Proof of Evidence of Mr. Steven Bainbridge MRTPI
On Behalf of the Appellant:
Capital Community Developments Ltd.

Planning Appeal Against the Refusal of Planning Permission for:

A phased development of 75 dwellings, car parking, public open space, hard and soft landscaping and associated infrastructure and access

Land North Of Gardenia Close And Garden Square Rendlesham Suffolk

Our ref. PS-2018-0645/POE
LPA ref. DC/19/1499/FUL
PINS ref. APP/X3540/W/19/3242636
Date: March 2020

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1.0 Introduction and Personal Statement

1.1 This Proof of Evidence has been written by Mr. Steven Bainbridge MRTPI. I am a chartered member of the Royal Town Planning Institute and have 16 years planning experience in both the public and private sectors. I am the Principal Planning Manager for Suffolk at Parker Planning Services Ltd.

1.2 I hold a BSc in Environmental Studies from the University of East Anglia (First Class Hons) and an RTPI accredited MSc in Town Planning from Anglia Ruskin University.

1.3 During my professional career I have worked on a full range of planning work including planning applications for development of multiple types and sizes, policy and strategy development, local plan submissions and planning enforcement and lawful use matters. I am very familiar with the site and the area having 14 years' experience of significant planning work in the Rendlesham area including:

- Multiple major development planning permissions at Bentwaters Parks, Rendlesham spanning the period 2006 to 2018.
- 2010 awarded first place in the East of England Royal Town Planning Institute Planning Award for a renewable energy plant at Rendlesham.
- Local plan allocations achieved in the Suffolk County waste local plan at Rendlesham.
- 2013 to 2015 advised on and contributed to the Rendlesham Neighbourhood Plan.
- 2015 awarded 1st place in the East of England Royal Town Planning Institute Planning Award for the Rendlesham Neighbourhood Plan.
- 2013 advised the parish council on objecting to a planning application for 50 houses in the Rendlesham district centre including appearing at the appeal public hearing with and on behalf of the parish council. The application was refused, and the called-in appeal was dismissed.
- 2015 successful in seeking the allocation of Bentwaters in the Site-Specific Allocations DPD – the local plan policy SSP24 including attending the local plan examinations alongside the Appellant who was supporting allocation policy SSP12.
- 2018 (18/2374) and 2019 (19/1499) Planning applications for the erection of 75 dwellings on Site SSP12.

1.4 The evidence which I have prepared and provide for this appeal and in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.

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1.5 The Appellant's have taken a professional, open and responsible approach to the application from the start. They have sought pre-application advice and have engaged fully in the local plan process, encouraging the LPA to engage and seek solutions. This has been, in the main, met by a stony resilience by the LPA to engage during the application process with the result that post appeal concessions have been made by it.

1.6 Appendix 3 of the Appellants Statement of Case contains 'Email no.37'. The email followed a meeting with the LPA on 12th June, organised at the applicant's request, to try to 'break through' the apparently outstanding matters. That email included a 'legal note' and other commentary which the LPA were invited to consider carefully, which included:

- Repeated requests for the LPA to request an extension of time to the planning application to resolve matters and, at least, reduce the issues at appeal.
- Reference to Planning Practice Guidance on accepting additional information and extensions of time.
- Reference to "*deep concern about matters appearing in certain of the reasons for refusal*" and "*disguised implications*" "*indicating that non-planning matters are being taken into account*".
- Reference to matters on which the LPA said they were "*immovable*".
- Warnings of a cost application.

1.7 The planning application was refused nonetheless in line with the LPA's express intention from (at least 21st May 2019) – see email 25 in Statement of Case Appendix 3.

1.8 At the time of writing this Proof of evidence there are no agreed topic-specific statements of common ground, an agreed core document list or proposed conditions from the LPA. Therefore, with the Inspector's permission, these matters may need to be the subject of Rebuttal Proofs.

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2.0 Site Description

2.1 The site is shown on the submitted site location plan (in Proof Appendix 1 for ease of reference).

2.2 The site is located to the north of Rendlesham and is approximately 5 hectares in size. Vehicular and pedestrian access to the site will be via Tidy Road, Peace Palace Gardens and Garden Square (see Parking and Access Plan 84 SP Pv J).

2.3 As can be seen in the aerial photos in Proof Appendix 1 the site is relatively flat and bounded by woodland on the north and west boundaries and residential development on the east and south. Further to the north, beyond the woodland, the main land use is agricultural. Just to the north of the site is the sewage treatment plant; the subject of recent local plan representations seeking the rescinding of the cordon sanitaire.

2.4 The photograph below shows the site and is taken from the point at which Garden Square meets the eastern boundary of the appeal site looking westwards:

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3.0 Planning History

3.1 I have set out below the planning history of the village of Rendlesham, the adjacent development and then the appeal site itself. It is my firm opinion that Rendlesham is unique, it is young and as a result has clearly distinct 'cells' of housing where the transitions between them are both clear and sudden; anyone familiar with Rendlesham could be 'dropped in' to any of the distinct areas of the village and would know, immediately, where they were.

3.2 It is my opinion that the transition from one area of Rendlesham to another is an inherent part of Rendlesham's character when compared, for example, to older villages such as Wickham Market, Framlingham etc.

3.3 I believe it is important for the Inspector to be aware of this, because the Appellants are residents of Rendlesham they understand it and have a proven track record in delivering development in Rendlesham.

3.4 The main part of Rendlesham village, as it exists now, was developed originally as the domestic part of the former Bentwaters Airbase. The first housing was for the USAF who departed at the end of the Cold War in the 1990's.

3.5 Planning permission was granted in 1997 for a "*Comprehensive development of a new community, including housing (1220 dwellings), ancillary facilities, employment, gun club, large scale clearance, restoration and afforestation*". Subsequent permissions in the nineties and two-thousands have seen the village built out in 'Areas' as defined in the old masterplans. The appeal site, currently referred to as Site SSP12, was previously referred to as Area 8 and was historically allocated for 75 dwellings in the saved local plan. Aerial photographs and visual aids showing the 'evolution' of the village over time and how these distinct 'areas' are delineated and how they align with the 'Neighbourhoods' characterised in the Rendlesham Neighbourhood Plan Appendix O, are set out in Appendix 2 to this proof.

3.6 The planning history of the adjacent 'Area 5' site which includes a residential development designed by the same design team and (one must assume) judged by the LPA to be acceptable against the design policy of the time (AP19 which is for practical purposes nearly identical to the currently adopted policies DM21 and DM22) is set out in Appendix Xv of the Appellant's Statement of Case but can be

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summarised as:

- Planning permission 03/2362 erection of residential development of 50 houses and apartments.
- Planning permission 08/0226 erection of residential education centre and 2 no. dwellings.
- Planning permission 13/3519 erection of two buildings for use as a health spa.
- Planning permission 14/1605 erection of four apartments as an alternative scheme to 08/0226 and 13/3519.

3.7 The planning history of the appeal site can be summarised as:

- Allocation of 'Area 8' in saved local plan 1994 (1st Alt. 2001 and 2nd Alt. 2006) for 75 dwellings.
- Reference to "*Rendlesham where there is an outstanding allocation of about 75 homes*" in paragraph 4.87 of the 2013 Core Strategy.
- September 2016 local plan examination attendance supporting the emerging policy SSP12 and seeking uplift of allocation.
- Allocation of site SSP12 in the January 2017 Site Allocations DPD where at paragraph 2.98 it states "*The site was formerly allocated for housing development for approximately 75 units*" with associated reference to "*limiting factors*" and that "*The number of homes and the area on which development could take place has therefore been reduced to approximately 50*".
- November 2017 pre-app 17/5074 submitted.
- June 2018 planning application 18/2374 submitted but refused in September 2018.
- September 2018 local plan reps submitted seeking uplift to 75 dwellings and addressing the SSP12 'limiting factors'.
- November 2018 pre-app 18/4778 submitted.
- January 2019 local plan reps submitted seeking uplift to 75 dwellings and addressing the SSP12 'limiting factors'.

