100. Whilst the Council's note on 3G pitches suggests that the Playing Pitches Strategy (2015) has borne some fruit in terms of provision, there appears (SCS do not purport to be experts) to be a quantitative need in Rugby Borough as a whole (and also in Coventry City as a whole) for more full-size 3G pitches; but it has not been shown that there is a qualitative need for that pitch to be on the appeal site; it lies outside the urban areas of Rugby (and Coventry) and it does not fit with the expressed locational aspirations of any of those clubs contacted. Both the Football Foundation and Birmingham FA have stated that they believe the location of the proposed pitch may be too rural to attract sufficient demand and Sport England do not support it. Moreover, if the result of providing a full-size 3G pitch on the appeal site were to lead to the demise of the Wolston Leisure and Community Centre, it may be said that there is a need not to grant planning permission for the proposed 3G pitch at Brandon. The impact on Wolston was not addressed or assessed in the officer's report to committee.

⁶³ CD 15.5.57.

(5) Whether the benefits of the alternative sports provision outweigh the loss of the former speedway use

101. When considering the respective benefits and loss, it is appropriate also to consider the viability of the alternative sports provision proposed. As regards the 3G pitch, the evidence set out in the July 2023 Feasibility Study⁶⁴ raises doubts about the future viability of the 3G pitch.⁶⁵ The Study recognises that if another pitch were to come forward, whether before the proposed 3G pitch is brought into use or after it has been, the viability of it could well be affected.

102. It is noticeable, in this regard, how the views of consultees have already changed between 2021 and 2023. Simply looking at the 2023 Study, of the 10 clubs approached, 9 responded; only 5 expressed an interest, all 5 are located in closer proximity to existing pitches;⁶⁶ 3 of those 5 have aspirations to use other 3G pitches should they come forward⁶⁷. The remaining 2 of the 5 comprise 27 teams in total. Sky Blues in the Community⁶⁸ have made it clear, moreover, that they “have had no input to the programme of use or the cost of projections outlined” in the business plan. SCS believe that 4 of the 5 clubs who expressed an interest are beyond the 5 mile catchment area referred to by Mr Eady. In the case of St Finbarrs, it was pointed out by SCS in response to the 2021 KKP Appraisal, that it was 10.2 miles away.⁶⁹

103. The consequences of failure must be borne in mind: planning permission would have been granted on the basis of benefits to which too great weight had been given. By contrast, if it were to be found that reuse of the appeal site for racing were not in fact viable, that would not preclude a future reconsideration of the site; whereas the housing development, if built, is likely of course to preclude any

⁶⁴ CD 3.1.

⁶⁵ On a point of detail, the hours of use assumed exceed those permitted at Wolston.

⁶⁶ CD 3.1 para. 3.30.

⁶⁷ Alvis, Christ the King at Cardinal Newman School and Coventry Copsewood at Caludon Castle Sports Centre.

⁶⁸ CD 10.5.

⁶⁹ CD 10.20 page 32. CD 18.21 responds to CD 18.10 (Distances to football clubs). The 10.2 miles was based on a measurement from Brandon (the village) to the club's premises. SCS's estimate in CD 18.10 is more accurate and measures the distance from the stadium itself.

possibility of racing in perpetuity. And as Sport England has observed, it would be harder to achieve the relocation of the current use to an alternative location than to provide a 3G pitch elsewhere.⁷⁰

104. I have already addressed the issue as to whether speedway and stock car racing are in terminal decline.

105. As to the respective numbers of participants: whilst the 3G pitch may, if fully utilised in accordance with the POU, give rise to 1,200 participants a week, it is important also to bear in mind that the number of participants in racing is not insignificant. I have referred above to Mr Carter's evidence that:

170 different speedway drivers raced at Brandon in 2016

765 different stock car drivers raced at Brandon in 2016.⁷¹

(Those figures do not of course include mechanics/the team behind each respective driver and rider; and many drivers and riders race at multiple events.)

106. The total number of participants and spectators at the stadium during 2016 can be estimated as follows:

37 Speedway meetings x 14 riders (i.e. 2 competing teams) at each event =
518 riders

Stock car racing 9 BriSCA F1 (incl the World Final) & 7 other car events (9+7 x
150) = 2,400 drivers⁷²

Stock car spectators at BriSCA F1 9 meetings x 3500 (average includes World
Final) = 31,500⁷³

Stock car spectators at 7 other (Startrax) events x 1500 = 10,500⁷⁴

Spectators at 17 Coventry Bees speedway events x 1700 = 28,900

⁷⁰ CD 9.32.

