

Ipswich Borough Council

FAO: Lisa Evans

By email

7th February 2025

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

Appeal Reference: APP/R3515/W/24/3350674

Application Reference: IP/24/00172/OUTFL

Site: Land north-east of Humber Doucy Lane, Humber Doucy Lane, Ipswich

Proposal: Hybrid Application – Full Planning Permission for the means of vehicle, cycle and pedestrian access to and from the site. Outline planning application (all matters reserved) for a mixed use development for up to 660 dwellings (Use Class C3), up to 400 sq m (net) of non-residential floorspace falling within Use Class E and/or Use Class F2(b), an Early Years facility, and associated vehicular access and highway works, formal and informal open spaces, play areas, provision of infrastructure (including internal highways, parking, servicing, cycle and pedestrian routes, utilities and sustainable drainage systems), and all associated landscaping and engineering works. (THE APPLICATION IS A CROSS-BOUNDARY APPLICATION AND IS LOCATED IN BOTH IPSWICH BOROUGH COUNCIL AND EAST SUFFOLK COUNCIL).

Sport England Reference: PA/24/E/IP/67308

We write to the Local Planning Authority to address the queries raised by the Planning Inspector regarding the planning appeal above.

The queries raised by the Planning Inspector are set out below:

- I would like to fully understand from the planning witnesses what they consider to be the appropriate policy approach to this issue. This should include national policy, noting the SE document refers to the 2023 NPPF.
- This would include views on approaches to mitigation for loss.
- 5.7 of SE document makes a reference to the 'appeal site' as a whole – what would the witnesses views be on this?
- Para 6.9 – please explain the Ipswich Open Space, Sport and Recreation Facilities Study 2009 – how does it fit in and is there a copy in the CD's as I could not see it.
- Para 6.20 makes a ref to another inspector DL – I could not find it in the CD – can both witnesses look at it and if you consider it is relevant add it as an inquiry document and give me your views on its relevance.

The above queries are addressed in turn below.

- **I would like to fully understand from the planning witnesses what they consider to be the appropriate policy approach to this issue. This should include national policy, noting the SE document refers to the 2023 NPPF.**

Sport England outlined their perspective on the appropriate policy approach regarding the assessment of the loss of playing field in their Statement of Case (Soc) in Section 2.0.

To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal (Paragraph: 006 Reference ID: 21b-006-20190315 of the Planning Policy Guidance).

Sport England's Playing Fields Policy and Guidance is in line with the Government's commitment to the protection of playing fields set out in paragraphs 103 and 104 of the Framework. Sport England considers that its policy and supporting guidance provides helpful clarification and additional guidance to assist all with assessing planning applications affecting playing fields.

In terms of the application and the loss of playing field, the local policies considered relevant are Policy ISPA4: Cross Boundary Working to Deliver Sites and Policy DM5: Protection of Open Spaces, Sports and Recreation Facilities, in the Ipswich Core Strategy and Policies Development Plan Document (the 'Development Plan').

Policy ISPA4, in the Development Plan, states that,

'Ipswich Borough Council will work with neighbouring authorities to master plan and deliver appropriate residential development and associated infrastructure on identified sites within the Borough but adjacent to the boundary where cross boundary work is needed to bring forward development in a coordinated and comprehensive manner.'

Within Policy ISPA4, Land at the northern end of Humber Doucy Land, which forms the appeal site, is referenced, and identified on the Policies Map as ISPA4.1. Policy ISPA4 expects development to comply with a suite of criteria, including replacing sports facilities if required to comply with Policy DM5 (see criteria (f) (ii) of Policy ISPA4) (see Appendix B1 for the full wording of Policy ISPA4).

As the proposal would result in the loss of a sports facility (a playing field), Policy DM5, in the Development Plan, is engaged with as required by Policy ISPA4. Policy DM5 outlines that development involving the loss of open space, sports or recreation facilities will only be permitted if a) the site or facility is surplus in terms of all the functions an open space can perform, and is of low value, poor quality

and there is no longer a local demand for this type of open space or facility, as shown by the Ipswich Open Space, Sport and Recreation Facilities Study 2009 (as updated in 2017) and subsequent update; or b) alternative and improved provision would be made in a location well related to the users of the existing facility; or c) the development is for alternative sports and recreation provision, the need for which clearly outweighs the loss. The open space, sports and recreational facilities protected by this policy include all the different types shown on the Policies Map including playing fields, allotments and country park.

As a material consideration, at the time of submitting Sport England's Statement of Case, the National Planning Policy Framework 2023 ('the Framework') was relevant, specifically paragraphs 102 and 103. The Framework has since been revised and superseded by the National Planning Policy Framework December 2024. As a result, paragraphs 102 and 103 of the Framework (2023), have become paragraphs 103 and 104 of the Framework (2024). The wording of the paragraphs remains broadly similar, with the exception that paragraph 104 mentions formal play spaces alongside playing fields.

Paragraph 104 of the Framework (2024) in particular, deals with the loss of open space, sports and recreational land, including playing fields. Paragraph 104 of the Framework (2024) states that existing open space, sports and recreational buildings and land, including playing fields and formal play spaces, should not be built on unless a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

The other document referred to is Sport England's Playing Fields Policy and Guidance Document (December 2021). The Framework, in paragraph 104, incorporates the essence of Sport England's Playing Fields Policy and its Exceptions as the basis for protecting playing fields from development. The Policy document presents Sport England's policy on planning applications affecting playing field land ('SEPPFG'). This document attracts great weight as outlined at paragraph 16 of the appeal referenced APP/P4605/W/24/3342499.

- **This would include views on approaches to mitigation for loss.**

In terms of mitigation, Policy DM5 of the Development Plan states that *'Development involving the loss of open space, sports or recreation facilities will only be permitted if... b) alternative and improved provision would be made in a location well related to the users of the existing facility.'*

The Framework (2024) sets out in paragraph 104 that *'existing open space, sports and recreational buildings and land, including playing fields and formal play spaces, should not be built on unless... b) the loss resulting from the proposed*

development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.'

In relation to the quality and quantity of replacement provision, case law¹ highlights that "equivalent or better provision" necessitates an assessment of both aspects, allowing for one to offset the other in certain circumstance. The implementation of the Development Plan and Framework (2024) policies should have regard to this interpretation of policy, encouraging decision makers to exercise planning judgment while considering pertinent factors.

Policy Exception 4 of SEPFPG states the area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field: of equivalent or better quality, and of equivalent or greater quantity, and in a suitable location, and subject to equivalent or better accessibility and management arrangements.

Paragraph 57 of SEPFPG provides advice on what details Sport England expect an application to provide in order to meet with Exception 4. It advises that,

'Where a replacement area of playing field and associated facilities can be provided which are equivalent or better than the existing area of playing field and its facilities, it may be beneficial to sport to take this opportunity. Along with presenting the quantity (area) of the proposed replacement provision, Sport England will expect details to be submitted which clearly demonstrate that any proposed replacement area of playing field and ancillary facilities can be delivered (including to what timescale), the proposed access and management arrangements and how equivalent or better quality will be achieved and maintained.'

The first bullet point of Exception 4 requires the new area of playing field to be 'of equivalent or better quality.' This is also included in NPPF paragraph 104 (b). Consideration should be given as to whether the mitigation is equivalent or better qualitative replacement.

Paragraphs 58 and 59 of SEPFPG provides the following clarification of what is meant by 'equivalent quality',

"58. A new area of playing field being laid out, drained, maintained and provided with the necessary ancillary facilities so as to have the same capability, functionality and flexibility as the existing area of playing field to accommodate playing pitches, matches, training sessions and other sporting activities.

59. The new area of playing field should be capable of providing playing pitches and producing playing characteristics, supported by all necessary ancillary facilities to the relevant standards, to allow the same level of

¹ [R\(Brommell\) v Reading Borough Council \[2018\] EWHC3529 \(Admin\), CD J9](#)

competitive play to take place without requiring any additional maintenance input. For example, if a playing field includes a pitch which is used by a senior county league club, then to achieve the equivalent quality the replacement playing field must be capable of providing for this standard of play without any additional costs being incurred by users, when compared to use of the existing site. This requirement applies equally to the provision of ancillary facilities, such as changing rooms, car parking, fencing and artificial sports lighting.”

