

APPEAL REF: APP/E3715/W/23/3322013

LPA REF: R18/0186

IN THE MATTER OF AN APPEAL BY

BRANDON ESTATES

**LAND AT COVENTRY STADIUM,
RUGBY ROAD, COVENTRY, CV8 3GJ**

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. This is an Appeal made by Brandon Estates ('the Appellant') following Rugby Borough Council's ('the Council') refusal of an application for the demolition of existing buildings and outline planning permission (with matters of access, layout, scale and appearance included) for residential development (Use Class C3), including means of access into the site from Rugby Road, provision of open space and associated infrastructure, and provision of a sports pitch, erection of a pavilion and formation of associated car park ('the Proposed Development') at Land at Coventry Stadium¹, Rugby Road, Coventry, CV8 3GJ ('the Site').
2. There was one reason for refusing permission². These closing submissions examine each of the seven main issues which flow from the same, as confirmed by the Inspector at the outset of this inquiry, in turn³.

¹ Note that the stadium is variously described as both Brandon and Coventry Stadium. The two terms are used interchangeably herein.

² Decision Notice, CD05: *The development would result in the loss of a sporting facility that has both local and national significance and although an alternative sporting provision is proposed there is not a clearly identified need for the alternative sporting provision and therefore it is considered that the proposed benefits of the new facility do not clearly outweigh the loss of the stadium. The proposal would therefore be contrary to Policy HS4(C) of the Local Plan (2019), Policy LF1 of the Brandon and Bretford Neighbourhood Development Plan (2019) and Paragraph 99(c) of the National Planning Policy Framework (2021).*

³ Paragraph 8, CD C11. i) Whether the proposed development forms inappropriate development in the Green Belt, the effect on openness and Green Belt purposes; ii) Whether the stadium is surplus to requirements having regard to national and local planning policies; iii) Whether it is financially viable to reinstate the speedway stadium; iv) Whether there is an identified need for the alternative sports provision proposed; v) Whether the benefits of the alternative sports provision outweigh the

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

3. Our submissions in respect of Green Belt matters (GB) follow the subheadings set out by the Inspector for the Roundtable Session. The Inspector is referred to the PoE of Matthew Chard together with the Landscape and Visual Impact Assessment (LVIA) produced by Barton Willmore⁴, which Mr. Chard reviewed and considered to be appropriate and accurate⁵, together with Mr. Chard's illustrative material⁶.

The character of the site and its surroundings

4. The site lies to the north-east of Rugby Road (A428), between Gossett Lane to the north-west and north-east, and Speedway Lane to the south-east⁷. Locally, it is surrounded by residential development to the immediate north, east and south, with woodland to the north⁸. The closest settlements are Binley Woods approximately 200m to the west and Brandon approximately 600m to the south-east⁹. The residential houses at Speedway Lane to the south-east of the Site form the edge of the built environment at Binley Woods¹⁰. Locally some of the hedges have deteriorated but substantial woodland blocks and tree belts provide a well wooded overall landscape character providing physical and visual containment to the Appeal Site¹¹.
5. Though the site is not covered by any national or local landscape designations, it is located within the West Midlands Green Belt where it extends between Birmingham and Coventry¹².

loss of the former speedway use; vi) Other benefits of the proposal including the delivery of new market and affordable housing; and vii) The overall planning balance.

⁴ CD 2.38

⁵ Paragraph 1.2.6. Note that neither the Council nor the landscape officer raised any queries during the application process and Matthew Chard considers that the submitted assessment is accepted.

⁶ Document A : Appeal Scheme Site Appraisal and Site Context Photographs & Maps; and Appendix B : Appendices.

⁷ Paragraph 2.1.1, PoE Matthew Chard.

⁸ Paragraphs 2.3.1 and 9.1.2, PoE Matthew Chard. See also paragraph 9.1.1.

⁹ Paragraph 2.1.2, PoE Matthew Chard.

¹⁰ Paragraph 2.3.1, PoE Matthew Chard.

¹¹ Paragraph 2.4.1, PoE Matthew Chard.

¹² Paragraphs 2.5.1 and 2.5.2, PoE Matthew Chard.

6. At a national level, the site is located within National Character Area (NCA) 96: Dunsmore and Feldon¹³. Due to the extensive area of the NCA in relation to the Site¹⁴, and the wide range of landscape characteristics found within it, Mr. Chard was clear that the Proposed Development would result in no effects on the character of the LCA as a whole. Regionally, the site lies within the area ‘Dunsmore’ that is described as “*well wooded and in places urbanised*”¹⁵.
7. The Landscape Assessment of the Borough of Rugby – Sensitivity and Condition Study 2006¹⁶ identifies the site as located within a Local Development Unit (LDU) which has been given a moderate rating on the fragility index indicating landscapes “*that are variable in character and/or more recent in origin are likely to have a greater (although not unlimited) capacity to accommodate change*”¹⁷. The site was also rated moderate in terms of visual sensitivity and noted that this rating had “*some potential to mitigate impact through tree and/or woodland planting*”¹⁸. This provides an overall rating of moderate sensitivity¹⁹.
8. The Rugby Borough Council Landscape Sensitivity Study 2016²⁰ shows the site as located within Land Cover Parcel (LCP) BR_01²¹. Insofar as landscape sensitivity to housing development, much of the central portion of the site is covered by a ‘Medium’ sensitivity rating, whilst the remainder is considered to be of a ‘HighMedium’ sensitivity²². The site description for Zone BR_01 includes that it “*forms part of the urban area to the periphery of Binley Woods and includes a derelict garden nursery plot to the south of the Rugby Road and a row of roadside properties and Coventry Stadium to the north*”²³. Two potential

¹³ Paragraph 3.1.1, PoE Matthew Chard.

¹⁴ It is a large elongated NCA which stretches from Coventry/Rugby to the north, past Royal Leamington Spa and Stratford – see Paragraph 3.1.1, PoE Matthew Chard.

¹⁵ Paragraph 3.3.1, PoE Matthew Chard. See further paragraphs 3.3.2 to 3.3.6 with respect to relevant landscape strategies and guidance with respect to the site.

¹⁶ CD 8.6

¹⁷ Paragraph 3.4.1, PoE Matthew Chard.

¹⁸ Paragraph 3.4.2, PoE Matthew Chard.

¹⁹ Paragraph 3.4.3, PoE Matthew Chard.

²⁰ CD 8.7

²¹ See 3.5.2 Figure 12: Landscape sensitivity to housing development at Binley Woods, within the submitted LVIA which can be found, together with photographs, at Document A: Appeal Scheme Site Appraisal and Site Context Photographs & Maps to Mr. Chard’s PoE. See page 23 of CD 8.7 for zone BR_01.

²² Paragraphs 3.5.2 to 3.5.4, PoE Matthew Chard. A Medium Sensitivity rating is defined as a “*Landscape and / or visual characteristics of the zone are susceptible to change and / or its intrinsic values are moderate but the zone has some potential to accommodate the relevant type of development in some situations without significant character change or adverse effects. Thresholds for significant change are intermediate*”. A High-Medium Sensitivity rating is defined as a “*Landscape and / or visual characteristics of the zone are vulnerable to change and / or its intrinsic values are medium-high and the zone can accommodate the relevant type of development only in limited situations without significant character change or adverse effects. Thresholds for significant change are low*”.

²³ Paragraph 3.5.5, PoE Matthew Chard.

allocations were identified on the site as part of the Council’s SHLAA in December 2015²⁴ and zone BR_01’s potential for housing development includes an acknowledgement that *“there is potential for some additional development, but this should extend no further east than the stadium”*²⁵.

9. The developed nature of the Appeal Site, enclosed boundaries, and existing residential development within the immediate setting mean that the site has a much closer relationship with the existing settlement edge, rather than being part of the more rural countryside located beyond the woodland to the north²⁶. As Matthew Chard explained²⁷, the site is a *“detracting void in the landscape with a dilapidated stadium”* which is *“degraded”* and *“out of kilter with the locality”*. The site features and character are illustrated by Appeal Site Appraisal Photographs (ASAP) A to L²⁸.

The extent to which the site forms previously developed land (‘PDL’)

10. The existing development consists of a racetrack, spectator stands and outbuildings with substantial areas of hardstanding in connection with the former Brandon Stadium. It comprises 10.86 hectares²⁹ of what is plainly previously developed land (‘PDL’) meaning that its redevelopment would meet the exception at paragraph 149 g) of the NPPF³⁰.
11. The Council’s Officer was clear in her report that the Site is previously developed³¹. It remains a matter of agreement between the Appellant and the Council that the Site is recognised as PDL together with that the Proposed Development is compliant with Local Plan Policy GP3³².
12. It is only SCS that disagrees. Indeed, that disagreement no longer appears to be pursued (at least with any vigour). Despite suggesting that he had long held the view that he doubted

²⁴ CD 8.10 – allocations S14/051 and S14/050.