⁷¹ CD 10.16, Briefing Paper 9, para. 5.13.

⁷² CD 15.5.3. para.4,2 on page 28.

⁷³ Mr Carter in evidence in chief.

⁷⁴ Mr Rees' oral evidence.

Total = 73,818⁷⁵ p.a. sport and recreation experiences in 2016 (cf 50,000 p.a. for the 3G facility).

(6) Other benefits of the proposal including the delivery of new market and affordable housing

107. SCS take the view that the benefits have been overstated by Mr Hooper. Indeed his apparent conclusion that every benefit is to be given substantial weight indicates, with respect, a lack of balance quite apart from a failure properly to reflect the relevant legal and policy framework.

(i) The delivery of market homes

108. See Opening. Only modest weight should be given to this ⁷⁶. There is a 5 year supply. The Local Plan is delivering at least in accordance with its policies. In particular the uplift in delivery since 2018 accords with the Local Plan Inspector's intentions. Whilst the figures are not ceilings, there is no need to develop the site. The most recent assessment of the 5YHLS and dwellings completions provide additional comfort for this view.

109. Mr Hooper has referred⁷⁷ to the existence of a joint venture agreement between Investin plc and St Philips Ltd in respect of the development of the site. It is accepted, on this basis, that a development may therefore proceed despite the warning and recommendation received from CBRE⁷⁸ CBRE's report worked on the

⁷⁵ No allowance has been made above for 'Storm' speedway meetings as SCS do not have figures for them. Mr Osborne suggests in his amalgam that National Development League racing (Storm meetings) would attract 690 spectators. SCS does not disagree with this suggestion.

⁷⁶ Mr Carter's planning proof, para. 3.18.

⁷⁷ CD 18.20.

⁷⁸ CD 2.60. "The appraisal results demonstrate that the Proposed Development cannot viably accommodate provision of affordable housing and the estimated Section 106 planning obligations, whilst achieving the minimum risk-adjusted developer's return and the [Benchmark Land Value]. The

assumption that there would be “a 25% discount to open market value for the [Discounted Market Sales housing] units.” No reference is made in their report to social rent or shared ownership, only to discount market. Mr Hooper’s latest note⁷⁹ refers to rents not exceeding 80% of local market value for “affordable rent dwellings”. (i) 80% of market rent does not constitute a social rent with a RP and there is no guarantee that the % will be less than 80%; (ii) despite a request, the position vis-à-vis shared ownership with a RP has not been clarified either. It appears at present that the “AH provision” may simply become discount market sales not involving a RP; and the s.106 appears to facilitate this.⁸⁰

(ii) The delivery of Affordable Housing

110. The foregoing calls into question the claimed benefits of the affordable housing.

111. By way of introduction, the need for affordable housing in the Borough is not in dispute. Its provision is a policy requirement of the Local Plan and of government policy. It is incorrect to regard it, given the wording of the Local Plan, as *only* a benefit.

112. Irrespective of the nature of the affordable housing that may be delivered (see above), SCS consider that the tenure split proposed by the Appellant has not been justified. The Council could not explain what justified the change from the SHMA’s 86/14% (to 56/44%)⁸¹ other than that there is said to be a “significant lack of

commercial decision whether to proceed with the scheme and/or to deliver a policy compliant affordable housing provision will therefore be at the discretion, and risk, of the Applicant. As supported by national planning policy and guidance, given the commercial risks, it would be CBRE’s recommendation that the Proposed Development does not incorporate any affordable housing units (or a payment in lieu of on-site provision) or any sums towards planning obligations.” Some assumed costs have since increased – 3G pitch (£750,000 to £1.2m), and the size and therefore the cost of the pavilion; but the assumed s.106 contributions have decreased; and the overall position looks broadly similar.

⁷⁹ CD 18.20.

⁸⁰ Schedule 2, paragraphs 2.1 and 2.2.

⁸¹ Schedule 2, clause 4.1 and 4.2. The latter says that the % can be changed.

demand” for social rented properties in rural areas. If there is a significant lack of demand then why is any being provided? Given, however, that the more recent (if not fully examined) HEDNA continues to seek a similar % split to that in the SHMA, it would appear that there is indeed a significant demand: so why is the proposed provision sufficient in terms of %?