The following advice is provided at paragraph 60 of SEPFPG on how equivalent quality should be secured:

“60. Details should be submitted with any application proposing replacement provision which include an assessment of the performance of the existing area of playing field, the programme of works (including pitch construction) for the creation of the proposed replacement area of playing field (to ensure it is developed to the required quality), along with a management and monitoring plan. The above details should be undertaken and developed by a suitably qualified and experienced sports turf consultant. Replacement areas of playing field and facilities should satisfy appropriate Sport England and national governing body of sport design guidance, and have regard to Sport England’s ‘Equivalent Quality Assessment of Natural Turf Playing Fields’ briefing note (see Annex A), especially where the replacement area of playing field is being provided on the footprint of previous buildings, as is the case in many school redevelopments.”

The second bullet point of Exception 4 requires the new area of playing field to be ‘of equivalent or greater quantity.’ This is also included in NPPF paragraph 104 (b).

The Development Plan (Policy DM5), the Framework (2024) (paragraph 104), and SEPFPG (exception 4) also stipulates that the replacement provision should be in a suitable location. Policy DM5 in the Development Plan requires the replacement provision to be well related to the users of the existing facility.

Paragraph 66 and 67 of SEPFPG explains a suitable location to be,

‘66. A place to which current or former regular users of a playing field, or those who may want to use the playing field now or in the future, can conveniently gain access by a variety of transport modes.

67. The location of playing fields relative to those who use them, or who may wish to do so, is an important consideration in determining whether there is sufficient supply. A simple geographical spread is not the appropriate test to apply in this context. For example, it is more important to understand how convenient the location of a playing field is for its

regular users (e.g. 'home' sports teams or schools). This can vary, for example if the users are predominantly juniors, or associated with an organisation with nearby headquarters, then only a playing field very close by is likely to be in a suitable location. To the members of a major sports club, who travel from a wider area, a change of location of a greater distance may be acceptable.

68. Access by public transport, cycling and walking are also relevant considerations. Sport England will assess what it considers to be a suitable location in each case, taking into account the convenience of the location to current, appropriate former, and potential users of a playing field, including for example their competitive play, training and practice needs.'

The final bullet point of Exception 4 relates to "equivalent or better accessibility and management arrangements." This element of Policy Exception 4 is not included within NPPF paragraph 104 (b) or Policy DM5 of the Development Plan.

Paragraph 64 of SEPPFG advises that,

'64. Equivalent or better accessibility and management arrangements are required to minimise any detrimental impact on the users of an existing area of playing field from relocation to a new area of playing field. For example, if an existing area of playing field is available to the local community through a formal community use agreement, then an agreement securing equivalent or better community use of the new area of playing field will be required.'

In terms of management arrangements, as outlined in paragraph 65 of SEPPFG, it advises that,

'65. All aspects that govern the running of a playing field including: ownership arrangements, rental and maintenance costs, management charges, opening hours, community access, staffing levels, and any restrictive covenants. They also include revenue generating activities that support the running of a playing field such as clubhouse social facilities, bars, catering and advertising.'

It should be noted that, in providing mitigation, as explained at paragraph 69 of the SEPPFG,

'69. Intensification or increasing the use of existing areas of playing field on the application site or off site, including marking out playing pitches on areas of a playing field not currently marked out for playing pitches, does not meet the requirements of this Exception 4. This is because it does not provide a new area of playing field (quantity) and may also cause deterioration in the quality of existing playing fields.'

In terms of securing replacement playing field, SEPFPG, at paragraphs 61 and 62 advises how a replacement area of playing field can be secured and when it should be available for use. It advises that,

'61. The delivery of a replacement area of playing field will need to be secured by means of a legal agreement between the applicant and the local planning authority, or by way of a negatively worded condition attached to a planning permission (referred to as a Grampian style condition). The replacement area of playing field and associated facilities should be available for use prior to the implementation of any development affecting the existing area of playing field, or the loss of any sporting use of the existing area of playing field, in order to secure continuity of use and certainty of re-provision.

62. There may be exceptional circumstances, such as site constraints, which prevent a replacement area of playing field being provided in advance of the development on, or loss of sporting use of, the existing area of playing field (e.g. in educational renewal and rationalisation programmes). Where exceptional circumstances exist, an appropriate alternative timescale securing the delivery of the replacement provision should be proposed and agreed. Sport England will also expect all reasonable steps to be taken to secure suitable transitional arrangements for, and which are acceptable to, the displaced users to enable continuity of sporting activity.'

There may be occasions where the loss of an area of playing field with a natural grass surface is proposed to be replaced in a different location by a new area of playing field with an artificial surface. Sport England may not raise an objection to such a proposal, so long as the new location is not an existing area of playing field, and it is satisfied that the benefit to sport of providing the artificial surface outweighs any detriment to sport resulting from the loss of the natural grass surface (see paragraph 70 of SEPFPG).

Sport England do not accept enabling development as an exception to justify the loss of playing field, where it has been demonstrated the playing field land is required to meet an identified community sport need, as is the case with this application (see paragraph 80 of SEPFPG).

Sport England advised in our letter dated 18th April 2024, that we may reconsider our objection should amended/additional details be provided to address Exception 4 of SEPFPG. As the planning application was refused, and there was no pre-application engagement with the Applicant, no discussions between Sport England and the Applicant concerning a mitigation package have been undertaken. Should a mitigation package be pursued, Sport England requests to be consulted and would subsequently seek input from the RFU.

- **5.7 of SE document makes a reference to the 'appeal site' as a whole – what would the witnesses views be on this?**

Sport England expresses their apologies to the Inspector for any confusion regarding this issue. To clarify, the reference 'appeal site' in paragraph 5.7 relates to the playing field that is located within the appeal site, used by Ipswich Rugby Club, and due to be lost in its entirety and not replaced as a direct result of the proposal.

- **Para 6.9 – please explain the Ipswich Open Space, Sport and Recreation Facilities Study 2009 – how does it fit in and is there a copy in the CD's as I could not see it.**

Reference is made to the Ipswich Open Space, Sport and Recreation Facilities Study 2009 (as updated in 2017) within the first criterion of Policy DM5, (a), which states that the site or facility is surplus in terms of all the functions an open space can perform, and is of low value, poor quality and there is no longer a local demand for this type of open space or facility, as shown by the Ipswich Open Space, Sport and Recreation Facilities Study 2009 (as updated in 2017) and subsequent update.

In Paragraph 2.2 of Ipswich Open Space, Sport and Recreation Facilities Study 2017, it advises that,

'The NPPF advises that planning policies for open space, sport and recreational facilities should be informed by an up to date assessment of need for their provision (paragraph 73). The Council published an Open Space Sport and Recreation Study in 2009, which informed standards for provision set out in the adopted Core Strategy and Policies Development Plan Document 2011. It has since been updated by the Council's Parks and Cemeteries Service and revised standards incorporated into the adopted Ipswich Local Plan (2017).'

The Ipswich Open Space, Sport and Recreation Facilities Study 2009 was updated in 2017 to incorporate the revised standards in the adopted Local Plan (2017).

Within the supporting text of Policy DM5 it advises that the Council carried out an open space, sport and recreation facility audit and needs assessment, as required by the NPPF, which identified the typology of open spaces, sport and recreation facilities, assesses the quantity and quality of provision in Ipswich and set out standards for the quantity, quality and accessibility of provision. The typology, together with the quantity and accessibility standards, is reproduced in Appendix 3 of the Development Plan. Quality standards can be found in the Ipswich Open Space, Sport and Recreation Facilities Study 2009 (as updated in 2017) ("the SPD") and subsequent update as a result of the Council's Open Space and Biodiversity policy (paragraph 9.43 of the Development Plan).

The supporting text of Policy DM5 explains that the need for formal sports provision was identified through the 2009 Open Space, Sport and Recreation Study, and was updated by the production of the Indoor Sports Facility Strategy and the Ipswich Borough Council's Playing Pitch Strategy ("IBCPPS"). The findings of the IBCPPS informed whether a facility is surplus and where/what alternative provision may be appropriate in the SPD (paragraph 9.43 of the Development Plan). The IBCPPS was last published in 2015 and there have been no further reviews of the IBCPPS. The IBCPPS, as explained in more detail at paragraphs 2.51 to 2.52 in Sport England's SoC, is considered out of date by Sport England. Since the IBCPPS findings are outdated, Sport England express concerns about the reliability and robustness of the SPD.

The 2009 study can be viewed here – [Ipswich Open, Sport and Recreation Facilities Study 2009](#)

Para 6.20 makes a ref to another inspector DL – I could not find it in the CD – can both witnesses look at it and if you consider it is relevant add it as an inquiry document and give me your views on its relevance.

