



SWINDON BOROUGH COUNCIL THE LOCAL PLANNING AUTHORITY

Town and Country Planning Act 1990

**The Town and Country Planning
(Development Management Procedure) (England) Order 2015**

The Town and Country Planning (Inquiries Procedure) (England) Rules 2000

Site: Lotmead, Eastern Villages, Swindon

Description: Outline Planning Application (means of access off Wanborough Road not reserved) for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative primary access road corridors to A420; improvements to Wanborough Road and associated works. Variation of conditions 9, 10, 41, 42, 43, 46 and 47 from previous permission S/OUT/19/0582.

Appellant: Countryside Sovereign Swindon LLP.

Agents to Appellant: Savills
Embassy House
Queens Avenue
Bristol
BS8 1SB

Appeal Reference: APP/U3935/W/24/3337172

Application Number: S/23/0438

Appeal Start Date: 1st February 2024

Inquiry Start Date: 30th April 2024

Swindon Borough Council

Local Planning Authority Statement of Case

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1 Introduction

1.1 This is the Statement of Case (SoC) submitted on behalf of Swindon Borough Council (SBC) in respect of an appeal under Section 78 of the Town and Country Planning Act 1990 against the non-determination by SBC of an application for planning permission under section 73 of that Act to not comply with specified conditions to which a previous planning permission was granted. The previous conditional planning permission is reference S/OUT/19/0582/PEEG (the Outline Planning Permission). The Outline Planning Permission is also subject to an environmental impact assessment, to parameter plans, and to a Flood Risk Assessment.

1.2 The description of development of the Outline Planning Permission states:

Outline Planning Application (means of access off Wanborough Road not reserved) for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative primary access road corridors to A420; improvements to Wanborough Road and associated works.

1.3 The Outline Planning Permission is subject to 64 planning conditions and is attached hereto in **Appendix A** because (if granted) a new planning permission is required to include on its face the conditions not sought to be changed by the current Appeal application.

1.4 In that context, the following conditions continue to define the scope of the development proposed in the Appeal application.

1.5 Condition 4 requires adherence to specified plans that include:

The development hereby permitted shall be carried out in accordance with the following

approved plans:

- o Application Boundary Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0001-S4-P01; received 12th April 2019);*
- o Land Use Parameter Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0003-S3-P02; received 2nd September 2019);*
- o Green Infrastructure Parameter Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0005-S4-P04; received 20th February 2020);*
- o Building Heights Parameter Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0006-S4-P04; received 29th November 2019);*
- o Movement Parameter Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0006-S4-P03; received 29th November 2019);*
- o Density Parameter Plan (Drawing No. PL1461.1-PLA-00-XX-DR-U-0007-S4-P02; received 2nd September 2019); and*
- o Wanborough Road Access Plan (Drawing No. 27970/003 Rev L; received 2nd September 2019).*

Reason: To define the scope of the development and to ensure the development is within the parameters that were subject to an environmental impact assessment. In accord with Policy NC3 of the Swindon Borough Local Plan 2026.

1.6 Condition 5 provides:

5. Illustrative Masterplan

All reserved matters shall be in broad accordance with the Illustrative Masterplan (drawing no. PL1461.1-PLA-00-XX-DR-U-0002-S4-P02; received 2nd September 2019).

Reason: In the interest of the proper planning of the area and to provide a high standard of design. In accord with Policy NC3 of the Swindon Borough Local Plan 2026.

1.7 Condition 6 provides:

The development hereby permitted shall comply with the following development parameters:

- o The residential content of the development shall not exceed 2,500 dwellings.*
- o There shall be a minimum of 340 sq m of gross internal floorspace in each of the two community centres (which excludes land in use as a primary school) for uses within Class D1 (non residential institution) and Class D2 (assembly and leisure) as defined in Part D in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).*
- o Two sites, each site being a minimum of 2.2 ha, shall be provided for the development of two, 2 form entry primary schools. The floorspace provided in these schools shall not be included in the community centre use floorspace detailed above.*

Reason: To define the scope of the development and to ensure the development is within the parameters that were subject to an environmental impact assessment. In accord with Policy NC3 of the Swindon Borough Local Plan 2026.

1.8 Condition 7 provides:

7. Retail floorspace

Retail floorspace falling within Class A1 of Part A in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) shall not exceed 600 sq m.

Within each local centre, there shall be a minimum of 200 sq m of Class A1 floorspace.

After first development, the floor areas shall be retained within the Class A1 Use Class notwithstanding any provision within the Town and Country Planning (General Permitted

Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification).

Within the development overall, the gross internal floor space falling within Classes A2, A3 and A4 of the aforementioned Part A in the Schedule to the Order shall not exceed a cumulative total of 500 sq m. Within each local centre, there shall be a minimum of 150 sqm of Classes A2, A3 and A4 floorspace. Notwithstanding any provision within the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) these floor areas shall remain within Classes A2, A3 and A4 at all times thereafter.

Reason: To limit the scale of commercial development in this out of centre location to protect the vitality and viability of Swindon Town Centre and the hierarchy of centres; and to ensure that each local centre has an appropriate mix of uses in order to promote sustainable development. In accord with Policies EC3 and NC3 of the Swindon Borough Local Plan 2026.

1.9 Condition 8:

8. Office floorspace

Within the development site, the total gross internal floorspace falling within Class B1 in

the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)

shall not exceed 2,500 sq m. After first development, the floor areas shall be retained in

the approved Class B1 use, notwithstanding any provision within the Town and Country

Planning (General Permitted Development) (England) Order 2015 (or any order revoking

and re-enacting that Order with or without modification).

Reason: To define the mix of uses to ensure the employment provision complements the

allocated employment site within the NEV and the role of the Town Centre. In accord with

Policies EC2 and NC3 of the Swindon Borough Local Plan 2026.

- 1.10 The current appeal is an application to not comply with Conditions 9, 10, 41, 42, 43, 46 and 47.
- 1.11 Condition 9 relates to "Phasing Details". Condition 10 relates to "Character Area Design Code". Conditions 41 to 43 relate to Environment Agency – Compliance with Flood Risk Assessment; River Crossing Details; River Corridor Survey. Condition 46 relates to "Strategic Surface Water Management Scheme"; Condition 47 relates to "Surface Water Management Scheme (Phases)".
- 1.12 The Outline Planning Permission is supported by drawing reference PBA 27970/4005/001 (1st February 2019) "Surface Water Management Strategy" Rev B (17th July 2019) that subdivides that outline permission area into a series of delineated "Catchments" and sub-compartments (e.g. A1-A2, B1-B2), each with a discharge rate of 4.67l/s/ha, each with a particular indicative "overland flow route" and a "receiving conveyance feature for catchment", as well as showing retained watercourses" and locations of attenuation basins. A table on that plan describes the footprint and volume provided by each of 6 basins and 18 swales. Notes on the Drawing include a requirement to adhere to the SPD (see below) and that 60% of the residential area and 80% of the commercial areas will be impermeable, comprising 39.3HA of impermeable area. That drawing is within the Approved Addendum to March 2019 Flood Risk Assessment (27970/4003/TN001) dated 22/08/19. That Addendum is attached in **Appendix D**. The ES accompanying the Outline Planning Permission includes in Appendix 9.1, Appendix B, a Topographical Survey that accurately identified on behalf of PBA in plan and in section (and by reference to its Legend) all ditches. There are no apparent errors by the survey team. Appendix 9.1 includes in Appendix D a PBA Hydraulic Modelling Report whose Section 5.2 sets out a "Flood Plain Restoration Scheme" to create a single developable area. "The chosen scheme channels the floodplain flow along the existing land drains onto a 'flood corridor' re-establishing a floodplain alongside the Liden Brook.." and is shown in Appendix C. Figure 4 shows a schematic of the land

raising comprising a slim linear area on the Eastern perimeter of the site. See Section 6.1, Summary of Model Results.

- 1.13 Condition 46 relates to "Strategic Surface Water Management Scheme" and the developer proposes to change a specified document from: "Strategic Surface Water Management Scheme for the site, in accordance with the approved Addendum to March 2019 Flood Risk Assessment (27970/4003/TN001) dated 22/08/19" to: "Strategic Site Wide Surface Water Drainage Strategy (ref. 22006-HYD-P0-XX-RP-C-2220 Revision P04"; and to delete the requirements specified in the bullet points to that Condition, inter alia, that require how flow rate will be restricted to 4.67 l/s/ha for all events up to and including 1% AEP + climate change and how the drainage scheme has been designed to incorporate SuDS techniques and in accordance with the SuDS Vision SPD and the SuDS Manual C753. The reason for that condition remains to ensure that the development does not increase the risk of flooding elsewhere, in accordance with paragraph 155 of the [NPPF] and Policy EN6 and NC3 of the [Local Plan].
- 1.14 Condition 47 relates to "Surface Water Management Scheme (Phases)" proposes to add a series of "Preliminary Drainage Strategy drawings for Phase 1 (only).
- 1.15 The covering letter (9th May 2023) with the Application/Appeal (ultimately) asserts there would be a net benefit of:
- a) some additional 300 homes approved under the Outline Planning Permission would be delivered. That is, the approved "up to 2,500" plus 300;
 - b) reduced lorry movements and CO2 as a result of the change to not raise the level of the site;
 - c) delivery of high quality development with retention of more hedgerows;
 - d) retention of the planning obligation contributions.

Planning History

- 1.16 This SoC will describe the appeal application, the site, planning history, the legislative and policy context, the material considerations and will confirm the relevant documents that the Council may refer to at the Inquiry.

Statements of Common Ground

- 1.17 In line with the Secretary of State's approach to the use of Statements of Common Ground, the Council will seek to reach agreement with the Appellant on Facts and by means of Statements on Topics.
- 1.18 The Council reserves the right to expand its evidence beyond the scope of this SoC in response to new matters not previously raised by either the Appellant or Interested Parties during the appeal process.