113. In addition, the AH housing mix (number of bedrooms) does not accord with Policy H2⁸². The HEDNA suggests a mix comprising 70% 1 - and 2 - bedroom properties: no 1 -bedroom properties are proposed; it is unclear why these are not appropriate in this location.

114. The number of household on the housing register referring to Binley Woods Civil Parish or Brandon and Bretford Civil Parish as at 20th September 2023⁸³ were respectively for 29 and 19 houses 411; yet applicants are encouraged to specify as many locations within Rugby Borough as possible and the Inquiry was informed by the relevant Council officer at the AH Round table that a significant number of applicants have expressed a wish to live in more than one area; So (i) it cannot be assumed that the 29 or 19 wish to live in the vicinity of the appeal site; (ii) Mr Carter gave evidence that the nearby sites at Sherwood Farm and Wolston have yet to fill AH (respectively 24 and 11 homes) to serve the current shortfall locally.

115. More generally, Policy H1 does not require the provision of 171 dwellings each and every year. That number is an annualised average referred to in the SHMA; but it is not a policy requirement.

116. The Local Plan envisaged (para 5.14) that the plan would meet all AH need in Rugby Borough: no doubt in part because it was also making provision to meet 2,800 homes needed by Coventry City in Rugby Borough.

⁸² Nor does the market housing match Policy H1; and no evidence to support a departure has been provided.

⁸³ CD 18.5.

117. The Local Plan also envisages, as did the Local Plan Inspector, that there would be a step-change in the housing requirement from 2018/19 until the end of the plan period (2031). Mr Stacey's Figure 8.1 shows the immediate positive impact/increase thereof not only on market housing delivery but also, unsurprisingly since the two are linked, affordable housing delivery.

118. Mr Stacey referred to the figure of 495 AH dpa in the HEDNA but recognised that this was not a planning figure: Mr Carter pointed out the obvious impracticality of using such a figure for planning purposes. The future figure is appropriately to be considered and addressed through the forthcoming Local Plan Review.

119. Mr Carter takes the view that the relevant figure is 171⁸⁴ (net of demolitions) rather than in addition after subtraction, to reflect the exercise of the 'right to buy'. There is no reason to suppose that that figure will not be achieved over the plan period, as anticipated by para 5.14 of the Local Plan and as envisaged by the Local Plan Inspector, especially since 20%/30% (Bf/gf) became the relevant (lower) % requirements for AH following the examination. Since, moreover, 171 dpa is not an annual requirement, it would be inappropriate to take a 'Sedgefield' as opposed to a 'Liverpool' approach to making up the current 'shortfall'.

120. None of the foregoing is to suggest at all that AH is not needed. It is to suggest that the weight to be given to this issue in this case is moderate and in any event is not sufficient to justify the development of the appeal site. Only 25 homes can be generated from this site.

(iii) New Homes Bonus

121. This should not be given any weight because it is not needed to make the development acceptable.⁸⁵

⁸⁴ As per the Annual Monitoring Report: CD 8.11.

⁸⁵ See NPPG 21b-011-20140612.

(iv) 370% increase in open space.

142. The provision of open space is to be secured by the s.106 obligation. Over provision cannot be given any weight: it is not necessary to make the development acceptable.⁸⁶ It cannot in law be a reason for granting planning permission. This is to avoid the buying and selling of permissions.⁸⁷

(v) Economic Benefits

143. These are accepted and may attract modest weight, but they need also to be tempered by the economic benefits which would arise from the resumption of speedway and stock car racing from the reintroduction of racing and the stadium reopening.⁸⁸

(vi) A 3G pitch

144. Firstly, if (contrary to SCS's submissions), the Appellant were to be successful in demonstrating that NPPF para.99(a) is satisfied, the benefit of a 3G pitch, secured by the s.106 should not in law be taken into account since it would not be needed to make the development acceptable.

145. Secondly, I have addressed this issue above and only limited weight should be given to it given the views of Sport England, the concern of Wolston Community and Leisure Centre and the distance of the appeal site from many of the clubs which it hopes

⁸⁶ See Regulation 122 (2) of the CIL Regulations 2010.

