



Planning Proof of Evidence

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Appeal Reference: APP/E/3715/W/25/3373251

Land North Of Rounds Garden, Rugby,
CV21 2BS St Modwen Homes.

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1. Qualifications, Experience and Declaration

- 1.1 My name is Chantel Blair. I hold an Undergraduate Degree in Planning and Development and Masters in Spatial and Environmental Planning from Birmingham City University. I am a Member of the Royal Town Planning Institute.
- 1.2 I am a Principal Planner at Cerda Planning Limited. I started in 2023, providing planning consultancy services principally in residential development. I work with a team of planning consultants and advise a number of the country's major house builders and promoters.
- 1.3 I have 25 years planning experience in both the public and private sectors. I have been based in the Midlands region throughout my career, advising on sites across the country.
- 1.4 Over this time, I have advised on numerous development proposals in the context of planning applications, Development Plan preparation and, as necessary, appeals.
- 1.5 I have visited the appeal site, and I am familiar with it and its context.

Statement of Truth

- 1.6 The evidence that I shall provide for this appeal has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true professional opinions. In providing expert evidence to the Inquiry, I am fully aware that my duty is to the Inquiry and to provide my honestly held professional views, irrespective of by whom I am employed.

2. Introduction and Scope of Evidence

- 2.1 This Section 78 appeal is lodged by St Modwen Homes, the Appellant. It relates to Rugby Borough Council's decision to refuse full planning application (reference R24/0111) for the development (as described in the decision notice issued by the Council) at Land North of Rounds Gardens, Rugby.

“Redevelopment of the former football pitch and tennis courts associated with the adjacent employment use, including demolition of the existing pavilion and all other remaining structures and enclosures relating to the previous use of the site; and the erection of 115 dwellings, accesses, landscaping, parking, drainage features and associated works”.

- 2.2 My evidence relates to matters of planning policy including considering the weight to be afforded to relevant Development Plan policies. I also consider sustainability as it relates to planning matters and the overall planning balance.
- 2.3 Separate proofs of evidence and related reports are also produced with regard to the following specific matters:
- i) **Mr Michael Carr**, Pegasus, Design
 - ii) **Mr Tom Smith**, Emery Planning, Housing Land Supply
- 2.4 Having read and understood the evidence of the other witnesses I confirm that I fully concur with and support their professional conclusions. I will draw as necessary from the evidence of Mr Carr and Mr Smith.
- 2.5 My evidence to this inquiry seeks to provide a comprehensive appraisal of the planning issues arising from the appeal proposals. Accordingly, I will cross reference relevant parts of the evidence of Mr Carr and Mr Smith to support my overall assessment of the relevant material considerations for this appeal.
- 2.6 I will further reference key elements of the evidence contained within the Core Documents as necessary.

Structure of Evidence

2.7 My evidence is structured as follows:

- i) In **Section 3**, I set out the appeal proposals;
- ii) In **Section 4**, I address the site and Rugby as a location for growth;
- iii) In **Section 5**, I set out relevant background to the appeal, including in relation to planning history, the processing of the appeal application, and the plan making context for Rugby;
- iv) In **Section 6**, I set out the planning policy framework against which this appeal should be determined;
- v) In **Section 7**, I set out the Appellants case. I assess the appeal proposals against the Reasons for Refusal; planning obligations, consider comments made by interested parties; the benefits to arise; and finally, I set out a planning balance.
- vi) In **Section 8**, I set out my summary and conclusions.

Key Considerations

2.8 I consider that the following key issues are relevant to the determination of this appeal:

- Whether the appeal proposals accord with the relevant policies of the Development Plan when taken as a whole;
- The degree to which the policies of the Development Plan are up to date;
- The extent to which the Development Plan policies are consistent with the Framework;
- The weight to be afforded to the Development Plan, having regard to the Framework;
- Whether the 'tilted balance' as set out in Paragraph 11d of the Framework is engaged;
- The benefits of the development and the weight that should be attached to those benefits;
- The adverse impacts of the development and the weight to be attached to that harm;
- Whether any conditions or Section 106 planning obligations could address that harm;

- If there are any other material considerations that need to be weighed in the balance.

2.9 I undertake a planning balance assessment to conclude whether the appeal should be allowed, and planning permission granted.

3. The Appeal Proposals

- 3.1 The Planning Statement of Common Ground includes a full list of the appeal application documents as submitted, accepted and consulted upon during the Councils processing of the appeal application.
- 3.2 The appeal application was submitted on 1st February 2024, validated on 9th February 2024 with a statutory determination date of 10th May 2024. A series of extensions of time were agreed between the Appellant and the Council. The Appellant sought to engage with the Council including in respect of submitting additional/revised information to assist in the processing of the application. The Council determined the appeal application on 19th March 2025.
- 3.3 The Committee Report is found at **CD5.2**.
- 3.4 The Council refused the application for six reasons as set out within the Decision Notice (**CD5.7**):
1. The sequential test for flood risk has not been applied properly and therefore has not been satisfied. It has therefore not been shown if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The development is therefore contrary to Policy SDC5 of the Local Plan (2019) and paragraph 174 of the National Planning Policy Framework (2024).
 2. The mitigation proposed in relation to the football pitch, pavilion and associated car park is not considered to be detailed or the required level of mitigation needed in order to replace the lost provision 'by equivalent or better provision in terms of quantity and quality in a suitable location' under 104b. It is therefore considered that this proposal does not comply with Policy HS4(C) of the Local Plan (2019) or paragraph 104 of the National Planning Policy Framework (2024).
 3. The Applicant has failed to demonstrate that safe and suitable access for all users would be provided to the development and the proposal, if permitted,

could consequently result in an unacceptable form of development and could lead to dangers for highway users contrary to paragraph 115 and 116 of the National Planning Policy Framework (2024) and Policy D1 of the Local Plan (2019).