2 The Appeal Site and Surrounding Area

- 2.1 The application site extends to approximately 169 hectares, to the east of the A419 and south of the A420. It includes the existing access from Wanborough Road serving Lotmead Farm, several residential properties, Lotmead 'Pick Your Own' activity farm, the Lotmead Business Village and pasture land (predominantly open farmland). The existing Lotmead Farm access road is a tree-lined, narrow private road (approx. 4 metres wide) with passing places.
- 2.2 The application site is located approximately 4 miles to the east of Swindon Town Centre. Agricultural land adjoins the site to the east and south. The southern boundary adjoins the Poplar Day Care Nursery. Lotmead Business Village comprises a collection of renovated Victorian farm buildings offering business accommodation; and Lotmead Farmstead, including two houses and dairy farm buildings.
- 2.3 The site gently slopes from the west at Wanborough Road, down towards the Dorcan Stream. The Dorcan Stream flows in a northerly direction towards the River Cole. Within the site, a small ditch follows a field boundary and flows

under the access road towards the Dorcan Stream. Three Oak trees and a group of Poplar trees located within and on the perimeter of the site are protected by a Tree Preservation Order. A further Tree Preservation Order covers the avenue of trees from Wanborough Road along the private access to the Lotmead Business Village.

2.4 The site falls within the Parish of Wanborough and is in the Ridgeway Ward. Wanborough Road is a relatively straight, single carriageway road linking Covingham to Wanborough and other villages beyond with varying speed limits between 30 and 60mph. The speed limit is 30mph at the site access. There is an existing footpath on the western side of Wanborough Road that starts as a narrow path opposite the Lotmead Business Village access and it widens towards Covingham. There are no footways heading south from the application site towards Wanborough. One Public Right of Way (footpath no. 5) travels in a north-south direction to the west of the site.

2.5 The Wanborough Roman Town (Durocornovium) is located within the west of the application site and is designated as a scheduled monument of national importance (scheduled monument no. 1004684).

2.6 Earls court Manor and Lower Earls court Farm are Grade II Listed buildings which are beyond but near the eastern boundary of the site. Lotmead Farmhouse is a non-designated heritage asset.

2.7 The application site is located within the NEV Strategic Allocation boundary, as defined by Policy NC3 of the Swindon Borough Local Plan 2026 (LP) and Policies Map.

3 The Appeal Application

3.1 The Application is supported by a covering letter dated 31st March 2023 (see **Appendix K**), a Hydrock “Revised Flood Risk Assessment Addendum dated 1st

March 2023 (see **Appendix L**), and a Hydrock “Technical Design Note” dated 9th November 2023.

- 3.2 The Revised Flood Risk Assessment Addendum and Technical Note (1st March 2023) by Hydrock is a version of the PBA “Technical Note: “Addendum to March 2019 Flood Risk Assessment (22nd August 2019)” but with deletions. For example, much of the text of Section 3, Drainage, is precisely the same except in the Hydrock document bullet 5 (the reference to the SPD (2017)) has been removed as an assumption from the surface water management strategy design. There are other changes also.
- 3.3 Differences between the approved Outline Planning Permission drainage and flood risk scheme and the proxy drainage scheme now proposed by the new landowner Appellant include (but not exhaustively):
- a) Aggregation of catchment areas into larger areas resulting in larger volumes of water requiring to be conveyed;
 - b) Installing a piped land drainage scheme and with pipes installed to a level below the flood level and it is that which results in reduced land raising whereas the use of pipe conveyancing would require an increase to ensure necessary flow gradients
 - c) Simultaneous removal of reliance on the SPD (2017) for drainage design and inclusion of reliance on the SPD (2017) in the proposed Character Area Design Code, pages 19, 80-81, and yet excluding or conditioning their application within plot areas under paragraphs 3.12.2 and 7, so as to thereby exclude application and operation of SuDS “at source”;
 - d) Simultaneously that “SuDS features will be prioritised in the following hierarchy: primary – plot scale “source control” features such as rain gardens, permeable paving etc” and yet (noting all matters remains reserved) the proposed Character Area Design Code, pages 19, 80-81, paragraphs 3.12.2 and 3.12.7 not at this Outline Planning Application Stage guaranteeing the same.

- 3.4 The Council considers the changed approach contrary (in particular) to NPPF (December 2023), paragraph 173(c) and 174.
- 3.5 The covering letter (31st March 2023) asserts at page 9 four so-called benefits and that are asserted also as “significant” result from its changes. The Council responds to these assertions as follows:
- a) Contrary to item 1, there is no approved reserved matters application, all matters remain reserved, and so there remains no guarantee of the asserted “additional c.330 homes” being delivered. Further, the Outline Planning Permission already approves up to 2,500 dwellings that enables increased densities of dwelling development at different places in the site;
 - b) Contrary to item 2, there is no apparent evidence in the Outline Planning Permission of the raising of levels of *the area* (as opposed to a part only of the Eastern perimeter of the site to restore floodplain) as part of any flood risk or drainage situations (and otherwise beyond the recommendations in Appendix 9.1 of the ES relating to the Outline Planning Permission, paragraphs 8.1.2 and 8.1.3 and 9.1.2, bullets 3 and 4 of that Assessment which state that “all built development would be within Flood Zone 1; Ground Levels to be set above *surrounding* ground levels to manage residual risks during extreme rainfall events” and that safe access is provided by new highway corridors). The Addendum (22nd August 2019) makes no reference to land raising. Therefore it is not accepted that the limited flood plain restoration and minor level raising permitted by the Outline Planning Permission would result in the asserted or significant benefit as relied by the Appellant as a significant benefit if reduced in height. Indeed, the removal of the floodplain restoration elements removes a significant off-site betterment (benefit) (removal of flooding from Liden Brook around Lower Earls court Farm) evaluated by PBA in paragraph 6.1.3 of the PBA Hydraulic Modelling Report in Appendix D to Appendix 9.1 to the ES underpinning the Outline Planning Permission;
 - c) Contrary to item 3, there remains no affordability nor viability evidence before the Council nor Secretary of State to evidence that the approved

Outline Planning Permission could not be delivered nor that reserved matters approvals cannot be made. Since all matters remain reserved (save for one access), it cannot be said that high quality development will be delivered at this stage. Development that does not comply with Policy NC3(c) and does not minimise flood risk within and outside of the site and area cannot to be considered high quality;

d) The planning obligations attached to the Outline Planning Permission remain due. There is no suggestion that the benefits would be removed as a result of the Appeal and there remains no viability evidence before the Council nor Secretary of State to sustain a suggestion that the Outline Planning Permission for up to 2,500 homes would not be built out. If it is the case (now) that it could not be carried out or could only be partly built ever out, then a different baseline would be necessary in the determination of this Appeal.

3.6 The Council disagrees with the “benefits” asserted by, and relied on by, the Appellant and disagrees that they are “significant”. The benefits are at most merely asserted, are circular, or are boot strap contentions.

3.7 The Appellant also relies on asserted “inconsistencies” between the plans supporting the Outline Planning Permission and the Surface Water Drainage Strategy. The Appellant has not in fact identified the inconsistencies and is requested to demonstrate each one. The Council notes that, because all of the matters are reserved, there can be no inconsistencies in relation to matters not fixed at this stage: layout, landscape, scale, and access (save for one highway). For example, there can be no inconsistency between the Strategy Drawing (fixed) and the Masterplan (unfixed) because no reserved matters application to fix the layout of the Masterplan has been made. Instead, the Council notes that the Appellant has changed its masterplan to a new envisaged layout and that, as a result of that change, there is anticipated to be a mismatch between the approved Strategy drawing and the desired layout on a future reserved matters application. But that is not an inconsistency because only the Strategy

Drawing remains fixed and so there is nothing for that drawing to be inconsistent with at this time.

4 Representations

- 4.1 The Council consulted with local residents and the following consultees, whose comments are summarised below:

Statutory Consultees

Environment Agency (EA) – Original comments

- 4.2 No objection to the proposed variations of conditions 41 (Flood Risk Assessment), 42 (River Crossing Details) and 43 (River Corridor Survey) No comments on conditions 10 (Character Design Guide), 46 (Strategic Surface Water Management Scheme) or 47 (Surface Water Management Scheme – phasing).
- 4.3 In relation to condition 9 state that the flood plain restoration scheme (details to be agreed under condition 40) lies within phases 2 and 7 of the phasing plan. The flood plain restoration scheme should be completed before development occurs in the existing 0.1% annual exceedance probability (AEP) flood extent, which appears to include housing in phase 2. Therefore, some works would likely be required before phase 2 is completed.

Comments after consultation on Environmental Statement (ES)

- 4.4 The submitted information would appear to fail to show the mapped flood extents. If there are no changes to the fluvial flood risk sections of the original Addendum to March 2019 Flood Risk Assessment, then there is no objection to the proposed amendments to conditions 41 and 42.

National Highways – Original comments

- 4.5 No objection

Comments after consultation on ES

- 4.6 No objection

Historic England – Original comments

4.7 No comments

Comments after consultation on ES

4.8 No comments as previous

Natural England

4.9 No comments to make on the variation to conditions. It should be noted that no assessment has been made of the impact of the proposal on protected species.

Sport England

4.10 No comments on proposed changes

Thames Water

4.11 The application indicates that surface water will not be discharged to the public network and as such Thames Water has no objection, subject to approval being sought from the Lead Local Flood Authority and conditions being imposed, regarding details of foul water capacity and water network capacity to meet the additional demand, and ensuring no construction within 5 metres of an onsite water main.

4.12 Also request that the foul water drainage strategy needs to be confirmed

External Consultees

Campaign to Protect Rural England (CPRE)

4.13 No specific comments on the changes to the planning conditions, however flag concern with surface water management of development areas on marshy flood prone land.

Network Rail

4.14 No objection

Wilts and Berks Canal Trust

- 4.15 Objection as the 'Strategic Site Wide Water Drainage Strategy 22006 -HYD - PO -XX - DR – C- 222 Rev6 'drawing and variants show flood alleviation works, ditches and bunds which conflict with the canal corridor.

