



Department for Levelling Up,
Housing & Communities

Duncan Parr
Rapleys
33 Jermyn Street
London SW1Y 6DN

Our ref: APP/Z0166/V/21/3270776
Your ref: 20/09130/F

17 March 2022

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY THE CARAVAN AND MOTORHOME CLUB
LAND AT POLICE DOG AND HORSE TRAINING CENTRE, CLANAGE ROAD, BRISTOL
APPLICATION REF: 20/09130/F**

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Christina Downes BSc DipTP MRTPI, who held a public local inquiry on 20-23 and 27-30 July 2021 into your client's application for planning permission for the change of use of the former Avon & Somerset Police Dog and Horse Training Centre to a touring caravan site consisting of 62 pitches and associated works including the demolition of existing buildings and erection of reception and amenity buildings and wardens' accommodation, in accordance with application Ref. 20/09130/F, dated 1 May 2020.
2. On 11 March 2021, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be granted, subject to the Secretary of State being satisfied that there would be no significant impacts on European sites, and subject to the conditions she recommended.
4. For the reasons given below, the Secretary of State disagrees with her recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

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determined in accordance with the development plan unless material considerations indicate otherwise.

6. In this case the development plan consists of the Bristol Development Framework: Core Strategy, adopted in 2011 (the CS), and the Site Allocations and Development Management Policies Local Plan, adopted in 2014 (SADMP). The Secretary of State considers that relevant development plan policies include those set out at IR18-22.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as local guidance comprising the Council's Flood Risk Sequential Test Practice Note, adopted in 2013; the Council's Level 1 Citywide Strategic Flood Risk Assessment (SFRA), from December 2020; the Planning Obligations Supplementary Planning Document (SPD), adopted in 2012, and; the Bower Ashton Conservation Area Enhancement Statement from 1993 (IR23-27).
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

9. The emerging plan comprises the emerging Bristol Local Plan Review Draft Policies and Development Allocations Document (LPR) and the emerging West of England Combined Authority Spatial Development Strategy (SDS). Further statutory consultation on 'Issues and Options' for the LPR is anticipated by Summer 2022. Publication of a draft of the SDS for consultation is currently anticipated in Spring 2022. The Secretary of State considers that given the early stage of preparation of both documents the emerging plan carries little weight.

Matters arising since the close of the inquiry

10. The Secretary of State received a representation from the Applicant's agent on 25 February 2022 relating to Storm Eunice, which was named by the Met Office on 14 February.
11. On 28 February 2022 the Secretary of State wrote to the main parties to afford them an opportunity to comment on this new information. These representations were circulated to the main parties on 8 March 2022 and 10 March 2022.
12. On 15 March the Secretary of State received a further representation from the Applicant's agent, including a copy of an appeal decision relating to a site at 10 and 12-16 Feeder Road and 6-8 Albert Road, St Philip's, Bristol. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
13. The Secretary of State's conclusions on the issues raised by these representations are set out below. Details of the representations received are at Annex A. Copies may be

obtained on request to the email address at the foot of the first page of this decision letter.

Main issues

Flood risk

14. The Secretary of State agrees with the Inspector for the reasons given at IR367 that the area of the site within Flood Zone 2 is so small as to be inconsequential in terms of the consideration of flood risk (IR367). He notes (IR368) that no objections in terms of surface water flood risk are raised. He further notes (IR370) that the proposed development would fall within the PPG definition of “more vulnerable”, and that for such development within Flood Zone 3a, the Sequential and Exception tests require to be passed.

The Sequential Test

15. The Secretary of State agrees with the Inspector’s analysis of potential alternative sites at IR371-IR378 and for the reasons given there agrees with the Inspector at IR378 that there are no reasonably available sites for the proposed development other than the application site. He therefore agrees that the Sequential test has been passed, and that in this respect the proposal is in accordance with policy BCS16 in the CS and the Framework (IR378).

The Exception Test

16. With regard to limb (a) of the Exception test, the Secretary of State agrees with the Inspector that the development plan does not include a definition of what “sustainability benefits” to the community might be (IR491). The Secretary of State agrees with the Inspector’s analysis of the benefits of the proposed development at IR484-IR488. These include the replacement of the Applicant’s existing site at Baltic Wharf with similarly easy access to the centre of Bristol; economic benefits which are estimated at to generate over £1m annually; the provision of relatively inexpensive visitor accommodation and a net gain to biodiversity of over 10%. He further agrees with the Inspector’s assessment of the benefit of the re-use of previously developed land, resulting in a considerable visual improvement and enhancement to the character and appearance of the area. He agrees that this opportunity seems unlikely to happen otherwise because the range of alternative uses that could occupy the site as it currently exists is very limited, and due to the various constraints it is unlikely that it would be suitable for housing or commercial redevelopment. Overall he agrees with the Inspector at IR489 that the package of benefits should be afforded very substantial weight.
17. He further agrees that these benefits satisfy social, economic and environmental objectives in accordance with paragraph 8 of the Framework (IR491) and considers that they comprise wider sustainability benefits to the community for the purposes of undertaking the Exception test. His consideration on whether these benefits are sufficient to outweigh the flood risk is set out below, in paragraph 35 of this decision letter.
18. With regard to limb (b) of the Exception test, the Secretary of State notes (IR380) that there is no allegation by either the Environment Agency or the Lead Local Flood Authority (LLFA) that the proposed development would increase flood levels and therefore

increase flood risk elsewhere. He has gone on therefore with regard to limb (b) of the Exception test to consider whether the development would be safe for its lifetime.

Site-specific tidal flood risk

19. The Secretary of State notes (IR381) that there is no dispute that the flood risk at the site is very serious indeed. He further notes that the 'design flood' could cause 'Danger for Most' over much of the site. For the reasons given at IR381-385 the Secretary of State agrees at IR386 that if the flood risk can not be successfully mitigated, planning permission should be refused for the application proposal. He further agrees that if the development could be made safe for its lifetime there would be no unacceptable flood risk.

Proposed management of the flood risk

20. The Secretary of State agrees that in this case the probability of flooding is high and will increase over time, and that this means that floods of lower severity than the design flood are likely in the future to create a hazard rating for a large part of the site of 'Danger for Most' or 'Danger for All'. He further agrees that the question to answer is whether the mitigation proposed would be sufficient for the site to be safe for its lifetime given the severity of the flood risk (IR387).

21. For the reasons given at IR388 and IR423, the Secretary of State agrees that whilst the proposal includes some measures to make the buildings resistant and resilient, these would not mitigate the effects of a design flood or probably even one of less severity. He notes that the Flood Risk Assessment submitted with the planning application did not consider mitigation through the design and layout of the development (other than the resilience and resistance measures), and that although the Applicant indicated that such measures had been considered and discounted at the design stage, there is little evidence to support such an assertion (IR389). The Secretary of State agrees with the Inspector at IR389 that it is likely that mitigation through design and layout would require a significant degree of intervention, resulting in a likely significant and adverse visual impact on the Green Belt and sensitive heritage assets (IR389).

Whether policy or guidance prevents a FWEP being the sole form of mitigation of flood risk as a matter of principle

22. The Secretary of State has carefully considered the Inspector's analysis at IR390-399, along with the cases put forward by the Council (summarised at IR213-215) and the Environment Agency (summarised at IR255-263). He considers that there is no policy in either the development plan or the Framework which specifically requires physical mitigation to be provided or which specifically prevents a FWEP being the sole form of mitigation to address flood risk. He further considers that the PPG FR does not definitively indicate that a FWEP can only be used in the context of residual risk. To this extent he agrees with the Inspector at IR393 and IR397. He further agrees with the Environment Agency's contention at IR255 that neither the Framework nor the PPG clearly state whether a FWEP can or cannot be the sole means of dealing with flood risk, whether design risk or residual risk. The policy and guidance are not definitive on these points. However, the Secretary of State agrees with the Environment Agency that the Framework and the guidance are clear that design risk and residual risk must be kept as distinct concepts (IR257), and that a FWEP should not be seen as a routine way of dealing with design risk (IR257).

23. Ultimately the Secretary of State agrees with the Inspector's conclusions at IR399 that whether a Flood Warning and Evacuation Plan (FWEP) can be used as the sole means of mitigation for flood risk will depend on the circumstances of the case and whether the particular FWEP can be relied upon to make the development safe for its lifetime. He has gone on to consider whether, in the circumstances of this case, the FWEP is sufficient mitigation of flood risk to make the development safe for its lifetime.

Whether the proposed FWEP would be sufficient to make the development safe for its lifetime

24. The Secretary of State has had regard to the Inspector's analysis at IR400-401. He notes that the FWEP remains in draft, and that Condition 20 requires the final plan to be submitted for approval by the Council. However, in the circumstances of this case, the Secretary of State does not consider that this conditioned approach is appropriate for a matter of such importance. He has had regard to the Inspector's analysis at IR426, but does not consider that this alters his conclusions on this point.

25. The Secretary of State has carefully considered the Inspector's analysis of triggers and forecasting at IR402-411, and has also taken into account the Environment Agency's evidence (IR265-274).

26. He has had further regard to the representation of 24 February on behalf of the applicant, noting their assertion that, based on the data, there would have been adequate time for the site to have been evacuated if it had been required as a result of Storm Eunice, using the strategy the applicant presented at inquiry. He notes that the Flood Alert in relation to Storm Eunice was issued approximately 20 hours before the predicted peak of flooding. He further notes, as set out in this representation, that the appeal site was entirely unaffected by flooding, either from the River Avon or from local surface water sources.

27. The Secretary of State has also had regard to the case set out in the representation on behalf of the applicant of 9 March 2022 that even in the event of flooding the site evacuation would have been triggered in good time, and the site would have been empty by the time of the peak of the tide. He further notes the applicant's assertion that it would be extraordinarily unlikely that the storm and tide of necessary magnitude to flood the site could occur without significant forewarning either from the Environment Agency or through the media. He has also had regard to the assertion that even if the Environment Agency flood alert had not been issued, it would be highly likely that, given the Met Office Red Warning, the site would have been evacuated in any case.

28. The Secretary of State has also had regard to the Environment Agency's evidence, as set out in its representation of 4 March, that in the case of Storm Eunice, there was a huge variation in forecasts and significant uncertainty continuing right up until the event. He further notes the Environment Agency's evidence that the timing of the storm in relation to the extreme tidal range in the Bristol Channel makes a significant difference to the peak height of the water in the River Avon and this is very difficult to predict.

29. Overall, the Secretary of State is more persuaded by the Environment Agency's evidence on this matter. He considers that the specific events and circumstances relating to Storm Eunice do not provide strong evidence in support of the Appellant's case, and do not assuage his concerns about flood risk in the circumstances of this case.

30. He notes the Inspector's conclusion at IR411 that the evidence indicates that the Flood Alerts and Flood Warnings would be sufficiently accurate and timely to ensure that there

is sufficient time for the site to be evacuated in advance of the flood. However, taking into account the evidence put forward by the Environment Agency at IR265-274 and in their representation of 4 March, and further taking into account his conclusions at paragraph 32 below, the Secretary of State does not consider that this can be guaranteed. He considers that this is of particular importance in this case given the reliance on evacuation as the sole form of mitigation. Other considerations that have been put, including that the Applicant has other sites in areas of flood risk, or that there may be possible future improvements in predictive techniques (IR411), or that the triggers would be reviewed every two years (IR413), do not overcome his concerns in this case.

31. The Secretary of State has gone on to consider implementation issues (IR412-422). He agrees with the Inspector at IR412 that in this case the safety of the development would be totally dependent on the timely actions of the site wardens and the co-operation of all occupiers, and that the FWEP is based on the prerequisite that everyone would have left the site in advance of a flood. He notes there is no dispute that if the Flood Warnings and Flood Alerts were not acted upon promptly and the site flooded there would be disastrous consequences that could lead to loss of life.
32. The Secretary of State has very carefully considered the Inspector's analysis of implementation issues at IR412-422 and the assumptions she relies on in assessing how an evacuation may proceed in practice. He considers that in the light of the potential risk to life, a highly precautionary approach is justified. Overall, he is more persuaded by the Environment Agency's evidence and considers that the Agency's assessment of the potential issues which may be encountered during an evacuation is more realistic (IR275-289). Like the Environment Agency, he considers that at every stage of the evacuation process, the Applicant is dependent upon fallible processes (IR281). He further agrees that there remains a residual risk of failure, whether through the failure of forecasting, the failure of the warning system, the failure to execute the FWEP properly or the risks inherent in the unpredictable aspects of human behaviour. Like the Environment Agency, he further considers that the Applicant has no plans for managing those residual risks (all at IR281).

*Planning appeal at 10 and 12-16 Feeder Road and 6-8 Albert Road, Bristol
(APP/Z0116/W/21/3279920)*

33. The Secretary of State has had regard to the representation on behalf of the applicant of 15 March 2022, including a copy of the above appeal decision by the Planning Inspector Mrs J A Vyse DipTP Dip PBM MRTPI of 9 March 2022, and the accompanying Technical Note. He has taken into account the representation, the Planning Inspector's decision and the reasons for it set out in the Inspector's decision letter, and has also taken into account that each case should be considered on the basis of its own circumstances. Having had regard to the particular facts of each case, he does not consider that there are sufficient similarities between the two cases for the Planning Inspector's decision to alter his conclusions on flood risk in respect of this application.

Overall conclusions on flood risk

34. The Secretary of State accepts that it is not possible to guarantee safety (IR424 and IR425), but agrees with the Inspector at IR424 that the risk must be adequately managed. He notes that in this case the probability of flooding is high and will increase over time due to the effects of climate change. He further agrees that the potential consequences are severe and are a threat to the life of the occupiers, and that in more extreme events the lives of the emergency services would also be in danger, which

means they are unlikely to be able to provide assistance. There is no dispute that in order to manage the risk satisfactorily everyone must be evacuated in advance of the flood occurring as once it arrives there is no safe egress for escape or access for help to be provided (IR424). The Secretary of State considers that such an evacuation would be contingent on the effective implementation of the FWEPP as the only mitigating action, and that the residual risk is the risk remaining if the FWEPP were to fail.

35. For the reasons given in this decision letter, the Secretary of State does not agree with the Inspector at IR425 that the risk of failure of the FWEPP is sufficiently low to conclude that the development would be safe for its lifetime. Taking all the evidence into account, he considers that it has not been demonstrated that the development would be safe for its lifetime. The proposal therefore fails to comply with limb (b) of the Exception test.
36. For the reasons given at paragraph 35 of this decision letter the Secretary of State disagrees with the Inspector at IR491 that flood risk would be satisfactorily managed in this case. He has gone on to consider whether the wider sustainability benefits to the community, set out at paragraph 16 above, would outweigh the flood risk, but in the light of his conclusions on the extent to which flood risk would be satisfactorily managed, he concludes that they would not. Therefore, unlike the Inspector, he considers that part (a) of the Exception test is also failed.
37. Paragraph 165 of the Framework requires that both elements of the Exception test should be satisfied for development to be permitted. As the Secretary of State has concluded that neither limb (a) nor limb (b) are satisfied, the Framework indicates that this development should not be permitted. He further considers that the proposal is in conflict with CS policy BCS16, and considers that the failure to satisfactorily manage flood risk carries substantial weight against the proposal.

Green Belt

38. The Secretary of State agrees that Policy BCS6 in the SC is compliant with the Framework for the reasons given at IR427. For the reasons given at IR428-433, the Secretary of State agrees with the Inspector at IR428 that the whole site can be considered to be previously developed land. He further agrees with the Inspector at IR437 that the application proposal would fail to preserve the openness of the Green Belt and would therefore be inappropriate development.
39. For the reasons given at IR434-435 the Secretary of State agrees that the application development would not conflict with the purposes of including land within the Green Belt. The Secretary of State has had regard to the fall-back position as set out at IR38 and agrees with the Inspector's conclusions on the likely impact of a fall-back position set out at IR436. He agrees with the Inspector at IR493 that inappropriate development is, by definition, harmful to the Green Belt and carries substantial weight against the proposal.
40. The Secretary of State has considered the Inspector's conclusion at IR493 that 'very special circumstances' justifying inappropriate development in the Green Belt would exist in this case. His reasoning and conclusions on this point are set out in paragraph 52 below.

Effect on heritage assets

41. For the reasons given at IR440 the Secretary of State agrees that Policy BCS22 in the CS and DM31 in the SADMP are not consistent with the Framework. For the reasons

given at IR441-443 he agrees that the development would not affect the significance or character of the Bower Ashton Conservation Area. For the reasons given at IR444-448, the Secretary of State agrees with the Inspector that the proposal would result in a small degree of harm to the significance of Ashton Court Registered Park and Garden, but on the lowest end of the scale (IR448). He agrees the proposed development is contrary to Policies BCS22 and DM31 of the development plan (IR454). The Secretary of State further agrees that whilst the harm would be at the lowest end of the scale, this asset is Grade II* and great weight and importance must be given to its conservation (IR492). Overall the Secretary of State considers that this harm carries moderate weight against the proposal. In line with paragraph 202 of the Framework, he has weighed this harm against the public benefits of the proposal. His conclusions on this test are set out below.

42. For the reasons given at IR449-453 the Secretary of State agrees that the proposal would not impact on the significance of any other heritage asset.

Effect on trees and green infrastructure

43. For the reasons given at IR455-469 and IR488 the Secretary of State agrees with the Inspector that H1 is a line of trees (IR464), and that Natural England's Biodiversity Metric 2.0 is to be used (IR488). The Secretary of State agrees with the Inspector's conclusions at IR469 and IR488 that the application proposal would result in a biodiversity net gain, which he considers would be well in excess of 10% (IR488) and would comply with development plan policies BCS9 in the SC, DM17 in the SADMP, the BTRS and the Framework.

Effect on ecology and nature conservation

44. The Secretary of State agrees with the Inspector's analysis of the applicant's Shadow Habitats Regulation Assessment (HRA) at IR472-475 and notes that Natural England considered that the Shadow HRA was robust and that subject to the mitigation measures being secure, it can reasonably be concluded that the proposal would not result in adverse effects on the integrity of European sites.
45. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. He agrees that without mitigation, significant effects would be likely to arise on the European sites of nature conservation importance identified in the Shadow HRA (IR476). Given this conclusion, for the reasons given at IR7 and IR472-475 the Secretary of State agrees at IR476 that if he were minded to grant planning permission he, as competent authority, would be required to undertake an Appropriate Assessment to establish whether there would be adverse effects on the integrity of the features of a number of European sites of importance to nature conservation within the vicinity of the application site. However, in the light of his decision to refuse permission for this proposal, he does not consider that it is necessary to carry out an Appropriate Assessment, and has therefore not proceeded to make an Appropriate Assessment in his role as the Competent Authority on this matter.

Planning conditions

46. The Secretary of State has given consideration to the Inspector's analysis at IR340-356 and IR477-479, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, he does not consider

that the imposition of these conditions would overcome his reasons for refusing planning permission.

Planning obligations

47. Having had regard to the Inspector's analysis at IR357-362 and IR480-483, the planning obligation dated 19 August 2021, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR483 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

Planning balance and overall conclusion

48. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policies BCS16, BCS22 and DM31 of the development plan. For the reasons given at paragraph 52 below, the Secretary of State considers that the proposal is also in conflict with policy BCS6. He therefore finds that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. Weighing in favour of the proposal are the replacement of the Applicant's existing site with similarly easy access to the centre of Bristol, economic benefits, the re-use and regeneration of derelict previously developed land, the provision of relatively inexpensive visitor accommodation a net gain to biodiversity, and the re-use of previously developed land, resulting in a considerable visual improvement and enhancement to the character and appearance of the area. These benefits collectively carry very substantial weight.

50. Weighing against the proposal is harm to Green Belt by way of inappropriate development and loss of openness which attracts substantial weight and less than substantial harm to heritage at the lowest end of the scale which carries moderate weight. Weighing against the proposal is also harm from the failure to satisfactorily manage flood risk which attracts substantial weight. Paragraph 165 of the Framework requires that both elements of the Exception test should be satisfied for development to be permitted. As the Secretary of State has concluded that neither limb (a) nor limb (b) are satisfied, the Framework indicates that this development should not be permitted.

51. Paragraph 202 of the Framework requires heritage harm to be weighed against the public benefits of the scheme. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Ashton Court Registered Park and Garden is outweighed by the public benefits of the proposal. He considers the public benefits of the scheme to be those set out in paragraph 49 of this decision letter. Overall the Secretary of State agrees with the Inspector at IR492 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of Ashton Court Registered Park and Garden. He considers that the balancing exercise under paragraph 202 of the Framework is therefore favourable to the proposal.

52. In line with paragraph 148 of the Framework the Secretary of State has considered whether the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations such that very special

circumstances will exist. Overall, the Secretary of State considers that the benefits of the proposal are not collectively sufficient to clearly outweigh the harm to the Green Belt and other harms such that very special circumstances would exist. As such he finds conflict with Green Belt policy in Section 13 of the Framework and policy BCS6.

53. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.

54. The Secretary of State therefore concludes that planning permission should be refused.

Formal decision

55. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses planning permission for the change of use of the former Avon & Somerset Police Dog and Horse Training Centre to a touring caravan site consisting of 62 pitches and associated works including the demolition of existing buildings and erection of reception and amenity buildings and wardens' accommodation, in accordance with application ref 20/09130/F, dated 1 May 2020.

Right to challenge the decision

56. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

57. A copy of this letter has been sent to Bristol City Council and the Environment Agency, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Decision officer

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Duncan Parr, Planning Partner, Rapleys LLP	25 Feb 2022
Duncan Parr, Planning Partner, Rapleys LLP	15 March 2022

Representations received in response to the Secretary of State's letter of 28 February 2022

Party	Date
Mark Willitts, Planning Specialist, Environment Agency	4 March 2022
Duncan Parr, Planning Partner, Rapleys LLP	9 March 2022



Report to the Secretary of State

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date 10 November 2021

TOWN AND COUNTRY PLANNING ACT 1990

BRISTOL CITY COUNCIL

Application by

THE CARAVAN AND MOTORHOME CLUB

Inquiry Held on 20-23, 27-30 July 2021

Site visits made on 18 July 2021 (unaccompanied) and 19 August 2021 (accompanied)

Police Dog and Horse Training Centre, Clanage Road, Bristol BS3 2JY

File Ref: APP/Z0166/V/21/3270776

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ABBREVIATIONS LIST

	Acronym
Arboricultural Impact Assessment	AIA
Bristol Tree Replacement Standard	BTRS
Community Infrastructure Levy	CIL
Flood Risk Emergency Plans for New Development	The ADEPT guidance
Habitats Regulations Assessment	HRA
Lead Local Flood Authority	LLFA
Natural England's Biodiversity Metric Version 2.0	BM Version 2.0
Natural England's Biodiversity Metric Version 3.0	BM Version 3.0
Planning Obligation by Agreement	S106 Agreement
Planning Practice Guidance: Flood Risk & Coastal Change	The PPG FR
Site Allocations and Development Management Policies Local Plan	SADMP
Special Area of Conservation	SAC
Special Protection Area	SPA
The Bower Ashton Conservation Area Enhancement Statement	The CA Statement
The Bristol Development Framework Core Strategy	The CS
The Flood Risk Sequential Test Practice Note – Bristol City Council	The Practice Note
The Flood Warning and Evacuation Plan	The FWEF
The Conservation of Habitats and Species Regulations 2017	The Habitats Regulations
The Level 1 City Wide Strategic Flood Risk Assessment	The SFRA
The National Planning Policy Framework	The Framework
The Planning Obligations Supplementary Planning Document	The SPD
The Planning Practice Guidance	The PPG

File Ref: APP/ZO166/V/21/3270776

Police Dog and Horse Training Centre, Clanage Road, Bristol BS3 2JY

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 11 March 2021.
- The application is made by the Caravan and Motorhome Club to Bristol City Council.
- The application Ref 20/09130/F is dated 1 May 2020.
- The development proposed is the change of use of the former Avon & Somerset Police Dog and Horse Training Centre to a touring caravan site consisting of 62 pitches and associated works including the demolition of existing buildings and erection of reception and amenity buildings and wardens' accommodation.
- The direction was made in accordance with the Secretary of State's policy on calling-in planning applications.

Summary of Recommendation: That planning permission be granted, subject to the conditions in Annex Three.

PROCEDURAL MATTERS

1. On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
 - a) The extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change.
 - b) The extent to which the proposed development is consistent with Government policies for protecting Green Belt land.
 - c) The extent to which the proposed development is consistent with Government policies for conserving and enhancing the historic environment.
 - d) The extent to which the proposed development is consistent with the development plan for the area.
 - e) Any other matters the Inspector considers relevant.
2. A revised location plan was submitted in advance of the inquiry (drawing no: OS extract Rev B). This excluded the water pumping station from the application site, which in fact is shown as outside the site boundary on the other application drawings. There was no objection to this minor amendment from any party (**Document 2.17.1**).
3. The Environment Agency was given Rule 6 status, although its participation was limited to the parts of the inquiry relating to flooding matters.
4. Whilst the Bristol Tree Forum did not wish to become a Rule 6 Party, it participated fully in the part of the inquiry relating to tree matters. It also submitted opening and closing statements.
5. The planning application was recommended by planning officers for refusal on the grounds of flood risk, Green Belt, heritage issues and highway safety. However, the Development Control B Committee resolved that it was minded to approve the application and would refer the matter to the Secretary of State due to the fact that it would be a departure from the Development Plan and due

to the Environment Agency's objection on flood risk. The Committee also required planning officers to prepare appropriate conditions, including to ensure trees T9 (Sycamore) and T19 (Silver Birch) would be retained and a mitigation strategy would be provided for lighting from the caravans on the site (**Documents CD 6.01-6.03**).

6. On 18 May 2021, the Secretary of State directed under the powers conferred on him by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that the application proposal would not be Environmental Impact Assessment development.
7. There are a number of sites of nature conservation importance within the vicinity of the application site. It is therefore necessary to consider whether the proposal would be likely to result in significant effects on those sites both in itself and in-combination with other plans and projects. If that is the case, the Secretary of State as decision maker will need to undertake an Appropriate Assessment under *The Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations). I consider this matter further in Consideration Five of my Conclusions.
8. A Planning Obligation by Agreement (S106 Agreement) was submitted in draft and discussed at the inquiry. However, some changes were required following that discussion. I allowed a short period of time following the close of the inquiry for the Deed to be fully completed and executed accordingly (**Document INQ 22**).

THE SITE AND SURROUNDINGS

9. There are descriptions of the site and its surroundings in the Planning Statement submitted with the planning application and the Statement of Common Ground (SCG) on Planning Matters. There is a location plan, aerial photograph, photographs of the site and surrounding area and photomontages in the landscape evidence (**Documents CD 1.05, section 2; CD 14.2, section 2; CD 12.06, appendices A, B, C, H, K**).
10. The site is a triangular piece of land, 1.2 hectares in extent. It lies immediately adjacent to Clanage Road, which is a main route into Bristol. To the west of the site is the Ashton Court parkland whilst to the east is a single track railway line, a local park, allotments and the elevated Brunel Way. This crosses the River Avon, beyond which lies the City. Immediately to the north of the site is a bridge crossing the railway, which connects to the footpath running north along the western bank of the river. On the southern side of the site is a large open area with various uses and associated buildings and structures. These include the Bedminster Cricket Club, a children's day nursery, and land used on occasion for car boot sales and event parking.
11. The site is in the Bristol-Bath Green Belt and the southern part is in the Bower Ashton Conservation Area. A public footpath runs from Clanage Road adjacent to the southern and part of the eastern site boundary. It is separated from the site by mesh fencing and crosses the railway line via a metal footbridge.
12. The site is now derelict and in poor condition. The northern section comprises hard surfaced parking areas. The land at this point is below the level of Clanage Road, which rises in a northerly direction at this point. There is a steep

embankment and a line of mature trees close to the roadside boundary. To the south of the parking areas is a buildings' complex built around a central courtyard and road access. These and other outbuildings provided the accommodation for the former use as a police dog and horse training centre and also the stables, kennels and animal enclosures. The flat roofed buildings are in poor condition and their elevations are covered in brightly coloured graffiti. To the south of these is the main gated access and another parking area, which was used for the parking of horse boxes. Beyond is an overgrown area of paddocks and a manège enclosed by the remnants of post and rail fencing and a tall line of conifers, which are a prominent feature in the wider landscape.

THE PROPOSED DEVELOPMENT

13. The purpose of the proposal is to replace the Applicant's existing site at Baltic Wharf in the Cumberland Basin. The existing buildings, outbuildings and other structures would be demolished and replaced with three new buildings. These would be sited within the existing footprint. The proposed buildings are indicated to be clad in red brick with grey tiled pitched roofs, although conditions 3 and 4 reserves external materials for future approval by the Council.
14. There would be 62 caravan pitches made up of 58 all-weather pitches and 4 grass pitches. Of the 58 all-weather pitches, 20 would be serviced. The all-weather hardstanding pitches would be located throughout the site with a row of 19 pitches in the northern area and a further 39 pitches in a circular layout in the southern section
15. The site would operate all-year and would be permanently manned by a fully trained warden couple residing on-site. No children would be permitted to live on the site. When the wardens are not present, cover would be provided (**Document INQ 10**).
16. The boundaries of the site would be enhanced with a scheme of native planting and with existing mature trees retained. The large non-native conifer feature running along the western boundary of the site would be removed and replaced with a native hedgerow.

PLANNING POLICY

17. The development plan includes the *Bristol Development Framework: Core Strategy*, adopted in 2011 (the CS), and the *Site Allocations and Development Management Policies Local Plan*, adopted in 2014 (SADMP). There are a large number of policies relevant to the application proposal and these are set out in the SCG on Planning Matters. Whilst these have all been taken into account, the most pertinent are set out below (**Documents CD 8.01; CD 8.02; CD 14.2, paragraphs 4.4, 4.5**).

THE CS

18. **Policy BCS6** seeks to safeguard the Green Belt and protect it from inappropriate development as defined in national policy. **Policy BCS9** includes provisions to retain green infrastructure and integrate it wherever possible. Where this cannot be done contributions are to be sought to make appropriate provision for green infrastructure off-site. **Policy BCS10** relates to transport and access improvements and includes a provision that development should be

located in places where the need to travel by car is minimised. **Policy BCS11** aims for development to mitigate its impact through the use of Planning Obligations. **Policy BCS22** seeks to ensure that development proposals safeguard or enhance heritage assets.

19. **Policy BCS16** includes provisions for flood risk and water management. It adopts a sequential approach and expects development in areas at risk of flooding to remain safe from flooding over its lifetime through design and layout, and/or sensitively designed mitigation measures. The latter may take the form of on-site flood defence works and/or such off-site measures as may be necessary. The policy also expects development to incorporate water management measures to reduce surface water run-off and ensure that it does not increase flood risks elsewhere.

THE SADMP

20. **Policy DM17** concerns green infrastructure. It includes provisions relating to trees and does not permit development that would result in the loss of Ancient Woodland, Aged trees or Veteran trees. Where tree loss or damage is essential to allow for appropriate development, it requires replacement trees of an appropriate species in accordance with a tree compensation standard that is based on trunk diameter. **Policy DM19** expects that development on or adjacent to sites of nature conservation value to enhance the site's nature conservation value through the design and placement of any green infrastructure provided.
21. **Policy DM23** requires that development does not give rise to unacceptable traffic conditions. Amongst other things it should provide a safe and adequate access onto the highway and provide for cyclists and pedestrians. **Policy DM31** includes various provisions relating to heritage assets in order to ensure that development conserves, and where appropriate enhances, a heritage asset or its setting.
22. The Council is in the process of reviewing its local plan, although this is currently at an early stage and has not been submitted for examination. A future growth area entitled Western Harbour has been identified to the east of the application site.

LOCAL GUIDANCE

23. **The Planning Obligations Supplementary Planning Document** (the SPD) was adopted by the Council in 2012. It includes provisions for the contribution to be made for replacement trees (**Document CD 8.04**).
24. **The Flood Risk Sequential Test Practice Note** (the Practice Note) was adopted by the Council in 2013. **The Level 1 – Strategic Citywide Strategic Flood Risk Assessment** (the SFRA) identifies risks from all sources of flooding and aims to inform those areas identified as being suitable for new development in the emerging Local Plan (**Documents CD 8.09; CD 8.06**).
25. **The Bower Ashton Conservation Area Enhancement Statement** (1993) includes a description, key issues and general enhancement objectives (**Document CD 8.05**).

NATIONAL POLICY AND GUIDANCE

26. **The National Planning Policy Framework** (2021) (the Framework) provides the Government's policy on planning with the overall objective of achieving sustainable forms of development. Of particular relevance in this case are section 13 (protecting Green Belt land); section 14 (meeting the challenge of climate change, flooding and coastal change); and section 16 (conserving and enhancing the historic environment).
27. **The Planning Practice Guidance** (the PPG) provides an on-line resource to provide guidance on Framework policy. There are chapters on Green Belt and heritage that are relevant to the application. However, of particular pertinence is the chapter on Flood Risk and Coastal Change (PPG FR).

RELEVANT PLANNING HISTORY

28. The site is currently derelict, but its former use was as a police dog and horse training centre, which was granted planning permission in 1969/ 1970. It is understood that this use ceased sometime around 2015. The Applicant purchased the site in 2017.
29. A very similar proposal to the present application was refused planning permission in 2016 on the grounds of adverse impact on the Green Belt, harm to heritage assets, flood risk and highway safety (**Document CD 6.01, page 3**).
30. The Applicant has operated a touring caravan site at Baltic Wharf for many years. However, this is owned by the Council who have served notice to quit. The use is currently continuing on a short- term lease. The land is part of the Western Harbour site allocation in the emerging local plan and is being promoted for a residential-led mixed use development. A planning application for a mixed-use development has been submitted, but at the time of writing no decision has been made.

THE CASE FOR THE APPLICANT (THE CARAVAN AND MOTORHOME CLUB)

The Applicant's case is fully set out in its evidence, including its opening and closing submissions, which were delivered orally and are in the electronic documents.

The main points are:

BACKGROUND

31. The Applicant operates an existing 56 pitch touring caravan site at Baltic Wharf. The site is owned by the Council and has been leased to the Applicants since 1978. It is due to be redeveloped by Goram Homes¹ and Hill and a planning application is currently being considered for 166 dwellings, commercial floorspace, associated infrastructure and services. Occupation of the site is currently on a rolling temporary lease but a formal notice to vacate the site in September 2021 has been served. Whilst this lease may be able to be extended, pending the Secretary of State's decision, there is no reasonable prospect of the caravan site use continuing on the site in the medium and long

¹ Goram Homes is a subsidiary of Bristol Holdings Ltd and wholly owned by the Council.

- term because of the Council's redevelopment intentions. Condition 6 would restrict occupation of the application site until the Baltic Wharf site is permanently vacated (**Documents CD 14.2, paragraphs 15.10-15.13**).
32. The application site has been vacant for a number of years. It has fallen into a state of disrepair, and there are a number of derelict and heavily vandalised buildings on the northern section associated with its former use as a police training centre. There are also extensive areas of hardstanding for the parking of cars and horse boxes. These are neglected, overgrown and unkempt. The site is an eyesore which substantially detracts from the visual amenity of the locality and there have been, and continue to be, anti-social behaviour issues associated with it (**Document CD 14.2, paragraph 3.5**).
33. The site is in a highly accessible location, with pedestrian and cycle connections to the city centre and Harbourside and nearby bus stops providing frequent public transport connections. It is within the Bristol-Bath Green Belt and the southern section is within the Bower Ashton Conservation Area. The majority is also within Flood Zone 3a (**Document CD 14.2, paragraphs 5.14, 5.15**).
34. The surrounding land uses predominantly relate to leisure and recreation uses within the Green Belt. In particular:
- a) To the south of the site are the grounds of Bedminster Cricket Club. These are used for a range of recreational activities, including match day parking associated with the nearby Ashton Gate Stadium, and a car boot sale held twice a week.
 - b) To the west are the grounds of Ashton Court and the associated Registered Park and Garden.
 - c) To the east is an area of allotments, known as Cumberland Basin.
35. There are a number of planning proposals in the surrounding area. These include:
- a) A mixed-use development, comprising 220 dwellings and flexible retail/café space, across nine buildings of 3 to 5 storeys in height at the Railway Depot site, 113m to the south east of the site. This is subject to a resolution to grant planning permission dated 28th April 2021 (**Document CD 11.09**).
 - b) An application for a Development Consent Order for the Portishead Branch Line – MetroWest Phase 1. The boundary of this site immediately adjoins the application site to the south. This proposes a temporary construction compound, and then a permanent railway maintenance compound with a new site access (**Document CD 11.10**).
36. The application is acceptable in its own right, but it is material to note that if the above proposals are implemented, they would significantly urbanise the locality and reduce the openness of land to the south of the site. Indeed, the Council's City Design Landscape Officer considered that the proposed compound would render any harm from the development almost irrelevant (**Document CD 4.05**).
37. The site was historically in use as part of the Clifton Bridge Railway Station and allotments. In 1969 and 1970, two planning permissions were granted to enable

its use by the Avon & Somerset Constabulary. The first, in 1969, granted planning permission for “*stabling, kennels and exercise area for Police horses and dogs*”. The second, in 1970, granted permission for “*erection of buildings comprising administration, stables and kennel block for mounted and dog sections*”.