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- April 2019 planning application 19/1499 submitted but refused in July 2019
- July 2019 local plan reps submitted seeking uplift to 75 dwellings and addressing the SSP12 'limiting factors'.
- September 2019 local plan examination attendance seeking uplift to 75 dwellings and addressing the SSP12 'limiting factors'.
- December 2019 appeal 3242636 submitted
- January 2020 through their Statement of Case LPA accept the principle of 75 dwellings on site SSP12.

3.8 As a result of its relatively recent history, Rendlesham is characterised by the cellular phases of development which are clearly distinct from each other as one transitions through the village.

3.9 The planning history above shows how Rendlesham has developed over time as discreet and highly recognisable 'character areas' and how the appeal site and the residential development next door share a common history and design principles.

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4.0 Description of the Proposal

4.1 The planning application was described on the planning application forms as:

"A phased development of 75 dwellings, car parking, public open space, hard and soft landscaping and associated infrastructure and access".

4.2 The submitted planning statement described the development thus:

1.1 This planning application is submitted on behalf of Capital Community Developments Ltd. and proposes the erection of 75 dwellings in Rendlesham. It has evolved from a planning application submitted in 2018 for a similar proposal but has benefitted from further preapplication engagement with the local planning authority. The applicants are residents of Rendlesham and have a proven track record in delivering development in Rendlesham which is important because delivery of housing is clear Government policy.

1.2 The intention is to develop houses and associated infrastructure which complement the village, with a range of development gains which will benefit the wider community.

1.3 The houses conform to specific architectural and design principles and perform very well environmentally; indeed, the Council's emerging local plan has policy aims which have moved towards the rationale behind the proposal with increased focus on sustainable buildings, even the 'orientation of buildings'. The scheme is exceptionally well landscaped providing a high-quality built environment surpassing usual proposals.

1.4 The application site is identified in the existing and emerging local plans and has long been earmarked for housing development. Whilst the local plan currently allocates the site for approximately 50 houses it has historically allocated the site for 75 houses. Government's objective is to boost housing supply and use land efficiently on sustainable sites.

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5.0 Reasons for Refusal and 'Remaining' Reasons

5.1 The planning application was refused on 8th July 2019 for the eight reasons set out in the decision notice.

5.2 Since the start of this appeal, the LPA has stated it will not defend a number of the reasons for refusal and has said in its Statement of Case:

> 1.7 In respect of reason 1, based on the clarification of that reason in this statement of case, the Council confirms that it does not seek to defend the specific points in that reason but that they are instead covered by other reasons. This reason will not be defended in isolation and focus will instead be placed on defence of reasons 3 and 5.
>
> 1.8 Based on information received as part of the appeal submission in response to reasons for refusal 4 and 7, the Council is satisfied with the information enables the Inspector to consider the effects of those aspects of foul drainage infrastructure interacting with the proposal. There is no longer a requirement for the Council to defend these reasons.
>
> 1.9 In respect of reasons 2 and 8, these are capable of being addressed over the next month through the statement of common ground and section 106 agreement and therefore evidence on these reasons may not be required and there is scope that the Council will not defend these. Equally, the Council has engaged with the appellant regarding reason 6 and the appellant has the opportunity to present a package of mitigation and information to enable the Council to withdraw its defence of this reason.
>
> 1.10 It is therefore possible for this appeal to consider this proposal with a focus solely on design impacts raised in reasons 3 and 5 and the conflict of this proposal with the development plan and NPPF.
>
> 1.11 The refinement of this appeal to a design focussed and policy compliance case was anticipated and communicated with the Planning Inspectorate and appellant upon receipt of the start letter

The 'Removed' Reasons 1, 4 & 7

5.3 The Appellant is not surprised that reasons for refusal 1, 4 and 7 have been withdrawn. But there is frustration that it has taken until January 2020 for this to happen; not least because there was never any justification for the reasons for refusal being applied in the first place.

Reason for Refusal 1 Housing Numbers

5.4 The LPA withdrew from **Reason for Refusal no.1** in their undated Statement of Case received in January 2020. It has long been the Appellant's case that this 'principle reason for refusal' was not reasonable. Since at least November 2017 (when the Appellant requested pre-app advice on his previous planning application 18/2374)

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the Appellant has said that the reasons why policy SSP12 was 'limiting' the housing numbers were not correct. The Appellant has also asserted since at least the submission of his planning application 18/2374 in June 2018 and again with his local plan representations of January 2019 that, notwithstanding the limiting factors, the developable area of the remaining land (outside the cordon sanitaire) at 3.2ha was capable of hosting some 98 dwellings at a 'rule of thumb' density of around 30 dwellings per hectare (subject to site specific assessment in a planning application and that any increase on the policy number of "approximately 50" should be viewed as windfall, not least because the local plan does not clearly define what it regards as windfall. It has taken the LPA since at least November 2017 to January 2019 to acknowledge that the site can take more than the "approximately 50 dwellings" as a matter of principle.

Reason for Refusal 4 Odour

5.5 The LPA withdrew from **Reason for Refusal no.4** in their undated Statement of Case received in January 2020. It has been the Appellant's case that the cordon sanitaire which features in policy SSP12 (and is currently featured in emerging policy SCLP12.62) was based on a misunderstanding of a 2018 odour assessment; this is set out in paragraphs 3.18 to 3.25 of the Matters Statement submitted to the LPA in August 2019 which highlighted that:

> 3.18 The cordon sanitaire is based on a 2014 assessment (see Appendix 6), upon which Anglia Water based their advice (see Appendix 7). The Anglia Water advice promotes the idea of the cordon sanitaire in order to reflect the industry benchmark odour threshold of 1.5 oue/m^3.
>
> 3.19 In basic terms residential dwellings are permissible in areas below 1.5 oue/m^3 and not in areas above 1.5 oue/m^3.
>
> 3.20 The 2018 odour report which was submitted in support of the two planning applications on this site (18/2374 and 19/1499) concluded that even within the boundary of the water treatment centre itself odour levels were only 0.14 oue/m3. An order of 10 times less than the benchmark figure. In theory a house could be built within the water treatment centre itself and not experience unacceptable odour levels.

5.6 The 2018 odour assessment which accompanied planning application 18/2374

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showed that odour levels were low. No statutory consultee advised at that point that odour was matter of concern. Odour was not a reason for refusal in the earlier planning application 18/2374. Nevertheless, it was a reason for refusal in 19/1499 despite the same odour assessment as was submitted with 18/2374 being resubmitted for 19/1499. The LPA will claim that this was because the odour assessment incorporated an old layout plan from 18/2374 and that this inherently invalidated the assessment. This is a distinction without merit. There was sufficient information in application 19/1499 for the LPA to understand that odour was not a problem – this is explained in paragraphs 4.59 to 4.65 of the Appellant's Statement of Case, a subset of which is set out below:

> 4.60 In this case the Council is claiming that "it was not possible to determine that there will be no effects on residents which adversely affect their amenity and the effectiveness of the current extent of cordon sanitaire around the sewage treatment plant".
>
> 4.61 This reason for refusal is without foundation. The Council was at liberty to ask for clarification during the planning application. The Council has acted unreasonably by advancing this reason for refusal without attempting to reconcile their concerns, and if the Council does not retreat from it, it will be the subject of a costs application.
>
> 4.62 The odour assessment of May 2018 was based on a sound methodology and its only shortcoming was that it included a previous layout drawing in Figure 1, page 5. This was only for information; the odour assessment took 4 receptor locations on the undeveloped field in Table 3, page 12.