Internal Consultees

Archaeological officer

- 4.16 No specific objection, but the archaeology conditions need to be re imposed with alterations to state that the archaeological mitigation strategy and WSI be amended and updated to consider any new archaeological impacts resulting from the change in drainage approach proposed in the application.

Ecological officer

- 4.17 The proposed development fails to demonstrate the impact of the proposed development on protected species including dormice, great crested newts and veteran trees or that effective mitigation measures can be provided such as the District Level Licencing scheme. The proposed development fails to demonstrate net biodiversity gain on the site, contrary to Policies SD1, EN4 and NC3 of the Swindon Borough Local Plan 2026 (March 2015) and Paragraph 180 and 186 of the National Planning Policy Framework (December 2023).

- 4.18 The proposals involve alterations to the proposed drainage network, which is likely to include reduced number of above ground surface water features such as swales within the development parcels. It is also likely to include an increase in engineering operations to construct the increased pipe network, which could involve additional disruption to existing habitats.

Education officer

- 4.19 No objection

Contaminated Land officer

- 4.20 The proposal does not involve amendments to planning conditions relating to land contamination assessment and management, therefore no objection.

Housing Officer

- 4.21 No comments on the application.

Landscape Officer

- 4.22 The submitted scheme has failed to demonstrate how the different types of public open space and GI would be acceptably provided within the appeal site, how it takes into account environmental constraints of the application area, whilst not double counting open space provision. As a result, the schemes fail to provide for the health and wellbeing of the new community.

- 4.23 The appellant has presented significant areas of 'wet / dry' surface water attenuation, which cannot be considered to be useable open space, and must be kept to a minimum, if deployed at all. The current design places these areas of attenuation extensively throughout available areas of public open space, located both within and at the immediate edges of the residential development cells, which means that users have to go further out to use the land left over - land that is likely to be waterlogged as it falls within the floodplain.

Lead Local Flood Authority (LLFA)

Original

- 4.24 The proposal changes the whole principles of development. It has not been demonstrated that the development would increase the risk of flooding elsewhere and is therefore contrary to paragraph 167 of the NPPF and Policy EN6 of the Swindon Local Plan 2026.
- 4.25 The latest proposals do not look to safeguard land in the right place for surface water management to ensure that any features would not be affected by the existing fluvial flood plain levels and increase the risk of flooding elsewhere. They do not ensure that the required surface water attenuation is

managed above the fluvial and groundwater levels as required by the adopted SuDS Vision SPD.

- 4.26 Space must be made available for adequate source control SuDs and attenuation within the future parcels as proposed within the FRA addendum and required by the SuDs Vision SPD.
- 4.27 The key strategic network of existing ditches and proposed swales that was shown on the outline Surface Water Management Strategy within the approved FRA addendum must be provided and the strategy must go further in discharging flows through out the network rather than only a few discharge points via large ponds , to ensure the existing drainage regime is maintained in line with local and national guidance.

Revised

- 4.28 The LLFA currently recommends refusal, primarily on the basis that insufficient information has been provided to demonstrate that the revised proposals would not increase flood risk. In addition, the current scheme does not fully align with the sustainable drainage requirements as set out in national and local policy, supplementary planning documents, industry best practice and guidance.
- 4.29 The revised proposals set drainage below modelled flood levels on the basis that this will minimise the need for ground raising on the site. However, setting drainage features below the flood level triggers some potential flooding issues that need to be considered. Firstly, the drainage network would need to be tested under a surcharged outfall scenario, to ensure any storage features are designed to have sufficient capacity. If insufficient storage capacity is provided and the drainage remains surcharged for long periods, unable to discharge, the drainage network could itself cause flooding to the site. The local ditch system would also be surcharged under design flood conditions. To prevent fluvial flows backing up into the drainage network a non-return system will be required. This could impact on local flood levels which we do not believe have been fully assessed. Furthermore, groundwater is a likely risk and any ingress

that could mean capacity in the attenuation basins becomes compromised. Whilst these basins could be lined to prevent the upward movement of groundwater into the basins, this is likely to have a displacement effect contributing to increased flooding. By siting drainage features above modelled flood levels means that the drainage system will be more effective even under design flood conditions.

- 4.30 Developers must demonstrate that their proposals maximise the opportunities for improving drainage in the area and reduce the risk of flooding to neighbouring communities where practicable. This requirement is particularly pertinent to any proposed development areas and their associated infrastructure where there are existing watercourses or flow routes flowing through them which provide a drainage function to neighbouring land and sufficient corridors must be provided to maintain, control and enhance existing flood flow routes to reduce the risk of flooding to existing residential areas. Opportunities must be thoroughly investigated and unless proved impracticable they must be incorporated in to the scheme. The developer here currently hasn't demonstrated as such.

Local Highway Authority (LHA)

- 4.31 No specific objections to the revised wording for conditions 9 and 10.
4.32 No comments to make in relation to conditions 41, 42, 43, 46 and 47.

Urban Design Officer

- 4.33 The argument for the different approaches to swales across the scheme generates a discussion on housing typology and design.
- 4.34 The phase 1 application for Lotmead is set out as a lower-density parcel with 25-35du/ha more traditionally-designed housing across the site.
- 4.35 The rest of the Lotmead development is accepted to be more contemporary in its layout and design approach as set out in the approved D&A Statement of that application.

- 4.36 Good precedent schemes from elsewhere designed by many of the housebuilders including Countryside Properties were included and illustrate a varying approach to typology of house types and typologies of place.
- 4.37 The variations of place and design are illustrated by good examples that range in resulting residential densities. The same is obviously expected within Lotmead. While a blanket 'average density' is set for the New Eastern Villages, this is not to say that a variation in 'mix' and 'type' should not be provided within each development. It is expected that the new homes to be delivered are of a good quality and that they provide a good mix and range of typologies across the site.
- 4.38 Such a mix should be capable of delivering a number of variations of dwelling numbers depending on typologies proposed. Applying a simplistic approach to density and design across the development where certain constraints are challenging the net developable area is an example of a 'numbers'-led, rather than a 'design'-led approach to such a constraint. Altering residential densities by a few houses per dwelling across the range of character areas can change the overall outcome quite significantly.
- 4.39 This has not yet been explored from a design-led process.

Public Rights of Way officer (PROW)

- 4.40 The western proposed access road to the A420 cuts across Public Footpath 39 Wanborough/5 South Marston at a number of locations. A diversion of this footpath will be required under section 257 of the Town and Country Planning Act 1990. Any permission needs to be conditioned to include the necessary diversion of the footpath and provision of an alternative route.

Adjacent Local Authorities

Oxford County Council:

- 4.41 No objection to the rewording of the conditions on transport grounds.

- 4.42 No objection on drainage grounds, subject to SuDs surface water management conditions.

Parish Councils

Shrivenham

- 4.43 The North Eastern villages applications will have a considerable impact on Shrivenham and the local rural area of Oxfordshire

South Marston

- 4.44 No objection, providing PRow connectivity maintained throughout the NEV development.

5 Legislative Context

Legislative

- 5.1 The Town and Country Planning Act 1990 provides for both detailed and outlined planning permission. The Town and Country Planning (Development Management Procedure) Order 2015/595 defines in Article 2(1) an “outline planning permission” to mean a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters. The “reserved matters” means any of the following matters in respect of which details have not been given in the application— a) access; b) appearance; c) landscaping; d) layout; and e) scale.
- 5.2 In this Appeal application all matters (save one access point from Wanborough Road) are reserved. Neither SBC nor the Secretary of State has jurisdiction to determine or influence the subsequent evaluation by SBC in the event of a reserved matters application (on the current Outline Planning Permission nor if a second outline permission is granted).
- 5.3 By section 73 of the Town and Country Planning Act 1990:
- 1) *This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*

- 2) *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*
- a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application...*
- 2B) *Nothing in this section authorises the disapplication of the condition under paragraph 13 of Schedule 7A (biodiversity gain condition)...*
- 4) *This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.*
- 5) *Planning permission must not be granted under this section for the development of land in England to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—*
- a) a development must be started;*
- b) an application for approval of reserved matters (within the meaning of section 92) must be made.*

5.4 An application under section 73 is not an application to “vary” a planning permission but results in a fresh and freestanding planning permission whilst leaving the original permission intact and unamended and it remains the baseline (Pye v Secretary of State [1999] PLCR 28; R v Leicester City Council, ex parte Powergen (2001) 81 P&CR 5). Whilst a developer may apply for any number of permissions, the carrying out of development under one permission resulting in a physical incompatibility precludes future reliance on the other permission (Hillside Parks Limited v Snowdonia National Park Authority [2022] 1 WR 5077).

5.5 “The comparison is not between the present effects of condition x imposed now and the present effects of condition y imposed now, but rather between the present effects of condition x imposed years ago and the present effect of condition y imposed now.” There is also no requirement on the decision maker

to shut its eyes to the practical consequences of granting or refusing planning permission. The local planning authority have to have regard to the factual circumstances as they exist at the time and to have regard to the facts that exist at the time of their decisions. (Powergen).

- 5.6 The scope of section 73 cannot extend to change the development description of the Outline Planning Permission. (Finney v Welsh Ministers [2019] EWCA Civ 1868).
- 5.7 The Council will also refer to further relevant case law on the determination of section 73 applications for planning permission.
- 5.8 Section 70(2) of the Act confirms that, in dealing with an application for planning permission, the LPA shall have regard to the provisions of the Development Plan in so far as material to the application and to any other material considerations.
- 5.9 By section 38(6) of the Planning and Compulsory Purchase Act 2004 the determination to grant planning permission must be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.10 The Flood and Water Management Act 2010, section 6(7) establishes the function of lead local flood authority, section 11(1) requires the risk management authority to act consistently with the national strategy and guidance, and similarly with local strategies and guidance. See also section 27(1) and (3)(a). In England, the following is not in force but expected to be brought into force during 2024. By section 32 and Schedule 3, paragraph 8, there are two approaches for application for approvals required by paragraph 7 from the approving body for construction work which has drainage implications. Paragraphs 1, 2, 5 and 6, provide for drainage systems, sustainable drainage and national standards, and the approving body.
- 5.11 The Town and Country Planning (Development Management Procedure) Order 2015/595, paragraph 18 and Schedule 4, paragraph (zf) identify the

Lead Local Flood Authority (LLFA) as a consultee for Major development with surface water drainage.