²⁵ Paragraph 3.5.7, PoE Matthew Chard

²⁶ Paragraph 5.1.3, PoE of Matthew Chard.

²⁷ Roundtable Session

²⁸ Paragraph 5.1.6, PoE of Matthew Chard.

²⁹ Paragraph 5.1.1, PoE of Matthew Chard.

³⁰ Paragraph 149 g) of the NPPF: *“limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: – not have a greater impact on the openness of the Green Belt than the existing development; or – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority”*.

³¹ The officers report to committee at CD 06 states at paragraph 19.2 *“in principle the development of housing on this site is acceptable due to the site being previously developed land”*. See also Paragraph 1.2..

³² Paragraph 3.1 of the SOCG at CD14.1.

that the main car park was PDL³³ David Carter accepted in his PoE³⁴ that the land is PDL “*in light of virtually all other sources saying it was*”³⁵. He then “*reflected*” upon this given the questions which the Inspector had asked and “*thought it was worth raising*”³⁶. Thus, he began the roundtable session stating that “*much of the site is to be regarded as PDL*”, but questioned the curtilage of the stadium³⁷, whether or not the car park is a fixed structure and contending that it is blending back into the landscape.

13. That period of enlightenment was short lived. David Carter quickly accepted, when the Inspector noted that in a very large site one would normally expect curtilage to include car parking which would indicate that land was PDL, that he did not think that he would be “*prepared to go to the stake in saying that it is not PDL*” confirming that his main points related to openness. We say that was a wise judgement call.

14. The NPPF, as the Inspector rightly reminded³⁸, provides a definition of PDL at Annex 2. That is clear that it encompasses “*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*”³⁹. On any sensible consideration, the curtilage of the stadium does include the car park area and, though the car park to the west is more open in character as Matthew Chard accepted⁴⁰, it has fixed infrastructure in the form of hardstanding. There would be substrata underneath where the gravel is and though vegetation is starting to ingress, it hasn’t blended into landscape at all. That much was evident from the site visit. David Carter contended that there is no subsurface to the hardstanding, and made a bizarre reference to a definition of hardstanding which he had found in the context of airports, though not citing the source⁴¹. This is no airport and, given the definition of PDL in the

³³ Roundtable Session

³⁴ Paragraph 2.9

³⁵ Roundtable Session – David Carter made this remark in the context of explaining why he did not think that the point was worth challenging when writing his PoE

³⁶ Roundtable Session – David Carter’s explanation for his change in tact

³⁷ He stated that there can’t be any doubt that the stadium buildings are within the curtilage of the stadium but suggested that the tree belt there and along Rugby Road cannot be regarded as PDL. Furthermore the area used for car parking in his view didn’t fall within the curtilage of the stadium.

³⁸ During the Roundtable Session

³⁹ Note that the definition goes on to note that it excludes “*land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape*”.

⁴⁰ Roundtable Session

⁴¹ Roundtable Session

NPPF, though the Appellant says that the hardstanding is permanent it wouldn't need to be in order to comprise PDL; indeed, land within curtilage does not even need to be developed to nevertheless comprise PDL.

15. Given that the landscape character and visual amenity experienced of the Appeal Site is defined by the existing Coventry Stadium which occupies the eastern part of the Appeal Site, with the western part taken up by hardstanding associated with car parking for the venue, the Site as a whole is clearly developed⁴².

Visual analysis of the site and its immediate surroundings

16. The Rugby Borough Council Landscape Sensitivity Study 2016⁴³ indicates that views into zone BR_01 are very limited with a low level of intervisibility, with a visual relationship with the settlement⁴⁴. Key views within the zone are described as: “...*urban in character, comprising housing, the Coventry stadium, the A428 and a run-down disused plant nursery*”⁴⁵. In terms of functional relationship “*the zone forms part of the urban area to the periphery of Binley Woods*” and in terms of visual relationship “*the zone relates visually to the settlement*”⁴⁶.

17. That rings true when considering the site itself. Its location on low lying generally flat land, the limited surrounding topographical variation and extensive woodland cover and mature vegetation in the wider landscape, and the surrounding built forms results in a very localised and limited visual envelope⁴⁷. Views obtained of the site from publicly accessible areas are extremely limited, restricted to close range views from short sections of local roads including Speedway Lane adjacent to the south-eastern boundary and the A428 / Rugby Road to the south-west; a single residential property off Gossett Lane along the PRow to the north-east; and PRow adjacent to the site boundaries⁴⁸.

⁴² Paragraph 8.2.2, PoE of Matthew Chard.

⁴³ CD 8.7

⁴⁴ Paragraph 3.5.9, PoE Matthew Chard.

⁴⁵ Paragraph 3.5.9, PoE Matthew Chard.

⁴⁶ Paragraph 3.5.11, PoE Matthew Chard.

⁴⁷ Paragraph 5.3.1, PoE of Matthew Chard.

⁴⁸ Paragraphs 5.2.2 and 5.3.1, PoE of Matthew Chard. See Appeal Site Context Photographs (ASCP) 1-7; in particular ASCP 1 with regard the entrance, ASCP 3-4 as to views from Speedway Lane and associated PRow, and ASCP 6-7 regarding views to the north and east at short sections of the adjacent PRow and property off Gossett Lane. There are no middle- or long-distance views of the site from the surrounding landscape as a result of a combination of intervening topographical variation and vegetation, including tree belts and woodland blocks – see Paragraph 5.2.1, PoE of Matthew Chard.

18. The existing built form creates prominent detracting features that restricts views over the eastern part of the site⁴⁹. The buildings are utilitarian, lacking in human interest with large blank façades and in a dilapidated and deteriorating condition creating a detracting influence on the site and immediate area⁵⁰. Due to the scale and massing they are seen as an anomaly, creating prominent detracting features that restricts views over the eastern part of the site⁵¹. The spectator stands are the most notable feature; linear monolithic features with a notable scale, massing, and height of approximately 11.5m⁵². The main western stand provides a large blank façade with its over scale, massing and size forming a monolithic feature that heavily restricts visual permeability across the Appeal Site⁵³. The southern boundary is currently enclosed by solid metal fencing with no visual permeability into the site from Speedway Lane⁵⁴.

The contribution of the site to the five Green Belt purposes

19. Policy GP2 sets out the settlement hierarchy of the Borough and shows the site as ‘Green Belt’ where the policy states “*New development will be resisted; only where national policy on Green Belt allows will development be permitted*”.

20. The NPPF sets out the five purposes of Green Belt at paragraph 138⁵⁵:

- a) to check the unrestricted sprawl of large built-up areas;*
- b) to prevent neighbouring towns merging into one another;*
- c) to assist in safeguarding the countryside from encroachment;*
- d) to preserve the setting and special character of historic towns; and*
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

21. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open⁵⁶.

⁴⁹ Paragraph 5.1.7, PoE of Matthew Chard.

⁵⁰ Paragraph 5.1.2, PoE of Matthew Chard. The ASAP illustrate the existing degraded built form, which has been subject to vandalism and graffiti – ASAP E – J.

⁵¹ Paragraph 5.1.7, PoE of Matthew Chard.

⁵² Paragraph 5.1.1, PoE of Matthew Chard.

⁵³ Paragraph 5.1.8, PoE of Matthew Chard. See also ASAP H.

⁵⁴ Paragraph 5.1.8, PoE of Matthew Chard.

⁵⁵ *a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; c) to assist in safeguarding the countryside from encroachment; d) to preserve the setting and special character of historic towns; and e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

⁵⁶ Paragraph 6.3.1, PoE Matthew Chard.

22. The Joint Green Belt Study (2015)⁵⁷ identified the site as within the local authority boundary of Rugby and more specifically within Broad Area 2. A Green Belt Review of the site was undertaken by Barton Willmore within the submitted LVIA⁵⁸ to assesses the contribution of the Site against the purposes of the Green Belt, at a finer grain than the Council assessment using the published Green Belt review criteria as presented within the 2015 Study⁵⁹.
23. Mr. Chard is plainly right that the reasons stated for the considerable contribution of the Broad Area to the purposes of the Green Belt within the Joint Green Belt Study are not reflective of the site's contribution to the Green Belt⁶⁰. The site has a *very limited* contribution⁶¹.
24. The Site occupies a very small percentage of the total Broad Area. It is already separate from Coventry and Rugby, lying at the edge of Binley Woods, and does not contribute to the sprawl or the merging of the two settlements⁶². The 2015 Study states that the Broad Area safeguards the countryside, in particular the River Avon flood plain; however the site lies outside the flood plain⁶³. It is also not considered to be part of the open countryside – albeit countryside in policy terms - given the existing scale of development that exists within it⁶⁴. The developed nature of the site, its enclosed boundaries, and the existing residential development within the immediate setting result in it having a much closer relationship with the existing settlement edge than the more rural countryside beyond the woodland to the north⁶⁵. It is visually contained, as has been discussed, and does not afford views towards the historic core of either Rugby or Coventry such that it does not contribute towards preserving the setting and character of historic towns⁶⁶.
25. It is Matthew Chard's clear view that the re-development of the site will not harm the purposes of Green Belt in relation to safeguarding the countryside but, rather, would support the fifth purpose of national Green Belt policy by contributing positively towards

⁵⁷ CD 8.9

⁵⁸ CD 2.38

⁵⁹ See Appendix 1 of the LVIA where the methodology is reproduced.