5.7 To the applicant's knowledge no statutory consultee raised issues with the odour assessment which accompanied 19/1499 (neither did they when it was previously used in 18/2373). Officers failed to relate the information they had and did not seek clarification.

5.8 The Officer's Report to 19/1499 claims that Anglian Water sent a response suggesting that it recommended that a detailed odour risk assessment be undertaken to establish the range at which the amenity of neighbouring property is likely to be impaired. The results of any detailed assessment can be reviewed in further consultation". That consultation response remains absent from the Council's website and was never shared with the applicant at the time.

5.9 The Officer's Report to 19/1499 stated: "odour effects have not been adequately

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addressed in the submission" and "Anglian Water has raised the concern of the odour impact of the Anglian Water Treatment Plant to the north east corner of the plot and wish for a detailed assessment to be carried out. The assessment that has been provided states that there would be no harm to the amenity of the new residents, but this appears to have been modelled on an old site location plan, hence Anglian Water asking for more details". For the reason set out in paragraph 4.62 of the Appellant's Statement of Case, the LPA's idea that the odour assessment was somehow fatally flawed or inappropriately modelled was incorrect. Had the LPA have shared their concerns openly and positively with the applicant, then the issue need never have become a reason for refusal.

5.10 The submission of the 2019 odour assessment with this appeal did nothing more than confirm evidence which was already in front of the LPA in the form of the 2018 assessment. Reason for refusal no.4 was unjustified from the start.

Reason for Refusal 7 Sewers

5.11 The LPA withdrew from **Reason for Refusal no.7** in their Statement of Case claiming that the information submitted with the appeal allowed them to do so based on a 'pragmatic and professional review of the information'. The Planning Statement at paragraph 6.53 made perfectly clear that the sewers had been accommodated and was repeated elsewhere in the Planning Statement. As set out in the Appellant's Statement of Case at paragraph 1.57 bullet point 5 and between paragraphs 4.110 and 4.116, it is a fact that the policy SSP12 does not require an applicant to 'demonstrate' the sewers have been accommodated. SSP12 simply requires that the sewers are accommodated. There was no evidence to demonstrate to the LPA that the sewers could not be accommodated. A correct reading of the policy and/or a request for clarification (if the LPA were uncertain), would have prevented this reason for refusal being applied in the first place. It was a reconcilable issue which simply required further dialogue and appropriate communication.

The Potentially Removable Reasons 2, 6 & 8

5.12 The LPA Statement of Case states that:

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"Three other reasons for refusal remain capable of being withdrawn and not defended by the Council. These are reasons 8, 6 and 2 and through the constructive feedback provided, there is scope for common ground and a s106 agreement to be agreed to address those. However, the Council also remains prepared to defend those reasons which are of fundamental policy and legislative importance in relation to the delivery of affordable housing and securing habitats regulations mitigation."

5.13 The Appellant maintains that reasons for refusal 2 and 6 were capable of being removed entirely at least at the same time as reasons 1, 4 and 7. The Appellant's arguments in relation to Reason for Refusal 2 are set out below. In respect to Reason for Refusal 6 these are set out in detail in the Appellant's Habitats Proof.

Reason for Refusal 2 Affordable Housing Mix

5.14 The LPA in their Statement of Case say that **reason no.2** is capable of being addressed in the next month. It is the Appellants position that there never was a significant conflict with policy DM2. The LPA were at liberty to query "*the adequacy of arrangements to ensure that these homes are offered to local people who can demonstrate need, at a price which they can afford, and that its enjoyment is by successive, as well as initial, occupiers*" required by policy DM2 at any time between taking receipt of the draft s106 on 12th June 2019 and when the application was decided by notice dated 8th July 2019. Nonetheless, provisions in the draft s106 should satisfy the LPA now. Again, this was a matter that could have been settled in a timely manner had the LPA chosen to engage positively with the Appellant at the application stage.

5.15 In the LPA Statement of Case at paragraph 5.19 the LPA usefully clarify that "The reason for refusal does not draw criticism of the open housing market mix" and that it is the affordable housing mix they now have issue with.

5.16 Policy SP3 provides no guidance on affordable housing mix, rather it speaks of a district-side strategy "*to increase the stock of housing to provide for the full range of size, type and tenure of accommodation to meet the needs of the existing and future population…*". As the LPA acknowledge in the Statement of Case, supporting text to policy SP3 includes Table 3.6 which includes guidance on housing mix (not

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specifically affordable housing mix) "as a general rule across the district" not for specific development sites. This table is updated in the emerging local plan as Table 5.1 which includes requirements related to "district level need" not local specifics.

5.17 The Appellant demonstrated in his Planning Statement how the proposed housing mix conformed to both the adopted 'general rule' and the emerging 'district level need'. It is my opinion that the proposals complied with the strategic approach of policy SP3.

5.18 At their paragraph 5.21 the LPA refer to "A recent consideration by the Head of Housing has advised that the mix should comprise of the following. This is a slight change to that set out at application stage because housing need does vary over time".

5.19 In respect of the comment that "this is a slight change to that set out at application stage" it is noteworthy that no information was set out at application stage. The LPA cannot now rewrite history. Whilst the Officer's Report to 19/1499 refers to a consultation response of the Head of Housing, that information was kept from the Applicant during the application and was not made publicly available on the Council's website:

Document Link	Document Date	Type Description	Information 1
DC/19/1499/FUL	09/04/2019	Application Form & Certificate	
DC/19/1499/FUL	09/04/2019	Archaeology Report	
DC/19/1499/FUL	09/04/2019	Archaeology Report	
DC/19/1499/FUL	06/06/2019	Consultee Responses	Ecologist
DC/19/1499/FUL	06/06/2019	Consultee Responses	Flooding
DC/19/1499/FUL	29/05/2019	Consultee Responses	Design Out Crime
DC/19/1499/FUL	20/05/2019	Consultee Responses	Ecologist
DC/19/1499/FUL	14/05/2019	Consultee Responses	Highways
DC/19/1499/FUL	10/05/2019	Consultee Responses	Highways
DC/19/1499/FUL	09/05/2019	Consultee Responses	Policy
DC/19/1499/FUL	08/05/2019	Consultee Responses	Anglian Water
DC/19/1499/FUL	07/05/2019	Consultee Responses	Economic Services
DC/19/1499/FUL	07/05/2019	Consultee Responses	Environmental Health
DC/19/1499/FUL	07/05/2019	Consultee Responses	Highways
DC/19/1499/FUL	03/05/2019	Consultee Responses	Suffolk Wildlife Trust
DC/19/1499/FUL	02/05/2019	Consultee Responses	Suffolk Fire & Rescue
DC/19/1499/FUL	02/05/2019	Consultee Responses	Suffolk Fire & Rescue
DC/19/1499/FUL	29/04/2019	Consultee Responses	Flooding
DC/19/1499/FUL	23/04/2019	Consultee Responses	archaeology
DC/19/1499/FUL	22/04/2019	Consultee Responses	Neil Mcmanus
DC/19/1499/FUL	16/04/2019	Consultee Responses	Steve Newman
DC/19/1499/FUL	09/04/2019	Contaminated Land Assessment	Part 2

5.20 The Officer's Report included detail on a mix of affordable housing but too late for the applicant to do anything about it.