This information can be found in Appendix A4 of Sport England's Statement of Case. For your convenience, I have attached it to this email.

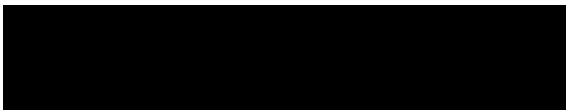
Sport England considers it to be relevant because the Inspector of the appeal decision at Land off Barrows Lane (former Coop playing pitches), Yardley (appeal reference APP/P4605/W/24/3342499) in paragraph 17 notes that '*Non-attendance at the inquiry does not reduce the weight of this (Sport England's) objection, given that the body (Sport England) is a statutory consultee on this topic. It is relevant and attracts great weight.*'

If you would like any further information or advice, please contact the undersigned.

Yours sincerely,

Clare Howe

Clare Howe MRTPI Msc BA(Hons)
Planning Manager





Appeal Decision

Inquiry held on 23, 24, 25, 26, 29, 30 and 31 July, and virtually on 2 August and 30 August & 2 September 2024

Site visits made on 23, 24 and 25 July 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2024

Appeal Ref: APP/P4605/W/24/3342499

Land off Barrows Lane (former Co-op playing pitches), Yardley, Birmingham B26 1SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Persimmon Homes against the decision of Birmingham City Council.
 - The application Ref is 2022/06190/PA.
 - The development proposed is erection of up to 87 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A case management conference was held on 10 June 2024 to discuss procedural matters in connection with the Inquiry. The main parties took part in the CMC and no discussion was held about the merits of the case.
3. A consultation on a revised version of the National Planning Policy Framework (the Framework) commenced on the 30 July 2024. The parties were invited to comment on any relevant proposed changes during the inquiry. I have taken account of these accordingly.
4. A draft version of the planning obligation was discussed during the inquiry. The final signed S106 planning obligation was completed on 13 September 2024 and submitted on the same date.

Main Issues

5. The main issues are:
 - the effects of the proposal on the quality and quantity of sports pitches in the locality; and
 - whether the Council can demonstrate an adequate housing land supply and considerations relating to affordable housing and housing mix.

Reasons

Proposal and context

6. The scheme is for 87 dwellings on part of a site which has a sports use as playing fields but which is in private ownership. The appeal site and adjoining land within the 'blue line' area, though in a single ownership, is being treated as two distinct parts for the purposes of the appeal. The appeal 'red line' site area includes the pavilion, and other external areas which broadly comprises former bowling greens, a mini football pitch, car parking area and two football pitches capable of being used for up to 11v11 football matches. The 'red line' site area measures around 3.48 hectares in area and this is where the dwellings would be located, along with a replacement pavilion, associated infrastructure and landscaping.
7. The 'blue line' land includes a cricket pitch which is currently used by around 2 or 3 men's teams. They also use the ground floor areas of the pavilion building, despite its current relatively poor condition. The proposals include the enhancement of the cricket square and outfield to allow for an intensification of its use for cricket purposes, but with additional mini football pitches on the outfield to allow winter use by small-sided youth teams.

Quality and quantity of sports pitches

Policy Context

8. In terms of the development plan context, Policy TP9 of the Birmingham Development Plan (2017) states that: "*planning permission will not normally be granted for development on open space except... where:*
 - *It can be shown by an up to date assessment of need that the open space is surplus taking account of a minimum standard of 2 ha per 1,000 population and the accessibility and quality criteria listed below;*
 - *The lost site will be replaced by a similar piece of open space, at least as accessible and of similar quality and size...*

Playing fields will be protected and will only be considered for development where they are either shown to be surplus for playing field use, taking account of the minimum standard of 1.2 ha per 1000 population, through a robust and up to date assessment and are not required to meet other open space deficiencies, or alternative provision is provided which is of equivalent quality, accessibility and size".

9. It is clear from the policy wording of TP9 that additional considerations apply to playing fields, and this differs from those that solely apply to open space.
10. Policy TP11 of the BDP is a broadly supportive policy that seeks to ensure the provision and availability of facilities to enable people to take part in formal and informal activities that contribute to healthier lifestyles which aligns with the overall aims of the Framework. It also indicates that the City Council will keep the provision of sports facilities under review in light of changing demands and preferences, and where deficiencies and oversupply are identified, an up-to-date assessment will aim to work with partners to address this. It also goes on to say that where there is identified need for particular sports and physical recreational facilities, the loss of existing sports facilities for these sports will

not be allowed unless an equivalent or better quantity and quality replacement provision is provided.

11. The Council introduced BDP Policies TP28 and TP37 in its Planning Proof of Evidence (PoE) despite that these are not set out in the reason for refusal. Policy TP28 relates to the location of housing avoiding conflict with other BDP policies, such as which relate to the protection of open spaces. Policy TP37 generally concerns health and improving the quality of life of residents, including making provision for open space. The Policies support, but do not introduce specific requirements over and above Policies TP9 and TP11.
12. The Framework sets out in paragraph 103 that *existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*
 - a) *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
 - b) *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
 - c) *the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*
13. Having regard to the evidence, the BDP was examined for consistency under the Framework of 2012, which in respect of paragraph 103 has remained identical with the 2023 version (save for the paragraph number). As it was found to be consistent with it, I do not conclude otherwise. The local articulation of standards that goes beyond paragraph 103 does not automatically render it as out of date given that the development plan is the starting point for decision-making.
14. That said, there is more recent caselaw¹ that emphasises that 'equivalent or better provision' involves consideration of both quantity and quality; with one being able to offset the other in certain circumstances. The application of the development plan and Framework policies must have regard to this interpretation of policy and promotes decision makers to make a planning judgement taking account of the relevant factors.
15. Therefore, I shall have regard to the development plan as the starting point with regard to the implications of the caselaw around quality being capable of offsetting quantity. I shall also have regard to the Framework as a relevant material consideration.
16. The other guidance document referred to in the decision notice is Sport England's Playing Fields Policy and Guidance Document of 2018 (PFPG). This document attracts great weight. Other documents also published by Sport England of relevance to the appeal and referred to during the inquiry include: Playing Pitch Strategy Guidance (2013) and Natural Turf for Sport Design Guidance Note (2011 Rev 002).
17. Sport England has objected to the proposal in its capacity as statutory consultee. They did not appear at the inquiry. The appellant has advised caution on attributing this objection considerable weight due to its lack of

¹ R(Brommell) v Reading Borough Council [2018] EWHC3529 (Admin), CD J9

participation. They also claim its' objection is out of date relative to the material before the inquiry. I disagree. Non-attendance at the inquiry does not reduce the weight of this objection, given the body is a statutory consultee on this topic. It is relevant and attracts great weight.

Surplus to requirement

18. The reason for refusal by the Council refers to the failure to provide adequate mitigation of 'equivalent / improved facilities' to offset the loss of the sports pitches from the site. This reason was framed in the context of the appellant's acceptance in the planning application documentation that the playing fields were not surplus to requirement, but that suitable mitigation and equitable replacement for the loss of the playing fields would be achieved instead. The argument that the pitches are surplus to requirement was introduced by the appellant in the appeal documentation.
19. The appellant's evidence suggests that the football pitches have been disused for around the last seven years². An overview summary³ of the reasons behind the closure are explained as resulting from a washout winter in 2014. This deterred any Clubs from returning the following season, owing to high maintenance overheads and insufficient income, even though the rent rates were apparently set lower than other facilities in the area. There was also an earlier failed lease arrangement. Nonetheless, Paragraph 103 of the Framework does not differentiate between used or unused playing fields. Nor does it differentiate between playing fields in public or private ownership.
20. Notably, however, residents of the surrounding community and a letter from a football club that previously used the facility allege that the reasons for its disuse differs from the account being provided by the appellant, for all but cricketing purposes.
21. The appellant accepts that if the development were to go ahead, there would be 1.08 hectares of playing fields available per 1,000 population relevant to the area surrounding the site. Using this metric, the evidence does not support that the playing fields on the site are surplus to the minimum of 1.2 hectares per 1,000 population Policy TP9 requirement, and there is a policy conflict.
22. An alternative metric was introduced by the appellant's evidence through the Birmingham City Council Playing Pitch and Outdoor Sports Strategy, September 2023 (the PPOSS), in the form of assessing match equivalent sessions (MES). I am cognisant that the PPOSS was only published by the Council in February 2024 after being endorsed through the stakeholder engagement protocol, and not at the September 2023 cover date. The previous 2017 version of the PPOSS was used as the main basis for the Council's decision.
23. When undertaken in accordance with Sport England Guidance⁴, a PPOSS is a document that is intended to have a 3 year lifespan. A 'Stage E' review of a PPOSS can be undertaken on annual basis as part of best practice to keep it up to date, but the effect of not undertaking a Stage E review does not mean that the PPOSS should necessarily be considered out of date within the original 3 year lifespan. The PPOSS is around a year old. It is current, and attracts great weight.