38. So far as any potential fall-back position is concerned:

- a) Both the 1969 and 1970 permissions related specifically to the use of the site by the police. That remains the lawful use as it has not been abandoned in a legal sense and has not been occupied by any other use since it became vacant. It is highly unlikely that the police would seek to re-occupy the facility having deemed it not fit for purpose.
- b) There is no condition restricting the use of the site to the police. In that situation, the relevant law is set out in the *I’m Your Man* judgement².
- c) A change to another use that was not materially different from the existing permitted use, for example a dog re-homing site or a city farm, would therefore not require planning permission. However, this type of use would not remove the existing ugly buildings or deal with the regeneration of the site as a whole. Indeed, such a re-use would be likely to retain them. There is also no evidence that such a use would come forward.
- d) Any other alternative development proposals would require a new planning permission. The location of the site within the Green Belt, Flood Zone 3 and with neighbouring heritage assets significantly limits the potential for alternative forms of development. There is no evidence of any alternative uses which would generate sufficient revenue to justify the demolition of the existing buildings.

In the circumstances, the fall-back position is therefore that the site would remain in its existing state should planning permission be refused.

39. In 2016, a planning application was refused for a similar scheme. Since then it is agreed with the Council that the relevant planning context has materially changed for the following reasons (**Document CD 14.2, paragraph 3.5**):

- a) The previous highway objection has been overcome and the Highway Authority raises no objection to the development (**Document INQ 1**).
- b) Further sequential site assessment work has been carried out, which is endorsed by the Council. No alternative sites have come forward in the five years since the previous application was refused.
- c) The application is supported by additional evidence, including a Heritage Impact Assessment (**Document CD 1.21**).
- d) The surrounding context is likely to change as a result of other proposed developments in the local area as set out in paragraph 35 above.

² *I’m Your Man v Secretary of State for the Environment* (1999) 77 P&CR 251 as summarised by the Court of Appeal in *Winchester City Council v SSCLG* [2015] JPL 1184.

THE PROPOSED DEVELOPMENT

40. The development provides an opportunity to sensitively re-develop this brownfield site to provide a replacement caravan site for the existing site at Baltic Wharf.
41. Any planning permission would run with the land. Therefore, it is agreed that the permission sought should be a personal permission under condition 5. This condition is necessary because the Flood Warning and Evacuation Plan (the FWEP) is bespoke to the Applicant, and its procedures. If the site was transferred to another occupant, with different operating procedures, there is a risk that it would not be followed. Also, depending on the date of transfer, there could be up to two years before the FWEP must be updated in accordance with the terms of proposed condition 20 (**Document CD 13.09.2**).

FLOODING

The Sequential Test

Policy and guidance

42. Paragraph 162 of the Framework sets out the requirement of the Sequential Test. The PPG FR provides guidance on its application where the site is unallocated. Paragraph 033 indicates that a pragmatic approach on the availability of alternatives should be taken. It also advises that for individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed.
43. The CS Sequential Test is more detailed than that of the Framework. Development proposals will be tested against the availability of sites within Bristol; this requirement derived from the former Planning Policy Statement 25: *Development and Flood Risk* and remains the approach in policy BCS16 in the CS and the Council's *Flood Risk Sequential Test Practice Note* (the Practice Note) (**Documents CD 8.01; CD 8.06, paragraph 2.2.1**)
44. The "reasonable availability" requirement is not defined in the Framework or the PPG, but it is in the Practice Note. The site must be "deliverable" and "developable" as defined in the Framework. The Practice Note also indicates that to be regarded as reasonably available sites should:
 - a) be within the agreed area of search;
 - b) accommodate the requirements of the proposed development;
 - c) not be safeguarded in the local plan for another use; and
 - d) be either owned by the applicant, be for sale at a fair market price or be publicly owned land that has been formally declared surplus. (**Document CD 8.06, paragraph 2.2.3**).

45. The former Planning Policy Statement 25: *Practice Guide* referred to “reasonably available” in the context of sites that were suitable, developable and deliverable for the type and scale of the proposed development.
46. The CS and the Practice Note sets out a series of criteria for alternative sites which is more exclusionary than the general policies of the Framework. The adopted development plan policies will therefore lead to fewer sites being identified for consideration.

The Sequential Test

47. The sequential testing in this case has been fair and impartial. It is not uncommon for an applicant to prepare a Sequential Test when it owns a site and indeed this is expressly allowed for in paragraph 033 of the PPG. The search has been at arms-length and extensive, evidencing not only its impartiality but also its robustness. The first site search was undertaken in 2014/15, which was jointly commissioned with the Council. The search process was then updated in June 2016, April 2018 and November 2019. The most recent search, undertaken in May to June 2021, is still more comprehensive and has sought to deal with the criticisms that were made of the search by the Council’s Officers in the November 2020 committee report, for example, that sites were discounted by being in the Green Belt (**Document CD 12.14, paragraphs 2.5, 5.5**).
48. The Sequential Test has been undertaken against the terms of the Framework and PPG, as supplemented by the previous guidance in Planning Policy Statement 25. The Practice Note criteria have not been used for the reasons given above. Compliance with national policy would necessarily entail compliance with the development plan. In any event, paragraph 034 makes clear that the decision about whether the Sequential Test has been established is taken by the Council.
49. The assessment shows that no other site is deliverable, suitable and available (**Document 12.9, section 7**):
 - a) The 3 sites identified in 2019 were either not sequentially preferable or were in existing commercial use or are being developed for such uses as well as being subject to land protection policies.
 - b) The majority of the sites were not suitable for the Applicant. This was either in terms of accessibility to central Bristol, having available local amenities or being on sloping land that would require significant engineering.
 - c) A substantial number were beyond the 5-mile search radius.
 - d) Eight sites were adjacent to suburban residential areas where local amenities were not available; they were also sites that serve key roles in relation to the purposes of including land in the Green Belt and so were not deliverable.
 - e) All but one site³ would be likely to have a significantly greater impact on the

³ This is a brownfield site containing buildings, but is an allocation in the emerging Local Plan and thus not likely to be available.

Green Belt than the application site. Their ability to obtain permission was therefore doubtful. 8 of these sites were also subject to specific landscape protection policies.

50. There were several sites that were excluded on the basis that they would not be deliverable because of restrictive development plan policies. Their exclusion was queried by the Inspector on the basis that these policies may be overridden by the public benefits of the development in the planning balance. Also, she commented that not all of the sites affected would be contrary to these policies (**Document CD 12.14, paragraphs 6.7, 6.8**):

- a) The sites affected by Policy NE2A of the *Bath and North East Somerset Core Strategy* are at the outer edge of the area of search, and unlikely to be sufficiently close to the town centre to represent a viable site.
- b) The other sites are affected by policy ENV1 of the *Long Ashton Neighbourhood Development Plan* and would not be deliverable:
 - i. Site 48 is part of the land to the east of the A370 which is being promoted as an urban extension. Site 49 has a planning application on it for up to 500 dwellings. Neither is available for development.
 - ii. Sites 46 and 47 are of particular relevance in creating the separation between the built-up area of Bristol and the village of Long Ashton. Further, sites 46, 47 and 51 are visible from the driveway to Ashton Court. Views from the house are orientated in this direction, and form part of the setting to the house, contributing to its significance as identified in the Bower Ashton Conservation Area Enhancement Statement. If these sites were developed the caravan site would be visible from the driveway, resulting in heritage harm. Any effect would still be less than substantial, but to a higher degree than any harm caused by development on the application site (**Document CD 8.05**).
 - iii. Sites 50, 52 and 53 form part of the rural setting of Long Ashton, immediately adjacent to the Conservation Area. They are close to a Scheduled Monument at Lower Court, and a Grade II* listed building. Site 50 has a clear function in providing separation between Long Ashton and Bristol under policy ENV1.
 - iv. Furthermore, all of the sites are in the Green Belt. As greenfield sites, development including the erection of new buildings, is likely to be inappropriate and not fall within any of the exceptions in paragraph 149 of the Framework. A number of the benefits associated with the proposal, including remediating a derelict brownfield site, would not apply. Planning permission would be unlikely to be granted because the harm resulting from inappropriateness, together with the other heritage harm identified above, would not be outweighed by other considerations.

51. It is important to note that this conclusion is not reached on the basis that the sites are not available but rather because they are not deliverable. In the majority of cases there is nothing to indicate availability one way or another. In circumstances where the site search could potentially include every greenfield site within the five-mile search radius, a pragmatic approach has to be taken to

assessing availability as indicated by the PPG. This included liaising with prominent rural land agents David James & Partners who will be aware of land within their clients' ownership that would be available. That approach of contacting agents was carried out with each iteration of the search. It is the only realistic way of narrowing down the search for available sites (**Document CD 12.14, paragraphs 5.6, 7.2 table**).

52. There was flexibility in terms of the size criteria for the search. The site search identified a number of sites and some were larger than the criteria whilst others were smaller. The application site is below the stated criteria but was identified in the original search. There is no risk that other smaller sites have been missed. The Council confirmed that it did not consider there to be any other alternative sites available⁴. The lack of sequentially preferable sites has been demonstrated and the Sequential Test has therefore been passed.

The Exception Test

53. The Exception Test is set out in paragraph 164 of the Framework and is in two parts. The first relates to sustainability benefits and the second relates to safety.

Whether the development would be safe for its lifetime

54. A workable strategy has been clearly identified, which has been agreed by the Council acting as the Lead Local Flood Authority (LLFA) and the Civil Protection Unit as set out in the SCG between them and the Applicant. The essential question for consideration is whether the FWEP is capable of reducing the flood risks at the site to an acceptable level (**Document CD 14.4.1**).

Policy on FWEPs

55. The Environment Agency contends that national policy and guidance prevents reliance on a FWEP as the sole means of making a development safe. However, its position on this issue has shifted markedly and it now accepts that as a matter of planning policy, it would be possible for a FWEP to be the sole means of mitigation⁵. They suggested that planning policy only allowed the use of FWEPs in respect of less dangerous scenarios, but there is simply no basis for such an assertion. That is not a point of policy but one of judgment as to whether the FWEP mitigation measure renders the development safe. The Environment Agency has no substantiated policy argument against the use of a FWEP as the sole means of mitigation.
56. That said, the correct interpretation of policy (and the PPG) is a matter of law. The Environment Agency suggests that there are several ways in which policy and/or guidance prevents the use of FWEPs as the sole means of making the development safe:
- a) It specifically does not allow for FWEPs to provide the means of managing flood risk in isolation.

⁴ This was confirmed by Mr Matthews at the alternative sites round table session.

⁵ This was agreed by both Mr Willitts and Mrs Steadman in cross-examination by Mr Reed.

- b) It implicitly does this by requiring free access and egress at a site above the design flood level.
- c) It implicitly does this by requiring resistance and resilience measures to be incorporated into the development.
- d) It implicitly does this by tying the FWEPs to the mitigation of residual risks.
- e) In any event it says that b) and c) are requirements which the FWEP does not comply with.

Whether there can be reliance solely on a FWEP

- 57. The Environment Agency is wrong to place such significance as it does on this point since the development would actually incorporate physical mitigation measures. Resilience and resistance would be built into the buildings. As a matter of fact, to the extent that it is necessary to show that other forms of mitigation have been introduced into a development as well as the FWEP, this would be done.
- 58. However, it is patently wrong to make the arguments that reliance on a FWEP is impermissible, for reasons given below.

Local policy

- 59. It was agreed that Policy BCS16 in the CS allows for the use of FWEPs as a sole means of management or mitigation⁶. There is no suggestion that policy BCS16 is out of date, even though it was adopted in 2010 and drafted under the terms of the then extant Planning Policy Statement 25.
- 60. The policy expectations set out in policy BCS16 do not require the delivery of only physical mitigation. The policy refers to design and layout issues or "*sensitively designed mitigation measures*" of which only examples are given. It was agreed that that a FWEP is "mitigation"⁷. A FWEP can be appropriately described as "sensitively designed".
- 61. It is to be noted that the list of examples given in policy BCS16 do not relate solely to actual works because there may be financial contributions towards works. The written statement to the policy puts the matter beyond doubt. It indicates that the extent of the mitigation measures required will be determined by the Council having regard to the Strategic Flood Risk Assessment, amongst other matters. This includes a section dealing with Flood Risk Assessments and specifically includes FWEPs as an option. In the section dealing with tidal flooding, it is recommended that FWEPs are devised where required. The list is clearly not a hierarchy, given the examples in that list. However, even if it was, there is nothing to indicate that it is an exclusionary hierarchy which requires each mitigation step to be discounted before the next is considered (***Documents CD 8.01, paragraph 4.16.8; CD 8.09, pages 44, 48***).
- 62. The Environment Agency's position on policy BCS16, even on the basis of that policy's wording, is therefore clearly wrong. However, the logic of its position is

⁶ This was agreed by Mr Willitts in cross-examination by Mr Reed.

⁷ This was agreed by Mr Willitts in cross-examination by Mr Reed.

equally flawed in contending that policy requires that it is always preferable to leave people on site instead of removing them from the risk and development must be refused if it does not take that approach. That is clearly nonsense as the benchmark test in policy BCS16 is that the development remains safe from flooding over its lifetime. If the FWEP achieves that, it would be contrary to the purpose of the policy if it was found that the policy was nonetheless breached.

National policy and guidance

63. The Framework does not state anywhere that a FWEP cannot be relied upon as the sole means of reducing risk to an acceptable level. Paragraph 159 is broad in its approach and indicates that:
- "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere."*
64. It is requiring this general judgment to be made without restriction. It does not, unsurprisingly, prescribe the particular matters that must be complied with in reaching that judgment. Paragraph 167 sets out a number of requirements but does not require physical works to the exclusion of a FWEP to deal with risk. It does not say that any particular physical mitigation works have to be carried out. Rather, it specifically allows for a FWEP. Safe access and escape routes are only required *"where appropriate"* and so, to the extent that this involves physical works, it is not an imperative.
65. The PPG is not policy but guidance and its limits have been made clear in a number of court judgements⁸. The PPG should be read with these observations in mind: it should not be readily taken as requiring a series of prescriptive elements unless that is specifically and clearly set out.
66. What the PPG FR indicates on a broad scale, is that a development should be designed to be safe without setting out any particular mechanisms to achieve that aim. None of the aspects of the PPG FR on which the Environment Agency relies, establish that a FWEP cannot be used as the sole means of mitigation for the following reasons:
- a) *Paragraph 001*
- The contention is that this paragraph does not refer to FWEPs but rather refers to avoidance followed by *"mitigation and management"*. This is wrong because the avoidance reference is to the sequential approach, not how to address risk on a site. There is no hierarchy or exclusive measures which may amount to *"mitigation and management"*.
 - The aim is that development is *"appropriately"* flood resilient and resistant and *"safe"*. Resilience and resistance relate to works to buildings, not other forms of mitigation. This does not apply to mobile

⁸ *R. (Solo Retail) v Torridge* [2019] EWHC 489 (Admin) see paragraphs 33, 34 and *Richborough Estates v SSHCLG* [2018] EWHC 33 (Admin) see paragraph 33. These are set out in the Closing Submission.

homes and the reference to "*appropriate*" is obvious – it is not requiring this form of mitigation in every instance.

- That the overarching policy allows for FWEPS alone is clear from the fact that the word "*safe*" goes through by hyperlink to "*how can development be made safe from flood risk*" (at paragraph 054), which links directly to FWEPS.
- It is noticeable that no part of paragraph 001 excludes a FWEPS as acceptable in and of itself to establish safety. If that was the intention it would be expected to be clearly set out.

b) Paragraphs 054 and 056

- This indicates how development "*can*" be made safe and it is not setting out an exclusive checklist. It then requires specific considerations to be taken into account and "*includes*" a number of issues, which are not therefore exclusive. The paragraph then requires one to look at "*further advice*" which specifically goes through to paragraph 056, which relates to when FWEPS are needed. The Environment Agency was wrong to suggest that paragraph 054 does not mention evacuation plans as it specifically does.
- Paragraph 056 says that a FWEPS is a requirement for caravan sites but also says that one of the considerations to ensure that any new development is safe is whether adequate flood warnings would be available to people using the development. It is a specific consideration to be taken into account. The guidance does not say that this must only be considered once physical mitigation measures are in place.

c) Paragraph 060

- The contention is that this paragraph does not refer to FWEPS. However, it is dealing with an entirely different situation. Its purpose is to say how one can go about incorporating resilience and resistance into a building. It is specifically dealing with buildings, as defined in paragraph 059, not mobile homes. Moreover, it is not saying other measures are impermissible.
- The paragraph also notably states that resistance and resilience are unlikely to be the only mitigation measures. It highlights that the PPG FR does set out the specific circumstances when a particular technique is not likely to be of itself sufficient. There is no similar paragraph anywhere indicating that this is the case for FWEPS.

d) Paragraph 068 (9⁹)

- It is contended that part (b) deals with management, including FWEPS, but only after the incorporation of "*risk management and mitigation measures*". This assumes that management and mitigation mean physical management. The PPG FR here is simply giving guidance on what a Flood Risk Assessment should include and is not setting out a

⁹ This is the section dealing with "Residual risk".

series of hierarchical criteria. A FWEPP is capable of falling under both parts (a) and (b) of this paragraph.

Flood free access above the design level

67. The contention is that the PPG FR inferentially prevents sole reliance upon a FWEPP because it requires there to be designed into any scheme flood free access and egress at a design flood level. The Environment Agency says that this development must provide such access and does not. This relies upon the argument that the PPG FR requires individuals to necessarily remain on a site at risk of flooding even though it may be easier and more effective to remove them in the first place. That is an irrational reading of the guidance and no part of it gets close to setting out such a requirement.
68. Paragraph 039 of the PPG FR is drafted to recognise access and egress may not be important to the overall safety of a development depending on the circumstances. An obvious example of where it would not be significant is where all occupants of a development are taken off site before a flood event, pursuant to a FWEPP. The paragraph indicates that "*access considerations should include the voluntary and free movement of people during a design flood*". It is important to note here that these are framed as considerations rather than mandatory requirements. This follows from the fact that questions of safety, particularly when considering flood risk in up to 100 years' time, necessarily involve the exercise of professional judgment. It also says that "*wherever possible, safe access routes should be provided that are located above design flood levels*", and so it is recognised that it may not always be possible for safe access routes to be provided above design flood levels. The guidance is making quite clear that these are factors to be considered but not specific hurdles to be overcome.
69. The Environment Agency's argument that safe access and egress by mitigation is a specific requirement of any development was rejected by the Secretary of State in the Fort Gilkicker decision (**Document CD 13.02, appendix A, IR paragraphs pages 108, 132, 177**).
70. The ADEPT guidance states that an evacuation plan will need to demonstrate that the voluntary and free movement of people will be available during a design flood. However, there is no basis for this requirement in the PPG FR or the Framework. The document is also internally confused because it provides that a FWEPP should be provided if relevant pedestrian access would be affected during a design flood. However, such a consideration would never be possible if the FWEPP itself should show that there was free movement in a design flood (**Document CD 12.03, Appendix D, pages 8, 9, 11**).
71. The Environment Agency has relied upon the Stourport on Severn Sports Club appeal decision to support its case. However, the Inspector's conclusion that free access should have been given was based on an obvious error of interpretation. The Inspector decided that the PPG required that access routes should allow future occupiers to safely access and exit their property in design flood conditions, which was purported to be a reflection of paragraph 039 of the PPG FR. However, as shown above, this is an incorrect interpretation of the paragraph (**Document CD 10.93, paragraph 7**).

Relevance of the FWEP to the Exception Test

72. The Environment Agency relied upon the flow diagram contained in the ADEPT guidance to argue that it shows that FWEPs are not relevant to the determination of the Exception Test. However, that is obviously wrong when the whole flow diagram is read. The Exception Test is only finally assessed under that diagram once the FWEP is assessed and found to be acceptable. This argument goes further than the original case in which it was accepted that a FWEP could be relied upon alongside other mitigation measures (**Document 12.03, page 16**).

Incorporation of resistance and resilience measures

73. The Environment Agency has suggested that resistance and resilience must be incorporated into schemes, which shows that a FWEP cannot be used in isolation. However, as shown above, paragraph 060 of the PPG FR does not require all developments to incorporate resistance and resilience measures. It is only dealing with what may be done in respect of buildings and is not stating that these must be done in a development. Indeed, paragraph 059 of the guidance is entirely the opposite in that resistance and resilience measures are not sufficient in themselves to justify a proposal.

Whether the PPG says that FWEPs can only deal with residual risks

74. Paragraph 040 does not state that the evacuation procedures can only be relied upon to deal with residual risks following the failure of defences. The paragraph is about what FWEPs will need to do and gives, as an example, the situation where there are residual risks. But there is also a hyperlink to paragraph 056, which is entirely unqualified and says that one of the considerations to ensure that any new development is safe, including where there is a residual risk of flooding, is whether adequate flood warnings would be available. It just could not be written in that way if FWEPs could only deal with residual risks.
75. An additional point goes to the question of what amounts to a "residual risk". This is not, as the Environment Agency suggests, where warnings have failed. It is dealing with the potential circumstances where a more extreme flood is in place. This is clear from paragraph 056 which states that *"one of the considerations to ensure that any new development is safe, including where there is a residual risk of flooding, is whether adequate flood warnings would be available to people using the development"*.
76. The contention that residual risks amounted to a situation where the warnings were not successful, is the wrong issue to consider in circumstances where the FWEP is the principal means of mitigation for any flood eventuality. All one is doing is considering whether the risk of failure leads to an unacceptable risk. If "residual risk" meant the circumstance where the FWEP had not worked, the assessment would be completely circular and require refusal without ever considering how likely it is that the residual risk will arise.

The ADEPT Guidance

77. This has been relied upon to justify the argument that a FWEP cannot be the sole means of mitigation. However, it has less weight than the PPG as it is promulgated by the organisation which relies upon it to establish the restrictive

criteria at issue, and it has not been endorsed by the Government. The Environment Agency's case relies upon the statement that it "*will want to see that every feasible option for avoiding, controlling, mitigating and managing all sources of flood risk has been taken, before considering access and escape measures in an Evacuation Plan*". Even at its highest, this statement does nothing other than require consideration of the feasibility of options. If such options are considered to be unfeasible, under the guidance itself it is appropriate to consider FWEPS. The guidance does not suggest that FWEPS are inadequate of themselves to manage risk but rather are an important part of the planning process (**Document CD 12.03, appendix D, page 9**).

78. The Environment Agency's premise that there is an obligation upon an applicant to establish that other measures must be discounted before considering a FWEPS is incorrect. There is no requirement in national policy or guidance to take this step. The Environment Agency's own guidance cannot say that this is required without any national policy basis to support it. While as a matter of practice, a flood risk expert may consider different options including physical mitigation before settling on a FWEPS, that does not place an obligation upon that person to establish the unfeasibility of other options if the FWEPS leads to a safe development.
79. In any event, other options have been assessed. It was accepted that the question of what amounted to a "feasible" option would be answered not simply by engineering feasibility but the effect of the proposal in planning policy terms and taking into account other material considerations¹⁰. The wall and land-raising suggestions had both been considered while designing this scheme. There is nothing in paragraph 068 of the PPG FR requiring Flood Risk Assessments to identify and explain discounted options.
80. With regards to a wall, this would need to be 3m high at the southern end and would need to wrap around the Site. Given the site's location in the Green Belt and the heritage and landscaping issues, this option would clearly be unfeasible on visual grounds. Furthermore, the vast majority of the boundary vegetation and trees would have to be removed, which would adversely affect the openness of the Green Belt and could give rise to safety concerns and anti-social behaviour. It would be less safe than the proposed FWEPS because a flood gate would have to be relied upon, which would lead to faster inundation and trap occupants within the site if it failed or was not properly engaged.
81. Land-raising would again require a 3m rise over large parts of the site and that would fundamentally change the character of the flat and low lying land to the east of Clanage Road and would be highly incongruous. It would also have an impact on the developable area of the Site and, as with the wall, would virtually wipe out all the vegetation. Thus, even if there is an obligation to consider these options, they were justifiably discounted.

Paragraph 167 of the Framework

82. The entire site is in the same "more vulnerable" category so the siting of the buildings to the north and the caravans further south is not a contravention of part a) of the policy.

¹⁰ This was accepted by Mr Willitts in cross-examination by Mr Reed.

83. It is not a requirement of part b) of the policy that every development must provide flood resistance and resilience. It is only where it is "appropriate". Resistance and resilience has been built into the buildings. It is unfeasible in respect of the caravans. Importantly, the extent of flood resistance is not prescribed in the PPG FR and it does not require resistance to the design standard. Paragraph 059 says that flood resistant construction need only minimise the amount of water entering a building and it does not require measures which will prevent risk to life¹¹. As a result, the fact that the measures will only deal with minor flooding is not a contravention of this policy.
84. The requirement that the development should be quickly brought back into use without significant refurbishment, requires careful consideration. If this is an additional policy requirement which the development no longer complies with, the question is the degree of weight which must be placed upon this in the light of its recent creation¹². Limited weight should be given to this requirement since it governs only the detailed layout of a development. The current proposal was designed against an earlier policy context which did not specify this requirement. In circumstances where the requirement does not go to the issue of safety but (at most) the economics of refurbishment, it should not tell against the scheme in any significant way.
85. In any event, this provision would not be contravened. The test relates to the development as a whole and not particular parts of it in isolation. While some refurbishment would be needed, this would be limited given the utilitarian nature of the buildings. The majority of the site could be readily returned to camping use without significant refurbishment. It would be unlikely that there would be any damage done to standpipes as a result of flooding and the sewerage system would be capable of being reused after a few days.
86. When the whole development is looked at, the refurbishment is not significant and would be "quickly" brought back into use. Core pitches could be brought back into use after 7 days and even if communal facilities were unavailable, the site could still reopen with members using their on-board facilities (**Document INQ 10, question 9**).
87. Parts d) and e) are both complied with for the reasons given below.

Safety

88. It is necessary, therefore, to consider whether the circumstances set out in the FWEP justify the conclusion that the development would be safe for its lifetime.

The test for safety

89. This is another aspect of the Environment Agency's case that has changed markedly. The position in its written evidence was that there needed to be a guarantee of safety and thus no risk at all. It relied on the Beeley Road, Sheffield appeal decision but this did not look at what is meant by risk or safety, or what the proper test should be. However, in its oral evidence the

¹¹ This was agreed by Mrs Steadman in cross-examination by Mr Reed.

¹² This was a new requirement introduced by the 2021 version of the Framework.

Environment Agency accepted that there was not a requirement for an absence of risk¹³ (**Document CD 13.07.1**).

90. The Framework is quite clear that the question is whether risk is managed, not negated. Paragraph 164 b) could not operate at all if safe is equated with no risk. If it was, one would never have the balancing act under part a), which allows wider sustainability benefits to outweigh risk, of any kind or amount. Similarly, paragraph 006 of the PPG deals with managing risk, not eliminating it. The approaches that are set out to deal with residual risk in paragraph 040, seek to manage the risk without disposing of it.
91. The level of risk that will be acceptable is a matter of judgment. Guidance is given, however, in the Fort Gilkicker decision. The Inspector considered that risk need not be eliminated to be acceptable. It should simply not be disproportionate to normal everyday life. By having a warning system in place and bearing in mind that the proposed use relates to mobile holiday makers and their everyday lives while on holiday, the risk is quite obviously not disproportionate to their everyday life (**Document CD 13.02, appendix A, paragraph 177**).
92. A benchmark can be seen in the Long Lane decision in which the Inspector noted that there was no need for a "guarantee" of safety. Taking into account the particular circumstances of those individuals, including the fact of the occupants' travelling lifestyle, the development was safe (**Document CD 13.02, appendix B, paragraph 19**).

Whether the Warning System could be relied upon to give appropriate warning

93. It is agreed that the site would, in a future 1in 200 year event, be flooded at a level which is a "Danger for All". The Environment Agency also agreed that no one would be at risk if there was no one on site (**Document CD 14.3, paragraphs 5, 6**).
94. The Civil Protection Unit and the LLFA consider that there would be sufficient warning to enable occupants to vacate the premises. There is no objection from the emergency services, who rely upon the Civil Protection Unit.
95. The Environment Agency considers that there is an unacceptable risk that insufficient warning will be given because the warning systems they produce will not be accurate, and unexpected flooding will then occur.
96. The question is whose judgment can be relied upon. The *Shadwell Estates* judgement¹⁴ addresses the weight to be attached to the Environment Agency's advice. The principle in that judgement does not apply in an inquiry context, where there is competing expert evidence subject to testing in cross examination. In that situation, the Environment Agency's views do not automatically receive enhanced weight. However, even if the Shadwell Principle does apply, if the Secretary of State prefers the Applicant's evidence on flooding to that of the Environment Agency, that alone would provide "*cogent and*

¹³ This was accepted by Mrs Steadman in cross-examination by Mr Reed.

¹⁴ *Shadwell Estates v Breckland District Council* [2013] EWHC 12 (Admin).

compelling reasons” for departing from the latter’s views in accordance with that principle (**Document CD 13.01, appendix 1**).

97. As a result, the weight to be attached to the Environment Agency’s evidence cannot arise from an artificial presumption of correctness but whether it should, given the nature of the evidence presented, be relied upon. In that context, it is to be noted that its own ADEPT guidance recognises that the judgment of what amounts to an adequate FWEP is not for the EA, but the Civil Protection Unit and LLFA (**Document CD 12.03, appendix D, page 3**).

Depth, velocity and regularity issues

98. These matters do not affect the extent to which the FWEP is capable of being relied upon. Whatever the depth or velocity in the 1 in 200 year event, this will not exacerbate the risk if no one is on site. There is no basis in the Council’s flood strategy for the Environment Agency’s conclusion that by 2120 the current 1 in 200 year flood would become an annual event. In any event, even if it was correct it does not affect the adequacy or robustness of the FWEP. The point is not whether there are many such events, but whether such events will be identified and dealt with under the terms of the FWEP. The answer is that it will be effective at whatever regularity.
99. In any event, the timescale for assessing the site is a 40-year period not 100 years and so a lower regularity should be considered. The Club has made quite clear that its policy is to demolish all buildings after 40 years. At that stage, the appropriateness of the development will necessarily be reconsidered. It is acknowledged of course that such a step would not prevent the continuation of the use in theoretical terms, but the practicality is that the whole site would be reassessed when the operational buildings are removed. In order to cut short this debate, if the timescale of the development is an issue for the Secretary of State, this can be readily addressed by the imposition of a condition limiting the use of the site to 40 years.

Probability of a Timely Warning

100. The Environment Agency’s principal practical objection to the FWEP is that a Flood Warning will not be issued in spite of its best endeavours to give 6 hours’ notice and people will be put at risk. It is noted that there was no suggestion that 6 hours would be insufficient. In reality, there is no real risk of less than 6 hours’ warning being given.
101. The only evidence the Environment Agency has relied upon to establish that there is the potential for insufficient warnings of flooding at the site concern the flood event in Bristol between 11-12 March 2020. Instead, the evidence is entirely to the contrary. The evidence from the Council in the Silverthorne Lane inquiry shows that warnings are typically provided with 24 hours notice and the Environment Agency’s own evidence endorses this. At the East Lindsey inquiry, evidence was given by the Environment Agency that usually 2-3 days lead in time is sufficient to make critical decisions. Whilst the Environment Agency has since said that the notification of the warning in that case was 9 hours, it accepted that this was nonetheless timely (**Documents CD 12.03, paragraph 5.1.15; CD 12.18, appendix 3; CD 13.06, paragraph 3.16**).

102. The Environment Agency's response that it could identify no other example of where insufficient warning had been given was because it is a regional body is an inadequate explanation. There must obviously be contact between different parts of the organisation in the country and if there was evidence to establish a lack of adequate flood warnings, the Environment Agency would certainly have it. If it does not, then that strongly suggests that this is because it does not exist. Consequently, no weight should be placed upon any suggestion that there might be similar situations in other parts of the country.

The settling of the FWEP

103. The FWEP is a working draft but one that is largely settled. It contains a number of relevant triggers and it sets out the parameters for safe warning systems and evacuation procedures. As a working draft it is always capable of being improved upon. One such improvement is the introduction of a trigger for Shirehampton and Pill, which the Environment Agency agreed would be appropriate and protective. For that reason, condition 20 requires the approval of the FWEP in accordance with the principles set out in revision F and each of the relevant triggers. This is workable in the same way that conditions are imposed on outline planning permissions. The important point is that the relevant condition, through revision F of the FWEP and the triggers, contains all of the significant aspects for establishing the safety of the scheme. The Civil Protection Unit is the appropriate determining body for the FWEP in tidal terms. Its input into the approved plan under the condition will necessarily be within the context of the fixed parameters of the current version of the FWEP.
104. In any event, there is no basis for the suggestion by the Environment Agency that the Civil Protection Unit and LLFA, who is the determining body for surface water, would agree to inappropriately "light" restrictions. Under the condition they could not do so. This is shown by the fact that the original draft of the FWEP which both determining bodies agreed to (Revision D) contained triggers tied to both Flood Alerts and Flood Warnings and, while the specifics moved on, these were justifiable. The reason for the more specific triggers, which are now contained in revision F was to meet the criticisms raised by the Environment Agency in its evidence. Notably it did not seek to make such observations at an earlier stage as part of a collaborative method for arriving at a finalised FWEP. The LLFA originally objected to the proposal and its change of stance was clearly not made without careful consideration. It is quite wrong to suggest that the Council has been, and thus would be, inadequately protective (**Document CD 6.01, page 9**).

The Triggers for Evacuation

105. The question of the likelihood of the amount of warning for evacuation that would be available is directly tied to the proposed triggers. There are two primary ways in which the evacuation would be instituted under condition 20. The first is if a Flood Alert is issued in respect of the River Avon area, which identifies a predicted tidal flood level of 8.65m AOD at Avonmouth. The second is if a Flood Warning for Pill and Shirehampton is issued identifying a tidal flood level of 8.21m AOD at Avonmouth (**Document CD 13.09.2, paragraph 4.6, step 7**).
106. Both Flood Alerts and Flood Warnings give tide flood levels. Both of these forms of warning can be subscribed to by the Applicant. There is no question that the

triggers will be capable of practically being taken into effect. In any event if there is a change in the future with regard to how these triggers work, this will be picked up on a revision of the FWEP under its own internal updating procedures (**Documents CD 13.02, appendix C; CD 13.09.2, paragraph 5.1.2**).