5.21 In any event it turns to me to respond to the new information produced by the LPA.

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I propose to approach this in terms of the following 'hierarchy' and will return to these 'criteria' in concluding this section:

- Is the overall provision policy compliant?
- Is the arrangement adequate?
- Is it a "key issue" in respect of the LPA SoC?
- Is there an overriding benefit to any conflicts with the above?

5.22 At their paragraph 5.20 I read that the affordable rental housing demand in Rendlesham is for 30 dwellings. There are two allocated sites in Rendlesham which will contribute to existing and future need and other planning applications are being made which will 'vary the need over time' as the LPA recognises.

5.23 Only site SSP12 has a proposed development in contention at the present time. This appeal is proposing 25 affordable dwellings; an 'over-provision' of 8 units based on the 33% of 50 dwellings 'required' by policy SSP12.

5.24 In addition, I am aware that a recent planning application was submitted in Rendlesham on one of the two 'district centre sites' for a "New convenience store, two shop units and associated car parking, service yard and pedestrian way, eleven affordable houses and associated car parking and ancillary works". Of those 11 affordable units; 8 were 2-bed and 3 were 3-bed. I mention this simply to highlight that the 'responsibility' to meet the affordable housing needs of Rendlesham does not only fall at the feet of proponents of Site SSP12, or SSP13, but evidently anyone considering negotiating neighbourhood plan policy on the district centre sites. What is of interest to this situation is that the application, whilst being refused for technical highways and RAMS matters (assumed to be capable of being overcome) was also refused because the mix of affordable housing did not meet policy SP3. Aside from the fact that SP3 has no recommended mix and instead relies on supporting text and 'general rules', I am frustrated to see that application was considered by the LPA to not be delivering enough 1 and 2 bed properties, whilst the appeal proposal was criticised for not providing enough 3 bed properties. Not all proposals will provide the desired mix, but in relatively short order the LPA had two proposals in front of it which turned out to complement each other in terms of their

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affordable housing offers. I contend that if a less arbitrary approach was taken by officers to the requirements of policy SP3 and its 'general rules' they would be more successful with the affordable housing provisions of Rendlesham.

5.25 The proposed affordable housing consists of 25 apartments:

Type	1 bed Sudbury 47 m^2 approx.	2 bed Sudbury 59 m^2 approx.	2bed Sudbury (2nd fl.) 84 m^2 approx.
Number AR	10	2	
Number DMS		8	5

5.26 This is shown graphically on the drawing in Proof Appendix 3.

5.27 I address the LPA's newly proposed affordable mix below in reference to the table above highlighting where the need is met in green and where it is effectively met in yellow:

Affordable housing type	**LPA mix**	**Appellant's response**
Affordable rent	5x 1 bed flats	This need is met with 5 of the 1 bed Sudburys.
	1x 2 bed bungalow with level access	This need is met with one of the ground floor 2 bed Sudburys.
	3x 2 bed houses	Not met by this scheme on this site.
	1x 3 bed bungalow with level access	Not met by this scheme on this site.
	2x 3 bed houses	Not met by this scheme on this site.
Shared ownership & discounted market sale	7x 1 bed flats	Not met by this scheme on this site.
	4x 2 bed houses	This need could be met by four of the five 2nd floor 2 bed Sudburys.
	2x 3 bed houses	Not met by this scheme on this site.

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5.28 The NPPF requires that "34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required…".

5.29 The Core Strategy pre-amble paragraph 5.11 to policy DM2 provides guidance on the levels and types of affordable housing required:

"The breakdown of these homes will be:

• 75% affordable rent; and

• 25% other affordable homes.

Policy DM2 sets out how this can be achieved"

5.30 Policy DM2 requires 33% affordable housing provision.

5.31 Emerging policy SCLP5.10 differs from the above percentage split, requiring:

"50% should be for affordable rent / social rent, 25% should be for shared ownership and 25% should be for discounted home ownership".

5.32 These percentages are included in policy, which means they are material, but they are not yet adopted.

5.33 The current proposal is split roughly 50/50 affordable rent and discount market sale which 'bucks' the percentages in terms of the 'other' non-rental properties.

5.34 The LPA state in their paragraph 5.29 that "The key issue with the reason therefore remains its compliance with Policy DM2". Reference is then made to the "adequacy of arrangements" provision in policy DM2.

5.35 The 'arrangement' which DM2 refers to are the provisions which would see the affordable homes offered to those in need. This relates to the provision of the s106 which have recently been discussed with the LPA in relation to whether the proposal met the NPPG requirements for build to rent. Rather than argue that the NPPG provisions which the LPA were pointing to was limited to 'build to rent schemes' (which this is not) the Appellant has taken the path of least resistance and confirmed his intention to become a registered provider for the affordable rental properties. Therefore, the LPA should be completely happy with the adequacy of the

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arrangements.

5.36 To conclude this section, I return to the questions I posed above:

- Is the overall provision policy compliant?

5.37 Answer: yes, it proposes 33% in line with policy DM2.

- Are the arrangements adequate?

5.38 Answer: yes, because the s106 includes the provisions the policy seeks.

- Is it a "key issue" in respect of the LPA SoC?

5.39 Answer: no. The key issue in DM2 is the adequacy of arrangements ensuring the homes are offered to local people via appropriate mechanisms. The 'adequacy' of the mix and tenure is a matter of conflict with the supporting text, not the policy.

- Is there an overriding benefit to any conflicts with the above?

5.40 Answer: yes. The developer proposed 75 dwellings which resulted in an affordable housing offer of 25 dwellings. This compares to the 17 dwellings the LPA would have seen if they had 'won' the 50 vs. 75 argument. I contend this benefit significantly outweighs any conflict with the supporting text to policy DM2. I find that the proposal conforms to policy DM2 and offer a benefit which overrides a conflict with supporting text which is not, in any event, a statutory policy matter.

Reason for Refusal 6 Habitats

5.41 In respect of **Reason for Refusal no.6** the LPA state in their Statement of Case that "the appellant has the opportunity to present a package of mitigation and information to enable the Council to withdraw its defence of this reason". For the reasons set out in the Appellant's Statement of Case and more recently in his Habitats Proof of Evidence, the LPA's position is disingenuous. There never was a legitimate reason for refusal on habitats grounds having regard to statutory policy requirements. Any residual concerns with respect to the informal requirement for a an appropriate dog walk was a matter that should (and would) have been resolved by positive engagement with the Appellant and appropriate discussion with Natural England during the application stage.

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Reason for Refusal 8 Planning Obligations

5.42 **Reason for refusal no.8** is a standard reason and will resolve itself in due course.

The Remaining Reasons 3 and 5

5.43 The Appellant's Statement of Case provides detailed responses to these 'outstanding' reasons for refusal (as well the other reasons) and arguments why they are misplaced and without foundation.

5.44 This Proof will not unnecessarily repeat that content, The Design Proof of Evidence will focus on the LPA's comments in relation to **reasons for refusal 3 and 5.** Because, at the time of writing this Proof and the Design Proof, no agreed statements of common ground have been forthcoming from the LPA, it may be necessary to deal with any issue arising from the subsequent agreement of Statements of Common Ground on Character & Appearance and Living Conditions via Rebuttal Proofs with the Inspector's permission.