⁸⁷ See DB Symmetry v. Swindon BC [2022] UKSC. That case held that a planning condition could not require the dedication of public rights of way over land. The Supreme Court also considered the scope of s.106 agreements and what could lawfully be taken into account. See paragraphs 55, 60 – 62. “Government policy and the law have rejected the “buying and selling of planning permissions” where a local planning authority makes exorbitant demands of a developer or a developer offers planning gain which is not sufficiently related to its proposal in the hope of obtaining planning permission.” Reference is made to Regulation 122 of the CIL regulations.

⁸⁸ See Mr Carter's Planning proof, para.5.2. In XIC Mr Carter also gave evidence as to the number of employees associated with the former use. A considerable number of written representations in response to the notification of the appeal also make express reference to use by visiting spectators of local facilities – e.g. hotels, restaurants etc.

to serve. Thirdly, factually the Playing Pitches Strategy (2015) has borne some fruit in the form of 2 3G pitches.

(7) Whether the proposed development makes an appropriate contribution to education

146. From what was said at the outset of the inquiry by the Council, it is understood that this is not in issue.

(8) The overall planning balance

147. s.38(6). The proposed development does not comply with the development plan as a whole and material considerations do not indicate that the determination should be other than in accordance with the development plan.

148. NPPF – development plan not out-of-date and a 5 year supply of deliverable housing sites accepted. Not a ‘tilted balance’ case therefore; and the tilted balance does not apply, in any event, in respect of development that conflicts with Green Belt policy. The benefits have been set out above.

146. As to the harm, there will be harm:

(a) to Green Belt – very special circumstances not shown.

(b) the failure to satisfy NPPF para. 99 concerning the importance of open space and recreation and the loss of a revered stadium used for speedway and stock car racing for many years.

(c) irrespective of the stadium buildings, the appeal site as a “place” should, SCS believe, be considered a “heritage asset” (non-designated)⁸⁹ by virtue of that

⁸⁹ As defined in the NPPF Glossary.

Paragraph 203 sets out the relevant policy test: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

treasured association with speedway and stock car racing. The proposed development would result in a total loss of the heritage asset. NPPF para. 203 sets out the relevant policy test: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.” The fact that the Council did not refuse permission on this basis does not preclude the matter being raised by SCS or from succeeding on this argument. The Council does not have a local list so it cannot be said to have applied its mind to this issue before.

- (d) the loss of 3 oak trees (the subject of a TPO) also affecting characteristic landscape feature⁹⁰.
- (e) Housing mix non-compliant with policy and lack of justification for this or for the % split between social rent/intermediate housing; indeed clear possibility that discount market sales only will result.

149. It is respectfully submitted that the appeal should be dismissed.

Postscript

150. It is pertinent firstly to note the importance of this inquiry to SCS, not only because they are dismayed at the prospect of the loss of the appeal site to speedway and stockcar racing, but also because so many of the points made in their previous representations had not, and have not, been addressed by the Appellant. The Appellant’s proofs of evidence and associated reports to this inquiry have reflected this approach. The opportunity, afforded by ‘Rule 6’ status, to be heard and to cross-examine witnesses is vital to the proper functioning of the planning system.

⁹⁰ CD 9.25.

151. The amount of work diligently undertaken by SCS over some 9 years now is remarkable: from attending the initial public exhibition (concerning a proposal for 250 dwellings) in 2014; a subsequent public exhibition in 2017; making representations to, and appearing at, the Local Plan examination (which secured current Local Plan Policy HS4I); making representations to the Neighbourhood Development Plan examination (which secured current Policy LF1); making representations in response to the 2018 application, including a detailed response (CD15.3.3) to the Sports Needs Assessment prepared by Framptons (CD1.30), engaging with WYG (independent review supporting SCS's contention that the site is not surplus to requirements); making representations in response to the substantial revisions to the planning application in 2021; and to the officer's original (subsequently withdrawn) report to committee. Only Council members have fully appreciated SCS's concerns. SCS's position is supported by people from 44 of England's 46 counties and from 14 countries.

152. Much of the foregoing has taken place against a background of having powerlessly to watch the buildings on the site deteriorate as a result of anti-social (and of course criminal) behaviour of trespassers without proper steps being taken to prevent this.

153. For Mr Hooper to state in his proof that the Appellant had, in all the years since the enforced closure of the site by the Appellant, done all that it could to secure the site, in the teeth of the convictions for the Appellant's failure to comply with the Community Protection Notice, is as offensive to SCS as it is inimical to the rule of law: it is simply not permissible to seek to imply that though the Appellant has not pursued an appeal against the convictions, fines or order of costs, it was not guilty of the offences.