² Ventham PoE

³ ID20

⁴ CD K10

24. For the purposes of the PPOSS and for the most prevalent pitch sport activities in Birmingham, football and cricket, the area was broken down into 10 sub areas. The two most relevant sub areas to the site are Yardley and Hodge Hill. The appeal site being in the former but close to the boundary of the latter. Both sub-areas fall within the larger 'Area 4' which is used in the PPOSS for other analysis purposes. The site is listed in the PPOSS as 'disused' with access removed by the landowner, being last marked out in circa 2018 as two adult pitches (i.e. 11v11), one 5v5 and one 7v7. The appellant's evidence⁵ indicates that an alternative layout in the adult pitch area of 3 youth pitches (2 No 11v11 and one 9v9) would be possible.
25. Under the grass pitch section, Table 2.23 of the PPOSS shows the supply and demand value for adult 11v11 match sessions in the Yardley area at 0, meaning no overplay but no spare capacity, but a shortfall of 1 MES in the Hodge Hill area. Table 2.25 sets out the youth 11v11 data and indicates that there is a shortfall of 6 match equivalent sessions in the Yardley area and a 0 balance at Hodge Hill. In terms of 9v9 pitches, there is a shortfall of 3.5 MES in Yardley area and surplus of 2.5 MES in Hodge Hill. The 2.5 MES spare capacity in Hodge Hill could absorb the undersupply of 3.5 MES in Yardley, leaving a shortfall of 1 MES for 9v9 capacity. There is recorded spare capacity of 7v7 and 5v5 formats in both of the sub areas. Taking future population growth predictions into account to 2042, which is predicated to add another 59 teams, the PPOSS predicts shortfalls across the City in the region of 13 MES for adult 11v11, 21 MES for youth 11v11 and 6.5 MES for 9v9.
26. The appellant's evidence essentially seeks to indicate that the PPOSS, which was expected to have a lifetime of around 3 years, has already become out of date due to material changes that have occurred in the intervening period. It seeks to update the position as at 2024 with a large focus on the Yardley and Hodge Hill area and on football. The evidence⁶ outlines that since the PPOSS was completed in 2023, 2 new artificial grass pitches (AGPs) have opened at Hodge Hill College and King Edward Sheldon Heath Academy and are registered on the FA 3G Pitch Register⁷, meaning that they can be used for match play. The evidence points to these AGPs being used intensively during the 2023/2024 season. The Saltley Wellbeing Centre AGP is also referred to in the appellant's evidence, which was also playable by the time of the agreement of the Sports Statement of Common Ground (Sports SOCG)⁸.
27. The Sports SOCG updated the position to June 2024 and set out that there were 5 additional full size AGPs on the FA 3G AGP Register, plus the youth 11v11 3G at Hodge Hill College, than when compared to the completion of the PPOSS data collection in 2023.
28. The PPOSS sets out that in the 2022/2023 season, 228 affiliated teams were registered as using AGPs for regular match play. Based on the PPOSS data on the number of AGPs in Birmingham and number of teams registered to use them, it is suggested that each AGP provides 10.5 MES per week. However, limited evidence is available to prove that these teams used AGPs exclusively and that the 10.5 MES created by each AGP was within the relevant weekend peak period. This undermines my confidence in the AGP capacity figure.

⁵ Harbridge Rebuttal

⁶ S O'Neill PoE, Erratum and rebuttal

⁷ CD K17

⁸ ID11

29. The further evidence of the appellant models the theoretical use of AGPs by teams for match play purposes, and the possibility of meeting all match needs within the relevant league-specified kick off times within the weekend peak times. This is to demonstrate that the transfer of grass pitches to AGPs is likely. It is suggested by the appellant⁹ that Hodge Hill College and King Edward have, together, created an additional supply of 18.5 MES.
30. However, the 18.5 MES figure divided across the two AGPs does not, in my view, adequately fit within one weekend. This is because there is not sufficient time within opening hours to cater for arrival and changeover times on the pitches, does not allow for specified kick off times where they may occur, nor does it allow sufficient time for teams to warm up adequately and assumes that such would be done off pitch without proof that such warm up areas exist. A greater analysis of what actually happens in terms of match sessions over the course of a weekend at such facilities would be more useful than the partial detail and theoretical calculations provided. Therefore, I regard the figures as painting an overly optimistic picture about how matches could be accommodated from a timing and logistical perspective on the new or improved AGPs, and the MES ratios used have been crudely calculated.
31. On the demand side, the analysis offered by the appellant about the spare capacity of MES initially omitted any reference to the changes in demand that occurred in the same period. This is incorrect, because if the growth in team numbers, taken at face value, is also factored in then there has been a growth in 95 extra teams registering to play in Birmingham in the 2023/2024 season compared to the 2022/2023 data used for the PPOSS. If all were operational teams, they alone would absorb most of the additional AGP MES created before any future housing growth changes are factored in.
32. On further analysis, the appellant's evidence also reduced the extra teams to 44 on the basis that a number are 'null' teams that didn't go on to appear anywhere within available league records, and that some are walking or other disability teams that use other non FA-registered AGPs or indoor facilities. The figure of 44 teams also excluded imported teams, which the appellant's witness accepted in XX there was no basis to do. Thus, the figure increases to a total of around 62 new teams registering in the 2023/2024 season compared to the PPOSS 2022/2023 season baseline.
33. The teams that have been discounted by the appellant as assumed as 'null' or specifically only walking/disability teams with non-typical MES needs have not all been contacted to corroborate the assumptions made. This reduces my ability to rely on the presented information. What is also evident is that the population growth predictions in the PPOSS anticipated only 59 new teams to 2042 in total, but a large proportion of that anticipated number of new teams appears to have arisen within Birmingham within only one year of the publication of the PPOSS. It is too soon to understand the relationship and scale of this change relative to the PPOSS growth assumptions.
34. In terms of carrying capacity for matches, the same is not true of grass pitches which have different carrying capacities depending on their quality¹⁰. Based on the appellant's evidence, the 11v11 pitches at the site are suitable for youth play and should be considered 'poor' quality, capable of sustaining one MES

⁹ SON PoE, Erratum and Rebuttal PoE

¹⁰ See PPOSS, CD K1 and K11

each per week, thus, two in total. I disagree. Despite that the appellant's evidence¹¹ adjudges them to fail against numerous criteria against the Sport England's Performance Quality Standards, in my view, there is nothing inherently problematic about their topography or natural drainage capabilities, or what their condition they could be returned to, that would prevent them from being used for recreational football. Thus, there is a likelihood that the appellant's evidence undervalues the carrying capacity of these pitches, but in any event, I have not found that the site is surplus to requirement.

35. Drawing all this together, the new AGP provision in the Yardley and Hodge Hill areas may have helped address the under-provision of MES that was originally identified in the PPOSS. But the information is too limited on which to be satisfied that they, and whatever other MES additions that have arisen in the City, have adequately addressed the needs of the new teams registering or importing to the Birmingham area within the same time frame, or that will register with the anticipated levels of future growth yet to be fully realised. The evidence falls short of a robust partial update to the PPOSS. Therefore, by whichever metric used, the existing site is not surplus to requirements under the terms of Policy TP9 or TP11 of the BDP or 103a) of the Framework.

Equivalent or Better

36. The appellant's contingent argument is that if the pitches are not considered surplus to requirement, then there are a range of receptor locations for qualitative enhancements that can be provided to achieve an equivalent or better facility. The offer is that I may use my discretion to choose any or all mitigation options if such is deemed necessary, and this could be addressed by reference to the 'blue pencil' clauses in the planning obligation. I introduce and assess the mitigation options on a site by site basis below.