4. The Applicant has failed to demonstrate that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be mitigated, contrary to paragraph 115 and 116 of the National Planning Policy Framework (2024) and Policy D1 of the Local Plan (2019).
 5. The proposals include the removal of T149-164 (high quality London Plane) which is a significant group and a prominent feature within the street scene which contributes positively. This would be detrimental to the character of the area alongside the loss of a further category A tree and 12 category B trees. The proposal is therefore considered to be contrary to Policy SDC2 of the Local Plan (2019) and paragraph 136 of the National Planning Policy Framework (2024).
 6. The proposed development does not provide a high-quality well-designed place. The development would not be visually attractive or provide a good architectural response to the site in relation to built form, layout and landscaping therefore having a detrimental adverse impact on the character of the area. The application is therefore contrary to Policies SDC1 and NE2 of the Local Plan (2019), Paragraph 130 and 135 of the National Planning Policy Framework (2024) and the National Design Guide (2021).
- 3.5 I note the provisions of Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMPO”) which provides: “(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters—... (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision”.
- 3.6 The reasons for refusal can thus be taken to constitute the Council’s “full reasons”.

- 3.7 The Council does not invite dismissal of the appeal on any other basis, nor are there any breaches of any other policies of the Development Plan other than those set out in the reasons for refusal. In particular, I note that the Council does not cite, or rely upon, a breach of any of the provisions of its emerging Development Plan, nor does it cite or rely upon paragraphs 48 to 51 of the NPPF (i.e. there is no suggestion that these proposals prejudice the emerging Development Plan).

4. Rugby and the Appeal Site

4.1 Rugby's Urban Area outside of the town centre is the primary focus for new sustainable housing and employment development. Rugby Town is the largest settlement in the Borough and is a sustainable location for growth and change.

4.2 The Development Plan confirms that:

“Rugby Town is the most sustainable location within Rugby Borough, providing the best access to a range of services and facilities”

4.3 Rugby Town contains key services and community facilities. The approximate distances from the centre of the Site to services and facilities in Rugby are set out in the table below:

Facility	Distance (m/km)
Rugby Town Centre	1km
Caldecott Day Nursery	790m
The Rugby Montessori Nursery School	990m
Wellingtons Regent Place Day Nursery	1km
Reena off Licence and News	440m
New Bilton Stores	470m
Co-operative Food	740m
Londis	790m
Asda	940m
Premier	990m
Sun Shing	540m
The Holly Bush	740m
China Palace	790m
Subway	790m
Arnies Batch Bar	840m
Royal Oak	890m
Rugby's Fish Bar	990m
Spices of Rugby	990m
Franklins Sandwich Shop	990m
Westside Medical Centre	840m
Rowlands Pharmacy	940m
Central Surgery	940m
Caldecott Park	740m
Jubilee Recreation Ground	790m
Rugby Art Gallery and Museum	990m
Hillmorton FC	1.2km
Rugby Cricket and Football Clubs	1.4km
Addison Road Recreation Ground	1.7km

- 4.4 The Development Plan requires significant levels of housing (12,400 additional homes), employment, office and retail development to be delivered over the plan period, along with supporting infrastructure and environmental enhancements.
- 4.5 I turn now to consider the appeal site.
- 4.6 The appeal site is currently overgrown, unoccupied and unmanaged with boundary treatments in a poor condition. The vast majority of the site comprises dense scrub, poor semi-improved grassland, scattered trees, treelines, hardstanding, woodland and hedgerow. There is a significant depression inside the site which was formally used as a sports pitch. The site is now derelict, and it has become dangerous and prone to anti-social behaviour. Warwickshire Police express concerns regarding frequent unauthorised access to the site, driven by the abandoned buildings and related safety risks **(CD9.7 and CD9.8)**.
- 4.7 The site is located to the northwest of Rugby town centre and forms part of the urban residential area of Rugby. The site extends to approximately 5.1ha, comprising a former private recreation ground including pavilion, tennis court and a disused car park. The site is currently vacant and was last in use in excess of 20 years ago by factory employees of GEC.
- 4.8 The site is bound by the Army Reserve Centre and Indian Community Centre to the west, both of which are accessed from Edward Street, with existing residential development beyond, as well as further residential development accessed from York Street to the south-west, and from Essex Street, Princes Street, Kings Street and Hill Street to the east. To the north, the site is bound by the remaining General Electric Power Facility – now known as Arabelle Solutions; and to the south it is adjoined by land owned by Rugby Borough Council, which until recently contained a combination of high- and low-rise apartment blocks – these are all now demolished.
- 4.9 In terms of infrastructure, the site sits east of the A426 and A428/B4642 to the south. The closest bus stops to the western part of the site (Willans Place) are located on Oliver Street approximately 450m to the south of the site. The nearest bus stops to the eastern part of the site (Princes Street) are located on the A426 Newbold Road, approximately 250m to the east of the site. Rugby railway station is located approximately 1.4km from Princes Street or 1.9km from Willans Place.

- 4.10 The site directly adjoins the urban area and is not presently located within any land designations. The site is clearly sustainable with excellent access to services and facilities.
- 4.11 There are no statutory heritage assets within or directly adjoining the sites boundary. The site is covered by a Tree Preservation Order (TPO).

5. Background

5.1 The associated planning history in respect of the appeal site is set out below:

Application	Description	Decision
R25/0420	Demolition of vacant pavilion located on land north of Rounds Gardens	No Prior Approval required 5 June 2025
R24/0745	EIA Screening Request – Erection of up to 200 dwellings	EIA Screening Opinion – Not EIA Development – 19 July 2023

The Adopted Development Plan

5.2 In June 2019, Rugby Borough Council adopted its Local Plan (2011 – 2031).

Local Plan Review

5.3 The Rugby Borough Local Plan 2011 – 2031 is currently under review with the Issues and Option consultation undertaken between October 2023 and February 2024. The updated National Planning Policy Framework (NPPF) was published on 12 December 2024. The Preferred Options Consultation Document sets out a proposed development strategy for the borough for the period 2024 – 2045 and was consulted upon between 24 March 2025 and 19 May 2025.