28th November 2023

Richard Humphreys KC

No 5 Chambers,

Birmingham and London

APPENDIX A

RELEVANT CASE LAW CONCERNING GREEN BELT POLICY

1. The leading case is now the Supreme Court's decision in R. (on the application of Samuel Smith Old Brewery) v North Yorkshire CC [2020] UKSC 3 (the case itself concerned a proposed extension of a quarry and thus in turn concerned what is now NPPF para. 150 (a)). Lord Carnwath held that:

“22. The concept of “openness” in para.90 [now para. 150] of the NPPF [is] a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. ...[I]t is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development.”

2. The Supreme Court upheld the approach of the Court of Appeal in Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466; [2017] 2 P. & C.R. 1 at [18].

“25. ... This concerned an inspector's decision refusing permission for a proposal to replace a mobile home and storage yard with a residential bungalow in the Green Belt. In rejecting the contention that it was within the exception for redevelopment which “would not have a greater impact on the openness of the Green Belt”, the inspector had expressly taken account of its visual effect, and that it would “appear as a dominant feature that would have a harmful impact on openness here”. The Court of Appeal upheld the decision. Sales LJ said:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. The

word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents" ([14])."

Before us there was no challenge to the correctness of this statement of approach. However, it tells one nothing about how visual effects may or may not be taken into account in other circumstances. That is a matter not of legal principle, but of planning judgement for the planning authority or the inspector."

3. As noted above, Lord Carnwath stated that "openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt." Sales LJ in Turner (above) had similarly observed that "Greenness is a visual quality: part of the idea of the Green Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and "safeguarding the countryside from encroachment" includes preservation of that quality of openness."

APPENDIX B

COMPARATIVE DATA

(i) Building footprint

Existing

- Combined external footprint of existing stadium buildings: 5,400 sq m (max height – the grandstand – 11.5 m)

Proposed

- Combined footprint of proposed dwellings, garages and pavilion: 6,500 sq m, approximately a **20% increase**, mostly 2 storey, some 2.5 storey, up to 10 m high to the ridge; one third of new dwellings located on the existing main car park

(ii) Site coverage

Existing

- Site coverage: existing buildings, tracks, infield terraces and circulation between buildings: circa 29,200 sq m

Proposed

- Area of new estate: 36,700 excluding estate roads (**25% increase**)
If also include (i) the pavilion (condition 8 refers now to a minimum of 350 sq m) and (ii) the 4.5 m high fenced 3G pitch (9,200 sq m) = 46,202 sq m (a **58% increase**).

APPENDIX C

ANALYSIS OF ASSERTED DECLINE

- **Speedway**
- (a) Speedway fixtures/meetings at Brandon⁹¹:
 - (i) as noted above⁹², the figure of 33 in 2000 double-counted 4 meetings (postponed) and reflected a particularly successful season, cf 2013⁹³.
 - (ii) in any event, the figures for 2014, 2015 and 2016 (respectively, 44, 36 and 37) do not suggest a terminal decline.
- (b) UK average speedway TV viewers (2008-2017)⁹⁴: Mr Morris advised that little weight be given to such figures; the relevant table does not reflect the signing of a worldwide investment with Warner Bros in 2021 for the broadcast rights for speedway grand prix series and major international team events⁹⁵ nor their 7-figure sum per annum investment in UK league speedway.; nor do the figures include live stream subscription broadcast nor club streaming services. These investments, especially in UK league speedway do not suggest that it is considered that speedway is in terminal decline. SCS have provided an explanation and fuller picture of TV viewing figures in CD 10.20. In addition, Mr Eady acknowledged in a footnote⁹⁶ that the figures to which he referred were simply taken from an Arena Essex application document but no source for that latter document was provided by Mr Eady.⁹⁷

⁹¹ CD 3.2, para 3.9 Table 3.1.

⁹² Para.36.

⁹³ See CD 10.20 page 47. Not addressed in April 2023 update nor in proof of evidence nor in evidence in chief.

⁹⁴ CD 3.2 para 4.8 Table 4.1. See, too, CD 10.20 (SCS August 2021) page 53: this is not a new point.

⁹⁵ Mr Morris' statement, paragraphs 18-19. No cross-examination. Mr Eady acknowledged that he personally is not an expert in speedway and that Mr Morris has far superior knowledge.