Barrows Lane

37. There are a number of material deficiencies with the existing cricket field which may explain its low level of use by only male adult teams. There would be improvements to the cricket field, including drainage and levelling improvements. The improvements to the cricket field could allow for a greater intensity of use and for a better gender and age balance of cricketers to have opportunities to play.
38. The existing pavilion building is also in poor condition, and whilst used at a basic level, its lack of maintenance has led to the situation where similar costs would be incurred if either refurbishing it or building a replacement pavilion, albeit on a smaller scale. The rebuilding of the pavilion would enhance the overall experience for users of the site.
39. The provision of 2 good quality 5v5 mini pitches on the cricket outfield is alleged as being capable of providing 8 MES, compared to the 4 MES that the previous 5v5 pitches at Barrows Lane could sustain. The PPOSS indicates that there is sufficient provision for mini football in this particular area, and whilst a benefit, it would not be necessary to meet any identified shortfalls or offset the loss of the larger pitch types for which there is greater need.
40. The landowner is a party to the S106 agreement, so the triggers in the S106 and the conditions would ensure that these improvements and works were

¹¹ DON POE, Appx 9

delivered by certain milestones alongside the development. There does not appear to be any provision in the S106 to permanently retain these facilities as open, available, hireable or by lease arrangement for ongoing dual sporting purposes. Therefore, I am mindful of the potential, sometime into the future, where a challenging financial situation or other unforeseen complication could again force the closure of these facilities at the discretion of the owner, despite the capital that would be secured from the development.

41. However, even if they would be permanently available for their intended purposes, the cricket outfield improvements, provision of a replacement pavilion at Barrows Lane and provision of two mini football pitches, would represent a significant investment and would be beneficial for a range of current and future users. These benefits, would not, however, offer a comparable equivalent or better facility to offset the football playing fields that would be permanently lost.

Fox Hollies

42. Fox Hollies is an existing leisure centre owned by Birmingham City Council, but is leased and operated by a leaseholder until at least 2030. The relevance of this facility is that it has an AGP sized up to 11v11 which is currently used for training and other football-related purposes. It is currently not used for football matches as it has not been tested under the FA Register.
43. As the typical life of an AGP carpet is 10 years, the Fox Hollies carpet would be due for renewal in around 3 years' time, depending on condition. The appellant has offered to provide funds to the Council for the initial replacement carpet and a sinking fund for a replacement carpet 10 years thereafter. The S106 would require these funds to be spent within 25 years of the contribution being paid.
44. The provision of a replacement AGP carpet at Fox Hollies, provided if put on to the FA Register in future, could provide some additional MES. However, despite being a PPOSS recommendation, there is nothing to suggest that prioritising MES would be guaranteed or what displacement of other footballing activities would occur if that were to happen. These are other informal and formal sporting opportunities that sit outside of the strict MES calculation which are currently taking place at this site. Additionally, there is no trigger or requirement in the S106 for such an approval test to be prompted through the carpet renewal process, just an expectation that it would be a logical next step.
45. Despite the appellant's claims about the Council's financial position, there is no convincing evidence that the Council or future leaseholders could not afford to replace the AGP carpet when the time comes to do so. There is also no evidence to suggest that incentives exist to justify prioritisation of MES on an AGP over and above the current or similar hire arrangements. Therefore, the mitigation offered at Fox Hollies would not result in equivalent or better facilities than what would be lost at the appeal site.

Mackadown Sports Ground

46. Mackadown Sports Ground is a Council-owned facility under lease to Mackadown Sports and Social Club Ltd until the year 2043. It is exclusively used for football and has some rudimentary changing facilities and recently installed WCs. The PPOSS also indicates that the site has poor quality pitches

and is considered 'poor' in terms of its ancillary facility quality. However, the PPOSS also notes that the lessee has been the recipient of investment via the Grass Pitch Maintenance Fund.

47. There is evidence in the PPOSS that its layout is one 5v5, one 7v7, one 9v9 and one 11v11. The plan appended in the S106 shows the facility laid out as an 11v11 pitch at the recommended size for games up to ages U13/U14, a new mini 5v5 pitch and 2 No. 7v7 pitches. However, there is insufficient space to have separate 9v9 and 11v11 pitches in addition to the 7v7 and 5v5, but the PPOSS does not acknowledge that it is an 'over marked' facility and nor was this made clear in the evidence. As detailed in the PPOSS, the over marking of the pitches results in changes to carrying capacity, being more restricted given its need to serve two different types of match play and with resultant areas of concentrated wear. Logistically, MES will also be affected because the pitch cannot be used simultaneously for both types of match.
48. As with the Fox Hollies improvements, the proposal is to pay a financial contribution to the Council to undertake or procure the improvement works, albeit in this case to be spent within 15 years. The contributions seek to improve the playing surface across the site to increase playing capacity of all pitch sizes, including the installation of drainage to prevent waterlogging. The S106 refers to the improvements to four pitches, but technically there would need to be a fifth pitch within the 11v11 pitch. It also proposes other associated improvements, such as fencing and the provision of a pavilion building. There would be no contributions towards ongoing maintenance of the altered pitch platform, as distinct from Oaklands (introduced below) where contributions to maintenance over a 15 year period are also offered.
49. The evidence details that the PPOSS recommends some surface improvements to eradicate overplay and the proposals would broadly align with the objectives of the recommendations. The evidence of the PPOSS on this facility indicates that the youth 11v11 and youth 9v9 pitch are overplayed by 5.5 MES combined.
50. With a focus on the youth 11v11 and 9v9, it is suggested that the improvements to the entirety of the Mackadown site would create 1 additional 11v11 MES and 1 additional 9v9 MES in total. The additional MES created would therefore not deal adequately with the current level of overplay to bring it to a balance of supply and demand.
51. The appellant's agronomy evidence on the quality of the pitches alleged them to be in a poor condition, albeit with an unusual entry for its slope. However, whilst I am aware that I visited the site in the off season when there had been some recovery and maintenance, even having taken account of the displacement of some teams due to waterlogging in the 2023/2024 season, the level of maintenance undertaken by the Club and the intensity of use it has historically received, it is my view that this site has pitches that would be better described as good quality, indicating that previous investment has been put to good use. The amount of overplay will have undoubtedly affected quality which will be more apparent during the winter season, but in my view, the extensive nature of the proposed pitch improvements appear excessive relative to the modest overplay that would be eradicated by the same.
52. The ancillary improvements at Mackadown would also include a small pavilion building, which again, aligns with the objectives of the PPOSS. Whilst beneficial

and an overall enhancement to the sporting experience at Mackadown, it would not offset from the loss of pitches at the site.

Oaklands

53. Oaklands Recreation Ground is a significant area of multifunctional open space owned by the Council. On part of its grass area are two non-standard sized pitches which appear could be used for youth games of around 9v9 or up to 11v11. The pitches are used at the weekends by a local football club during the playing season and the Council undertakes the maintenance at this site. There are changing rooms at the nearby facility which can be hired separately.
54. The proposal for this site would be focussed on pitch Nos 1 and 2 to provide 2 improved youth 11v11 pitches through either cut and fill or regrading works and to provide drainage systems beneath the pitches. The financial contribution would be paid to the Council to procure or undertake the works within 15 years and a maintenance budget has been factored in to allow for the upkeep of the improvement works over a 15 year period. These works are intended to yield a net additional 2 youth 11v11 MES.
55. The facility is already well-used and exists within a wider public open space which prevents it being cordoned off specifically for football use by the football club. The Council could also undertake a higher specification of maintenance than it does at present to sustain better playing surfaces if it chose to do so, and purportedly has the money available via S106 obligation from a Tesco development to draw from.
56. Nonetheless, in my view, the pitches can be used for informal football and other recreational purposes by members of the public outside of scheduled matches. Such use may have undermined the existing playing surface. Therefore, even though it would be desirable to keep the pitches in better condition, the publicly accessible nature of these pitches limits my reliance on the precise number of additional MES that is suggested would be achieved to offset the loss of the pitches at the appeal site.

General points on mitigation

57. There are some reoccurring issues with the mitigation proposals despite that most of them broadly align with the PPOSS recommendations.
58. The general gist of the improvements at Mackadown and Oaklands, and their objective to improve the playing surface and increase capacity has been discussed with the tenant/anchor Clubs, but the more specific details about the duration and impact of said works do not appear to have been made clear. The evidence outlines that the works would take in the region of a whole playing season to undertake and establish. Any defects or issues with surface unevenness, if any should arise thereafter, would also have to be resolved. However, the duration of the initial works would mean that an entire playing season would be lost across all pitches at Mackadown and on pitches 1 and 2 at Oaklands at some point in the future, to allow for the improvements to be made. Without a temporary facility onto which to relocate for the duration of works, a Club might take issue with such works being imposed upon it. Therefore, the assumption that a Club would grasp the opportunity for such improvements to be made cannot be guaranteed.