Policy Context

Local Planning Policy

5.12 The Council's evidence will demonstrate that the proposal is clearly contrary to the adopted Development Plan, in particular, Policies NC3; EN6; SD1, EN4, EN3, IN1 and CM2 of the Swindon Borough Local Plan 2026 ("the Local Plan").

5.13 The Council will set out which Development Plan policies are relevant to this appeal and identify areas of breach or conflict. This will include reference to policies from the following adopted Development Plans:

- Swindon Borough Local Plan 2026 (Local Plan), (adopted 26th March 2015);
- Swindon Borough Local Plan 2026 Policies Map; and
- Wiltshire and Swindon Waste Core Strategy 2006-2026, (adopted July 2009).

5.14 Policy NC3 of the Local Plan requires, under Policy NC3(c):

The development will ensure:

- *The risk of flooding from the development is minimised, both within the development and at existing neighbouring communities in accordance with Policy EN6...*

5.15 Policy EN6: Flood Risk includes:

a. The risk and impact of flooding will be minimised through:

- *Directing development to areas with the lowest probability of flooding;*
- *Ensuring that all development addresses the effective management of all sources of flood risk;*
- *Ensuring development does not increase the risk of flooding elsewhere including on adjoining and surrounding land; and*

- *Ensuring wider environmental benefits of development in relation to flood risk...*
- b. ...
- c. ...
- d. *All development proposals must be assessed against the Local Flood Risk Management Strategy to address locally significant flooding ... Appropriate mitigation and managements measures must be implemented.*
- e. *All development shall be required to provide a drainage strategy. Developments will be expected to incorporate sustainable drainage systems and ensure that run-off rates are attenuated to greenfield run-off rates. Higher rates would need to be justified and quantified.*
- f. *Sustainable drainage systems should seek to enhance water quality and biodiversity in line with The Water Framework Directive.*

5.16 Paragraph 4.362 of the Reasoned Justification for Policy EN6 explains that:

The design of sustainable drainage systems (SuDS) should be in accordance with design criteria as required by the SuDS Approval Body (Swindon Borough) and current best practice guidance. The Flood and Water Management Act, 2010 requires that the SuDS Approval Body (SAB) assess and approve sustainable drainage systems and if approved adopt and maintain these systems. It is required that SuDS design enables good masterplanning and design within the proposed development. Early consultation with the Local Planning Authority is therefore essential. For major development, a complete and functional SuDS system that supports the masterplanning should be designed at outline stage.

Material Considerations

5.17 The Council will refer to the following material considerations:

- The National Planning Policy Framework (December 2023);
- National Planning Practice Guidance (PPG);
- DEFRA “National Standards for sustainable drainage systems: designing, constructing, operating and maintaining drainage for surface runoff” (December 2011);
- DEFRA “Sustainable Drainage Systems: non-statutory technical standards for sustainable drainage systems” (March 2015);
- CIRIA Report, C753 The SuDS Manual (2015) as updated;

- New Eastern Villages (NEV) Planning Obligations Supplementary Planning Document (SPD) (October 2016);
- SuDS (Sustainable Drainage Systems) Vision for the New Eastern Villages (NEV) Supplementary Planning Document (SPD) (2017);
- New Eastern Villages (NEV) Green Infrastructure (GI) Supplementary Planning Document (SPD) (2017);
- Swindon Borough Council Strategic Flood Risk Assessment Level 1 (May 2019).

5.18 The Council will refer to relevant sections of the National Planning Policy Framework (NPPF) (December 2023) and National Planning Practice Guidance (PPG).

5.19 In particular, the NPPF, Section 14, provides:

168. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding...

172. Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.

173. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment⁵⁹. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be

inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan...

175. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should: a) take account of advice from the lead local flood authority; b) have appropriate proposed minimum operational standards; c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and d) where possible, provide multifunctional benefits.

5.20 The Secretary of State's PPG includes:

Paragraph: 003 Reference ID: 7-003-20220825:

The National Planning Policy Framework sets out strict tests to protect people and property from flooding which all local planning authorities are expected to follow. Where these tests are not met, new development should not be allowed. ...

Paragraph: 004 Reference ID: 7-004-20220825:

Where an assessment shows that flood risk is a consideration for a plan or development proposal, the process is set out below:

Avoid ...

- In decision-making, where necessary, planning authorities also apply the Sequential Test and, if needed, the Exception Test, to ensure that flood risk is minimised and appropriately addressed...*
- Within sites, using site layout to locate the most vulnerable aspects of development in areas of lowest flood risk, unless there are overriding reasons to prefer a different location. In addition, measures to avoid flood risk vertically can then be taken, by locating the most vulnerable uses on upper storeys, and by raising finished floor and/or ground levels, where appropriate and that such techniques are suitably designed. Such measures should also account for residual flood risks from flood risk management infrastructure.*

Control

- Planning authorities and developers can investigate measures to control the risk of flooding affecting the site. ..*

Mitigate

- Use flood resistance and resilience measures to address any residual risks remaining after the use of the avoidance and control measures described above...*

Manage Residual Risk ...

Tensions between flood risk mitigation measures and other planning matters, do not justify unsafe development.

Paragraph: 040 Reference ID: 7-040-20220825:

When considering proposals for major development the local planning authority will need to consult the lead local flood authority on surface water drainage...

Paragraph: 055 Reference ID: 7-055-20220825:

Sustainable drainage systems (or SuDS) are designed to control surface water run off close to where it falls, combining a mixture of built and nature-based techniques to mimic natural drainage as closely as possible, and accounting for the predicted impacts of climate change. They provide benefits for water quantity, water quality, biodiversity and amenity. Many types of sustainable drainage systems are possible, contributing to reducing the causes and impacts of flooding. Multifunctional sustainable drainage systems are those that deliver a wider range of additional biodiversity and environmental net gains ...

The layout and function of drainage systems needs to be considered at the start of the design process for new development, as integration with road networks and other infrastructure can maximise the availability of developable land.

Paragraph: 056 Reference ID: 7-056-20220825:

The types of sustainable drainage system which it may be appropriate to consider, will depend on the proposed development and its location, as well as any planning policies and guidance that apply locally. Where possible, preference should be given to multi-functional sustainable drainage systems, and to solutions that allow surface water to be discharged according to the following hierarchy of drainage options:

- 1. into the ground (infiltration);*
- 2. to a surface water body;*
- 3. to a surface water sewer, highway drain, or another drainage system;*
- 4. to a combined sewer...*

Consideration of sustainable drainage systems early in the design process for development, including at the pre-application or master-planning stages, can lead to better integration, multi-functional benefits and reduced land-take.

Paragraph: 057 Reference ID: 7-057-20220825:

When considering major development with surface water drainage the local planning authority must consult the lead local flood authority on proposed drainage arrangements...

Non-statutory technical standards are available to guide decisions about the design, maintenance and operation of sustainable drainage systems. Refer to the Environment Agency's approach to groundwater protection. Detailed industry guidance (for example CIRIA's SuDS Manual, the Institution of Civil Engineers' SuDS Route Maps, provide technical details for the suitability of sustainable drainage systems for a wide range of design characteristics.

Applicants and developers should take into consideration the above.

Paragraph: 059 Reference ID: 7-059-20220825:

Where SuDS are required in accordance with paragraphs 167 and 169 of the National Planning Policy Framework, to reduce delays in the planning process, applicants need to submit a sustainable drainage strategy containing proportionate information on the proposed sustainable drainage systems as part of their planning application (including outline applications)...

5.21 The Secretary of State for Department for Environment, Food and Rural Affairs (DEFRA) has published DEFRA “National Standards for sustainable drainage systems: designing, constructing, operating and maintaining drainage for surface runoff” (December 2011) provides for sustainable drainage:

0.2 SuDS are an approach to managing rainwater falling on roofs and other surfaces through a sequence of actions. The key objectives are to manage the flow rate and volume of surface runoff to reduce the risk of flooding and water pollution. SuDS also reduce pressure on the sewerage network and can improve biodiversity and local amenity.

0.3 The Department for Environment, Food and Rural Affairs (Defra) has developed National Standards to be used in England in order to manage surface runoff in accordance with Schedule 3 to the Flood Water and Management Act 2010.

0.4 The National Standards set out what to design and construct in order to obtain approval from the SuDS Approving Body (SAB) and for operating and maintaining SuDS which the SAB adopts.

0.5 Drainage for approval by the SAB must be designed to comply with the National Standards. The Sustainable Drainage (Approval and Adoption) (England) Order 2012 defines the exemptions to the requirement for approval...

0.6 There are two parts to the National Standards:

- *Principles that:*
 - i. Must be taken into account for the design of SuDS; and*
 - ii. Set the criteria for governing the judgement of SABs on the functionality of drainage they adopt; and*
 - iii. Exempt development from complying with certain aspects of the standards on the grounds of disproportionate cost.*
- *Standards with design, construction and maintenance requirements for SuDS.*

0.7 In addition, the Local Planning Authority may set local requirements for planning permission that have the effect of more stringent requirements than these National Standards...

Part 1 – Principles

2.1 A proposed drainage system does not comply with these National Standards unless it is designed so that:

- a. Surface runoff is managed at its source where it is reasonably practicable to do so;*
- b. Surface runoff is managed on the surface where it is reasonably practicable to do so;*

- c. *Public space is used and integrated with the drainage system, where it serves more than one property and it is reasonably practicable to do so;*
- d. *Design is cost-effective to operate and maintain over the design life of the development, in order to reduce the risk of the drainage system not functioning;*
- e. *Design of the drainage system accounts for the likely impacts of:*
 - *climate change; and*
 - *changes in impermeable area;**over the design life of the development, where it is reasonably practicable to do so.*

2.2 Where arrangements have been made before seeking SAB approval, which do not take these Standards into account, this is not a reason to regard compliance as not reasonably practicable.

