
Lotmead Farm, New Eastern Villages, Swindon

Appellant's Statement of Case

Savills on behalf of Countryside Sovereign Swindon LLP

Local Planning Authority Reference Number – S/23/0438

November 2023



Appellant's Statement of Case

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1. Introduction

1.1. This Statement of Case has been prepared by Savills on behalf of the Appellant, Countryside Sovereign Swindon LLP ("CSS"), to accompany an appeal against non-determination of a Planning Application submitted to Swindon Borough Council (the "Council" / "SBC") in relation to Lotmead Farm in the New Eastern Villages area of Swindon (the "Site").

1.2. The Planning Application in question was submitted under Section 73 (s73) of the Town and Country Planning Act 1990 (as amended). It appears on SBC's portal under reference S/23/0438, with the following description of development:

"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".

1.3. The Application was validated on 11th May 2023, with the statutory determination period expiring on 31st August 2023. No extensions of time have been requested or agreed.

1.4. During the statutory determination period, updated information has been submitted in response to comments and feedback received, as well as to further substantiate the evidence base underpinning the proposals. Although copies of all documents submitted throughout the Application have been submitted alongside this Appeal, the list included as part of Appeal Form Section 8 sets out the documentation that the Appellant considers should form the basis of the Appeal's determination.

1.5. The purpose of this Statement is to set out the Appellant's case, and it should be read alongside other documentation submitted as part of this Appeal including a draft Statement of Common Ground ("dSoCG"). The structure of this Statement is as follows:

- **Section 2:** Background to the Application, the Proposals and Appeal
- **Section 3:** Decision Making Framework, Planning Policy and Material Considerations
- **Section 4:** The Appellant's Case
- **Section 5:** Benefits and Adverse Impacts of the Proposals
- **Section 6:** Conclusions
- **Section 7:** Justification for Inquiry

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- 1.6. The Decision Making Framework set out in Section 3 identifies that, as per Section 38(6) of the Planning and Compulsory Purchase Act, the proposals should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 1.7. Section 4 of this Statement demonstrates why the proposals accord with the development plan and that material considerations do nothing to alter this and therefore why planning permission should be granted without delay. Because of this, even if a decision maker were to disagree with CSS's evidence as to why the proposals have come forward (as set out in Section 2), this does not mean that the proposals can or should be determined other than in accordance with the Decision Making Framework (i.e. positively).
- 1.8. Notwithstanding there being no need for any form of balancing exercise to be undertaken to establish whether permission should be granted, the National Planning Policy Framework's (the "NPPF" / "Framework") tilted balance is engaged as a result of the Council's five year housing land supply shortfall. Therefore, Section 5 of this Statement appraises the benefits of the proposals against its adverse impacts to add further weight to why planning permission should be granted.
- 1.9. The Appellant requests that the Appeal is determined via an Inquiry. Justification for this is set out at Section 7 of this Statement.
- 1.10. The Appellant's submission makes reference to a number of Appeal Core Documents (with the prefix 'ACD') and Key Correspondence (with the prefix 'KC'). A working list setting these out is submitted as part of the Appeal in draft form, with the intention that this allows the Council to add any further items to the list in the preparation of their evidence, such that all parties can work from a common reference list thereafter.

2. Background to the Application, the Proposals and Appeal

Introduction

- 2.1. This Section provides overall context and background to the Site, the Application in question and how matters have resulted in CSS submitting this Appeal against non-determination.
- 2.2. A description of the Site, its surroundings and relevant planning history is set out in the dSoCG, however, commentary relating to the Outline Permission is repeated below.
- 2.3. **Appendix A** of this Statement and the dSoCG contains a timeline of key dates and information relating to this Application and Appeal.

The Site Allocation

- 2.4. The Site forms part of the New Eastern Villages ("NEV"), allocated under Policy NC3 of the adopted Swindon Borough Local Plan 2026 (adopted March 2015) (copy at **ACD1**). Policy NC3 allocates the land for mixed-use development, requiring that the Site and the rest of the land within the NEV delivers "about 6,000 dwellings".
- 2.5. Policy NC3 does not include any drainage specific requirements.

The Outline Permission

- 2.6. SBC granted outline planning permission (ref. S/OUT/19/0582) to Ainscough Strategic Land Ltd prior to CSS's acquisition, for the redevelopment of the Site to provide up to 2,500 homes; up to 1,780sqm of community/retail; up to 1,780sqm of community/retail uses; up to 2,500sqm of employment use; 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 (the "Outline Application" / "Permission"). All matters were reserved aside of access. The description of development as stated on the Decision Notice (copy at **ACD2**) is as follows:

"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".

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- 2.7. The Outline Permission was determined at Committee on 9th June 2020 (see Committee Report at **ACD3**) and the Decision Notice (copy at **ACD2**) was issued on 30th March 2021 following the signing of a s106 Agreement (copy at **ACD4**) by Ainscough Strategic Land, SBC, and Angela Helen Gillibrand, Arthur Guy Parry and Julian Mark Culmer Cooper on 29th March 2021.
- 2.8. The Outline Permission was Environmental Impact Assessment (“EIA”) development and included an Environmental Statement (“ES”) submitted in April 2019¹. Chapters and documents of particular relevance to this application and Appeal include:
- Chapter 9 – Water Resources (see **ACD5**)
 - Flood Risk Assessment (see **ACD6**)
 - Flood Risk Assessment Addendum (“Original FRA Addendum”) (see **ACD7**)
- 2.9. Condition 4 requires that development “*shall be carried out in accordance*” with the approved parameter plans. None of the parameter plans show any drainage basins within development parcels, however, the Green Infrastructure Parameter Plan (copy at **ACD8**) shows “*Land Safeguarded for Tertiary Drainage Features*” within areas of open space and “*Proposed Secondary Drainage Features*”, along the boundaries of development parcels.
- 2.10. Condition 5 requires that all proposals are in “*broad accordance*” with the approved Illustrative Masterplan (copy at **ACD9**). The Illustrative Masterplan shows retention of existing watercourses and a limited number of “*Secondary Drainage Features*” adjacent to but outside of residential parcels. These features then connect to “*Land safeguarded for Tertiary Drainage Features*”, which are effectively large drainage basins located within areas of open space. To confirm, no new drainage features are shown within any development parcels.
- 2.11. Conditions 40 to 48 relate to drainage flood risk and hydrology. More specifically, Conditions 41 (Compliance with Flood Risk Assessment), 42 (River Crossing Details), 43 (River Corridor Survey) and 46 (Strategic Surface Water Management Scheme) all reference an Addendum to March 2019 Flood Risk Assessment (ref. 27970/4003/TN001, dated 22 August 2019), as a document that the future drainage design must accord with (copy at **ACD7**). As noted on the Decision Notice, Conditions 40 to 45 were specifically at the request of the Environment Agency (“EA”).

¹ A comprehensive copy of the original ES was been resubmitted to the Council as part of the s73 application that is the subject of this Appeal. Its contents are provided to PINS under Sections 5 and 13 of the Appeal Form.

