

LAND AT NORTH ROAD WEST AND

GROVEFIELD WAY, CHELTENHAM

APPEAL A: APP/B1605/W/18/3200395

APPEAL B: APP/B1605/W/18/3214761

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. **Introduction**

1.1 In these conjoined appeals, the Appellant seeks planning permission for the following descriptions of development:

- i. **Appeal A:** Hybrid application seeking detailed planning permission for a 5,034 sq.m of commercial office space (Use Class B1), 502 sq.m day nursery (Use Class D1), 1,742 sq.m supermarket food retail unit (Class A1), a 204 sq.m coffee shop retail unit and drive-thru (Use Classes A1 and A3), with associated parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sq.m of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access).
- ii. **Appeal B:** Hybrid application seeking detailed planning permission for 5,914 sq.m of commercial office space (Use Class B1), 502 sq.m day nursery (Use Class D1), 1,742 sq.m food retail unit (Use Class A1), with associate parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sq.m of commercial office space (Use Class B1), together with associated car parking, landscaping and

infrastructure works, with all matters reserved - except access (resubmission).

- 1.2 Both appeals were firmly recommended for approval as schemes that conform with the development plan.
- 1.3 Throughout the inquiry much evidence has been heard on a variety of issues, however, the fact remains that the Council's officers were right to make their recommendations for approval. Indeed, as a matter of legal interpretation, neither policies SD1 or EM2 of the development plan could possibly be breached in respect to either appeal. The Council's arguments to the contrary are obviously hopeless. Thus, it is beyond doubt that Appeal B conforms with the development plan and thus permission ought to be granted without delay.
- 1.4 As regards design (which only concerns Appeal A), whilst the Council originally sought to make numerous criticisms of both appeals, their case ultimately has been confined to some minor criticisms of the Costa Coffee. None of the Council's concerns have any relationship with the relevant development plan policies (namely Policies SD4 and CP7). Indeed, at no stage in the Council's written or oral evidence did the Council actually engage with these policies (note that there is literally no analysis of SD4 or CP7 in the Council's evidence).
- 1.5 Rather, the Council have sought to advance a series of vague criticisms, unsubstantiated by any proper analysis or regard for the context of the Site. The Council's officers were correct in their recommendation to the committee that the design was acceptable and conformed with the development plan. The Council's arguments to the contrary through this appeal do not withstand scrutiny.
- 1.6 In any event, even if it was determined that there was some design issue (which the Appellant firmly refutes), the development plan is

plainly out of date given that the Council do not have sufficient employment B1 office space to meet the minimum requirement identified in the JCS and the allocations in the JCS are neither deliverable nor resolving the acute shortage of B1 office space in Cheltenham. Accordingly, within the tilted balance, per paragraph 11(d) of the NPPF, any design concerns do not significantly and demonstrably outweigh the significant benefits of Appeal A – which the Council agreed.

- 1.7 It follows, therefore, that the refusal of planning permission in respect to both appeals was never informed by any proper land use planning merits analysis. This is plainly one of those instances where planning permission ought to be granted without delay.

2. **Compliance with the development plan – Policies SD1 and EM2**

2.1 Law

- 2.1.1 In light of the Council's approach at this inquiry, it is necessary to rehearse some trite ^{law} relating to the interpretation of planning policy.

- 2.1.2 In ***Tesco Stores Ltd v Dundee Council*** [2012] UKSC 13, the Supreme Court held that, '*... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context*'.

- 2.1.3 The Court went on to say at [19]:

*That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract ... Nevertheless, **planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.***

2.1.4 Rather than engage with the actual text of the relevant policies in the development plan, the Council have sought to consider the 'objectives' of the development plan as being key. Not only have the Council not actually engaged with the objectives of the development plan, but the argument is flawed in any event.

2.1.5 The relevance of 'objectives' or 'aims' of a plan was recently considered in *Chichester DC v SSHCLG* [2018] EWHC 2386 (Admin). In that matter, UT Judge Andrew Grubb stated as follows:

56. The distinction between the "policies" set out in the NP and its "aims" is, in my judgment, in principle a rational one. Mr Williams and Mr Garvey referred me to decision of the Court of Appeal in *R(Cherkley Campaign Ltd) v Mole Valley DC and another* [2014] EWCA Civ 567. There, the Court of Appeal distinguished between the "policies" and the supporting text. The latter might be relevant to the interpretation of the "policies" contained in a development plan but whether a proposal conformed with, or conflicted with, the plan was to be determined by reference to the policies it sets out.

62. ... Whilst, therefore, it was an "aim" to restrict development to the south of the Stein Road level crossing, such a limitation was not expressed in the NP's Policies 1 and 2 so that it can properly be said that any proposed development there (or anywhere outside the settlement boundary and specified areas) "conflicts" with the NP.

2.2 SD1

2.2.1 The Council accept that the B1 office space elements of both Appeals A and B conform with Policy SD1.¹ Thus, the alleged conflict with policy SD1 is said to derive from the non-B1 elements of both appeals. However, that represents a plain error in the application of Policy SD1.

2.2.2 Paragraph 4.1.3 of the JCS says:²

In the NPPF, employment is considered in a wider sense than the traditional industrial, office and warehousing (B1, B2 and B8 uses).

¹ CD 13.1 p.28

² CD 13.1 p. 27

For example, uses such as retail, hotels, tourism, leisure facilities, education, health services and residential care, (**referred to as non-B use classes**) can also be large employment providers. **This policy covers job-generating uses such as business, industry and tourism. Retail and other uses, including those within use class 'A' are not covered by this Policy and are dealt with in Policy SD2.** More detailed policies will be included in District plans.