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6.0 How the National Planning Policy Framework Relates to this Case

6.1 The NPPF requires decision makers to apply the presumption in favour of sustainable development. This follows on from the Ministerial Statement of March 2011 (which remains a material consideration):

"The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes'…"

6.2 The NPPF is a material consideration in decision making and it is my opinion that the following paragraphs are pertinent to the Appellant's case.

6.3 Paragraph 8 sets out the three interdependent and overarching objectives of sustainable development. I set out in paragraph 6.112 of the Planning Statement how the proposed development would contribute to the three dimensions of sustainable development; economic, social and environmental. I stand by those statements and my opinion has not altered.

6.4 Paragraph 11 directs decision makers to apply the presumption in favour of sustainable development to decisions and to approve development which accords with an up to date development plan without delay. It is my opinion that in this case the Appellant has been severely delayed by the LPA and this is discussed in the Planning Statement, Statement of Case and in this Proof.

6.5 Paragraphs 21 to 23 deal with Strategic Policies. Policy SSP12 is a strategic policy and should not have been used by the LPA in support of its Reason for Refusal no.1 as if it were a development management policy. The local plan Inspector is quite clear in Appendix 4 of this Proof that the successor to policy SSP12 (SCLP12.62) is a strategic policy.

6.6 Paragraph 38 states:

"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to

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approve applications for sustainable development where possible."

6.7 Paragraph 47 states:

"*Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing*"

6.8 The LPA had not approached the proposals positively. In the Statement of Case the Appellant stated that the LPA's behaviour had resulted in an appeal which should not have been necessary. By way of example, Appendix 3 to the Appellant's Statement of Case entitled 'Email correspondence with LPA', the email annotated '22', the case officer stated that "[in respect of extensions of time] *it is up to the team leaders to agree to the extension of time but they are only saying yes to committee items [OR?] other exceptional circumstances. This application is neither of them*". As set out in the Appellants Statement of Case at paragraph 1.50 this internal 'diktat' runs contrary to the PPG. Other examples of the LPA's less than positive approach are set out separately and below. It is a matter of record that since the appeal was submitted and a number of reasons for refusal have, in fact, been withdrawn (as the Appellant made clear would happen). Much public and private expense could have been avoided if the LPA had complied with the spirit of para. 38. It is very puzzling why this exhortation was steadfastly ignored by the LPA in relation to key issues that have led, unnecessarily, to this appeal.

6.9 Paragraphs 54 to 57 cover Planning Conditions and Obligations. Paragraph 54 states "*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*".

6.10 Paragraph 59 sets out the Government's objective of boosting significantly the supply of homes. In this case this objective is achieved by utilising an allocated site efficiently and providing higher than allocated numbers where any demonstrable harm is shown to be outweighed by the benefits.

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6.11 Paragraph 122 states that planning decisions should support development which make efficient use of land. The LPA have and will continue to argue that this paragraph is disapplied because of criteria d) and e). It is my opinion that the proposed development does maintain the area's prevailing character (by repeating the character of the neighbouring development) and does secure a well-designed, attractive and healthy place. In the event the Inspector agrees with the Appellant on these matters then NPPF paragraph 122 is a strong material consideration in favour of the proposed development.

6.12 Paragraphs 124 to 132 cover Section 12 Achieving Well-Designed Places. These paragraphs will be covered in greater depth in the Appellant's Design Proof. Notwithstanding, paragraphs 127, 128 and 129 are pertinent. Paragraph 129 requires LPA's to make appropriate use of "*frameworks such as Building for Life*". As set out in the Appellant's Statement of Case and in the Character and Appearance Statement of Common Ground, the Appellant is clear that in only referring to the 2015 edition of Building for Life throughout this process so far, the LPA missed the caveat in the 2018 edition of Building for Life which cautions against using Building for Life in support of refusals. I can attest that the Appellant did try to communicate this to the LPA at a meeting of 12th June 2019.

6.13 Paragraph 130 is not referred to specifically in the LPA's Statement of Case. It is referred to once in the Officer's Report to 19/1499 where only the first part of the paragraph is referenced. For balance the entire paragraph should be considered because it is the middle part which the LPA will need to justify in this appeal, namely:

"*Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development*".

6.14 The Appellant's Design Proof will set out whether the development plan policies have clear expectations and, if they do, how the proposal accords with them.

6.15 Paragraph 131 is especially pertinent because it advises decision makers to give great weight to "*innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in*

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with the overall form and layout of their surroundings". It is my opinion and that of the Appellant's Design Witness that the proposed dwellings promote high levels of sustainability through the use of environmentally sensitive building materials, high levels of landscaping and the orientation of the buildings to maximise daylight and passive solar gain[1]; for this reason the development is innovative. The properties will help raise the standard of design in Rendlesham. The development will fit in the overall form and layout of the surroundings as Garden Square and Gardenia Close have done and will create a safe and congenial living environment.

[1] Final sentence of emerging policy SCLP9.2 Sustainable Construction

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7.0 How the Development Plan Relates to this Case

7.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the Development Plan and its policies unless material considerations indicate otherwise. This is why, despite the LPA's stated position in December 2018[2] that the tilted balance was engaged, the Planning Statement I authored for the planning application took a precautionary approach and advanced two lines of policy analysis (see Planning Statement paragraph 6.11) and analysed the development in the context of the presumption in favour of sustainable development but also by reference to the policies in the development plan (applying s.38(6)).

7.2 The Development Plan consists of:

- Core Strategy and Development Management Policies (adopted in 2013)
- Site Allocations and Area Specific Policies (adopted in 2017)
- Rendlesham Neighbourhood Plan Policies (Made in 2015)
- Saved Policies of the 2001 Local Plan (it is common ground with the LPA that no saved local plan policies are relevant to decision making)

7.3 The Planning Statement and Statement of Case set out at length and in detail the policies considered relevant to decision making and provided the Appellant's feedback to them.

7.4 This Proof will focus on those policies which remain 'outstanding' in so far as they relate to the remaining reasons for refusal as discussed in Section 5 above. If circumstances alter then additional policies may require coverage in a Rebuttal Proof.

7.5 Outlined below are those policies on which the decision notice was orientated and are referenced in 'remaining' reasons for refusal

- DM21 Design Aesthetics
- DM22 Design Function
- DM23 Residential Amenity

[2] Notes of pre-app meeting of 11th December 2018, confirmed by LPA email of 19th December 2018

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- 'Elements' of SSP12 as set out in the LPA Statement of Case at paragraph 5.15 and 5.16.

7.6 The following development plan policies may be relevant if respective topic-specific statements of common ground cannot be achieved:

- SP3 New Homes
- DM2 Affordable Housing
- SP14 and DM27 Biodiversity

7.7 The following development plan policies are not considered relevant as they relate to reasons for refusal which the LPA is no longer defending. Clearly if that situation changes then the matter may need to be revisited in Rebuttal Proofs:

- 'Elements' of SSP12 as set out in the LPA Statement of Case at paragraph 5.15 and 5.16.

7.8 Policy DM21 and DM22 are, for all practical purposes, identical to their predecessor saved local plan policy AP19. The neighbouring development at Garden Square and Gardenia Close was designed by the same design team and was determined to be acceptable in planning and design terms by the LPA in accordance with the now superseded saved local plan policy AP19 – which includes, practically word for word, the same policy tests.