2.12. Approved plans and documents listed in the conditions discussed above that are of relevance to the Appeal are as follows:

- Condition 4 (Approved Plans):
 - Application Boundary Plan (see **ACD10**)
 - Land Use Parameter Plan (see **ACD11**)
 - Green Infrastructure Parameter Plan (see **ACD8**)
 - Building Heights Parameter Plan (see **ACD12**)
 - Movement Parameter Plan (see **ACD13**)
 - Density Parameter Plan (see **ACD14**)
 - Wanborough Road Access Plan (see **ACD15**)
- Condition 5 (Illustrative Masterplan):
 - Illustrative Masterplan (see **ACD9**)
- Condition 41 (Compliance with Flood Risk Assessment):
 - Flood Risk Assessment (see **ACD6**)²
 - Flood Risk Assessment Addendum (see **ACD7**)

2.13. The Original FRA Addendum was produced late in the determination of the Outline Application, in response to comments raised by the Local Lead Flood Authority (“LLFA”) and the EA. Section 3 of the Original FRA Addendum include requirements for future detailed drainage design, which were not proposed in any earlier documentation submitted during the determination of the Outline Application. In particular, it notes (at Page 2):

- *“Shallow above ground conveyance features will be prioritised throughout the development (where feasible) ... ”*
- *“Plot scale ‘source control’ SuDS features such as raingardens, permeable paving, green roofs or swales, will be prioritised in the first instance ... ”*

² The documents listed under Condition 41 are a duplicate of those listed as Appendices to Chapter 9 of the ES.

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- “SuDS drainage features will be prioritised in the following hierarchy:
 - *Primary – plot scale ‘source control features such as raingardens, permeable paving etc;*
 - *Secondary – under drained swales providing conveyance and attenuation storage;*
 - *Tertiary – attenuation basins or ponds providing attenuation storage.”*

2.14. We understand these requirements arose from the Sustainable Drainage Systems Vision for New Eastern Villages Supplementary Planning Document (approved by SBC in 2017) (the “NEV Drainage SPD” / “the SPD”) (copy at **ACD16**).

2.15. The Outline Permission was approved following viability testing. This viability work assumed delivery of the maximum quantum of residential development permitted by the Outline Permission, i.e. all 2,500 dwellings. It did not give consideration to any substantial levels raising required to facilitate development thereby not considering the impact of the associated banking on net developable area (“NDA”) (further discussed below). Copies of the confidential viability documents can be made available to the Inspector upon request.

CSS Acquisition, Technical Review and Legal Advice

2.16. Following CSS’s acquisition of the Site, further masterplanning and drainage design work was commissioned pursuant to investigating and satisfying the requirements of the Outline Permission, as set out above.

2.17. These investigations identified that the implications of pursuing drainage design in accordance with the requirements of the Original FRA Addendum and the approved Parameter Plans would result in a number of challenges for the delivery of the Site. These are set out below.

2.18. Firstly, the Original FRA Addendum’s requirement to prioritise plot scale source control features (in contrast to large basins in open space) would require substantial land take within the development parcels as defined by both the Land Use Parameter Plan and the Illustrative Masterplan. Whilst drainage features within residential parcels are not precluded by the Land Use Parameter Plan and the Illustrative Masterplan, including them would have a significant effect on reducing residential capacity from the Outline Permission’s maximum of 2,500 dwellings. The impact of including such features within development parcels was not considered in the original Outline Application. This “lost” NDA cannot be clawed back on the areas safeguarded for basins, as this would not be in compliance with the approved Parameter Plans or the Illustrative Masterplan.

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- 2.19. Secondly, setting the base level of the attenuation ponds above the 1 in 100 year plus climate change flood level and conveying runoff to them from the furthest extremities of the catchment would require substantial level raising due to the very flat profile of the Site. Substantial level raising would be required across almost all phases of the development. In some places, levels would need to be raised by c. 2.5m to 3m above existing levels to achieve a drainage strategy that is compliant with the Original FRA Addendum. Above ground, plot scale, source control features such as swales require steeper gradients to ensure appropriate conveyance of water, when compared to piped conveyance to basins in open space. The effect of this is that there is a greater levels difference between the starting and finishing points of the drainage network.
- 2.20. Thirdly, the effect of raising levels would significantly reduce the developable area as this scale of land raising will result in the need for excessive banking and batters around the perimeter of development parcels in order to return back to existing levels and tie into retained features such as watercourses, hedgerows and trees. This would mean some existing hedgerows and trees would be sitting c. 2-3m below made ground level, potentially impacting the longevity of these retained landscape features. Notwithstanding impact on residential capacity, this would not be positive from a placemaking perspective.
- 2.21. In terms of Site capacity, to demonstrate the impact of meeting the requirements of the Original FRA Addendum, CSS have overlayed an Original FRA Addendum compliant drainage strategy on to the approved Density Parameter Plan (ref. PL1461.1-PLA-00-XX-DR-U-0007-S4-P02) (see **ACD14**), as shown by the Density Plan Overlay (ref. DPO 02 REV P6) (see **ACD17**). Accounting for NDA "lost" to drainage (both in terms of surface level plot scale source control features and banking / battering around the perimeters of development parcels), which is estimated to be c. 13.66ha, this exercise demonstrates the maximum residential numbers that could be achieved whilst remaining in accordance with the Parameter Plans, regardless of discussions on mix, house types, plotting etc. This evidence demonstrates that if the Original FRA Addendum drainage strategy is implemented, the maximum residential capacity of the Site is 1,898 homes. This is some 602 homes lower than the maximum figure permitted by the Outline Permission.
- 2.22. Fourthly, although the Outline Permission sets an "up to" residential figure of 2,500 dwellings, as confirmed above, the viability assessment that underpinned it was undertaken on the basis of 2,500 dwellings being delivered. In addition, the viability assessment did not factor in any substantial levels raising required to implement the Original FRA Addendum.
- 2.23. Collectively, these challenges mean that CSS cannot commercially deliver the Site without some form of variation to the existing Outline Permission.

Options for Remediating Challenges

- 2.24. Having identified the challenges above, CSS took advice from Counsel and planning advisors which identified three potential options for remediating these challenges. These were:
- i. Amend the Original FRA Addendum to reduce the need to deliver source control features, but whilst still retaining large SuDS basins within open space, in order to satisfy development plan requirements;
 - ii. Retain the Original FRA Addendum, but amend the approved Parameter Plans to expand developable areas in order to recoup "lost" dwelling numbers; and / or
 - iii. Retain the Original FRA Addendum, but proceed with a significantly reduced dwelling capacity, and revisit the scheme's viability and infrastructure package in light of the reduced capacity.

Pre-Application Engagement with the Council

- 2.25. With the benefit of the above, CSS sought to engage with SBC and the LLFA in order to agree a way to remedy the challenges outlined above. Pre-submission engagement began in February 2022, running through to the submission of the s73 application in March 2023.
- 2.26. Two meetings from this period are of particular note.
- 2.27. First, a meeting between CSS, SBC and the LLFA on 18th January 2023. The purpose of this meeting was to focus on establishing common ground on the impacts of implementing a drainage strategy pursuant to the Original FRA Addendum, in particular implications for levels raising.
- 2.28. Notes circulated to attendees following the meeting (enclosed at **KC1**) confirm that the LLFA Drainage Officer agreed that the sections through Phase 1 shared at the meeting (enclosed at **ACD18**) represented realistic levels raising required to implement a drainage strategy pursuant to the Original FRA Addendum. This included levels raising of up to c. 2.5m to 3m.
- 2.29. Second, a meeting on 31st January 2023, held between the Managing Director and Senior Technical Manager of Countryside Partnerships West, the Chief Investment and Development Officer of Sovereign Housing Association (collectively comprising CSS) and SBC's Director of Strategic Development and Growth and Head of Planning. The purpose of the meeting was to agree a solution to the drainage challenges identified. CSS presented the three potential options identified by Counsel and planning advisors (as outlined at paragraph 2.24 of this Statement).