- 2.2.3 Accordingly, the supporting text could not be clearer in making the point that Policy SD1 is not directed towards non-B use classes. Thus, if the policy is not intended to address non-B use classes, it follows that there could be no possible conflict with the policy owing to such uses.
- 2.2.4 Notwithstanding the above being the obvious interpretation of the policy, even were one to apply the policy to the non-B use classes as the Council have incorrectly sought to do so, there still would be no conflict.
- 2.2.5 Policy SD1 supports employment-related development that satisfies certain criteria. Here, criterion (vi.) is met on the basis that:
- i. The development is in the wider countryside - Agreed in XX with Mr Staddon.
 - ii. The Site is located adjacent to a settlement - Paragraph 2.2 of the SoCG states that, *'The site is adjacent to the settlement of Reddings'*. Mr Staddon agreed this in XX.
 - iii. The development is an appropriate scale and character - Paragraph 6.11 of the SoCG states that, *'It is agreed that both Appeals A and B are of an appropriate scale and character'*. Mr Staddon agreed this in XX.

2.2.6 Accordingly, even applying the Council's incorrect interpretation of SD1, there is still no conflict with the language of the policy. Indeed, Mr Staddon agreed that there was compliance with criterion (vi) in this regard, however, unreasonably he maintained the position that there was some conflict with the policy for some nebulous reason.

2.2.7 Repeatedly in XX Mr Staddon was invited to give any insight into what language in the policy he relied on to give rise to a policy conflict. At no stage was he able to identify anything within the policy or supporting text that gave rise to conflict. Indeed, he had only devoted a single sentence³ (comprised of 14 words) in his proof of evidence to SD1, which again had no consideration of the text of the policy or supporting text. Mr Staddon was plainly seeking to unreasonably support the planning committee's decision, notwithstanding the fact that he was unable to highlight anything within the policy that gave rise to conflict. It was a classic example of the 'humpty dumpty' approach criticised in Tesco Stores v Dundee.

2.2.8 Accordingly, as a matter of legal interpretation, there can be no conflict with Policy SD1.

2.3 EM2

2.3.1 The Council's interpretation of Policy EM2 is similarly flawed as a matter of legal interpretation.

2.3.2 The opening text of Policy EM2 makes its scope clear:⁴

A change of use of land and buildings in existing employment use, or if unoccupied to a use outside Use Classes B1, B2 or B8 inclusive will not be permitted, except where ...

³ Paragraph 7.28 Staddon PoE p. 19

⁴ CD 13.3 p. 77

2.3.3 Thus the policy is directed towards preventing a change of use from Use Classes B1, B2 or B8 to another use (except where certain criteria is met). For the policy to apply, therefore, the Site must either be in use or last in use pursuant to either Use Class B1, B2 or B8. Indeed, if no such use has been established at the Site, there is no 'use' for the policy to safeguard and prevent a change from.

2.3.4 This is also made clear by the supporting text to the policy, which says:⁵

9.21 Because of the limited supply of employment land, the Council wishes to ensure that sites currently or last in employment use remain available for B1 - B8 employment uses and are not eroded by development for other uses. This land will be safeguarded by policy EM 2.

2.3.5 This supporting text is also consistent with Objective 021 of the Cheltenham Borough Local Plan Second Review (2006),⁶ which is cited within the header of the policy as being relevant. It says:

021 to safeguard land and buildings in existing employment use, or if unoccupied, last in employment use

2.3.6 It is common ground⁷ that there has never been an employment use at the Site pursuant to B1 – B8 employment uses. Furthermore, it is common ground⁸ that it would constitute a breach of planning control to even implement any such use at the Site, being that there is currently no permission that allows for this use at the Site (the pre-commencement conditions pertaining to the extant permission have yet to be discharged). The irony is, therefore, that it would require a material change of use to B1, B2 or B8 uses in order to subsequently fall within the remit of Policy EM2, which is seeking to prevent material change of uses.

⁵ CD 13.3 p. 77

⁶ CD 13.3 p. 13

⁷ Staddon XX

⁸ Staddon XX

2.3.7 Notwithstanding these necessary concessions from Mr Staddon and his acceptance that the Site is not currently or last in employment use, he maintained that there was some conflict with the policy. Again, after repeatedly being asked what language in the policy is breached, he simply referred to 'unoccupied land'. This was consistent with his proof of evidence.⁹ In effect, Mr Staddon argued that unimplemented planning permissions in respect to the Site meant that it came within the remit of the policy.

2.3.8 There is nothing within the language of the policy or supporting text that would support this interpretation. This was made clear by the Council's Planning Policy Team consultation (dated 19th January 2017) for Appeal A¹⁰, who stated: *EM2 is concerned with protecting existing or last employment uses rather than unimplemented planning consents*'. The exact same point was made in the consultation response from the Council's Strategic Land Use Team (dated 28th June 2018) for Appeal B. It is noteworthy that Mr Staddon made no reference to this in his evidence and indeed had no answer as to why the officers were incorrect save for saying that he disagreed with them.

2.3.9 The fact that Policy EM2 does not relate to unimplemented planning permissions is also consistent with Policy EM1¹¹ of the emerging plan, which highlights those sites that ought to be safeguarded (it does not include the Appeal Site). Moreover, emerging policy EM1 makes clear that it would only relate to the Appeal Site after completion of development of B1 office spaces at the Site.

⁹ Staddon PoE para 7.32 p.20

¹⁰ CD 4.2

¹¹ CD 13.5 p.10

2.3.10 The Council also sought to rely on the LEP letter¹² in XX in support of their interpretation of Policy EM2, on the basis that the LEP referred to the Appeal Site as an 'employment site'. This argument is obviously incorrect on the basis that:

- i. the LEP were not offering an interpretation of Policy EM2;
- ii. the LEP were specifically commenting that the Appeal Site is not currently safeguarded (which is consistent with the correct interpretation of Policy EM2).

2.3.11 The Council also sought to argue that one should consider the 'purposes' and 'objectives' of Policy EM2 as somehow giving rise to some nebulous conflict with the policy. The relevant objectives of the plan that Policy EM2 relates to (which were not saved in any event) are Objectives 06, 07, 20 and 21.¹³ Nowhere within the Council's evidence was there any mention of these objectives or any analysis of why there would be conflict ^{with} of these objectives - notwithstanding the fact that this is the incorrect way to approach policies in any event (see Chichester).

2.3.12 Again, the Council were simply seeking to do all it could to stand by the committee's decision, without actually considering the language of the policy.