107. The Environment Agency suggested that the FWEP cannot be relied upon because the FWEP relating to the existing site at Baltic Wharf had not been updated. However, that was based on an Environment Agency template. The only updating required was in relation to the details of the wardens, each of whom would know each other but, in any event, the Regional Manager's details were correct. The reference to the previous flood warning system (Floodwatch) in this FWEP is irrelevant because the current warning system has been transposed onto the earlier system so the wardens will receive the flood warnings (**Document CD 11.06**).
108. The triggers in the FWEP have been set at a level which are agreed to be both precautionary and rational¹⁵. That is because they require evacuation from the site at tide levels at Avonmouth which will not cause flooding at the site. This approach is precautionary because it deals entirely with the principal argument around the acceptability of the warning process raised by the Environment Agency. This is that a Flood Warning or Flood Alert will not be issued because tide levels have been underpredicted. The 1 in 200 flood level is at 9.28m AOD and the overtopping level at the bank of the Avon by the site is in the region of 8.8m – 8.9m AOD.
109. The standard for judging safety in this case is the 1 in 200 event. At a level of 9.28m AOD, a prediction would have to be wrong by up to one metre in order for the Environment Agency's scenario against the 1 in 200 event threshold to be realised. It has pressed the case that it was necessary, in spite of what it has have always required as the standard by which to judge safety, to look at what the position is for any level of flooding at lower than the 1 in 200 level.
110. Even against initial overtopping, on which the Environment Agency gave no evidence about the level of danger that this would cause, the assessment would have to be wrong by at least 0.6m. Initial flooding would not have dangerous effects given that the site fills to the south.
111. There is no evidence whatsoever that such underprediction has ever occurred at any tidal river location anywhere in the country, at any time. The only evidence given relates to the March 2020 event in Bristol. However, the predictions in that event showed an error range of between 0.1m (6 hours from high tide) and 0.14m (18 hours from high tide) (**Document CD 13.06, page 5 table**).
112. The evidence given at a recent call-in inquiry in East Lindsey showed a forecasting inaccuracy of 0.8m. However, this is an example of coastal flooding, not tidal flooding. The trigger at East Lindsey was set at a low level because of the big changes that can occur. Such changes do not occur here. Indeed, for tidal river levels there is no evidence of significant tide differences between prediction and reality¹⁶ (**Document CD 12.18, appendix 3, paragraph 3.6**).

¹⁵ This was agreed by Mrs Steadman in cross-examination by Mr Reed.

¹⁶ As confirmed by Mrs Steadman in cross-examination by Mr Reed.

113. The Environment Agency sought to identify a greater range of inaccuracy by reference to figures contained within the Council's report into the March 2020 tidal flood event in Bristol. The measured evening high tide level at Avonmouth for 11th March used in this exercise was 8.63m AOD, and the predicted level 8.29m AOD. While the difference between these two figures was 0.34m, this related to a prediction made more than 48 hours prior to the relevant tide. If the same figures are used by reference to the forecast issued 24 hours before the relevant high tide, this was 8.46m AOD, which was only 0.17m different from the measured high tide. This was consistent with the minimal degree of difference between prediction and reality in the 24-hour period before the high tide event. Only 6 hours warning is required to engage evacuation of the application development (**Documents CD 12.03, appendix C, page 13, page 23 appendix A, page 23 appendix B**).
114. The additional point made by the Environment Agency is that there may be an underestimate in the Flood Alert which will not trigger the evacuation procedure in the FWEP and, because alerts are only issued once a day, this error will not be corrected, and flooding will occur. However, the error would have to be so major that it is plainly not going to happen. The Environment Agency's suggestion that the differences between predicted tides and real tides can be "massive" is just not borne out by the evidence. Even if this situation were to occur, the alert trigger for the Avon is higher than the warning trigger at Shirehampton and Pill, both being gauged at Avonmouth, which will either be initially triggered or which will be the subject of multiple updates in any tide cycle. Even an egregious error in the Flood Alert prediction would still not lead to an unexpected flood at the site.
115. These tide triggers are precautionary because they happen irregularly. The 8.65m AOD level has not been reached in the period between May 2017 and the present day. The 8.21m AOD level is triggered for only 2-3 events per year on average (**Document CD 13.09.1, paragraph 1.4**).
116. In addition to the evacuation triggers, the FWEP contains a further measure, the cancellation of bookings and introduction of evacuation readiness steps on receipt of a Flood Alert for the Avon area with a tide flood level of above 8.35m AOD at Avonmouth. This initial step would ensure that the wardens would be preparing the site and its occupants for any potential flooding event well in advance of any actual flood event. The Flood Alerts are issued at flood levels as low as 7.66m AOD at Avonmouth so there is no real prospect that a Flood Alert would not be received. Again, for the reasons given above, the possibility of an under-prediction is so unlikely that it can be ignored. This is also not a regular occurrence, having been exceeded once in the 4 years between May 2017 and in 2020, during the March event (**Documents CD 13.02, appendix C; CD 13.09.1, paragraph 1.5**).
117. The context must be considered when assessing whether a warning would be given. The 1 in 200 year event would presently be one of the biggest storms to hit Britain in a generation. The 2020 event in Bristol was more like a 1:40 year event. The idea that the site wardens would be unaware of the various warnings issued by the Council and the Environment Agency or that the Environment Agency would not issue any warning is patently fantastic. It was claimed that the method of predicting tide heights is very complicated and its results are uncertain. The evidence of the error margin needed establishes the

exaggeration of this claim. Furthermore, the uncertainties in flood prediction relate principally to the timing of floods, not their existence. The predictive techniques of the relevant authorities and the technical infrastructure to assist with that have developed dramatically over the last few years and will continue to do so. None of this evidence has been contradicted by the Environment Agency (**Document CD 12.03, paragraph 5.1.10**).

Whether 6 hours warning is sufficient

118. The Environment Agency's position is that, if 6 hours' warning is given it would, in principle, be sufficient to evacuate the site¹⁷. There would be two wardens on site but their children would not be allowed to reside there. At full occupancy there would be about 62 caravans, depending on whether the wardens' caravan would be on site. There would have been advanced warning of the potential for evacuation so occupants would be on-notice. They would also have been made fully aware of the potential for flooding before they have even booked, and this would be repeated on arrival. It is bizarre to suggest that each caravan will need to be visited and each occupant be so full of questions as to prevent all occupants from being aware in good time. Even if each caravan owner needed 3 minutes of the warden's time, this would still only take 3 hours to speak to every occupant. That leaves another 3 hours to organise occupants to leave. It is inconceivable that individuals would not be ready to leave in that timescale (**Document INQ 10**).

Whether the flood warnings would be heeded

119. The site wardens would be under a specific duty to abide by the FWEP, controlled by a planning condition. The Applicant has considerable experience of dealing with flood issues at its sites in Yorkshire, Bristol and Tewkesbury and this shows that it does abide by the terms of the relevant FWEPs. The staff are ordered and careful and there is no evidence that evacuation procedures are not carried out correctly. The example of the site in the Calder Valley was notably lacking in detail of exactly what the problems were. It does not provide a good enough reason for concluding that it is an unacceptable risk at this site, with this Applicant. The comparison is meaningless (**Document CD 12.02, appendix 1**).

120. It is wholly unlikely that Club members would not heed the site wardens' requirements. The examples relied upon by the Environment Agency are not comparable (**Document CD 12.15, paragraph 11.44-11.46**):

- a) Moorland, Somerset dealt with a homeowner who refused to evacuate. This is not the situation in the present case, which concerns a touring caravan owner/motor-homer on a holiday, who is warned of flooding (**Document CD 12.21**).
- b) Billing Aquadrome related to static mobile homes where occupants did not heed the FWEP. Again, a mobile caravan owner would not simply wait for the flooding (**Document CD 12.19**).

¹⁷ This was agreed by Mrs Steadman in cross-examination by Mr Reed, subject to concerns about the absence of the occupiers or their unwillingness to leave.

- c) There is no evidence that the site at Knaresborough was equipped with a FWEP or whether it was occupied by a residential caravan park or static mobile homes (**Document CD 12.20**).
121. The Environment Agency has relied on the Beeley Road, Sheffield appeal decision to support the argument that people act irrationally so that there is an unacceptable risk. This decision should not be followed, for the following reasons:
- a) The Secretary of State found that the benefits outweighed the risk even though the Inspector found the development was not safe. The Secretary of State was obviously not convinced that the development was as unsafe as the Inspector thought (**Document CD 13.07.1, DL paragraph 19**).
 - b) This was a proposed residential, office and café/restaurant development; the residential occupants would have different responses to mobile holiday makers.
 - c) The emergency planner had not been consulted in that case (**Document CD 13.07.1, IR paragraph 112**).
 - d) The warning time was only two hours (**Document CD 13.07.1, IR footnote 3**).
 - e) The Inspector stated that human behaviour could be unpredictable. However, in the Long Lane and Fort Gilkicker decisions the Secretary of State has concluded that rational behaviour can be relied upon. In any event, in Beeley Road, the Inspector was considering a complicated proposal with numerous uses, not a simple campsite (**Documents CD 13.02, paragraph 177; CD 13.03, appendix A, IR paragraph 177; CD 13.03, appendix B, paragraph 19; CD 13.07.1, IR paragraph 115**).
 - f) The Inspector applied the test of whether there is a guarantee that the development would be safe. That was too high a test (**Document CD 13.07.1, IR paragraph 115**).
122. These are poor comparisons. If the objective of the individual is to protect their property, the best option for doing so is to leave the site. Members at the Applicant's Tewkesbury site are cooperative and act on the staff's instructions. There is a collegiate sense that is produced by being a club member. In the light of all this, the argument is left that individuals do irrational things. That is so vague as to be meaningless (**Document CD 12.02, appendix A**).

Whether the less mobile would be less safe

123. The Environment Agency also argues that those who are less mobile would be unable to leave the site sufficiently quickly. However, the visitors would have arrived at the site by car or motorhome and could obviously reverse the process. They would have at least 6 hours to do that, on a worse case. It was suggested that if someone wanted more assistance, a warden would be taken away from other duties. However, there would normally be two wardens on the site at any one time, which would allow sufficient time to deal with unexpected events. The Club would already be aware of those who are vulnerable and/or have mobility issues, and so would be able to ensure that they are evacuated off the site first (**Document INQ 10, paragraph 6**).

Whether holiday makers would be unaware

124. It has been argued that holiday makers may be unaware of the flood risk and be unfamiliar with the area. The FWEP specifically deals with that by ensuring that all visitors are told of the flood risk. Indeed, the use of a FWEP to deal with visitors' lack of awareness of local flood risk is specifically endorsed in the ADEPT guidance, which the Environment Agency accepted¹⁸ (**Document 12.03, appendix D, page 9**).

Night-time evacuation

125. This would not present a risk here. Whilst not an optimal situation, specific provision is made for it in the FWEP. However, requiring occupiers to leave their vehicles and walk out of the site was a strategy that was put in place when specific triggers were not included within the FWEP. The measure would now be unnecessary on account of the very long lead-in time produced by the Flood Alert and Flood Warning triggers (**Document CD 13.09.02, paragraph 4.2.2**).
126. The Environment Agency relies on a series of cataclysmic chances all occurring to arrive at the night-time scenario. The alert trigger must not be met. If it was there would be at least 18 hours' warning. The Flood Warning trigger for Pill & Shirehampton must not be triggered. And a late warning must be issued just before dark. Even then there would obviously be a sensible response. The site wardens would give occupants the opportunity to leave the site in their vehicles, which they would be likely to want to do. Clanage Rd is a reasonably busy road, but it is not a difficult manoeuvre to exit the site and turn right. The wardens would be able to direct traffic out. The highway authority has no objection to the scheme, or to the use of the access (**Documents INQ 1.1; INQ 1.2**).

Visitors not returning to their caravans in time

127. Again, this does not establish an unacceptable risk. First, given the forewarning that individuals would be given on booking and arriving at the site, they would be aware of the risks. Second, the FWEP ensures that they would be contacted when the risk is identified if they are not at the caravan or motorhome. Third, it would be wholly unlikely that an individual would put themselves at risk of a flood if they returned late. Fourth, the 1 in 200 event would be a very bad storm. It is wholly unlikely that, given all this, an occupant would not be either at, or quickly return to their caravan or motorhome.

Where occupants would evacuate

128. All mobile homes would be evacuated and so visitors would have their accommodation with them. In the case of the York Rowntree site, some guests would simply head home whilst others would be relocated to alternative sites. The only individuals potentially impacted by this would be the site managers. They would also have their own caravan or motorhome which they would take with them to a nearby site until the site was safe to return to (**Document INQ 10, paragraph 8**).

¹⁸ This was accepted by Mrs Steadman in cross-examination by Mr Reed.

The Stourport Sports Club decision

129. The Environment Agency has relied upon the Inspector's observations to support its case on risk. However, the proposal was about use of the site in the winter. The concerns were about owners of caravans not being able to attend their caravans because they were being left at the site all year. The site also had "acute lead times". Furthermore, it was not feasible to take a large number of caravans to nearby highways, which would lead to congestion and occupiers being stranded in a place of refuge. None of these situations apply to the present case. It is to be noted that the requirement for seasonal use was not a management technique because although the site had a FWEP to address the seasonal risk, 20% of the floods occurred during the summer season (**Document CD 10.03, paragraphs 8, 17**).

Summary

130. There are already almost the same number of caravans capable of occupying the existing site at Baltic Wharf and the proposed development would not take place until the existing site is vacated. There would therefore be no additional burden placed upon the emergency services or a greater number of people put at risk as a result of the proposal.
131. The FWEP would be sufficient of itself to make the development safe. There is a risk that would always remain, but this would not be disproportionate to everyday life and would be acceptable. The Environment Agency has agreed there can be risk. However, by continually identifying any risk of any kind no matter how unlikely, it is really saying that there must be no risk here. This position is contrary to the Framework, the PPG and the Local Plan. It is quite clear that the prospect of the FWEP not working would be extremely low and would be a risk that any reasonable person would think it would be worth taking.

Whether the sustainability benefits would outweigh flood risk

132. Whilst the PPG points out that the Council should consider the criteria that they will use in this assessment, there is no published set of criteria in this case. However, the CS sets out a number of sustainability issues which are plainly satisfied in this case. Sustainability benefits can fall within any of the categories in paragraph 8 of the Framework and all of the benefits relied on would do so (**Document CD 9.02, paragraph 037**).
133. The Environment Agency has not undertaken an assessment of the benefits. It takes the approach that the development is unsafe, which must necessarily outweigh the benefits. However, such an assertion rests upon its inadequate assessment of risk. It has applied an unreasonably high hurdle to establish safety. When judged reasonably, the FWEP is sufficient to render the development safe. Looked at in this way, there is no basis for contending that part a) of the Exception Test in paragraph 164 of the Framework is not made out.
134. The arguments about precedent are equally ill-founded and rest on the premise that a FWEP cannot be the sole means of mitigation against flood risk, which is demonstrably false.

GREEN BELT

Whether the proposal would be inappropriate development

135. The development would include both the construction of new buildings and a material change of use associated with the siting of caravans. However, it is necessary to reach a judgment on whether the development as a whole is inappropriate, rather than to consider the material change of use elements and the construction of new buildings separately.
136. Paragraph 149 of the Framework sets out that the construction of new buildings is inappropriate in the Green Belt, subject to a number of exceptions. Of relevance here are b) and g).
137. In terms of the change of use, paragraph 150 e) of the Framework makes clear that the material change of use to outdoor recreation is not inappropriate provided that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
138. The proposed use of the site for caravanning falls under the category of outdoor recreation as the touring caravans would be used for recreational activities outdoors, such as camping and outdoor cooking. The new buildings would be in connection with the change of use to provide appropriate facilities for that use. The facilities would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it for the reasons set out below.
139. The development clearly represents the complete redevelopment of a site that comprises previously developed land. The definition in Annex 2 of the Framework includes land that is, or was, occupied by a permanent structure, including the curtilage of the developed land. There are a number of exclusions, but none apply here. The northern part of the site is occupied by permanent structures and therefore the only issue is whether the southern part falls within their curtilage. The relevant test is whether the land is so intimately associated with the buildings as to lead to the reasonable conclusion that the land was part and parcel of the building¹⁹. The expression "part and parcel" is figurative and means that a reference to the building would be understood to include, or extend to, that other land (**Document CD 12.01, appendix 1, paragraphs 66, 124**).
140. Here the paddocks to the south of the site are "part and parcel" of the buildings on the northern part, such that a reference to those buildings would be understood to extend to the paddocks. This is because the whole site is, and was, in single ownership; the purpose of the paddocks is intimately associated with the buildings as the whole site was used for the sole purpose of training police horses and dogs; the paddocks occupy a relatively small area of the site.
141. This approach to the consideration of previously developed land is supported by an appeal decision at Lavendon, Olney. Here the Inspector considered that the site comprising in part a stable building, hardstanding and manège with the remainder used as grazing areas for equestrian purposes, fell under the definition in the Framework (**Document CD 12.01, appendix 2, paragraph 13**).

¹⁹ See *R. (on the application of Hampshire CC) v Blackbushe Airport Ltd* [2021] EWC Civ 398 at [124].

Impact on openness

142. The *Samuel Smith* judgement made clear that this is not a matter of legal principle but of planning judgement²⁰ (**Document CD 10.02, paragraphs 22, 25**).
143. The PPG gives guidance²¹ on assessing the impact of a development on openness, which reflects the matters identified in the Court of Appeal judgement of *Turner*²². These include:
- a) Openness is capable of having both spatial and visual aspects. The visual impact of the proposal may be relevant, as could its volume.
 - b) The duration of the development, and its remediability. Account may be taken of any provisions to return land to its original state or to an equivalent (or improved) state of openness.
 - c) The degree of activity likely to be generated, such as traffic generation.
144. Paragraphs 149(b) and 150(e) of the Framework require that the facilities preserve the openness of the Green Belt. Paragraph 149(g) requires that the redevelopment would “*not have a greater impact on the openness of the Green Belt than the existing development*”. Both of these tests are satisfied here:
- a) In terms of the baseline position against which to assess the impact of the development on the openness of the Green Belt, the site is located in the urban fringe. The land to the south contains a number of buildings, hardstanding, lighting, and is frequently used for large scale car parking and a twice weekly car boot sale. The existing buildings have a footprint of approximately 1,000 m². They are of utilitarian appearance and have been subject to neglect and vandalism. These buildings will remain unless planning permission is granted for an alternative use.
 - b) The proposal would replace these buildings with three new buildings with a footprint of 318 m². This would represent a significant reduction in built form of about 68%. The buildings would have a lesser overall visual impact on openness because of their height and massing.
 - c) The southern half of the site would remain generally open in nature. The size of the caravans, the distance between the pitches, and the transient nature of each caravan and motorhome, means that the majority of the land would remain open and grassed and would appear open to those who see it. The use would be consistent with the similar recreational uses to the south and with the semi-urban character of the land in this location
145. There would be a greater spread of development to the south, but the site needs to be considered as a whole. It is not currently read as two separate elements, and the southern part is currently read as part of the curtilage of the buildings. The increase in built form in the south must therefore be balanced against the 68% reduction in permanent built form overall and the increase in

²⁰ See R. (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council [2020] UKSC 3.

²¹ See the *Planning Practice Guidance: Green Belt*, paragraph 001 Reference ID: 64-001-20190722.

²² *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466

the openness of the northern part of the site, which has significant amounts of hardstanding in addition to the buildings. The presence of caravans on the southern part would not be materially different to the parking and car boot sales that are regularly held on the adjacent land. The southern part of the site already has an extensive area of hardstanding. Further, should an alternative use of the site commence, it is likely that this would involve some activity on the southern part.

146. Further, if the current DCO Application is approved, a substantial compound would be created with significant hardstanding. This would have a further urbanising impact on the immediate surroundings of the site, necessarily reducing any impact of the development on the openness of the Green Belt (**Document INQ 11**).
147. Consequently, the impact of the proposed development on the openness of the Green Belt within this location would be no greater than the existing use and its openness would therefore be preserved.

Impact on Green Belt purposes

148. Paragraph 149(b) of the Framework also requires that the development should not conflict with the purposes of including land within the Green Belt. However, it would either comply with or positively support them. Taking them in turn:
- a) The proposed caravan site with temporary pitches would be a use well-suited to an edge-of-settlement area. There would be limited built infrastructure and the site is also already partially developed. The proposals would not result in urban sprawl.
 - b) Bristol would remain separated from the adjoining towns and villages, and in addition, the various suburbs and areas within the south-west of the City would also remain separate. The proposed development would not result in any perceptual or actual coalescence.
 - c) The site is already largely developed and is not countryside as such. It also benefits from clearly defined and defensible boundaries. Consequently, the redevelopment would not result in encroachment into the wider countryside.
 - d) The site is previously developed land and in its current state it detracts from the surrounding landscape/ townscape character. Its redevelopment as proposed, would enhance the site's character, and therefore the setting of the adjoining listed parkland.
 - e) The proposal would bring the site back into proper management, with a use that would have no adverse effect on the openness of the Green Belt. It would thereby regenerate the landscape/townscape of the site.

Conclusion

149. The proposal would therefore not be inappropriate development in the Green Belt and would fall within the exceptions in both paragraph 149(b) and 149(g) of the Framework. Consequently, it would also comply with policy BCS6. However, if the Secretary of State finds that this would be inappropriate development there are a number of considerations which combine to represent

very special circumstances to justify the proposed development in the Green Belt. These very special circumstances are addressed at paragraph 190 below.

The Alternative Sites Assessment

150. No alternative sites have been found to be preferable to the application site. That is the case whether or not it is concluded that the proposed development would be inappropriate. The reason is that the vast majority of the other sites are currently undeveloped and generally in agricultural use. Only one site has been identified which is also on previously developed land. This is identified for a new neighbourhood in the emerging Local Plan and is therefore not available or suitable for the proposed development (**Document CD 12.14, paragraphs 6.4-6.6**).
151. Nine sites were identified that are not in the Green Belt, but none are suitable or available alternatives to the application site. The clear conclusion to be reached is that there is no less harmful site in the Green Belt to accommodate the scheme. The application site represents the best location in Green Belt terms for the scheme. This is a powerful factor in support of it, which should be given substantial weight (**Document CD 12.14, paragraphs 6.9-6.10**).

HERITAGE

152. It is agreed with the Council that there are three designated heritage assets that have the potential to be affected by the proposal, given their proximity to the site (**Document CD 14.2, paragraph 5.22**).

Bower Ashton Conservation Area

153. This includes land within the southern part of the site. *The Bower Ashton Conservation Area Enhancement Statement (November 1993)* (the CA Statement) describes its character and appearance as being a "*pleasant rural area of open pastureland*" and that the "*pasturelands surrounding Ashton*" should be preserved. Historic England also considered that the "*rural setting*" of the site contributes to the character and appearance of the Conservation Area (**Documents CD 4.13; CD 4.14; CD 8.05**).
154. The CA Statement makes no reference to the contribution that the southern part of the site, or indeed the area of which it forms part, makes to the significance of the Conservation Area. The Council acknowledge that this document is largely out of date and no reference is made to the police training facilities or uses to the south of the site other than sports fields and allotments. The southern part of the site does not play any role in contributing to significance. That is consistent with paragraph 207 of the Framework, which makes clear that not all elements of a conservation area will necessarily contribute to its significance.
155. The southern part of the site is not part of the surviving historic pastureland that the CA Statement suggests should be preserved. It is not rural in character, as Historic England suggest. Rather, it forms part of the urban fringe of Bristol, and exhibits uses and activities and structures that are not rural in character. Views of the south of the site are affected by the visual intrusion of traffic on Clanage Road, which is a major vehicular route into the City, and the existing poor-quality buildings and associated structures on the site. It is seen in the context of the clutter associated with the recreational and sporting uses that take place further to the south. The stone boundary walls to the west of

Clanage Road mark a distinct difference in character between the land to the east and west and help to define the clear landscaped qualities of the parkland compared to the more urbanized uses of the land to the east. The site does not play any role in forming a rural boundary to either the City or Bower Aston village.

156. This context could change further if the DCO Application is approved. This would involve a permanent vehicular access compound to be constructed on land immediately to the south of the application site. This would introduce screen planting into the foreground, and rapidly obscure views of the application site and the proposed development.
157. The boundary of the Conservation Area is somewhat arbitrary and there is no obvious reason why it should run across the site. The northern part of the site is within its setting by virtue of being immediately adjacent to it. However, it is just as influenced by the existing urban form and urban periphery uses as the southern part of the site and contributes nothing in terms of significance.
158. Indeed, the site as a whole detracts from the character and appearance of the Conservation Area. It has been vacant for a number of years and is a significant eyesore. Furthermore, given the permitted use of the site, the potential risk, should the existing buildings and external lighting be brought back into use, would be to result in harm. The proposal would eliminate that risk and offer an opportunity to allow a development that would be more effectively assimilated into its surroundings through the associated landscaping strategy. As such, the development would preserve the character and appearance of the Conservation Area. Historic England's concern about the use of materials could be addressed through conditions 3 and 4.

Ashton Court Registered Park and Garden (Grade II*)

159. The Park boundary follows the back edge of the highway verge on the opposite side of Clanage Road to the application site. The development would therefore have no direct effect on this heritage asset but is within its setting. As is made clear in Historic England's *Good Practice Advice Note 3 –The Setting of Heritage Assets*, setting is not a heritage asset and its importance lies in what it contributes to the significance of the heritage asset or the ability to appreciate the significance. It also explains that the contribution of setting to the significance of a heritage asset is often expressed by reference to views, but that some views may contribute more to understanding the heritage significance than others. It also emphasises that, over time, the setting of heritage assets will change reflecting the evolving built and natural landscape (**Document CD 12.08, paragraphs 60-64**).
160. The development would not undermine the green setting to Ashton Court, which would be unaffected to the north, south and west. To the east, the site does not contribute to the significance of the Registered Park and Garden, or the setting of the listed mansion. The significance of the Registered Park and Garden is derived in part from the contrast between the single-owned designated landscape of the Park and the urban form of Bristol, which is close by. It is this difference in character between the two areas that helps to reinforce the significance of the Park as a designed landscape and its association with the privilege and power of a landed estate owner.

161. That contrast would be unchanged through development of the site, which sits in a marginal area between the urban form of Bristol and the designated landscape. The character and appearance of the land has already changed through the existing development. The site is currently in very poor condition and a harbour for anti-social behaviour. The proposed redevelopment would improve the role it plays within the setting of the Registered Park and Garden, amounting to a clear heritage benefit.

Clifton Suspension Bridge (Grade I)

162. This is approximately 880m to the north and in views from the bridge, the site appears as a small element in an expansive view. It does not block a view or detract from any focus in the view. The eye is drawn elsewhere, and the site is a minor blip in the view. The site is seen within the view in the context of the existing City, including the raised major road network to the east and its associated lighting. Given the backdrop of built forms in the view, the contribution the view make to the significance of the bridge would not be harmed by the proposed development.
163. The night-time view would be unaffected. Across the vast majority of the site, the light levels would fall below 0.5 lux. The proposed lighting scheme would be an improvement over the present situation where there are flood lights of varying types. Any alternative use would need to retain a level of lighting. The site is seen in the context of nearby street lights and other lit urban form, including the Cumberland Basin (**Document CD 1.25**).
164. Historic England and The Gardens Trust referred to other heritage assets in the vicinity:
- a) **Avon Gorge Hotel:** This is not a designated heritage asset. It is difficult to see the application site in the view from its terrace, but even if it is visible this is a co-incidental view rather than a designed view. The site is not in the setting of the hotel and, even if it is, does not contribute to any historical significance that the hotel may have. The hotel is within the Clifton and Hotwells Conservation Area.
 - b) **The Clifton and Hotwells Conservation Area:** The western side of the River Avon forms part of its setting. However, the site does not currently contribute anything in terms of visual character to that setting. The proposal therefore has no impact on the significance of the Conservation Area.
 - c) **Greville Smyth Park and Bower Ashton garden:** These are two parks that the Gardens Trust have suggested may be affected by the development. Greville Smyth Park is not a designated or non-designated heritage asset and intervisibility with the site is affected by the elevated Brunel Way, which sits between the public park and the Registered Park and Garden. The proposal would not result in any harm to the significance of the public park. Bower Ashton garden is not found in either the Avon Gardens Trust register or the Parks and Gardens register, and it is not clear what park is being referred to.
 - d) **Ashton Court mansion (Grade I):** the registered park and grounds of Ashton Court are designed to form the setting to the mansion, There are no designed viewing corridors towards Bristol as the main aspect faces to the

south and west. The key views are the ones experienced from the drive to the south. The application site is outside the setting of the mansion and so the proposal would not harm its significance (**Document CD 1.21, pages 12-19**).

Conclusion

165. The proposed development would not result in any harm to the significance of the nearby designated assets. Indeed, it offers an opportunity to eliminate the potential risk of harm arising from the existing buildings and external lighting being brought back into use. There would be heritage benefits associated with the removal of the current unsightly buildings and incongruous conifer trees on the frontage to Clanage Road. The development would therefore comply with, policy BCS22 in the CS and policy DM31 in the SADMP.
166. If it is found that there is harm to any of the heritage assets set out above, it is at the very lowest end of less than substantial harm. The relevant balancing exercise under paragraph 202 of the Framework is carried out below.

TREES AND BIODIVERSITY

Biodiversity Net Gain

167. Beyond a requirement to enhance biodiversity, there is no policy requirement in the development plan to deliver net biodiversity gain. Whilst the Framework refers to the delivery of biodiversity net gain at paragraphs 174, 179 and 180, it does not specify a particular numerical requirement for the extent of the gain. The Environment Bill should be given very limited weight. It is not yet law, and in any event will be subject to a two-year transitional period before its provisions are given effect.
168. The development would result in a 15.87% net gain in habitat units and a 466.93% net gain in hedgerow units. This is disputed by the Bristol Tree Forum for a number of reasons set out below. It is noted that the representative of the Bristol Tree Forum has not entered the site, has no academic or professional qualifications in relation to ecology and has sought no training in the correct use of Natural England's Biodiversity Metric²³.

The choice of metric

169. Version 3.0 to the Biodiversity Metric (BM), was published on 7th July 2021, shortly before the Inquiry commenced. The Bristol Tree Forum advocate the use of BM Version 3.0, but Natural England's advice is to continue using BM Version 2.0 unless requested to do otherwise by the client or consenting body for the duration of the project it is being used for. This is because the biodiversity unit values that BM Version 2.0 generates will differ from those generated by BM Version 3.0.
170. It would therefore be inappropriate to use BM Version 3.0 for this proposed development, since it was BM Version 2.0 that influenced the design of the soft landscape proposals. It would be unreasonable to assess the development

²³ Inspector's Note: Mr Ashdown did attend a site meeting with the Council's Tree Officer and Mr Rose (Applicant) on 21 July, which was prior to the round table session on trees and biodiversity.

against a different metric at this late stage. Bristol Tree Forum point to no site-specific reasons to use the new version of the metric. The flurry of different calculations they produced illustrates not only the difficulties in applying it to the development, but also their subjective approach and lack of experience in the metric's correct use.

171. It is contended that emerging policy and guidance and the Environment Bill means that BM Version 3.0 should be relied on. However, Natural England would have been aware of this when it gave its advice. Further, the Environment Bill, when enacted, will include a two year transitional period. The fact that BM Version 2.0 was a beta version is irrelevant since a number of appeal decisions have relied on it, and Natural England clearly considers that it is still appropriate in cases such as this.

BM Version 2.0

172. There are two main issues raised by the Bristol Tree Forum:

- a) It is said that the non-native *Leylandii* hedge (H1) along the western boundary of the site should be classified as a line of trees. This is not correct, for the reasons set out below, but in any event even were H1 to be re-classified the development would still yield a 117.22% net gain in hedgerow units. The habitat units delivered would be unaffected.
- b) It is said that the scattered trees in the former parking area to the north of the site (T9-T20) should be categorised as "*woodland and forest – other broadland woodland*" as should the trees on the western boundary (T1-T8 and G1), which are said to be a continuation of the woodland to the north. However, trees T9-T20 are predominately non-native and were planted in an urban context, set within hardstanding. Therefore, the "*urban street tree*" classification is the most appropriate. The trees on the western boundary (T1-T8 and G1) form a discrete linear feature and therefore have been correctly categorised as a "*line of trees*". Neither group of trees can be said to be woodland. Woodlands are characterised by their understory shrub layers, ground flora soil conditions and are not defined merely by the presence of trees, irrespective of their context.

173. The categorisation of net gain associated with the development has been correctly calculated using BM Version 2.0.

BM Version 3.0

174. The release of BM Version 3.0 and its supporting documents provides useful clarification regarding the intended use of the urban street tree habitat category. These are renamed urban trees in BM Version 3.0, in order to better reflect the habitat niche covering individual trees, blocks of trees and lines of trees along urban streets. Despite the initial objection of the Bristol Tree Forum having hinged on their rejection of the urban street tree habitat category to describe scattered trees at the site, they have adopted the updated urban tree category for all on-site trees in their BM Version 3.0 calculation. In doing so however, the Bristol Tree Forum have made a number of errors:

- a) Proper account has not been taken of habitat condition. This is reduced, for example, by the prevalence of ornamental/non-native species.

- b) Linear features H1 and T1-T8 have been wrongly counted as area habitats. Feature T1-T8 is a linear "*line of trees*". Feature H1 is an "*ornamental non-native hedge*". These are linear features not area habitats. This fundamental misclassification has a significant effect on the overall metric output.
 - c) A subjective measurement of habitat area has been made and the urban tree area tool embedded within the metric has been rejected. All trees are arbitrarily assigned to be of medium size.
 - d) A multiplier has been erroneously applied for delayed habitat creation, even though the User Manual states that this should be applied if there would be a "*significant delay in the creation of a habitat type relative to any losses of on-site features*". There is no reason why the planting could not take place in the first planting season (**Documents CD 13.10.4, paragraph 4.74; INQ 7.1, INQ 14**).
175. The Bristol Tree Forum submitted a revised calculation, which purported to apply the urban tree area tool. However, the classifications of different sizes bears no relationship to the categorisations given in the User Guide. In any event, the latest calculation contains a fundamental error by substantially reducing the area of retained trees to the south of the site. If this basic mathematical error is corrected the result would be a net gain in both habitat and hedgerow units, without recourse to off-site compensation (**Documents CD 13.10.4, table 7.2; INQ 13.1; INQ 14, paragraph 1.8**).
176. Even with all of these errors, the Bristol Tree Forum still calculate that BM Version 3.0 produces a net gain if the financial contribution is made under the Bristol Tree Replacement Standard (BTRS). However, the correct application of BM Version 3.0 results in a net gain of 30.64% in habitat units and 721.4% in hedgerow units (**Documents INQ 14, paragraph 1.8; INQ 7.1, paragraph 1.6**).

Tree loss

177. The Council's Arboricultural Officer has confirmed that there is no objection to the loss of trees that would arise from the proposed development. It would comply with the mitigation hierarchy set out in paragraph 180(a) of the Framework. The layout has been designed to minimise the number of tree removals. Where this has not been possible, 53 additional trees would be planted as mitigation, alongside a new hedgerow to strengthen the boundaries of the site.
178. There is a dispute about whether a contribution is required under the BTRS in compensation. In this respect, it is common ground that:
- a) Should H1 be recognised as a hedge it would be exempt from the replacement requirement. The new tree planting proposed, which compensates for the proposed removals, would be sufficient and no further tree planting or financial contributions would be necessary to meet the requirements of policy DM17 in the SADMP.
 - b) Should H1 be recognised as 34 individual trees requiring replacement under policy DM17, the proposals would generate a total requirement of 74 new trees beyond those already proposed, or a total financial contribution to off-site mitigation of £56,625.54. This would be delivered through the S106 Agreement.