⁶⁰ Paragraph 6.2.2, PoE Matthew Chard.

⁶¹ Paragraph 9.1.18, PoE Matthew Chard and Appendix B Green Belt Review Table, Table 1: Contribution of the Site to the Purposes of the Green Belt. See also the submitted LVIA.

⁶² Paragraph 6.3.1, PoE Matthew Chard.

⁶³ Paragraph 6.3.1, PoE Matthew Chard.

⁶⁴ Paragraph 6.3.1, PoE Matthew Chard.

⁶⁵ Paragraph 9.1.5, PoE Matthew Chard.

⁶⁶ Paragraph 6.3.1, PoE Matthew Chard.

assisting regeneration and encouraging the recycling of derelict and other urban land in the West Midlands⁶⁷. And he does not stand alone. Both the submitted LVIA produced by Barton Willmore⁶⁸ and the Council's Officer's Report to the committee⁶⁹ consider there to be no harm to the 5 purposes of the Green Belt.

26. The Proposed Development would result in a reduction in developable area, the large linear monolithic buildings will be removed and replaced with development that is smaller in mass and of a more appropriate domestic scale to its location, and it will reflect the existing character of the existing development within the immediate and local vicinity⁷⁰.

Openness: whether the proposal would have a greater impact on the spatial and visual aspects of openness than the existing use of the site

27. An essential characteristic of the Green Belt as set out in NPPF paragraph 137, is its openness.

28. There is no definition of openness within the NPPF. In Timmins v Gedling BC and Westerleigh [2014] EWHC 654 (Admin)⁷¹, openness was held to mean '*an absence of buildings or development*'. However, openness is not only a spatial designation; visual impact should also be considered. In John Turner v Secretary of State for Communities and Local Government and East DC [2016] EWCA Civ 466 Sales LJ interpreted openness as a concept "*not narrowly limited to [a] volumetric approach*" which "*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*"⁷². This was expanded upon in Samuel Smith Old Brewery (Tadcaster) and ors v North Yorkshire County Council [2020] UKSC 3. When considering change to openness it can be positive, negative or neutral in its resulting effect⁷³.

⁶⁷ Paragraphs 6.3.1 and 6.3.6, PoE Matthew Chard.

⁶⁸ CD 2.38

⁶⁹ CD 6

⁷⁰ Paragraph 8.4.1, PoE Matthew Chard.

⁷¹ Paragraphs 68-75 of the Judgment

⁷² See paragraph 14 of the Judgment

⁷³ Paragraph 8.3.2, PoE Matthew Chard.

29. Inevitably, there would be a change to the openness from the proposed development, by definition⁷⁴; but there is a sound basis for concluding that the Proposed Development would result in no harm there being a collective positive outcome or at the very least no less than neutral outcome⁷⁵. As the Council's Officer's Report notes:

“The site is however within the Green Belt but the proposed residential development would not result in an increase in the developed area of the site and will introduce development of a smaller scale and further open space, soft landscaping, footpaths and cycle paths linking to the existing footpaths surrounding the site. It is therefore considered that the proposed development would not have a greater impact on the openness of the Green Belt than currently exists therefore the proposal complies with paragraph 149 of the NPPF”⁷⁶.

Spatial

30. There would be no very significant intensification of built development nor would it result in large scale urbanisation within the countryside⁷⁷. In spatial terms, there would be a reduction in the overall development footprint when comparing the coverage of the existing stadium including the large scale-built form, outbuildings and areas of hardstanding that lie within the domain of the main stadium (fenced) against the proposed developable area of the Proposed Development as illustrated by Mr. Chard's Figure 2 Comparative Coverage Plan⁷⁸. 40.05%⁷⁹ of the site is currently occupied by built form, infrastructure and hardstanding whereas 37.48%⁸⁰ of the site is proposed for development with a greater proportion comprising public open space⁸¹.

31. Moreover, the proposed built form will be redistributed over the site with a greater area of open space to the north, a limited section of housing within the south-eastern part, and a more organic form and connection with the proposed landscaping and 3G sports pitch⁸². The introduction of residential development of a smaller scale is characteristic of the local

⁷⁴ Paragraph 9.1.11, PoE Matthew Chard

⁷⁵ Paragraph 8.3.2, PoE Matthew Chard.

⁷⁶ Paragraph 19.2, Officer's Report, CD06. See also paragraph 5.8.

⁷⁷ Paragraph 9.1.15, PoE Matthew Chard

⁷⁸ Paragraph 8.3.2, PoE Matthew Chard.

⁷⁹ 4.35ha

⁸⁰ 4.07ha

⁸¹ Paragraph 8.3.4, PoE Matthew Chard.

⁸² Paragraph 8.3.5, PoE Matthew Chard.

setting to the east, south and west⁸³. The network of footpaths and cycleways will provide enhanced connectivity and permeability to the existing PRow network and roads within the vicinity⁸⁴.

Visual

32. The potential harm to visual openness would also be limited as a result of the existing level of enclosure to the site⁸⁵. The Inspector has had the benefit of a site visit but may find the Wireline Accurate Visual Representations (AVRs) helpful as a reminder of the impact of proposed built form on the site from the agreed views⁸⁶.
33. It is not proposed to regurgitate that already said with regard to the limited views in relation to the site. The submitted LVIA⁸⁷ considered the openness of the site and its numerous urbanising features which Mr. Chard is right have an existing effect on the perception of visual openness⁸⁸.
34. The principal receptors that experience visual openness would be users of the PRow, roads / lanes and residents adjacent to the site boundary only⁸⁹. There is presently limited appreciation of the site from these locations, heavily restricted by the robust boundary vegetation and local vegetation framework, and when viewed is seen as an area of derelict land and dilapidated development⁹⁰. The existing built form, structures and boundary fencing within and adjacent to the site also provide a strong degree of enclosure, evident along all boundaries⁹¹.
35. Matthew Chard is correct that the overall change to the openness characteristic of the Green Belt would be highly localised in extent and partly mitigated through the sensitive design approach⁹². With the Proposed Development in situ, the overall experience of users of the PRow and local residents will be enhanced⁹³. The large linear monolithic buildings

⁸³ Paragraph 8.3.6, PoE Matthew Chard.

⁸⁴ Paragraph 8.3.6, PoE Matthew Chard.

⁸⁵ Paragraph 9.1.18, PoE Matthew Chard

⁸⁶ Appendix 5 of the Submitted LVIA

⁸⁷ CD 2.38

⁸⁸ Paragraph 8.3.8, PoE Matthew Chard.

⁸⁹ Paragraph 8.3.9, PoE Matthew Chard.

⁹⁰ Paragraphs 8.3.8 to 8.3.9, PoE Matthew Chard.

⁹¹ Paragraph 8.3.8, PoE Matthew Chard. See also Appeal Site Context Photographs 1-7.

⁹² Paragraph 8.3.11, PoE Matthew Chard.

⁹³ Paragraph 8.3.9, PoE Matthew Chard.

presently in situ would be removed and replaced⁹⁴. Though there would be a change in the visual experience, consideration has been given in the design process to maintaining a perception of visual openness⁹⁵. The residential built form will be located largely within the eastern extent of the site, in and around the existing location of the existing stadium footprint⁹⁶. The footprint of the proposed built form will be smaller than the existing stadium with the built form being of a domestic scale⁹⁷. Green and blue infrastructure will total approximately 62.52%⁹⁸ of the site with a multitude of visually interesting and locally distinctive open spaces including a play area, sports pitch, footpath/cycleways and informal play⁹⁹. The positive outward facing development will provide views along corridors throughout the scheme to provide perceptual linkage with wider landscape and mitigate loss of visual openness¹⁰⁰.

36. There is a potential for significant benefits arising from the enhanced access to and quality of land remaining within the Green Belt¹⁰¹; particularly in the context of the existing dilapidated and degraded brownfield land¹⁰².

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

37. The origin of this main issue is paragraph 99 of the NPPF¹⁰³ which states that:

99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

⁹⁴ Paragraph 9.1.14, PoE Matthew Chard

⁹⁵ Paragraph 8.3.9, PoE Matthew Chard.