2.4 Overview

2.4.1 There is nothing difficult about the interpretation of Policies SD1 and EM2. This appeal does not turn on some tricky interpretation of the language used within these policies. Indeed, the Council are unable to point to anything within the language of either policy or the supporting text that gives rise to conflict.

¹² Appendix 3 to Mr Griffin's evidence

¹³ CD 13.3 p.1

- 2.4.2 The Council's planning policy team made the obvious recommendation that there was no breach of these policies. In seeking to argue otherwise at this appeal the Council have taken a classic '*humpty dumpty*' approach, which deliberately avoids engaging with the language of the policy and simply fudges the question in a hopeless attempt to support the planning committee's obviously incorrect decision.
- 2.4.3 There can only be one conclusion – namely that there is no conflict with Policies SD1 and EM2.
- 2.4.4 Being that these are the only development plan policies cited in respect to Appeal B, it can only be concluded that Appeal B conforms with the development plan and thus planning permission ought to be granted without delay – per paragraph 11(c) of the NPPF.
- 2.4.5 Similarly, the only possible development plan conflict with Appeal A (which the Appellant firmly denies) is in respect to the design policies (addressed below). However, the only design concern with Appeal A relates to the Costa Coffee. Thus, the extent of any development plan policy breach could only be limited.
- 2.4.6 This is relevant in that in ***R v Rochdale Metropolitan BC*** [2000] WL 1151364, Sullivan J held that in determining whether a proposal was in accordance with the development plan, one should have regard to the plan as a whole and the "*overall thrust of development plan policies*". Indeed, owing to the numerous conflicting interests that development plans seek to reconcile, it would be untenable that a breach of any one policy would lead to the conclusion that the proposal was not in accordance with the plan.¹⁴

¹⁴ paragraphs 47 - 49 of the judgment

2.4.7 Thus, even if it was held (contrary to the Appellant's position) that there is some minor conflict with the design policies owing to the Costa Coffee, the Appellant would still maintain that there remains compliance with the development plan overall for Appeal A.

3. The Emerging Plan

3.1 Policy EM3 of the emerging plan allocates the Appeal Site exclusively for B class uses or sui generis uses that exhibit the characteristics of traditional B class employment. Accordingly, for the most part, the policy does support the development proposals in so far as they provide B1 office space in accordance with the allocation. However, being that both appeal proposals involve non-B1 uses that are not supported by the policy, there is some limited conflict with the policy overall.

3.2 The weight to be afforded to this conflict is determined by reference to paragraph 48 of the NPPF, which says:

48. Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)²².*

3.3 48(a)

3.3.1 The emerging plan's first examination hearing is scheduled for February, meaning that the emerging plan is at a moderately advanced stage.

3.4 48(b)

3.4.1 There remain significant unresolved objections to policy EM3.

3.4.2 Unusually, the Council made no amendments whatsoever to the submission version of the emerging plan as compared with the pre-submission version.¹⁵ Indeed, there is no evidence that the Council considered any objections raised against the emerging plan. Thus, all objections to the emerging plan remain unresolved and, as far as the evidence suggests, they have not been considered.

3.4.3 Significantly, the LEP have objected to the emerging plan,¹⁶ specifically in relation to the lack of flexibility offered through the allocations in the plan, being that they prevent ancillary uses. This objection is obviously highly relevant to this appeal, which focuses on ancillary uses.

3.4.4 The significance of the LEP's objection is underscored by the fact that the JCS makes clear that:

- i. Pursuant to Strategic Objective 1, the Council are required to work in partnership with the LEP to develop the potential of the JCS area for further economic and commercial investment;¹⁷
- ii. Similarly, the text to Policy SD1 makes clear that the Council ought to have worked collaboratively with the LEP to ensure that the needs of employers and the business community are being met and, essentially, to provide '*sufficient flexibility*' through '*taking account of the aspirations of the LEP and local businesses*'.¹⁸

¹⁵ SoCG p.16 para 4.11

¹⁶ Griffin Appendix 3 letter dated 9th April 2018

¹⁷ JCS Objective 1 – CD 13.1 p.13 see second bullet point

¹⁸ CD 13.1 p.32 para 4.1.39

3.4.5 However, notwithstanding that the JCS specifically directs the Council to have regard for the LEP's aspirations and to work collaboratively with them, the evidence indicates that the Council have had no regard for the LEP and have entirely ignored them in advancing the submission version of the plan.

3.4.6 Accordingly, one can hardly envisage a more substantial unresolved objection to an emerging plan. Moreover, given that this unresolved objection entirely underscores why the conflict with Policy EM3 owing to non-B1 uses would be inappropriate, this objection significantly tempers the weight to be afforded to emerging policy EM3.

3.5 48(c)

3.5.1 Footnote 22 of the NPPF says:

During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in March 2012.

3.5.2 Accordingly, for the purposes of determining consistency of the emerging plan with the NPPF, this must be determined by reference to the NPPF 2012. However, it matters not whether one determines consistency against the NPPF 2018 or NPPF 2012.

3.5.3 Paragraph 21 of the NPPF 2012 similarly echoes the point now made at paragraph 81 of the NPPF 2018. Paragraph 21 says:

21. Investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing. In drawing up Local Plans, local planning authorities should:

- *set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth;*
- *set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;*
- *support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area. Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances;*
- *plan positively for the location, promotion and expansion of clusters or networks of knowledge driven, creative or high technology industries;*
- *identify priority areas for economic regeneration, infrastructure provision and environmental enhancement; and*
- *facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.*

3.5.4 As explained below, the emerging plan fails to identify sufficient sites to meet the anticipated B1 office space needs over the plan period (the LEP similarly make this point within their objection). Furthermore, policy EM3 remains inflexible through the lack of allowance for non-B1 uses. Accordingly, policy EM3 remains inconsistent with the NPPF in its current guise.

3.5.5 Moreover, the lack of recognition for non-B1 uses within Policy EM3 further tempers the weight to be afforded to the policy being that:

- i. The Council accept¹⁹ that ancillary uses can be desirable in planning terms on business parks, yet the emerging policy makes no recognition of this.
- ii. The Site at Jessop Avenue has planning permission for ancillary uses,²⁰ which would mean that the planning permission at this Site would conflict with the allocation.