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2.30. Notes circulated to attendees following the meeting (enclosed at **KC2**) outline the following points:

- i. The meeting was requested by CSS as engagement with SBC officers and LLFA during the period of February 2022 to January 2023 had not identified any clear solution to drainage challenges.
- ii. SBC confirmed:
 - a. They did not want to see levels raised more than the normal development process.
 - b. Impacts on hedges and traffic movement are also special concerns.
 - c. They did not want to see a loss of units (below the 2,500 dwellings permitted by the Outline Permission).
 - d. The Original FRA Addendum is "*clearly at odds with the other outline documents*".
- iii. It was then agreed that CSS would proceed with a s73 application focussed on amending the Original FRA Addendum to allow for an alternative drainage strategy.
- iv. SBC confirmed they "*will manage LLFA during S73A process as they will not take well to the changes*".
- v. SBC confirmed they did not want CSS to explore alternatives to varying the Original FRA Addendum (such as a viability case or amending the Parameter Plans or Illustrative Masterplan) "*as ultimately drainage is the issue and we all want the units*".

2.31. Agreement at this meeting formed the basis of CSS's decision to proceed with the s73 application, focused solely on amending the Original FRA Addendum.

The Application Proposals

Overview

2.32. On the basis of the advice and request from senior SBC officers, in good faith, CSS proceeded with the preparation and submission of a single s73 application, with the primary function of replacing the Original FRA Addendum with a Revised FRA Addendum (see **ACD19**³).

³ This is part of the information submitted under Section 6 of the Appeal form.

2.33. In March 2023, an application under Section 73 of the Town and Country Planning Act 1990 was submitted to SBC by CSS (ref. S/23/0438). The application seeks to vary Conditions 9 (Phasing Details), 10 (Design Code), 41 (Compliance with Flood Risk Assessment), 42 (River Crossing Details), 43 (River Corridor Survey), 46 (Strategic Surface Water Management Scheme) and 47 (Surface Water Management Scheme (Phases)) of Outline Permission ref. S/OUT/19/0582.

2.34. The description of development as it reads on the Council's portal is as follows:

"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".

2.35. Lists have been enclosed within the Appeal submission which set out:

- all the documents which were submitted to the Council at the outset of the application (see **ACD20**),
- all the documents which were submitted to the Council during the determination period (see **ACD21**), and
- the documents upon which CSS seek the Appeal to be determined (see **ACD22**).

Content and Effects of the Revised FRA Addendum

2.36. The principal change proposed between the Original and Revised FRA Addenda is amends to Section 3 to remove the requirement for prioritisation of plot scale source control features and new above ground conveyancing features within development parcels, as well as setting the invert level of SuDS / attenuation features below the fluvial flood level but requiring them to be served by surcharged outfall points during flood events.

2.37. This would enable a drainage strategy that is 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. Such strategy has been prepared and is enclosed, titled Strategic Site Wide Surface Water Drainage Strategy (ref. 22006-HYD-P0-XX-DR-C-2220 REV P07)⁴ (see **ACD23**).

⁴ Enclosed as part of the information submitted under Section 6 of the Appeal form.

- 2.38. Notwithstanding these changes, the Revised FRA Addendum (see **ACD19**) does nothing to preclude the inclusion of additional plot scale surface level source control features (i.e. permeable paving or rain gardens, for example) as part of future detailed drainage design which will come forward pursuant to Condition 47. 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).
- 2.39. The effects of these changes are meaningful, and are set out comprehensively in Section 5 of this Statement as the benefits arising from the proposals. In summary, and in contrast to the existing Outline FRA Addendum, the Revised FRA Addendum:
- Optimises the quantum of residential that can be delivered in accordance with the approved Parameter Plans as a result of no land being “lost” to drainage within development parcels and lessening the levels raising around their boundaries. This optimisation equates to an additional c. 211 dwellings⁵ within the existing overall cap of up to 2,500 units;
 - This in turn increases the quantum of affordable housing that will be delivered;
 - Will facilitate a swifter route to residential completions;
 - Lessens the need for level raising, and therefore lorry movements and CO2 emissions;
 - Facilitates an overall higher quality of development, placemaking and the relationship between the development and the green infrastructure; and
 - Avoids any need to formally reconsider or revisit the Site’s viability and infrastructure package.
- 2.40. Finally, the Revised FRA Addendum retains the details secured by the existing Conditions 41 – 45 whilst noting the conditions in which the details are secured, for clarity. The application does not seek to change the principle of what is secured through Conditions 41 – 45, which were requested by the EA at the Outline stage.

⁵ The methodology behind this calculation set out below at Section 5, paragraph 5.6, as well as more comprehensively within Section B of the Applicant’s Cover Letter submitted during the planning application (dated 10th November 2023).

Changes Proposed to Condition Wording

- 2.41. The summary below sets out the proposed changes to conditions' wording and the reason for this. In comparison to the wording on the approved Outline Permission decision notice, the proposed changes are shown in tracked changes within the cover letters submitted during the determination period (and most recently in November 2023, see **ACD24**). A full clean draft of the proposed conditions' wording is submitted as part of the draft SoCG accompanying this Appeal.
- 2.42. Conditions 41, 42, 43, 46 and 47 are all related to drainage.
- 2.43. The changes proposed to Conditions 41, 42 and 43 (Compliance with FRA, River Crossing Details and River Corridor Survey, respectively) substitute the Original FRA Addendum (ref. 27970/4003/TN001) for the Revised FRA Addendum (ref. 22006-HYD-P0-XX-RP-C-0006). No other alterations to the approved wording are proposed.
- 2.44. As approved, Condition 46 requires a Strategic Surface Water Management Scheme, in accordance with the Original FRA Addendum to be submitted and agreed with the local planning authority. The criteria it specifies are a duplication of the content of the Original FRA Addendum, which the Revised FRA Addendum seeks to approve.
- 2.45. In light of the Revised FRA Addendum, the proposed changes to Condition 46 seek to turn this into a compliance condition, which requires accordance with a Strategic Site Wide Surface Water Drainage Strategy (ref. 22006-HYD-P0-XX-DR-C-2220 REV P07) (see **ACD23**) that has been prepared pursuant to the Revised FRA Addendum.
- 2.46. As approved, and pursuant to the Strategic Scheme required by Condition 46, Condition 47 requires the submission and approval of detailed Surface Water Management Schemes on a phased basis.
- 2.47. This detail has already been worked up for Phase 1, and is submitted as part of this Application, designed in accordance with the Strategic Site Wide Surface Water Drainage Strategy CSS seek approval for in Condition 46. For Phase 2 onwards, the condition remains unaltered.
- 2.48. Conditions 9 and 10 relate to the submission and approval of Phasing Plans and Character Area Design Codes respectively. Proposed changes here are to reflect material that has already been submitted and approved by SBC to avoid the need for these Conditions to be discharged following the grant of permission pursuant to this s73. As set out in the dSoCG, there are no matters of disagreement between CSS and SBC in relation to Conditions 9 and 10.

EIA

- 2.49. An ES Addendum⁶ was submitted as part of the s73 application to provide a robust assessment of the potential/likely significant environmental effects arising from the proposed changes to the Outline Permission.
- 2.50. Upon submission of the ES Addendum, an ES Statement of Conformity submitted at the outset of the s73 application was revoked and is not relevant to the determination of this Appeal.
- 2.51. The ES Addendum concludes that the overall level of effect is expected to remain as predicted in the Original ES and ES Addendum submitted during the Outline Application.

During Determination and the Decision to Appeal

- 2.52. Below we summarise events following the submission of the Application and how this has led to CSS's decision to appeal against non-determination.
- 2.53. As noted above, **Appendix A** of this Statement and the dSoCG contains a timeline of key dates and information relating to the Application and Appeal. This includes exchanges of key correspondence between the Appellant's planning consultants and SBC.