⁹⁶ Paragraph 9.1.9, PoE Matthew Chard

⁹⁷ Paragraph 9.1.17, PoE Matthew Chard

⁹⁸ 6.79ha

⁹⁹ Paragraph 8.3.13, PoE Matthew Chard.

¹⁰⁰ Paragraph 9.1.17, PoE Matthew Chard

¹⁰¹ Paragraph 9.1.15, PoE Matthew Chard

¹⁰² Paragraph 8.3.13, PoE Matthew Chard.

¹⁰³ CD8.1

38. There is no dispute between the parties that the suffix ‘or’ makes clear that only one of a)-c) need be satisfied for there to be compliance with this part of the Framework.

39. In terms of the Development Plan, policy HS4 C in effect mimics paragraph 99 in stating that sports and recreational buildings and land within Open Space Audit evidence and/or defined on the Policies Map and/or last in sporting or recreational use should not be built upon unless:

- i) An assessment has been undertaken which has clearly shown the open space, building or land to be surplus to requirements; or*
- ii) It can be demonstrated that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- iii) The development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.*

40. Again, the suffix ‘or’ makes clear that only one of i)-iii) need be satisfied in order for there to be compliance with the policy.

41. This main issue arises from paragraph 99 a) of the Framework and policy HS4 i) of the Local Plan. Implicit in the above is that the Inspector does not need to agree with the Appellant in order to still find favour with the appeal proposals. Nonetheless, it will be remembered that Mr. Stephens agreed in XX that the Inspector concluding that paragraph a) was met – and indeed c) – would be rational.

42. Breaking down a), a couple of things may be noted¹⁰⁴:

- i) An assessment needs to have been undertaken; but there are no set criteria as to what that assessment must look like. That is plainly a matter for planning judgement.*
- ii) There is no definition provided as to what constitutes ‘surplus to requirements’, so that must also be a matter for the Inspector’s judgement.*

¹⁰⁴ Which also relate to policy HS4 C

- iii) Though Mr. Hooper accepted that the onus is on the Appellant to carry out such an assessment, neither paragraph 99 nor policy HS4 C explicitly state that.
- iv) There is no requirement for the conclusions to be unequivocal i.e. leaving an absence of doubt. There can be doubt which remains; as long as the standard of ‘clearly’ showing that there is a surplus to requirements is met; and that is also a matter for planning judgement.

43. It should be borne in mind that the Council’s RFR does not cite paragraph 99 a) but rather paragraph 99 c) as the basis for the application being rejected¹⁰⁵.

Surplus to Requirements

44. In the absence of a definition contained within the NPPF or Development Plan, it is for the Inspector to come to a view as to what, rationally, constitutes a ‘*surplus to requirements*’. That must mean in relation to its previous use; so, as a speedway and stock car racing venue. In basic terms, something is ‘*surplus*’ if it is more than that which is needed.

45. What the term cannot sensibly and rationally mean is surplus to any requirements. If it were to mean any requirements, taken to its extreme, it would mean that if any single individual felt that they had a need for Brandon stadium for its former purpose that would be enough. That cannot be right. As was put to Mr. Stephens in XX, a person might want to do a variety of things; drive an Aston Martin, live in a grand stately home. Simply having a desire for something doesn’t make it a requirement that the planning system has to provide for. As Mr. Stephens acknowledged¹⁰⁶, national policy isn’t written in a way to satisfy desires. Where there is a divergence between the parties is whether what SCS contends for is a desire or a requirement. The Appellant says it is plainly the former.

46. It is also clear that whether or not something is more than is needed - a surplus - is plainly wedded to viability. Mr. Stephens accepted that financial realism is a material consideration but one that is separate to paragraph 99 a). That cannot be right. In any event, the Appellant’s assessment demonstrates that not only is Brandon Stadium surplus to requirements irrespective of its viability, but that it is no longer a viable prospect either.

¹⁰⁵ CD 05 – see under ‘relevant development plan policies & guidance’

¹⁰⁶ In answering that question

The Assessment

47. The Appellant’s assessment is in the form of Mr. Eady’s firm, KKP’s, speedway viability appraisal April 2023¹⁰⁷, speedway being the focus not because stock car racing has been ignored – Mr. Osbourne’s evidence clearly considers the same – but because it is subsidiary. Given that there is no set definition of what comprises an assessment, it is open to the Inspector to take into consideration as part of any assessment, and in any event as a material consideration, all other evidence that she has heard.
48. KPP is a national and international consultancy with particular expertise in relation to planning for sport and leisure facilities. Importantly, Mr. Eady has not only a wealth of experience carrying out assessments such as these but was involved in the teams which helped to develop the methodologies for both Sport England’s Assessing Need and Opportunities Guide (‘ANOG’) and their Playing Pitch Strategy (‘PPS’)¹⁰⁸. His evidence should be taken in that context.
49. Mr. Eady was clear that the ANOG guidance¹⁰⁹ does not apply to an assessment of the kind he carried out because it relates to participation in sport not spectating¹¹⁰. As a member of the team that created the guidance, he should know. His view is not altogether dissimilar to that of WYG who remarked in their independent report that “*although the ANOG principles can be followed, undertaking SNA work for motorsports is also difficult as there are no supply and demand models, participation is also low as the sports are mainly about spectating as opposed to participation, meaning many of the parameters set out in ANOG do not directly apply*”¹¹¹. Though the stages for an assessment may be a sensible framework¹¹², that does not mean that there is any requirement to use them in this context. There are, as Mr. Eady explained¹¹³, clear differences when dealing with spectating to which ANOG is not directed. It is not appropriate to try to adopt a document prepared for one purpose, for another¹¹⁴.

¹⁰⁷ CD 3.2

¹⁰⁸ See Part 1 of Mr. Eady’s PoE for details as to his vast qualifications and experience

¹⁰⁹ CD 15.1.4

¹¹⁰ Echoed in both EIC and XX

¹¹¹ Bottom of page 3 (PDF page 4), CD 15.1.2.

¹¹² PDF page 3 of CD 15.1.4, as accepted by Mr. Eady in XX by HR

¹¹³ in XX by HR

¹¹⁴ Mr. Eady confirmed this in re-examination

50. As Sport England accept¹¹⁵, the Proposed Development does not fall within either their statutory¹¹⁶ or non-statutory remit¹¹⁷; Mr. Hooper is plainly right¹¹⁸ that their views should be afforded some weight but tempered with that in mind. As Mr. Eady confirmed¹¹⁹, they do not have any policies with respect to stadia nor have any imperative to retain any particular stadium. None of the governing bodies for speedway or stock car racing appear to have any published strategy as to facilities and/or stadia either.
51. Mr. Eady has a specific expertise in areas of work for which there is not a prescribed methodology such as this¹²⁰. His approach, and that of his team at KKP, is plainly sound. The assessment is based upon the level of activity that was taking place at Brandon Stadium prior to its closure in 2016 taking into account the reasons for the closure; a review of the existing available research and reports including the WYG report; an analysis of the national and local ‘market’ and current national position in respect of operational stadia; an analysis of other venues; and consideration of environmental impact¹²¹.
52. Mr. Eady was criticised as to the extent of the data upon which he relied¹²². However, as he fairly pointed out¹²³ *“there’s not huge amount of statistical evidence upon which to base an assessment of need or an assessment of viability”*. He explained how his firm had tried to *“take available statistics and available data that pertains to speedway, less so stock cars, and look at in effect the trends in the sport which provides some indication of the current health in the sport in our opinion”*¹²⁴. He was clear¹²⁵ that his colleague had consulted with operators of speedway facilities across England with discussion including conversation with the CEO of Gaming International, the Owner of Swindon Robins Speedway, the Former Chairman of British Speedway Promoters Association (BSPA) and the Co-ordinator of the Speedway Control Board (SCB). They did not *“go out of the way”* to try to find a case in support of the Appellant but *“tried to investigate the case based on the available evidence”*¹²⁶. That is a sound approach. Whilst there may be a paucity of data,

¹¹⁵ CD 9.34

¹¹⁶ They acknowledge Statutory Instrument 2015/595 at CD 9.34

¹¹⁷ They acknowledge National Planning Policy Guidance (PPG) Par. 003 Ref. ID: 37-003-20140306 at CD 9.34

¹¹⁸ As per his evidence in EIC

¹¹⁹ In re-examination

¹²⁰ Paragraph 1.4, PoE of Mr. Eady

¹²¹ Paragraph 1.6, CD 3.2.

¹²² XX

¹²³ Mr. Eady in EIC

¹²⁴ Mr. Eady in EIC

¹²⁵ Both in his study at paragraph 1.7 of CD 3.2 and in oral evidence

¹²⁶ Mr. Eady in EIC

that does not mean that there is an absence or data; nor that the assessment is anything other than sound.