Affordability

2.3 If full compliance with the Standards would necessitate the construction of a drainage system that is more expensive than an equivalent conventional design then full compliance is not required, and instead the drainage system must comply with the standards to the greatest extent possible, without exceeding the cost of the equivalent conventional design...

5.22 The DEFRA “Sustainable Drainage Systems: non-statutory technical standards for sustainable drainage systems” (March 2015) provides for Peak Flow Control and for Volume Control and for Flood Risk within the development:

This document sets out non-statutory technical standards for sustainable drainage systems. They should be used in conjunction with the National Planning Policy Framework and Planning Practice Guidance....

S2 For greenfield developments, the peak runoff rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event should never exceed the peak greenfield runoff rate for the same event.

S4 Where reasonably practicable, for greenfield development, the runoff volume from the development to any highway drain, sewer or surface water body in the 1 in 100 year, 6 hour rainfall event should never exceed the greenfield runoff volume for the same event.

S6 Where it is not reasonably practicable to constrain the volume of runoff to any drain, sewer or surface water body in accordance with S4 or S5 above, the runoff volume must be discharged at a rate that does not adversely affect flood risk.

S7 The drainage system must be designed so that, unless an area is designated to hold and/or convey water as part of the design, flooding does not occur on any part of the site for a 1 in 30 year rainfall event.

S8 The drainage system must be designed so that, unless an area is designated to hold and/or convey water as part of the design, flooding does not occur during a 1 in 100 year rainfall event in any part of: a building (including a basement); or in any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development.

S9 The design of the site must ensure that, so far as is reasonably practicable, flows resulting from rainfall in excess of a 1 in 100 year rainfall event are managed in exceedance routes that minimise the risks to people and property.

Local Policy and Other Guidance

- 5.23 The CIRIA Report, C753 The SuDS Manual (2015) as updated provides guidance on sustainable drainage systems.
- 5.24 SuDS (Sustainable Drainage Systems) Vision for the New Eastern Villages (NEV) Supplementary Planning Document (SPD) (2017) provides local guidance on sustainable drainage systems. In particular, the SPD explains the phrase in Policy EN6 “sustainable drainage systems”, and paragraph 1.4 describes the “SuDS techniques”, its component elements, and how the SuDS Management Train conveys water to an existing watercourse. See Figure 1. The components include: Source Control Measures “that occur at the beginning of the management train and involve managing surface water runoff as close as possible to where it rains”; “Conveyance”, such “techniques being the next step in the train”. “By incorporating source control measures wherever possible and utilising the existing drainage paths throughout the site, SBC consider that all final attenuation requirements can be accommodated outside flood zones 2 & 3 and as a result will not be affected by existing flood levels (i.e. invert levels are above the 1 in 100 year plus climate change flood level”.
- 5.25 The SPD continues: “Due to the location of the NEV and the majority of the proposed development areas being islands with connectivity crossing designated flood plain (flood zones 2 & 3), SBC will not accept a drainage

strategy that seeks to use traditional gully and pipe systems discharging to large attenuation features close to the final discharge point. The Council will expect source control measures to be incorporated into the development which will ensure water is discharged throughout the management train at greenfield runoff rates. Water should be conveyed and controlled through the development using shallow above ground conveyancing systems to mimic the natural drainage features of the site”.

- 5.26 Copies of the relevant Local Plan policies and supplementary planning documents accompanied the appeal questionnaire or are appended to this submission.
- 5.27 The Swindon Local Plan is under review and the Council is in the process of developing a new Local Plan. The review of the Local Plan had gone through a number of stages, as follows:
- Regulation 18 (part i) Issues and Options published for consultation from 7th November to 19th December 2017.
 - Regulation 18 (part ii) Emerging Strategies published for public consultation from 29th July to 23 September 2019.
 - Regulation 19 (part i) the Swindon Local Plan 2036 (draft) was published for public inspection from 17th December 2019 to 31st January 2020.
 - Regulation 19 (part ii) the Swindon Local Plan 2036 (revised draft) was published following consultation feedback and legislative changes and was made available for public inspection from 29th July to 7 October 2021.
- 5.28 For completeness, on the 7th December 2022, Cabinet had approved a new Local Development Scheme (LDS) which came into effect on 1st January 2023 and essentially created a timetable for the production of a new Local Plan rather than continue with the review process. One of the changes in the new local plan is a revised and extended technical plan period (2023-2043). A further update to the LDS was taken before Swindon Borough Council's Cabinet on 13th December 2023 and approved a revised timetable for production of the Local Plan with public consultation on the Regulation 18

Preferred Options Swindon Local Plan due to commence during Summer 2024, a further Regulation 19 consultation later in the year and then submission to the Secretary of State under Regulation 22 for Examination in Public by 30th June 2025. The new plan will be a single integrated plan combining outstanding Swindon Central Area Action Plan matters and also additional changes integrating mineral and waste policy policies, designations and allocations.

- 5.29 The Council reserve the right to refer to other evidence and documents in our Proofs of Evidence, or at the Inquiry, as necessary

6 The Case for Swindon Borough Council

- 6.1 If the Council had been in a position to determine the planning application it would have refused planning permission for the following reasons:

a) Drainage:

1. The application fails to demonstrate a suitable sustainable drainage strategy can be achieved on the site to ensure that surface water run-off will be safely managed to prevent the risk of flooding elsewhere. As a result, the proposed development is contrary to Policies EN6 and NC3 of the Swindon Borough Local Plan 2026 (March 2015), SuDS Vision for the NEV SPD and Paragraphs 173 and 174 of the National Planning Policy Framework (December 2023).

b) Ecology:

2. The proposed development fails to demonstrate the impact of the proposed development on protected species or that effective mitigation measures can be achieved. The proposed development fails to demonstrate net biodiversity gain on the site, contrary to Policies SD1, EN4 and NC3 of the Swindon Borough Local Plan 2026 (March 2015) and Paragraphs 180 and 186 of the National Planning Policy Framework (December 2023).

c) Open Space:

3. The application fails to satisfactorily demonstrate how the open space requirements for the development can be met on site and deliver a multi-functional SuDS scheme as part of the placemaking strategy contrary to

Policies SD1, EN3, NC3, IN1 and CM2 of the Swindon Borough Local Plan 2026 (March 2015) and the provisions of the National Planning Policy Framework (December 2023).

d) Planning Obligation:

4. In the absence of a completed Section 106 Legal Agreement, the application fails to secure the delivery of, or financial contributions towards, the necessary infrastructure required to enable sustainable development and mitigate the direct impact of the proposed development. In addition, the application fails to provide a strategy for the long term sustainable management and maintenance of the green infrastructure provided on site. The application is therefore contrary to Policies IN1, EN1 and EN2 of the adopted Swindon Borough Local Plan 2026 and the National Planning Policy Framework (NPPF).

- 6.2 The Council will produce evidence during the Inquiry to demonstrate that the appeal application should be dismissed. The Council addresses each reason for refusal below.

Reason for Refusal: Drainage

- 6.3 Reason for Refusal:

1. The application fails to demonstrate a suitable sustainable drainage strategy can be achieved on the site to ensure that surface water run-off will be safely managed to prevent the risk of flooding elsewhere. As a result, the proposed development is contrary to Policies EN6 and NC3 of the Swindon Borough Local Plan 2026 (March 2015), SuDS Vision for the NEV SPD and Paragraph 173 and 174 of the National Planning Policy Framework (December 2023).

- 6.4 The Council will demonstrate that the appeal application has failed to propose a drainage design or strategy that qualifies as a “sustainable drainage system” or such a strategy because the first criteria or component of such a system is absent from the Appeal proposals: there is no “at source” component. Nor does the proxy scheme produced by the Appellant result to effectively manage surface water run-off to minimise the risk of flooding elsewhere. The Appellant’s proxy is contrary to the relevant policies of the Local Plan, SuDS Vision for the NEV SPD and NPPF, and the PPG (in particular, to the drainage hierarchy),

and also directly contrary to the Secretary of State for DEFRA's non-statutory guidance on "sustainable drainage systems".

- 6.5 Policy NC3 of the Local Plan requires the development ensure that the risk of flooding from the development is minimised "both within the development and at existing neighbouring communities in accordance with Policy EN6". Policy EN6 of the Local Plan requires that development provide a drainage strategy, and developments will be expected to incorporate sustainable drainage systems and ensure that run-off rates are attenuated to greenfield run-off rates. The Secretary of State for DEFRA says this: (Emphasis added)

Approach 1: restricting both the peak flow rate and volume runoff

B4. The peak flow rates for the: a) 1 in 1 year rainfall event; and b) 1 in 100 year rainfall event; must not be greater than the equivalent greenfield runoff rates for these events. The critical duration rainfall event must be used to calculate the required storage volume for the 1 in 100 year rainfall event.

B5. The volume of runoff must not be greater than the greenfield runoff volume from the site for the 1 in 100 year, 6 hour rainfall event.

Approach 2: Restricting the peak flow rate

B6. The critical duration rainfall event must be used to calculate the required storage volume for the 1 in 100 year rainfall event. The flow rate discharged: a) For the 1 in 1 year event, must not be greater than either: • the greenfield runoff rate from the site for the 1 in 1 year event, or • 2 litres per second per hectare (l/s/ha); And b) for the 1 in 100 year event, must not be greater than either: • the greenfield mean annual flood for the site, or • 2 litres per second per hectare (l/s/ha)...

Flood Risk

D4. The design of the drainage system must take into account the impact of rainfall falling on any part of the site and also any estimated surface runoff flowing onto the site from adjacent areas.