¹⁹ SoCG p.22 para 6.18

²⁰ CD 13.5 Table 11 p. 142

3.6 Accordingly, having regard to all of the above, the conflict with the emerging plan can only be afforded limited weight.

3.7 Principle of conflict with an emerging plan

3.7.1 Whilst it is accepted that limited conflict with an emerging policy is a material consideration, this conflict plainly does not warrant a refusal (nor has the Council suggested otherwise) on the basis that:

- in & of itself.

- i. Prematurity forms no part of the Council's case (nor would it be appropriate in any event);
- ii. At most the Council regard the emerging plan to warrant moderate weight - that moderate weight obviously cannot override compliance with the development plan and the agreed significant weight to be afforded to the benefits of the appeal proposals;
- iii. Neither party are aware of any appeal decision where a scheme that conforms with the development plan is refused on account of conflict with an emerging plan.

3.8 Accordingly, whilst it is accepted that the limited conflict with Policy EM3 must be considered as a material consideration, this plainly does not override the conformity with the development plan.

4. Urban Design

4.1 Mr Tomaney's written evidence adopted a scatter-gun approach of trying to make as many criticisms as possible in respect to both appeals in order to see what sticks. However, through the inquiry, the Council's arguments in respect to Appeal A have been narrowed to

the consideration of the Costa Coffee. Further, it is agreed that the dispute does not relate to:

- i. architecture;
- ii. landscaping;
- iii. topography.

4.2 It has proved difficult to discern exactly what the Council's case in respect to urban design against the Costa Coffee is. Moreover, nowhere within the Council's evidence or oral evidence has there been any consideration of why there is conflict with policies SD4 and CP7 (there is not a single sentence in any of the Council's evidence explaining why the policies are breached and the matter was not addressed in oral evidence).

4.3 Whilst it remained unclear, it appeared as if Mr Tomaney's evidence boiled down solely to paragraph 7.18 of his proof, where he made the following criticisms of the Costa Coffee:

7.18 The introduction of office unit 5 in place of the café has a positive effect on issues of elsewhere in section 7, above. It reduces to 26% the proportion of the site given over to non-B1 uses. It reduces the amount of non-B1 uses along Grovefield Way, the public face of the site. It places a B1 use in a prominent building on the important junction at the access to the site. The removal of the drive-through lane enables improved landscape, an ability to use landscape to deal more satisfactorily with the levels and it moves the building closer to the street giving a much-improved relationship to both Grovefield Way and the spine road. It introduces to this important part of the site many of the characteristics identified as missing in the non-B1 buildings – active edges, height and less intrusive servicing arrangements. Car parking is dealt with in a more comfortable format.

4.4 Accordingly, doing the best that the Appellant can, it seems to be that the urban design case boils down to:

- i. the height of the Costa Coffee and distance from the street;

- ii. the car parking format;
- iii. the lack of active edges;
- iv. the less intrusive servicing arrangements;
- v. the fact that there is a non-B1 use on a prominent part of the junction.

4.5 The height of the Costa Coffee and distance from the street

4.5.1 Notwithstanding Mr Tomaney's criticism of the height of the Costa Coffee, it is noteworthy that elsewhere in his evidence he maintained that, *'Details of building style and **height** do not form part of the Council's case ...'*²¹

4.5.2 As regards the distance of the Costa Coffee from Grovefield Way, Mr Tomaney gave no analysis of why this gave rise to an issue.

4.5.3 It appeared that Mr Tomaney's case on the Costa Coffee (which was not made in his written evidence) was that it would not have a presence owing to the lack of height. However, in asserting this view Mr Tomaney gave no consideration to the BMW building, which would clearly dominate the entrance to the Site.

4.6 The car parking format

4.6.1 Mr Tomaney argued that the dual access points required for the drive-thru meant that there was less opportunity to provide car parking spaces. At best, this just appears to be a generic criticism of drive-thru lanes.

4.6.2 In support of this argument, Mr Tomaney was unable to highlight any design guide or otherwise that would support his conclusion.

4.7 The lack of active edges

²¹ Mr Tomaney's evidence p.17 para 6.1 (last sentence)

- 4.7.1 Mr Tomaney argued that the lack of an active frontage would cause urban design concerns here. There are a number of issues with this.
- 4.7.2 Firstly, Mr Tomaney worked at the Council whilst the BMW garage/showroom was approved. He found the design of that building acceptable – yet that building did not have an active frontage. If this were to be required, clearly Mr Tomaney would have sought it there.
- 4.7.3 Secondly, Mr Tomaney agrees that there are no active frontages along Grovefield Way.²² Thus, providing an active frontage at the Costa Coffee would be inconsistent with the surrounding character and context. Thus, an active edge would actually be contrary to the Planning Practice Guidance, which focuses on the integration of development with its surrounding context being an important design objective.²³
- 4.7.4 Thirdly, as Mr Tucker explained, the Costa Coffee would have a more active edge than Office 5 of Appeal B being that people in offices would likely opt for privacy through blinds and that the Costa Coffee would have open windows and chairs set out for visitors. Thus, to the extent that active edges are desirable, Appeal A has this to a greater extent.
- 4.7.5 Fourthly, the extant scheme illustrative masterplan²⁴ never proposed an active frontage onto Grovefield Way. Rather, it proposed that the backs of large office buildings would back onto Grovefield Way, thus presenting a continuous urban wall in an urban fringe location. By comparison, Appeal A offers a more open design that offers views across the site.

²² Tomaney PoE p.36 para 7.15(c)(iii) – see third sentence of Roman numeral (iii)

²³ Tomaney p.11 para 4.10(a) makes this point

²⁴ CD 16.1

4.7.6 Fifthly, there is nothing within the development plan policies or accompanying tables (see tables SD4b and SD4c)²⁵ that suggest that active edges are required.

4.8 The less intrusive servicing arrangements

4.8.1 Mr Tomaney provided no explanation or urban design justification for this throwaway point.

4.9 The fact that there is a non-B1 use on a prominent part of the junction

4.9.1 Mr Tomaney appeared to argue that the fact that one will see a Costa Coffee at the entrance to the Site rather than an office would give rise to an urban design concern. There are a number of issues with this.