53. It is also not a criticism that fairly lies at Mr. Eady's door. The absence of data was also recognised by WYG who acknowledged that "*through no fault of the applicant, clarity surrounding the operation of the Stadium and the ultimate viability is still clouded*"¹²⁷ and that "*what remains lacking is any clear set of management accounts for the Stadium operation, separate to the company accounts, which clearly show the operational costs of the Stadium separate from any company*" encumbrance. This is despite significant efforts from the applicant"¹²⁸ it being noted that "*it is unlikely that a true picture can ever be established*"¹²⁹.
54. What has been rather curious throughout this appeal is that the data has not improved despite the heavy involvement of SCS as a R6 Party, which contains a plethora of individuals perhaps best placed to access such information, and who have not hesitated to criticise the Appellant team. Were speedway and stock car racing at Brandon (and elsewhere) as vibrant as they claim, it would surely have been effortless to produce verified attendance and participant data and complete sets of accounts from the various venues around the country, which they grasp at as examples of an allegedly thriving sport. The Inspector will read what she will into why that was not done.
55. Instead, what remains is no explicit, specific and properly verified data to successfully challenge the contentions made by Mr. Eady, nor Mr. Osbourne, when they say that Brandon Stadium is surplus to requirements and not a viable prospect¹³⁰. Any estimated figures of attendance and participation at Brandon Stadium prior to its closure, and

¹²⁷ Third unnumbered paragraph, under subheading 'viability', page 10 (PDF page 11), CD 15.1.2.

¹²⁸ Fourth unnumbered paragraph, under subheading 'viability', page 10 (PDF page 11), CD 15.1.2.

¹²⁹ Fifth unnumbered paragraph, under subheading 'viability', page 10 (PDF page 11), CD 15.1.2.

¹³⁰ By way of example: Mr. Carter referred to attendances in 2016 during his oral evidence with an estimated average of 2,500 attendances at stock car racing; but this was not formally verified. Mr. Hunter confirmed that he was unable to assist the Inspector as to attendance data at any speedway stadiums and that he wouldn't know about data available in relation to attendance at stock car racing events. The best he could offer in XX was that it "*would be somewhere I am sure*". Mr. Allen accepted in XX that he was unable to provide an assessment as to viewing figures or attendances in respect of any speedway event. Mr. Morris produced no verified figures in his evidence, despite being termed 'Mr Speedway' by Mr. Richards acting for the Council, and avoided directly answering questions regarding broadcasting revenue. Mr. Rees and Mr. Ford were also unable to provide verified figures with the latter providing an estimate of 1200-1500 spectators based on Poole albeit that a) those were not verified numbers and b) Mr. Osbourne's evidence should be noted that his colleague spoke to Mr. Ford's son Danny, who runs Poole while Mr. Ford lives in France, to inform the figures he provides in his notional speedway profit and loss data at CD 15.5.57.

assumptions as to likely attendance and participation were it to reopen based on other stadia, was not properly verified by public records.

56. Though SCS were at pains to draw out minor errors in Mr. Eady's analysis¹³¹, they do not change the overall tenor and legitimacy of what he concludes: that the viability of speedway as a sport as a whole is severely challenged, the impact of which is that the need for the former stadium to be retained does not exist¹³². It remains that a number of speedway teams have fallen away since 2016¹³³ and though two others have emerged, there is no clear evidence of success to suggest that this changes the overall picture. The Independent Review of the Sports Planning Case undertaken by WYG in September 2019¹³⁴ also highlights that motorsport participation has been in decline nationally. Mr. Eady was not directly challenged as to his evidence that the average TV viewing numbers for the sport fell from 145,550 in 2008 to just 34,000 in 2017, dropping by a further 50% in the subsequent two years¹³⁵. Though Mr. Morris talked passionately about Warner Brothers Discovery having paid 100 million euros over 10 years for the rights to speedway broadcasting, no evidence was provided by him as to how this impacts the UK, let alone how Brandon might benefit. Mr. Ford's evidence seemed to suggest that for a Championship team revenue would only pay for various fees at source rather than producing any particularly beneficial income; and even then, that would not go to the Stadium operator.

57. The appeal site has not fulfilled a role for motorsport for 7 years in which time the professional speedway team which occupied the site has been disbanded and the number of professional speedway teams and resultant fixtures has reduced¹³⁶. There has been no

¹³¹ For example, that he did not acknowledge the emergence of two new teams at Table 4.2 of his CD 3.2 study, that he has incorrectly recorded 43 teams as opposed to 33 in 2006, that he had counted 4 postponed meetings in his Table 3.1, and that he had not included 7 additional stock car racing fixtures in his paragraph 5.5 – see SCS submission at CD 10.20.

¹³² Paragraph 5.2, PoE Gareth Hooper. See paragraph 2.20 of the PoE of Mr. Eady for a summary of the key points drawn out from KKP's study at CD 3.2: There has been a national decline in speedway (and other potential user sport) demand and participation; A national decline in the number of spectators attending speedway and the loss of related commercial income; The insufficient evidence of demand at a level that would make a reinstated/replacement facility commercially viable; All the above having been exacerbated by the impact of cost-inflation and rising energy prices; The impact of Brexit on the free movement of (and cost of employing) speedway riders; The impact of Covid-19 on spectator sports *per se*; and there are ongoing concerns in relation to the future management of environmental impact.

¹³³ See paragraph 2.10 of the PoE of Mr. Eady. Whilst he accepted that the reference to having gone into administration may not have been the correct phrasing, it remains that the following have ceased: Lakeside Hammers and Rye House Rockets and Coventry Bees (2018), Workington Comets and Stoke Potters (2019), Eastbourne Eagles (2021), Newcastle Diamonds (2022) and most recently Swindon Robins (2023). It remains understood that Monmore Stadium (up until this year the home of Wolverhampton Wolves) will cease to accommodate speedway as of 2024, choosing to focus solely on greyhound racing.

¹³⁴ CD15.1.2

¹³⁵ Paragraph 2.11, PoE of Mr. Eady

¹³⁶ Paragraph 5.85, PoE Gareth Hooper

evidence, at all, save for anecdotal reference to one stock car rider, that suggests that participants have not been able to compete in either speedway or stock car racing since Brandon Stadium closed. The evidence of all parties appeared to be in agreement that speedway riders are ‘*footloose*’¹³⁷. They are predominantly professional¹³⁸ primarily paid on the points they score in meetings together with contracted retainers and travel expenses¹³⁹. Clearly travelling between venues, away from where they might locally reside, is not an issue. There has been no evidence of any professional speedway rider having been unable to access a racetrack, either for training or competition, and, of the currently 18 operational speedway tracks in the whole of the UK¹⁴⁰. As Mr. Osbourne explains, riders can ride in more than one league and many also ride for clubs abroad¹⁴¹. Indeed, riders in the U.K. and European teams and competitions include those travelling to the UK and Europe for the season¹⁴²; they are hardly likely to be wedded to Brandon Stadium. Certainly, no rider came to, or wrote to, the inquiry to say that this was so. Similarly, though stock car drivers are amateur they are paid on performance¹⁴³. There was no evidence provided by any stock car driver, even if one were enough to demonstrate no surplus, to say that they are unable to participate in the sport as a result of Brandon Stadium closing. Any need that might remain can be met from the several tracks which remain¹⁴⁴. There are no “*accessibility standards*” in motorsport, as acknowledged in the 2019 WYG Report¹⁴⁵. Though a number of tracks are some distance, the sport has continued and evolved without the appeal site.

58. With the greatest of respect to SCS, the history and previous fanbase is not enough justification¹⁴⁶ to find that paragraph 99 a) or policy HS4 C is not met. Even if there were verified data in respect of the spectatorship (to seek to demonstrate such a need) that would not do so: to the contrary, the policy is plainly directed at participants. That must be correct when one considers the true purpose of both national and local policy on any sensible view.

¹³⁷ Note paragraph 4.10 of Mr. Osbourne’s PoE which explains how contracted riders are considered an asset and can be loaned out to other promotions for a fee. Riders can be transferred to other promotions for a fee. Mr. Ford also gave evidence about the number of contracted riders he has, which he said was one of the largest at 30 riders, and how he could therefore provide riders for Brandon Stadium; but this does not demonstrate any need for Brandon as plainly they could be sent anywhere.

¹³⁸ See paragraph 4.4 and 4.5, PoE of Mr. Osbourne

¹³⁹ Paragraph 4.12, PoE of Mr. Osbourne

¹⁴⁰ See paragraph 4.6, PoE of Mr. Osbourne with regard the number of tracks.