5.4 The Local Development Scheme (LDS) sets out the timetable for the Local Plan Production.

Local Plan stage	Timescale
Issues and options consultation (Regulation 18)	Complete
Preferred options consultation (Regulation 18)	March 2025
Pre-submission consultation (Regulation 19)	January 2026
Submission for examination	June 2026
Adoption	June 2027

- 5.5 It is currently anticipated that the Council will adopt the Plan by June 2027; however, there is no certainty regarding the Plan's adoption.
- 5.6 As set out in Plan table S2 (Strategy for homes), the current housing requirement is 618 dwellings per annum equating to a total housing requirement of 12,978 across the plan period (2025 to 2042). However, a housing requirement of 636 dwellings per annum as set out in the latest Standard Method (SM) is the figure to be planned for. The Council is unable to demonstrate a 5-year housing land supply position and has an annualised requirement of 668 dwellings per year between 2025 – 2030.
- 5.7 There remains uncertainty around adoption, factors such as further updates to the NPPF and particularly uplifts to the annual housing requirements currently shown in the emerging plan to adoption, therefore, could take many years. As the current Local Plan Review does not meet the new housing requirements introduced in the latest NPPF, the Council will be required – under national policy – to begin work on a new Local Plan following adoption to ensure compliance with the updated housing targets.

6. Planning Policy

- 6.1 The relevant policy framework against which the appeal should be assessed is found in the Appellant's Statement of Case (**CD4.2**) and the Statement of Common Ground (**CD4.3 and CD9.2**).

7. The Appellants Case

7.1 This section of my evidence sets out the Appellant's case, having regard to the Reasons for Refusal offered by the Council, the representations from interested parties, and the benefits to arise from this proposal.

7.2 I proceed on to undertake a planning balance, and I do this as a 'tilted' balance assessment.

Viability

7.3 Before making an assessment against the Council's reasons for refusal, I consider it appropriate to consider the viability position.

7.4 A Viability Assessment (**CD1.154**) and Addendum Report (following the revised dwelling numbers proposed) (**CD2.141**) were prepared by Savills on behalf of the Appellant and submitted as part of the appeal application to determine the level of planning obligations the scheme could sustain. Aspinall Verdi were appointed to review the Viability Assessment and Addendum Report on behalf of the Council. Table 2 (summary of Appraisals, page 4) in the Addendum Report includes a summary comparison of three appraisals: 1) the Appellant's original preferred mix based on Savills assumptions; 2) the Appellant's revised mix and updated dwelling numbers, using the assumptions adopted by Savills when preparing the initial appraisal; and 3) as per 2) but using the assumptions adopted by Aspinall Verdi in its review of the Viability Assessment. In each scenario, the scheme is not considered commercially viable in planning viability terms, and the conclusions of the Viability Assessment and Addendum Report are agreed between the Appellant and the Council.

7.5 Following consideration of the consultation responses and planning policy including the independently verified viability assessment, the LPA determined that it would not seek the following contributions:

- Affordable housing (35 units)
- Education contribution of £1,971,985
- Library contribution of £2,517

- Health care contribution of £250,000
- Open space
 - Amenity Green maintenance - £9,180
 - Natural and semi-natural maintenance - £24,510
 - Parks and Gardens: provision - £156,160.80 and maintenance - £39,330
 - Children and young people: provision – £6,982.80 and maintenance - £16,063.20

7.6 The Appellant acknowledges that whilst the CIL receipts could be used towards mitigation for health care, open space and libraries, the education impact cannot be mitigated in full by the CIL receipts from this development.

7.7 The Council accept that the proposal cannot viably provide or make a contribution to affordable housing (paragraph 22.56 of Committee Report - **CD5.2**). As such, it has been demonstrated that the appeal proposal complies with **Policy H2**, subject to a viability review mechanism being secured via a legal agreement.

7.8 It should be noted that none of the reasons for refusal cite failure to make relevant contributions which is consistent with the viability evidence accepted by the Council. Other than the CIL payment, the only other contribution the Appellant has agreed to make are towards highway works. These are set out in the Unilateral Undertaking with the County Council or otherwise secured by condition to be attached to the decision notice.

Appellant's Response to the Reasons for Refusal

7.9 Following the submission of further information and updates to national planning policy in respect of sequential tests; **Reason for Refusal 1** (Sequential Test), **Reason for Refusal 3** – Highways (Access) and **Reason for Refusal 4** – Highways (capacity and congestion of Transport Network) have been addressed. The Council no longer relies on these reasons for refusal and will not be providing evidence on these issues.

7.10 It is noted that the Appellant and the Highway Authority has reached agreement in relation to RFR3 and RFR4 as set out within the Highways Technical Note (**CD4.4**). At the point of the Council's resolution to refuse permission, there remained unresolved

matters relating to Strategic and Local Traffic Modelling, design of the one-way system and public transport enhancements. These matters were resolved through agreement to provide financial contributions towards a feasibility study for longer term improvements at the Rugby Gyratory, adjustments to models of junctions, a further RSA of the one-way system and bus stop improvements.