59. I also question whether a 15 or 25 year implementation period could be said to be a relevant timeframe to the proposed development. If the PPOSS has allegedly gone out of date within a year of its publication as per the appellant's suggestion, then it is even more likely that other material changes would occur within 15 or 25 years and render the mitigation irrelevant.
60. The other aspect which has been touched upon is the absence of detailed plans for the proposed works. I agree that the proposals have detailed feasibility studies, but they are not specifications of works, nor have any applications for planning permission been made where the need arises for such. Therefore, a degree of uncertainty arises in these regards.
61. The appellant also suggests that the payment of the contributions is similar to financial contributions being made towards the expansion of school and healthcare facilities to cater for new residents where no permission has been granted for such at the time of the decision. However, those situations differ insofar as there are already expectations on such bodies to work collectively to provide essential everyday services. Here the works would be undertaken on Council-owned land over which there are user or leaseholder agreements with sports clubs that offer services on a more discretionary basis, and where there can be no assumed consensus to works being undertaken nor indication that the Council would impose such works on them.
62. The appellant's approach is that the package of mitigation is highly resilient and that even if delays or obstacles were to occur with one, then the others would come forward and deal with the loss of the pitches at the appeal site. If I found the mitigation capable of offsetting the loss of the pitches, there is a need for sufficient certainty about what would be delivered to offset said loss and, within reason, by when. Assembling a range of mitigation options that includes the potential of some aspects being delayed or, in the event of unforeseen complications, falling away completely, is not in accordance with the planning obligations tests for necessity as set out in the Framework.
63. Therefore, even if there is an example of the Council having secured financial contributions for such in relation to another scheme¹² based on its own merits, having regard to the above and the specifics of this case, the obligations cannot be considered reasonable, necessary or directly related to the development proposed as per the tests for planning obligations set out in paragraph 57 of the Framework.

Grampian condition

64. The additional point raised by the appellant is that if I were dissatisfied with the mitigation presently on offer, then I could use a Grampian condition to secure a scheme of mitigation prior to commencement of any development, at least to supplement the details currently available.
65. I have considered at length the range of options for mitigation explored through the inquiry, the evidence of past attempts to agree on appropriate mitigation as detailed in the various entries in the planning history, including the endeavours on the part of the Council and other bodies, and the constrained urban nature of Birmingham. However, I am of the view that there would be no prospect of an equivalent or better provision being secured by

¹² Long Nuke Road as per Ventham PoE

Grampian condition within the time-limit imposed by any grant of permission for the appeal. I accept that this is a high bar, but it is met in this case, and that the deferral of this matter to a conditions discharge application on the assumption that such a prospect exists would be a poor basis for decision making.

Other Policy TP9 considerations

66. The underuse of Barrows Lane does not appear, on the face of the evidence, to be about its poor surveillance, physical quality or layout. In my view, it is not materially different to Mackadown in terms of layout, surveillance or, with sufficient maintenance, what it could be in terms of quality, and thus, what it could sustain in terms of levels of use. Consequently, as I have doubts about the reasons for its underuse, and do not share the view about the severity of its alleged inherent problems, then the assessment under this limb of the Policy is problematic.
67. In any case, even if only the areas of the pitches and immediate run off areas to be lost were taken into consideration, at around 1.4 hectares, they do not form a small part of a larger area. The proposal does not, therefore, qualify under this freestanding limb of BDP Policy TP9.

The reality of what would be lost

68. The appellant opines that there is a need to consider what would really happen if the appeal were dismissed and provides unchallenged evidence of the costs of resuming football at Barrows Lane. This would involve the capital outlay of around at least £52,540 if it is assumed that all items are strictly necessary. Some of this cost is attributable to the fact that play has not occurred for such a long time, maintenance of the site has been limited and items have fallen into disrepair.
69. Limited avenues of obtaining such funds have been explored, such as through funding providers or Clubs capable of covering such outlay, but the point was raised late in the inquiry process, thus limiting a proper exploration of the prospects. Whilst the Council's officer accepted the sincerity of the letter from the Co-Op in cross examination, it does not, in my view, come close to proving that all avenues have been explored with sufficient rigour. Furthermore, whilst there may not be a policy test that requires a marketing exercise to be undertaken, that is not unusual for policies concerning playing fields.
70. The costs of annual maintenance have also been raised by the appellant, which are alleged to be in the region of £22,832 per annum, which once deducting the appellant's calculated income of around £5,000 for the hire of the pitches over a typical season, means that the overall annual loss to the owner would be around £17,832. This may be so, but I know of no precedent for treating grass playing fields on a commercial basis such as this. If it is assumed that the costs of maintenance of Mackadown are in anyway comparable to those that would be incurred at Barrows Lane once returned to a playable condition, then it is clear that such costs and the added ground rent paid by the Club have, and can be covered by income it raises from various sources.
71. Another point made is that the costs of returning football to Barrows Lane should also take into account the costs of acquiring the land, which though unquantified are suggested as potentially being 'very significant' by the

appellant. On this, little evidence has been submitted that suggests an owner/occupier is the only viable model for the resumption of football at Barrows Lane, and even if it were, I have no basis on which to agree that the value of the land as playing fields, distinct from the landowner's expectations, is in fact 'very significant' when considered against a range of market comparables and/or potentially available funding sources. The costs of renovating or replacing the pavilion are also suggested as necessary to add on top of all other costs, which are in the region of around £800,000 for either option. But, in my view, even if desirable, it is not a cost that is strictly necessary to facilitate the basic resumption of reuse of the playing fields.

72. I have noted that the Asset of Community Value listing and notice of intended disposal process did not result in the community proving that it was able to acquire the site at that time. Be that as it may, it does not alter my view that there is an insufficient basis from which to conclude now that the site could not serve its intended purpose as playing fields at any time in the future.
73. Overall, my view is that what would be lost to the development may appear less significant because the losses were first incurred some time ago. However, what has been lost to date, and what would be permanently and irreversibly lost is many years of matches and the associated training sessions that go in between; the many years of opportunities for people local to the area to play sport, enjoy healthier lifestyles and form a community built on a shared sporting interest. If I were to accept the offers of mitigation, the loss of the site would also incur further material displacement of football activities in an area where facilities are already receiving high levels of use.

Conclusions on quality and quantity of sports pitches

74. Taking all of the evidence into account, including on considerations of accessibility of the various sports facilities, the agronomic conditions and various pitch size supply and demand requirements, I am of the view that the site is not surplus to requirement from an open space or playing field perspective. Moreover, the mitigation measures, taken either individually or collectively, are not so certain to deliver an equivalent or better provision both in regard to qualitative and quantitative considerations under BDP Policy TP9 or Framework paragraph 103 b). There are no other limbs of either BDP Policies TP9 or TP11 under which the proposals qualify so as to be compliant with the development plan. The potential for other sites protected under TP9 to be released under the Regulation 18 draft Preferred Options Local Plan is not determinative as I attribute it only limited weight at this stage and have insufficient comparable details of those sites in any event.
75. Therefore, the proposal is in conflict with the aforementioned policies, and with the development plan when considered as a whole. For the same reasons, the proposal is in conflict with Paragraph 103 of the Framework. By extension therefore, the proposal also fails to adhere to the guidance in the Sport England PFPG.

Housing land supply

76. The parties agreed a Housing Land Supply Statement of Common Ground (HLS SOCG)¹³ in July 2024 before the start of the inquiry. The key points from the

¹³ CD E1

HLS SOCG that informed the discussion on housing land supply include the agreement of the following points:

- The requirement for 51,100 homes in Policy PG1 of the BDP was found sound at that time despite the objectively assessed need being for around 89,000 homes over the plan period. The BDP was adopted in 2017 and promoted collaborative working with other authorities in the Greater Birmingham Housing Market Area.
 - The BDP became five years old in 2022 and at that time, the standard method for calculating housing need became relevant with the effect of rendering BDP Policy PG1 and related delivery trajectory policies out of date.
 - The Framework sets out the definitions of deliverable sites to which both parties referred.
 - The Council is presently consulting on its Regulation 18 draft Preferred Options Local Plan. As this satisfies the requirements of Framework paragraph 226, the Council is only required to demonstrate a four year supply of deliverable sites in the context of the current appeal.
 - The latest Five-Year Housing Land Position Statement (March 2024) indicates that the Council can demonstrate a 4.38 year supply of housing. This Statement uses the base date of 31 March 2023 as has been used for the purposes of this appeal.
77. In terms of the requirement for the period, whilst different to the figure set out in the HLS SOCG, the Council conceded during the round table discussion that the overall five year requirement should be the appellant's promoted figure of 7,174 per annum, or a five year requirement of 35,870 homes based on the affordability ratios for 2024-2034 rather than using those from 2023-2033.
78. The Council's position is that the 4.38 year supply, as set out in the Five-Year Housing Land Position Statement, should be preferred to the appellant's finding of 3.5 years supply of housing. The areas of dispute between the parties on supply are as below.