179. The sole issue in dispute is whether H1 should be categorised as 34 individual trees or as a hedge. Policy DM17 applies to “tree loss” but the word “tree” is not defined in the SADMP. It should be given its ordinary meaning, rather than applying definitions given in different legislation, which address different issues. Any definition given in the Biodiversity Metric is also unhelpful as this post-dated the policy and therefore was not in the Council’s contemplation when the policy was drafted. In the *Bullock* High Court judgement²⁴, it was determined that “*anything that ordinarily one would call a tree is a “tree”*”. The same approach should be taken to defining a “hedge”. In this respect, the ordinary meaning of a “tree” and a “hedge” are different (**Document CD 13.08**).
180. Whilst a hedge may be made up of a series of trees, and therefore in some circumstances the BTRS may apply to the individual trees within the hedge, the position here is different. That is because, whilst the individual elements within H1 would be classed as “trees” had they grown alone, they cannot now survive individually in an attractive way due to their very close spacing which has significantly constrained crown development and forced tangential growth. The fact that the “trees” within H1 could physically survive individually is not the point. As no one would ever seek to separate out the individual elements of H1, this is entirely hypothetical. H1 exists as a single irreducible feature, and the reasonable person would conclude that it was therefore a “hedge” rather than a series of trees. As such, no contribution is payable. However, should the Secretary of State disagree, one is provided for in the S106 Agreement (**Document CD 12.07, appendix B, paragraphs 4.4-4.5**).

Other matters

181. A Shadow Habitats Regulation Assessment (HRA) has been provided. Natural England confirmed that this is considered a robust assessment upon which the Inspector and Secretary of State can conclude that the proposals would not result in a significant effect to the nearby European designations of international importance to nature conservation (**Documents CD 1.16; CD 4.17**).

CONCLUSION AND PLANNING BALANCE

182. There would be no conflict with policies in relation to impacts on highways, sustainability, green infrastructure and amenity (**Document CD 12.01, section D**).
183. The proposal would not be inappropriate development in the Green Belt and would therefore comply with policy BCS6 in the CS.
184. The development would not result in any harm to designated or non-designated heritage assets and would therefore comply with policy BCS22 in the CS and policy DM31 in the SADMP. However, if it is found that there is less than substantial harm to any heritage asset, strictly speaking the development would breach both policies, which do not incorporate any public benefits balancing exercise within them. In that respect both policies are out of date as they are inconsistent with paragraph 202 of the Framework and limited weight should be given to that breach. The development would comply with the heritage policies in the Framework.

²⁴ *Bullock v Secretary of State for the Environment* (1980) 40 P &CR 246 (page 251).

185. The development would comply with policy BCS16 in the CS as there are no other reasonably available sites with a lower risk of flooding, and the development would remain safe from flooding over its lifetime.
186. The development would deliver a biodiversity net gain of 15%, the layout has been designed to minimise the number of tree removals and additional trees would be planted as part of the soft landscaping proposals. There is no obligation to make a contribution under the BTRS, but one is provided should the Inspector or Secretary of State find otherwise. The development would comply with policy BCS9 in the CS and policies DM17 and DM19 in the SADMP.
187. The development would comply with the development plan taken as a whole.
188. Paragraph 11(c) of the Framework applies. It states that planning permission should be granted "without delay" because the development accords with an up-to-date development plan. Whilst policies BCS22 and DM31 are out of date, the development plan must be taken as a whole, and as a whole it is not out of date.
189. Paragraph 11(d) of the Framework is not engaged. Whilst the Council does not have a five-year housing land supply, footnote 8 does not apply because this is not an application involving the provision of housing. The policies which are most important for determining the application are not out-of-date. Applying the approach set out in *Wavendon Properties Limited*²⁵, the policies which are most important for determining the application do not just relate to heritage, but also Green Belt, flooding, landscape and biodiversity. Taken as a whole, these policies are not out of date.
190. The development would deliver a number of significant and compelling benefits:
- a) It would provide the only viable opportunity to remediate a vacant and unattractive brownfield site that significantly detracts from the visual amenity and character of the area. Also, it would put a stop to the current anti-social behaviour and criminal activity associated with the site. If permission is refused, the inevitable consequence is that the existing harm will continue, and it is likely that the site will deteriorate further. The re-use of previously developed land is a central aim of policies BCS56 and BCS20 in the CS and in the Framework.
 - b) The development would enable a touring caravan park to be provided in proximity to Bristol City centre. The economic benefit of tourism spend within the City associated with it would be over £1m annually. The calculation is based on a daily off-site spend of £51 per day per pitch, which is likely to be an under-estimate. There would also be significant employment opportunities on both a full time and seasonal basis. The development is therefore supported by, amongst others, Destination Bristol, who consider that it is "*vital that Bristol has a replacement central site for the Caravan and Motorhome Club*"; Bristol Chambers of Commerce, who describe the existing site as an "*important, high performing asset for Bristol's visitor economy*" and SS Great Britain Trust who say that "*a high*

²⁵ *Wavendon Properties v SSHCLG & Milton Keynes Council* [2019] EWHC 1524 (Admin) (see paragraph 58).

quality caravan site within easy walking of the city centre is a virtually unique asset to Bristol and its visitors and should be strongly encouraged for its social and economic benefits to the city" (Documents CD 13.01, appendix 2; CD 6.01, pages 4-6).

- c) Formal notice has been given to vacate the existing Baltic Wharf site. The Applicant will not be able to remain in the medium and long-term given the Council's intent to redevelop it. In the absence of any other suitable and available alternative sites, without the proposal the economic benefits would be lost. In accordance with paragraph 81 of the Framework they should be attributed substantial weight.
 - d) The proposal would provide for a comparatively affordable form of accommodation. The site is close to Ashton Court, enabling more members of the public to enjoy this facility. These additional benefits should both be afforded significant weight.
 - e) The development would achieve all of the Government's objectives for enhancing the beneficial use of the Green Belt under paragraph 145 of the Framework through provision of public access; provision of opportunities for outdoor sport and recreation; enhancement of the landscape and biodiversity; and improvement to damaged and derelict land. There is no less harmful location for the development at any other Green Belt site within this locality.
 - f) The development would realise heritage benefits to the Grade II* Registered Park and Garden and the Grade I Ashton Court mansion, through the removal of incongruous trees and unsightly buildings.
 - g) The development would result in substantial environmental benefits to the area. As well as the landscape benefits brought about through replacement of the existing rundown buildings, there would be a significant biodiversity net gain. This would very significantly exceed current and emerging policy requirements and should attract substantial weight in accordance with the conclusions of the Inspector in the Minster on Sea appeal decision, where the net gain was much lower (**Document CD 10.04**).
191. If the Secretary of State concludes that the proposal would be inappropriate development in the Green Belt, there would be very special circumstances arising from the positive considerations that clearly outweigh the potential harms. If the Secretary of State concludes that there would be less than substantial harm to any heritage asset, this would be on the lowest end of the spectrum and, even giving that harm great weight, it would be outweighed by the public benefits of the development. If the Secretary of State concludes that the development would be contrary to the development plan taken as a whole, there would be significant material considerations to indicate that permission should nevertheless be granted.
192. However, it is considered that the development would be in accordance with the development plan and would also provide significant economic, social and environmental planning benefits. This further supports the case for granting planning permission.

THE CASE FOR BRISTOL CITY COUNCIL

The Council's case is fully set out in its evidence, including its opening and closing submissions, which were delivered orally and are in the electronic documents.

The main points are:

193. The appeal site is overgrown and unkempt, with a collection of derelict and vandalised buildings of no architectural or historic merit. It is subject to criminal activity and anti-social behaviour and a clear detractor from the area. Other than the current proposal there is no realistic prospect of any other use coming forward to put an end to those problems. There may be uses that could theoretically occur on the site, but they would require extensive work to the buildings and there is no evidence that they actually are likely to come forward. The most likely outcome is that the site would continue in its current state (**Documents CD 12.01, paragraph 6.2; CD 14.2, paragraphs 5.7, 5.36**).
194. Despite an extensive search, the Applicant has not found any other site to relocate its successful caravan site currently located at Baltic Wharf.
195. The current proposal would solve both of the apparently intractable problems referred to above. As such there are very significant public benefits associated with it. This was rightly recognised by the Council's Development Control Committee in resolving that they were minded to approve the application. There were initial concerns about this application given its location in Flood Zone 3 and the Green Belt and its proximity to heritage assets. At first glance those are formidable obstacles to a scheme coming forward on the site. However, on careful analysis the proposal would comply with relevant policies on these issues and any small remaining harms would be amply outweighed by the very significant public benefits (**Document CD 6.03**).
196. While planning is not a plebiscite it is also worth noting that, extraordinarily for a scheme in the Green Belt, there was virtually no public objection to this proposal. The public comments are almost universally supportive of the scheme (**Document CD 5**).

FLOODING

The Sequential Test

197. The Environment Agency does not lead any evidence on the Sequential Test. In any event whether it is passed or failed is, in the first instance, for the Council to decide taking advice from the Environment Agency as appropriate. In this case it is a matter for the Secretary of State. The sole basis for the Council's concern was that a number of sites had been identified outside Flood Zone 3. Whilst it was recognised that many of those sites were located in the Green Belt, this was the case also with the application site. There were no other concerns about the sequential testing presented. Critically, it was not suggested that an insufficient search for sites had been undertaken or that there were any other sites that should have been considered. (**Document CS 12.01, paragraph 7.15; CD 12.02, paragraph 7.1; CD 9.02, paragraph 034; CD 6.01, page 14**).
198. In the site search report presented with the planning application and the updated report provided for the inquiry, sites outside Flood Zone 3 have been identified. The Framework indicates that development should not be permitted if

there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The PPG is clear that a pragmatic approach to the availability of alternatives should be taken. This approach is reflected in the *Council's Flood Risk Sequential Test Practice Note*. To simply say that there are alternative sites outside of Flood Zone 3 is not a sufficient approach (**Documents CD 1.09; CD 9.10, paragraph 162; CD 9.02, paragraphs 019, 033; CD 8.06, paragraph 2.2**).

199. Over years of searching with some four iterations of search a total of 77 sites have been identified, including the application site. Of the 76 other sites, all but 9 are located in the Green Belt. The 9 that are located outside the Green Belt are not reasonable alternatives. Two are located in the Western Harbour Regeneration Area, which is subject to proposed regeneration for housing; one is a community park; one is part of a local historic park, a SINC and an important open space; one has an implemented permission for residential and commercial uses; one has been subject to various planning applications; one site has been partially developed for dwellings; one is in an industrial area and subject to policies seeking to retain industrial uses; and one is in an industrial area and subject to policies seeking to retain economic uses. Nobody has suggested that any of those sites provide a reasonable alternative (**Document CD 12.14, page 9 and paragraphs 6.9, 6.10**).
200. The remaining 67 sites in the search are in the Green Belt, as is the application site. Virtually all of these are greenfield sites. They cannot come forward without inevitable harm to openness. That provides a clear contrast with the application site. There is though no dispute that the proposal would be inappropriate development at the other Green Belt sites. Looking at them in a level of detail that is reasonable for a sequential assessment, it is not considered that the sites would give rise to the very special circumstances needed to allow development in the Green Belt. The only very special circumstances likely to exist are the retention of the existing caravan park and associated economic benefits. However, consultees such as the Bristol Chamber of Commerce, are clear that the level of benefits brought to the City are connected with having the caravan club site in a central location. It is reasonable to infer that, were the site to be further out, the same level of benefits would not accrue (**Document CD 5**).
201. It is not sufficient to show that the application site is preferable. What has to be shown is that the other sites are undeliverable by virtue of their Green Belt position. None of the other sites bring anything like the unique combination of benefits and, on the evidence before the inquiry, there is no reason to believe that any would be able to make out a very special circumstances case. It follows they would be highly unlikely to get planning permission and they cannot be considered to be reasonably available.
202. Of the 76 sites, only 3 are known to be on the market. The Applicant's decision to approach local agents to find out what sites are on the market rather than attempt to approach individual landowners was reasonable and proportionate given the breadth of the site search undertaken. Whilst not being on the market was not by itself a basis for excluding sites, taken alongside other factors it can show that a site is not reasonably available (**Document CD 12.14, page 19**).

203. The Inspector was particularly interested in a group of sites around Long Ashton. All of them are Green Belt and none are on the market (**Documents CD 12.14, appendix 2; INQ 15**). Furthermore:
- a) Parsonage Farm - Site 46 JLL 2015: The proposal would have a significant impact on openness. It would also likely cause significant heritage concern.
 - b) The Ashton and adjoining land - Site 47 JLL 2015: This land is opposite the pub and the proposal would have likely significant heritage impacts and significant impacts on the openness of the Green Belt.
 - c) Taylor Wimpey Land - Site 48 JLL 2015: This is part of the land being brought forward for residential development. It is unlikely to be available for the proposed use.
 - d) Former Bristol City FC proposed site - Site 49 JLL 2015: This land has had permission for a stadium and is being promoted for residential development. It is unlikely to be available for the proposed use.
 - e) Bridge Farm - Site 50 JLL 2015: This land has a clear function in providing separation for Long Ashton and Bristol under policy ENV1 of the Long Ashton Neighbourhood Development Plan.
 - f) Land along Clarken Coombe - Site 51 JLL 2015: This site is in the Conservation Area, the Green Belt and the area of separation. Like the other sites there is no evidence to show it is on the market.
 - g) Yanley Lane, Long Ashton - Site 52/53 JLL 2015: These sites are adjacent to the conservation area and close to a range of listed buildings and a scheduled monument. They are within the area of separation and have an obvious role to play in that policy. Like the other sites there is no evidence to show that landowners wish to bring this land forward.
204. There are many other reasons for discounting all the other sites considered. Many are outside the Applicant's search area or do not meet the criteria in terms of the size or topography of the land. Many have poor accessibility. Those that are reasonably close to Bristol are often subject to aspirations for development that would make the site unavailable to the Applicant. Any area of flat, unconstrained land located close to the City centre is likely to be sold at a price that makes it unavailable to the Applicant (**Document CD 12.01, paragraph 7.16**).

The Exception Test: Framework paragraph 164 a) - Sustainability benefits

205. The Environment Agency provided no assessment of this aspect of the Exception Test. The flood risk as agreed with the Applicant has been carefully balanced against the sustainability benefits. The author of the Officer's Report did not consider that the first part of the Exception Test had been met. However, this was based on the Environment Agency's assessment of risk in that the proposal could not be considered safe. It is therefore unsurprising that it was concluded that the sustainability benefits to the community did not outweigh the flood risk. When the risk is properly understood, however, the benefits of the scheme are capable of outweighing it (**Documents CD 12.24, paragraph 5.21; CD 12.01, paragraph 7.23; CD 12.02, paragraph 7.1**).

206. Officers also did not think that the first part of the Exception Test would be met because they considered that the economic and tourist benefits of the scheme alone would not outweigh the risk of flooding and questioned whether there were other benefits of the scheme. That approach is not tenable. The economic and tourist benefits by themselves are substantial and capable of outweighing the flood risk when that flood risk is properly understood. The proposal, which is likely to operate as the current site does at up to or at full capacity, has been estimated to generate between £1m and £1.5m annual spend in the City. The proposal has the full support of a range of tourist and business groups (***Documents CD 6.01, page 14, part E; CD 12.01, appendix 2; CD 12.01, paragraph 6.2; CD 5***).
207. Furthermore, the approach taken by the Officers fails to take into account the other substantial benefits of this proposal. In particular, the removal of the existing eyesore at the site. This scheme represents the only realistic proposal to end criminal and anti-social behaviour at the site. When these additional factors are properly brought into account the sustainability benefits to the community of providing an important visitor resource in a sustainable location whilst regenerating an eyesore site evidently outweigh the small remaining flood risk in the context of an application that is fundamentally safe.

The Exception Test: Framework paragraph 164 b) – safety and flood risk

208. It is agreed between the Applicant and the LLFA and the Applicant and the Environment Agency that the proposal would not increase surface water and tidal flood risk elsewhere. Therefore, the dispute is solely about whether the development would be safe for its lifetime, taking account of the vulnerability of its users. This now only relates to tidal flooding (***Documents CD 14.3, paragraph 2; CD 14.4, paragraph 14***).

Surface water flooding

209. This falls within the remit of the LLFA. The Council's Flood Risk Manager initially objected to the application on the basis that he considered it failed part b) of the Exception Test. The Applicant undertook further modelling and the LLFA accept that this gives confidence that a FWEP could be implemented before the onset of flooding. That modelling shows similar flood durations, depths and extents to the Council's own flood models. In light of this and a series of agreed changes to the FWEP, the LLFA has withdrawn its objection to the proposal (***Documents CD 14.3, paragraph 2; CD 14.4, paragraphs 2, 15; CD 3.04; CD 4.11***).

Tidal flooding

210. In actual fact even in relation to tidal flooding the dispute is a relatively narrow one. The Applicant accepts that anybody on site during the peak of a design flood would be at risk, conversely the Environment Agency accepts that if occupants of the site are evacuated to a safe place before the flood event then the flood risk to those people would be zero. The dispute predominantly resolves around whether it is consistent with policy and guidance to rely on a FWEP to manage flood risk at the site; and whether the FWEP in this case would be sufficient to ensure that the development is safe (***Documents CD 12.03, paragraphs 2.1.13, 2.1.14; CD 14.4, paragraphs 6,7***).

211. The Environment Agency has asserted that a decision to depart from its advice as the statutory consultee on flooding, requires cogent and compelling reasons. This relies on the *Shadwell Estates Ltd* judgement²⁶. Lord Justice Beeston was not saying that during an inquiry where an Inspector has heard two witnesses being cross-examined, the evidence of one witness should be preferred purely because they were employed by a regulator. There seems to be no authority that would support such a proposition. In the case of a Highway Authority, for example, it has never been the case that some special weight is given to its evidence. Instead, the Inspector listens to the evidence from both sides and explains with reasons which is preferred (**Documents CD 12.24, paragraph 2.13; CD 13.01, appendix 1**).
212. Even if the Shadwell principle did apply, the authorities are clear that a decision maker can depart from the advice of bodies such as the Environment Agency where they give cogent and compelling reasons for doing so. Having heard its evidence tested and that of the Applicant, preferring the latter's arguments would evidently be a cogent and compelling reason for departing from the Environment Agency's arguments.

Whether a FWEP alone can be used to manage flood risk

213. The Framework indicates that development must be safe for its lifetime. It does not say that this cannot be achieved by a FWEP alone, which is simply left as a matter of judgment for the decision maker.
214. This point then turns on the meaning and application of the PPG. This does not have the status of planning policy as is clear from the *Solo Retail* judgement²⁷. The Environment Agency relies on the following paragraphs to show that a FWEP cannot be relied on alone:
- a) Paragraph 054 provides a series of examples of ways of making a development safe, it does not say that a FWEP cannot be used to make a development safe alone or at all.
 - b) Paragraph 060 contains nothing preventing use of a FWEP. This is unsurprising as the paragraph directly addresses flood resilience and resistance measures.
 - c) Paragraph 068(9) describes the contents of a FRA. It would be a surprising place for the PPG to place the crucial information that a FWEP could not be used by itself, and in fact the paragraph contains no such statement.
215. By contrast paragraph 056 of the PPG makes it clear that one of the considerations to ensure that any new development is safe, including where there is a residual risk of flooding, is whether adequate flood warnings would be available to people using the development. In other words, it specifically equates one of the matters considered in a FWEP with whether the development is safe. Paragraph 066 of the PPG describes more vulnerable development as sites used for holidays or short-let caravans and camping, subject to a specific warning and evacuation plan. The Council and the Applicant are in agreement that paragraph 066 implies that a FWEP is an appropriate form of mitigation and

²⁶ *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12.

²⁷ *R (Solo Retail) v Torridge* [2019] EWHC 489 (Admin) (see paragraph 33).

the same physical flood infrastructure is not required as might be for a residential development (**Document 14.4, paragraph 8**).

Whether the FWEP is adequate to ensure the development is safe from flooding

216. Notwithstanding its written evidence, the Environment Agency agreed that in determining whether the development would be safe from flooding the approach is not to eliminate risk but to manage it²⁸. The approach of requiring safety to be guaranteed is not one that is found in the Framework or the PPG. Instead, the Framework requires development to be safe from flooding. The protection of life is always paramount, but whether a development is safe involves a series of judgments about the degree to which any risks from flooding can be managed. To be safe does not require the elimination of all risks, however fanciful (**Document CD 12.15, paragraphs 11.12, 11.14, 11.17**).
217. In terms of the technical evidence about risk, reliance is placed on the evidence provided by the Applicant and on the conclusions reached by the LLFA and Civil Protection Unit. In terms of the factors that are particularly relevant to whether the FWEP in this case reduces risk to an acceptable extent, the following observations can be made:
- a) The site is in Flood Zone 3 and the consequences of that are not in dispute. Nobody is suggesting this site will not flood. However, it is worth recalling that there is no record of the site having ever flooded before and it did not flood in the March 2020 flood event²⁹, which represented the highest tide level on record. The Environment Agency has expressed concern about flooding occurring more frequently and up to annually by the end of the century. One option available to the Secretary of State would be a temporary planning permission, which would allow reconsideration of all the flood issues long before that time (**Document CD 8.10, paragraph 3.7**).
 - b) Warnings of tidal flood events have historically been given several days in advance by the Environment Agency and/or the Flood Forecasting Centre. A FWEP could feasibly be implemented in good time on receipt of a Flood Warning in advance of the onset of tidal flooding. The Council has worked closely with the Applicant to produce a FWEP that now contains very precautionary triggers for cancellation of bookings, putting guests on notice of possible flooding and evacuation of the site. Adopting the Flood Warning at Pill and Shirehampton as a trigger would have led in 2020 to around 18 hours' notice, albeit that the site did not flood then (**Documents CD 14.4, paragraph 3; CD 13.06, table at paragraph 3.2**).
 - c) The Environment Agency is concerned that, even if a flood warning is issued in plenty of time, human nature is such that people may be reluctant to leave the site. It is hard to see what the incentive would be when the plan of evacuation is to simply take the caravan away to safety. It is highly likely that a very significant storm would have been predicted, the weather would be poor or deteriorating, and those on site would likely have been warned about a risk of flooding before being told to evacuate. That Caravan and Motorhome Club members are generally content to comply with instructions

²⁸ This was agreed by Mrs Steadman in cross-examination by Mr Reed.

²⁹ This was said in examination-in-chief by Mr Jenkin.

around flooding is shown at the successfully run sites at risk of flooding elsewhere, including the Baltic Wharf Site. The examples relied on by the Environment Agency where people have been reluctant to leave are not analogous to a touring caravan park run by a reputable organisation such as this (**Document CD 12.02, appendix 1, paragraphs 6, 7**).

- d) It is argued that it could become more likely that occupants would be unwilling to leave the site if they have been evacuated in the past without serious flooding. However, it is hard to see how this applies when club rules do not allow a stay on site of longer than 21 days at a time. As a worst case scenario it has been suggested that the triggers would lead to an annual evacuation. Employees would be contractually bound to follow the FWEP and it seems very unlikely that they would become so fed up with evacuations that take place annually that they would simply cease to follow the FWEP (**Document CD 1.08, paragraph 8**).
218. The emergency services were notified of the planning application and have not raised any objections. They were not consulted on every subsequent iteration of the FWEP but that is because the Civil Protection Unit has carefully considered the plan and liaised closely with the Applicant effectively on their behalf. Provided the FWEP is properly implemented there would be no additional burden placed on the emergency services nor any need for the emergency services to access the site during a flood (**Document CD 14.4, paragraph 12**).
219. The Environment Agency is concerned about the provision of a safe access to and from the site in a design flood. The PPG provides guidance, but the policy test is whether the proposal would be safe from flooding. Provided the FWEP is implemented as proposed, it is agreed with the Applicant that there is no need to provide a safe dry access during a design flood as all occupants would have been removed from the site. It is a matter of agreement with the Applicant that, provided the FWEP is properly implemented, the occupants of the site would not be at significant risk. The risk of the FWEP not being properly implemented is not a realistic one. In the circumstances, the proper conclusion is that the occupants of the site would not be at significant risk in the event of flooding at the site (**Document CD 14.4, paragraphs 11,13**).

GREEN BELT

220. There is no dispute that the proposal is consistent with Government policies for protecting the Green Belt. The Framework indicates that new buildings are not inappropriate in the Green Belt where they represent the redevelopment of previously developed land, which would not have a greater impact on its openness than the existing development. The whole site, including the paddock and manège area to the south is previously developed land.
221. The Framework confirms that previously developed land includes land which is or was occupied by a permanent structure including the curtilage of the developed land. The *Blackbushe Airport* Court of Appeal judgement³⁰ reiterated that the correct test for whether land falls within the curtilage of a building is whether it is so intimately connected with it that it is part and parcel of that building. The paddocks represent a relatively small part of the site (37.5%) but

³⁰ *R (Hampshire County Council) v Blackbushe Airport Ltd* [2021] EWCA Civ 398.

are clearly intimately associated with the buildings on site by virtue of their previous use for the purposes of training dogs and horses. This reasoning is very similar to the conclusion reached in an appeal in Lavendon. If it is not considered that the manège is a structure then it is previously developed land by virtue of being in the curtilage of the existing buildings (**Documents CD 9.10, page 70; CD 12.01, appendix 1, paragraphs 61, 116, 124; CD 12.01, paragraph 7.38; CD 10.1, paragraph 13**).

222. The question then is whether the proposal would have a materially greater impact on the openness of the Green Belt. As explained by the Supreme Court in the *Samuel Smith Old Brewery* judgement³¹, the concept of openness is not merely about a volumetric comparison but is open textured with a number of issues capable of being relevant, including how built up the Green Belt is now and how built up it would be. Visual impact is capable of being relevant to an assessment of openness but is not necessarily so (**Document CD 10.02, paragraphs 25, 41**).
223. The existing buildings have a footprint of approximately 1,000m² and the proposed buildings have a footprint of 318m². Even taking into account the caravans, there is no dispute that the proposal would not have a greater impact on the openness of the Green Belt than the existing use. The introduction of caravans would result in the development being more spread out over the site. However, that should be balanced against the significant reduction in fixed development on the northern part of the site. The activity that would take place is relevant to impact on openness but is just one factor. When that overall judgment is made the application would not have a greater impact on openness and thus would not be inappropriate (**Documents CD 12.01, paragraphs 7.47, 7.49; CD 12.02, paragraphs 5.2.2, 6.1; CD 12.04, paragraphs 7.32, 7.34, 7.40**).
224. If it is necessary to demonstrate very special circumstances, then the proposal can amply do so. These lie in the unusual combination of this being the only site within easy distance of the centre of Bristol with all the benefits that would bring; the only proposal that would bring an end to the current illegal behaviour on the site and the undoubted visual harm caused by the site in its current condition; the reuse of previously developed land, which is consistent with the Framework; and the moderate benefits from the location of the development close to Ashton Court.

HERITAGE

225. The Council's Conservation Architect raised a concern about views from Ashton Court mansion but did not provide any analysis of the role of the site in its setting. Historic England while acknowledging that the derelict buildings are a detractor, assert that the presently open paddocks make a positive contribution to the setting of the Registered Park and Garden. Even so, they had no objection to the principle of the redevelopment, asking instead for changes to the detailing. Whilst they make an assertion of harm, they do not provide any analysis of the role the paddock plays in the setting of the asset. Neither the

³¹ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3 on appeal from: [2018] EWCA Civ 489.

Heritage Officer nor Historic England provide any evidence to contradict the conclusion in the Heritage Impact Report that there is now no obvious historical, physical or visual relationship between the site and the parkland to the west across Clanage Road (**Documents CD 12.08, paragraphs 46, 48; CD 4.04; CD 4.13; CD 1.21**).

226. A portion of the paddock and manège area fall within area 6 of the Bower Ashton Conservation Area. The Council's Conservation Architect asserts that the special character of this corner of the conservation area would not be preserved or enhanced and its setting would be negatively impacted and eroded. Again, this conclusion is not supported by any analysis as to what the special character of the conservation area is, or what the setting of the conservation area includes. Not every part of a conservation area will contribute to its significance and there is simply no evidence that the site contributes to the special character of the Conservation Area (**Document CD 8.05, page 92**).
227. The main significance of the Clifton Suspension Bridge is derived from the views towards it and these would not be significantly impacted by the proposal. Even if views out can be considered to contribute to the significance of the asset, the change brought about by the proposal would only be a very small part of a panoramic view. It cannot be said to cause any significant harm to that view or to the significance of the asset.
228. The Council's Conservation Architect did raise concerns about the impact of new lighting on heritage assets although it is not entirely clear which ones he had in mind. However, most would comprise low level, downward directional bollards with low levels of luminescence. The conclusion that the proposal would represent an "*isolated island of light*" and would be "*obvious and jarring*" does not seem to have taken that matter into account. Nor has there been regard to the fact that the site does not form part of a pristine light environment but is next to a major route into the City with streetlights present 180m to the south, with other uses involving lighting nearby. This situation will only become more significant if the Railway Depot Housing scheme, which currently has the benefit of a resolution to grant planning permission, is built out (**Documents CD 12.01, paragraph 7.71; CD 4.04; CD 11.09; CD 14.02, page 3**).
229. In the circumstances the only evidence that was supported before the inquiry is that there would be no harm to heritage assets. Even if that is not right, it is apparent that any harm to heritage assets would be at the low end of the scale of less than significant harm. In those circumstances while any harm must be given great weight, it is still capable of being outweighed by other factors and in this case it is outweighed by all the public benefits of the scheme. Therefore, the proposal does comply with the policies in the Framework concerning the historic environment.

CONSISTENCY OF THE PROPOSAL WITH THE DEVELOPMENT PLAN

230. The Environment Agency only allege that one policy of the development plan is breached, Policy BCS16 in the CS. There is no dispute that the first part of the policy relating to the Sequential Test is met and that the final part relating to not increasing flood risk elsewhere and incorporating SuDS is met. The only issue turns on the middle portion of policy BCS16.

231. The Environment Agency accepted that the key part of that policy is "*in order to ensure that the development remains safe from flooding over its lifetime*". As was further accepted, if the development remains safe from flooding over its lifetime the policy as a whole is met³². It therefore does not matter whether the proposal would specifically comply with the bullet points in the policy. However, it does do so because the FWEF in this case constitutes the "*sensitively designed mitigation measures*" referred in the second bullet.
232. Some consideration at the inquiry was given to policy BCS22 in the CS and policy DM31 in the SADMP. These heritage policies seek to prevent harm to various types of assets or their settings. If minor harm to the heritage assets is found there would be some non-compliance with those policies. However, those policies are not entirely consistent with the Framework in that they do not contain any provision to weigh the less than substantial harm to those assets against the public benefits, as set out in paragraph 202 of the Framework. Therefore in so far as there is any small degree of non-compliance with those policies that attracts limited weight in the balance.

OTHER MATTERS

233. There is a dispute with the Applicant as to whether the BTRS applies to the Leyland Cypress trees at the entrance to the site. The BTRS is derived from policy DM17 of the SADMP but it does not explicitly say that it applies to trees not to hedges. The proper focus should be on whether the group of Leyland Cypress are considered trees and the question of whether they could also be described as a "hedge" is not an answer to that question. The terms trees and hedges are frequently used interchangeably. There are undoubtedly some hedges which would not naturally be described as being made up of a series of trees, but a site visit will show that is not the situation here. (**Documents CD 12.07, appendix A, photograph 3 and appendix B, paragraphs 4.1-4.9; CD 1A.01, photograph 5; CD 13.08**).
234. This type of tree would, everyone acknowledges, be considered a tree if individually planted. As was clarified at the inquiry they could subsist individually. Although in the past there has been some attempt to manage the feature as a hedge on the site side, that management seems to have not taken place in some time. What presents on site today is a series of large trees. The guidance of the High Court in *Bullock* rejected the argument that coppice should not be considered to be trees for the purposes of Tree Preservation Orders saying that anything that ordinarily one would call a tree is a tree. What is on site one would ordinarily call a line of trees (**Document CD 13.08**).
235. The Applicant effectively acknowledged the difficulty in the terms of the policy here, by making a plea to consider the spirit of the policy. While of course policies have to be applied sensibly and pragmatically they also have to be applied in accordance with what they actually say so this argument takes the Applicant nowhere. It is no part of the policy to apply the requirement that in order to be defined as "a tree", the specimen has to contribute to visual amenity. The Planning Obligations SPD clarifies that obligations in respect of the planting of trees arise where trees covered by categories A, B and C of BS5837 are felled as part of a development and replacement planting is required on

³² These points were accepted by Mr Willitts in cross-examination by Mr Reed.

public land. The Applicant's arboricultural impact assessment identifies the Leyland Cypress trees as category B (**Documents CD 8.04, page 20; CD 1A.01, section 4**).

236. The aim of the policy in seeking to retain or replace trees for their own sake chimes with the increasing emphasis in the Framework on provision of trees.

APPROACH TO DECISION MAKING AND PLANNING BALANCE

237. Notwithstanding any minor breach of the heritage policies, the proposal complies with the development plan as a whole. The Environment Agency has not done a planning balance and offers no advice on the compliance of the proposal with the development plan as a whole. The starting point for the planning balance is the presumption of a decision in accordance with the development plan under section 38(6) of the Planning and Compulsory Purchase Act. Whether the proposal also benefits from the presumption in paragraph 11 of the Framework does not make any significant difference to the outcome in this case (**Documents CD 12.01, paragraph 7.134; CD 12.24, paragraph 7.2**).
238. This is not a case where there are no relevant development plan policies. There is a degree of inconsistency between the heritage policies and the Framework, but the most important policies judged as a whole are not out of date. This is not an application for the provision of housing and so footnote 8 is not engaged and the tilted balance in paragraph 11(d) is not triggered.
239. The proposal is compliant with Government policy on flooding, the Green Belt and the historic environment. The harms caused by the proposal would be minimal and those harms fall to be set against the formidable public benefits of the proposal.

THE CASE FOR THE RULE 6 PARTY: THE ENVIRONMENT AGENCY

The Rule 6 Party's case is fully set out in its evidence, including its opening and closing submissions, which were delivered orally and are in the electronic documents.

The main points are:

INTRODUCTION

240. The Environment Agency's evidence on the proposed development is limited to dealing with issues relating to tidal flood risk. It is assumed that there is no additional impact caused by any surface water flooding that might be contemporaneous with sea flooding. As the Government's advisor on matters which include tidal flood risk, its views ought to be afforded significant weight. The fact that those views have been tested by cross-examination and not undermined only serves to reinforce the weight that should be afforded to its advice. There has been little engagement with its expertise. For example, before the inquiry it was the last to know about changes proposed to the FWEP and to the planning conditions, which seem to have been a private discussion between the Applicant and Council.

CONSISTENCY WITH GOVERNMENT POLICY ON CLIMATE CHANGE, FLOODING AND COASTAL CHANGE

241. The proposed development would be inconsistent with chapter 14 of the Framework because it would not be safe over its lifetime. It would thus fail to

meet the requirements of part b) of the Exception Test in paragraph 164.

242. Other than a small sliver of land in the northwest of the site being located in Flood Zone 2, the remainder is in Flood Zone 3a. The site is therefore at a greater than 1 in 200 or 0.5% annual probability of flooding from the sea. Although Flood Zones are designated ignoring the presence of defences, in this case the site is undefended. In a design flood, that is a tidal flood which has a 0.5% annual probability of occurrence, the site would flood with nothing to prevent or impede the natural process of flooding.
243. Further, the flooding risk posed at the application site is very grave. There is agreement as to the current and future flood risk in terms of what depths, velocities and overall hazard would result from a design flood in 2020 and 2120, although there is disagreement with the Applicant about the use of 2120 as the future year to assess flood risk.
- a) For the year 2020, a design flood would reach heights of 9.28m AOD, leading to flood depths on the site of between 0.6m and 1.0m and a wide variety of velocities. All would produce a hazard rating according to the Technical Report produced jointly by DEFRA and the Environment Agency: *Flood Risk Assessment Guidance for New Development* and its *Supplementary Note* of "Danger for Most" across the majority of the site (**Documents CD 12.16.1-CD 12.16.3; CD 9.04; CD 9.05**).
- b) In 2120, using Upper End climate change allowances, a design flood level would be at 10.49m AOD and would create depths of no less than a 1.0m in the northern part of the site, rising to a potential maximum depth of around 3m at the southern end. There would be a range of velocities up to over 2m/s in places, leading to a hazard rating of "Danger for All" across the entire site. The small sliver of "Danger for Most" along the north-western fringe does not reflect the topography in that part of the site in real life (**Documents CD 12.16.10-CD 12.16.12**).
244. The Applicant does not dispute the use of Upper End climate change for 2120. In any event, it makes little difference if Higher Central estimates are used. The only difference is to reduce the hazard rating from "Danger for All" to "Danger for Most" for approximately the northern third of the site (**Documents CD.12.16.09; CD 12.16.12**).
245. The Applicant does not challenge the use of the aforementioned hazard rating methodology (as later modified to reflect the impact of debris). "Danger for Most" means that the flood depth and velocity would present danger for anyone in the water other than a member of the Emergency Services. "Danger for All" means that the flood depths and velocities would produce danger for everyone, including members of the emergency services (**Documents CD 9.04; CD 9.05; CD 12.15, paragraphs 8.3-8.5 and table on page 22**).
246. The Applicant has not disputed that, in the event of a design flood, the site would flood across its entire extent within 15 minutes. Nor has it challenged that the Council's Strategic Flood Risk Assessment (SFRA) modelling work accounted for the presence and effect of the railway. Indeed, the Applicant's site-specific Flood Risk Assessment did not seek to dispute any of the findings from the SFRA as they apply to the site. The Applicant accepts the flood risk

posed by a design flood is as the SFRA modelling work predicts (**Documents CD 1.17; CD 8.09**).