⁹⁶ CD 3.2 para 4.8, Table 4.1 and footnote number 6.

⁹⁷ Considerable reliance was generally placed on the Arena Essex application (which has not been determined) by the Appellant. Indeed there are 9 references to that application in CD 3.2. CD 10.20 noted that much of the KPP report is simply a 'copy and paste' of the Arena Essex documentation.

- (c) Number of speedway teams competing in BSPA leagues⁹⁸:
 - (i) the 2006 figure for NDL should have been 8, not 18⁹⁹; the total for that year was therefore 33 not 43;
 - (ii) the fact that in 2023 there are 24 teams rather than 33 in, for example, 2016 reflects the fact that 8 clubs (9 teams) including Coventry (Coventry having 2 teams) have stopped racing: only 3 of those have stopped because they have gone into administration¹⁰⁰; 4 of the others have stopped because their tracks are the subject of redevelopment proposals. 2 tracks – Oxford and Workington have also reappeared¹⁰¹. Again, this hardly suggest that there is a terminal decline. (As was stated on a number of occasions by witnesses, the fact that 3 clubs have gone into administration is not uncommon in other sports either (rugby and football were examples referred to by Mr Morris).
- **Stock car racing**
- (d) as regards stock car racing, Mr Carter (who happens also to be secretary to BriSCA F1 Management Board) pointed out (again) that, contrary to para. 5.5 of CD 3.2, in 2016 the number of stock car events (in all formats) at Brandon had exceeded the 9 fixtures referred to there by some 7¹⁰² events for non-BriSCA F1 events. Table 4.4¹⁰³ (2019-2023 shows a similar number of total events for BriSCA F1 in 2023 across the 14 venues in the UK to the pre-pandemic number although that was below the 50 events on the calendar prior to the closure of Coventry.

⁹⁸ CD 3.2 Table 4.2.

⁹⁹ CD 10.20 page 54 in respect of Table 4.2 of the 2020 Speedway Viability Assessment (CD2.58 page 12).

¹⁰⁰ Mr Morris's statement page 8.

¹⁰¹ Ibid.

¹⁰² CD 2.58 page 49 – point addressed over 2 years ago by SCS. Not corrected in April 2023 update nor in evidence in chief.

¹⁰³ CD 3.2 paragraph 4.24 pages 14-15.

APPENDIX D

ANALYSIS OF THE RIDER LEVETTT BUCKNALL COST REPORT¹⁰⁴

1. Paragraph 2.1 of the Cost Report states: “The scheme comprises the demolition, refurbishment and construction of an existing speedway track

including the following.

- Demolition of existing Main Stand and replacement with a 1,000-seater stand including hospitality, club shop, offices, kitchen, lounges etc...,
...”

and Appendix A¹⁰⁵ refers to this Stadium rebuild; but this is neither that which the Farrow report expressly concludes nor does it reflect the SCS/Hunter proposal for the short term.

2. The Cost report includes costs of some £537,000 for the demolition of buildings including associated costs such as dealing with hazardous materials. It also includes rebuilding costs of some £4.6 m for the grandstand, entrance booths and garages (it is unclear what ‘garages’ refers to) which are not envisaged/proposed by SCS.
3. The Cost report also refers¹⁰⁶ to, and includes in its costings, for example, “proposed new kennels and welfare, but greyhound racing is not proposed.
4. The report also assumes that the speedway track will need to be resurfaced, when that is not considered to be the case¹⁰⁷. The lack of need to resurface the speedway track or the greyhound track (£640,000 combined), kennels and welfare for the dogs (a further £510,000) alone show that the total costs are overestimated by over £1.1m. These are in addition to the £5m+ demolition and new stand costs.

¹⁰⁴ Appendix 4 to Mr Hooper’s proof of evidence.

¹⁰⁵ Page a66.

¹⁰⁶ section 3.4.

¹⁰⁷ the views respectively of Mr Rees (based on his experience at Odsal stadium) and Mr Lestrade (based on the experience at Oxford stadium).