7.11 Despite the fact that making the contribution sought by the Highway Authority would take the developer's return below the level agreed to be reasonable in the Viability Report, a commercial decision was made by the Appellant to make the contributions sought in order to overcome the highway reasons for refusal (RFR3 and RFR4). The contributions are secured in the Unilateral Undertaking alongside conditions to be attached to the decision notice which secure the agreed physical works. This led to the Highway Authority withdrawing its objection. Any further payments, contributions or provision of infrastructure by the Appellant is not possible because it would make the scheme unviable to a point that it would be commercially unjustifiable, and the development would simply not proceed. This is supported by the Viability Assessment, an assessment that the LPA has agreed.

7.12 The main issues in respect of the appeal as identified by the Inspector are:

- Whether the proposal would lead to the unacceptable loss of sports and recreational building and land;
- The effect of the proposal on the character and appearance of the area, with particular reference to protected trees and urban design; and
- Other considerations, including housing land supply.

Reasons for Refusal 5 – Trees and 6 – Design (character and appearance)

7.13 I consider that RFR5 and RFR6 overlap in terms of the impact on the character and appearance of the area with reference to protected trees and urban design. A separate Statement of Common Ground has been prepared by Aspect Arboriculture (**CD11.1**) on tree matters.

7.14 Below I set out (a) the factual matter relating to tree loss and replacement and (b) the relevant policies and other documents relating to tree loss. Compliance with design policies is addressed by Mr Carr (**CD14.1**) in his evidence, on which I rely with regard to all matters of design and impact on character and appearance.

- 7.15 The proposal includes the removal of a group of 16no. Category A Plane trees (T149 – 164, TPO TR4.311), a Category A Lime tree (TPO TR4.311) and 10no. Category B trees with 1no. Himalayan Birch tree scheduled within TPO TR4.311 (part of G4) and a further 2no. Category B groups of trees (G3 and G18 of mixed species).
- 7.16 A total of 18no. trees covered by a TPO would be lost as part of the appeal proposal. Reason for Refusal 5 relates to a total of 28no. trees.
- 7.17 Paragraph 136 of the NPPF expects new streets to be tree-lined, seeks the retention of existing trees wherever possible, and the long-term maintenance of newly planted trees to be secured. Footnote 7 (protection of assets of particular importance) does not include trees and the NPPF requires only that trees are retained where possible. In other words, the NPPF does not prohibit tree loss. The scheme includes the retention of as many trees as possible and justifies the removal of the ones which just are not possible to retain within the proposed layout of this centrally located site which makes efficient use of previously developed land. The scheme includes the delivery of new street tree planting, whilst retaining key tree groups and woodland areas and retained landscaping including improved management which would result in positive changes in the long term, in accordance with the NPPF.
- 7.18 The landscape strategy (**CD2.43, CD2.44, CD2.45, CD2.46 and CD2.47**) shows a substantial package of new planting, including hedgerow planting, street trees along the access and primary streets, and additional trees. The appeal proposal includes planting for 159 standard trees and implementation of native woodland planting providing approximately 908 trees as identified in the landscape strategy (**CD2.42**).
- 7.19 The Council's Tree Policy (**CD9.6**) provides guidance with regards to trees and development. This policy does not have any planning status and is guidance only. The purpose of this document as set out at Section 3 –
- "The overall aim of the tree policy is to ensure that the Council's tree stock is retained, enhanced and increased in the most proactive manner..."***
- 7.20 The policy is intended to provide direction and ensure a consistent approach to trees in a number of key areas, including:

- The management and inspection of trees on Council owned land, including tree planting.
- The Council's management of trees in relation to planning applications.
- Tree Preservation Orders.

- 7.21 This document (page 6) stipulates within the Tree Planting and Felling section that where trees are removed, three or more trees should be planted for each tree removed.
- 7.22 Section 11 (Trees in the planning system) states that trees are a material consideration in relation to a development proposal and must be assessed in accordance with BS 5837:2012 standards. Where trees are agreed to be removed to accommodate development the applicant will be required to submit for approval a landscaping scheme – applications are dealt with on a case-by-case basis.
- 7.23 The appeal scheme complies with the requirements of this policy and trees have been assessed against relevant British Standards and an Arboricultural Impact Assessment undertaken which fully justifies the proposed tree removal. Importantly the proposals include the retention of trees where possible and include the planting of many more.
- 7.24 The appeal proposals avoid key groups of trees and bring about public benefits through the opening of private land to include new POS, improved frontages to residential streets and new pedestrian/cycle links. It is considered in overall terms that the development would have a positive effect on the site and the surrounding area.
- 7.25 The overall impact on the character and appearance, before and after the scheme, is a matter addressed by Mr Carr.

Reason for Refusal 2 – Sports Mitigation

- 7.26 Reason for refusal 2 relates to whether the appeal proposal would lead to the **unacceptable** loss of sports and recreational building and land.
- 7.27 Paragraph 104 of the NPPF 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.'*

7.28 I understand that the meaning of policy is a matter of law, although its application to a set of facts may be a matter of planning judgment. In interpreting and applying this policy, I therefore have had regard to an Appeal Decision at Former Friends School Field, Mount Pleasant Road, Saffron Walden (S62A/2025/0107) (**CD9.4**) and a High Court judgement (The King on the application of Stoke Mandeville Parish Council v Buckinghamshire Council 2025 case no. AC-2024-Lon-003358) (**CD9.3**).

7.29 I recognise that the facts relating to the Appeal Decision (Saffron Walden) are different from the present case – I do not suggest that the case is analogous in that regard, but in my view, the way in which that Inspector interpreted NPPF paragraph 104 is relevant. From this decision I have therefore drawn the following propositions;

- (a) The history of the provision and its quality, and what would be needed to bring them back up to standard, are relevant considerations (decision letter, paragraph. 43 and 44).
- (b) The policy in the NPPF is not to be interpreted as containing an open ended safeguarding provision. There must come a point at which it is no longer realistic or viable to seek to preserve the historic use of land in this way (i.e., the restriction does not continue in perpetuity) (Decision letter paragraph 47).