7.9 Policy DM23 relates to residential amenity and states that "*Development will be acceptable where it would not cause an unacceptable loss of amenity to adjoining or future occupiers of the development*". It is my opinion that this is a high bar to reach and through scrutiny of evidence provided by the LPA the Appellant's team can demonstrate that there are either no instances of unacceptable amenity impact or that cannot be mitigated simply. The Appellant team will do this by reference to the submitted documentation and the 'life size model' of Garden Square and Gardenia Close where comparable relationships exist; comparable relationships that were deemed to be acceptable under old saved policy AP19 with its policy tests near-identical to the current policies DM21 and DM22.

7.10 Policy SSP12 is in my opinion a strategic policy and not a development management policy. The criteria in policy SSP12 are used to guide developments to ensure they

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do not offend the strategic approach of the local plan.

7.11 The LPA state that the proposed development does not comply with some elements of the policy. The LPA Statement of Case identifies those elements. The LPA do not assert that the proposed development conflicts with the detailed requirements of policy SSP12 nor that any non-compliance with the policy conflicts with the strategic objectives of the plan taken as a whole.

7.12 Those 'elements' are set out below:

Refusal Reason 1 – Principle of development

Policy SSP12 (Land west of Garden Square, Rendlesham) states:

5.05ha of land west of Garden Square, Rendlesham, as shown on the Policies Map, is identified for a mixed residential development and greenspace provision for approximately 50 units.

Development will be expected to accord with the following criteria:
- *Meet the minimum distance from the Water Recycling Centre within which new residential development is considered acceptable as advised by Anglian Water;*
- *Provision of a flood risk assessment;*
- *Accommodate the sewers that cross the site;*
- *The development will need to demonstrate there is adequate capacity in the foul sewerage network or that capacity can be made available;*
- *The design, layout, mix and type of housing proposed is compatible with the housing and transport objectives set out in the 'made' Rendlesham Neighbourhood Plan;*
- *Provision of affordable housing;*
- *The remaining greenspace should be used for a mix of informal open space suitable for daily dog walking, allotments or orchards in accordance with Rendlesham Neighbourhood Plan policy RNPP3;*
- *Provision of a substantial landscape buffer to the northern and western boundaries where it abuts open countryside;*
- *An archaeological assessment will be required; and*
- *A transport assessment.*

In addition, the air quality impacts of traffic from cumulative development at Melton crossroads and the Air Quality Management Area declared in Woodbridge will need to be investigated in the form of an Air Quality Assessment, together with a mitigation appraisal.

7.13 Section 70 of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 provide that in determining planning applications and appeals regard shall be had to the development plan and the determination must be made in accordance with the plan unless material considerations indicate otherwise. The determination must be made in relation to the development plan as a whole, and this is an important principle when considering the application of Section 38(6).

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7.14 This was established by Mr Justice Sullivan in the High Court case R v Rochdale Metropolitan Borough Council ex parte Milne (referring at that time to Section 54A of the Town and Country Planning Act 1990) where he made clear a proposal does not necessarily have to accord with each and every policy contained in the development plan (I set out the relevant extracts from the judgment here for convenience - see Proof Appendix 5 For the full judgement):

48. It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In City of Edinburgh Council v. the Secretary of State for Scotland [1997] 1 WLR page 1447, Lord Clyde (with whom the remainder of their Lordships agreed) said this as to the approach to be adopted under section 18A of the Town and Country Planning (Scotland) Act 1972 (to which section 54A is the English equivalent):

> *"In the practical application of section 18A, it will obviously be necessary for the decision maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it."*

49. In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes et cetera, it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies.

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50. For the purposes of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.

7.15 This is also reflected in the NPPG which states:

What approach must be taken where development plan policies conflict with one another?

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Conflicts between development plan policies adopted, approved or published at the same time must be considered in the light of all material considerations, including local priorities and needs, as guided by the National Planning Policy Framework.

Paragraph: 012 Reference ID: 21b-012-20140306

Revision date: 06 03 2014

7.16 In my opinion, for the reasons set out in this proof, the appeal proposal is in accordance with the development plan when considered as a whole.

7.17 The Appellant set out in detail in the Planning Statement his position on how the proposal complied with the Rendlesham neighbourhood plan objectives but that the neighbourhood plan objectives are just that and not development plan policies. Having been involved in the production of the neighbourhood plan, I know that the neighbourhood plan objectives were specifically chosen to be objectives and not policies. The neighbourhood plan objectives are material, but not policy.

7.18 The application provides for affordable housing in compliance with development plan policy.

7.19 The very large area of greenspace has been proposed for open space, forming part of the daily dog walk and is proposed to be landscaped with orchards; in compliance with SSP12 and RNPP3.

7.20 It is therefore my firm opinion that the proposal complies with ALL elements of policy SSP12, especially those identified by the LPA as ‘outstanding’.

7.21 The submitted Planning Statement took two approaches to appraising the proposed development; one of which was the ‘Section 38(6)’ / NPPF Para 11 approach of

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simply demonstrating compliance with the development plan. The following table was produced:

Policy	Name/Description	Compliant y/n?
SP1	Presumption in Favour of Sustainable Development	Yes
SP1a	Sustainable Development	Yes
SP2	*Housing Numbers and Distribution*	No but a positive conflict
SP3	New Homes	Yes
SP11	Accessibility	Yes
SP12	Climate Change	Yes
SP14	Biodiversity	Yes
SP15	Landscape and Townscape	Yes
SP16	Sport and Play	Yes
SP17	Green Space	Yes
SP18	Infrastructure	Yes
SP19	Settlement Policy	Yes
SP27	Key Service Centres	Yes
DM2	Affordable Housing on Residential Sites	Yes
DM19	Parking Standards	Yes
DM20	Travel Plans	N/A as confirmed in TS
DM21	Design Aesthetics	Yes
DM22	Design Function	Yes
DM23	Residential Amenity	Yes
DM24	Sustainable Construction	Yes
DM26	Lighting	Yes
DM27	Biodiversity	Yes
DM28	Flood Risk	Yes
DM32	Sport and Play	Yes
DM33	Allotments	No, but complies with RNPP3 instead
SSP1	New Housing Delivery	Yes
SSP2	Physical Limits Boundaries	Yes
SSP12	Land West of Garden Square, Rendlesham	There is a minor numerical conflict but the compliance with the wider objectives of the development plan are considered to override this.
RNPP3	Allotment, Orchard and Growing Space Provision	Yes

7.22 I remain content with the reasoning behind that assessment. In fact, in respect of policy DM2 and the approach taken to respond to the new information in the Council's Statement of Case, I would say that the proposal is even more compliant than it was.

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8.0 The Planning Balance

8.1 It is my opinion that the LPA failed to properly balance the benefits and harms at application stage (see Proof Appendix 6) and continue to do so now, despite having retreated from multiple reasons for refusal.

8.2 The matters which the LPA weighed into the balance against at application stage, but have since withdrawn from:

- The 'principle objection' that the proposal was contrary to policy SSP12 simply because it proposed 75 dwellings instead of the "approximately 50" set out in the policy. The position taken by the development management planning officers did not appear to acknowledge the evidence submitted multiple times to the local plan process.
- That the cordon sanitaire limited the area of housing. I acknowledge the LPA say this is because of more recently submitted information. I disagree with this and have said in the Statement of Case and Local Plan Representations that the data was there from the start to enable the LPA to approach this matter positively and determine that the odour levels were not reflective of the cordon sanitaire and were not a 'limiting factor' on development.
- That the applicants had accommodated the sewers across the site and/or needed to 'demonstrate' they had accommodated. I acknowledge that the LPA have their comments on this in their Statement of Case but I maintain that the multiple references to the sewers having been accommodated in the design in the planning application was clear, if the LPA had any questions it could have asked. In addition, policy SSP12 advises that the sewers be 'accommodated' the policy does not require 'demonstration of accommodation'.