247. There is a debate about which future year to select. The SFRA takes a 60 year lifespan for commercial development. A design flood in 2080 would still create hazards rated as "Danger for Most" or "Danger for All" across the whole site. The Applicant has referred to the out-dated Central Area Flood Risk Assessment modelling which uses the year 2060. As the modelling is out of date, it is not an accurate or appropriate assessment of flood risk. The Applicant accepted that in present and future years a design flood will create conditions that cause danger to anyone in the water. For those not in the emergency services that danger will exist from a 0.5% design flood now. In the future, that danger will exist for everyone. It was also accepted that the depths, velocities and hazards mean that it is not an exaggeration to say that the risk posed is a risk of death³³ (**Documents CD 8.09, section 2.16; CD 13.06.2**).
248. It is also important to recall what the design flood is. Its only defining attribute is that it is the flood with a 0.5% chance of occurring every year. It is not the flood level which provides the threshold of conditions that pose a "Danger for All" or a "Danger for Most". Still less is it the level which represents the threshold when flooding first occurs. The importance of that is that the site will flood at levels below the design flood and that such floods could be to depths which could create "Danger for Most" in the current day and "Danger for All" in the future. Floods that are less severe than the design flood have a greater annual chance of occurrence and, in addition, floods which create hazardous conditions will have a greater probability of occurrence with sea level rise through climate change.
249. The suggestion of a condition to make any planning permission time-limited would not assist with addressing the hazard in the present day or the worsening hazard as time progresses. There is no evidence to robustly quantify the change in hazard over time. However, it is agreed that, in principle, flooding events will become more frequent and more severe as sea levels rise as a result of climate change. If it is relevant to look beyond the year 2100, then reliance is placed upon the evidence set out in the *Bristol Avon Flood Strategy Outline Case* that a flood with a severity that is now a 0.5% event could become an annual one with an annual exceedance probability of 63% by the end of the century. That is the Council's own position, stated in the Bristol context. It does not derive from a consideration of future weather patterns in the tropics. The proposed condition does not assuage the concerns because the flood risk is unacceptable now as well as in the future (**Document CD 8.08, section 1, paragraph 2 and section 2.1, penultimate paragraph**).
250. The Environment Agency does not comment on the outcome of the Sequential Test in individual cases but confines its role to advising on how to carry it out from a flood risk perspective. No evidence has been provided on whether the proposal complies. The Secretary of State must determine whether the Applicant has made a robust case for showing that land at lesser flood risk is not reasonably available for the proposed development.

³³ These points were agreed by Mt Jenkin in cross-examination by Mr Carter.

251. There is no dispute that the proposed development would be classed as “more vulnerable” for the purposes of Table 2 of the PPG. Nor is it in dispute that, as a result of Table 3 in the PPG, “more vulnerable” development proposed in Flood Zone 3a needs to satisfy the Exception Test. This has two limbs, with paragraph 165 of the Framework making it clear that both limbs have to be satisfied. The Environment Agency’s role is limited in providing advice on limb a). The only involvement in this exercise is to advise upon the nature of the flood risk and not in identifying the benefits or carrying out the balancing exercise. However, neither the Applicant nor the Council has provided much in the way of a detailed reasoned conclusion of what flood risk they are weighing against the community benefits and why those benefits outweigh the flood risk. Little attention has been paid to the Environment Agency’s concerns and evidence.
252. The main concern is with the Applicant’s consideration of, and the scheme’s performance against, limb b) of the Exception Test. It is that the Applicant has failed to demonstrate that the development would be safe over its lifetime. There is no objection that the scheme would increase flood risk elsewhere.
253. The Environment Agency is not seeking a “guarantee” of safety. It is acknowledged that no site at flood risk can ever be completely free from risk. But there is a very significant difference between using a FWEP as a means of dealing with residual risk when a site benefits from protection by other means and using it as the sole means of trying to deal with design risk. Paragraph 002 of the PPG defines risk as a combination of the probability of occurrence and the potential consequences if it does. In this case the flood risk arises from the design flood and an unknown amount of flooding, which is less severe than the design flood. This is not a site that only faces the residual risk posed by either a more severe event than the design flood or from a failure of defences during a flood of whatever level of probability. The probability of occurrence is greater than 0.5% a year and is therefore defined as being a site with a high probability of flooding.
254. The consequences are severe now, rising to as severe as the hazard rating classification gets in the assessed future years. As accepted by the Applicant, the future year scenarios are well into the red portion of the hazard classification matrix, meaning that future floods less severe than a design flood could still create “Danger for All” and “Danger for Most”³⁴. Given the combination of probability and consequences, the acceptability of a given consequence will reduce as the probability of its occurrence increases. Here, the combination of a site defined as having a high probability of flooding and consequences which are at the extreme end of the scale of hazard with climate change mean that the flood risk here is as severe as it can be. Simply relying upon a FWEP as the sole means of guarding against the severe risks posed by a design flood is wholly unacceptable in this case.

WHETHER THE RELIANCE ON A FWEP ACCORDS WITH NATIONAL POLICY AND GUIDANCE

255. The Framework does not clearly state whether a FWEP can be the sole means of dealing with flood risk, whether design risk or residual risk. It is accepted that the PPG is guidance, not policy, and that it should not be subject to overly

³⁴ This was accepted by Mr Jenkin in cross-examination by Mr Carter.

detailed analysis. In terms of the *Solo Retail Limited* judgement an “overly legalistic” analysis of the text had not been adopted in a way that is disapproved of in that case. That case was dealing with the PPG’s guidance on retail impact assessments. Nothing in the *Richborough Estates* judgement adds to the basic point later made in *Solo Retail Limited*.

256. Further, there is nothing in the PPG which clearly states whether a FWEF can or cannot be the sole means of dealing with flood risk. However, there are indications that it is not expected to as follows:
- a) Paragraph 038 provides guidance on what needs to be considered to demonstrate that a development will be safe for its lifetime. The references to FWEFs in that paragraph is in the plain context of residual risk, not design risk.
 - b) Paragraph 039 refers to evacuation in the context of a more extreme flood. In other words, an event posing a residual risk, not a design risk.
 - c) Paragraph 040 also makes an explicit and exclusive link between evacuation and residual risk.
 - d) Paragraph 054 has two sets of bullet points. The first relate to making development safe and FWEFs are not mentioned in those bullets. The second set of bullets does refer to evacuation plans, but again only does so in the context of an extreme event. That is also a reference to evacuation as a means of dealing with residual, not design, risk.
 - e) Paragraph 056, on whether FWEFs are needed, again refers to them in the context of residual risk.
 - f) Whilst paragraph 057 does refer to the extent to which flood warnings would be available, that is hardly surprising given that the paragraph is dealing with what should be addressed by a FWEF. It is saying nothing about when and if a FWEF may be acceptable as the sole means of flood risk management.
 - g) Paragraph 068 sets out the site-specific Flood Risk Assessment checklist. Part 9 does refer to FWEFs, but that is also in the context of residual risk.
257. The references to FWEFs in the PPG that do not relate to residual risk are generic references which say nothing about the situations in which a FWEF may be needed. When it refers to FWEFs specifically it is in the context of residual risk. It is not hard to think why that might be. If a FWEF was seen as being the routine way to deal with design risk, there would never be a need to build any robust physical flood protection measures. All one would need to do would be to plan for people to evacuate. However, that would leave vast areas of development liable to flooding, which is clearly not the intention of the policy or guidance. Neither says that a FWEF can be the sole means of managing risks posed by a design flood. The Council’s contention that a FWEF is an accepted means of dealing with “residual flood risk” only serves to show that it does not have a sound understanding of the concept of flood risk. Design risk and residual risk must be kept as distinct concepts (**Document CD 12.01, paragraph 7.25**).

258. The PPG therefore provides no support for the use of FWEPS as the sole means of dealing with design risk and it is a proper inference to draw that the references to FWEPS are referring to it as a tool to deal with residual risk once other methods have been used. The Applicant's approach is contrary to the PPG.
259. Paragraph 038 of the PPG refers to a demonstration that the site will be safe. The PPG proceeds on the basis that the development itself needs to be protected from flooding, not just the people using it. That makes sense given what policy and guidance have to say about resistance and resilience.
260. Paragraph 167e) of the Framework refers to the need for safe access and escape routes "where appropriate" and this is elaborated upon in the PPG. Paragraph 039 refers to access considerations including the voluntary and free movement of people during a design flood as well as the potential for evacuation before a more extreme flood. The second bullet in that paragraph also makes it clear that safe access ought to be provided. Three points flow from that provision:
- a) There is no point in flagging an issue up as a consideration if the PPG does not intend that to be provided. The Applicant's argument that access is something to be thought about but not necessarily provided is nonsensical.
 - b) The Applicant considers that the guidance is aimed at fixed buildings but considers the bullets to be examples. In any event, the proposal includes fixed buildings including the wardens' accommodation, which would be their home; and
 - c) The ADEPT guidance follows the PPG in requiring safe access routes during a design flood (**Document CD 12.03, pages 8 and 11**).
261. Further, the Applicant recognises that it might be preferable to consider physical measures to manage flood risk before relying upon management measures such as a FWEPS. That is common sense because physical measures are less reliant upon human input. Some of them, such as a solid wall, are not dependent upon human action at all. If a site is protected to design flood standards by a wall, then no-one must remember to do anything if the flood, or anything less severe than it, occurs (**Document CD 13.02, paragraph 2.1.3**).
262. The Flood Risk Assessment does not address the feasibility of physical measures at all, and the Applicant's written evidence only addresses an embankment, and then only in terms of footprint. In oral evidence, two further kinds of physical measures were addressed, albeit in a less than convincing way³⁵:
- a) The reasoning for rejecting a wall on flood risk grounds was that it would have to have a flood gate within it which may fail and did not provide certainty. There is a plain inconsistency between rejecting a wall because of a risk of failure and then failing to acknowledge the same risks of failure for a FWEPS.
 - b) It was said that the required degree of ground raising would create a modest off-site impact as regards surface water flooding. Why avoiding serious risk to life from sea flooding would be outweighed by this is unclear.

³⁵ Mr Jenkin referred to physical options that had been considered in evidence-in-chief.

The Applicant appeared to be of the view that ground raising was unacceptable because the LLFA might object. However, the LLFA did object to the scheme and that did not prevent the Applicant from progressing it. The Environment Agency still objects to the scheme, but that has not prevented the Applicant from carrying on. The mere fact or threat of objection is no reason to dismiss ground raising. There was little evidence about any landscape, heritage or Green Belt issues with ground raising or any detailed explanation of why those measures would not be feasible.

263. The case for rejecting physical mitigation measures has not been made out by the Applicant.

WHETHER A FWEP IS A SUFFICIENTLY ROBUST MECHANISM TO ADEQUATELY MANAGE DESIGN RISK IN A CASE SUCH AS THIS

264. Even if the PPG-based objection to the use of FWEPs as the sole means of managing design risk is not successful, there are practical problems with relying upon a FWEP to address the risk and hazard posed to the application site. It is subject to a whole range of technological and human inputs into decision making, all of which have to be sufficiently robust all of the time. If any one or more of them are not, then the site occupants may not have time to evacuate, placing them in grave danger. The Agency relies upon the following matters.

The Imperfections of Forecasting.

265. The Applicant places far too much reliance upon advance prediction of a tidal surge event that would affect the site. A flood which arises as a result of a tidal surge arises through a combination of:

- a) Astronomical tide level.
- b) Atmospheric pressure.
- c) Wind strength.
- d) Wind direction.

266. Only the first of those is capable of precise prediction. However, it is the other elements that provide the critical input into a tide level creating flooding of land and property which would otherwise remain dry. Those other issues are not capable of being predicted with precision. It is, of course, very likely that the Environment Agency and other bodies involved in flood forecasting and response will know that some kind of big event is coming. It will in all probability be approaching from the Atlantic and so its approach will be obvious. However, it simply does not follow that such general knowledge of an approaching event will allow the Agency to forecast, with precision, precisely where the surge will affect and how high the tide will be. The ability to predict and forecast the combination of pressure, wind strength and direction and timing relative to high tide is inevitably imprecise. The two witnesses³⁶, whilst not flood forecasters, are well used to seeing the changing nature of forecasts and their inevitable imprecision when dealing with their roles as Flood Warning Duty Officers.

³⁶ Mrs D Steadman and Mr M Willitts.

267. The Applicant has no substantive answer to the concern about the imprecision of flood forecasting. It refers to the forecasts which were made in the run up to the March 2020 floods and points out the degree of under-prediction of the flood height compared to what transpired. There are a number of points to make about that:

- a) The timeline of the March event is a clear illustration of how forecasting is imprecise. The forecasts changed as the incident approached, becoming more accurate as time progressed, but they were still not a reliable guide to predicting what actually happened. Flooding took place in areas where it was not thought it would and the first recommendation of the Flood Investigation Report prepared by the Council after the event was that the Environment Agency and others ought to continue striving to improve forecasting. It pointed out that predicting the precise local effects of surges is difficult. Such a recommendation would simply not have been made if the Council was comfortable with the robustness of forecasting (**Document CD 8.10, section 6, paragraphs 1 and 3**).
- b) The degree of difference between forecast and actual levels in relation to one incident cannot be used as a guide to the likely reliability of forecasting in all events. There is no evidence that forecasts are routinely made with the same degree of accuracy as was achieved in March 2020. The Applicant seeks to rely upon a specific trigger level now set out in Rev F of the FWEP, which was seen for the first time on the afternoon before the inquiry opened. It is required to demonstrate that the development will be safe over its lifetime. Any criticism about the paucity of evidence about the likely degree of difference between predicted and actual flood heights cannot be laid at the door of the Environment Agency (**Document CD 13.9.2**).
- c) The debate about the required degree of inaccuracy if the site were to flood despite the use of the trigger levels set out in the FWEP proceeded on a wholly false premise. That is because it sought to explore the required difference between a predicted flood height and the design flood, which is wrong. The purpose of using the design flood to plan development is to consider floods not just of the design flood's severity, but events up to and of that severity. The site could flood at levels below the present-day design flood level of 9.28m AOD and at depths which could cause "Danger for Most". The Applicant was unable to say at what flood height the site would flood, let alone at what depths it would flood so as to create "Danger for Some", "Danger for Most" or "Danger for All". On the evidence, the required inaccuracy between a forecast and an actual level that would create unacceptable hazard is completely unknown. The Applicant has wholly failed to show that an inaccuracy in forecasting that could lead to the site flooding when no trigger level for evacuation has occurred is unlikely to happen.

268. There is evidence of the types of inaccuracy in forecasting that can manifest itself. In the Environment Agency's evidence to the East Lindsay called-in application, it is shown that the inaccuracy between the forecast and flood level was as high as 0.8m in places. In short it is known that forecasting is inaccurate, and on the evidence it cannot be said that forecasting is sufficiently accurate to allow a specific trigger level in an Environment Agency's Flood Alert to be relied upon (**Document CD 12.18, paragraph 3.6; CD 12.15, paragraph 11.33**).

The Environment Agency's warning system

269. A service is provided where the public can subscribe to receive Flood Alerts, Flood Warnings and Severe Flood Warnings. There is no legal duty to provide such alerts and warnings to any particular standard of lead-in time. It is endeavoured to provide 6 hours' warning of impending flooding in the relevant area. But that is not and cannot be a commitment, promise or service standard. In short, it cannot be relied upon. Further, as the FWEF makes clear the following timescales are publicised for the various levels of alert or warning (**Document CD 12.03, appendix A; CD 13.09.2, appendix A**).
- a) A Flood Alert is usually issued between 2 hours and 2 days in advance when flooding is "possible". They are to encourage people to stay alert, vigilant and to make early preparations.
 - b) Flood Warnings are issued half an hour to 1 day in advance when flooding is "expected". They are to encourage people to take immediate action to protect themselves and their property.
 - c) Severe Flood Warnings have no timing range but are issued when flooding poses a significant threat to life and are to encourage people to take immediate action to protect themselves.
270. The only information that the site operators would be able to access with the tide height trigger would be the Flood Alerts. The "warnings" that the Applicant claims were issued 50.25 hours in advance of the March 2020 flood events was information passing between the Flood Forecasting Centre and the Council and was not publicly available. The same is true of the referenced 3 days' advance warning of the December 2013 floods in East Lindsey. Indeed, 3 days out from that event the Environment Agency was of the view that there was a low risk of flooding (**Document CD 12.03, appendix G**).
271. Reliance upon Met Office Yellow or Amber Warnings would not provide any definitive trigger for evacuation. No Met Office warning contains tide height information of the sort now proposed as the evacuation trigger.
272. The difficulties with predicting the precise location and extent of a flood caused by a tidal surge means that relying on the receipt of a timely and accurate warning to trigger evacuation as the sole means of dealing with flood risk is fraught with difficulty. The Applicant is not relying simply on the timely receipt of a Flood Alert but is dependent upon the timely receipt of a Flood Alert which contains an accurate forecast of a specific tide level for the Avonmouth tidal gauge. That is not at all reliable because if a Flood Alert is issued, it will be issued on day 1, to provide an Alert relating to the two tides on day 2. If the predicted tide height meets the criteria for an Alert being issued, then the Alert will be issued with a forecast tide height which represents the forecast as it stands at the time the Alert is issued. If the forecast is later refined so that a different, higher tide height is predicted, then the Alert for day 2 is not reissued just to amend the predicted tide height. Any Alert issued on day 2 will not be for day 2, but for the tide cycles on day 3.
273. That situation has massive implications for the Applicant. Its presently chosen trigger height for the evacuation of the site is a predicted tide height of 8.65m at Avonmouth. It is therefore perfectly possible that a timely Flood Alert is issued on

day 1 for the tides on day 2 which specifies a tide lower than the evacuation trigger height. If the tide prediction is changed, the only way in which the site operators would know is through the issuing of a Flood Warning in respect of flooding on day 2. That Flood Warning could easily be issued with insufficient notice to allow for the site to be evacuated. Using a lower tide height as the trigger for evacuation (such as that forecast for Avonmouth which triggered a warning for Shirehampton in March 2020) does not remove the uncertainty of forecasting, but merely increases the degree to which the forecast would have to be wrong before dangerous flooding occurs. However, as the flood height that causes unacceptably hazardous flooding is unknown that is not a robust response to the problem. Further, it can only increase the frequency of evacuation and the likelihood of evacuation taking place which turns out to have been unnecessary (**Document CD 13.02, paragraph 3.2, table**).

274. The Applicant's total reliance upon receiving accurate and timely advance notice of a specified tide height as a trigger for evacuation is therefore misplaced.

The evacuation itself

275. Even assuming an accurate and timely triggering of the evacuation plan occurred, that is not the end of the difficulties. There is no real-world evidence about how long an evacuation would take, for example at the York Rowntree and Tewkesbury sites. Baltic Wharf has never been evacuated. From the time when a decision to evacuate is taken, site users would have to deal with:

- a) Any awnings on their caravan or motorhome.
- b) External freshwater tanks in the case of caravans.
- c) External wastewater tanks in the case of caravans.
- d) Electricity supplies.
- e) Hitching the caravan to the tow vehicle and any vehicles towed by the motorhome.

276. The vehicles would then have to leave the site one by one in an orderly process. Further, the 2 wardens would be under severe workload during this time. One of them would have to contact every site occupant to tell them of an evacuation. That would involve telephone calls or messages to the occupants of the 62 pitches, or visiting their pitches, or both. Repeated attempts may have to be made. If occupants were visited on their pitches, it is easy to envisage that people may very well have queries, questions and concerns to share with the wardens. This would require their engagement and occupy their time further.

277. Some site users may have mobility difficulties through age or disability or both. Surprisingly, the FWEP is completely silent on how people with mobility issues could or would be assisted. If they could, that would also be a time-consuming activity for either or both wardens. Even if the site user was able to leave unassisted, they may well be slower in their ability to pack up their outfit and leave the site.

278. The FWEP does not address those unwilling to leave as soon as they are asked. There is no reason to think that the Caravan and Motorhome Club is devoid of members who challenge instructions they may be given. The Billing Aquadrome

December 2020 flood is an example of people refusing to leave a flooded site. In any event, the concern is not just about outright refusal to leave, but a desire to delay leaving could also be significant. Adult occupants may have had an alcoholic drink and not be able to drive straight away. Others may be in the process of preparing or eating a meal. Others may interrogate the wardens and discover that the evacuation was precautionary and based on a Flood Alert which did not mean that the site would be bound to flood. The Applicant has no answer to a situation where a person decides to take their chances or to await developments. All the examples show the perils of relying on a FWEP as the sole means of managing flood risk (**Documents CD 12.19-CD 12.21**).

279. The reliance on Flood Alerts, issued when flooding is possible and not necessarily expected, means that the site could easily be evacuated when there was no need. That would have implications for the reputation of the Applicant.
280. The Applicant would expect at least annual evacuations in the present day with the lower trigger predicted tide height of 8.21m at Avonmouth. It is not far-fetched to contend that the wardens may suffer from complacency after repeated unnecessary evacuations given their workload in the event of an evacuation. The evacuations would only become more frequent as sea levels rose.

Conclusion on the practical aspects of the FEP.

281. It can readily be seen that at every stage of the evacuation process, the Applicant is dependent upon fallible processes. Both the Framework at paragraph 167d) and the PPG require residual risk to be managed. The PPG at paragraph 041 defines residual risk as the risk that remains after compliance with the Sequential Test and after taking mitigating actions. The Applicant puts the FWEP forward as a mitigating action and a residual risk is its failure. This could be through the failure of forecasting, the failure of the warning system, the failure to execute the FWEP properly or the risks inherent in the unpredictable aspects of human behaviour. The failure of the FWEP is a risk remaining after the proposed mitigation action is put in place. But the Applicant has no plans for managing those residual risks. They are simply ignored, with the Applicant inappropriately optimistically assuming that no-one will ever be on site if it floods.
282. If the FWEP failed for any reason, the consequences could be dire. The site would not be accessible by roads which were either dry or flooded to low levels only. Clanage Road would be impassable. If the evacuation process failed to any degree that left people on site, then those people would be at severe risk with no means of the emergency services getting to the site by road. They would be dependent on rescue by boat or by air, putting their own and their rescuers' lives in peril.
283. Further still, if the FWEP failed, the site would place an additional burden on the emergency services. It would not be a replacement for Baltic Wharf for the following reasons:
- a) The Baltic Wharf site is smaller so more people would be accommodated on the application site.
 - b) The Baltic Wharf site will be vacated from September 2021, subject only to ongoing discussions about continued occupation which have not been resolved. On the basis that a decision will not be forthcoming on this

application by then, the baseline for a decision in this case could be one where there is no operable site at Baltic Wharf.

284. The Applicant has referred to several appeal decisions to show that successful mitigation of flood risk need not be guaranteed. They are also useful examples of situations where evacuation has been found to be acceptable as a method of mitigation:
- a) In the Fort Gilkicker appeal, reliance upon a FWEP was found acceptable. The context was that the development was in Flood Zone 1 and the access was in Flood Zone 3a. However, flood defences protected the road until 2062 with a prospect of the access being raised after that date. There were also other means of flood protection than the FWEP. The FWEP was being used as part of a package of measures to manage residual risk not design risk (**Document CD 13.02, appendix A, IR paragraphs 172, 178**).
 - b) The traveller site on land at Snaith was defended and so the issue was residual risk. Even then, if the defences failed, the hardstanding on site would only flood to 0.13m depth and the site would be on the fringes of the flooded area with slow-moving water. Indeed, the Inspector found that inundation would be unlikely even in the event of defence failure. In those circumstances, it is unsurprising that the Inspector was content to rely upon site evacuation as a means of dealing with residual risk (**Document CD 13.02, appendix B, paragraphs 13, 15, 17, 26**).
285. There is a great difference between using evacuation as a means of dealing with residual risks that would have consequences of limited seriousness and using evacuation as the sole means of dealing with design risk that would bring very severe consequences. Little comfort can be drawn from the Applicant's experience at other sites. York and Tewkesbury are located at slow response river catchments and Tewkesbury is a seasonal site, part of which remains dry even in flooding episodes. Nor is the Applicant's FWEP for Baltic Wharf such as to inspire much confidence in its ability to administer evacuation. The FWEP refers to Flood Watches, which ended in about 2010 and also says on its face that it needs updating before the 2015 season. Its updating has obviously been overlooked for some time.
286. In the Stourport-on-Severn appeal decision the Inspector agreed with the Environment Agency's interpretation on the need for dry access even in design flood conditions. It is not correct that it had been content for the sole reliance on a FWEP. The planning permission, which the application sought to vary, had incorporated a seasonal occupancy condition which was part of the strategy for dealing with flood risk. The Environment Agency was therefore content for permission to be granted provided that the site was closed in the highest risk winter period and with a FWEP in place to deal with the risk outside that higher risk period (**Document CD 10.03**).
287. There is no decision letter before the inquiry which shows that an Inspector or the Secretary of State has granted planning permission where a FWEP is the sole means of dealing with the risk from a design flood on an undefended site.
288. The earlier versions of the FWEP provided that for a night-time evacuation people would leave on foot. That is not now the Applicant's case and it was claimed that there would be ample daylight time to evacuate. That is patently not the case. If

a flood event was due to occur at 7am in December, even a timely trigger event occurring about 14 hours in advance at 5pm the previous day would still lead to an evacuation which would occur wholly in the dark. Indeed, the evidence shows that such timings can occur and a Flood Alert was issued at 14.57 on 8 March 2020 for the 9th March, the first high tide on that day being at 07.00. There is no reason why such timings could not arise in December. If the notice was shorter, the problem would simply be more acute. The Applicant simply cannot credibly claim that it would be able to avoid night-time evacuations (**Document CD 13.02, appendix C**).

289. Paragraph 167 of the Framework indicates that:

- a) Whilst all parts of the site are subject to the same level of hazard in the long term, the northern parts of the site are subject to lower hazard in the early years of the proposal. The Applicant has not explained why, having regard to paragraph 167a) of the Framework, the wardens' accommodation needs to be centrally located, rather than at the northern part where risk is lower.
- b) The development would not be appropriately flood resilient or resistant, so that it could be quickly brought back into use without significant refurbishment. The wardens' accommodation would be effectively destroyed in the design risk flood and the Applicant accepted it would be significantly damaged³⁷. The proposals for the wardens' accommodation would not accord with the Framework's requirements. The assertion that the site could be almost instantly brought back into use as a caravan site overlooks not just the need to clear the site, but also the need to ensure that the site has safe drinking water supplies, foul drainage, chemical waste disposal and also electricity supplies. The claim that this would take about 7 days would not be almost instant reuse. Even taking the development as a whole, paragraph 167(b) of the Framework is not met (**Document INQ 10**).
- c) Residual risk would not be safely managed as Paragraph 167d) of the Framework requires. Safe access and escape routes would not be available during a flood, contrary to paragraph 167e).

CONSISTENCY WITH THE DEVELOPMENT PLAN

290. In terms of the flood risk policies, policy BCS16 of the CS is consistent with the Framework and is therefore not out of date. It requires development to be safe over its lifetime. It refers to two potential ways to demonstrate safety. The first is resilience through design and layout. The application proposes no measures that would resist or be resilient to a design flood. The second is sensitively designed mitigation measures which take the form of on-site flood defence works or a contribution to off-site works. These are not proposed either. The policy says nothing about using a FWEP as the sole means of managing flood risk, whether design risk or residual risk. As a result, the proposal does not accord with policy BCS16.

291. Given the importance of flood risk, a breach of policy BCS16 can be taken to be a breach of the development plan in this case, even if all other policies would be complied with.

³⁷ This was accepted by Mr Jenkin in cross-examination by Mr Carter.

292. The Environment Agency has not considered all of the other policies in the development plan. However, neither the Applicant nor the Council consider that the most important policies for determining the application are out of date. If the Secretary of State disagrees, flood risk provides a "clear reason" for refusing planning permission, so that the application of paragraph 11(d)(i) of the Framework should lead to the refusal of planning permission.

OVERALL CONCLUSION.

293. Despite the importance attached to the protection of such interests as designated heritage assets and the Green Belt, there can be no more important material consideration than one which protects life. If the application scheme would not be safe, then planning permission should be refused.
294. The imposition of a condition to limit the duration of the permission to 40 years or impose a personal permission would not address the objections. The risk that the development would face is unacceptable now as well as in the future. It is not considered that a FWEP to be an appropriate means of protecting the development from flood risk, even if the permission is limited to the Applicant.
295. The Council's officers' judgment in the Committee report that permission ought to be refused was the right judgment in this case. It is less than clear how or why the Council's officers in the Civil Protection Unit and LLFA changed their mind about the acceptability of the proposal, so far as the risk of sea flooding was proposed. The LLFA are not the expert body on sea flooding. The Civil Protection Unit does not contain flood risk experts.
296. The risk of failure of a FWEP alone cannot be quantified. But there is no requirement for it to be quantified. Ultimately it is a judgement call based on the evidence. On the evidence here, the risk of failure of the FWEP would be unacceptable having regard to the probability of the occurrence of unacceptably hazardous flooding, which may be a flood less severe than the design flood. The consequences of such failure would be very severe in a hazardous flooding event. The development would not be safe for its lifetime.
297. The Applicant accepted that planning permission should not be granted for an unsafe development notwithstanding the scheme benefits³⁸. Putting lives at risk for the sake of achieving whatever benefits are prayed in aid should not be countenanced.

THE CASE FOR THE INTERESTED PARTY: BRISTOL TREE FORUM

The interested party's case is fully set out in its evidence, including its opening and closing submissions, which were delivered orally and are in the electronic documents.

The main points are:

298. The proposed development of this derelict site is not opposed. However, the trees on the site should be protected and properly valued. If they must be removed, then their loss should be properly compensated.

³⁸ This was agreed by Mr Jenkin, Mr Parr and Mr Matthews in cross-examination by Mr Carter.

THE BRISTOL TREE REPLACEMENT STANDARD (BTRS)

Whether H1 is a group/line of trees or a hedge

299. The Arboricultural Impact Assessment (AIA) describes H1 as 34 Leyland Cypress planted along the western boundary of the site. These trees were planted between 1.5m to 2m apart. They now have stem diameters which are agreed to average 0.33m. They were measured at 10m high and 8m wide with their canopies extending to the ground on their inner face and to the top of the boundary wall on their outer face. It is estimated that the feature is about 72m long. All this suggests that H1 was not planted as hedging which normally have young trees planted about half a metre apart (**Documents CD 1.10; CD 13.5page 2**).
300. The AIA notes that they had been previously managed to 6m, but the Council estimated that this had probably last been done some time before or around 2014³⁹. Whilst the inside face of the trees had been maintained, the outside face had not. The analysis and conclusion of the Council that H1 is a group of trees rather than a hedge is adopted. Reliance is also placed on figure 4 of the Defra *Hedgerow Survey Handbook. A standard procedure for local surveys in the UK*. This makes it clear that, given its dimensions, this feature is not a hedgerow but a line of trees for the purposes of BTRS (**Documents CD 13.5; CD 13.08**).
301. Furthermore, none of the planning policies which apply BTRS exclude trees growing in or as hedges. The purpose of BTRS has always been to replace trees lost to development. Whether or not each of the trees in H1 could survive or offer any future amenity value if one or more are removed is beside the point. Whether or not H1 was planted, or is described, as a hedge, it is now made up of trees, whether grown out or not. Its removal falls to be compensated under BTRS.

The requirements and application of BTRS

302. The requirement for replacing trees lost to development is established in policies BCS9 and BCS11 in the CS and policy DM17 in the SADMP. The mechanism for calculating tree compensation is set out in the SPD.
303. It is calculated that 41 trees would need to be replaced under BTRS. This includes the 34 Leyland Cypress trees in H1. Applying the tables provided in policy DM17 and the SPD, 127 replacement trees would need to be planted. Of these, it is agreed that 53 trees would be planted on-site. The balance of 74 would be compensated by a payment of £56,625.54.
304. If it is decided that H1 has no trees, then it is accepted that no compensatory payment would be due.

APPLICATION OF THE BIODIVERSITY METRIC CALCULATION

305. There is a presumption in favour of sustainable development and biodiversity in the latest version of the Framework. There are also various references to net gain. Neither the CS nor the SADMP make any reference to biodiversity net gain (**Document CD 9.10, paragraphs 8, 32, 174d), 179b), 180d)**).

³⁹ This was information provided by Mr Bennett, a Council Arboricultural Officer at the round table session on trees and biodiversity.

The most appropriate Biodiversity Metric to use

306. Natural England has advised that projects currently using BM Version 2.0 may continue to do so unless requested otherwise by their client or consenting body. As the consenting body, the Secretary of State is entitled to decide which metric to use.
307. BM Version 3.0 should be applied and the recent changes to the Framework, together with emerging government policy make this an imperative. There has been recent publicity about the threats to biodiversity, for example the House of Commons Environmental Audit Committee report *Biodiversity in the UK: bloom or bust*.
308. Natural England states that BM Version 3.0 provides an evidence-based, transparent, consistent and easy to use way of ensuring that nature is considered within the design of developments and in land management practice and it leaves nature in a better place than it was before, benefitting wildlife, people and places. BM Version 2.0 was only ever issued as a beta test version to allow wider public consultation before the final version was published. This has now happened with the publication of BM Version 3.0 on 7 July 2021.
309. BM Version 3.0 introduces a number of improvements and corrects some issues associated with BM Version 2.0. The urban street tree habitat has been abandoned and a new, combined urban tree habitat replaces both it and the other previous urban tree habitats. There is now a definition of urban tree in BM Version 3.0 whereas there was none for urban street tree. The urban tree habitat now gives proper weight to urban trees.
310. BM Version 3.0 will be the metric that underpins the Environment Bill's provisions for mandatory biodiversity net gain in England. Notwithstanding the challenges of interpreting it, the Applicant has been able to produce a BM Version 3.0 calculation in fairly short order. If this is accepted the proposed development will not need to be redesigned to comply with current net gain requirements.
311. It is common ground that the new development should secure a measurable net gain in biodiversity. It is also agreed that a suitable target is for a net gain of 10%+ in both habitat and hedgerow units, although a percentage net gain of zero or greater is currently legal and in all respects policy compliant (**Document CD 14.1**).

The calculation (Document INQ 13.3**)**

312. H1 is a line of trees that falls within the BM Version 3.0 definition of an urban tree (**Document CD 13.10.4, table 7-1**).
313. Both BM Version 2.0 and BM Version 3.0 categorise urban trees as small, medium or large. However, these tables are unworkable because they give neither guidance nor disclose any logical method for interpreting them. The preference is to use root protection areas or, even better, tree canopy areas. These values can be derived for each tree from the AIA. This approach better represents the actual habitat areas of urban trees and does not run the risk of discounting, which using these tables does (**Documents CD 13.10.2, table 7-1; CD 13.10.4, table 7.1**).