7.30 From the High Court judgment, I draw the following conclusions;

- (a) Paragraph 26 confirms that because a facility is no longer in use does not mean that it is no longer 'existing'
- (b) At the other extreme, neither does it have to be shown that the site is rendered incapable of being a playing field use before it can be said that it is no longer 'existing' (paragraph 29)

- (c) What is an 'existing' use necessarily involves a considerable degree of planning judgment (paragraph 35);
- (d) The correct test is whether 'the loss of the use is not so permanent that the word "existing" could no longer apply' (or, to put it positively, the decision-maker should ask 'is the loss of the use so permanent that the word existing can no longer apply') (paragraph 37)
- (e) In answering that question the following are considerations:
 - (i) How easy it is to bring the facility back into use is relevant but is not the sole test because 'it will virtually always be the case that a sports field is relatively easy to bring back into use'. If the test was to show that it could be not easily be brought into use, it is a test that 'would be very unlikely to be met' - (paragraph 44).
 - (ii) It was reasonable to place reliance on the period of time since the use ended (paragraph 44) rather than the ease or otherwise of putting the sports field back into use (paragraph 44).

7.31 In the context of the above legal position, in applying my planning judgment to determine whether the application site is an existing playing field, I have had regard to the following factual matters:

- a) The PPOSS Assessment Report (**CD6.32**) categorises playing fields according to their access. Page 7 provides clarity on disused sites;

'Disused – provision that is not being used at all by any users and is not available for community hire either. Once these sites are disused for five or more years they will then be categorised as lapsed sites.'

Table 2.3 of the same document confirms that playing field provision was last provided on site circa 2002. This is 23 years ago. As a consequence, I conclude that the PPOSS confirms that the proposed development site is lapsed.

- b) In my judgment it is relevant that government policy, through the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015

No. 595), sets out that Sports England is no longer a statutory consultee once playing field land has not been used for five years or more.

- c) The physical characteristics of the site mean that there is no longer any evidence of the former use as a playing field. The site suffers from poor drainage and is significantly overgrown with extensive vegetation.

Table 2.3 of the Rugby Council Playing Pitch Strategy (PPOSS) confirms this, reporting that *Pitches are no longer marked out and grass is overgrown.*'

- d) Additionally, the topography of the land means that the site is now informally serving as an attenuation basin for surface water for the wider area.

7.32 It is clear therefore that this playing field site is not just disused, the changes to the site that have taken place over the last 23 years mean that it is not possible for it to be used for sport without costly works to reinstate the former pitch.

7.33 This is also accepted by the Council – the PPOSS action plan does not recommend the reinstatement of this site to playing fields. Similarly, paragraph 10.26 of the Planning Committee Report states;

'It is acknowledged that there are difficulties with bringing the pitch on site back into use due to the topography of the site therefore meaning that the pitch in question is acting as an attenuation pond for the wider area.'

7.34 I compare the above characteristics of the proposed development site to those of the playing field land subject to the High Court judgment and note that;

- The period of disuse was significantly less than in that case (7 years from application to judgment) compared to the development site (23 years)
- Paragraph 42 confirms that the playing fields subject to the High Court judgment were ready to use. The proposed development site is derelict, overgrown and now informally acts as a drainage attenuation feature, a permanent change of function.
- It was reasonable to place reliance on the period of time since the use ended (paragraph 44) rather than the ease or otherwise of putting the sports field back

into use (paragraph 44). In this instance, in addition to the above, it would be almost impossible to reinstate the playing field without significant works and expense.

7.35 The Court held that it was within the reasonable judgement of the Council to find that the playing fields no longer existed for the purpose NPPF paragraph 104 having regard to the period of disuse.

7.36 Having regard to all of the above, it is therefore my planning judgment that the site in this case can no longer be described as existing. It cannot be defined as a playing field – its function has changed. I consequently conclude that NPPF paragraph 104 is not engaged.

7.37 Policy HS4(c) of the Rugby Borough Local Plan states that:

Public open space, sports and recreational buildings and land, including playing fields within Open Space Audit evidence and/or defined on the Policies Map and/or last in sporting or recreational use should not be built upon unless:

- *An assessment has been undertaken which has clearly shown the open space, building or land to be surplus to requirements; or*
- *It can be demonstrated that 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*
- *The development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.*

7.38 NPPF paragraph 36 confirms that local policy should be read consistently with national policy. The opening requirements of Policy HS4(c), which define the land use covered by this policy must therefore be read as applying to ‘existing’ public open space, sports and recreational buildings and land, including playing fields.

7.39 On this basis, based on my conclusion above that the playing fields are not existing, it is my view that this policy is also not engaged.

7.40 If it is that this policy does in fact apply to facilities that no longer exist, then this would make it inconsistent with the NPPF, it is my professional judgment that breach of this policy should be afforded no weight. This conclusion is informed by my view that any

policy that applies to facilities that no longer exist is unreasonable and unworkable. This is supported by reference to the aforementioned Appeal Decision (**CD9.4**); paragraph 47 of the accompanying letter references the Inspectors view that:

'There must be a point at which it is no longer realistic or viable to seek to preserve the historic use of land in this way and to the extent that there is an implied requirement that the restriction continues in perpetuity, that part of the policy must be considered out of date as inhibiting other forms of sustainable development.'

7.41 In the event that the Inspector disagrees with my above viewpoint that the pitches are not existing, and consequently, finds that NPPF paragraph 104, and thus local policy, is engaged and breached, an assessment is required of what harm is created by the loss of what is currently 'exists'.