5. Further, much of the proposed works to various fences or barriers allowed for is not needed.
6. Whilst, in addition to the existing and to be retained 'Armco' barrier, a new speedway safety fence and air fence and a stock car catch fence will be needed (the Cost Report estimates some £200,000), these items would be provided by sponsors under the SCS proposal.
7. It is noted, however, that it is acknowledged¹⁰⁸ that "[t]he hard surfacing around the existing track will have isolate[d] repairs/replacement only (not complete replacement)", so it appears to be accepted by RLB that the terracing can be repaired, or only to need replacement in isolated areas. This rather accords with Mr Carter's view and the experience of Mr Rees at Odsal and Mr Lestrade at Oxford.
8. Mr Hooper confirmed that the works to the terracing related to the East stand were estimated to cost £100,000. (This would be broadly consistent with SCS's contingency figure.) Mr Osborne's figure for repairs to the terracing was £150,000; but even if it were to be the latter figure, there is no suggestion that Mr Hunter would balk at funding this.
9. A final observation regarding the Cost Report is that SCS are of the view that the costs of building a new stadium would not be as high as stated. For example, the brand new Belle Vue stadium in Manchester, albeit constructed in 2016, cost some £8m (including grandstands and racetrack).^{109 110}

¹⁰⁸ Page a64, section 3.4.

¹⁰⁹ Hooper Appendix 5, page a80 (last line).

¹¹⁰ On a separate point, although much seemed to be made by the Appellant as to the financial viability of that stadium, a careful reading of the Council report in Mr Hooper's Appendix 5 shows that this had nothing to do with the viability generally of speedway racing. For example:

(a) there appear from the report to have been financial irregularities and/or impropriety (page a82, para 2.13);

(b) on the day of the first speedway event in March 2016, the track was declared unfit: it subsequently transpired that "the materials used for the sub base on Turns 3 and 4 were different to those specified in the Building Contract and should not have been used as a replacement without an

APPENDIX E

ANALYSIS OF CD15.5.50

1. Mr Osborne has included a figure of £325,000 for demolition works. This obviously overstates the position should only partial demolition be required. It should be noted, too, that one of the businesses supporting the reinstatement of the stadium in SCS' proposal is Northeast Demolition¹¹¹ so this may reduce this figure further.
2. Mr Osborne also identified costs of £5.2m for a new 'customer building' should that be required. This figure, too, would be a significant overestimate if the central part of the grandstand (the area of the grandstand least affected by fires), could be retained. As Mr Osborne stated in evidence "There is always a difference practically between something which is an extensive report to what can practically be dealt with on the ground".
3. Putting aside references to, and costs of demolishing the grandstand for one moment, as that is not the SCS short term objective for the resumption of racing, and focussing on other elements referred to in Option 2 by Mr Osborne, Mr Carter stated in his rebuttal (Item 13) that there were a number of areas where the appellant's estimates would be disputed. The following may be noted:

Item 21: Relaying the speedway track £200,000. There is no need to relay the speedway track. Whilst some shale was removed from the surface, as in usually the case during a race meeting, it is stored on the infield and none of it left the site, as stated in Mr Carter's rebuttal of Mr Hooper's proof.¹¹² SCS identified minimal costs of

assessment on the impact of the Speedway track. It has come to light that the owners of Belle Vue Group Companies were aware of the proposal to use alternative material. However, the Council were not made aware of this change of material and the express consent of the Council was not obtained." (para 3.4).

(c) "In January 2017, it was confirmed that both BV Arena Ltd and Belle Vue Speedway Limited had formally entered voluntary liquidation following concerns over financial management."

¹¹¹ See CD15.5.12.

¹¹² Item 32.

£20k for restoration of the track, essentially for removal of weeds, relaying the shale currently on the infield, topping up the shale and grading. The SCS cost of doing this was informed by both Mr Rees, based on his experience at Odsal, and by Mr Lestrade, based on the experience of restoring the Oxford track.

Item 22: Creating a tarmac stock car track £155,000. There is no need to create a tarmac stock car track.¹¹³ Speedway and stock cars have shared the same shale track at Brandon, widely regarded as the ‘Wembley of the stock car world’ for 62 years. Many other stadia including Sheffield, Kings Lynn and Mildenhall have shale tracks shared by speedway and stock cars.

Item 14: Acoustic barrier £525,000. Mr Osborne accepted under cross examination that the Coventry stadium has operated without an acoustic barrier (for 88 years). Existing permissions would allow the resumption of racing without such a barrier. Swindon also operated without such a barrier for decades but was required to install an acoustic barrier as a planning condition related to the approval of an application to build houses in very close proximity to the stadium, including the stadium car park.¹¹⁴ (RLB, by contrast, estimated this at £112,000.)