314. A compromise methodology has been adopted which assumes that the small, medium and large stem diameters given are the median points in three evenly distributed tree populations as follows (**Document INQ 13.1**):
- a) Small Tree Range = less than 20 cm.
 - b) Medium Tree Range = 20 cm - 40 cm.
 - c) Large Tree Range = greater than 40 cm.
315. Of course, large trees are effectively unbounded in their upper range and small trees with a stem diameter of less than 7.5 cm are excluded, so these populations are not really evenly distributed. However, this is the best attempt to resolve this conundrum. The Applicant has come up with another approach based on root protection areas without any explanation save that it is the office convention. However, this approach further discounts the true habitat value of urban trees and fails to resolve the challenges presented by these tables and demonstrates that they are unworkable.
316. A delay factor should be factored into any BM Version 3.0 calculation when habitats are created or enhanced. Any delay replacing lost habitat is significant. A one-year delay has been allowed between the removal of the trees and their eventual replacement for the on-site habitat creation calculation and a two-year delay for the off-site habitat creation calculation. These delays are conservative and likely to be longer. If a BM Version 2.0 calculation is used, then this adjustment will not apply (**Document CD 13.10.4, paragraphs 5.38, 5.44-5.47**).
317. All of the applicant's calculations save for those relating to the valuation of baseline urban tree habitats have been accepted. It is not accepted that the trees T1-T8 in the AIA form the linear habitat for the same reasons that H1 should be categorised as an urban tree habitat. G8 should be categorised as an urban tree habitat for the same reasons as H1. H1 has been excluded from the baseline hedgerow calculation but 0.002 km of the hedge H2 has been included because, although a small habitat, it falls within the site boundary. All the trees on site, including H1, T1-T8 and G8 have been included in the baseline calculation as urban tree habitat.
318. The latest BM Version 3.0 calculation mistakenly double counted the linear features T1 -T8 and G8. These have been removed as they are already included in the urban tree habitat calculation. As a result, the Net Gain Hedgerow Units have leapt to nearly 26,000 %. Also included is the off-site habitat creation using BM Version 3.0 to give credit for the 74 compensatory trees that should be planted because of the application of BTRS. Whilst there is a small net loss on the site of 1.14%, the latest BM Version 3.0 calculation shows total habitat units with a 23.98% net gain. If there is no off-site habitat creation, then the overall Habitat Units show a 1.14% net loss.
319. However, if BM Version 2.0 is to be used, then all the trees on site should be categorised as a woodland and forest-other woodland broadleaved habitat. Assigning the habitat category urban street tree or the other linear habitat categories the Applicant uses is inappropriate, especially given this site's location. In the absence of a formal definition of what an urban street tree habitat is, describing it as a woodland and forest - other woodland broadleaved habitat provides a far better fit than calling it a street tree habitat.

PLANNING CONDITIONS

320. It is requested that planning conditions 9 and 23, which relate to landscaping and tree planting, have an additional requirement that the 5-year maintenance and replacement obligation will restart for that tree from the date the replacement tree is planted. This is because from experience, trees planted in new development sites often fail more than once yet are not replaced if the initial maintenance period has expired.

WRITTEN REPRESENTATIONS (*Document CD 5*)

BRISTOL CIVIC SOCIETY

321. Supports the proposal. Those who stay at the site should be encouraged to use public transport, walking and cycling to access the City.

BRISTOL CHAMBERS OF COMMERCE & INITIATIVE AT BUSINESS WEST

322. Is the main business representative and leadership organisation in the West of England with over 22,000 members. It strongly supports the proposal based on its independent view of the long-term economic interests of the region and the whole spectrum of businesses and employers who operate in it. It jointly owns and runs Destination Bristol, the destination management and tourism organisation for the City and wider region, and so directly understands and recognises the importance of the visitor economy to the City.
323. This is an important application for Bristol that will bring some £1-£1.5m of spend a year into the local economy. There is a need to ensure that the City retains this facility in a quite central, but also discrete, location. There is strong support for the application, most notably from the SS Great Britain, Bristol Civic Society and site neighbours. The existing caravan site at Baltic Wharf has proven over many years to be an important, high performing asset for Bristol's visitor economy, enabling visitors to stay in walking distance of the centre and thus providing significant levels of custom for local businesses. It has played a part in the regeneration and enhancement of Bristol's Harbourside, enabling more and more people to live, work, visit and enjoy the City. The importance of locating such a site centrally is evident when looking at the comments on this planning application from those who regularly stay at the Baltic Wharf site and is reflected in the consistently high levels of occupation of the site.
324. The site is very well positioned as it is close to both the City centre and the countryside. It is easily accessed from the motorway network without needing visitors to drive through the City centre. It would replace a vacant eyesore that is currently creating a negative visual impact on the Green Belt and the setting of Ashton Court. Use as a caravan site, with the proposed landscaping, would considerably improve the character and appearance of the area. Visitors would be very well placed to visit many parts of the City by foot, bicycle and by Metrobus. The very substantial social and economic case for this application would help strengthen the City's economy. At a time of huge challenge as a consequence of the impact of COVID-19 it is very important that Bristol and its local economy is able to move forward and enable investment into areas of growth. The visitor economy is very much part of this, and this replacement site would enable the City to offer visitors a very good solution in a very well-placed location.

THE BS3 PLANNING GROUP

325. In order to ensure safety, there is a concern that the site and its access, which is in an area of the City that is accustomed to less light pollution, may require further lighting. However, it is accepted that the Applicant's existing site needs to find a new home in Bristol. If it cannot be allowed to stay in its current location the application site would be acceptable. It would be preferable to be able to re-use the current structures rather than build new.

DESTINATION BRISTOL

326. Points to the significant financial benefits from the existing site due to the year-round supply of visitors. This has been one of the most popular and successful central sites in the UK. The national interest in camping and caravanning has risen out of all proportion. The closure of the current site is happening at a time when Bristol needs to send a really positive message to potential visitors and relocation in the near future is critical. To recover effectively after COVID-19 will be very difficult for the tourist sector and it needs a great deal of support.

327. It is vital that Bristol has a replacement central site. Failure to do so would result in visitors looking for alternative sites in other cities and locations. The new site is relatively close to Ashton Court, Clifton, Harbourside and the City centre and would allow easy access to Bristol's long list of great attractions. Bristol needs to be sure that all aspects of the tourism sector are adequately provided for and this application is fully supported.

SS GREAT BRITAIN TRUST

328. Strongly supports the proposal. The SS Great Britain plays an important part in the cultural life of the City as a major tourist destination. The existing caravan site generates a significant number of tourist visits to the City centre in a sustainable way for people of many different backgrounds. A high-quality caravan site within easy walking distance of the City centre is a unique asset to Bristol and should be strongly encouraged for its social and economic benefits to the City. A suitable alternative site is very important to the visitor economy of the City. The application site is readily accessible to the SS Great Britain and the City centre. The proposal would result in an overall improvement in the character and appearance of this area of Green Belt. It would enhance the area and help define clearly the green edge of the built-up area of the City as it transitions to the countryside and Ashton Court.

INTERESTED PERSONS

329. There were some 33 individual representations. The majority were in support, both from those living locally and also from visitors to the existing site in Baltic Wharf. Points raised include:

- a) The existing site is very popular and well located in terms of its proximity to the City centre. It makes a major contribution to the local economy and tourist offer of Bristol. The application site would be an ideal replacement.
- b) This is an ideal location due to its proximity to the City centre, countryside and Ashton Court. There is also the opportunity for trips for shopping or to visit attractions and restaurants.

- c) The Applicant is well used to managing flood risk through evacuation procedures, for example at York. The existing site is also within an area of flood risk.
- d) The site provides an alternative and cheaper choice of accommodation to hotels or B&Bs.
- e) Arrivals and departures would mostly be outside peak periods and the location is easy for access without having to go through the City centre.
- f) Several people indicated that they would be unlikely to visit Bristol again if the replacement site was not provided.
- g) The existing site is in poor condition and the proposal would be an improvement.

330. There were few objections. Points raised include:

- a) Clanage Road is a busy road where speeds frequently exceed the 30mph limit. There is a blind bend to the north of the site and a steep gradient. Approaching from the south would entail crossing traffic coming down Rownham Hill at speed. Those approaching from the north would need to make the turn shortly after the bend. In both cases they could be risky manoeuvres for slow moving towing vehicles.
- b) There would be tree loss and inadequate replacement. This would be contrary to policies in the development plan. Retention of trees is essential for amenity value and ecology. The mature Leyland Cypressess are not a hedge and 6 trees should be replanted for each tree lost. Replacements should be native species and large in stature. If the number of pitches was the same as the existing site, there would be sufficient space for replacement planting on-site.
- c) Trees should be planted around the boundaries of the site to screen the development.

EXTERNAL CONSULTEE RESPONSES

HISTORIC ENGLAND (*Documents CD 4.13; CD 4.14*)

331. There is no objection to the principle of the scheme. However, the proposed buildings would be unsympathetic in appearance, and the infrastructure to support use of the paddock as caravan pitches would be unnecessarily urban in character. The proposed roadway and hardstandings would erode the semi-rural character of the location. Softer landscaping is recommended so that when viewed from a distance the paddock is still read as a field. Part of the significance of the Grade II* registered landscape at Ashton Court is derived from its setting. The site forms part of the green fringes of the Ashton Court estate, which make a significant contribution to the user's experience of Ashton Court.
332. The immediacy of transition from townscape to landscape in this part of the City is integral to the local distinctiveness of the area. The land between Clanage Road and the railway together with Ashton Meadows on its opposite side has an important role mediating between the busy roads and built environment around the confluence of the Floating Harbour and New Cut, and the naturalistic landscape of Ashton Court's Registered Park and Garden. The character and

appearance of the Bower Ashton Conservation Area is partially derived from the characteristics outlined above. Its open semi-rural character would be harmed by the urbanising effect of the caravan site and associated infrastructure.

333. Reference is made to the negative effects associated with a proposed works compound on an adjacent site. This compound would be provided to facilitate the reopening of the Portishead railway line to passenger traffic and would be removed once works are complete. Its effect would be temporary in nature and reversible. Whilst the existing buildings are obscured by trees in views from Clifton Suspension Bridge and the Avon Gorge Hotel, the wider site is not.
334. The justification for the harm is not “clear and convincing” as required by the Framework. The proposal should not be approved in its current form.

THE GARDENS TRUST AND AVON GARDENS TRUST (*Documents CD 4.25; CD 4.26*)

335. The proposal would cause unjustified harm to the nationally significant, Grade II* Registered Ashton Court Park and Garden, the setting of the Grade I registered Ashton Court mansion and stables, the Avon Gorge, the Grade I Clifton Suspension Bridge as well as the setting of two local historic parks and gardens, Greville Smyth Park and Bower Ashton. Ashton Court is unusual in celebrating its relationship with Bristol with views from their estate over the City that supported the wealth of the Smyth family. Most landowners at this time were more concerned with privacy and containing their views. The unbuilt land to the east of Clanage Road, which includes the application site, is especially significant as it lies between the park and the City. It provides open green space as the setting of the park and the public views of the rising parkland beyond. The Bower Ashton Conservation Area was designated to protect the setting of the park and includes the southern part of the site.
336. In addition, the wonderful ‘wedge’ of mainly trees, but also open fields/parkland from the Suspension Bridge down to the river on the west of the gorge, is part of the setting and iconic arrival views of Bristol itself, with the Clifton terraces on the opposite side. The proposal would replace the trees and open grassland with caravans and their parking bays. The search should be revisited for a suitable site on which the proposal would not harm the Grade II* Registered Park and Garden. Strong objections are raised.

THE COAL AUTHORITY (*Documents CD 4.23; CD 4.24*)

337. Following the submission of a Coal Mining Risk Assessment, the objections of the statutory consultee were withdrawn.

NETWORK RAIL (*Documents CD 4.18-CD 4.20*)

338. No soakaways or septic tanks should be within 5m of the site boundary with Network Rail land and no surface water should drain onto its land. No buildings shall be erected within 2m of the common boundary, which shall be delineated by a suitable trespass proof fence at least 1.8m in height. Existing fencing and vegetation on its land shall be retained. Lighting associated with the development must not affect the safe operation of the railway.

NATURAL ENGLAND (*Document CD 4.17*)

339. The Council was advised as competent authority that a HRA would be required to

assess the potential effects on the Avon Gorge Woodlands Special Area of Conservation (SAC); the Severn Estuary Special Protection Area (SPA), SAC and RAMSAR site; and the North Somerset & Mendip Bats SPA. The Shadow Habitats Regulation Assessment is considered robust and, provided the mitigation measures it identifies are secured, it can reasonably be concluded that the proposal would not result in adverse effects on the integrity of the European sites.

PLANNING CONDITIONS

340. A schedule of planning conditions was drawn up by the Council and Applicant. These were discussed at the inquiry and the Environment Agency and Bristol Tree Forum also contributed to the round table session. The Applicant has given written agreement to the pre-commencement conditions in the schedule. In considering the conditions I have taken account of the various comments made as well as paragraph 56 of the Framework and advice in the PPG. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable (**Documents CD 14.2.1; INQ 16; INQ 17; INQ 19**).
341. The conditions that I commend to the Secretary of State if he wishes to grant planning permission are set out in Annex Three. The numbering does not accord with that within the aforementioned schedule as some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers used in the Report concur with those in Annex Three.
342. It is not necessary to shorten the normal 3 year implementation period in **condition 1**. Although it seems likely that the development would be carried out more quickly, the exact timescale would depend on the redevelopment plans for Bristol Harbourside, which as yet do not have planning permission. The two sites could not be operable at the same time, as explained in relation to condition 6 below. **Condition 2** sets out the list of approved plans. However, it seems to me reasonable to retain control of the materials for separate approval in view of the sensitive location close to important heritage assets. Details are therefore required under **condition 3**, which also includes the parking areas and hardstandings. This addresses a concern raised by Historic England.
343. No details of the proposed wardens' accommodation have been provided and **condition 4** is thus necessary to ensure acceptability in terms of visual amenity and character. Furthermore, the condition requires that the flood resistance and resilience measures are carried out and retained, albeit that these would only provide security in the case of a relatively minor flood. The Environment Agency has indicated a freeboard allowance of at least 500mm should be provided and this has been included in the condition.
344. **Condition 5** would make the use personal to the Applicant. A Planning permission generally runs with the land and the PPG makes clear that such a condition would only be justified in exceptional circumstances. In this case, the proper management and application of the FWEP is crucial in terms of safety from serious danger in the event of flooding. The FWEP has been tailored to the management procedures specific to the Applicant. In addition, the Applicant has experience of operating sites within areas at risk of flooding, which may not apply to other site operators. If the Secretary of State disagrees that these are material factors of some weight, the condition would not be necessary.

345. The Baltic Wharf site is to be redeveloped, which is the reason behind the planning application. Nevertheless, the timescale is less clear. **Condition 6** requires that both sites would not be operable at the same time. This is because both are within areas of high flood risk. It is also relevant when considering likely significant effects on the European sites as addressed in Annex Four⁴⁰.
346. **Condition 7** requires a plan for the management of the site. Access to the site is off Clanage Road, which is a busy main route into the City. It is reasonable to ensure that stopping and waiting on the highway is minimised and that details of how slow-moving vehicles get in and out of the site are submitted for approval. It is also necessary to ensure that waste and recycling storage and collection is properly dealt with, along with site security. One of the advantages of this site is its proximity to the City to enable sustainable travel modes. Those using the site may not be familiar with the area and so accessibility information requires to be properly communicated. Whilst details of cycle parking provision were also suggested, it was agreed that this was unnecessary as cycles would likely be parked adjacent to the caravan or motorhome.
347. The Ecological Impact Assessment recommends a management plan to set out measures for the establishment and long-term management of newly created and retained habitats to maximise benefits for biodiversity. The southern part of the site is within the Bower Ashton Playing Fields Bristol Wildlife Network Site and is therefore valued as part of a wildlife corridor. **Condition 8** requires the management plan to identify features of interest, set objectives and implement a plan for a 10 year period. The plan is to be approved by the Council who will have to be satisfied as to the robustness of its contents. I have reworded the condition in the interests of clarity.
348. **Condition 9** is necessary to ensure that the landscaping proposals are carried out expeditiously. A provision is included to ensure trees and plants that die within 5 years are replaced. Bristol Tree Forum asked that the 5 year period should re-start every time a replacement is made. I can understand that sometimes there are repeated failures, and that time may run out. However, an open-ended clause would be unreasonable. It seems likely that if a species fails several times it is because it is not well suited to its environment. The condition allows the Council to agree to an alternative size or species in such circumstances.
349. **Conditions 10-12** relate to contamination. There is no particular evidence that the site is contaminated. However, no specific ground condition assessment has been undertaken. The site is adjacent to the railway and there are a number of derelict buildings within it, so it is necessary to ensure that potential risks are properly identified and addressed. The conditions I have used are worded in a different way to those suggested by the parties but follow the same principles of a staged approach that include a provision if unexpected contamination is found during the course of development.
350. A number of conditions were suggested that relate to parking and access. **Condition 13** requires the vehicular access onto Clanage Road to be constructed in accordance with the approved drawing before the use commences. **Condition 15** requires the visibility splays to be provided and kept clear of obstruction.

⁴⁰ See for example paragraphs 6 and 11 of Annex Four to the Report.

These are necessary in the interests of highway safety. **Condition 14** requires the two pedestrian/ cycle accesses onto Clanage Road and the public footpath to be provided prior to occupation. These are necessary to encourage accessible travel. Whilst it is not part of the FWEP, the Clanage Road gate would provide a pedestrian escape route from the site in circumstances of an impending flood.

351. It was agreed that the condition requiring certain road works would be covered under S278 of the Highways Act. It was also agreed that dedicated servicing areas would be unnecessary for a site of this nature. Visitors would park adjacent to their caravan on the pitches and it was agreed that the only parking requirement that would be necessary relates to the 3 parking bays on the northern side of the entrance. These would be provided and retained under **Condition 16**.
352. The *Updated Ecological Impact Assessment* refers to the use of the site by bats for foraging and commuting with some of the buildings and possibly trees used for roosting by various species. The site has been derelict for several years and it is likely to be colonised by reptiles and invertebrates. Nesting birds may also be present in the trees, hedges and boundary grassland. **Condition 17** specifically relates to the provisions to be made for the protection and accommodation of bats. I have reworded it to include details of the new roosting structure to replace the facilities provided by the existing buildings. **Condition 18** requires details of the method statement to be used during construction to protect nesting birds, protected reptiles and other species. **Condition 19** requires details of bat and bird boxes and hibernacula. These conditions are necessary to ensure that the ecological interest of the site is not harmed either during construction or thereafter.
353. **Condition 20** relates to the FWEP and was the subject of considerable discussion at the inquiry. All of the main parties agreed the wording, which is discussed in more detail in my conclusions. **Condition 22** relates to the flood resilience and resistance measures for the amenity and reception buildings. The wardens' accommodation is dealt with separately under condition 4. The wording was the subject of discussion at the inquiry and all main parties agreed its contents. **Condition 21** is required to ensure that a sustainable drainage system is provided and that there is no interference with Network Rail infrastructure (*Documents CD INQ 16; INQ 17*).
354. The trees on the site are an important feature that contribute to the character and amenity of the area and most are proposed to be retained. **Conditions 23-25** include various necessary provisions to ensure that adequate protection measures are in place during the construction period. A lighting strategy was submitted with the planning application and so it was agreed that further details would be unnecessary. **Condition 26** is required to secure its implementation.
355. Policy BCS14 in the CS seeks to reduce carbon dioxide emissions from energy use. It expects development to provide sufficient renewable energy generation to reduce such emissions from residual energy use in the buildings by at least 20%. A *Sustainability & Environmental Overview* was provided with the planning application, which committed to achieve the policy requirement. **Condition 27** requires the necessary details to be provided. I have reworded the condition to acknowledge the document that has already been submitted.

356. In order to minimise the detrimental effects of construction activity, it is necessary to require submission of a Construction Management Plan. There are no proximate residential properties but there is a children's day nursery nearby. Access is also off the busy Clanage Road and so provisions for on-site parking, unloading, plant storage and the like are required for reasons of highway safety. For the same reason arrangements for the supervision of large vehicles turning into the site are necessary. A restriction on the hours of construction seems to me unnecessary. Measures to protect vulnerable road users, whilst a worthy objective, seems to me too vague to be practicable. There is no evidence that temporary traffic measures would be necessary or what they would entail. I have adjusted **Condition 28** accordingly, to be reasonable and enforceable with only necessary measures included.

PLANNING OBLIGATION BY AGREEMENT

357. The planning obligations are contained within a fully executed Deed dated 19 August 2021. The signatories are the City Council of Bristol and the Caravan Club Limited. It was confirmed that the latter is the sole owner and that there are no charges on the land. It will be noted that the Owner and the Applicant are not expressed identically. The Registered Title is held by The Caravan Club Limited and it was confirmed that this is the legal entity whereas the Caravan and Motorhome Club is its trading name (**Documents INQ 20-INQ 22**).

358. Section 11.2 of the Deed contains a "blue pencil" clause whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with Regulation 122 of the *Community Infrastructure Levy Regulations* (CIL Regulations).

359. I am satisfied that the S106 Agreement is legally correct and is fit for purpose. It can therefore be relied upon to deliver its commitments. However, whether the obligations meet the statutory requirements and can be taken into account in any grant of planning permission, will be considered in Consideration Six of my conclusions.

360. Schedule 1 contains the main obligations, which comprise 2 financial contributions. Schedule 2 concerns indexation. There is a site plan and a plan showing the position of H1, the Leyland Cypress feature.

361. **The Traffic Order Contribution** is for £6,067 and is to be used for the imposition of waiting restrictions along Clanage Road. It is to be paid on commencement of development.

362. **The Tree Replacement Contribution** is for £56,625.54 and is to cover the cost of providing replacement trees off-site in mitigation for the loss of Leyland Cypress in H1. It is to be paid on commencement of development.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions

363. Taking account of the matters that the Secretary of State particularly wishes to be informed about, the oral and written evidence to the inquiry and my site observations, the main considerations are as follows:

- **CONSIDERATION ONE: Whether the proposed development would be acceptable taking account of its location within an area of high flood risk**
- **CONSIDERATION TWO: The effect of the proposed development on the Green Belt**
- **CONSIDERATION THREE: The effect of the proposed development on heritage assets**
- **CONSIDERATION FOUR: The effect of the proposed development on trees and green infrastructure**
- **CONSIDERATION FIVE: The effect of the proposed development on ecology and nature conservation**
- **CONSIDERATION SIX: Whether any conditions and planning obligations are necessary to make the development acceptable**
- **CONSIDERATION SEVEN: Overall conclusions and planning balance**

INTRODUCTION

364. The application proposal is to replace the Applicant's touring caravan site at Baltic Wharf in the Cumberland Basin. This is owned by the Council and is earmarked for redevelopment in the review of its local plan, which is currently at pre-submission stage. Whilst it is unclear exactly how long the Applicant will be able to continue to occupy Baltic Wharf, it has been seeking an alternative site for some time. The application site was purchased by the Applicant in 2017 [28; 31].

365. The proposal would provide 62 pitches, a bungalow for the wardens and a reception building and amenity block. It would be broadly similar in size to the existing site, which has 56 pitches. Condition 6 would not permit the two sites to operate at the same time [13; 14; 345; 31].

366. In 2016 a similar scheme was refused planning permission by the Council on the grounds of adverse impact on the Green Belt, harm to heritage assets, flood risk and highway safety. Notwithstanding the recommendation that permission should be refused again, the Council supports the current application. It is to be noted that the Highway Authority no longer raise objections and a Heritage Impact Assessment supports the current application. Further work has also been undertaken in relation to the sequential site assessment [29; 39].

CONSIDERATION ONE: WHETHER THE PROPOSED DEVELOPMENT WOULD BE ACCEPTABLE TAKING ACCOUNT OF ITS LOCATION WITHIN AN AREA OF HIGH FLOOD RISK

Introduction

367. The inquiry heard a great deal of evidence relating to the matter of flood risk. There is no dispute that the site is within Flood Zone 3a, apart from a small sliver in the north-west corner, which is in Flood Zone 2. The latter is so small as to be inconsequential in terms of the consideration of flood risk. The risk relates to the high probability of surface water flooding and tidal flooding. In the case of tidal flooding there is an annual probability of 0.5% or 1 in 200 years.

This does not take account of flood defences, but in the present case the area is currently undefended [38; 242].

368. Surface water flood management falls within the remit of the Council as LLFA. Its modelling is based on a 1 in 100 year rainfall event with a further 40% allowance for climate change. The LLFA considers that a storm of this severity would be notified by the Met Office sufficiently far in advance to allow the site to be evacuated. Due to the topography, the modelling shows that flood waters would first accumulate on lower land to the south of the site. The inundation would not reach a critical level for about 6 hours. The LLFA is satisfied that, provided the Applicant's FWEPP is enacted appropriately, there would be no significant risk to the site's occupants, nor would an additional burden be placed on the emergency services. This is because all occupants would have been removed from the site before the flood arrives. No objections in terms of surface water flood risk are therefore raised [104; 130; 208; 209; 218].
369. Tidal flooding falls within the remit of the Environment Agency who object to the scheme. It contends that as the Government's adviser on tidal flooding its views should be given significant weight. In the *Shadwell* judgement, departing from the advice of the statutory consultee was said to require cogent and compelling reasons. To my mind that seems perfectly reasonable in the circumstances of that case, which concerned the judicial review of a Council's decision to grant planning permission. In the present case the Applicant has also provided expert evidence on tidal flooding to counter that given by the Environment Agency. Both main parties have had their evidence tested through cross-examination and it is for the decision maker to judge which is to be preferred [96; 211; 212; 240].
370. It is agreed that the proposed development would fall within the PPG definition of "more vulnerable". For such development within a Flood Zone 3a area, the Sequential and Exception tests require to be passed [251].

The Sequential Test

371. Policy BCS16 requires a sequential approach to flood risk management, which gives priority to the development of sites with the lowest risk of flooding. This is in accordance with policy in paragraph 162 of the Framework. The Council considered the Sequential Test during the application process and concluded that it had been passed. The Environment Agency has not specifically addressed the issue as is its normal practice. However, it has commented that there is no evidence that the Sequential Test has been complied with. It is now of course a matter for the Secretary of State to determine [19; 59; 197; 230; 250; 290].
372. The search for a site to replace Baltic Wharf was commenced in 2014 and further reviews and updates were made in 2015, 2018, 2019 and 2021. It is fair to say that the purpose was not specifically related to flood risk. However, the assessment is such that it can be used to inform the Sequential Test. 77 sites were identified in total and the majority related to the 2014 and 2015 searches. The exercise was undertaken by JLL, a property consultancy independent of the Applicant. There is no evidence that it was carried out other than in an arms-length and professional way. There is therefore no reason to believe that the purchase of the application site in 2017 meant that it was more favourably treated than any other in the site search [47; 199; 202].

373. Sites that are in Flood Zone 3 can be eliminated as they are not sequentially preferable. The PPG FR also indicates that the extent of the search should take account of the type of development that is proposed. In this case the Applicant is seeking to find a replacement for its Baltic Wharf site in an accessible location to the City. Key requirements are a site that is easily accessible to the City centre within a secure and tranquil location. A 5 mile radius from the City centre was stipulated and the site should ideally be between 2-3 ha, although I was told that smaller sites were not discounted. Some sites were dismissed as being too far away from the City centre and some because they were significantly larger than 3 ha or had poor accessibility. There were also sites with significant gradients that would not be suitable for the proposed use [**42; 49; 52; 204**].
374. The PPG FR indicates that a pragmatic approach to availability of alternatives should be taken. There is no definition in the Framework as to what is required for a site to be reasonably available. However, the former *Planning Policy Statement 25: Practice Note* indicated that it should be suitable, developable and deliverable for the type and scale of development being proposed. The Council's Practice Note contains similar guidance and one of its provisions includes that the land should be either owned by the applicant or for sale at a fair market price. In answer to my questions, I was told that there were too many sites for approaches to be made to each landowner directly. Reliance was therefore placed on information given by local land agents as to whether a landowner would be willing to sell. This seems a pragmatic approach in view of the aforementioned guidance, although it is noted that sites were not automatically eliminated solely because the landowner's intentions were unknown [**42-45; 51; 198; 202**].
375. Some sites were excluded if they had already been developed, were being promoted for alternative uses or were in active use. Again, on the basis of the above guidance this seems reasonable. As the Applicant pointed out, the proposed use would find it difficult to compete against higher value land uses. Sites being promoted for residential development are a good example [**199; 204**].
376. All but 9 sites are located in the Green Belt, including the application site. Only two comprise previously developed land. The application site is one and the other has been identified for housing and commercial uses in the emerging Local Plan. Whilst this is at an early stage it seems unlikely that the land would be available for the application development. In the case of the other Green Belt sites, individual assessments have been made. Apart from the policy issues relating to development of greenfield Green Belt sites, most also have other constraints that make them unsuitable overall [**49; 50; 150; 151; 199-201**].
377. The alternative site assessment has considered each site in the round. I held a round table session at the inquiry where sites that I was concerned about were discussed in more detail. I was particularly interested in sites 46, 47, 51, 52 and 53 around Long Ashton that are within the area of separation designated by policy ENV1 in the Long Ashton Neighbourhood Development Plan. However, it soon became clear that none of these sites would be suitable for the reasons given by the Applicant [**50; 203**].
378. From the oral and written evidence, I consider that the judgements made in the alternative sites assessment are adequately justified and robust. There are no

reasonably available sites for the proposed development other than the application site. Whilst there are sites within Flood Zones 1 and 2 they are not reasonably available for the reasons given. I therefore conclude that the Sequential Test has been passed and in this respect the proposal is in accordance with policy BCS16 in the CS and the Framework [185; 201].

The Exception Test

379. This is set out in paragraph 164 of the Framework. To pass it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

380. There is an assessment of the wider sustainability benefits in Consideration Seven of the Report, and it is here that I will reach an overall conclusion on whether the Exception Test has been passed. In respect of part b) there is no allegation by either the Environment Agency or the LLFA that the proposed development would increase flood levels and therefore increase flood risk elsewhere. The Environment Agency's objection is that the development would not be safe for its lifetime on account of the tidal flood risk. It is this matter which is the subject of the remainder of this section of the Report [208; 252].

The site-specific tidal flood risk

381. The application site is close to the banks of the tidal River Avon, which flows north-west to join the Severn Estuary at Avonmouth. This has one of the highest tidal ranges in the world. There is no dispute that the flood risk at the site is very serious indeed. In order to assess the degree of danger, the evidence indicates that at the present time the 1 in 200 year tidal flood, which is termed the "design flood", would inundate the site with depths and velocities of water that would cause "Danger for Most" over much of the site. The hazard ratings are set out in the Technical Paper provided jointly by DEFRA and the Environment Agency entitled *Flood Risk Assessment Guidance for New Development*. There is no dispute about their applicability or that "Danger for Most" will affect the general public, excluding the emergency services [243; 245; 247; 248].

382. A development will be in place for many years, and it is therefore necessary to look ahead and take account of the effect of climate change. In the case of tidal flooding the factor of most relevance is future rises in sea level. There will be increases in the astronomical tide and greater frequency of storm events and surges. The Environment Agency provides guidance in *Flood risk assessments: climate change allowances*, which is published on the Government's website with a link from the PPG FR. The Higher Central allowance is based on the 70th percentile and is exceeded by 30% of the projections in the range. The Upper End allowance is based on the 95th percentile and exceeded by 5% of the projections in the range. These allow a range of possible future scenarios to be considered although there was no objection by the Applicant to use of the Upper End scenario [244].

383. The Environment Agency has considered the situation 100 years ahead, which is the normally accepted lifetime for a residential development. Whilst the proposal does include two ancillary buildings and a wardens' dwelling it seems unlikely that its use as a caravan site would endure for that long. The 60 year lifespan, normally attributed to commercial premises seems more appropriate. The Applicant however considers that in this case a 40 year period would be more applicable. This is because it is the Applicant's policy to demolish all buildings after 40 years. However, there is no guarantee that its policy would not change and, in any event, the use itself could continue. Even if planning permission were to be required for the replacement of the buildings, I am doubtful that it would be considered reasonable to reassess flood risk in the context of a use that is not time limited. In such circumstances if the 40 year time horizon were considered relevant, any planning permission would need to be time limited. I return to a consideration of whether such a restriction would be justified in this case in paragraph 479 below [99; 217; 243; 247; 249].
384. The anticipated flood levels for different years are taken from the Council's SFRA. The latest modelling looks ahead to 2080 and 2120 but there is no up-to-date evidence for the year 2060. In 2080 the modelling shows that much of the site would have a hazard rating of "Danger for All" with the remainder as "Danger for Most". The former rating means that the danger is for everyone, including the emergency services [243; 246; 247].
385. There is no evidence that the application site has ever flooded. The highest tide level on record for Bristol was in March 2020 and the Applicant estimates that this was equivalent to a 1 in 40 year event. The design flood would be of far greater magnitude and would put anyone occupying the site in very great danger. The Environment Agency contend that the 1 in 200 year tidal flood could occur annually by 2120. However, the annual probability of this happening according to the *Bristol Avon Flood Strategy Outline Case* is only 63%. There is little doubt that the severity and frequency of flood events will increase in the future as climate change advances and sea levels rise. The degree to which this will happen is, on present evidence, not known. The design flood would though cause a hazardous situation whatever the time horizon. However, tidal flood events below the level of the design flood are also likely to cause danger. These lower-level floods occur more often than the design flood and will become more frequent over time. However, there is no evidence about the extent to which they will affect the site, either now or in the future [217; 247-249; 253; 254].
386. There was agreement from all main parties that if the flood risk could not be successfully mitigated, planning permission should be refused for the application proposal. Conversely, if the development could be made safe for its lifetime there would be no unacceptable flood risk [210; 297].

The proposed management of the flood risk

387. In the context of a risk-based assessment, safety cannot be guaranteed. The approach is not to eliminate risk but rather to manage it. Paragraph 002 of the PPG defines flood risk as a combination of the probability of the flood occurring and the potential consequences if it does. In this case the probability of flooding is high and will increase over time. This means that floods of lower severity than the design flood are likely in the future to create a hazard rating for a large part of the site of "Danger for Most" or "Danger for All". The question to answer is

whether the mitigation proposed would be sufficient for the site to be safe for its lifetime given the severity of the flood risk. This will ultimately be a matter of judgement for the Secretary of State [89-92; 216; 253-254].

388. The Applicant relies on its FWEP as the sole form of mitigation against flood risk. The Environment Agency contends that this would only be appropriate to manage the residual risk once physical measures have been put in place. The proposal includes some measures to make the buildings resistant and resilient. This would be through the construction itself and also raising the level of the ground floors. Conditions 4 and 22 require details to be approved of the flood resistance and resilience measures for the wardens' bungalow, the amenity block and the reception building. They include a stipulation that the ground floor levels should be raised by at least 500mm above the adjoining ground level. Nevertheless, the design flood would be deeper than this, reaching depths of between 0.6m and 1.0m in the present day and between 1.0m and 2.5m in 2080, using the Upper End climate change allowances. Therefore, in such an event the buildings would flood both now and in the future. Whilst these would be physical measures, they would not mitigate the effects of a design flood [57; 243; 343; 353].
389. The Flood Risk Assessment submitted with the planning application did not consider mitigation through the design and layout of the development, other than the resilience and resistance measures mentioned above. Although the Applicant indicated that such measures had been considered and discounted at the design stage there is little evidence to support such an assertion. Nevertheless, this was discussed at the inquiry and it seems likely that the degree of intervention necessary would be significant. Bearing in mind potential flood depths in the future, an effective flood proof barrier around the site would need to be a substantial construction with watertight flood gates across the vehicular and pedestrian entrances. Alternatively, the ground would need to be raised to a level that would involve a significant engineering operation with the buildings, pitches and accessways placed on top. Even though not all parts of the site would be flooded to the same depth, the visual impact of physical mitigation measures such as this would likely be considerable. It is acknowledged that no specific proposals have been put forward, but in my opinion, it is not difficult to envisage that the impacts on the Green Belt and sensitive heritage assets would be significant and adverse [79-81; 262; 263].