7.42 I conclude that there is almost no harm because;

- a) The playing fields are lapsed. They have not been used for 23 years. The site is inaccessible and has no existing sport and recreation function.
- b) When in use historically, the site was privately owned and used exclusively by factory employees. There was no public access to the playing fields at any time.
- c) The disused / lapsed status is confirmed by the Council's PPOSS. As the appeal site is not in active use, it does not form part of the supply figure and is excluded from the calculations. The loss would therefore not exacerbate any existing playing field deficiency. The site has no role in providing for sport.
- d) Whilst the PPOSS discusses reinstatement of disused playing fields in general terms, the site specific action plan outlines which sites should be considered for reinstatement. It does not contain any site specific recommendations for this site – consequently, there is no clear direction that the playing field should be reinstated and no evidence that the site is of any sporting value. This is the only disused site for which this is the case. The loss of the appeal site would therefore not contradict the recommendations of the PPOSS
- e) The land is very overgrown and now functions informally as a drainage attenuation feature. The land is in private ownership and reinstatement costs would be high. The owner has no intention of committing this level of investment to provide a playing field at this site.

- 7.43 Additionally, there is no real prospect for the site to be used for sport and recreation again without significant investment. Even if a budget was available, the result would be the creation of a single pitch site. Page 79 of the PPOSS (**CD6.31**) confirms that ‘the single pitch sites which have been provided traditionally by developers are not considered to provide long term sustainable provision for the relevant sports.’
- 7.44 The above points mean that in my view, given that there is no actual existing use and reinstatement is unrealistic and costly, this would represent a technical breach of policy only, which can be afforded only limited weight in the planning balance.
- 7.45 Finally, the above is all academic because a financial sum of £627,500 to fund replacement provision is sought by the Council (in addition to delivery of a replacement pavilion). This is a significant sum of money, yet the Council accept this scheme cannot viably make contributions to affordable housing, education/libraries and health care. Yet the Council is not opposing this scheme on the basis that it is not making those contributions, no doubt because government policy allows exemption from making such contributions if supported by a viability assessment.
- 7.46 Accordingly, it follows that this scheme cannot make a payment for a replacement facility because it has already been demonstrated that the scheme is unviable in planning terms. If permission is refused on this basis, it would achieve nothing. It would not have the effect of bringing forward a scheme that would make alternative provision because such a scheme would be unviable and not be brought forward. Nor would it mean that an existing facility would continue to be used by the community, because even if technically the use is found to be ‘existing’, in reality, there is no use and there will be no use in future.
- 7.47 All it would mean if planning permission is refused is that nothing is achieved; the site would remain derelict.
- 7.48 In summary in relation to RFR2, it is therefore my view that Policy 104 of the NPPF and Policy HS4(c) of Rugby Borough Local Plan are not engaged.
- 7.49 If the Inspector disagrees with my judgment, evidence presented above suggests that limited or no weight should be attached to this breach of policy.
- 7.50 Turning to other matters:

- 7.51 In terms of ecology, the Appellant considers that BNG should be secured by condition for a scheme of biodiversity measures. This is considered appropriate to secure delivery of a net gain prior to commencement of the development.

5-Year Housing Land Supply

- 7.52 Mr Smith has prepared evidence in relation to 5-year housing land supply (5YHLS) **(CD10.1a and b)** matters and addresses the deliverable supply of homes and the housing land supply position in his evidence. Mr Smith's position is that the Council is unable to demonstrate a 5YHLS.
- 7.53 NPPF paragraph 11(d) provides that where 'the policies which are most important for determining the application are out of date', the planning permission should be granted unless either paragraph 11(d)(i) is engaged or the proposals fail the tilted balance set out in paragraph 11(d)(ii). In the present case the policies which are most important for determining the application are out of date for two reasons. Firstly, the housing requirement set out in the adopted plan is out of date and consequently so are the policies which constrain the delivery of housing. Secondly, the Council cannot demonstrate a 5YHLS and thus the most important policies are deemed to be out of date by virtue of footnote 8 to paragraph 11. Paragraph 11(d)(i) is not engaged in this case (none of the policies set out in footnote 7 to paragraph 11 of the NPPF provide a strong reason for refusing the development proposed). Accordingly, the test for determining this appeal is as set out in NPPF paragraph 11d(ii), which sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF, taken as a whole.
- 7.54 As is set out later within my evidence I believe there are no adverse impacts that would significantly and demonstrably outweigh the significant benefit of housing delivery and other benefits which accrue.
- 7.55 In this context NPPF paragraph 11d(ii) therefore directs that planning permission be granted.

Planning Obligations

- 7.56 A Section 106 Agreement to secure the planning obligations identified at the appeal application stage will be submitted as part of the Appeal in accordance with the agreed timetable.
- 7.57 That remains the case. At the time of preparing my evidence a draft Section 106 Agreement, consulted upon with the Council, is well advanced and I consider will be completed and submitted in a timely manner consistent with the programme set out in the Inspector's Case Management Conference Note.
- 7.58 The contributions and provisions to be included in the Section 106 Agreement reflect the requests set out by the Council at appeal application stage. In summary these are:
- Viability Review Mechanism
 - Contribution towards RBC monitoring fees of £590 per relevant obligation
- 7.59 A Unilateral Undertaking reflects the agreed highway works with the Highway Authority to include -
- £30,000 Transport Network Feasibility Study Contribution
 - £78,400 Path Improvement Works Contribution
 - £10,000 Traffic Regulation Order Contribution
 - Contribution towards WCC monitoring fee of £700 + (5 hours x £40 Officer time x Number of triggers)
- 7.60 It is necessary to ensure that all obligations sought comply with the Community Infrastructure Levy (CIL) Regulations. In this case, the Section 106 Agreement incorporates a 'blue pencil' clause, allowing any obligation that is subsequently found not to meet the statutory tests to be severed without affecting the validity of the remaining provisions.