Formal Consultation Responses to the s73 Application

- 2.54. A full description of formal consultation responses received to the Application are set out in the dSoCG.
- 2.55. In summary, thirteen consultees have confirmed they have no objection or no comment to the proposals. Most importantly, this includes the EA. This is significant to the determination of this Appeal as it was the EA, not the LLFA, who originally requested Conditions 41, 42 and 43, which are three of those that the proposals seek to amend.
- 2.56. Three consultees responded on matters unrelated to the scope of the s73 proposals. CSS provided responses to these via the Case Officer, and no further responses were received. As such these comments are considered to be positively addressed and not relevant to this Appeal.
- 2.57. During the determination period at a local level, no public comments were received.
- 2.58. Almost three months after the validation of the Application, the LLFA issued a formal response dated 27th July 2023 (see **ACD25**), which objected to the proposals. They are the only party to formally object to the proposals on matters relevant to the scope of the Application.

⁶ Enclosed as part of the information submitted under Sections 6 and 13 of the Appeal form.

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2.59. CSS provided a response to the LLFA comments on 16th August 2023 (see **ACD26**) as part of an updated cover letter. As was set out in the response, CSS did not consider that the comments from the LLFA raised any matters which had not already been addressed in material already submitted by the Applicant.

2.60. No formal feedback has been provided by the LLFA or SBC thereafter.

2.61. No consultation responses have raised any objections or queries relating to the ES Addendum.

Other Engagement

2.62. As set out comprehensively within the timeline at **Appendix A** of this Statement and enclosed within the dSoCG, separate to formal consultation responses, the Case Officer provided some informal feedback and made some requests for additional information in two meetings and in other correspondence during the determination period.

2.63. CSS addressed all of these requests through the updated submissions made on the following dates. In each instance (save for the 16th April submission), material has been submitted alongside an updated version of the cover letter, which acts as a supporting statement for the proposals:

- 9th May 2023
- 6th April 2023
- 16th August 2023
- 25th August 2023
- 10th November 2023

The final material pack was submitted after CSS issued the notice to SBC informing them of the intention to appeal via inquiry (26th October) as, despite CSS repeatedly seeking to arrange meetings to discuss the material (including inviting the LLFA to the Site to look at existing drainage features), SBC did not provide availability.

Decision to Appeal

2.64. Throughout the determination period at a local level, CSS sought to proactively and comprehensively engage with all requests from the Council, as the comprehensive provision of further evidence above sets out.

2.65. However, despite agreement with senior SBC officers on the principle and scope of the s73 application prior to its submission, and CSS proceeding on this basis in good faith with no change in circumstances, CSS feels that Officers have failed to proactively engage (as per Framework paragraph 38) with them or content of the s73 application in a timely or substantive fashion. Examples of this are set out below.

- Failure to substantively engage with or review application material submitted:
 - Numerous emails from the Case Officer were received stating that the proposals will result in no SuDS being delivered, however, the submitted cover letter, Revised FRA Addendum and Strategic Site Wide Surface Water Drainage Strategy very clearly show SuDS are to be incorporated, in keeping with the positions on the approved Parameter Plans and Illustrative Masterplan (Case Officer to Planning Agent emails 15th September 2023 (x2), see **KC3** and **KC4**, and 25th September 2023, see **KC5**).
 - The SBC Placemaking Team response received on 25th September 2023 stated that SBC “*consider neither of the two proposed options [drainage strategies] to be in accordance with the original FRA addendum*” (Case Officer to Planning Agent email, 25th September 2023, see **KC6**). However, it is clear from the cover letters (most recent at **ACD24**) that have accompanied the proposals that only one of the Strategic Site Wide Drainage Scheme’s is provided pursuant to the Original FRA Addendum, with the other provided pursuant to the Revised FRA Addendum.
- Failure to adequately or clearly substantiate or explain reasons for not supporting the proposals:
 - The SBC Placemaking Team response received on 25th September 2023 provided no explanation as to why SBC officers considered “*neither of the two proposed options to be in accordance with the original FRA addendum*” (Case Officer to Planning Agent email, 25th September 2023, see **KC6**).
 - Case Officer email received on 16th October 2023 provided no explanation as to why SBC “*are not happy with the principle of the revised FRA addendum*” (Case Officer to Planning Agent email, 16th October 2023, see **KC7**).

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- Excessively long timescales for engagement, responses and consultation of information submitted:
 - Following the registration of the s73 application, aside of one initial in person meeting on 22nd June 2023 between the Case Officer, CSS and Planning Consultant and one virtual meeting between the same parties on 23rd August 2023, the Case Officer has repeatedly refused, ignored or delayed requests from the Applicant to meet to enable either CSS to better understand comments from the Council and LLFA or to offer CSS's team an opportunity to present their position. An example of this can be seen at **KC8**, following which no response was received from SBC. This is contrary to agreement at the first meeting where the Case Officer agreed to fortnightly meetings to work matters through.
 - It took almost three months from the validation of the Application to receive comments from the LLFA. As the Applicant's response to these sets out, we do not consider they raised any new issues or demonstrated that the LLFA had critically engaged with material that had already been formally submitted by the Applicant (see **ACD26**).
 - CSS submitted Environmental Statement Further Information to SBC on 31st August 2023. Notwithstanding the Council uploading some but not all of the Further Information to the public portal on 13th September 2023, to date the Case Officer has ignored or deferred a series of correspondence (see **KC9** including email trail) from the Applicant seeking confirmation as to whether the relevant newspaper advert has been placed and for the missing information to be uploaded.
 - As confirmed in the meeting notes from 23rd August (see **ACD27**), CSS were advised by the Case Officer that an internal SBC workshop was to be held during w/b 4th August and that Officers would then be happy to feedback to CSS at a meeting during 11th August. As of 11th September (see **KC10**), the Case Officer advised that a comprehensive internal discussion was still to take place. No further meeting between CSS and the Case Officer took place despite repeated requests for meetings from CSS.
 - The Managing Director of Countryside Partnerships West emailed SBC's Head of Planning on 13th September outlining the position of the s73 as they understood it and seeking SBC to confirm whether, based on the information SBC have been provided, the Council have any intention to positively determine the s73 in a timely fashion (see **KC11**). SBC's Head of Planning provided a holding response on 14th September (see **KC12**), however, no further correspondence was received in response.

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2.66. In light of the above, whilst it is clear that the Case Officer and the LLFA do not support the proposals and despite the Application being live for almost five months, CSS are in a position where they do not clearly understand the Council's position. As a result, CSS do not believe there to be any credible prospect of the Council positively determining the s73 in a timely fashion. Therefore, CSS feel they have no choice but to appeal against non-determination.

3. Decision Making Framework, Planning Policy and Material Considerations

Introduction

3.1 The purpose of this Section is to:

- set out the relevant Decision Making Framework for the determination of the Appeal; and
- provide a summary of policy and material considerations that are directly relevant to the determination of the Appeal.

3.2 Commentary is also provided on the weight that should be afforded to policy and material considerations.

Decision Making Framework

3.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

3.4 In respect of decision making, paragraph 11 of the Framework (a copy included at **ACD28**) reinforces the primacy of the development plan in stating:

“Plans and decisions should apply a presumption in favour of sustainable development. ...

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; ... ”*

3.5 The remainder of this Section sets out the relevant development plan policies and material considerations. Commentary is also provided on the appropriate weight that should be attributed.

Adopted Development Plan

3.6 As set out in summary in the dSoCG, given the scope of the s73 proposals, the relevant development plan policies are Policy EN6 (Flood Risk) and Policy NC3 (New Eastern Villages, “NEV”) of the Swindon Borough Local Plan (adopted in March 2015). A copy of the Local Plan is included at **ACD1**.