D5. Drainage systems must be designed so that, unless an area is designated for flood management in the Local Flood Risk Management Strategy, flooding from the drainage system does not occur: a) On any part of the site for a 1 in 30 year rainfall event; and b) During a 1 in 100 year rainfall event in any part of: • a building (including a basement); or • utility

*plant susceptible to water (e.g. pumping station or electricity substation); or
c) On neighbouring sites during a 1 in 100 year rainfall event.*

D6. Flows that exceed the criteria in Standard D5 must be managed in flood conveyance routes that minimise the risks to people and property both on and off the site.

- 6.6 The reasoned justification for Policy EN6 explains in paragraph 4.362 of the Local Plan what “sustainable drainage systems” means and “*For major development, a complete and functional SuDS system that supports the masterplanning should be designed at outline stage”.* (Emphasis added)
- 6.7 The SuDS Vision for New Eastern Villages Supplementary Planning Document (‘SuDS Vision SPD’) was adopted in February 2017. It explains the phrase in Policy NC3(c) “The development will ensure ... the risk of flooding from the development is minimised, both within the development and at existing neighbouring communities in accordance with Policy EN6”. It describes the concepts underpinning “SuDS” referred to in Policy EN6, the most effective techniques to use and ways they can be managed. SuDS seek to reduce the impact of development on sites and neighbouring land through the careful management of surface water discharges. The key features that can be used can include swales, attenuation ponds and wetlands, which can also be multi-purpose and provide wider benefits to the residents of the community and biodiversity. The inclusion of these features within areas of open space can also contribute towards the creation of a healthy community.
- 6.8 The outline planning application was submitted in April 2019, and therefore was required to fully consider the requirements of Policies NC3 and EN6 of the Local Plan and the SuDS Vision SPD.
- 6.9 The application for the Outline Planning Permission was considered by Planning Committee on 9 June 2020.

6.10 The Planning Committee Report for the Outline Planning Permission evaluates the following: (Emphasis added)

9.83 The FRA provided details of the proposed SuDS surface water drainage strategy to demonstrate that there would not be an increase in the rate of surface water runoff from the Site. This utilised swales and basins with outlet controls into the adjacent watercourses. The use of SuDS is deemed important as a form of surface water drainage management for the site and is required by Policy NC3.

9.87 The design would ensure that run off would be limited to greenfield rates up to and including 1 in 100 plus climate change events. Additional ecological and biodiversity benefits would be provided within SuDS such as planting, reed beds and varying permanent water depths where feasible. The provision of swales, ditches, permeable paving or other forms of SuDS would be in accordance with the 'SuDS Vision for New Eastern Villages (NEV) Supplementary Planning Document' (SPD).

6.11 This demonstrates that the SuDS network, embedded within the development parcels formed a key part of the consideration of this application by Planning Committee and aligned with national guidance of the two Secretaries of State and remains the relevant baseline.

6.12 Benefits of SuDS (p4 of SuDS Vision SPD)

"...Successful SuDS enhance the quality of life for people living in a community, by increasing the aesthetic, environmental and recreational value of their everyday outdoor spaces. SuDS help to protect local watercourses from pollution and an increase surface water runoff, as a result of new development, but furthermore they can draw upon the aesthetic and environmental character of watercourses into the urban fabric, creating cohesion between a development and the landscape within which it sits. The inclusion of source control measures throughout a development, to improve capture and slow down the flow of water, can reduce the required end-of-line attenuation volume and thus increase the available space for development..."

"Other benefits of a successful SuDS scheme include:

- Water storage – providing long and short term storage of water during a storm event, ensuring that development does not increase the risk of flooding to downstream areas*
- Water reuse – reducing future demand for water by reusing rainfall runoff*

- *Pollutant treatment – effective treatment of polluted runoff*
- *Recreation – open space and water features available for leisure activities*
- *Visual amenity – providing attractive features which enhance the urban landscape*
- *Biodiversity – increasing the variety of plants and wildlife*
- *Silt removal – removing suspended sediments in water*
- *Education – learning opportunities around biodiversity and water management*
- *Climate change resilience and adaptability – easily changed for additional future capacity*
- *Reduce maintenance costs”*

6.13 The proposed drainage strategy in the Appeal now changes from that previously accepted and policy and guidance compliance to a proxy that is not compliant with national or local guidance. The Council considers the change to be at odds with that guidance and drainage hierarchy.

6.14 The Appellant, having acquired the land with the benefit of the Outline Planning Permission, now proposes a new strategy: (Emphasis added)

“based around predominantly piped drainage within development areas leading to multi-functional surface level SuDS basins in open space in the locations where land is already safeguarded on the approved Parameter Plans and Illustrative Masterplan for exactly this purpose”.

(Appellant SoC, Para 2.37, p.10).

6.15 That is, the Appellant has *removed* the ‘at source’ component of the sustainable drainage design from the ‘beginning’ of such a design, additionally has *prioritised* below ground conveyance of surface water notwithstanding that such pipe systems are at level 3 of the drainage hierarchy, and has set the level of the drainage below the assessed flood level resulting in its inundation during a flood event. This proxy drainage system is directly contrary to national and local guidance.

- 6.16 The Appellant seeks to remove from the Outline Planning Permission the existing and approved prioritisation of plot scale source control features and above ground conveyancing of flows, to instead convey water below ground in pipes to the extents of the site to fill larger, deeper basins located in the open space areas, and in order that the areas of the site upon which housing and occupied development can be built would be increased.
- 6.17 Consequently, under the submitted proposals, open areas would become dominated by large drainage features, to which water would be required to travel a considerable distance from the furthest point of the catchment to reach those large attenuation features and point of discharge there. Such an approach is contrary to national and local guidance in that the new approach fails to deal with water at source or to fully integrate water management into the development, both of which are guiding principles of the concept sustainable drainage. This is not only contrary to the latest NPPF and supporting PPG, which prioritise the integration of above-ground multifunctional SuDS and natural flood management into new development, it also conflicts with the detailed requirements and expectations set out in the DEFRA non-statutory guidance on sustainable drainage and with the particular local guidance formulated for the New Eastern Villages: the SuDS Vision for the New Eastern Villages (NEV) Supplementary Planning Document (SPD).
- 6.18 Contrary to the assertion of the Appellant as to the little weight it contends be attributed to the SPD, the SPD aligns with national guidance from DEFRA and with best practice from CIRIA. The SPD was created to detail the specific requirements for each of the NEV developments in terms of drainage approaches. The Outline Planning Permission already aligns with the SPD and is an approved scheme, with all matters (save one access) reserved. Since all matters remain reserved (save one access), there can be no technical reason presented at this outline stage for not meeting these requirements. Indeed, the previous developer set drainage as one of fixed the parameters for the development throughout all stages of the application process and in which reserved matters applications would be evaluated as they come forwards. By

contrast, the introduction of a proxy drainage scheme that does not align to national and local guidance would have significant and broad scale consequences across the whole NEV allocation under Policy NC3 and rewrite through a planning application the terms of NC3(c), bullet 2 and paragraph 5.52 that makes clear that flood risk zones “within the site prevent development in certain areas”, as well as rewriting the requirements and provisions of Policy EN6. It remains noteworthy that the Appellant’s stated conditions the potential for source control on the absence of reduced developable area and delivery of units. Indeed, the Appellant has submitted no viability evidence nor affordability evidence to date to justify not adhering to the DEFRA and local guidance for sustainable drainage.

- 6.19 Somewhat surprisingly, the revised proposals set drainage below modelled flood levels on the basis that this will minimise the need for ground raising on the site. However, setting drainage features below the flood level triggers potential flooding issues that need to be considered. Firstly, the Appellant has provided no updated flood area maps of the Outline Planning Permission area to confirm the introduction of the climate change allowance to the flood area maps leaves them unchanged. Nor has the Council been provided with the drainage model itself nor its print out to consider the input assumptions and flow rates. That evidence remains not before the Secretary of State. Secondly, the proposed and existing drainage network would need to be tested under a *surcharged* outfall scenario, to ensure any storage features are designed to have sufficient capacity. It is reasonable to assume that the situation of pipes below flood levels would result in their surcharge and inability to be used for discharge during a flood event. It is also reasonable to assume that the Appellant envisages use of the pipes as additional flood water storage volumes. If insufficient storage capacity is provided and the drainage remains surcharged for long periods, unable to discharge, the drainage network could itself cause *flooding within* the site. That is a breach of Policy NC3(c) bullet 2 (“within the development”). The local ditch system would also be surcharged under design flood conditions. That too would be a breach of Policy NC3(c) bullet 2. To prevent fluvial flows backing up into the drainage network a non-return system

will be required and that is not a passive feature but its suggested inclusion indicates the Appellant knows of a surcharge issue. This could impact on local flood levels which the Council has no evidence to show that it has been assessed nor fully so. Thirdly, groundwater ingress is a likely risk and ingress that could mean capacity in the attenuation basins becoming compromised. Whilst these basins could be lined to prevent the upward movement of groundwater into the basins, this is likely to have a displacement effect contributing to increased flooding. By siting drainage features above modelled flood levels means that the drainage system will be more effective even under design flood conditions. That too would be a breach of Policy NC3(c) bullet 2.

6.20 Source control can be used in areas which do not have any additional land take whatsoever– such as permeable paving (of drives/shared spaces etc), green roofs, or rainwater harvesting – and opportunities for these within the various parts of the Lotmead development are detailed in the SuDS SPD for the NEV. Whilst it is accepted that detailed layouts and drainage provision for each parcel will come later in the planning process, assumptions of car parking provision, commercial square footage and property numbers can be made at this stage for these types of source control features. Therefore, it is reasonable to expect an assessment of how these will contribute to the drainage provision and be delivered within the scheme. However, such an assessment has not been undertaken and this should be provided.

6.21 Raingardens are referred to extensively in the SPD and are generally very small features as most often designed to accommodate runoff from individual plots and /or for managing smaller rainfall events (as defined by the SuDS SPD). Consequently, these features are unlikely to compromise the delivery of significant property numbers and often can be designed into small parcels within developments. A reasonable calculation should therefore be made of all the potential opportunities available within the development to utilise these features, and if they are discounted this should be appropriately evidenced.