Whether policy or guidance prevents a FWEP being the sole form of mitigation of flood risk as a matter of principle

Policy

390. Policy BCS16 in the CS allows for sensitively designed mitigation measures and it was agreed that these could include a FWEP. The supporting text refers to the SFRA and in the section of that document dealing with tidal flooding there are a number of recommendations. At the top of the list is the avoidance of sites at risk, followed by physical measures, such as raising ground or floor levels. Devising a FWEP where required is lower in the list and would imply that the first two measures should be taken first, although this is not made explicit. Nevertheless, it remains the case that policy BCS16 solely seeks to ensure that the development remains safe for its lifetime. If the FWEP does this, then the policy would be complied with. There is no suggestion that the policy is

inconsistent with the Framework or otherwise out-of-date [59-62; 231; 232; 290; 291].

391. National planning policy requires development to be directed away from areas of highest flood risk. Where this is not possible, it should be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 167 of the Framework sets out a number of provisions relating to proposals for development in areas at risk of flooding. These include that within the site the most vulnerable development should be located in the area of lowest flood risk. The hazard rating of the northern and western parts of the site is lower than the remainder. However, all of the development would be in the same vulnerability category. In such circumstances there is no requirement to site any element, such as the wardens' accommodation, on this slightly higher ground. A further provision is that safe access and escape routes are included where appropriate. That would not be necessary here for the reasons given in paragraph 395 below. Whether the provision that residual risk can be safely managed is met goes to the heart of the debate about the efficacy of the FWEP. This will be considered in detail below [82; 83; 260; 289].
392. Paragraph 167 of the Framework also indicates that in the event of a flood the development should be capable of being quickly brought back into use without significant refurbishment. This was introduced in the 2021 version of the Framework and therefore after the application scheme had been designed. It seems to me that it is less relevant to a caravan site than a built development where the objective is to ensure that people would not be displaced from their homes for any significant period of time. In this case the intention is that the caravans and mobile homes would be removed from the site in advance of the flood. The wardens' bungalow would be affected but it is notable that the Applicant would not allow children to live on-site and it is a requirement that the wardens also have a mobile home. The evidence from the Applicant is that the site itself could be brought back into use within 7 days but to my mind a flood of the severity envisaged would be likely to cause longer term damage to its essential infrastructure. Even though occupiers may have their own on-board facilities, I am not convinced that it would be practical or desirable to stay on a site without the basic amenities [84-86; 118; 289].
393. There is therefore no policy in either the development plan or the Framework to require physical mitigation to be provided or to prevent a FWEP being the sole form of mitigation, regardless of the level of flood risk [55; 63; 64; 87; 213; 255].

The PPG FR

394. Flood resistance measures prevent or minimise the entry of flood water to a building. Flood resilience measures reduce the impact of flood waters entering a building. Paragraph 059 does not indicate that such measures should necessarily be sufficient to deal with a design flood. In the present case, the measures proposed would only be sufficient to counter minor flooding. Paragraph 060 states that this type of mitigation is unlikely to be suitable as the only measure. I note that there is no similar indication relating to FWEPs [73; 83; 214].
395. Paragraph 038 addresses the evidence needed to show that the development

would be safe **and** that any residual risk can be overcome (my emphasis)⁴¹. Its provisions, which include FWEPS, can therefore relate to design risk and residual risk. Paragraph 039 considers how safe access and egress can be assured. Whether or not it only relates to residual risk, its provisions are qualified by a consideration of whether access and egress is important to the overall safety of the development. In this case the basis for the FWEPS is that occupiers would be evacuated before any flooding occurred. The matter of access and egress in a flood situation would therefore not be relevant. Paragraph 040 refers to evacuation and flood response procedures to manage residual risk associated with an extreme flood event. However, it does not say or imply that such measures could not also be used to manage design risk [67; 68; 74; 219; 256; 259; 260].

396. In the section on making development safe from flood risk, Paragraph 054 contains a checklist. It seems to me that this is based on the expectation that measures would be in place to safely enter and leave during a design flood with a FWEPS used to evacuate in the case of a more extreme flood. My reading of this section is that it relates mainly to built development. In any event there is a link to paragraph 056, which asks the question as to whether FWEPS are needed. It says that one of the considerations to ensure that any new development is safe, **including** where there is a residual risk of flooding, is whether adequate flood warnings would be available to people using the development (my emphasis). It goes on to say that a FWEPS is important in the case of a caravan site where there are transient occupants. It should not be implied from this that a FWEPS should **only** be used to address residual risk (my emphasis). Paragraph 068 sets out a checklist for site specific flood risk assessment. Section 9 deals with residual risk and refers to FWEPS in this context. However, there is no reason why it could not also be considered as a management and mitigation measure, in which case it would be dealing with design risk [66; 214; 256].
397. The PPG FR is guidance not policy and as such it is not prescriptive. There is reference to a FWEPS in the context of residual risk. However, it does not, in my opinion, either directly or by implication indicate that a FWEPS can only be used in this context. The Environment Agency is concerned that if a FWEPS were to be considered as an acceptable way of dealing with design risk there would never be a need to build physical protection measures and large areas would be left prone to flooding. I do not agree that this would be the case or that such generalisations are helpful. The acceptability of the proposed mitigation should be considered on its merits within the circumstances of this particular case [65; 66; 256-258].

The ADEPT guidance

398. This guidance is produced jointly by the Environment Agency and ADEPT. It particularly relates to emergency plans and access and escape routes. The Applicant considers that it should be given little weight as it is effectively a document produced by the primary objector and is not endorsed by the Government. However, it does contain relevant guidance and its production by

⁴¹ In this case I use the term "residual" risk in terms of the risk of a more extreme flood than a design flood, which in Flood Zone 3a is a 1 in 200 year event [75; 253].

the Government's statutory advisor on flood risk seems to me to deserve consideration. It does indicate that people should be able to move in and out of the site during a design flood. This means that it advocates the availability of a safe access and egress with a FWEP plan being used for more extreme circumstances (ie to deal with residual risk). However, as the Applicant points out there is some internal inconsistency because the guidance requires a FWEP plan in the event that safe routes would be affected during a design flood [70; 72; 77; 78; 260].

399. Drawing the above points together, it seems to me that there is no national or local policy requirement that prevents a FWEP being used as the sole means of mitigation for flood risk. The PPG FR also contains no such requirement. The ADEPT guidance is less clear. Overall, I consider that it will depend on the circumstances of the case and whether the particular FWEP can be relied upon to make the development safe for its lifetime.

Whether the proposed FWEP would be sufficient to make the development safe for its lifetime

400. The FWEP specifically addresses the operation of the proposed use by the Applicant. This is the main justification for a personal planning permission under condition 5. The FWEP has had a number of iterations and revision F, which was discussed at the inquiry, remains a draft. Condition 20 requires the final plan to be submitted for approval by the Council. Whilst earlier drafts have been discussed with the LLFA and Civil Protection Unit, it is apparent that prior to the inquiry there had been little engagement with the Environment Agency. Even though the final judgement as to the adequacy of the FWEP rests with the Civil Protection Unit, it would have been beneficial if the expertise of the Environment Agency had been sought [41; 97; 240].
401. There was some debate at the inquiry as to whether the emergency services were satisfied with the proposal. I was told that they had been consulted on the application and raised no objection. Whilst it became clear that they had not been directly involved in the evolution of the FWEP, I understand that the Civil Protection Unit provided feedback on their behalf. This accords with advice in the PPG FR that local planning authorities should consult with their emergency planning officers regarding any planning applications that have implications for emergency planning. In any event the intention of the FWEP is that no-one would be on the site needing assistance from the emergency services in the event of a flood [94; 218].

Triggers and forecasting

402. The Environment Agency has a duty to provide a flood warning service. It issues Flood Alerts and Flood Warnings to the general public via its free of charge Floodline Warnings Service. Flood Alerts are to warn people of the possibility of flooding and encourage them to be alert, stay vigilant and to make early preparations for flooding. Flood Warnings are to warn people that flooding is expected and encourage them to take immediate action to protect themselves and their property. In the case of tidal flooding, the decision as to whether to issue a warning is not informed by actual tidal levels but is based on forecast weather information [106; 269].

403. The astronomical element of a large storm approaching in the Atlantic can generally be foreseen well in advance. However, the surge element derives from low pressure conditions and also depends on the strength and direction of the wind. This can be changeable, and its effects are less easy to predict. Surges may cause a rise in sea level that adds significantly to the height of the tide, especially with the conditions prevalent in the Severn Estuary. At the present time, a 1 in 200 year flood will likely depend on the astronomical high tide coinciding with the surge. However, in future years sea level rises will mean that the two will not necessarily need to be coincidental for flooding to occur. Furthermore, the frequency of such events is likely to increase [**100-102; 118; 266**].
404. The Environment Agency agreed that 6 hours advanced warning of a flood should be sufficient for the site to be evacuated, provided occupiers were present and willing to leave. I deal with that point later. However, whilst its objective is to issue a timely warning, it contends that this may not always happen due to the uncertainties referred to above. The dispute is whether tide level predictions will be sufficiently accurate and issued in sufficient time to trigger the necessary evacuation [**118; 269**].
405. The FWEP requires the Applicant to be registered with the Floodline Warnings Service. Both Flood Alerts and Flood Warnings include predicted tide levels and provide the basis for the triggers for evacuation in the FWEP. The Environment Agency agreed that the triggers would be precautionary in that they are set at tidal levels that would not flood the application site. The Applicant has indicated that the River Avon close to the site will overtop with a water level of about 8.8m and there is no evidence to dispute this [**105; 108; 115; 116; 217**].
406. The triggers in the draft FWEP are also specifically set out in condition 20. Two of these concern Flood Alerts and relate to the cancellation of bookings when the forecast tidal level at Avonmouth is predicted to exceed 8.35 AOD and the evacuation of the site when it is predicted to exceed 8.65m AOD. The Environment Agency does not consider that a Flood Alert is an acceptable basis for a trigger in the FWEP. It is given when predicted levels are reached for a particular area, which is widely drawn. It relates to the 2 tides the following day but if it is incorrect it will not be updated during that tide cycle. It is therefore possible that a Flood Alert could be issued that is below 8.65m AOD, but that the intervening tide proves to be higher [**114; 272; 273**].
407. The Environment Agency pointed out that in the Bristol floods in March 2020 no Flood Warning was given to the Sea Mills to Conham area for the morning high tide on 10 March. Also, that less than 6 hours Flood Warning was given for the evening tide on March 11 and only half an hour's Flood Warning for the "other properties" in Pill and Shirehampton. Following discussion at the inquiry, it was suggested that the final FWEP should contain an additional trigger relating to the Flood Warning given at Pill and Shirehampton, which is further downstream than the Sea Mills to Conham stretch. For the riverside properties the Flood Warning was issued for the morning high tide on 11 March when the Avonmouth gauge was predicted to reach 8.21m AOD and this was over 18 hours beforehand. A second Flood Warning was given over 6 hours before the evening high tide when the gauge was predicted to reach 8.53m. The trigger, which is also included in condition 20, is based on a predicted level of 8.21m at the Avonmouth gauge and seems to me to be highly precautionary [**113; 217; 272**].

408. Flood Zone 3 is based on a 1 in 200 year design event where the depth of flood water would be 9.28m AOD. This is around one metre above the lowest tidal height that would trigger evacuation (8.21m AOD). The predicted tidal level would therefore have to be very significantly underestimated for the trigger in the FWEP not to be activated. This seems very unlikely for a design event of this magnitude. The Environment Agency referred to events below the design flood. However, at this point the river would not overtop in this location until the water level had risen to about 8.8m AOD. The water level would have to be underpredicted by 0.6m for the evacuation not to have been triggered [**108; 109**].
409. The tidal flood events on 11/12 March 2020 were the highest tide levels in Bristol on record. The Council's subsequent *Flood Investigation Report* recommended, amongst other things, that improvements should continue to be made to tidal forecasting by the Environment Agency and Met Office and continued close liaison with the Council. Nevertheless, the evidence in the Report showed that whilst uncertainties undoubtedly exist, the difference between the forecast and observed peak tide levels was relatively small. Nor was the inquiry given evidence of forecasting errors for other tidal rivers that would be of relevance in this case. The oral evidence to the inquiry was that the Environment Agency operated on a regional basis and that this information could not be accessed. This seems to be me rather an unsatisfactory explanation in the face of an assertion of such difficulties [**111; 113**].
410. The Environment Agency referred to a called-in application relating to 3 caravan sites in East Lindsey District. In this case the evidence from the Environment Agency suggested that the flood level had been under-predicted by 0.8m. However, the flooding was from the sea and the Environment Agency's target for coastal Flood Alerts and Flood Warnings is 9 hours, which appears to have been met in this case. It also seems that one of the hazards related to wave overtopping, which is not present in the present situation [**112; 243; 247**].
411. Drawing these points together, the triggers within the FWEP are highly precautionary. The evidence indicates that the Flood Alerts and Flood Warnings would be sufficiently accurate and timely to ensure that there is sufficient time for the site to be evacuated in advance of the flood. It is relevant that the Applicant has other sites in areas of flood risk. Whilst it is acknowledged that its Baltic Wharf site has never flooded, it has clearly had experience of evacuations at its York Rowntree and Tewkesbury sites, albeit that the circumstances may have been different. It should also be considered that a design flood event would entail a very serious storm. Whilst its exact timing and severity may be difficult to predict, it would not arrive unannounced taking everyone by surprise. Furthermore, it is also relevant to contemplate that as technology advances, predictive techniques in the future are also likely to improve [**117; 118; 119; 128; 275; 285; 329**].

Implementation issues

412. In this case the safety of the development would be totally dependent on the timely actions of the site wardens and the co-operation of all occupiers. There is no dispute that if the Flood Warnings and Flood Alerts were not acted upon promptly and the site flooded there would be disastrous consequences that could lead to loss of life. This is a very serious matter and one that deserves

careful consideration. Nevertheless, it is important to understand that the frequency or extremity of the flood events, which will both increase in the future, are not factors that determine whether or not the FWEP would provide adequate mitigation. This is because the FWEP is based on the prerequisite that everyone would have left the site in advance of the flood [98].

413. The triggers for cancellation of bookings and evacuation are highly precautionary. Furthermore, the FWEP requires under condition 20 to be reviewed every two years. This means that if the triggers are shown to be defective in any way they can be changed. The Baltic Wharf site has a FWEP in place but seemingly the only updates required related to the wardens' details. It is appreciated that this has not been done, albeit that the Regional Manager's details have not changed [106-108; 285].
414. One of the Environment Agency's concerns was that the precautionary level of the triggers would lead to false alarms. The site would not flood at a tidal level below 8.8m. This means that it is highly probable that on occasion bookings would be cancelled and evacuation procedures instigated unnecessarily. The concern is that false alarms may lead to complacency. However, the site wardens would be employees who would have a duty of care and would be obliged as conditions of their employment to follow the terms of the FWEP. There is no reason to believe that they would delay the evacuation once they had received the relevant Flood Alert or Flood Warning, especially as they would be well aware of the potential danger associated with delay. Occupiers of the site would only be there for the period of their visit. Whilst some may return more than once, it seems unlikely that this would coincide with an evacuation to the extent that there would be a perceived immunity to risk [119; 217; 279; 280].
415. The evidence indicates that the existing site is very popular and so it should be assumed that all 62 pitches would be occupied. The wardens would have to alert the occupiers of each pitch of the impending evacuation. This would probably involve knocking on doors and there would likely be questions to be answered and explanations to be given. However, it is a condition of the FWEP that when booking or on arrival, visitors are made aware of the flood risk at this site. Directions to evacuate would therefore not come as a complete surprise. Even if each pitch required 5 minutes of each warden's time, the task would be completed in well under 3 hours. Some people may need assistance, for example those with disabilities or mobility issues. However, the wardens are likely to be aware of this beforehand and where they are located on the site [120; 123; 124; 217; 278].
416. It is not an unreasonable assumption that many members of the Caravan and Motorhome Club would have a sense of communality with their Club and a willingness to obey the site wardens who are responsible for their wellbeing. Of course, the Club will not be exempt from awkward and belligerent individuals, but it is difficult to believe that anyone would ignore instructions when it comes down to personal safety, especially knowing of the risks. Furthermore, at this time the weather would be deteriorating and so the situation would have become abundantly clear. In such circumstances people would already be making ready and carrying out tasks such as packing away awnings. It seems very unlikely that a caravan or motorhome could not be driven away because all of its occupants were incapacitated from an excess of alcohol. To my mind people would wish to leave the site as quickly as possible. A caravan or

- motorhome is a valuable asset, which most individuals would be keen to protect [122; 278].
417. Evacuation may be necessary at night, but this would involve the same process as in the daytime whereby people would leave with their caravan or motorhome and drive to safety. Although the draft FWEP includes a provision for evacuation on foot at night, this was agreed to be impractical and inadvisable following discussion at the inquiry. It was agreed that it should not be included in the final FWEP to be submitted for approval under condition 20 [125; 126; 288].
418. There was concern about some occupiers being away from their accommodation at the time of the receipt of the flood warning. However, in a bad storm it seems unlikely that people would be away from the site. Even if they were, the FWEP includes a requirement that a contact number will be required, and occupiers would therefore be phoned and told to return to the site [127; 117; 217]
419. It is acknowledged that Clanage Road is a busy route. However, there is no objection from the Highway Authority about the safety of the access and condition 15 requires sight lines to be provided and maintained. The wardens would provide assistance to ensure an orderly evacuation, which would most likely be in a northerly direction up Rownham Hill and towards the M5 motorway. It seems likely that most people would go home but there could be the option to move to another site if there was availability [128].
420. I agree with the Applicant that the cases referred to at Moorland in Somerset, Billing Aquadrome and Knaresborough do not appear to relate to comparable development and so are not particularly helpful. In the Stourport Sports Club appeal decision the Inspector reached a different conclusion about the requirement for a safe access. However, it was also clear that there was concern about the provisions of the FWEP in the face of the potential speed of inundation during autumn and winter periods of higher rainfall, saturated catchments, and the speed of surface water runoff. This relates to a very different situation to the present case. With regards to the Beeley Road, Sheffield called-in application, the Secretary of State did not agree with the Inspector's recommendation. The proposal related to built development where flood resilience measures ensured that the residential accommodation was above the predicted flood levels. In this case the regeneration benefits were judged to outweigh the flood risk within an area which was identified as a priority for improvement [71; 120; 121; 129; 278].
421. In the Fort Gilkicker called-in application, the Secretary of State did not disagree with the Inspector's comments regarding human behaviour. This related to the point that safe access and egress was not possible during an inundation event. She commented that the residual risk could not be eliminated because of the exercise of free will reacting to the inconvenience of evacuation. However, her view was that the residual risk would be limited to the point where it would not be disproportionate to that involved in everyday life. This was on the basis that there was a package of measures to minimise and mitigate flood risk. This included a FWEP but also included the reinforcement of defences and a safe refuge within the fort itself. This is different to the current case where there is total reliance on the FWEP. Nevertheless, it can be

concluded that any remaining risk is proportionate to that involved in everyday life [69; 91].

422. In the Long Lane appeal the Inspector's conclusions about human behaviour related specifically to the particular circumstances of the Appellants who were Romany Gypsies and therefore relied on caravan accommodation and enjoyed a travelling lifestyle. I am not convinced that this is applicable in the current case where the caravans would be used only for holiday purposes [92].

Overall conclusions

423. Drawing together the above points, I consider that there is no reason in principle why a FWEF could not be the sole means of mitigation against flood risk. In this case it seems unlikely that physical measures such as land-raising or a flood resistant wall would be an acceptable solution due to the particular constraints on this site. Whilst the use of resistance and resilience measures for the buildings have been included, these would be inadequate to provide protection against a design flood or probably even one of less severity.
424. It is not possible to guarantee safety, but the risk must be adequately managed. In this case the probability of flooding is high and will increase over time due to the effects of climate change. The potential consequences are severe and are a threat to the life of the occupiers. In more extreme events the lives of the emergency services would also be in danger, which means they are unlikely to be able to provide assistance. It is agreed that in order to manage the risk satisfactorily everyone must be evacuated in advance of the flood occurring. Once it arrives there is no safe egress for escape or access for help to be provided.
425. For the reasons given, I consider that the evidence indicates that the Environment Agency's flood warning system would provide sufficient time for the site to be evacuated in accordance with the provisions of the FWEF. Furthermore, whilst there can be no absolute guarantee of safety, the risk of failure is sufficiently low to conclude that the development would be safe for its lifetime. The proposal would comply with policy BS16 in the CS and the Framework in respect of flood risk.
426. Whilst the Environment Agency was not instrumental in the generation of the FWEF, it did engage with it during the inquiry. It is worth mentioning that the Civil Protection Unit, as the body responsible for determining FWEFs, has considered the various drafts and found the latest iteration to be acceptable. There is no reason to believe that it does not undertake a thorough assessment or that it would not continue to do so in the future.

CONSIDERATION TWO: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE GREEN BELT

427. There is no dispute that the application site is in the Bristol Avon Green Belt. The Framework makes clear that substantial weight should be given to any harm to the Green Belt and should only be permitted in very special circumstances. Policy BCS6 in the CS seeks to safeguard the Green Belt and protect it from inappropriate development as defined in national policy. This is compliant with the Framework [18].

428. There was consensus at the inquiry that the application site comprises previously developed land. There are various buildings, hard surfacing and parking areas on the northern part and overgrown paddocks and a partially fenced manège on the southern section. I understand that there was also floodlighting around the manège, parking areas and buildings. The glossary to the Framework makes clear that previously developed land includes not only land that was occupied by a permanent structure but also its curtilage. The hard surfaced areas, manège and paddocks were all used in close association with the former use as a police dog and horse training centre. Having regard to the *Blackbushe Airport* judgement, I have no doubt that the whole site can be considered to be previously developed land [**12; 139-141; 220; 221**].
429. Paragraph 149 of the Framework sets out the types of development that are not inappropriate in the Green Belt. These include the provision of appropriate facilities in connection with a change of use for outdoor recreation provided they preserve openness and do not conflict with the purposes of including land within the Green Belt. Also included is the complete redevelopment of previously developed land provided there is no greater impact on openness. The application proposal would fall within both categories. Paragraph 150 indicates that material changes of use of land are not inappropriate provided they preserve openness and do not conflict with the purposes of including land within the Green Belt. This requires that there should not be a greater impact on openness than the existing development [**136-139**].

Effect on openness

430. The Green Belt is essentially a spatial concept as is clear from considering its purposes. However, when considering the matter of openness, the visual impact can also be relevant, as was made clear in the judgement of the Supreme Court in the case of *Samuel Smith*. The footprint of built development would be reduced by about two thirds, although the buildings would be greater in height due to their pitched roofs. Furthermore, parking areas, hardstandings, the manège and floodlights would also be removed. However, the main difference is that the development would extend across the southern part of the site. There would be green spaces between the pitches and in the centre. However, the latter is intended to provide 4 grass pitches and the pitches overall would be quite closely spaced [**142; 143; 144; 222; 223**].
431. The evidence is that the site would operate throughout the year and it is noted that the existing site, which it would replace, has a high level of occupation. Whilst visitors would stay for limited periods of time, it is likely that overall there would be caravans, cars and motorhomes parked on the site for much of the year. Whilst these would be limited in height they would still result in a spread of development across the currently open southern section of the site. I am not convinced by the suggestion that the flow of land beneath the caravan would be appreciated by the observer. I also do not support the Applicant's argument that because the southern part of the site is part of the curtilage it is currently read as a single element. In my opinion, the proposal would increase activity and reduce the overall sense of openness to an extent that would not be compensated by the removal of what exists at present [**143; 145; 222; 223**].
432. The existing Leyland Cypress feature along the site frontage currently blocks views into the site from Clanage Road and beyond. These would be removed

and replaced with a hedge of native species. This would be a benefit to the openness of the Green Belt at this point, but it would also expose the extent of the development within the site.

433. Reference was made to a proposal for a compound immediately to the south of the site, which would be used in connection with the opening up of Portishead Branch Line in connection with the MetroWest project. Whilst this would be an urbanising feature, at the time of writing the Development Consent Order had not been approved. However, even if it is, this does not change my conclusion that the openness of the Green Belt would be diminished by the application development [35; 145; 146].

Effect on Green Belt purposes

434. Paragraph 138 refers to 5 purposes within the context of preventing urban sprawl and keeping land permanently open. This does not of course mean that the Green Belt does not contain development. The application site is on the edge of Bristol and the area includes uses that are typical of the urban fringe. As well as the former use of the site itself, examples can be seen to the south, where the green open spaces are used twice weekly for car boot sales and periodically for parking in association with the Stadium and Ashton Court. Within the above context, I do not consider that the application proposal would contribute to urban sprawl [148].
435. Bower Ashton is to the south-west of the City. Whilst the development would encroach onto the open area in the southern section of the site, overall the intervening green space would not be materially diminished in terms of the merging of settlements. I would not describe the application site as being within open countryside, which is more applicable to land west of Clanage Road. Encroachment would therefore not be an issue. I do not consider that the provisions relating to historic towns or urban regeneration are particularly relevant in this case. In the circumstances, the application development would not conflict with the purposes of including land within the Green Belt [148].

Conclusions

436. It is relevant to consider whether there is a fall-back position whereby the site could be used for something else that would have a greater impact on the Green Belt. The former use was very specific and has now moved elsewhere. However, the existing buildings could perhaps be repurposed without the need for planning permission. Mention was made at the inquiry of a city farm or dog-rehoming site. To my mind the likelihood seems quite low, bearing in mind the poor condition of the site, which has been heavily vandalised. Even if an alternative use could be found, it seems unlikely that it would have a material effect on the openness of the site [38; 193].
437. For all of the reasons given above, I consider that the application proposal would fail to preserve the openness of the Green Belt. It would therefore be inappropriate development and contrary to BCS6 in the CS. The issue of other harms and benefits to determine whether very special circumstances exist will be dealt with under Consideration Seven.

CONSIDERATION THREE: THE EFFECT OF THE PROPOSED DEVELOPMENT ON HERITAGE ASSETS

438. There are a number of heritage assets within the vicinity of the application site. The Council and Applicant consider that the three that have the potential to be affected are Bower Ashton Conservation Area, Ashton Court Registered Park and Garden and Clifton Suspension Bridge. Whilst the Council has raised no objections on heritage grounds it does not agree with the Applicant that there would be no harm at all to the assets. Historic England and the Gardens Trust did raise objections on heritage grounds and referred to other assets that they considered to be of relevance. All of these were considered at the round table discussion at the inquiry.
439. In the case of the Bower Ashton Conservation Area, the southernmost part of the site is within its boundary. For the other heritage assets any potential effect on significance would relate to development within the setting. The setting is the area within which the asset is experienced, and its importance is how it contributes to the significance of the asset or the ability to appreciate its significance. This most commonly relates to views but can also relate to historical associations, for example. Settings are not static but can change over time.
440. The Framework indicates that great weight should be given to the conservation of a heritage asset. In this case there is no dispute that any harm would be less than substantial in nature in terms of paragraph 202 of the Framework. In such circumstances harm should be weighed against the public benefits of the proposal. Policy BCS22 in the CS seeks to safeguard or enhance heritage assets and the character and setting of areas of acknowledged importance, including historic buildings, historic parks and gardens and conservation areas. Policy DM31 in the SADMP has similar objectives. Neither policy makes provision for a balancing exercise and therefore is not consistent with the Framework [**18; 21; 232**].

The Bower Ashton Conservation Area

441. The southernmost section of the site is within the Conservation Area. The CA Statement divides the asset into 7 areas. Whilst it does not directly address significance, this seems to be derived from the association with Ashton Court mansion and its contribution to the rural setting of this Grade I listed building. The core of the village includes the estate dwellings with their boundary walls, hedges and gardens. There are also nurseries, which now form allotments and pastureland. There are pennant stone walls enclosing the parkland. These all contribute to the character and significance of the heritage asset [**153; 332; 335**].
442. Historic England considers that the green swathe between the railway, Brunel Way and Clanage Road contributes to the semi-rural character of the Conservation Area. This is a very widely drawn area that extends well beyond the open ground of the sports fields. In terms of the southern part of the application site, this is former paddock land but is not rural in character or associated with Ashton Court or its parkland. Rather it is closely related to the heavily graffitied derelict buildings behind. The Framework makes clear that not all parts of a conservation area will necessarily contribute to significance, and in this case the southern part of the site does not [**154; 155; 226; 332**].

443. For similar reasons I do not consider that the remainder of the site provides part of the setting of the Conservation Area. It therefore follows that the development would not affect the significance or character of the Bower Ashton Conservation Area [**157**].

Ashton Court Mansion and Ashton Court Registered Park and Garden

444. This is a Grade 1 listed building that is set within the parkland of Ashton Court, which is a Grade II* Registered Park and Garden. The house had early origins but was in the hands of the Smyth family for over 400 years and was remodelled and extended by different occupiers over time. It borrows the wide landscape of the Mendip Hills and Somerset Levels to the south-west but there are no designed viewing corridors towards the City itself. In the early 19th century, there were plans to reorientate the house from a main southerly aspect to one facing east. The purpose was to look towards the City thus showing the connections with trade and shipping from which the Smyth family's wealth had been derived. The house itself gains much of its significance from its evolution as a country house estate in the hands of a prominent local family. Its development was closely related to their wealth and fortune, which in turn derived from Bristol as a major centre of trade. [**164; 331; 335**].
445. The house stands within a parkland setting, which itself is a heritage asset. It was enclosed in the 14th century to form a Medieval Deer Park as was expanded over subsequent centuries by generations of the Smyth family. In the early 19th century Sir Humphrey Repton was commissioned to design various landscape interventions and large numbers of trees were planted and sweeping drives from the south were created. A later entrance to the north took advantage of the opening of Clifton Suspension Bridge. Whilst many of Repton's ideas were never instituted, the basic landscape structure from this period survives intact.
446. In terms of Ashton Court Mansion itself, its setting may well extend beyond the boundaries of the parkland to the south-west. However, the house was never reconstructed to face towards the City as Repton had intended. There are therefore no designed views to the east, which could have included the application site. In the circumstances the significance of the listed mansion would remain unaffected by the proposed development. [**160; 164; 335**].
447. The application site was once part of the Ashton Court estate but was separated from it when the turnpike road, now Clanage Road, was constructed in the mid-19th century. The Portishead Railway was built a little later and part of the site was occupied by Clifton Bridge station. However, by 1949 it had been dug for allotments and in the 1960's the station buildings were demolished. The use by the police for training dogs and horses began in the late 1960's. There is a substantial stone wall along the western side of Clanage Road, which was constructed in the early 19th century. The land beyond the wall was subsequently sold by the estate. The Applicant's heritage adviser described the wall as providing the boundary between privilege and wealth within and ordinary life outside. [**160; 225; 332**].
448. There is a swathe of green space between the boundary of the parkland and the City. When the parkland is viewed from within Ashton Meadows park, for example, it forms a dramatic feature sloping steeply from its Clanage Road boundary. Conversely the views from within the parkland look down towards the City with the intervening treed open space in the foreground. I would class this

area as semi-rural in character as it includes various urban fringe uses, including on the application site itself. However, in my opinion this setting does contribute to the significance of the parkland. The application proposal would generally be benign but, for the reasons given under Consideration Three, it would spread the development and diminish the openness of the southern part of the site. The removal of the Leyland Cypresses would also open up views into the site. This would result in a small degree of harm to the significance of the heritage asset, but on the lowest end of the scale. [159; 161; 225; 335].

Clifton Suspension Bridge

449. The bridge was designed by I K Brunel and construction commenced in 1831, although it was not completed until 1864 after his death. Its significance as a Grade I listed structure lies in its architectural and historic interest. The listing description records a remarkable engineering feat that is mainly intact to this day. It is a major landmark and icon that spans the deep gorge of the River Avon and is associated with the expansion of Bristol. The bridge is seen at its most dramatic in views from within the gorge where its imposing and dramatic effect is most readily experienced. The site does not form a part of these views [227].
450. From up on the bridge the connection between the terraces of Clifton on one side of the river and Leigh Woods and the treed slopes of the gorge on the other, can be readily appreciated. Beyond this in a southerly direction, is a wide panorama forming an expansive setting. Even if the paddock at the southern end of the application site can be seen, this is insignificant in the context of the wider panorama. Whilst there may be some lighting, it should be recalled that the former use was floodlit. In any event, the context here includes street lighting associated with the City itself, including the elevated Brunel Way. Bearing these points in mind I do not consider that the significance of the bridge would be affected by the proposed development in its setting. [162; 163; 228; 333; 336].

Avon Gorge Hotel

451. The hotel is a non-designated asset that was clearly built to take advantage of the views of the Avon Gorge. Its significance probably lies in its position atop the gorge and its historic associations with Victorian Clifton. From the hotel terrace and no doubt from the rooms facing westwards, there is a dramatic view of the Clifton Suspension Bridge and across to the wooded western cliffs of the gorge. Views south are less important and experienced obliquely. Even if the site is within the setting of the hotel, which I doubt, it is a small and insignificant part. The proposed development would have no effect on the significance of this heritage asset [164; 333].

Other heritage assets

452. The **Clifton and Hotwells Conservation Area** is on the eastern side of the river. The application site is on the western side, close to the point where the Rownham Ferry once provided the only crossing between the City and the countryside of Ashton Court. Its popularity however waned with the opening of Clifton Suspension Bridge and this historic connection has long since gone. If the application site is within the setting of the Conservation Area, which I find

doubtful, the application proposal would not diminish the significance of that heritage asset [164].

453. The Gardens Trust has mentioned two local historic parks and gardens. **Greville Smyth Park** is a municipal park on the eastern side of the elevated Brunel Way. Even if it is classed as an undesignated heritage asset it is some distance to the south-east of the application site and separated from it by the road infrastructure, Paxton Drive residential development and allotments. The application site forms no part of its setting. Also mentioned is **Bower Ashton garden**, but no local park or garden with that name is listed on the Avon Garden Trust's website. If it is referring to a part of the Bower Ashton Conservation Area, I have addressed that heritage asset above [164; 335].

Conclusion

454. For the reasons given above, I consider that the proposal would result in less than substantial harm to the significance of Ashton Court Registered Park and Garden. The harm would be at the lowest end of the scale of less than substantial harm. It would nonetheless be contrary to policy BCS22 in the CS and DM31 in the SADMP. I consider the public benefits and whether the proposal would comply with paragraph 202 of the Framework in Consideration Seven.

CONSIDERATION FOUR: THE EFFECT OF THE PROPOSED DEVELOPMENT ON TREES AND GREEN INFRASTRUCTURE

Tree replacement

455. The proposed development would result in the loss of 7 individual trees out of a total of 26. Those to be removed would include 4 classified as of moderate quality and 3 of low quality. A group of 3 Common ash trees would also be removed but these are classified as unsuitable for retention⁴². The Council's Arboricultural Officer and the Bristol Tree Forum have no objections to the loss of these trees, subject to suitable replacements. It is to be noted that the two trees referred to by the Planning Committee (T9 and T19) would be retained. Under the BTRS there would be a requirement for 28 replacements. These would be provided on-site in accordance with the landscaping scheme, which indicates some 53 new trees to be planted [5; 177; 303].
456. It is also proposed to remove the Leyland Cypresses on the western boundary. The AIA classifies this as being a hedgerow of moderate quality (H1). It comprises ornamental non-native species but is a relatively prominent feature in the local landscape. There is no dispute about its removal and replacement with a hedge of native species, but there is disagreement about whether replacement trees should be provided. This all hinges on whether it is classified as a hedgerow, as contended by the Applicant, or 34 individual trees as contended by the Council and Bristol Tree Forum. It is agreed that if replacement under the BTRS is applicable this would require 99 trees. Taking account of the landscaping proposals, this would require a financial contribution of £56,625.54 [178; 233; 303].