4.9.2 Firstly, the entrance to the Site is along Grovefield Way, a lightly trafficked road around the outskirts of Cheltenham. The entrance does not provide the key view of the Site. Rather, the key 'gateway' views of the Site are from the A40 as one approaches Cheltenham. Indeed, this point has been made consistently in the Appellant's evidence.²⁶ Along the A40, the only views of the Site would be that of B1 offices.²⁷ Indeed, the current design means that one would not be able to see any non-B1 uses from this gateway location (which Mr Tomaney agreed). Thus, to the extent that seeing non-B1 uses is undesirable, this is avoided along the key gateway views of the Site.

4.9.3 Secondly, even at the entrance to the Site, one can see offices at all points. Indeed, the viewing pack²⁸ provides an image from the entrance to the Site, where it is clear that one would see through to offices prior to even entering the Site. Moreover, in the real world, most people driving past the Site would be aware that there are offices owing to their familiarity with the area. Furthermore, even if

²⁵ CD 13.1 JCS p.44

²⁶ Including the Design and Access Statement and planning statement

²⁷ Mr Tomaney's evidence accepts that one would see passing views of offices from the A40 – Tomaney PoE p. 8 para 3.6 and p.27 para 7.8

²⁸ CD 7.16

one was unfamiliar with the area, through signage visitors to the Site and/or Cheltenham would be informed of the offices across the Site.

4.9.4 Thirdly, even if one could not see offices at the entrance to the Site and were oblivious to the fact that offices were on Site, it remains unclear what in urban design terms would be undesirable about this. Indeed, the Council have been unable to point to any appeal decision, committee decision (nationally or in Cheltenham), design guide, supplementary planning document, national policy, development plan policy or otherwise that suggests that this is undesirable. The Council simply argue that by not seeing B1 offices right at the entrance to the Site, this gives rise to development plan conflict.

4.9.5 The B1 offices that inhabit business parks such as the Appeal Site do not rely on passing trade. Indeed, the fact that there may be offices which an observer of the Site might not be aware of would not impinge on the success of the business (and certainly no evidence has been presented to the contrary). Accordingly, even if the presence of the Costa Coffee does mean that a visitor to the Site would not recognise the Site as having B1 offices (which is denied), in urban design terms it remains unclear what the harm that arises out of this is.

4.9.6 Fourthly, in criticising the impact the Costa Coffee will have on the Site, Mr Tomaney makes no mention of the BMW dealership. As Mr Tucker explains in his evidence,²⁹ the Costa Coffee is in the optimum location from both an urban design and sustainability perspective in that it: (a) provides a counterbalance to the BMW dealership and (b) it means that road users can access the Costa Coffee without unnecessarily needing to travel to the rear of the Site. Indeed, as the Design and Access Statement and Mr Tucker's PoE makes clear,³⁰ the

²⁹ Tucker PoE p.16 para 5.29

³⁰ Tucker PoE para 5.34 pp.16 - 17

Costa Coffee did not follow a standardised design. Rather, the architectural vocabulary of the building was amended from the typical Costa Coffee design specifically to respond to the BMW buildings. Thus, the Costa Coffee responds positively to the context of the Site.

4.10 Summary

4.10.1 The Council's design RFR was always a makeweight objection. Indeed, significantly the Council provide no guidance document or otherwise to demonstrate why the Costa Coffee is unacceptable. Rather, Mr Tomaney simply makes a number of unsubstantiated generic criticisms of the Costa Coffee. In reality, the same could be done in respect to any scheme.

4.10.2 What is more significant is that Mr Tomaney had the opportunity to provide his initial comments in respect to Appeal A whilst employed at the Council.³¹ If he were so concerned about the Costa Coffee, he could have provided a design brief and comments to the Appellant's team to resolve any concerns that he might have had. He did not. It is wholly unreasonable for him to seek to raise those concerns now through this appeal when he had the opportunity to do so earlier. This is especially the case where the Council's own design team found the scheme to be acceptable and in conformity with the development plan. Indeed, as the officer report for Appeal A noted:³²

7.4 ... The application has been the subject of a significant amount of negotiation in terms of the layout which has resulted in a much improved scheme which officers support

³¹ Tomaney PoE p.3 para 1.2

³² CD 4.2 (last page)

4.10.3 Finally, at no point have the Council sought to correlate Mr Tomaney's criticisms of the Costa Coffee to Policies SD4 and CP7. Indeed, their case on conflict with these policies remains opaque.

4.10.4 Contrary to Mr Tomaney's evidence, in accordance with the officer recommendation for approval, this represents a sensitive and thoughtful scheme that was arrived at following lengthy negotiations on layout. There is no conflict with policies SD4 and CP7. Furthermore, to the extent that the Inspector raised concerns about desire lines and landscape maintenance, this could all be resolved through conditions.

4.10.5 Accordingly, there is no cause to refuse permission for Appeal A owing to urban design.

5. Employment Land Supply

5.1 It is common ground that there is an acute shortage of B class employment land and premises within Cheltenham.³³

5.2 The JCS was adopted on the basis that it would provide a *minimum* requirement of 192 ha of B class employment land.³⁴ The Inspector's report for the JCS made clear that this was to be comprised of the following:

120. The strategic allocations are expected to deliver at least 84ha of B-class employment land and the District Plans 48ha which, together with existing capacity of 63ha, is intended to give about 195ha of B-class employment land. Together with non B-class employment land, the strategic allocations are now set to deliver in the order of 112ha of employment land and to reflect this, amendment is needed to the strategic allocations chapter and specifically Table SA1, which sets out indicative development capacities.