- 6.22 There is poor infiltration at the site, and this is clearly identified in the SuDS SPD for the whole NEV allocation. The Appellant's position appears to be to attribute that fact little weight because it is in the SPD. The Council disagrees. The SPD is particular to the NC3 allocation area and attracts considerable weight because of its detailed consideration. The natural drainage regime of the site is via a ditch network. Whilst work has been done and submitted which shows that this network is not as extensive as originally assumed, this remains the natural drainage regime for the site and should still be used as the basis for the drainage approach.
- 6.23 The site is largely flat and situated on effective islands in an existing floodplain. It is argued that for both the drainage proposals in the Original FRA addendum (OFRA) and those in the Revised FRA (RFRA) addendum, ground raising is needed to achieve the relevant 'fall' to the attenuation basins located at the edge of the site but that raising would be less in the proposed scheme because the drainage pipes would be set below flood level (whereas in the approved scheme the drainage system is set above flood levels and approved as such). The RFRA suggests that by lowering the base of the attenuation features to below the flood level, and by installing larger pipes that this will mean less ground raising. Therefore, the proposals assert that the land raising requirement is greater for surface features to be implemented, and therefore the piped scheme is preferable. But that cannot be correct because, typically, piped conveyance drainage requires steeper falls than surface features in order that they achieve self-cleansing velocities (or there can be no appropriate self-cleansing). The Council consider that the principle should still be to ensure the shortest distance between source and point of discharge has been achieved, keeping water at the surface and using localised attenuation features, only conveying water elsewhere within the site if this cannot be managed at source. There may well be potential obstacles to achieving this, such as existing infrastructure (Thames Water Main) or other constraints (Protected Hedgerows, Bunds), but it must be demonstrated through appropriate evidence and between consultees that these are insurmountable, or implementation of such approaches would have greater environmental implications.

6.24 It is important to note also that conveyancing piped schemes do not allow for *natural* drainage processes to occur and so do not mimic (as sustainable drainage is required to) natural processes. Hence, the Appellant's scheme is a proxy for a sustainable drainage scheme and is not itself a sustainable drainage scheme. Pipes move water away quickly to a single location where it is artificially held in large volumes *until* it can discharge back into the environment often some distance from its source. This causes a water imbalance across the site, where water is not available within the environment as it is diverted into pipes. Whilst accepting infiltration opportunities are limited (for the effective post development site drainage), under natural regime the water would remain close to source and would slowly infiltrate or be conveyed along drainage pathways resulting in natural losses like evaporation - ensuring groundwater replenishment and provide resources and habitat for local wildlife and vegetation. To qualify as a SuDS scheme, a sustainable drainage scheme *mimics* natural processes by keeping water close to source, utilising existing nature drainage routes (ditches and depressions) whilst still allowing the remaining land to be developed. Piped drainage is generally deeper, more carbon hungry through its production, excavation of trenches and its construction, harder to access for ongoing maintenance, and cannot contribute to water quality improvements nor ecology in comparison with natural surface conveyance features such as swales. Without effective source control features (which the current scheme seeks to remove from the Outline Planning Permission) piped systems risk becoming blocked, and silts and other pollutants end up in the receiving basin. There is no amenity value associated with a pipe scheme, as it does not enable the water it conveys to integrate into the broader landscape and placemaking proposals but instead encloses it and below ground, resulting in no real public or amenity interaction with the water environment within the development parcels. By contrast, using sustainable drainage results in surface features allowing settlement of silts and treatment of pollutants at a more localised level using natural process. Smaller features such as swales and raingardens can become much more integrated into development parcels, and are generally shallower, cheaper to construct and

maintain as they drain smaller areas and issues are more visible and easier and safer to resolve.

- 6.25 Notwithstanding that all matters (save one access) are reserved and so it remains at this stage impossible to know the layout or numbers of dwellings without all reserved matters being applied for, the Appellant asserts that a considerable number of units (c. 600 units) cannot be delivered if the original drainage scheme were to be implemented with on plot SuDS and surface conveyance features due to developable land 'lost' to drainage, but it is not clear how this number was derived and what land take assumptions around the provision and types of SuDS have been made. The Council considers that assertion is guesswork in the absence of a reserved matters application and evidence of layout that remains not before the Council nor the Secretary of State.
- 6.26 Para 2.38 of the Appellants SoC states *"CSS remain committed to incorporating drained swales alongside strategic roads, and continuing to explore opportunities to introduce surface level features at detailed design stage subject them "not compromising residential capacity or requiring site levels to be raised excessively" (Revised FRA Addendum, Page 2)"*.
- 6.27 The Council disagrees with the Appellants assertion that dwellings be put before the requirement to minimise flood risk and ensure sustainable drainage is provided in line with Policy NC3(c), EN6 and national guidance of two Secretaries of States.
- 6.28 The submitted Appellant's case and evidence to date fails to show how the approved Outline Planning Permission and its supporting FRA, which focuses on SuDS within development parcels, is inappropriate and fails to show how the proposed Appeal application would not breach national and local planning policy. The Appeal application fails to comply with, and is in breach of, the requirements and provisions of the NPPF, PPG, DEFRA Guidance, Policies EN6 and NC3 and the SuDS Vision SPD.

Ecology

6.29 Reason for Refusal:

2. The proposed development fails to demonstrate the impact of the proposed development or that effective mitigation measures can be provided. The proposed development fails to demonstrate net biodiversity gain on the site, contrary to Policies SD1, EN4 and NC3 of the Swindon Borough Local Plan 2026 (March 2015) and Paragraphs 180 and 186 of the National Planning Policy Framework (December 2023).

6.30 The proposals involve alterations to the proposed drainage network, which is likely to include reduced number of above ground surface water features such as swales within the development parcels. It is also likely to include an increase in engineering operations to construct the increased pipe network, which could involve additional disruption to existing habitats. Some of these works are likely to be in close proximity to field boundaries which, in places include hedgerows and trees (some of which are veteran status). The application submission fails to outline the potential impacts of the revised proposals on protected species, such as dormice and great crested newts or hedgerows and trees (including veteran trees).

6.31 The Councils Case will set out how, based on the submitted information, there will be potential changes to the approved parameter plans, with areas of open space, grassland and biodiversity habitats now proposed for large attenuation features. The proposed submission has failed to demonstrate how the proposed drainage alterations would impact existing protected species and the proposed level of biodiversity net gain on the site.

6.32 Whilst the submitted documents indicate there may be options to mitigate these impacts, these are not proposed as part of any documents for approval.

6.33 The Appellants now intend to rely on District Level Licensing (DLL) for great crested newts. The Impact Assessment and Conservation Payment Certificate

(IACPC) counter-signed by Natural England must be submitted for all the land within the red line boundary prior to determination. This information has not yet been submitted.

Open Space

6.34 Reason for Refusal:

3. The application fails to satisfactorily demonstrate how the open space requirements for the development can be met on site and deliver a multi-functional SuDS scheme as part of the placemaking strategy contrary to Policies SD1, EN3, NC3, IN1 and CM2 of the Swindon Borough Local Plan 2026 (March 2015) and the provisions of the National Planning Policy Framework (December 2023).

6.35 The Appellant's SoC outlines how the existing approved plans, including the Green Infrastructure Parameter Plan (ACD8) (GIPP), will remain unchanged. The submitted Strategic Site Wide Surface Water Drainage Strategy (ACD23) identifies the proposed revised drainage strategy. It includes a number of large tertiary drainage features. A number of these features have been added since the GIPP was approved, whilst a number appear larger in area than those identified on the GIPP. There is no indication how these large attenuation features would relate to the various open space typologies, nor whether the required open space quantum and requirements as set out in the s106 can still be met. In particular, the proposals appear to impact the areas available for outdoor sports, general recreation and woodland planting.

6.36 The submitted scheme has failed to demonstrate how the different types of public open space and GI would be acceptably provided within the appeal site, taking account of the environmental constraints and is not being double counted. Neither is there any evidence to outline how the revised scheme will deliver a multi-functional SuDS scheme as part of the placemaking strategy. As a result, the schemes fail to provide for the health and wellbeing of the new community.

6.37 The Council will contend that insufficient information has been provided to demonstrate how the required types of publicly accessible open space can be achieved on site in a satisfactory manner, especially when taking account of the extent of the floodplain and the proposed flood attenuation measures, contrary to the relevant policies of the Local Plan and NPPF.

Infrastructure

6.38 A Section 106 (of the TCPA) Deed was made between SBC (1); Angel Helen Gillibrand, Arthur Guy Parry and Julian Mark Culmer Cooper (2); and, Ainscough Strategic Land Limited (3) which completed 29 March 2021 (the Original S106). A Deed of Variation was made between SBC (1); Countryside Sovereign Swindon LLP (2), Angel Helen Gillibrand, Arthur Guy Parry and Julian Mark Culmer Cooper (3); Countryside Properties (UK) Limited (4); and, Sovereign Housing Association Limited (5) which completed 21 July 2023 (DoV).

6.39 The Council has three concerns with the Original S106 Deed (as varied by the DoV):

- (i) The infrastructure package will not be retained in the event that the Inspector is minded to allow this appeal at all. The definition of 'Planning Permission' remains as per the Original S106 Deed: "...**the Planning Permission to be issued by the Council** pursuant to the Planning Application" [emphasis added]. The Original S106 only related to the Outline Planning Permission. The DoV widened the definition of 'Planning Application' to:

"...any of the applications below individually or any combination thereof:

- (a) the application for outline planning permission registered with the Council on 9 April 2019 with application reference number S/OUT/19/0582 for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative

primary access road corridors to A420; improvements to Wanborough Road and associated works; and/or;

(b) the subsequent application validated by the Council on 11 May 2023 with application reference number S/23/0438 for variation of conditions 9, 10, 41, 42, 43, 46 and 47 from previous permission S/OUT/19/0582; and/or,

(c) any planning permission granted in accordance with Clause 23 of this Deed.”