- 3.7 Although the Local Plan was adopted in 2015, Framework paragraph 219 confirms that weight can be attributed to development plan policies “according to their degree of consistency with this Framework.”
- 3.8 The Site forms part of the NEV under Policy NC3 which allocates the land for mixed-use development, requiring the Site and the rest of the land within the NEV to deliver “about 6,000 dwellings”. The full wording of Policy NC3 is below for reference:

“Policy NC3: New Eastern Villages – including Rowborough and South Marston Village Expansion

- a. *Land to the East of the A419, as defined on the Policies Map, is allocated for a mixed-use development. The form of the development shall comprise a series of new inter-connected distinct villages and an expanded South Marston village defined by the network of green infrastructure corridors.*
- b. *The development shall provide:*
- *a design led approach to housing density leading to an overall average density of 40 dwellings per hectare; comprising:*
 - *about 6,000 dwellings at the New Eastern Villages (south of the A420);*
 - *about 1,500 dwellings at Rowborough (north of the A420).*
 - *500 dwellings at South Marston.*
 - *Affordable housing shall be provided at Rowborough and south of the A420 in accordance with Policy HA2. Separate proposals are made in Policy RA3 in relation to South Marston*
 - *high quality public realm including outdoor civic public space;*
 - *sustainable transport links including:*
 - *walking and cycle network improvements that integrate with existing networks and provide good connectivity within the development and to the surrounding area;*
 - *an express bus network through the District Centre that connects the Eastern Villages to Swindon Town Centre as part of phase 1 of the development, which includes residential development north of the A420, the District Centre and the employment allocation;*
 - *additional public transport services to connect with Swindon and internally within the development;*
 - *an improved gateway junction at White Hart to manage additional demand and deliver high quality public realm;*
 - *improvements to the Oxford Road/Drakes Way and Covingham Road/Dorcan Way transport corridors;*

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- *a green bridge across the A419 near Covingham Drive to provide for walking, cycling and public transport;*
- *a new road link to the Commonhead Roundabout;*
- *a new road link under the Bristol to London railway line connecting the development north and south at Rowborough;*
- *New and/or improved accesses to the A420 for proposed residential and employment uses;*
- *a 1000 (3ha.) space Park and Ride site; and*
- *measures to minimise rat-running through existing adjacent villages and east Swindon.*
- *an extensive green infrastructure network that maximises opportunities for habitat connectivity and enhanced biodiversity including extending the River Cole green infrastructure corridor and connecting with Nightingale Wood;*
- *sports and leisure facilities, including playing pitches a leisure centre and a 25m swimming pool;*
- *about 40 hectares net of employment land in total (B Class Uses) to be located south and east of the A420 and A419 respectively adjacent to the White Hart Junction, in a form that complements the mixed-use District Centre, and safeguards its connection with the wider residential development in the Eastern Villages and distributed as follows:*
 - *2.5 hectares within B1a use-class to be located at and/or adjacent to the District Centre;*
 - *7.5 hectares. within B1b/c or B2 use-class; and*
 - *30 hectares within B8 use-class.*
- *about 12,000m² (gross) of retail floorspace including a high quality District Centre with strong connectivity to the adjacent residential areas, comprising an anchor food store and complementary uses, and a network of Local Centres that offer retail provision of a scale that meets the daily shopping needs of the communities they serve, including the existing community at South Marston.*
- *educational requirements comprising:*
 - *a minimum of 8 forms-of-entry of secondary provision;*
 - *a minimum of 8 forms-of-entry of primary provision with early learning facilities*
 - *a site for a special school for children and young persons with profound, multiple and severe learning difficulties for ages 0-25*
 - *measures to manage the demographic peak at primary and secondary schools;*
- *community facilities by the means of safeguarded land and/ or developer contributions, including where appropriate, flexible, multi-purpose buildings for use*

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by the community, the public sector and for worship at the District Centre, local centres and educational requirements;

- *a health care facility with GP, dentist and pharmacy at the District Centre;*
- *safeguarded land for a fire station towards the southern part of the site, and*
- *a sewage treatment works if required.*

c. *The development will ensure:*

- *the landscape context and views to and from the North Wessex Downs AONB are respected, including potential off-site mitigation;*
- *the risk of flooding from the development is minimised, both within the development and at existing neighbouring communities in accordance with Policy EN6;*
- *biodiversity, including the River Cole Corridor and River Cole Meadow County Wildlife Sites, is protected, integrated and enhanced; and*
- *the historic environment, including the Scheduled Monument, Earls court Manor, Great Moorleaze Farm and other Listed Buildings are protected, acknowledged and enhanced.*

d. *The route for the Wilts & Berks Canal as set out on the Policies Map will be safeguarded and protected from development.*

e. *The character and identity of Wanborough, Bishopstone and Bourton will be protected by a principle of non-coalescence between the settlements. The land between the New Eastern Villages site boundary and the existing villages shall remain part of the countryside. However, small scale development within this area, as defined on the Policies Map, will be permitted where it retains or enhances the existing character of the countryside and:*

- *involves the re-use, conversion or extension of existing buildings at a scale appropriate to their location, in accordance with the criteria specified in Policy DE1;*
or
- *is an essential requirement directly related to the economic or social needs of the rural community.*

f. *The character and identity of South Marston will be protected as set out in Policy RA3”.*

(Swindon Borough Local Plan 2026, Pages 160 – 162)

3.9 As set out in the dSoCG, both parties consider that Policies EN6 and NC3 are consistent with the Framework and therefore can be considered up to date in the determination of this Application.

Material Considerations

National Planning Policy Framework

- 3.10 As above, the policies of the Framework are material considerations in the determination of this Appeal.
- 3.11 The most recent Framework was published in September 2023, during the determination period of the s73 application.
- 3.12 Significant weight should be afforded to the policies of the Framework.

Sustainable Drainage Systems Vision for New Eastern Villages SPD

- 3.13 As a starting point, it is well established that supplementary planning documents ("SPDs") carry less weight than development plan documents, given they are guidance and not policy. This was confirmed via a recent NEV appeal at Land at Foxbridge North in relation to the Swindon NEV Planning Obligations SPD dated October 2016 (appeal reference APP/U3935/W/22/3298100) (see **ACD29**).
- 3.14 SBC has produced a suite of supplementary planning documents relating to the NEV.
- 3.15 This includes the NEV Drainage SPD (approved by SBC in 2017, following the adoption of the Local Plan) (copy at **ACD16**).
- 3.16 This document has been the focus of discussion with the Council as its content is what informed future drainage design criteria within the Original FRA Addendum, which these proposals seek to amend.
- 3.17 National Planning Practice Guidance ("PPG") (Paragraph: 008 Reference ID: 61-008-20190315) (see **ACD30**) states that SPDs should not add unnecessarily to the financial burdens on development.
- 3.18 As set out in the next Section, the implications of the NEV Drainage SPD are such that they would result in a substantial reduction in the number of dwellings capable of being delivered on the Site, via the introduction of requirements that are over and above those within the Framework and the adopted development plan. As a consequence, it would have a very significant additional financial burden on development, over and above the requirements of Policy EN6.
- 3.19 Furthermore, in preparing the SPD, the Council undertook public consultation, however, the SPD was not subject to any independent examination or viability testing.

- 3.20 Following the consultation that was undertaken on the draft SPD, the Council published a Consultation Statement (see **ACD31**), which summarises the consultation responses received and the Council's responses to them. Multiple consultation responses identified that the requirements of the SPD were more onerous than those set out within the adopted development plan. However, no changes were made by the Council in response.
- 3.21 On the basis of the above, this SPD should be afforded very limited weight in the determination of this Appeal. Further, the SPD cannot, as a matter of law, be treated as a rule-setting document, otherwise it would fall foul of Regulations 5 and 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012 which require such documents to be promoted and examined as DPDs. Legal submissions will be made on this at the requested inquiry.