8.3 The submitted Planning Statement was clear on the benefits associated with the planning application and the planning balance conclusion that derived from it – see Planning Statement paragraphs 6.75 to 6.77.

8.4 In the Officer's Report to 19/1499 the LPA conclude that:

"Therefore the application is being recommended for refusal due to the overall harm that would be cause from this development, it is considered that there would be no

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benefit recommending the application for approval on the basis of new dwellings in this sustainable location versus the impact and harm that would be caused on the overall design and function of the site and harm to the amenity of the future residents of this site lack of affordable dwellings, HRA mitigation and no firm detail on the S106. These concerns and refusal reasons have been raised throughout the preapplications and previous application that has been recommended for refusal. Therefore this application cannot be supported and is being recommended for refusal."

8.5 The LPA's balancing exercise was flawed then and, because of the removal of significant reasons for refusal, is more so now (indeed, I would suggest that it remains incumbent on the LPA to reconsider the planning balance given the material concessions it has made to date). There was no 'overall harm'. Therefore, the conclusion that "there would be no benefit in recommending the application for approval" was illogical.

8.6 The LPA's Statement of Case provides no updated planning balance exercise so it is not clear how or whether the LPA have undertaken any 're-balancing' exercise or simply soldiered on with the remaining reasons for refusal.

8.7 I address now the eleven specific 'planning balance' comments from the Officer's Report and respond to them in light of both the information submitted with the original submission and/or more recent circumstances appropriate, in order to show that the LPA's planning balance was flawed at application stage, and, when corrected shows the application should have been approved instead of refused.

LPA Comments on Benefits

8.8 **LPA comment 1**: "*Economic benefits including both spend in the local economy and job creation in the construction industry, during construction upon occupation*".

8.9 This is a very limited assessment of the economic benefits.

8.10 Bearing in mind that at the time the LPA undertook their 'balancing exercise' they were still maintaining the 50 dwelling principle issue (see the Officer's Report conclusion), then the LPA should have given weight to the CIL uplift from the 50

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dwellings referred to in policy and the 75 being proposed, regardless of whether any perceived impacts were considered to tip that balance.

8.11 Economic benefits include local finance considerations. The relevant NPPG guidance on this is included in Appendix 7 of this proof. It is my opinion that at the time of the LPA balancing exercise the difference in CIL monies arising from 50 or 75 dwellings was material – it was a benefit deriving from the application before the officers which differentiated from what they were saying was possible in policy terms, namely 50 dwellings.

8.12 For the avoidance of doubt the CIL 'uplift' discussed in the Planning Statement between 50 and 75 dwellings is approximately £172,000.

8.13 There is no mention of this in the LPA's assessment and I give a significant monetary uplift such as this significant weight, not least in Rendlesham where the common complaint of local people and the parish council is one of infrastructure shortfalls.

8.14 Because Rendlesham has a made neighbourhood plan they can be entitled to 25% of the CIL monies arising. The LPA wrongly claim this as 15% therefore any weight which the LPA may have placed on this aspect is necessarily undermined.

8.15 Of the CIL amounts set out in Appendix 8 of this Proof, the following amounts are derived:

- 50 dwellings at the LPA's 15%: c. £52,000
- 50 dwellings at 25%: c.£86,000
- 75 dwellings at the LPA's 15%: c. £77,400
- 75 dwellings at 25%: c. £129,000

8.16 I give the benefit deriving to the community from the difference between the CIL monies the LPA have been working to (£52k) and the reality (£129k), a difference of some £77,000 significant weight, not least in light of the parish council's comments on local infrastructure provision in Rendlesham. I see no reference to this in the LPA's planning balance.

8.17 **LPA comment 2**: "*Provision of affordable housing (though this is affected by deliverability concerns highlighted in the report*".

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8.18 The deliverability concerns were just that and were either baseless or could have been satisfied had the LPA expressed those concerns prior to determination and sought an answer. We are not told to what degree the benefit as acknowledged was affected by the concerns. The LPA has subsequently accepted information provided, and these concerns have evaporated. Therefore, the benefit the LPA were giving to affordable housing provision would not have bene tarnished as it was by 'concerns'.

8.19 **LPA comment 3**: "*Very limited weight to CIL contribution to be spend on infrastructure projects, a proportion of which would be directed to the Town Council (15% of receipts), as this is required primarily to mitigate the effects of the development and New Homes Bonus*".

8.20 Please see comments above re local finance considerations. The weighting being given here is artificially low because the LPA have failed to acknowledge the materiality of the CIL uplift at the very least and have misunderstood the proportion available to a parish council with a made neighbourhood plan.

Benefits Missing from the LPA's Assessment at Application Stage

8.21 The following benefits were not included in the LPA's planning balance exercise, despite having been set out clearly in the planning application:

- Making efficient use of land on an allocated housing site.
- Boosting the supply of housing in the context of an out of date housing and distribution policy.
- Providing high quality housing and contributing to the established mix of housing in Rendlesham and the district.
- Provision of affordable housing above the evidenced need in the district.
- Very limited environmental or landscape impacts.
- 'Local finance considerations' and the uplifted contribution towards local infrastructure through the Community Infrastructure Levy (CIL).

LPA Comments on Impacts

8.22 **LPA comment 4**: "*The poor design and layout of the development*".

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8.23 This matter remains in contention, however we know that the LPA's assessment of design was heavily reliant on Building for Life 2015 which, for the reasons given in the Appellant's Statement of Case and the Design Proof, this approach was flawed and misguided and in my opinion displays a preference to find any mechanism to be negative rather than be positive.

8.24 **LPA comment 5: "***The lack of connectivity to the existing wider community, through limited public routes into and through the development, and limited visual cohesion with the adjacent built environment in terms of layout and form*".

8.25 There is no lack of connectivity. Along the shared boundary with the developments at Tidy Road and Garden Square/Gardenia Close there are two vehicular access where the site is clearly expected to be accessed by road and there are two pedestrian points of access.

8.26 There are a further two points of pedestrian access shown which access through to Peace Palace Gardens and from there to Gardenia Close.

8.27 In total two vehicular accesses in line with County Highways requirements and four points of pedestrian access.

8.28 It is difficult to envisage that more could have been possible.

8.29 In term of visual cohesion with the adjacent built environment, the layout is clearly intended to be a continuation of the existing and successful development at Garden Square/Gardenia Close with which the appeal site shares the largest proportion of its boundary.

8.30 **LPA comment 6: "***The creation of locations which would be vulnerable to fear of crime, due to lack of natural Surveillance*".

8.31 The proposed dwellings have windows on all sides. In this way they are practically identical to the development at Garden Square and Gardenia Close. The planning application provided crime data showing that Garden Square and Gardenia Close experienced proportionately less crime than the rest of Rendlesham. Whatever the LPA's concerns they were not supported by evidence.