6.40 The Original S106 Deed only bites on commencement of the Planning Permission as defined, which is a permission only issued by the Council and not by the Secretary of State on appeal. Therefore the definition of Planning Permission and Planning Application in so much as it relates to facet (b) of that definition would mean the Original Section 106 (as varied) will not bind the Site and will not be enforceable by the Council and no infrastructure package would be realised.

6.41 The Council expects the Appellant will rely on Clause 23 of the Original S106 also inserted by the DoV:

“If after the date of this Agreement any planning permission is granted pursuant to section 73 of the Act in respect of any condition(s) attached to the Planning Permission references in this Agreement to the 'Planning Application' and 'Planning Permission' shall be deemed to include respectively any such subsequent section 73 planning applications and any planning permissions granted pursuant to the section 73 planning applications and this Agreement shall apply and take effect and be read and construed accordingly PROVIDED ALWAYS THAT nothing in this clause shall fetter the discretion of the Council in determining any such section 73 planning application from requiring that any consequential planning obligations be secured by way of a new deed or supplemental deed under section 106 and section 106A of the Act”

6.42 The Inspector needs to be satisfied that this Appeal will result in a planning permission granted pursuant to section 73 of the Act in order for the Original

Section 106 (as varied) to bind this Appeal. The Council's position is that were the Inspector minded to allow this appeal it would grant planning permission pursuant to section 78 of the Act and not section 73. Again, this would mean that the Original Section 106 (as varied) will not bind the Site and will not be enforceable by the Council and no infrastructure package would be realised.

- (ii) Given the uncertainty with the overall quantum of development which is likely to be achieved, there is a risk that some of the contributions and infrastructure delivery planning obligations required to mitigate the impact of development may not be met. Alternative triggers will therefore be necessary.
- (iii) There was a drafting error in the Original S106. "Waste Provision – Kerbside Collection Contribution" should have been included as a Contribution Shortfall in the table at Appendix 11; this was an oversight and the Council's position is should be rectified.

6.43 All three concerns could be rectified and would welcome negotiations with the Appellant for a further deed of variation to do so or at least narrow some of the points in dispute in respect of the Councils concerns with the Original S106 Deed (as varied by the DoV)."

7 Response to the Appellant's Statement of Case

7.1 The SuDS Vision for the NEV SPD underwent extensive consultation. Early engagement was undertaken in November 2015 with key stakeholders, including developers with interest at the NEV. No response was received from Ainscough Strategic Land (the developer for Lotmead). A further full public consultation was undertaken in September 2016. No response was received from Ainscough Strategic Land (the developer for Lotmead). The SuDS Vision for the NEV SPD was adopted on Tuesday 14th February 2017.

7.2 In the context of Paragraph 11d) of the NPPF, the Council's position is that the development plan policies most important in the determination of the application, principally Policy NC3, are not out-of-date. Notwithstanding this, in terms of Paragraph 11d) (i.), as identified by footnote 7, the application provides a clear reason for refusal with respect to the risk of flooding. In relation to (ii.)

the Council consider the adverse impacts of the Appeal Scheme would not be outweighed by the benefits.

7.3 The Appellants list a number of benefits of their proposal in the Appellants SoC. These are as follows:

- i. Optimising Housing Delivery within the 2,500 Dwelling Outline Permission Limit

7.4 In response to the Appellants comment in paragraph 2.13 that the Original FRA addendum was produced late in the determination of the original outline application, the Council respond that the provision of the original FRA addendum alleviated LLFA concerns and allowed the scheme to be put forward for approval. Without this document the proposal would not have been recommended for approval.

7.5 The Appellants state in paragraph 2.15 of their SoC that the viability work for the original outline application tested at the capacity of 2,500 dwellings and did not consider the required land level rises. The Council contest that the appellant sought outline planning permission for up to 2,500 dwellings and therefore the viability testing for this proposal assessed for the delivery of up to 2500 dwellings. It is noted that the Appellants have not sought to produce any evidence to demonstrate that to accord with the original FRA addendum would make a proposal unviable.

7.6 Paragraph 2.19 of the Appellants SoC raises the issue of substantial level rises being required to meet the original FRA Addendum. In response the Council state that there is no clear evidence provided of exact level raising, while there would also be a need for land raising to allow water to flow through pipes as in their suggested revised proposal, the distance of which would be exacerbated by piping right across this site. The setting of the ponds below flood level as the Appellants suggest would also potentially cause surcharging and create likely greater risk of flooding, which the Appellants have failed to demonstrate won't happen.

- 7.7 Paragraph 5.8 of the Appellants SoC states that the maximum capacity of the site based on the revised FRA approach is 2,109 dwellings. This still falls significantly short of the quantum agreed as part of the outline planning permission. It is unclear from the submission why the outline quantum of development (2,500 dwellings) cannot be delivered at the site.
- 7.8 The Density Overlay Plans (Dwg no: DPO 02 rev P6 and Dwg no: DPO 02 rev P8) indicate that the maximum number of dwellings achieved based on the existing FRA is 1,898, whilst the revised FRA would result in a capacity of 2,109 dwellings. It states that these calculations have been arrived at by using the 'maximum density parameters'. The maximum density parameters should be clearly set out on a density overlay plan. The Appellant identifies three density ranges defined by the approved outline consented parameter plan. These range from 20-25; 25-45 and 45-55. It is not clear how the density calculations have been arrived at, and how these are specifically impacted by the outlined land level rises. Information setting out the individual parcel sizes, linked to a table including all net developable areas across the site should be provided to evidence the assumptions reached.
- 7.9 Currently the approach to demonstrating the likely capacity for the site is blunt, and it does not appear like it has been explored from a design-led process. Whilst Policy NC3 sets an 'average density' of 40d/ha for the New Eastern Villages, this is not to say that a variation in 'mix' and 'type' should not be provided within each development. It is expected that the new homes to be delivered are of a good quality and that they provide a good mix and range of typologies across the site.
- 7.10 Such a mix should be capable of delivering a number of variations of dwelling numbers depending on typologies proposed. Applying a simplistic approach to density and design across the development where certain constraints are challenging the net developable area is an example of a 'numbers'-led, rather than a 'design'-led approach to such a constraint. Altering residential

densities by a few houses per dwelling across the range of character areas can change the overall outcome quite significantly.

7.11 Overall therefore the Council do not consider that it has been demonstrated that the housing delivery has been optimised.

ii. Optimising Affordable Housing Delivery

7.12 The second benefit put forward by the Appellant is optimising affordable housing delivery. Whilst the Council note the benefits associated with the delivery of Affordable Housing, the rationale for this is the same as outlined within the sections above and for the same reasons the Council do not consider it has been demonstrated that it has been optimised.

iii. Faster Delivery of Residential Completions and Contribution to Five Year Housing Land Supply

7.13 The Council's current position is set out in the Five-year housing land supply statement (For period: 1st April 2023 to 31st March 2028) (published 1st November 2023) (Appendix I), which outlines a housing land supply position of 4.87 years. For completeness, this did not include Lotmead with the 5 year projections, for which an assessment was made against Outline Permission S/OUT/19/0582. The primary reasons for this relate to the inconsistent, changing and unrealistic delivery forecasts outlined within the developer questionnaire responses and the excessively optimistic per annum delivery yields. These significant changes in per annum and total yields, suggest potential strategic problems with the delivery of the development or issues with viability as asserted in the Appellants Appeal submission (Appendices O and P). The Council understands the Appellant does not agree with this approach.

iv. Significantly Less Level Raising, Lorry Movements and CO2 Emissions

7.14 The fourth benefit put forward by the Appellants is significantly less level raising, lorry movements and CO2 emissions.

7.15 In response the Council reiterate that there is no clear evidence provided of exact level raising, while there would also be a need for land raising to allow water to flow through pipes as in their suggested revised proposal, the distance of which would potentially be exacerbated by piping right across this site.

v. Delivery of Higher Quality Development

7.16 The provision of SuDs drainage itself is nationally considered to be a fundamental part of good design and placemaking with the utilisation of the site features.

7.17 As set out above, the Appellant has failed to demonstrate a multi-functional SuDS scheme that delivers high-quality placemaking across the site. There is no evidence of a proposed SuDS system having been designed to positively integrate into the site layout considerations, and a disconnect exists between delivering the functional requirements of drainage against the placemaking attributes required of Sustainable Drainage Systems.

vi. Retention of s106 and Infrastructure Package

7.18 The sixth and final benefit put forward by the Appellants is retention of a s106 and infrastructure package agreed for the original outline planning permission. In response the Council would simply comment that the s106 and infrastructure package is a requirement to make the development policy compliant. Failure to retain it would likely justify additional reasons for considering the proposal unacceptable.

7.19 The Council supports the principle of residential development at the appeal site, owing to its location within the NEV allocation and based on the Outline Planning Permission. The NEV policies remain the appropriate means of delivering the substantial development required for the NEV. The provision of homes at the appeal site is a significant benefit but that is already ensured by that Permission. Policy NC3(c) continues to apply to reserved matters however

and the minimisation of flood risk remains also a key and significant benefit of the NC3 Village developments.

8 Common Ground

- 8.1 The Local Planning Authority and Appellant will work together to form the basis of a joint Statement of Common Ground.

9 Planning Conditions

- 9.1 The Council will continue to discuss the list of planning conditions with the Appellant to come up with an agreed list as part of the Statement of Common Ground.

10 Concluding Comments

- 10.1 Overall, the proposed development would fail to meet the sustainable development objectives, as identified in NPPF. The Council considers that, overall, the breaches of national and development plan policy and guidance require the Appeal application to be refused. That leaves the Outline Planning Permission to be built out in line with the approved drainage scheme.
- 10.2 In view of the reasons set out above, Swindon Borough Council respectfully requests that the appeal be dismissed.

11 Appeal Documents

- 11.1 The primary documents which the Council will refer to and rely upon in evidence or at the Inquiry are listed within the Appendices or included within the Appellants submission. The Council reserves the right to refer to any additional documents that may be relevant to this appeal.