Housing Land Supply

- 3.22 In an appeal determined in December 2022 (see **ACD32**), the Inspector concluded that SBC were only able to demonstrate a supply of 3.6 years, representing a "*significant*" (paragraph 64) shortfall of 1,812 dwellings (over 27%). As part of assessing the land supply evidence during the appeal, in relation to Lotmead the Inspector concluded (at paragraphs 62 and 63) "*I have not been provided with clear or firm evidence that housing completions will begin on the disputed sites [Lotmead and one other] within five years ...*" and, on that basis, "*I have found that all the disputed sites should be excluded from the five year period*". Although it is not clear from the information on the public file, we believe the five year period used in arriving at these figures was 2021 to 2026, consistent with the end of the adopted Local Plan period.
- 3.23 More recently, the Council have published an updated Housing Land Supply Statement dated November 2023 (see **ACD33** and Annexes at **ACD34**) covering the period of 1st April 2023 to 31st March 2028. This document concludes the Council have a 4.87 year land supply. At its Annex H (Strategic Site Allocations), it confirms that the Council do expect Lotmead to deliver a total of 2,500 dwellings (the full extent of the outline permission), however, they do not include any completions from Lotmead within the five year period. No justification is provided for this position.
- 3.24 On the basis that the Council's latest Housing Land Supply Statement does not seek to argue against the Inspector's earlier position confirming that they are unable to demonstrate a five year housing land supply, this Statement of Case has not sought to interrogate the overall supply position. However, as we return to below in Section 5, CSS do consider that Lotmead is capable of making a considerable contribution toward the Council's land supply prior to 31st March 2028.
- 3.25 Notwithstanding the above, should the Council's position on their land supply change during the course of this Appeal, CSS reserve the right to provide further evidence in relation to housing land supply.

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The Existing Outline Permission

- 3.26 The existing Outline Permission should also be taken into account as a material consideration to this application as a position of contrast to what is currently being proposed.
- 3.27 As highlighted elsewhere in this Statement, the approved Parameter Plans (copies at **ACD8, ACD11, ACD12, ACD13, ACD14, ACD15**) and Illustrative Masterplan (copy at **ACD9**) did not show the delivery of any additional drainage features within development parcels, and the viability work undertaken assumed the delivery of all 2,500 dwellings and did not account for the cost of any strategic scale levels raising.

4. The Appellant's Case

Introduction

- 4.1. Below this Statement appraises the proposals in relation to the Decision Making Framework identified in Section 3.
- 4.2. Notwithstanding the commentary as to why CSS have brought forward these proposals (as set out in Section 2), this Section demonstrates the proposals are in any event in accordance with the development plan and that material considerations do not indicate that they should be determined otherwise.
- 4.3. Because of this, even if a decision maker were to disagree with CSS's evidence as to why the proposals have been brought forward (i.e. the impact of the Original FRA Addendum), this does not mean that the proposals can or should be determined other than in accordance with the above (i.e. positively).

Development Plan

Policy EN6 (Flood Risk)

- 4.4. In so far as SuDS and drainage design are concerned, the key parts of the Policy are criteria (e), (f) and supporting paragraph 4.362 (see **ACD1**).
- 4.5. Criteria (e) requires drainage strategies to include SuDS features, but importantly it does not require that any drainage strategy must be solely comprised of SuDS features. It also states that run off rates are attenuated to greenfield rates.
- 4.6. Criteria (f) and paragraph 4.362 then set out further requirements for the design of SuDS features; notably that they deliver water quality and biodiversity enhancements. However, as above, neither include a requirement for drainage strategies to comprise solely of SuDS features.
- 4.7. The Revised FRA Addendum still requires a drainage strategy for the Site to include SuDS features, and the Strategic Site Wide Surface Water Drainage Strategy (ref. 22006-HYD-P0-XX-DR-C-2220 REV P07) that has been submitted for approval as part of the revised wording of Condition 46 (see **ACD23**) demonstrates this at a site-wide scale. Furthermore, the Revised FRA Addendum (see **ACD19**) commits CSS to explore further source control SuDS features subject to this not compromising residential capacity or requiring site levels to be raised excessively. This detail will be approved through drainage design pursuant to Condition 47 but ultimately in line with the Revised FRA Addendum (Condition 46).
- 4.8. Therefore the content of the Revised FRA Addendum is compliant with Policy EN6.

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Policy NC3 (New Eastern Villages)

- 4.9. Policy NC3 requires that the Site and the rest of the land within the NEV deliver “about 6,000 dwellings” (see **ACD1**).
- 4.10. Although the NEV is still at an early stage of planning permissions and delivery, without CSS’s site delivering as close to 2,500 units as possible, it seems very unlikely that the Council could achieve the “about 6,000” requirement of the Policy.
- 4.11. The Council’s most recent housing land supply evidence⁷ assumes a site yield of all 2,500 dwellings pursuant to the Outline Permission, and therefore, the Council is heavily reliant on the Site delivering all 2,500 dwellings or as close to that.
- 4.12. Policy NC3 does not include any drainage specific requirements.
- 4.13. Given that the Revised FRA Addendum would facilitate up to 211 more dwellings being delivered than the Original FRA Addendum (justification provided in paragraph 5.6 below), it is reasonable to conclude that these proposals are more conducive to achieving the aims of Policy NC3, and are therefore in compliance with Policy NC3.

Development Plan Conclusions

- 4.14. On the basis of the above, the s73’s proposals are not only in accordance with the adopted development plan but are also fundamental to the delivery of the development and allocation as a whole.
- 4.15. At no point during the determination of the s73 application at a local level has the Council, or any other consultee, indicated that they think the proposals are contrary to Policies EN6, NC3 or any other development plan policy.

Material Considerations

- 4.16. Since the proposals accord with the development plan, in keeping with the Decision Making Framework, they should be approved unless material considerations indicate otherwise.
- 4.17. Each material consideration is considered in turn below.

The Framework

- 4.18. Nothing in the Framework or PPG is considered to conflict with the adopted development plan or the proposals.

⁷ SBC Housing Land Supply Statement (Nov 2023) and Annexes (see **ACD33** and **ACD34**)

- 4.19. In particular, we highlight Framework paragraph 169, which states that *“Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate”*.
- 4.20. Similarly to Policy EN6, this requires major developments to include SuDS features but it does not say that any drainage strategies must comprise *solely* of SuDS features.
- 4.21. As the proposals do definitively incorporate SuDS features in the form of large basins within open space, as well as a commitment to exploring further opportunities at detailed design stage, the proposals are compliant with the above.
- 4.22. The same paragraph goes on to state that:

“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.”*

- 4.23. Addressing each of these points in turn:
- a. The LLFA do not support the proposals, however, the Framework's requirements do not obligate parties to agree with the LLFA. CSS have taken account of all comments and feedback provided by the LLFA at all stages of pre-application and during determination and provided further information and responses where necessary.
 - b. Minimum operational standards are secured via the Revised FRA Addendum, with the Site attenuated to greenfield run off rates, which is exactly the same standard required within the Original FRA Addendum.
 - c. Controls for the approval of SuDS and drainage maintenance and management arrangements are in place via Condition 48 of the Outline Permission, which these proposals does not seek to vary.
 - d. Proposed SuDS basins would deliver multifunctional benefits for water quality and ecology.

4.24. On the basis of the above, the proposals are compliant with the Framework. This adds further weight to the primacy of the development plan for the determination of the proposals.

The Existing Outline Permission and Housing Land Supply

4.25. The effect of the proposals is to better align site and housing delivery with the already approved Parameter Plans, Illustrative Masterplan and appraisal work that underpinned the existing Outline Permission.

4.26. At a time when the Council is unable to demonstrate a 5 year housing land supply, the proposals will facilitate up to 211 more dwellings to be delivered on the Site when compared to the existing Outline Permission⁸.

4.27. This is a positive conclusion and does nothing to detract from the primacy of the development plan for the determination of the proposals.

NEV Sustainable Drainage SPD

4.28. Whilst the SPD (see **ACD16**) is a material consideration, as evidenced above, it is one that should be afforded very limited weight in the determination of these proposals.