Item 4 Car Park clear and tidy / repair £125,000. The car park essentially requires the removal of vegetation and laying of clinker to level out any ‘pot holes’. All of this work could be carried out by volunteers.

Item 5: Competitors parking £30,000. SCS take the view that the competitor parking area is just as it was prior to closure and does not require any works.

Items 8, 11, 12, 13: all relate to terracing repairs / replacement totalling £647,000. Mr Osborne, in evidence and under cross examination, accepted that the condition of the terracing had not been fully investigated. Based on the experience of Mr Rees (who repaired terracing at the Elite designated Odsal Stadium Bradford, and Mr Lestrade, who repaired terracing at Oxford Stadium), these estimates are considered

¹¹³ Mr Carter’s Rebuttal, Item 12.

¹¹⁴ Mr Carter’s Rebuttal Item 9.

to be significantly overestimated. The work to repair terracing is neither technical nor requires expensive materials.

Item 10: Vehicle Access Roads £210,000. SCS contend that the main roadway into the stadium and the roadway running parallel with the stadium are in good condition and not in need of any works.

Item 16: Electrical substation and connection £210,000. The substation has been vandalised by travellers and is beyond repair but the SCS proposal includes the provision of a diesel generator to power the whole stadium on event days. The cost of a generator together with the coupling, as informed by Keith Chapman who has installed one at Kings Lynn, is circa £78,000 and is identified in the SCS costing as being sponsored by Mr Whalley. (RLB estimated the cost to be £150k.)

Item 28: Changing rooms and showers £145,000. The condition of the existing changing rooms and showers is unknown to all parties as they are boarded up and inaccessible; but, if necessary, portacabins can be used.

Item 24 and Item 41: Track fencing and Air fence £180,000. As the Inspector may have seen on the site visit, the Armco (stock car barrier) remains in place but a speedway safety fence, air fence and a stock car catch fence would be required. As previously noted, these are all covered in the SCS costs by West Midlands Golf Club sponsorship.

4. Mr Osborne was asked how SCS's estimate of £736,000 correlated to his own estimate of £4.9m in terms of the cost of reinstatement of racing. Mr Osborne singled out just one cost put forward by SCS, 'make good perimeter fencing, £2k' and suggested the perimeter fencing was 'defunct and beyond repair'. The perimeter fencing to which SCS was referring was the stadium perimeter fencing, which is largely intact. Mr Osborne was confusing this with the racetrack perimeter fencing, which SCS accept, apart from the armco barrier, requires replacement and provision is made for this within the £100,000 and in any case, would be sponsored by West Midlands Golf Club.

5. Investigations will of course need to be carried out to see what precisely needs to be done to make the back-straight (or east) stand and associated terracing (or relevant sections thereof¹¹⁵ – even Mr Hooper referred to ‘areas’) structurally sound to ensure the safety of all and thereby to satisfy both governing bodies and public regulatory bodies. Mr Hooper referred to Farrow’s structural report¹¹⁶ as putting a sum of £100,000 on this.

6. Mr Osborne also acknowledged that the terracing under the east stand was in much better condition than the external terracing and that investigations as to its sub-structure had yet to be carried out. He thought that it would be feasible to re-use this terracing. There is no evidence that the cost would be prohibitive: it was not put to Mr Hunter in XX that it would be prohibitive, whether for him alone or for any consortium. Indeed, by way of context, the figure of some £736,000 includes £140,000 of sponsorship; and an additional £100,000 in terms of an order of magnitude should be seen in the context that the contingency allowed for by SCS is some £95,000. No disrespect at all is intended to Farrow by noting that theirs is not a report which was asked to focus on what would be possible to achieve (and how much it would cost) simply to reinstate sufficient terracing in that stand – Mr Carter considered that the back straight terrace and stand as a whole had capacity for up to 3,000 people – to enable racing to recommence with sufficient spectators – for the profitable promotion of speedway alone Mr Ford considered that 1,200 spectators would suffice.

¹¹⁵ The Farrow report suggested that cracks in the backstraight covered slabs are defects but this is not supported by any evidence from Health and Safety experts as to whether this presents a risk to the safety of people who may in the future stand in those areas.

¹¹⁶ The report was provided only on exchange of evidence (Mr Hooper’s appendix 3).