Windfall allowance

79. Whilst the windfall allowance of 1,800 dwellings per annum is challenged as being too generous in the appellant's written evidence, no deductions were made from the supply figure and in the inquiry round table session, it was accepted that the figure was suitably conservative based on the evidence. My view is also that the windfall allowance is suitably conservative so as to be certain to yield at least 1,800 dwellings per year over the five year period.

Lapse rate

80. The written evidence of the appellant indicates that a 10.6% lapse rate should be applied to the deliverable supply. The Council do not, and has not applied a lapse rate to its deliverable supply, though it is stated in the Housing Economic Land Availability Assessment (HELAA)¹⁴ 2024 that 10.6% of permissions lapsed between 2011 and 2018. The explanation in the HELAA as to why a lapse rate was not applied to the deliverable supply was linked with the Framework's

¹⁴ ID6

application of a buffer of 5%, 10% or 20% depending on the relevant housing delivery test outcomes.

81. Since the December 2023 version of the Framework, the requirement to apply a buffer has largely been removed. There is no specific requirement set out in the Framework or Planning Practice Guidance to apply a lapse rate and none has specifically arisen out of the Framework changes to remove the buffer requirement.
82. My view is that it would not be reasonable to take a step beyond the Framework and PPG requirements and apply a lapse rate to the deliverable supply irrespective of the Council's previously claimed link with the now non-applicable buffer. The evidence of the appellant does not persuade me otherwise.
83. Therefore, I do not deduct the 870 dwellings on this basis as suggested by the appellant.

Disputed Sites

84. The main parties produced a schedule of the disputed sites which was used for the basis of the round table discussion. The disputed sites fall into three categories.

Category A Sites – detailed permissions

Tesco Monaco House

85. This is a scheme for which the detailed permission was granted after the base date. However, prior to that it was a scheme which had complicated planning history and which had been presented to the planning committee at various points in time between 2018 and December 2022. It had a resolution to approve at the base date of 31 March 2023 but was finally approved on 20 April 2023.
86. Whilst I am content that the site is one which will deliver dwellings within five years, the yield of 792 dwellings appears reasonably ambitious. The appellant offered a figure of 528 dwellings based on the Council's suggested lead-in times and yield rates from the HELAA 2024 which seems a more realistic yield from this scheme to the end of the five year period.
87. Therefore, I count a yield of 528 dwellings from this site towards the supply.

Category B Sites – other opportunity sites

Former MG Works

88. The outline permission for this site was granted on the 10 August 2023, after the base date. However, prior to the base date, the Council had evidence of a willing landowner/developer through the Call for Sites process in 2022. A resolution to grant outline permission was passed on the 18 August 2022, and though this had still not been passed by the base date, a demolition approval had been granted on 12 October 2022 to clear the site in preparation for the development. The combination of these factors indicate that the site can be considered suitable, available and achievable.

89. Therefore, I am of the view that the Council is right to rely on the 136 dwellings from this scheme within the five year period.

Oval Estates

90. The Council conceded this 40 units as mistakenly having been included. This concession is included in the interests of completeness.

Langley Strategic Urban Extension (SUE)

91. The allocated Langley SUE is relied upon as a contributor of 1,190 dwellings within the five year supply. It is a scheme which has a resolution to grant outline planning permission and which involves a consortium of developers that has produced a delivery trajectory. The trajectory of September 2022 anticipated a yield of 1,514 cumulative completions within five years at that point in time. The more recent trajectory of August 2023 indicates that 1,190 dwellings would be built instead.
92. As we are another year on from even the latest trajectory, without any other reported change in the permission status of the SUE, I am cautious about relying on the anticipated yield of 1,190 dwellings, which seems high relative to the remainder of the time available within the 5 year period even in the context of a developer consortium.
93. I have a high degree of confidence that the site will be delivered in due course given that it is an allocated site for which an outline application and collaborative working approach is well progressed. However, there are some key milestones to achieve before works can commence on any of the respective land parcels. The evidence does not assist in calculating a more realistic yield based on the numbers of developers and time remaining within the five year period.
94. The Hanging Lane¹⁵ decision establishes that it may be appropriate to take account of evidence ascertained since the base date to establish whether delivery assumptions were well founded. In this case, the evidence calls into question the yield expectations and, absent of an alternative more realistic figure, I have deducted all 1,190 dwellings from the supply.

Category C Sites – where permission has lapsed since the base date

95. The Council were able to rely on these detailed schemes which were extant at the base date. That should be uncontroversial. The appellant offers evidence that a range of 23 sites¹⁶ have not commenced since the base date within their 3 year lifespan which is says should be considered lapsed. These 23 sites account for a total of around 3,403 dwellings within the 5 year supply. The appellant conceded one site (Northwood Street) for which the detailed permission amounting to 289 dwellings had been implemented. The remaining dispute is therefore for the 22 schemes and total of 3,114 dwellings.

¹⁵ CD I17

¹⁶ See ID8, Sites: 3.5 Bellfield Inn, 3.6 Northwood Street, 3.7 164 Bridge Street, 3.8 Connaught 1 Land, 3.9 Bull Ring Trading Est, 3.10 Heartlands Nursing Home, 3.11 Former Yardley Sewage Works, 3.12 Land at Sivermere Road, 3.13 58-72 John Bright Street, 3.14 Radio House, 3.15 43 Temple Row, 3.16 Lee Bank Business Centre, 3.17 122 Moseley Street, 3.18 176-183 Moseley Street, 3.19 Clent Way, 3.20 Land at Junction of Stratford Rd/Highgate Rd, 3.21 1 Johnstone Street, 3.22 Radio House, 3.23 Land bounded by 51 Northwood Street, 3.24 37 – 42 Tenby Street, 3.25 Irish Club, 3.26 Site of Muhammed Ali Centre and 3.27 Land at Gildas Avenue

96. The Council sought to resist the acceptance of evidence that post-dated the base date about non-implementation. It also reserved its position to advance evidence of permissions in the order of 3,500 dwellings that have been granted since the base date in the event that the appellant's evidence was accepted.
97. The form of evidence offered by the appellant in respect of a number of sites includes descriptions and photographs allegedly indicating a lack of commencement following site visits. They have not been provided or endorsed by the respective landowners or developers. I accept that the appellant's witness has experience in this field. However, there is a varied scope and appearance of works that can be undertaken to implement a development under S55 of the Town and Country Planning Act 1990 (as amended), including works that can be hard to detect to anyone standing adjacent to the site. Therefore, the evidence is not sufficient nor substantive enough to conclude that each of the 22 disputed permissions have lapsed and no deduction would be necessary.

Conclusion on supply

98. Drawing together all of the above, the Council is able to demonstrate at least a 4 year housing land supply and that the supply position is closer to the Council's 4.38 year position than the appellant's 3.5 year calculation.

Affordable housing

99. Policy TP31 of the BDP requires 35% affordable housing from schemes of 15 dwellings or more. This requirement would be met by the scheme which would provide 30 affordable homes. There would be three different tenures of affordable housing: 15 affordable rent dwellings, 8 shared ownership homes and 7 first homes, with a variety of sizes ranging from 2 bed apartments to 3 bed dwellings.
100. The appellant's evidence¹⁷ indicates that there are some 20,529 households on the Housing Register on 27 March 2023; 4,327 households in temporary accommodation on 31 March 2023; 7,071 households presenting as homeless in 2022/23; evidence of lengthy waiting lists and high numbers of bids per affordable home. Furthermore, there are a high number of schemes which do not meet the 35% affordable housing requirement, with an average of around 22% affordable housing having been built as a percentage of the total number of homes in the period between 2011/2012 and 2022/2023.
101. There is a further issue with the acquisition of some of the affordable rent housing stock through the 'Right to Buy' entitlement. Whilst this route provides certainty of home ownership for long-term tenants, disposals at a greater pace than reinvestment into new affordable dwellings has an overall negative effect on the stock of available affordable homes. Another point highlighted by the appellant is that there have not been any completions of affordable dwellings in the Yardley East area within which the site is located since 2011/2012.
102. All the above factors point towards a significant need for affordable dwellings. Despite only meeting the 35% policy requirement, 30 affordable dwellings would be provided, and this would be a benefit of the scheme that cannot be downplayed.