4.29. CSS accept that the proposals, specifically the content of the Revised FRA Addendum, do not wholly accord with guidance contained within this SPD. However, much of what is proposed actively accords, or at least is not in conflict, with the content of the SPD. This includes, but is not limited to:

- Existing drainage features on Site will be utilised for the conveyance of existing and proposed surface water flows.
- Swales will be provided primarily along strategic roads and in other areas subject to residential capacity not being compromised.
- Attenuation basins will be situated outside of Flood Zones 2 and 3.
- SuDS features including swales and attenuation will cater for 1 in 100 year plus climate change storm events so that the risk of downstream flooding is not increased.
- Flows from the development will discharge to existing watercourses at the agreed greenfield runoff rates thus mimicking the existing situation.
- Attenuation basins will include pools of permanent water and appropriate planting to enhance biodiversity.
- The use of existing ditches, swales and attenuation basins will maintain and improve water quality.

⁸ Justification for this is set out at paragraph 5.6.

- 4.30. In addition to the above, following consultation on a draft of the SPD between July – September 2016, the Council published a Consultation Statement (see **ACD31**), which summarises the consultation responses received and the Council's responses.
- 4.31. As well as the consultation responses that identified the requirements of the SPD were more onerous than those in the development plan, one consultation response argued that the SPD should make provision for some pipe and gully drainage systems as part of wider drainage strategies, akin to what is proposed as part of these proposals. At page 3 of the Consultation Statement, the Council responded stating "*Traditional pipe and gully solutions may be more appropriate in certain circumstances, however they will need to be in accordance with other SuDS systems to ensure they meet policy requirements*".
- 4.32. This evidences that the Council always knew there was likely to be some need for piped drainage within the NEV, and despite consultees raising this, they chose not to include any reference to this within the approved SPD.
- 4.33. Given these proposals justify the need for piped features as part of a strategy that also includes SuDS and demonstrates accordance with the development plan, on the basis of the Council's reasoning above, this should not weigh against the proposals.
- 4.34. In conclusion, there are only limited elements of the proposals which are not in accordance with the SPD, which, in any event, is to be afforded very limited weight in the determination of these proposals. On this basis, this material consideration does not indicate that the proposals should be determined contrary to the development plan.

Conclusions in Relation to Decision Making Framework

- 4.35. Returning to the Decision Making Framework, the proposals must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.36. The commentary above demonstrates that the proposals are in accordance with the adopted development plan.
- 4.37. The material considerations of the Framework, the existing Outline Permission and the Council's housing land supply position weigh further in favour of the granting of permission, with only limited lack of accordance with an SPD of very limited weight indicating anything to the contrary.
- 4.38. Collectively, the material considerations do not come close to indicating that the proposals should be determined anything other than in accordance with the development plan.
- 4.39. Therefore planning permission should be granted without delay.

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4.40. As above, because of this even if a decision maker were to disagree with CSS's evidence as to why the proposals have been brought forward (i.e. the impact of the Original FRA Addendum), this does not mean that the proposals can or should be determined other than in accordance with the above (i.e. positively).

5. Benefits and Adverse Impacts of the Proposals

Introduction

- 5.1 In keeping with the Decision Making Framework identified in Section 3, the evidence set out in Section 4 demonstrates that the proposals accord with the development plan with material considerations not indicating otherwise, with the Framework adding that, in such cases proposals should be approved without delay.
- 5.2 Notwithstanding there being no need for any balancing exercise to be undertaken in order to establish whether permission should be granted, the tilted balance is engaged by virtue of the Council's housing land supply position, so this Section sets out the benefits and adverse impacts of the proposals as means of further emphasising why planning permission should be granted without delay.
- 5.3 The benefits and adverse impacts below are presented as those arising directly from these proposals, in comparison to the Outline Permission, and regard is had to how they contribute toward the Framework's overarching objectives for sustainable development (paragraph 8).
- 5.4 To provide clarity and consistency in the weighing of the benefits and adverse impacts, the following scale (low to high) has been adopted:
- Limited weight;
 - Moderate weight;
 - Significant weight; and
 - Substantial weight.
- 5.5 All of the benefits and adverse impacts identified below are attributed to one of these four categories.

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Benefits

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

- 5.6 As evidenced by the two Density Plan Overlay's submitted (Drainage Strategy pursuant to Original FRA Addendum ref. DPO 02 REV P6 (see **ACD17**), and Drainage Strategy pursuant to Revised FRA Addendum ref. DPO 03 REV P8 (see **ACD35**)), the proposals pursuant to the Revised FRA Addendum will facilitate the delivery of c.211 more homes, when compared to the Original FRA Addendum. This additional delivery optimises what can be delivered within the Outline Permission's maximum limit of 2,500 and fully in accordance with the approved Parameter Plans (including maximum densities)⁹.
- 5.7 With the Council's housing land supply as well as the Site's allocation assuming delivery of at or close to 2,500 units from this Site, it is essential to the Council that housing delivery is optimised. This was confirmed by SBC Senior Officers in a meeting with CSS prior to the submission of the s73 application (meeting notes at **KC2**).
- 5.8 Therefore the facilitation of an additional c.211 dwellings over and above the number that could be delivered pursuant to the Original FRA Addendum should be considered **a benefit of substantial weight**, contributing toward the Framework's social objective of ensuring that a sufficient number and range of homes can be provided to meet needs of present and future generations.

ii. Optimising Affordable Housing Delivery

- 5.9 In addition to optimising the overall quantum of residential delivery the delivery of affordable housing is often considered separately as an additional benefit.
- 5.10 It is relevant to do this here, as in addition to the lack of an overall housing land supply, SBC have a significant shortfall of affordable housing. The Department for Levelling Up, Housing & Communities' Affordable Housing Supply Statistics 2021-22 published in June 2023 (see **ACD36**) indicate that when comparing the total of completed affordable homes against the Local Plan requirement SBC has a cumulative shortfall of 2,340 affordable homes from 2015 (being the beginning of the Local Plan period) to 2022.
- 5.11 Further to the viability process undertaken as part of the Outline Application, the s106 requires that 20% of dwellings delivered on the Site are delivered as affordable housing.

⁹ The methodology used to arrive at these calculations is explained in full in Section B of Savills' Cover Letter (see **ACD24**) submitted during the application.

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- 5.12 Applying this to the c. 211 total additional dwellings figure above, this means that these proposals could facilitate the delivery of c. 42 affordable dwellings, over and above development pursuant to the Original FRA Addendum.
- 5.13 In the context of the Council's very substantial shortfall, this should be considered **a benefit of substantial weight**, contributing toward the Framework's social objective of ensuring that a sufficient number and range of homes can be provided to meet needs of present and future generations.
- iii. Faster Delivery of Residential Completions and Contribution to Five Year Housing Land Supply
- 5.14 Separate to optimising the overall quantum of residential delivery and affordable delivery as set out above, the s73 proposals will also deliver benefits for the pace of residential delivery and the Council's five year housing land supply.
- 5.15 Should permission for these proposals be allowed at appeal, CSS anticipate being able to deliver first residential completions within 19 months. This is based on the assumption of Phase 1 reserved matters consent being granted five months after the s73 proposals, and start on site two months after that.
- 5.16 If this Appeal were to be allowed in June 2024, this would result in first completions in January 2026. Based on CSS's anticipated delivery trajectory (as set out at Scenario 1 in **ACD37**), they would be able to deliver c. 282 dwellings by the end of March 2028, which is the backstop of the Council's current five year housing land supply position.
- 5.17 Given the Inspector's description of the shortfall as "*significant*" as part of a recent appeal decision, the supply of c. 282 units from Lotmead, none of which is accounted for within the Council's latest Housing Land Supply Statement, should be considered **a benefit of substantial weight**, contributing toward the Framework's social objective of ensuring that a sufficient number and range of homes can be provided to meet needs of present and future generations.
- 5.18 In contrast, should this Appeal be refused, CSS can confirm that at a maximum residential yield of 1,898 set against a viability assessment which assumed delivery of 2,500 units, they would not be able to take forward development pursuant to the Original Permission without some form of variation or entirely new application. This was a position that CSS confirmed to SBC Senior Officers prior to the submission of this application, with SBC Officers confirming that they did not want CSS to consider alterations to the viability or parameter plans (see meeting notes at **KC2**). Whilst timescales associated to this are ultimately unknown, it might be reasonable to expect that this would result in delays of at least a year to residential completions on Site.