³³ SoCG para 6.17 p. 22

³⁴ CD 13.1 p.17 of the JCS Policy SP1

- 5.3 Accordingly, the JCS was adopted on the basis that there was an existing capacity of 63ha of employment land, which was required in order to satisfy the minimum requirement over the plan period. Indeed, in light of this existing capacity, it was thought that the District plans would identify 45 ha of B class employment land.
- 5.4 The Inspector's conclusions were based on the JCS Economic Update Note (dated February 2016). Accordingly, the evidence base that informed these conclusions is almost 3 years old. Since then, the only assessment of existing capacity across the JCS is provided in Mr Fong's evidence. Indeed, the Council have provided no update for the purposes of the emerging Local Plan (which further tempers the weight to be afforded to Policy EM3).
- 5.5 Mr Fong's evidence ^(to supply) was uncontested at the appeal. Accordingly, it is clear that, whilst there was thought to be an existing capacity of 63ha when the JCS was adopted, there is now only an existing capacity of 20.6ha (less than a third). This has been as a consequence of losses through alternative schemes coming forward on those sites that were thought as being available to provide B class employment.
- 5.6 This means that there is currently 42.4ha of B class employment land that is required in order to satisfy the minimum requirement in the JCS.³⁵ There is no answer as to where this shortfall will be met. Indeed, Tewkesbury BC have already proposed 45ha as part of their district plan (which Mr Fong has already accounted for). Gloucester have given no indication to date of what they can provide, however, Mr Fong's uncontested evidence was that given the significant constraints across Gloucester, they could not make a meaningful contribution.

³⁵ Fong PoE p.15 para 3.27 – 3.28 sets these figures out

- 5.7 Cheltenham's emerging local plan only proposes 8.28ha of employment land, however, this land had already been accounted for in the existing capacity. Accordingly, there remains a significant shortfall of employment land against the minimum requirement.
- 5.8 Furthermore, as Dr Athey readily conceded, the allocations in the JCS (which Mr Fong had not sought to discount from the existing supply) are not development ready and are not resolving the Council's acute shortfall of employment land.
- 5.9 It follows from the above that the employment land strategy within the JCS was approved based on assumptions that have now been proven to be incorrect. It follows, therefore, that the strategy is flawed and the policies contingent upon it (including JCS Policy SP1), *SAI*
- 5.10 In XX, the Council argued that the review of the JCS was the solution to the lack of employment provision. It appeared to be suggested that the tilted balance did not need to be applied, on the basis that the review would 'solve' any deficiencies in the JCS strategy. However, that constitutes a further legally incorrect interpretation of the JCS.
- 5.11 The review of the JCS is provided for through Policy REV1.³⁶ As the supporting text makes clear,³⁷ the review relates to Gloucester and Tewkesbury's housing supply. The supporting text³⁸ to the policy and the Examination Inspector's report into the JCS³⁹ also make clear that the review would address Policy SD2 relating to retail.
- 5.12 Accordingly, the JCS was adopted on the basis of the need for an immediate 'partial review' (as the Examination Inspector found⁴⁰), which had no relationship to employment land supply. Thus, the

³⁶ CD 13.1 p.108

³⁷ CD 13.1 pp. 105 – 110 of the JCS

³⁸ CD 13.1 p. 106 para 7.1.13

³⁹ CD 13.2 p. 46 – 47 paras 264 - 273

⁴⁰ CD 13.2 p.49 para 49

employment land strategy in the JCS did not rely on a review, as it was thought at the time that there were sufficient sites to meet the Council's minimum requirement of B class employment land.

5.13 It was only as a consequence of the NPPF being adopted in July 2018 that the authorities have considered it necessary to expand the review into employment land requirements.⁴¹ Thus, the review was not a plan led solution that was part of the JCS strategy for employment land. Rather, the review has been a reaction by the authorities, presumably on the basis that the JCS employment strategy requires reconsideration. The Appellant would agree with this – on the basis that the strategy has already been demonstrated as being reliant on assumptions that have proven incorrect.

5.14 Accordingly, not only does the acute need for B1 office space in Cheltenham underscore the benefits of both appeal proposals. But the deficiencies in the employment land strategy demonstrate why the tilted balance per NPPF 14(d) is engaged.

6. Application of the tilted balance

6.1 The Appellant's firm submission is that there is no conflict with the plan. The Appellant's secondary case (which relies on the tilted balance) serves to underscore how unreasonable the Council have been in refusing planning permission.

6.2 Even if it was thought by the Council that there was some conflict with the development plan (which could only be with policies SD4 and CP7 in respect to Appeal A as a matter of law), the Appellant submits that Appeal A ought to still be considered within the tilted balance per paragraph 11(d).

⁴¹ Staddon PoE p.11 para 6.6

- 6.3 In XX it was suggested that the employment policies cannot be rendered out of date on the basis that there is no specific mechanism for doing so, as there is with 5 year housing land supply. That is wrong. Whilst it is accepted that there is no specific trigger to engage the tilted balance when contemplating an employment scheme, that does not mean that the tilted balance cannot be engaged. This point was made abundantly clear by the Supreme Court in Richborough Estates Partnership LLP v Cheshire East BC [2017] UKSC 37:

55 It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.

58 In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as "out-of-date" to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

- 6.4 In this instance, there are a number of reasons why the tilted balance is engaged as a consequence of the development plan policies being out of date:
- i. The JCS was adopted based on a strategy and assumptions that have been proven to be incorrect. This has led to a significant

shortfall of employment land provision against the identified minimum requirement in the JCS;

- ii. The Council themselves have recognised the need to review the JCS employment strategy through a review, notwithstanding that this was not envisaged in the JCS strategy;
- iii. The JCS only provides broad-brush policies⁴² on employment land provision. In the absence of the relevant detail, the strategy remains incomplete and thus out of date (which is comparable with the Moulton argument – albeit the same point was made there in the context of housing policies);
- iv. The JCS was adopted with no identified retail strategy, which necessitated an immediate review.

6.5 Within the context of the tilted balance per paragraph 11(d), any design harm does not significantly and demonstrably outweigh the harm – which Mr Staddon agreed.

6.6 Furthermore, as Mr Griffin maintained, even if the tilted balance is not engaged (which it plainly is), any design harm clearly would not outweigh the significant benefits of the development proposals.

7. Delivery

7.1 The planning history of the Site invites the following obvious question: why has the Site not come forward for B1 office development to date? The Appellant's answer to that question is that the absence of ancillary uses has made the Site less attractive to the

⁴² As in the Moulton appeal decision – CD 14 para 45

market and thus undeliverable. The Council's answer is that they are unsure.