¹⁷ Roberts PoE

Housing mix

103. The scheme proposes 87 dwellings which would range between 2 bed apartments to 4 bed dwellings. Policy TP27 of the BDP requires the delivery of a wide choice of housing sizes, types and tenures to ensure balanced communities catering for all incomes and ages. BDP Policy TP30 requires proposals to deliver a range of dwellings to meet local needs and support the creation of mixed, balanced and sustainable neighbourhoods, taking into account a range of evidence, including the housing needs assessments (strategic/local), market trends and demographic profiles (current/future).
104. The scheme has been informed through consideration of the Birmingham Housing and Economic Need Assessment (HEDNA)¹⁸ 2022, BDP Authority Monitoring Report 2021 – 2022, Birmingham 5 Year Housing Land Supply 2023-28 report, Birmingham Local Plan Background Paper: Housing Density¹⁹ 2022, and other such relevant data. The mix of homes delivered in Birmingham has been heavily skewed towards the delivery of 1 and 2 bedroom homes. This has exceeded the requirements of both the adopted policy and updated evidence base, whereas the delivery of 3 and 4 bedroom homes has fallen short. This trend looks set to continue with an anticipation of higher density flatted schemes forming a large part of the Council's future housing supply.
105. Considered in a more local context, the evidence indicates that residents in the Yardley area broadly share a similar age profile to the rest of Birmingham. There is a disparity at the age brackets which suggests more young families and fewer students or graduates in Yardley than elsewhere. Additionally, there is evidence to suggest a high proportion of larger families which supports the view that larger family homes are needed in the Yardley area.
106. The data has influenced the appellant to omit 1 bed units from the scheme, and a slightly lower proportion of 4 bed dwellings in favour of focussing a higher proportion of 2 and 3 bed homes than typically required by the BDP. The delivery of 3 and 4 bed dwellings within the scheme is also promoted by the appellant to address the shortfall of larger residential completions across Birmingham as a whole.
107. The proposed housing mix could, in a modest way, help to address an imbalance. It is a factor that weighs in favour of the scheme.

Other Matters

Planning obligation

108. In addition to the above mentioned contributions towards improvements of various sports facilities, the planning obligation seeks to secure 35% on site affordable housing, off site public open space contributions to Gilbertstone Recreation Ground and offsite biodiversity contributions. As the appeal is being dismissed, it has not been necessary to examine the planning obligation any further.

¹⁸ CD H5

¹⁹ CD H23

Local residents

109. A number of objections were raised by residents. Whilst most of these are addressed in the decision, it has not been necessary to examine the other objections any further as the appeal is being dismissed.

Planning balance

110. I ascribe weight on a rising scale from neutral, limited, moderate, significant to substantial.
111. In my view, the Council's housing land supply stands above the four year minimum requirement relevant at the current point in time. This means that the tilted balance outlined in paragraph 11 d) of the Framework is not engaged, despite the appellant's claims that the policies in relation to housing are out of date. That said, I am aware of the issues that exist with the City being unable to fulfil its overall housing need and thus requiring the co-operation of neighbouring authorities to do so. The pressing need for houses in Birmingham and the wider Housing Market Area is clear.
112. Additionally, the supply of affordable housing is underdelivering, particularly when considered in the context of the losses under the Right to Buy provisions. The provision of 35% affordable homes would make a real difference to the vast number of individuals and families in need of an affordable home.
113. The mix of housing towards family homes could help address an emerging imbalance in the types of homes being delivered within the City and better cater for the demographic profile of residents, specifically within Yardley.
114. All of the dwellings would also be likely to be deliverable within a short time frame by virtue of the detailed nature of the scheme and the appellant's position as a volume housebuilder. Therefore, the timely delivery of market and affordable housing in a sustainable location and of a mix which would modestly address an imbalance of housing types attracts substantial weight in favour of allowing the appeal.
115. The proposed off site public open space contribution would provide future residents with access to outdoor recreation facilities in the local area. The provision of enhancements to cricket and mini football, including ancillary provision in the form of the replacement pavilion would also be beneficial. These improvements would benefit existing and future users and attract moderate weight in favour of the scheme.
116. There would be a range of social and economic benefits, including construction jobs and increased spending for local services and facilities. This is also of modest weight.
117. The offsite biodiversity contributions would mitigate the impacts of the development and generate a modest net gain which attracts limited weight in the overall balance.
118. There would be no harm to the character and appearance of the area or other harms arising from trip generation, highway safety, drainage or design. The absence of harms is, however, a factor of neutral consequence in the planning balance.

119. Critically, however, the site is not surplus to requirement from a playing field perspective. Moreover, the mitigation measures, taken either individually or collectively, are not so certain to deliver an equivalent or better provision, taking account of qualitative and qualitative considerations.
120. Even if reduced weight was to be applied to BDP Policy TP9 by the implications of the Brommell judgement, and the tilted balance applied, it is my planning judgement that the harms would be of overriding substantial weight, sufficient to significantly and demonstrably outweigh the benefits.
121. Therefore, the benefits of the proposal would not outweigh the harms and the proposal conflicts with the development plan when considered as a whole.

Conclusion

122. For the reasons given above, I conclude that the appeal is dismissed.

H Nicholls

INSPECTOR

APPEARANCES

For the Local Planning Authority:		
Killian Garvey, Counsel		Instructed by Birmingham City Council
He called		
	Mr Jeremy Guise BSc (hons) DipTP MRTPI	Principal Planning Officer, Birmingham City Council
	Ms Stella Rixon BSc (hons)	STRI Senior Agronomist
	Mr Bob Churn BA(Hons) DipLA CMLI	District Parks Manager, Birmingham City Council
	Mr Stuart Donahue BA, MA, MTRPI	Principal Planning Policy Officer, Birmingham City Council
For the appellant:		
Lord Charles Banner, KC		Instructed by Mrs Kathryn Ventham, Stantec
He called		
	Mrs Kathryn Ventham BSc Hons MSc MRTPI	Director, Stantec
	Mr Nicholas Paterson-Neild BA Hons MPhil MRTPI	Director, Stantec
	Mr Jamie Roberts MPlan MRTPI	Associate, Tetlow King
	Mr James Donagh BA Hons MSc IED	Director, Stantec
	Mrs Susan O'Neill BSc Hons MRTPI	Director, Nortoft Planning
	Mr David O'Neill BSc Hons MRTPI	Director, Nortoft Planning
	Mr Michael Harbridge BSc Hons MSc	Senior Consultant, PSD Agronomy
Also appearing		
	Mr Joe Murphy	Persimmon Homes
	Ms Caroline Featherstone	Stantec
Interested parties:		
Mrs Fay Goodman MSc		Chair of Yardley Community Protection Society
Mrs Debbie Norton		Member of Yardley Community Protection Society
Mrs Angela Ward		Local resident
Mr Mark Walkski		Local resident
Mrs Lynne Ford		Local resident
Mr Mark Ward		Local resident
Mr Ian Turner		Local resident

INQUIRY DOCUMENTS

ID1	Appellant's opening submissions
ID2	Council's opening submissions
ID3	Plans list
ID4	Summary notes on affordable housing from Mr Roberts
ID5	Summary notes on housing mix from Mr Donagh
ID6	Updated HEELA 2023
ID7	Agenda for Housing Land Supply round table discussion
ID8	Schedule of disputed sites
ID9	HEELA 2022
ID10	Draft S106 planning obligation
ID11	Statement of Common Ground – existing sports provision
ID12	Response from the appellant
ID13	Evidence from Mrs Goodman
ID14	Photographs from Mrs Goodman
ID15	Correspondence from Arden Forest Football Club
ID16	Notts Sports document from Mrs Goodman
ID17	Mersham note from appellant
ID18	List of draft planning conditions
ID19	Note on Mrs Goodman's submissions from appellant
ID20	Note from Co-Op
ID21	Updated planning conditions
ID22	Email and plan in relation to Mackadown
ID23	Note on NPPF consultation from Council
ID24	Note on NPPF consultation from appellant
ID25	Note on Grampian condition from appellant and accompanying decision
ID26	Position on Grampian condition from Council
ID27	CIL compliance statement
ID28	Appeal decision reference APP/W4325/W/23/3329105
ID29	Planning Statement of Common Ground
ID30	Final draft S106 planning obligation
ID31	Bellway homes judgement
ID32	Council closing submissions
ID33	Appellant closing submissions