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

5.19 As set out above, the effect of the Revised FRA Addendum will be to substantially reduce site level raising.

5.20 This will result in c. 768,000m³ less soil to be brought on to Site, which in turn will result in a reduction of c. 179,000 HGV vehicle movements, and c. 11,000 tonnes of CO2 saving from HVG movements when compared to development pursuant to the Original FRA Addendum¹⁰.

5.21 Collectively, **these are benefits that should be considered substantial**, and contribute toward the Framework's environmental objective of protecting and enhancing the natural environment, using natural resources prudently and minimising waste and minimising waste and pollution.

v. Delivery of Higher Quality Development

5.22 As a result of lesser requirements for levels raising, the proposals will facilitate placemaking improvements via the avoidance of excessive banking and batters around retained landscape features including watercourses, hedgerows and trees. Reduced levels raising will help the built form and public realm relate more positively to the retained features.

5.23 With the delivery of high quality development a consistent and important theme of the Framework and the Council's development plan, **this benefit should be considered significant**. This benefit contributes toward the Framework's social objective through fostering well-designed places, and the environmental objective of protecting and enhancing our natural environment and making effective use of land.

vi. Retention of s106 and Infrastructure Package

5.24 The Outline Permission's conditions and s106 secured a significant package of contributions to the benefit of the Site and the wider NEV community. The viability of this package was calculated assuming the delivery of 2,500 units, and certainly not a maximum unit delivery of 1,898 under a scheme delivered pursuant to the Original FRA Addendum.

5.25 As at the time of Appeal, CSS confirm that approval of this s73 would allow them to proceed with development pursuant to the existing s106 and infrastructure package.

5.26 However, as confirmed above, should this Appeal be refused, CSS would not viably be able to take forward development pursuant to the original Outline Permission, without some form of variation or entirely new application. Under this scenario CSS would look to submit a viability assessment as part of an alternative set of proposals as part of a separate application.

¹⁰ The methodology behind these calculations is set out in Section B of the Applicant's Cover Letter (see **ACD24**).

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5.27 As part of a meeting between CSS and SBC senior officers prior to the submission of this s73, the latter requested that CSS did not consider altering the viability or approved Parameter Plans, and favoured instead amendments to drainage (see **KC2**). CSS took this in good faith and acted accordingly.

5.28 Although the outcomes of any reappraisal of viability are unknown at this time, it would be reasonable to assume that it would involve significant reductions to the s106 and infrastructure package that is currently agreed. Avoiding the need to revisit viability, should be considered **a benefit of significant weight**. This is a benefit that likely spans all of the Framework's objectives.

Adverse Impacts

5.29 The only adverse impact that could be perceived in relation to proposals relates to guidance. The proposals do not meet all the requirements of the NEV SuDS SPD, however, in light of the limited weight that should be afforded to the SPD (and the fact that it cannot be treated as a rule-setting document due to the 2012 Regulations) and the proposals compliance with the development plan's policy relating to drainage, as well as Framework paragraph 169, this is at worst a minor adverse impact of very limited weight.

Conclusion

5.30 Notwithstanding the Decision Making Framework, the commentary above demonstrates the benefits of the proposals clearly outweigh any perceived adverse impact, which further weighs in favour of the grant of planning permission.

6. Conclusions

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act sets the Decision Making Framework for this Appeal requiring that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 6.2 Notwithstanding the reasons as to why these proposals have come forward, the proposals accord with the relevant policies of the development plan and the material considerations of the Framework, the existing Outline Permission and the Council's housing land supply position weigh further in favour of the granting of permission. Only limited lack of accordance with an SPD of very limited weight indicates anything to the contrary.
- 6.3 Collectively, these material considerations do not come close to indicating that the proposals should be determined anything other than in accordance with the development plan. Therefore planning permission should be granted without delay.
- 6.4 Notwithstanding there being no need for any form of balancing exercise to be undertaken to establish whether permission should be granted, the NPPF's tilted balance is engaged, by virtue of the Council's five year housing land supply shortfall.
- 6.5 The following benefits derive from the proposals:
- i. Optimising housing capacity – substantial weight;
 - ii. Optimising affordable housing delivery – substantial weight;
 - iii. Faster delivery of residential completions and contribution to five year housing land supply – substantial weight;
 - iv. Reduction in vehicle movements and carbon emissions, resulting from less levels raising – substantial weight; and
 - v. Retention of s106 and infrastructure package – significant weight.
- 6.6 The sole adverse impact of the proposals is:
- i. Limited lack of accordance with SPD – very limited weight.
- 6.7 This demonstrates the benefits of the proposals clearly outweigh any perceived adverse impact, which weighs further in favour of the grant of planning permission, over and above the Decision Making Framework.

7. Justification for Inquiry

- 7.1 The Planning Inspectorate's '*Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals*' published in April 2022 (the "Guidance") (see **ACD38**) sets out criteria for assessing the appropriate route of determination for appeals.
- 7.2 Having considered the Guidance, the Appellant considers that a Public Inquiry to be the appropriate route of determination.
- 7.3 The Guidance states that an Inquiry would "*be appropriate if*":
- i. There is a clearly explained need for the evidence to be tested through formal questioning by an advocate.
 - ii. The issues are complex.
 - iii. The appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing.
- 7.4 Two further criteria are omitted on the basis they relate to enforcement appeals only.
- 7.5 An inquiry is requested by virtue of the first criterion and/or the second criterion.

Assessment Against Criteria

- i. *There is a clearly explained need for the evidence to be tested through formal questioning by an advocate*
- 7.6 The rationale sitting behind the proposals and the benefits associated to the proposals are wide ranging. These span site capacity, levels raising, carbon emissions, drainage strategies and impacts on landscape and placemaking.
- 7.7 This will require evidence from a variety of specialists from both the local planning authority and the Appellant's project teams and we believe this is best undertaken via cross examination led by advocates, particularly as the Appellant does not consider that the Council's position has been clearly explained or substantiated to date.

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ii. The issues are complex

7.8 The response to this criteria is very similar to the first. The evidence that will need to be called at the appeal concerns technical subject matters requiring specialist expert evidence that will take considerably longer than the duration of hearing to explore. Further, there is an important and complex legal issue concerning the Local Plan Regulations 2012 as outlined above. This will require detailed legal submissions from counsel of a nature not apt for a hearing or written representations.

7.9 In addition, it is also relevant to note the significance of the Site to the delivery and success of the New Eastern Villages allocation, the development plan as a whole and the Council's housing land supply. Notwithstanding all the other benefits identified, the proposals will optimise the delivery of c. 211 additional dwellings when compared to what is possible under the existing Outline Permission. Proposals of this scale and significance therefore merit exploration in the most comprehensive and thorough public forum, i.e. an Inquiry.

Conclusion

7.10 On the basis of the first two criteria, we consider this Appeal merits determination via a Public Inquiry.

7.11 This Statement of Case has been prepared on the basis that the Appeal will be dealt with at a Public Inquiry. If, subsequently, it is decided that it would be dealt with at a Hearing, we reserve our right to add or amend this Statement.

END

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Appendix A: Application and Appeal Timeline