- 7.2 Before engaging with this debate, it is worth setting it in its proper context. The relevance of this debate is that it speaks to why the non-B1 uses at the Site are a significant benefit of both appeals. Indeed, it was not disputed by Mr Staddon that the non-B1 uses are employment generating uses that are a benefit. Thus, the relevance of this debate is simply that it informs the extent of weight to be afforded to this benefit.
- 7.3 What this debate does not relate to is whether the proposals conform with the development plan. Indeed, there is no policy or otherwise in either the development plan or NPPF which says that non-B1 uses are only acceptable where they assist with the delivery of B class employment land. Furthermore, there is no policy in the development plan that invites a decision maker to determine an acceptable balance between B1 and non-B1 uses.
- 7.4 None of the Council's witnesses professed to have any particular experience in business parks. By contrast, a number of the Appellant's witnesses (including Mr Fong, Mr Pratt and Mr Tucker) all gave details of their considerable experience associated with promoting business parks through the planning system.
- 7.5 Mr Fong and Mr Pratt both gave evidence that the absence of non-B1 uses rendered the extant permission undeliverable. Indeed, it was accepted by officers in determining Appeals A and B that the non-B1 uses facilitate the provision of B1 uses:⁴³

6.6.9 Officers accept the principle that some non-B1 uses within a business park environment can make it more attractive to businesses

⁴³ CD 4.2

who are considering potential locations for office accommodation, thereby facilitating economic development.

7.4 ... The inclusion of non B1 uses on the Site, through the provisions of the s.106, will facilitate the provision of employment provision on the site, do not dilute the principle purpose of the site to an unacceptable degree and in themselves provide employment opportunities

- 7.6 Similarly, the LEP⁴⁴ specifically make the point that non-B class uses are required to secure the delivery of B class uses. This is also consistent with the correspondence from Hawkins Watton, the most active office agent in Cheltenham,⁴⁵ and John Ryde Commercial.⁴⁶ It is noteworthy that the latter correspondence from John Ryde Commercial is dated 28th March 2017 (long before an appeal was contemplated), where the following was written:

Furthermore, one of the considerations that office occupiers considering space on a business park have to make is the trade-off between more open plan space, with their own front door and a better parking provision against the retail and leisure convenience that a town centre offers. Providing some form of on-site retail provision, such as that proposed, significantly minimises the impact of this. If there were to be no such complimentary uses on the site, it would likely be too big a shift in environment for many businesses (including the occupier who I am representing in discussions for a unit on the site) and their workforce.

- 7.7 The Appellant has provided details of a significant number of other business parks where non-B1 uses are present on Site. Indeed, the only exclusive B class employment site that the Council have raised is

⁴⁴ Griffin Appendix 3

⁴⁵ Pratt PoE Appendix 1 letter from Hawkins Watton

⁴⁶ Pratt PoE Appendix 2

at Hatherley Place, which has not actually been delivered, and is only a single office building of 3,065m². Moreover, the development is both smaller and literally next to a large Asda superstore.

7.8 The Council have focussed on the lack of marketing, seemingly in an attempt to explain why the Site has not come forward. However, this demonstrates an ignorance of the market. As Mr Pratt made clear, the marketing of a site such as this which is intending to secure specific occupiers requires a more bespoke marketing arrangement.

7.9 Mr Hinton's statutory declaration⁴⁷ makes clear that it was only when non-B1 uses were proposed that occupiers began to approach Hinton with a view to securing office space. Prior to then, no such occupiers were interested.

7.10 The Inspector has remarked on the 'credibility gap' between, on the one hand, the acute need for B1 office space and, on the other hand, the fact that no B1 office development has come forward at this Site for 12 years. This underscores the argument associated with ancillary uses. Indeed, it is not simply that occupiers want B1 office space, but they want the right sort of B1 office space set in a modern business environment. Securing an office in a business park comprised exclusively of B1 office space is not attractive to the market – all the evidence points only one way on this matter. Indeed, this is why this Site has not come forward. Furthermore, it also explains why many developers are leaving Cheltenham⁴⁸ – not just because of the lack of office space, but also the right office space in a modern business environment.

7.11 It is no coincidence that it was only through promoting non-B1 uses at the Appeal Site that Hinton have now been able to secure

⁴⁷ Pratt PoE Appendix 4

⁴⁸ Per Dr Athey's evidence

agreements with named occupiers⁴⁹ – whereas previously they have been unable to.

8. Benefits

8.1 There are numerous benefits associated with both appeal proposals, that are addressed below.

8.2 Provision of B1 office space

8.2.1 Mr Staddon accepted that significant weight ought to be afforded to the provision of B1 office space through both appeal proposals. For the avoidance of doubt, this weight is not tempered by virtue of the fact that the extant permission offered more office floorspace or that there could be other hypothetical schemes on the site that offer more B1 office floorspace. Indeed, every scheme must be determined on its own merits. It is unknown to planning law to undervalue one scheme by reference to an extant permission or possible hypothetical alternatives at a Site.⁵⁰

8.3 Economic Benefits

8.3.1 It is common ground that Appeals A and B would offer significant economic benefits⁵¹ and that this should be afforded significant weight⁵². The Council sought to introduce an entirely redundant dispute about leakage as being a point of disagreement between Dr Athey and Mr Hardisty. However, the fact is that Mr Hardisty did consider leakage in considering both the JCS and Cheltenham area. His evidence is more robust for having done so. In any event, Dr Athey

⁴⁹ Including Bloor Homes and Ridge and Partners LLP

⁵⁰ Note that a fallback argument does involve consideration of extant permissions. A fallback argument is predicated on the notion that a scheme is rendered acceptable by reference to what could otherwise be done on a site. However, there is no case law or appeal decision which makes the contrary argument – ie. that a development could be considered unacceptable by virtue of what could otherwise be done on a site.

⁵¹ SoCG para 6.19 p. 22

⁵² Staddon XX

accepted that Mr Hardisty's evidence was robust and that there was no material difference between their assessments.