¹⁴¹ See paragraphs 4.13 and 4.14, PoE of Mr. Osbourne

¹⁴² Paragraph 4.15, PoE of Mr. Osbourne

¹⁴³ Paragraph 5.3, PoE of Mr. Osbourne

¹⁴⁴ Paragraph 5.86, PoE Gareth Hooper

¹⁴⁵ CD15.1.2

¹⁴⁶ Paragraph 5.86, PoE Gareth Hooper

Whether it is financially viable to reinstate the speedway stadium

59. Whether considered as part of the consideration as to whether or not Brandon Stadium is surplus to requirements, or as a material consideration, it is clearly not viable to reinstate the stadium.
60. The WYG Report¹⁴⁷ concludes that the former stadium “*may struggle to be delivered viably in its current state and given the ownership would be difficult to deliver*”. It goes on to state that “*This is different however from whether a new stadium operated under a new model could potentially be operationally viable.*” However, as we set out in opening, even that is overly optimistic.
61. The Council do not have any plans for how the stadium could be brought back into use¹⁴⁸ and presented no evidence at the appeal in relation to the future viability of the stadium. It cannot be considered that there would be any compulsory purchase of the site by them. It was abundantly clear from Mr. Allen’s evidence that the Council rely on SCS’ evidence; Mr. Allen continually deferred to them during XX unwilling, it seemed, to provide his own analysis.
62. It is understood that SCS do not plan, at least in the first instance, to bring back Brandon Stadium as it once was. Rather, they talk of bringing back speedway and stock car racing through a phased approach to reuse. The ‘jumpers for goalposts’ offer. To support that offer, they produced an estimated breakdown of costs set out in Mr. Carter’s PoE¹⁴⁹.
63. Those costs need to be considered in the context of the current condition of Brandon Stadium, which the Inspector will have observed for herself during the site visit. The only professional evidence in respect of the same is the Structural Condition Report produced by Farrow Walsh Consulting in April 2023¹⁵⁰ which confirms significant concerns regarding the condition of the former stadium which could not host any form of events without demolition and significant re-instatement. Neither SCS nor the Council have

¹⁴⁷ CD15.1.2

¹⁴⁸ Paragraph 5.73, PoE Gareth Hooper. Note also paragraph 5.76 in respect of recent lessons learnt in respect of Belle Vue Speedway Stadium in Manchester.

¹⁴⁹ Pages 9-10.

¹⁵⁰ Appendix 3, PoE Gareth Hooper

produced similar. Though SCS complain that they have not been permitted access to the Site for inspection, Mr. Hooper's evidence was clear that he had not refused the same; access was denied for the purposes of surveys in respect of SCS' planning application but not the appeal. Either way, the Farrow Walsh report is the best evidence the Inspector has and, importantly, neither Mr. Allen nor Mr. Carter could detail in XX anything specific, about the same, that they took issue with. Mr. Osbourne was clear, in his capacity as an experienced stadium operator, that he had read that report and seen the site post its closure and there was nothing that made him consider the report to be inaccurate.

64. Frankly, the report illustrates the lack of realism SCS have in respect of their jumpers for goalposts pipe dream. It just isn't possible. Though Mr. Carter suggested that the grandstand could simply be boarded up, there has been no health and safety or licensing-based assessment to suggest that this is at all possible. Mr. Osbourne was of the view that it would not be safe.
65. It was suggested by Mr. Carter in oral evidence that the grandstand could simply be separated off from the rest of the site with boarding so that use could begin. That is simply not realistic. No evidence has been produced as to any risk and/or health and safety assessments having been carried out by SCS, or any other body, confirming that this would be a possibility. Mr. Osbourne's evidence was clear that he did not consider SCS' hope of boarding off the grandstand to be realistic. Mr. Hooper further questioned whether or not planning permission would be required to demolish and re-instate the former stadium in part or in whole and why, even if consent were granted, it would likely subject to conditions limiting the operation of the stadium and adding significantly to the cost of the track¹⁵¹.
66. Turning to the costs evidence, Mr. Carter noted that the estimate produced by SCS as set out in his PoE included a 15% contingency; but he acknowledged that this "*might be an incorrect figure*" describing the analysis as "*informed to a degree*". That information appears to have come from a series of sources, without any clear verified data to support it and in respect of stadia such as Oxford which was not in the same condition as Brandon when works were required. SCS' costings have not been through any professional analysis

¹⁵¹ Paragraphs 5.34 and 5.50-5.52, PoE Gareth Hooper

carried out by costs consultants or similar¹⁵². They are not based on any business plan; either sufficiently detailed, or at all¹⁵³.

67. To the contrary, the Appellant's cost report prepared by international cost consultants Rider Levett Bucknall provides a detailed breakdown of the cost for the demolition, refurbishment and construction required to restore the stadium back to a level where it could host the same level of activity as it did at the point of closure in 2016¹⁵⁴. The total cost of the works would be some £13.7M¹⁵⁵.

68. It is acknowledged that this is for more than the 'jumpers for goalposts' proposal; but the Appellant's witnesses have made clear why that isn't a possible option, in any event. Even if it were, as Mr. Hooper rightly pointed out¹⁵⁶ it is possible to compare the two parties' estimates side by side and pick out from them those elements that would be the same. Even then, there is a clear and significant disparity which illustrates the lack of realism on the part of SCS.

69. Mr. Osbourne considered a number of options producing a design and specification matrix, the most relevant of which is Speedway and Stock Car racing without a Stadium Customer Building at CD 15.5.52. He emphasised a number of items that would be required whatever proposal were taken forward which adds to costings¹⁵⁷. He was clear that there is no financial justification for the development of speedway racing facilities and, in the absence of a substantial grant of funds for the development of facilities, and the subsidy of operation costs, the operation of speedway racing (even where combined with stock car racing) at Brandon Stadium is not feasible at any level¹⁵⁸.

70. It must be remembered that his notional Profit and Loss account¹⁵⁹ assumes no rent and is the position if the stadium operator and the promoter were one and the same. But this is not what SCS is proposing. Even if it were, it isn't a viable prospect; but it certainly isn't when one considers that the proposal, at least at present, would involve Mr. Hunter

¹⁵² In XX

¹⁵³ Mr. Carter spoke only of a draft business plan that has not been disclosed nor has any detail been divulged in respect of it to suggest that the costs estimates provided are at all realistic.

¹⁵⁴ Appendix 4, PoE Gareth Hooper

¹⁵⁵ Paragraph 1.2, Appendix 4, PoE Gareth Hooper

¹⁵⁶ In EIC

¹⁵⁷ See paragraph 3.2, PoE of Mr. Osbourne and paragraph 3.3 in respect of speedway and paragraph 3.4 in respect of stock car racing, in addition.

¹⁵⁸ Executive Summary, PoE of Clarke Osborne and his oral evidence.

¹⁵⁹ CD15.5.57

purchasing the stadium and Mr. Ford acting as promoter. Mr. Hunter said himself¹⁶⁰ that were the site to become available for sale, he would want an evaluation done on it and an assessment of all of the damage. He would want “*a view from outside parties of, you know, where we take it from there*”. It is not at all certain that he would purchase the site and, when the Inspector noted that the project could pose a significant financial risk to him and asked if, depending on the outcome, there could be a stage where he considers it would not be viable he sensibly responded that there was “*always a stage*”. Though he continued on to say that he still thinks racing at the stadium is viable, he hasn’t yet had the expert advice he would go on to seek. The Appellant has. The Inspector has it to read. It doesn’t look good. There is no evidence which guarantees any funding or guardian angel philanthropist which will save the day. As Mr. Osbourne very sensibly said¹⁶¹ to the suggestion that breaking even might be sufficient, it is “*madness*”; “*you can’t do it*”.

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

71. It is very clear that the benefits the alternative sports provision would bring outweigh the loss of the former speedway use such that the proposed development is in accordance with NPPF paragraph 99, criterion (c) and bullet point 3 of Policy HS4 (C) of the Local Plan. That is why, in recommending the planning application for approval, the Council’s officers determined that the benefits associated with the proposals outweighed any conflict with national and local planning policy¹⁶².

72. Though Policy HS3 of the Local Plan has been raised, it relates to the Protection and Provision of Local Shops, Community Facilities and Services, the Council’s Officer’s Report to committee being clear that the Local Plan definition of community facilities does not include sports provision¹⁶³. Policy HS3 does set out that other services that contribute towards the sustainability of the local settlement are covered by the Policy; but again, the Council’s Officer’s Report confirms that Brandon Stadium does not contribute to the sustainability of Brandon Village, the operation having focused on regional and national sport¹⁶⁴.