Interested Parties Representations

7.61 This section of my evidence sets out responses to the interested party representations at both the application and the appeal stage. I do so below, by setting out on a topic-by-topic basis, the comments received and the responses to those comments, including reference to the corresponding application and appeal documents.

TOPIC	SUMMARY OF COMMENTS	RESPONSE AND RELEVANT DOCUMENTS
Highways	<ul style="list-style-type: none"> • Cyclist safety • Increase in traffic and congestion • Increased risk of dangerous manoeuvres • Vehicle access • Access roads • Road design • Loss of parking • One way system 	A Transport Assessment has been submitted as part of the appeal application stage and additional information submitted in the appeal dealing with access and highway matters. Highway improvements have been agreed with the Highway Authority and to be secured by financial contributions.
Legal Agreements	<ul style="list-style-type: none"> • Limited open space • Pressure on infrastructure • Existing car parking pressure • Loss of recreational open space 	The Council has requested a range of contributions towards infrastructure to mitigate the impacts of development. A CIL payment would be used towards mitigating the impacts from this development.
Environmental	<ul style="list-style-type: none"> • Flood Risk and Drainage • Loss of mature trees • Impact on air quality • Environmental Protection • Irreversible harm to biodiversity • Tree canopy • Impact on protected species 	Having regard to Aspect Arboriculture SoCG and the Ecology matters, the proposals accord with the Development Plan in relation to trees and ecology.
Design	<ul style="list-style-type: none"> • Poor design quality • Out of character • Architectural style and materials 	Mr Carr deals with design matters in his evidence. The appeal proposal has been carefully designed within a sustainable location.
Housing	<ul style="list-style-type: none"> • There is no demand for housing in Rugby. 	In my evidence I have set out the spatial

	<ul style="list-style-type: none"> No affordable housing. 	strategy, the minimum housing requirements for Rugby, and the Section 106 contributions to mitigate the impacts of development.
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Benefits to arise

- 7.62 There are a range of benefits directly related to this proposal. These reflect the economic, social and environmental dimensions to sustainable development. I consider these below.

Benefit 1: Development would be delivered within the next 5 year period in the context of the Council's housing land supply being significantly below 5 years.

- 7.63 The appeal scheme is **deliverable**. The Appellant owns the appeal site ensuring that there are no delays to the delivery of housing, in the event that planning permission is granted, this proposal will come forward. The appeal proposal can make an immediate contribution to addressing the Council's housing land supply shortfall.
- 7.64 The Appellant has indicated that in the event of planning permission being granted, the house build construction would commence in early 2027 with a rate of approximately 40 houses per annum. There are no significant off-site infrastructure issues that would delay construction.

Benefit 2: Social benefit from providing 115 market homes in a variety of sizes and types including family dwellings.

- 7.65 The Council has not suggested that the appeal does not provide an appropriate mix of market housing. The dwelling size and tenure has similarly not been criticised, and the scheme overall can provide a balance of different unit sizes which contribute favourably to the supply of a range of dwellings within the Council area as a whole.

Benefit 3: Social benefit by way of accessible public open space.

- 7.66 The need for infrastructure alongside much needed housing is often raised by interested parties and for this appeal forms a common theme in objections.

- 7.67 A range of infrastructure improvements are proposed as part of this appeal proposal. These include the provision of public open space and transport measures which are secured by way of a legal agreement or conditions proposed to be attached to the decision notice.
- 7.68 The infrastructure improvements mitigate the impacts from the appeal proposals but also benefit the wider community of Rugby. I consider therefore that the infrastructure goes beyond mitigating the impacts of the development and comprise a benefit to arise from the appeal proposal.

Benefit 4: Economic benefits flowing from the construction and operational phases of the development.

- 7.69 The economic objective of sustainability is to help build a strong, responsive, and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.
- 7.70 Housing development is a significant contributor to both national and local economy and generates economic benefits through capital investment and construction benefits, direct and indirect employment benefits and national and local government revenue benefits.
- 7.71 Direct capital investment and expenditure will be generated by the developer through the construction of the development and the disposal of homes. This provides economic benefits across a variety of sectors including finance, planning and design, construction, materials, sales, rent and management. The CBI calculate that every £1 spent on UK construction creates £2.92 of value to the whole economy. Based on an indicative average build cost of £220,000 per dwelling, this would result in an approximate development construction cost of £25,300,000 and a value to the whole economy of £73,876,000.
- 7.72 In terms of direct and indirect employment benefits, housebuilding plays a significant role in creating and supporting employment, this includes people directly employed by housebuilding firms and their contractors as well as employees who support the wider supply chain.

Benefit 5: Environmental benefits of the development as a result of the enhancement and provision of landscape and ecological features including BNG.

- 7.73 Mr Carr's evidence is that the appeal proposal will be built to a high standard that will complement the existing character. The evolution of the scheme has fully taken on board ecological considerations and includes suitable mitigation. Landscaping and tree retention and protection is heavily influenced by the design which will mitigate the effects of climate change. The proposal may cause very little, short term harm during the construction phase, although will be compensated for through a high-quality landscaping scheme, which will include additional tree planting.
- 7.74 In light of the above, it should be considered that there would be no adverse effects that would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

Benefit 6: Bringing a partially previously developed site back into beneficial use.

- 7.75 The appeal scheme would bring a partially developed site back into beneficial use. The site is suitable for residential development which would integrate well with existing surrounding houses and contribute to the housing supply. The site is located at the very top of the settlement hierarchy as it relates to the town centre of Rugby. NPPF paragraph 125(c) gives substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. Paragraph 125(d) promotes and supports the development of under-utilised land and buildings, particularly where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

The Planning Balance

- 7.76 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. A key material consideration in this case is NPPF paragraph 11(d), which introduces the 'tilted balance.' It does not displace the primacy of the development plan, but when the tilted balance is engaged the test is to

grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF when taken as a whole.