8.3.2 Furthermore, whilst Dr Athey also sought to consider the economic benefits associated with a series of hypothetical schemes (the details of which were not before the inquiry) this again is an entirely pointless argument. Indeed, it is not even a material consideration that there could be an alternative 'better' scheme (and there is no appeal decision, legal judgment or otherwise to say otherwise).

8.3.3 Dr Athey's evidence in this regard simply reflected the fact that the Council have found themselves in the undesirable position of defending the indefensible. To that end, the Council have sought to present a series of pointless arguments/disputes (including Dr Athey's consideration of alternative hypothetical schemes) to flesh out their case and distract from the actual focus of the appeal - the development plan policies.

8.4 Mixed uses

8.4.1 The appeal proposals would offer a mix of uses and job opportunities, which should be afforded moderate weight in the planning balance.

8.4.2 The NPPF recognises that mixed use developments are desirable - per paragraph 118(a). Indeed, the JCS makes clear that a mix of future job opportunities is just as important as specifically allocating parcels of land for employment provision.⁵³

8.4.3 Whilst Mr Staddon sought to argue that the mix of uses is not required⁵⁴, on the basis that there is a mix of uses in the area, that argument could be relied upon in any town centre location - which

⁵³ CD 13.1 p.29 para 4.115

⁵⁴ Staddon PoE para 7.51

would effectively nullify the NPPF's support for mixed use development.

8.5 Non B1 uses

8.5.1 The non-B1 uses at the Site ought to be afforded significant weight. As explained above, this is owing to the fact that these uses will assist with facilitating the B class employment.

8.5.2 Furthermore, as recognised in the JCS, the non-B1 uses contribute to jobs, which are predicted to provide two-thirds of the projected growth across the area.⁵⁵ Indeed, all of the non-B1 uses would still provide employment and contribute to the JCS objective of securing economic growth.

8.6 Under-utilised land

8.6.1 Limited weight ought to be afforded to the fact that the Site constitutes under-utilised land per paragraph 118(d) of the NPPF. There are no technical constraints to developing the Site and indeed the intention has been to develop the Site for over 12 years. Thus, it is currently under-utilised in its current state as a greenfield site with no function/use. The appeal proposals would bring the Site into use for an identified need.

8.7 Sustainable location

8.7.1 The appeal proposals offer B class employment in a sustainable location with good links to Cheltenham and the local area. This is a material consideration that ought to be afforded limited weight in the planning balance.

9. The Council's arguments

⁵⁵ CD 13.1 p. 29 para 4.1.15

9.1 Rather than engage with the development plan policies in this matter, the Council have sought to present a series of obviously incorrect arguments in support of their case.

9.2 Dilution of character

9.2.1 The Council have argued that the non-B1 uses dilute the character of the Site as a B1 business park. There is nothing in development plan policy that supports this proposition or even relates to this argument.

9.2.2 To the extent that character is relevant, it is addressed in the urban design policies. If it is contended that 'character' addresses something outside the remit of the urban design policies, it can only relate to some wider planning policy concern. However, even if that is the case, the Council agreed that both appeals were of an appropriate scale and character in the SoCG, which Mr Staddon did not seek to dispute or resile from.

9.2.3 Thus, it remains entirely unclear what relevance the Council's argument here has to do with relevant development plan policies. To the extent that character is relevant beyond the scope of urban design, it is an agreed matter between the parties.

9.3 Loss of B1 office space

9.3.1 The Council's case appears to be focussed on the loss of B1 office space. However, that concern is misplaced, on the basis that there is no existing B1 office space at the Site to be lost. Whilst there is less B1 office space than the extant permission, that does not give rise to planning harm (and again, there is no legal judgment, appeal decision or otherwise that even says that this is a material consideration).

10. Other matters

10.1 Highways

10.1.1 Whilst residents did raise concerns as regards highway impacts, there has been no technical evidence presented in this regard. Indeed, there is no objection raised by Gloucester County Council (as local highway authority) or Highways England. Furthermore, there is no evidence that supports the view that the residual cumulative impacts on the road network would reach the high threshold of being severe (per paragraph 109 of the NPPF).

10.1.2 These concerns were addressed in detail in the officer report.⁵⁶

10.2 Flood Risk/drainage

10.2.1 Contrary to the view of local residents, it was agreed with the Council that there are no objections to either Appeal A or B on flooding or drainage grounds.⁵⁷ No technical evidence has been presented to the contrary. Indeed, these issues are only relevant in so far the imposition of conditions is concerned.

10.2.2 These concerns were addressed in detail in the officer report.⁵⁸

10.3 Noise/air quality

10.3.1 Contrary to the view of local residents, it was agreed with the Council that there are no concerns with noise⁵⁹ and air quality⁶⁰. There has been no technical evidence presented to the contrary. It appears as if the concerns in this regard have been focussed on the difference between the extant permission (which would likely not be open at weekends) and the proposals. However, as stated above, the acceptability of Appeals A and B are determined on their merits, not by reference to the extant permission.

⁵⁶ CD 10.2 paras 6.3.1 – 6.3.12

⁵⁷ SoCG p. 21 para 6.12

⁵⁸ CD 10.2 paras 6.8.1 – 6.8.8

⁵⁹ SoCG p.21 para 6.7

⁶⁰ SoCG p.21 para 6.8

10.3.2 These concerns were addressed in detail in the officer report.⁶¹

10.4 **Green Belt**

10.4.1 Contrary to the views of local residents, the Site is not in the Green Belt. This is not a subjective question. Rather, as a matter of fact, the JCS removed the Site from the Green Belt and thus Green Belt policy is no longer relevant. It is not open to this appeal to revisit the merits of that decision.

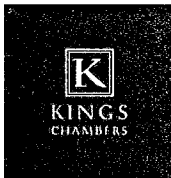
10.4.2 These concerns were addressed in detail in the officer report.⁶²

11. **Conclusion**

11.1 For all these reasons, therefore, the Appellant invites the Inspector to grant planning permission for both Appeals A and B, subject to suitably worded conditions.

Killian Garvey

15th January 2019



⁶¹ CD 10.2 paras 6.7.1 – 6.7.5

⁶² CD 10.2 paras 6.10.1 – 6.10.3