¹⁶⁰ During re-examination and questions from the Inspector

¹⁶¹ In re-examination

¹⁶² Paragraph 6.1, PoE Gareth Hooper

¹⁶³ Paragraph 6.6, CD 06

¹⁶⁴ Paragraph 6.6, CD 06

73. The former stadium has not provided any economic benefits to the local community since 2016¹⁶⁵ and offers very little support to economic growth and productivity¹⁶⁶. The only economic benefit the site is currently generating is the £100,000 per annum cost the Appellant is paying to maintain and provide security on site¹⁶⁷.
74. Though SCS suggest that “very significant” economic benefits would have continued had the speedway not departed from the site, that is simply not realistic. No firm evidence was produced before this inquiry to support SCS’ claims. Mr. Osborne gave evidence of the typical expenditure of a speedway operation making clear that seeking speedway racing promotion at Brandon at any level is not viable¹⁶⁸. Typical expenditure of a speedway operation would be £14,331 per Premiership event, £11,823 for every Championship event and £6,395 per National Development League event¹⁶⁹. Assuming 20 Premiership Events, 20 Championship Events and 10 NDL events, this would generate a total expenditure of £587,030 per annum¹⁷⁰. It is clear that the expenditure generated by the former Speedway use is significantly lower than the appeal proposals would generate in construction and operation and that the majority of ‘spend’ by the Speedway operator is directed to riders, the majority of whom are not based locally, rather than being spent directly with local businesses/people¹⁷¹. Conversely, the appeal proposals will result in *significant* economic benefits which will be felt locally and, in accordance with paragraph 81 of the NPPF, should be afforded **substantial weight**¹⁷².
75. The much-needed 3G pitch and associated pavilion which will create a community facility¹⁷³, but it would also deliver an alternative to the former stadium Neighbourhood Plan defined ‘community facility’, secured through a community use agreement, which could be accessed and used by the local community in which it is sited¹⁷⁴. The proposed

¹⁶⁵ Paragraph 7.25, PoE Gareth Hooper

¹⁶⁶ Paragraph 6.20, PoE Gareth Hooper

¹⁶⁷ Paragraph 6.15, PoE Gareth Hooper

¹⁶⁸ Paragraph 8.9, PoE Clarke Osborne

¹⁶⁹ Paragraph 6.17, PoE Gareth Hooper

¹⁷⁰ Paragraph 6.18, PoE Gareth Hooper

¹⁷¹ Paragraphs 6.18-6.19, PoE Gareth Hooper

¹⁷² Paragraphs 6.20 and 9.5, PoE Gareth Hooper were clarified in answer to questions in EiC and from the inspector as to whether or not Mr. Hooper uses significant and substantial interchangeably (he doesn’t, substantial is higher) and that he refers to both significant and substantial weight in this context – he was clear that the weights are at his final page in his PoE therefore substantial weight per paragraph 9.5 should be taken to be correct. See also the assessment of economic benefits included with the appeal submission CD3.6 and CD3.7, together with the Assumptions Note prepared by Lichfield at Appendix 11 to the PoE of Gareth Hooper which provides an updated basis of the economic benefits derived from the appeal proposals.

¹⁷³ Paragraph 9.7, PoE Gareth Hooper

¹⁷⁴ Paragraph 4.19, PoE Gareth Hooper

3G pitch should be afforded **substantial weight**¹⁷⁵. As such, the appeal proposals accord with Policies HS3 and HS4 of the Local Plan and with Neighbourhood Plan Policy LF1.

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

76. There are a number of other significant benefits which the development proposal will bring.

Market Housing

77. Though the Council are able to demonstrate the required five-year housing land supply, this is a minimum rather than a maximum requirement and “*should not count against*” the development¹⁷⁶. There is incontrovertible evidence that there is a national housing crisis in the UK affecting many millions of people, who are unable to access suitable accommodation to meet their housing needs¹⁷⁷. The national housing shortfall is in excess of 5.5 million homes¹⁷⁸.

78. The Government has an objective of significantly boosting the supply of homes and is unsurprisingly clear, through paragraph 60 of the NPPF, as to the need to support the same. There is, as Mr. Hooper explained¹⁷⁹, a “*national imperative to encourage housing particularly on brownfield sites*” which “*alleviate pressure on greenfield sites in the future*”. The appeal proposals will result in the delivery of 124 new homes with a mix that the Council considers to be acceptable¹⁸⁰. Small and medium sized sites, such as this, can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly¹⁸¹. Accordingly, it is clearly appropriate to apply **moderate weight** to this benefit.

Affordable Housing

¹⁷⁵ Paragraph 9.8, PoE Gareth Hooper

¹⁷⁶ As Gareth Hooper emphasised in EiC

¹⁷⁷ PoE of James Stacey – see paragraph 3.1 and section 3 which highlights some of the evidence which supports this statement and how the Government is responding.

¹⁷⁸ Figure 4.4, page 32, PoE of James Stacey. This is based on achieving 300,000 homes a year since 1970/71 See also section 4 of his PoE for the context in which this sits.

¹⁷⁹ In EiC

¹⁸⁰ See Table 6.2, PoE of Gareth Hooper for the percentage split of the market housing. See also paragraph 4.2, SoCG at CD14.1

¹⁸¹ See paragraph 69, NPPF

79. Policy H2 of the Local Plan¹⁸² is the principal policy for affordable housing delivery in Rugby and states that on sites over the size threshold of at least 0.36ha in area and 11 dwellings or more, 20% affordable housing will be sought on previously developed sites (such as the appeal site)¹⁸³. The proposals will see the provision of 25 affordable homes, thus would be policy compliant. That the offer is not more than compliant, does not detract from its weight; affordable housing policy is drafted to capture a benefit not to ward off harm or something needed in mitigation¹⁸⁴.

80. Mr. Stacey's expert evidence was detailed and clear as to determining the appropriate weight to give to that benefit. As to the need for affordable housing across Rugby Borough, the Updated Assessment of Housing Need: Coventry-Warwickshire HMA¹⁸⁵ forms part of the evidence base of the Local Plan and provides a net need of 171 affordable homes per annum¹⁸⁶ broken down into 16% intermediate tenures and 84% affordable rented tenures¹⁸⁷. The more recent Coventry and Warwickshire Housing and Economic Development Needs

Assessment (HEDNA)¹⁸⁸ identifies a need for 495 affordable homes per annum between 2022/23 to 2031/32 split between 407 rented and 88 affordable home ownership per annum¹⁸⁹. Across Rugby Borough, the delivery of affordable housing has fallen persistently short of meeting those identified needs¹⁹⁰ with a shortfall of 669 homes between 2011/2012 and 2021/22 (an annual shortfall of 61) set against the SHMA figure of 171 dwellings per annum¹⁹¹. That must be seen in the context of the substantial change in affordable housing need illustrated in the more recent HEDNA to 495 affordable dwellings per annum from 2022/23 onwards. Market signals indicate a worsening trend in affordability in the Borough relative to both the West Midlands region and England as a whole, this being an authority which, in Mr. Stacey's view, is "*facing serious and worsening affordability pressures, and one through which urgent action must be taken to deliver more affordable homes*"¹⁹².

¹⁸² Page 41, CD8.2

¹⁸³ Paragraph 12.34, PoE James Stacey

¹⁸⁴ See Norton Appeal Decision at CD15.5.35.

¹⁸⁵ September 2015, CD8.4

¹⁸⁶ Table 43, page 107

¹⁸⁷ Figure 55, page 114. See paragraphs 7.4 – 7.7, PoE of James Stacey

¹⁸⁸ November 2022, CD8.17

¹⁸⁹ See paragraphs 7.19 – 7.11, PoE of James Stacey

¹⁹⁰ Paragraph 8.13, PoE of James Stacey

¹⁹¹ Figure 8.4, page 51, PoE of James Stacey

¹⁹² Paragraph 12.34, PoE of James Stacey

81. Looking to the future, Mr. Stacey is right that delivery of affordable housing is highly uncertain¹⁹³. Within Rugby Borough the delivery of affordable homes has fluctuated considerably since the start of the Local Plan period in 2011/12¹⁹⁴. It is imperative that the 669 dwelling affordable housing shortfall is addressed as soon as possible and in any event within the next five years¹⁹⁵. Removing the backlog will result in a need between 2022/23 – 2026/27 of 305 affordable homes per annum¹⁹⁶. Mr. Stacey’s scrutiny of the sites in the Council’s 5YS¹⁹⁷ suggests that the Council is likely to delivery 635 affordable homes in total or 125 per annum in that period.
82. SCS raised questions over the mix and tenure split of the affordable housing offer which it is accepted departs from the dwelling size mix contained in policy H1, as it does not include 1- or 4-bed properties, and does not provide 85% social rent and 16% intermediate housing in accordance with the findings of the SHMA instead offering 56% social rent and 44% shared ownership¹⁹⁸. However, the Council accept both the mix¹⁹⁹ and tenure split²⁰⁰ in line with the Officer’s Report on such matters. Due to the site’s “*more rural location it is considered that 2 bedroomed properties are above are more suitable for the site*”²⁰¹. Furthermore, “*due to the lack of demand for social rent in this location*”²⁰² the divergence from policy is acceptable. As policy H2 only requires that the proposed tenure is “*informed*” by the 2015 SHMA update, the tenure split plainly does not need to be strictly applied on individual sites or proposals²⁰³ and there is provision made for “*flex*”²⁰⁴. In any event, the Council’s explanation for accepting the offer makes perfect sense.
83. In light of the Council’s poor record of affordable housing delivery, the volatility of future affordable housing delivery and the level of affordable housing needs identified there can

¹⁹³ Paragraph 9.1, PoE of James Stacey

¹⁹⁴ Demonstrated by figure 8.4, page 51, PoE of James Stacey.