8.32 I note that the LPA's approach to crime and safety was in large part informed by its use of BfL and for the reasons set out in Appendix Xiv to the Appellants Statement

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of Case where our design witness states (I repeat it here because it is so important, with my emphasis in bold):

> *"This letter accompanies the report produced by us in which we undertook an assessment of the proposed development to the north of the village of Rendlesham, Suffolk using the BfL12 system. It should be noted that* ***this letter should be read in conjunction with that report****, to help clarify how the scope of the BfL12 report overlaps – or doesn't – with our overall view of the design proposal. Please note we are also currently engaged in developing the new Suffolk Design Charter.*
>
> *Building for Life 12 is a useful tool for achieving good design,* ***but it has to be used properly*** *and* ***at the right time*** *in the design process to be fully effective. It also* ***has to be understood by the people using it that there may be design solutions not recommended within BfL12 that nevertheless deliver the same intended outcomes.***
>
> *In 2018, a new version of BfL12 was published by the BfL Partnership, to which we are a contributing editor. This version differs from the previous 2015 version primarily because* ***it makes clear that BfL12 is best used as a tool for design development, not assessment****.* ***That is not to say that BfL12 cannot be used for this purpose, merely that it is not its core function****.*
>
> *A key issue that we found when using BfL12 in the case of Rendlesham was* ***a difference between standardised best practice and what is supported by evidence*** *in this specific case. A case in point is the generally accepted approach to design to minimise crime. The design proposal features some layout arrangements that would be expected, statistically, to be more vulnerable to crime. However,* ***disaggregating causal factors in determining crime susceptibility is a difficult task****,* ***and isolating variables is inherently tricky****. In this case, what we have is* ***solid data on incidences of crime*** *that show that the existing development designed to the same principles is* ***the least prone to criminal issues in the entire village****. So, whilst BfL12 can tell you what* ***generally works****, here we have an example of a design approach that* ***specifically works*** *in terms of minimising crime.* ***Outcomes matter****.*
>
> *Indeed, the recently launched* ***National Design Guide is written expressly to shift the focus to outcomes rather than design specifics****. Outwardly and similarly to BfL it sets out ten characteristics of a well-designed place, each of which is a statement of performance or results. In this way, it allows space for design solutions that can demonstrate the required characteristic as an outcome, much as the design team are doing here.*
>
> *In summary, we have tried to use the BfL12 system to appraise the design in a fair and disciplined way, sticking closely to the recommendations contained within it. However, that does not mean that this is our definitive view of the design proposal. We expect to prepare a full design appraisal - of which BfL12 will only be a part – in due course in this appeal*."

8.33 It is my opinion and that of the Design Expert Witness that the LPA did not understand how to use BfL, did not use the latest version of BfL, did not disaggregate causal factors in their assessment and instead of focusing on evidence instead were blinkered by the task in hand (being negative) and missed the

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outcomes of the design they were seeking to discredit.

8.34 The LPA were told of the existence of Building for Life 2018 at the 12th June 2019 meeting, but I assume did not understand the relevance of what they were being told. I therefore give this supposed 'impact' limited weight or credibility because I contend that had the LPA have approached BfL properly and/or understood what BfL 2018 was cautioning them against, it is reasonable to assume the LPA would have reconsidered their position.

8.35 **LPA comment 7: "***The impact on residential amenity, through limited residential amenity spaces for some units and direct overlooking to both proposed and existing dwellings*".

8.36 The LPA have since significantly retreated on the extent of claimed impact on this matter and therefore its significance in their balancing exercise is much diminished.

8.37 **LPA comment 8: "***Insufficient information on the provision of affordable housing*".

8.38 Any insufficiency could have been dealt with had the LPA only have asked. In any event, now that the LPA are focussed on the matters at hand, additional information has been willingly provided and this matter is resolved, as it could have been prior to July 2019.

8.39 **LPA comment 9: "***The impact of odour from the adjacent treatment centre upon the proposed open space and future residents*".

8.40 This was not a matter during the application, there being sufficient information in the submitted information to show odour levels were below adverse levels. Additional work was commissioned to help advance local plan arguments and this has helped the LPA see that odour is not the problem it thought it was.

8.41 **LPA comment 10: "***Impacts upon the habitats of protected species and impacts upon environmentally designated sites from increased visitor numbers, resulting in likely significant effects*".

8.42 As set out the Habitats Proof of Evidence:

"The Council in its Statement of Case admits that it did not consult Natural England. It appears that this decision was initially taken shortly after the application was made, when statutory and other consultees were initially consulted, and the decision not to consult was repeated later in May 2019, notwithstanding that the Council's

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Ecology Officer recommended that it be done.

The informal use of this template by the Council appears to have materially influenced its decision (see Section 6 above), despite the fact that it has no statutory policy significance and, notwithstanding that it purports to be based upon NE guidance, appears to have been applied as if it were policy and, in my opinion, without proper transparency and the use of appropriate discretion.

The failure to carry out an appropriate assessment, and/or properly to consult NE, was an omission which has led, in my view, to an unjustified reason for refusal on Habitats Regulations grounds. Even though there is no policy requirement for its provision, such consultation would, in any event, have revealed NE's satisfaction with a circa 2km walking route in this case".

8.43 This impact was therefore likely incorrectly applied.

8.44 **LPA comment 11: "***The adverse impacts of permitting this development would significantly and demonstrably outweigh the benefits, when assessed against the NPPF taken as a whole*".

8.45 It is my contention that there never were any adverse impacts. However, taking a somewhat generous approach and 'gifting' the LPA the benefit of the doubt on the 'outstanding' design matter, it is my professional opinion that the benefits (as set out above and as set out in the planning application) clearly and demonstrably outweighed these alleged impacts.

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9.0 Conclusion

9.1 This proposed development is patently sustainable development and has been shown to be so from the start. The LPA have approached decision making negatively in contravention of NPPF paragraph 38.

9.2 It is my opinion that there are demonstrably no adverse impacts that individually or cumulatively outweigh the clear and compelling benefits of the proposed development. The proposed development complies with the development plan when read as a whole and should be approved on that basis alone.

9.3 Currently in Suffolk Coastal the Council is operating under an aged local plan which was "*subject to* [a] *commitment to an early review of the Plan, with full up-to-date evidence, commencing no later than 2015*" (Core Strategy foreword) but which did not commence until early 2017.

9.4 It is in the process of adopting a new plan which is falling behind its timetable for adoption; originally scheduled in the Council's 2015 Local Development Scheme for November 2019 and currently said to be Spring 2020 on the Council's website.

9.5 In their pre-app advice (DC/PREAPP/18/4778 notes of the meeting of 12th December 2018) the LPA advised that: "*SP2 is out of date and the NPPF Para 11 tilted balance applies* [and] *the 'most important' policies in this case would be SP2, SP27 and SSP12, SP1 and SP1a* [and] *in the event that SSP12 is regarded by the LPA as a restrictive policy in terms of housing numbers then, by virtue of it being a derivative policy of SP2 and the Core Strategy, then it must be 'infected' by the out of date status of SP2 and be out of date itself and therefore of less weight – insofar as any 'numbers restriction' might be implied or applied [and] that if SSP12 is not 'restrictive' then the first 50 or so dwellings could be seen as compliant with the policy and the subsequent 25 or so as windfall and therefore be plan compliant that way*". The Appellant considers that the 'Most Important Policies' would be SP2, SSP1 and SSP12.

9.6 It is at least arguable that the tilted balance applies but the Appellant has always been clear that he does not have to rely upon this either because the proposals are in accordance with the development plan taken as a whole, or, to the extent that there is any conflict, material considerations in terms of the benefits clearly indicate that planning permission should be granted.

9.7 It follows, that if the tilted balance is found to apply, it cannot be said that that any residual impacts, such as they might be, would significantly and demonstrably outweigh the considerable benefits of the proposal.

9.8 The Inspector is respectfully requested to allow this appeal and allow the Appellant to pursue his development without further delay.

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