- 7.77 Having regard to the evidence of Mr Smith, it is the Appellant's case that the Council is unable to demonstrate a 5-year housing land supply. In this context, the tilted balance applies, and this is the assessment I have undertaken.
- 7.78 In my evidence I have assessed the appeal proposals against the policies of the Development Plan. I consider that the proposals accord with the great majority of policies I have referred to, including strategic policies concerning the spatial strategy and housing delivery.
- 7.79 A breach of any one policy in a development does not automatically render a proposal not in accordance with the Development Plan, given the numerous conflicting interests that the Development Plan seek to reconcile; and conflict with one particular policy may be treated as having an adverse impact and yet of relatively little weight. In this regard a decision-maker may consider that compliance with other policies designed to secure that development has a great priority or importance than non-compliance with other policy/policies designed to protect one other aspect.
- 7.80 In this case, I take the position that the Policy HS4(c) is not engaged. If the inspector disagrees with my judgment, evidence presented, limited or no weight should be attached to this breach of policy.
- 7.81 The 5YHLS position is woefully below 5 years, and this means very significant weight to housing delivery should be afforded. This is in addition to the benefits outlined above, but not least of all bringing a partially previously developed site in a town centre into beneficial use.
- 7.82 I set out my tilted balance assessment arising from this proposal having regard to the benefits I have identified above. These reflect the economic, social and environmental dimensions to sustainable development.
- 7.83 In assessing the respective weights in the planning balance, I use the following scale:
- Substantial / very significant
 - Significant

- Moderate
- Limited
- No weight (immaterial)

7.84 I consider that these benefits should be attributed weight as follows:

- Provision of open market housing: **very significant weight**
- Improvements to infrastructure: **significant weight**
- Economic benefits: **significant weight**
- Social benefits: **moderate weight**
- Environmental benefits: **moderate weight**

7.85 Having regard to the viability position, I consider that the weight attributed to these benefits should not be reduced by the fact that the scheme does not make the usual contributions. It has been demonstrated that the appeal proposal complies with **Policy H2**, which allows exemptions if it can be justified on viability grounds, as in this case, and it should not count against the scheme.

7.86 Set against these benefits, I have identified the following harms to arise from the proposals:

- **Impact on trees:** The proposal would result in the loss of TPO trees. It is considered that the proposals can be integrated without significant harm to the character and appearance of surrounding area. The proposal will not cause unacceptable level of visual harm beyond the boundaries of the appeal site and will conserve and enhance key landscape features.

7.87 I have not identified any other harm to arise from the appeal proposals. I consider that these harms should be attributed weight as follows:

- Impact on trees: **minor/moderate**

7.88 I conclude that the identified harm does not significantly and demonstrably outweigh the benefits of the appeal proposal. Indeed, to the contrary, the benefits of this scheme are numerous, and substantial, and more than significantly outweigh the minor impact on trees.

8. Summary and Conclusions

- 8.1 My name is Chantel Blair. I am a Principal Planner at Cerda Planning Limited. My evidence to this inquiry seeks to provide a comprehensive appraisal of the planning issues arising from the appeal proposals.
- 8.2 In my evidence, I have provided a statement of truth. The evidence that I shall provide for this appeal has been prepared and is given in accordance with the guidance of my professional institution.
- 8.3 I have set out a summary of the appeal proposals, the reasons for refusal of the appeal application, and that in my view these must constitute the Council's full reasons and objections on the proposal.
- 8.4 I have described Rugby as a location for growth.
- 8.5 I have explained the background to the appeal, by reference to the planning history and as well as the plan making context.
- 8.6 I have described the relevant planning policy. Insofar as the reasons for refusal referred to within the Committee Report and their relationship with the appeal site in the context of the appeal proposal.
- 8.7 A key issue I identify in the Development Plan is the need to balance and reconcile competing objectives, protecting open spaces whilst also delivering strategic growth requirements.
- 8.8 The Appellant's case is then set out.
- 8.9 I start by setting out the viability position agreed between the Appellant and the Council.
- 8.10 I go on to assess the appeal proposal against the Council's reasons for refusal.
- 8.11 Having regard to the evidence of Mr Carr, the proposals can be integrated without significant harm to the character and appearance of the surrounding area. The proposals will not cause an unacceptable level of visual harm beyond the boundaries of the appeal site and will conserve and enhance the key landscape features.

- 8.12 The appeal proposals avoid key groups of trees and bring about public benefits through the opening of private land to include new POS, improved frontages to residential streets and new pedestrian/cycle links. It is considered in overall terms that the development would have a positive effect on the site and the surrounding area.
- 8.13 I deal with the issue of sports and recreation. I identify the relevant policies, discuss how these are to be read if they are engaged. In my view, if the policies were read so as to protect existing public open spaces, sports and recreation building and land, there would be a degree of inconsistency with the NPPF.
- 8.14 I refer to the 5-year housing land supply position, having regard to the evidence of Mr Smith. The Council is unable to demonstrate a 5-year housing land supply. This is a significant consideration for this appeal.
- 8.15 Finally, I address the issue of planning obligations and confirm that a Section 106 agreement and Unilateral Undertaking is being put to the Inquiry.
- 8.16 I recognise there is engagement in this proposal from interested parties. A key consideration is that of highway matters.
- 8.17 I also consider other issues raised by interested parties.
- 8.18 My evidence considers the benefits to arise from this proposal, and these are wide ranging including in relation to the delivery of open market housing, infrastructure, economic benefits and environmental benefits.
- 8.19 I recognise there are harms to arise, and I therefore undertake a planning balance assessment. I do this as a tilted balance assessment given the Council are unable to demonstrate a 5-year housing land supply.
- 8.20 I conclude that the appeal proposals should succeed, and planning permission be granted, in the context of a tilted balance assessment.