¹⁹⁵ Paragraph 9.8, PoE of James Stacey. See also paragraphs 9 and 11 of the Appeal Decision at Aviation Lane, CD15.5.36 referred to at paragraph 9.5 of the PoE of James Stacey which endorses the Sedgefield approach

¹⁹⁶ Figure 9.1, page 55, PoE of James Stacey

¹⁹⁷ Appendix JSr1 Rebuttal PoE of James Stacey. See also paragraph 2.13.

¹⁹⁸ Note in EiC David Carter commented that he did not think that the justification for the variance really seemed to have been covered by the OR

¹⁹⁹ Paragraph 4.2, SoCG, CD14.1

²⁰⁰ Paragraph 4.4, SoCG, CD14.1

²⁰¹ Paragraph 7.8, OR, CD6 and paragraph 12.6, PoE of James Stacey

²⁰² Paragraph 7.9, OR, CD6 and paragraph 12.7, PoE of James Stacey

²⁰³ Paragraph 12.10, PoE of James Stacey

²⁰⁴ Gareth Hooper in EiC

be no doubt that the provision of 25 affordable dwellings on this site should be afforded **substantial weight** in the determination of this appeal²⁰⁵.

Other Benefits

84. The site is currently characterised by crumbling structures and a derelict appearance²⁰⁶. The proposal would change that, and there are a number of further clear benefits that result.

85. The site would be brought back into beneficial use. Paragraph 119 of the NPPF is clear that “*planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions*”. Mr. Stephens acknowledged²⁰⁷ that it would be a fair objective for the Inspector to consider that improvement is a desirable outcome, within the overall planning balance. Moreover, paragraph 120 c) of the NPPF makes clear that planning policies and decisions should “*give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land*”. Though the appeal site is outside the settlement boundary, that using brownfield land within settlements for homes and other identified needs is to be given substantial weight justifies instead applying significant weight to proposals such as these. That was Mr. Hooper’s evidence²⁰⁸ and Mr. Stephens confirmed that he would also give the same **significant weight**²⁰⁹.

86. There will be significant environmental (and social²¹⁰) enhancements. The appeal site is currently not accessible to the public, which the appeal proposals will change. Moreover, a significant amount of public open space will be provided²¹¹ with the potential of creating 370% more open space on site than the policy requirement²¹². This open space, including a large area to the north of the site to adjoin the existing woodland, will be accessible by the

²⁰⁵ Paragraph 2.18, Rebuttal PoE of James Stacey

²⁰⁶ Paragraph 6.29, PoE Gareth Hooper

²⁰⁷ In XX

²⁰⁸ He provided further clarification in EiC from paragraph 6.4 of his PoE which refers to the substantial weight referenced in paragraph 120 c) itself.

²⁰⁹ In XX

²¹⁰ Mr. Hooper discusses the social enhancements at paragraphs 6.24 to 6/28 of his PoE but includes reference to them (such as public open space provision) in the umbrella of environmental enhancements at paragraph 9.6 of his PoE when summarising his position

²¹¹ See Table 6.1, PoE Gareth Hooper

²¹² Paragraph 6.26, PoE Gareth Hooper

public creating significant benefit whilst benefiting the openness of the Green Belt²¹³. Improvements to links from the site to existing public rights of way outside the site will also be secured via a financial contribution, promoting increased usage²¹⁴.

87. In XX, Mr Humphreys challenged Mr. Hooper's inclusion of the provision of public open space as a benefit contending that the Supreme Court had "*made it clear as recent as last year*" that it was "*not in the business of buying and selling permissions*". It is assumed that Mr. Humphreys is referring to his involvement in DB Symmetry Ltd and another v Swindon Borough Council [2022] UKSC 33 in which the Court discussed the use of planning obligations. It is not a point explicitly made in SCS' statement of case²¹⁵ nor in the planning evidence of David Carter.

88. In any event, the point goes nowhere. Though it is correct that "*government policy and the law have rejected the "buying and selling of planning permissions"*" this is in the context of situations "*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*"²¹⁶. That is not the position here. As is acknowledged by the Court, "*it is well established that a planning authority can achieve, by obtaining the agreement of a landowner to a planning obligation, a purpose which it could not achieve by imposing a planning condition*"²¹⁷. Moreover that, per Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, "*The vires of planning obligations depends entirely upon the terms of section 106. This does not require that the planning obligation should relate to any particular development. As the Court of Appeal held in [Good v Epping Forest], the only tests for the validity of a planning obligation outside the express terms of section 106 are that it must be for a planning purpose and not Wednesbury unreasonable*"²¹⁸. It is a planning obligation which has nothing to do with a proposed development that "*cannot be a material consideration and can be regarded only as an attempt to buy planning permission*"; but "*where the planning obligation is related to the development proposal in a way which is not trivial, the weight to be given to the obligation in determination of the application for planning permission is a matter within*

²¹³ Paragraph 6.26, PoE Gareth Hooper

²¹⁴ Paragraph 6.28, PoE Gareth Hooper

²¹⁵ CD13

²¹⁶ See paragraph 55 of the Judgment in DB Symmetry

²¹⁷ paragraph 57 of the Judgment in DB Symmetry

²¹⁸ paragraph 59 of the Judgment in DB Symmetry

the discretion of the planning authority”²¹⁹. The test at regulation 122 of the Community Infrastructure Levy Regulations 2010 is met²²⁰. The Council clearly agrees.

89. The Council agrees that the proposal achieves a biodiversity net gain²²¹. Coherent ecological networks will be established that are more resilient to current and future pressures than the current use, assisted by the provision of a comprehensive scheme of landscaping²²². As agreed by the LPA in recommending the application for approval, these benefits hold **substantial** weight²²³.

90. Paragraph 81 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. In addition to the economic benefits touched on above, the assessment of economic benefits which would result from the appeal proposals²²⁴ illustrates job creation not only in the construction period²²⁵. Occupiers of the scheme are estimated to spend £682,000 on first occupation of their properties as part of a total gross expenditure of £3.1M per annum with £256,000 of expenditure per annum being within 10 miles of the appeal site²²⁶ but also more widely²²⁷. Local Authority revenue will also result²²⁸. Such economic benefits should be afforded **substantial weight**.

The overall Planning Balance and conclusion

91. Critically, the appeal proposals will deliver 124 dwellings, including much needed affordable properties, in a sustainable location whilst also providing an alternative sports and community facility, significant public open space, biodiversity net gain and significant economic benefits. As such, the significant benefits are consistent with the objectives of national, local and neighbourhood plans²²⁹.

²¹⁹ paragraph 60 of the Judgment in DB Symmetry

²²⁰ 2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—(a)necessary to make the development acceptable in planning terms; (b)directly related to the development; and (c)fairly and reasonably related in scale and kind to the development.

²²¹ Paragraph 6.2, SoCG, CD14.1

²²² Paragraph 6.30, PoE Gareth Hooper

²²³ Paragraph 9.6, PoE Gareth Hooper

²²⁴ CD3.6 and 3.7. See also Appendix 11 Assumptions Note prepared by Lichfields attached to Mr Hooper’s PoE

²²⁵ There will be 103 construction jobs generating a GVA of £8.6M for each year of construction together with 124 indirect supply chain ‘spin-off’ jobs generating an indirect GVA of £10.1M per annum - see Paragraph 6.8, PoE Gareth Hooper

²²⁶ Paragraphs 6.10 to 6.11, PoE Gareth Hooper

²²⁷ There will be an estimated 3 new FTE jobs in the local area - see Paragraph 6.12, PoE Gareth Hooper

²²⁸ Paragraphs 6.13 to 6.14, PoE Gareth Hooper

²²⁹ Paragraph 7.34, PoE Gareth Hooper

92. Set against even the alleged harm, it is clear that the benefits of the development are not demonstrably outweighed. Accordingly, for all of these reasons, it is respectfully suggested that the Inspector allows the Appeal.

PETER GOATLEY KC
LEANNE BUCKLEY-THOMSON
28th November 2023