⁴² In accordance with the classification in BS 5837 (2012) – *Trees in Relation to Design, Demolition and Construction*.

457. Although the Bristol Tree Forum disagree, I consider that the Leyland Cypresses were probably originally planted with the intention of providing a quick growing hedge that would provide screening, noise reduction and privacy for the horse paddocks and manège. I was told that whilst the site was in use the interior face of the hedge had been cut back, and the AIA indicates that H1 was kept to about 6m in height. However, there is no doubt that there has been no management for several years and the trees within it are individually substantial, growing to about 10m in height. The AIA indicates individual trunk diameters of 0.3m and some 1-1.5m between them. There was little evidence that they are an irreducible linear feature that could not persist as individuals if, for example, some were removed. It is the case that this would not look very attractive because the interior dead growth would not regenerate. However, their visual quality is not a factor when considering how they should be defined [180; 234; 235; 299; 300].
458. The development plan does not provide any definition of what it means by "a tree". BM Version 2.0 contains a useful guide as to whether a feature is classified as a hedgerow. In this case the Leyland Cypresses extend to over 70m in length with no shrub layer beneath. Working through the flow diagram they would be classed as a "line of trees". However, this is less clear from the definition in BM Version 3.0. The current caselaw is provided by the *Bullock* judgement. This indicates that anything that would ordinarily be called a tree, is a tree. The same could of course also be said of a hedge. I also note that the High Hedges Regulations (2005) define a high hedge as "*a line of two or more evergreen or semi-evergreen trees or shrubs higher than 2 metres above ground level that provide a complete barrier to light and access*". Clearly H1 is not a shrub and so under this definition it would be a tree [179; 234; 299; 300].
459. There is no reason why some or all of the components of a hedge cannot grow to the extent that they become trees. This will depend on the species and management regime amongst other things, but examples can be seen in many field boundaries. In such places some individuals have grown taller and stronger and would be clearly regarded by the observer as trees. In this case the species is so vigorous and has had sufficient space to develop into a line of trees. In the absence of what the development plan means by a tree, it is quite reasonable to consider other sources of assistance as set out above [180].
460. Bearing all of the above points in mind, I consider that although the conifers were probably originally planted as a hedge the reasonable observer would now perceive them as a line of trees. Whether or not their removal would be a visual enhancement or an improvement to biodiversity, it remains the case that the BTRS would be applicable, and that the replacement standard should be applied [180].

Biodiversity enhancement

461. The Framework encourages development to contribute to and enhance the natural and local environment through providing net gains to biodiversity, amongst other things. At the present time there is no policy requirement for any particular level of net gain. However, the Applicant contends that this would be well in excess of the 10% that has been indicated as an objective in the forthcoming Environment Bill. The accepted way in which gains are measured is

through the use of Natural England's Biodiversity Metric [**167; 171; 305; 310; 311**].

462. BM Version 2.0 was published in 2012 and was updated by BM Version 3.0 shortly before the inquiry commenced. Bristol Tree Forum considers that the earlier provisional document should not be used now that the final version is available. This has built on the consultation and experience gained from use of BM Version 2.0, but it contains significant differences, and the unit values are not the same. For this reason, Natural England has made clear on its website that users of BM Version 2.0 should continue to use that metric, unless requested to do otherwise by their client or consenting body, for the duration of the project [**169; 307-309**].
463. BM Version 2.0 was current when the design of the soft landscaping was evolved and the Applicant contends that it is the relevant guidance to use when considering biodiversity gain. This seems to me reasonable, but the Secretary of State is the consenting body and may consider that the more recent and final version is more appropriate. Notwithstanding its view on the matter, the Applicant engaged with BM Version 3.0 at the inquiry and so the Secretary of State has this information available to him as well [**170; 310**].

BM Version 2.0

464. There are two disputes here. The first relates to the categorisation of the Leyland Cypress feature along the western boundary and whether it is a hedge or a line of trees. The Council and the Bristol Tree Forum say it is a line of trees and the Applicant says it is a hedge. I agree with the former view, for the reasons given above. However, even if I am wrong, the net gain in hedgerow units would be in excess of 100% [**168; 172**].
465. There are various trees within the former parking area to the north of the site (T9-T20) and a line of trees along the Clanage Road boundary. I would agree with the Applicant that the former are mainly ornamental in nature and the latter form a linear feature. They do not therefore sit comfortably within a woodland category and do not seem to me to be an extension of the treed environment to the north and west outside of the site. In the circumstances, the Applicant's assessment of net gain in habitat units of around 15% is to be preferred. This is on the basis that H1 is a hedge but even if it were considered to be a line of trees then the gain in habitat units would be no lower [**168; 172; 319**].

BM Version 3.0

466. There is no dispute that all of the trees on the site fall within what is termed in BM Version 3.0 the "urban tree" category. The Applicant calculates that there would be a net gain in habitat units of about 30% and of hedgerow units of over 700%. This is on the basis that H1 is a hedge, but even on the basis that it is a line of trees, the hedgerow unit gain would be considerable [**174; 176**].
467. Bristol Tree Forum's final calculation, which was undertaken after the round table session, is that there would be a net gain of about 24% in habitat units and 851% in hedgerow units provided that H1 was treated as a line of trees that triggered off-site compensation. However, if that is not the case then it says there would be a loss of just over 1% in habitat units. The Applicant has

made a number of criticisms of the way the calculation has been made. The guidance is very new and therefore this is not surprising. However, there is no reason why there should be a significant delay between on-site habitat loss and the creation of new habitat to justify the inclusion of an additional delay factor. I also agree with the Applicant that “area habitats” have been incorrectly used to assess linear features. In addition, the area of retained trees in the southern part of the site appears to have been incorrectly reduced. Each or all of these matters are likely to change the marginal negative loss in habitat units into a positive gain [**174; 175; 312-318**].

468. If the Secretary of State agrees that H1 comprises 34 individual trees, then the S106 Agreement includes the necessary compensation under policy BCS9 in the CS, DM17 in the SADMP and the BTRS. However, if he considers H1 is a hedge, then it should be made clear in the decision that the obligation is not necessary in terms of Regulation 122 of the CIL Regulations. The “blue pencil” clause in the Deed would be engaged and the contribution would not need to be paid [**18; 20; 178; 302-304; 358; 363**].
469. Whether H1 falls within the category of trees or a hedge overall I consider that the application proposal would result in a biodiversity net gain and would comply with the aforementioned development plan policies and the Framework in this respect [**20; 176**].

CONSIDERATION FIVE: THE EFFECT OF THE PROPOSED DEVELOPMENT ON ECOLOGY AND NATURE CONSERVATION

On-site ecology

470. The application was accompanied by an updated Ecological Assessment (September 2020), a Bat Survey Report (August 2020) and a Reptile Survey (August 2020). A lighting strategy has also been prepared. The Council has no objection in terms of the effect on protected species, subject to planning conditions.
471. The southern part of the site is part of the **Bower Ashton Playing Fields Wildlife Network Site** and forms part of a green corridor. As I understand it the Applicant’s Biodiversity Metric calculations have taken this into account when concluding that there would be a net gain in habitat and hedgerow units. Furthermore, condition 8 requires a Nature Conservation Management Plan. There would be no conflict with policy DM19 in the SADMP [**20**].

Effect on sites of European importance to nature conservation

472. There are a number of European sites of importance to nature conservation within the vicinity of the application site as follows:
- a) **The Avon Gorge Woodlands SAC** is about 280m to the north.
 - b) **The Severn Estuary SAC** is about 5.9 km to the north-west.
 - c) **The Severn Estuary SPA** is about 5.9 km to the north-west.
 - d) **The Severn Estuary RAMSAR site** is about 5.9 km to the north-west.
 - e) **The North Somerset and Mendip Bats SAC** is about 12 km to the south-west.

473. The Habitats Regulations transpose the *Habitats Directive* and the *Birds Directive* into English and Welsh law. The aim is to conserve key habitats and species and in this case a HRA is required to assess the effects of the application proposal on the sites in question. An Appropriate Assessment is undertaken to establish whether there would be adverse effects on the integrity of the features of the sites, either alone or in combination with other plans and projects. Under the *People over Wind* judgement of the European Court of Justice⁴³ this needs to be done before potential mitigation is considered. However, the *Langton* judgement indicated that measures which were integral to a project are not mitigating or protective measures and could therefore be taken into account when screening for likely significant effects⁴⁴.
474. The Applicant submitted a **Shadow HRA**. The preliminary screening indicated that the application proposals could conceivably affect the aforementioned European sites of nature conservation importance. Further screening was undertaken having regard to site characteristics and potential impact pathways between the application site and the European sites. The in-combination assessment took account of the 33,500 new homes proposed in the emerging local plan by 2036. The conclusion was as follows:
- a) **The Avon Gorge Woodlands SAC:** No likely significant effects in isolation to undermine published conservation objectives through recreational pressure or nitrogen deposition through vehicular activity. In-combination there could be an increase in recreational pressure due to the expanded population in proximity to the site.
 - b) **The Severn Estuary SAC, SPA and RAMSAR site:** No likely significant effects in isolation to undermine published conservation objectives through recreational pressure. In-combination this could be an issue due to the expanded population in proximity to the site.
 - c) **The North Somerset and Mendip Bats SAC:** In the absence of mitigation, disturbance and degradation of supporting habitats outside the SAC could undermine conservation objectives.
475. In the circumstances, the Shadow HRA concludes that an Appropriate Assessment of the implications of the proposed development on the qualifying features of the European sites, in light of their published conservation objectives, will be required. It anticipates a conclusion that there would be no likely significant effects on the integrity of the Avon Gorge Woodlands SAC or Severn Estuary SAC, SPA and Ramsar site. Taking account of the proposed mitigation measures it anticipates a conclusion that there will be no likely significant effects on the integrity of the North Somerset and Mendip Bats SAC as a result of the proposed development. Natural England considered the Shadow HRA was robust and that subject to the mitigation measures being secure, it can reasonably be concluded that the proposal would not result in adverse effects on the integrity of the European sites [339].
476. I agree that without mitigation, significant effects as cited above would be likely to arise as a result of the application proposal. If he is minded to grant planning

⁴³ *People Over Wind & Peter Sweetman v Coillte Teoranta* C-323/17.

⁴⁴ *R (on the application of) Langton v SSEFRA & ANOR* [2018] EWHC 2190 (Admin).

permission the Secretary of State, as competent authority, will be required to undertake an Appropriate Assessment accordingly. This is addressed further in Annex Four. Natural England has already commented on the Shadow HRA as set out above and I do not consider that further consultation will be necessary.

CONSIDERATION SIX: WHETHER ANY CONDITIONS AND PLANNING OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE

Planning conditions

477. If the Secretary of State is minded to grant planning permission, the suggested conditions are at Annex Three. The justification is provided in paragraphs 342-356 of the Report and also in various parts of my Conclusions. Bristol Tree Forum raised issues about the period to be allowed for replacement planting. I have considered this in paragraph 348 [320].
478. It is considered that the conditions are reasonable, necessary and otherwise comply with Paragraph 56 of the Framework and the provisions of the Planning Practice Guidance. It will be noted that the Applicant has given written agreement to the pre-commencement conditions [340].
479. The imposition of a condition restricting the planning permission to a temporary period was discussed at the inquiry. The PPG indicates that a temporary period may be appropriate, including where a trial run is needed, to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. This is discussed in paragraph 383 and for the reasons given I do not consider that either of these situations are relevant in this case. However, should the Secretary of State disagree, a condition limiting the use to 40 years could be imposed. It was pointed out it would not be appropriate to require restoration of the site to its existing condition because that would mean replacement of the demolished buildings, hardstanding parking areas and manège. The condition would need to require the buildings to be demolished and the land restored in accordance with a scheme to be agreed with the Council [99; 294].

The S106 Agreement

480. There is a fully executed Deed, dated 19 August 2021, which contains the planning obligations for the purposes of Section 106 of the 1990 Act. The S106 Agreement and its provisions were fully discussed at the inquiry. I am satisfied that it is legally correct and fit for purpose. A summary of its main provisions is provided at paragraphs 361 and 362 of the Report.
481. It is necessary to consider whether the obligations that have been made would meet the statutory requirements in Paragraph 122 of the CIL Regulations and the policy tests in Paragraph 57 of the Framework in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that the Deed contains a "blue pencil" clause that the obligations are conditional on the Secretary of State finding that they comply with the CIL Regulations [358].
482. There are two obligations in the Deed, and both relate to financial contributions.

- a) The **Traffic Order Contribution** is for £6,067 and is specific to the cost of making and implementing a Traffic Regulation Order for double yellow lines along this section of Clanage Road. The Highway Authority originally requested £5,913 for this purpose in the interests of highway safety. Clanage Road is a busy route into the City, and it would not be safe to allow caravans or motorhomes to park along the kerbside whilst waiting to enter the site. I queried why the sum of money exceeded the requested amount and was told that this includes indexation. This seems reasonable. A Traffic Regulation Order is subject to consultation but there seems little reason why it should not be made given the safety implications.
- b) The **Tree Replacement Contribution** is for £56,625.54. This accords with the formula in the SPD for the BTRS. Its justification is explained in paragraphs 445-460. As I have explained, if the Secretary of State disagrees with my assessment of H1 as a line of trees, then the contribution would not be required.
483. I consider that the planning obligations referred to above are reasonable, necessary and directly related to the proposed development. They therefore comply with Regulation 122 of the CIL Regulations. However, if the Secretary of State reaches a contrary view on the Tree Replacement Contribution, he should explicitly state that it would not comply with the aforementioned regulations and this would mean that the "blue pencil" clause is engaged, and the contribution would not be paid.

CONSIDERATION SEVEN: OVERALL CONCLUSIONS AND PLANNING BALANCE

The benefits of the proposed development

484. The proposed development would offer a number of benefits. It would replace the Applicant's existing Baltic Wharf site. This is a very popular recreational amenity, which is borne out by the representations in support. It is not clear exactly when the Applicant will be required to vacate its existing site, but condition 6 requires that the two would not co-exist. One of the reasons for its popularity is its location close to the centre of Bristol with easy access by bicycle and on foot. The proposed site is similarly well located [**31; 33; 190; 321; 329**].
485. There would be an economic benefit resulting from those who stay at the site visiting local tourist attractions, shops, food and drink establishments and the like. There is much local support for the proposal from the local tourist and business community. It is estimated that the proposed development would generate over £1m annually. This would be lost to the City if the application does not succeed, because the existing site would be closed and there are no alternative suitable and available sites [**190; 206; 322-324; 326-327; 328**].
486. The proposal would re-use previously developed land, which is in accordance with local and national planning policy. Furthermore, the existing site is a derelict eyesore and subject to intrusion and anti-social activity. It is a negative feature in the local environment and detracts from its sensitive setting in the Green Belt and close to heritage assets. The application proposal would result in a considerable visual improvement and enhancement to the character and appearance of the area. This opportunity seems unlikely to happen otherwise because the range of alternative uses that could occupy the site as it currently exists is very limited. Furthermore, due to the various constraints it is unlikely

that it would be suitable for housing or commercial redevelopment [38; 190; 207; 324; 329].

487. The site would offer an alternative and relatively inexpensive type of accommodation for those wishing to visit the City and the countryside around it [190; 329].
488. There would be a net gain to biodiversity although the extent of this would depend on which Biodiversity Metric is considered applicable and whether or not the Leyland Cypress is considered as a line of trees or a hedge. As discussed under Consideration Four, I consider that BM Version 2.0 should be used and, in this case, the net gain in both hedgerow and habitat units would be well in excess of 10%. The replacement of these trees with a native hedgerow would be a benefit to the landscape [190].
489. Overall, I consider that the package of benefits should be afforded very substantial weight.

Conclusions on flood risk

490. The proposal would involve "more vulnerable" development and therefore must pass both the Sequential Test and the Exception Test. For the reasons I have given in Consideration One, the requirements of the Sequential Test and part b) of the Exception Test have been met.
491. With regard to part a), the development plan does not include a definition of what "sustainability benefits" to the community might be. However, the benefits arising from the proposed development, as set out in paragraphs 484-488 above, satisfy social, economic and environmental objectives in accordance with paragraph 8 of the Framework. For the reasons I have given, I consider that the flood risk would be satisfactorily managed in this case. If that risk can never be eliminated, any remaining risk would be outweighed by the very substantial public benefits. The Exception Test is therefore passed, and the development would be in accordance with policy BCS6 in the CS and the Framework in this respect [132, 133; 205-207].

Conclusions on heritage assets

492. For the reasons given under Consideration Three there would be less than substantial harm to the significance of the Ashton Court Registered Park and Garden. Whilst the harm would be at the lowest end of the scale this asset is Grade II* and great weight and importance must be given to its conservation. Paragraph 202 of the Framework indicates that this harm should be weighed against the public benefits. Whilst recognising that this is not an even balance, in this case I consider that the very substantial benefits would outweigh the harm. In such circumstances, I can conclude that the proposal would not conflict with the Framework in this respect although there would still be conflict with policy BCS22 as this includes no provision for the consideration of benefits.

Conclusions on the Green Belt

493. For the reasons given under Consideration Two the proposal would be inappropriate development that would be harmful to the openness of the Green Belt in conflict with policy BCS6 in the CS. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and

should be given substantial weight. Other than the Green Belt harm and that to heritage assets, there would be no other harm arising from the proposal. In this case I conclude that the harms arising would be clearly outweighed by the benefits. Very special circumstances would therefore exist in this case. Whilst conflict would remain with the development plan due to the wording of policy BCS6 in the CS, the proposal would be in accordance with the Framework in this respect.

Conclusions on the development plan

494. Whilst the application proposal would be in accordance with many of the development plan policies, including BCS16 in the CS relating to flood risk, it would conflict with policies BCS6 and BCS22 in the CS and DM31 in the SADMP. These relate to the Green Belt and heritage assets and are therefore of considerable importance. I do not therefore conclude that the scheme would be in accordance with the development plan when taken as a whole.
495. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* makes clear that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case there would be very substantial economic, social and environmental benefits that weigh in favour of the scheme. Policy BCS22 is not in accordance with the Framework and this conflict can be afforded limited weight. Conversely as indicated in the individual balancing exercises carried out above, the proposed development is in accordance with the policies of the Framework with regards to flood risk, Green Belt, heritage assets and biodiversity, and this is also a matter to which I give significant weight.
496. My overall conclusion is that in this case there are material considerations to indicate that the application should be determined otherwise than in accordance with the development plan. However, this proposal requires the decision maker to undertake a HRA and I have provided the relevant information to enable the Secretary of State to do so in Annex Four.

RECOMMENDATION

497. Subject to the Secretary of State being satisfied that there would be no significant impacts on European sites, it is recommended that planning permission be granted, subject to the conditions in Annex Three.

Christina Downes

INSPECTOR

ANNEX ONE: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Clare Parry	Of Counsel, instructed by Bristol City Council Legal Services
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She called:

Mr N Matthews BA(Hons) MRTPI	Director of the Planning Division at Savills
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FOR THE APPLICANT:

Mr Matthew Reed	Of Queen's Counsel
Mr Andrew Parkinson	Of Counsel
	Both instructed by Mr D Parr, Rapleys LLP

They called:

Mr P Jenkin BEng (Hons) MSc(Eng) CEng C.WEM FCIWEM	Director of Water Management at Stantec
Mr K Hunt MTCP MRTPI	National Director of JLL
Mr M Rose BSc(Hons) MSc MCIEEM	Associate Ecologist of CSA Environmental
Mr C Self Dip LA CMLI MA(Urban Des)	Managing Director of CSA
Mr N Worlledge BSc Dip.Arch.Cons MRTPI IHBC	Proprietor of Worlledge Associates
Mr D Parr DUPI DipTP FRGS MRTPI Cgeog MEWI	Planning Partner of Rapleys LLP

FOR THE RULE 6 PARTY:

Mr Martin Carter	Of Counsel, instructed by Ms P Yorath, Solicitor with the Legal Services of the Environment Agency.
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He called:

Mrs D Steadman MEng CEng MICE C.WEM MCIWEM	Senior Flood and Coastal Risk Management Advisor at the Environment Agency
Mr M Willitts BA(Hons) MA	Planning Specialist at the Environment Agency

INTERESTED PARTY:

Mr M Ashdown	Chair of the Bristol Tree Forum
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ANNEX TWO: DOCUMENTS AND PLANS

DOCUMENTS

CD1	Application Documentation
1.01	Planning Application Form
1.02	CIL Forms
1.03	Design and Access Statement - Revision C
1.04	Planning Application Overview
1.05	Planning Statement
1.06	Statement of Community Involvement
1.07	S106 Statement
1.08	Supporting Statement – Caravan Club
1.09	Site Search Report
1.10	Arboricultural Impact Assessment
1.11	Draft Arboricultural Method Statement
1.12	Ecological Impact Assessment
1.13	Biodiversity Net Gain Assessment
1.14	BNG Calculator
1.15	Reptile Survey Report
1.16	Shadow Habitats Regulations Assessment
1.17	Flood Risk Assessment Rev B
1.18	Flood Emergency Plan Rev B
1.19	Transport Statement
1.20	Landscape and Visual Impact Assessment
1.21	Heritage Impact Assessment
1.22	Sustainability and Environmental Overview
1.23	Lighting Specification
1.24	Lighting (Dextra Specification)
1.25	Lighting Values Contours and Vertical Values (3 sheets)
1.26	Coal Mining Risk Assessment
1.27	Coal Mining Risk Assessment
1.28	Updated Ecological Impact Assessment
1.29	Bat Survey Report
1.30	CO ₂ Calculations
CD1A	Post-Committee Submission
1A.01	Updated Arboricultural Impact Assessment
1A.02	Updated Arboricultural Method Statement
CD2	Plans
2.01	Site Location Plan OS Extract
2.02	Existing Site Layout BRT-2016-S-101
2.03	Indicative Site Layout SK01
2.04	Proposed Site Layout BRT-2016-S-150 Rev G
2.05	Proposed Site Plan (Coloured)
2.06	Existing and Proposed Clanage Road Elevation BRT-2016-P-500
2.07	Proposed Reception Building BRT-2016-R-201
2.08	Proposed Amenity Building BRT-2016-TB-301
2.09	Detailed Landscape Proposals CSA/2751/107 Rev D (superceded)
2.10	Clanage Road 3D Views (Lighting)
2.11	Proposed Lighting Layout (2 Sheets)

2.12	Proposed External Lighting Layout BRT-2016-S-160A
2.13	Proposed External Lighting Layout BRT-2016-S-160B
2.14	Swept Path of Large Car Towing a 7m long caravan A19282-002P1
2.15	Swept Path of Large Car Towing a 7m long caravan (right-in and right-out) A19282-003P1
2.16	Detailed Landscape Proposals CSA/2751/107 Rev E
2.17.1	Revised site location plan (OS Extract Rev B)
2.17.2	Explanatory note about the revision (16 July 2021)

CD3 Applicants Responses to Consultees

3.01	Response to Arb Officer
3.02	Response to Conservation Architect
3.03	Response to Environment Agency
3.04	Response to Flood Risk
3.05	Response to Historic England
3.06	Response to Landscape
3.07	Response to Network Rail

CD4 Consultation Responses – Consultees

4.01	Arboricultural (BCC)
4.02	Arboricultural (BCC)
4.03	Arboricultural (BCC)
4.04	City Design – Conservation (BCC)
4.05	City Design – Landscape (BCC)
4.06	Conservation Section (Archaeology) (BCC)
4.07	Crime Reduction Unit
4.08	Ecology (BCC)
4.09	Environment Agency
4.10	Environment Agency
4.11	Flood Risk (BCC)
4.12	Flood Risk (BCC)
4.13	Historic England
4.14	Historic England
4.15	Public Protection Team - Land Contamination
4.16	Public Rights of Way (BCC)
4.17	Natural England
4.18	Network Rail
4.19	Network Rail
4.20	Network Rail
4.21	Sustainability Officer (BCC)
4.22	The Bristol Waste Company
4.23	The Coal Authority
4.24	The Coal Authority
4.25	The Gardens Trust
4.26	The Gardens Trust
4.27	Transport Development Management
4.28	Transport Development Management

CD5	Consultation Responses – Interested Parties
	Not individually numbered
CD6	Committee Documents
6.01	Case Officer Report to Committee
6.02	Case Officer Report to Committee Amendment Sheet
6.03	Extract of Minutes of the Bristol City Council Development Control B Committee held on 14 October 2020
CD7	Statements of Case
7.01	Bristol Tree Forum Statement of Case
7.02	Bristol Tree Forum Statement of Case Addendum
7.03	Bristol Tree Forum – Biodiversity Metric 2.0 Calculations
7.04	Applicant's Statement of Case
7.05	Council's Statement of Case
7.06	Environment Agency's Statement of Case
CD8	BCC Policy and Guidance Documents
8.01	Bristol Core Strategy
8.02	Bristol Site Allocations and Development Management Plan
8.03	Bristol Policies Map (Interactive Version here - https://maps.bristol.gov.uk/policies/)
8.04	Planning Obligations - Supplementary Planning Document (EXTRACTS)
8.05	PAN 2 Conservation Area Enhancement Statement – Bower Ashton
8.06	Flood Risk Sequential Test Practice Note
8.07	Climate Change and Sustainability Practice Note
8.08	Bristol Avon Flood Strategy: Strategic Outline Case
8.09	Bristol City Council City Wide Strategic Flood Risk Assessment (Level 1), report and mapping and model versions 20 and 20.1
8.10	Bristol City Council Flood Investigation: March 2020 Tidal Flooding
CD9	National Policy and Guidance
9.01	National Planning Policy Framework (February 2019)
9.02	Planning Practice Guidance – Flood Risk and Coastal Change – https://www.gov.uk/guidance/flood-risk-and-coastal-change
9.03	Flood Risk Assessments: Climate Change Allowances
9.04	Flood Risk Assessment: Guidance for New Development, R&D Technical Report FD2320/TR2
9.05	Supplementary note on flood hazard ratings and thresholds for development planning and control practice
9.06	Flood risk emergency plans for new development- a guidance for planners
9.07	Flood risk assessment: the sequential test for applicants
9.08	PPS25 Development and Flood Risk Practice Guide (Withdrawn guidance)
9.09	National Planning Policy Framework (July 2021) (track change version)
9.10	National Planning Policy Framework (July 2021) (clean version)

CD10	Caselaw and Appeal Decisions
10.01	Appeal Decision relating to land to the rear of Castle Road and north of The Glebe, Lavendon (APP/Y0435/W/17/3178790) (29 November 2017)
10.02	<i>R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)</i> [2020] UKSC 3 on appeal from: [2018] EWCA Civ 489
10.03	Appeal decision relating to land at the former Stourport on Severn Sports Club (APP/R1845/W/21/3269009) (13 July 2021)
10.04	Appeal decision relating to land west of Barton Hill Drive, Minster-on-Sea (APP/V2255/W/19/3238171) (2 March 2020)
CD11	Other Documents
11.01	Bath and North Somerset Core Strategy and Placemaking Plan – District-wide Strategy and Policies
11.02	Long Ashton Neighbourhood Development Plan 2013-2033
11.03	South Gloucestershire Core Strategy
11.04	EA Flood Warning Email
11.05	John Young Proof of Evidence (extract) in Silverthorne Road Planning Appeal (APP/Z0116/V/20/3264641 and APP/Z0116/V/20/3264642)
11.06	Flood Evacuation Plan for caravan and camping sites, Baltic Wharf
11.07	PBA Technical Note TN002: Flood Modelling
11.08	East Lindsey Council Flood Warning Example
11.09	Railway Depot Housing Scheme Layout and Visuals
11.10	Portishead Branch Line, DCO Application Plan
CD12	Proofs of Evidence
12.01	Mr Matthews’s proof of evidence and appendices
12.02	Mr Parr’s proof of evidence and appendices
12.03	Mr Jenkin’s proof of evidence and appendices
12.04	Mr Self’s proof of evidence
12.05 + 12.06	Mr Self’s appendices
12.07	Mr Rose’s proof of evidence and appendices
12.08	Mr Worlledge’s proof of evidence
12.09 – 12.13	Mr Worlledge’s appendices
12.26	
12.14	Mr Hunt’s proof of evidence and appendices
12.15	Mrs Steadman’s proof of evidence
12.16 – 12.23	Mrs Steadman’s appendices
12.24	Mr Willitts’s proof of evidence
12.25	Mr Willitts’s appendix
CD13	Rebuttal Proofs of Evidence
13.01	Mr Parr’s rebuttal proof of evidence
13.02	Mr Jenkin’s rebuttal proof of evidence to Mrs Steadman’s proof
13.03	Mr Jenkin’s rebuttal proof of evidence to Mr Willitts’s proof
13.04	Mr Rose’s rebuttal proof of evidence
13.05	Bristol Tree Forum’s rebuttal evidence
13.06	Mrs Steadman’s rebuttal proof of evidence

13.06.1 –	Drawings referred to in Mrs Steadman’s rebuttal proof of evidence
13.06.4	
13.07	Mr Willits’s rebuttal proof of evidence
13.07.1	Appendix to Mr Willits’s rebuttal proof of evidence
13.08	Council’s position statement on the Bristol Tree Replacement Standard (14 July 2021)
13.09.01	Mr Jenkin’s technical note on additional points raised about Flood Warnings and Flood Alerts (July 2021)
13.09.2	Applicant’s Flood Emergency Plan (rev F) (July 2021)
13.10.1	Biodiversity Metric 2.0 Technical Supplement (Beta Test Final) (29 July 2019)
13.10.2	Biodiversity Metric 2.0 User Guide (Beta Test Final) (29 July 2019)
13.10.3	Biodiversity Metric 3.0 Technical Supplement (7 July 2021)
13.10.4	Biodiversity Metric 3.0 User Guide (7 July 2021)

CD14 Statements of Common Ground

14.1	Statement of Common Ground on Tree Matters (between Bristol Tree Forum and the Applicant)
14.2	General Statement of Common Ground (between the Applicant and the Council)
14.2.1	General Statement of Common Ground Appendix (working draft planning conditions)
14.3	Statement of Common Ground on Flood Matters (between the Environment Agency and the Applicant)
14.4.1	Statement of Common Ground on Flood Matters (between the Council and the Applicant)

CD 15 Draft Section 106 Agreement

15.1	Draft S106 Agreement
15.2	Plan (OS Extract rev A)
15.3	Tree plan

Inquiry Documents

INQ 1.1	Transport Note, submitted by the Applicant
INQ 1.2	Response, submitted by the Council
INQ 1.3	Swept Path Drawing No A19282-002 Rev P1
INQ 1.4	Travel Plan
INQ 2	List of consultees
INQ 3	Existing and proposed site access (drawing no: BRT-2021-S-950), submitted by the Applicant
INQ 4	Statement of Common Ground Addendum (between Bristol Tree Forum and the Applicant)
INQ 5	Biodiversity Metric 3.0 calculation, submitted by Bristol Tree Forum (21 July 2021)
INQ 6	Biodiversity Metric 3.0 calculation, submitted by Bristol Tree Forum (22 July 2021)
INQ 7.1	Applicant’s response to Documents INQ 5 and INQ 6
INQ 7.2	Biodiversity Metric 3.0 calculation, submitted by the Applicant (22 July 2021)
INQ 8.1	Bristol Tree Forum response to Documents INQ 7.1 and INQ 7.2
INQ 8.2	Biodiversity Metric 3.0 calculation by Bristol Tree Forum (26 July 2021)

INQ 9	Listing description for the Clifton Suspension Bridge
INQ 10	Site operations Note provided by the Caravan and Motorhome Club (28 July 2021)
INQ 11	Metrolink Development Consent Order – general arrangement plan extract
INQ 12	Site location plan for the residential development on the railway depot site
INQ 13.1	Bristol Tree Forum observations on Biodiversity Metric 3.0 following the inquiry round table session on trees and biodiversity (28 July 2021)
INQ 13.2	Bristol Tree Forum tree size analysis following the inquiry round table session on trees and biodiversity (28 July 2021)
INQ 13.3	Bristol Tree Forum Biodiversity Metric 3.0 calculation following the inquiry round table session on trees and biodiversity (28 July 2021)
INQ 14	Applicant's response to Documents INQ 13 (29 July 2021)
INQ 15	Hyperlink to the map of alternative site locations
INQ 16	Applicant's suggested wording for draft conditions 26 and 28
INQ 17	Environment Agency's response to Document INQ 16
INQ 18	Long Ashton Heritage Study and Conservation Area Review (May 2019)
INQ 19	Applicant's agreement to the pre-commencement conditions
INQ 20	Land registration documents, submitted by the Applicant
INQ 21	Email confirming land ownership details
INQ 22	Executed Planning Obligation by Agreement (19 August 2021)

PLANS

A Application plans:

Site location plan (OS EXTRACT Rev B)
 Existing site layout (BRT-2016-S-101)
 Proposed Site Layout (BRT-2016-S-150 Rev G)
 Existing and Proposed Clanage Road Elevation (BRT-2016-P-500)
 Proposed Reception Building (BRT-2016-R-201)
 Proposed Amenity Building (BRT-2016-TB-301)
 Detailed Landscape Proposals (CSA/2751/107 Rev E)

ANNEX THREE: SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the plans detailed below except for the external materials specified for the reception building and the amenity block, the parking areas and the accessways and unless variations are agreed by the local planning authority in order to discharge other conditions attached to this decision:
 - Proposed Site Layout (BRT-2016-S-150 Rev G)
 - Existing and Proposed Clanage Road Elevations (BRT-2016-P-500)
 - Proposed Reception Building (BRT-2016-R-201)
 - Proposed Amenity Building (BRT-2016-TB-301)
 - Detailed Landscape Proposals (CSA/2751/107 Rev E)
3. Prior to the commencement of development, details of the external materials to be used in the construction of the reception building and amenity block and the materials to be used for the parking areas and the accessways shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
4. Prior to the commencement of development, details of the proposed wardens' accommodation building and its materials shall be submitted to and approved in writing by the local planning authority. The details shall include the flood resistance and resilience measures for the building as outlined in section 5.3 of the *Flood Risk Assessment by Stantec* (May 2020). The ground floor finished floor level shall be set at a minimum of 500mm above the adjacent finished ground level. The wardens' accommodation building shall thereafter be constructed in accordance with the approved details and the flood resistance and resilience measure shall be carried out as approved and retained for the lifetime of the development.
5. The use hereby permitted shall endure for the benefit only of and shall be carried on only by The Caravan and Motorhome Club.
6. The use hereby permitted shall not commence until the use of the existing caravan park site at Baltic Wharf, Bristol has ceased.
7. Prior to the commencement of development a Site Management Plan shall be submitted to and agreed in writing by the local planning authority and shall include:
 - Details of how vehicle arrivals, departures, parking, stopping and waiting will be controlled to minimise any impact on the adopted highway.
 - Details of how waste and recycling will be stored and collected from the site.
 - Details of how site users will be provided with information on sustainable travel options from the site, local areas of interest and site security advice.

- Details of site security, such as CCTV or alarms.

The approved Site Management Plan shall thereafter be implemented for the lifetime of the development.

8. The use hereby permitted shall not commence until a Nature Conservation Management Plan has been submitted to and approved in writing by the local planning authority and shall include:
 - A consideration of the features of interest.
 - The setting out of objectives.
 - Establishment of the management compartments and prescriptions.
 - Provision of a work schedule, including a ten year annual work plan.
 - Details of resourcing, including a financial budget.
 - Provision for ongoing monitoring.

The Nature Conservation Management Plan shall thereafter be implemented as approved.

9. The planting proposals hereby approved (Detailed Landscape Proposals CSA/2751/107 Rev E) shall be carried out no later than during the first planting season following the date when the development is first occupied or in accordance with a programme to be first agreed in writing with the local planning authority.

Any trees or plants that die, are removed or become seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees to an alternative size or species.

10. Prior to the commencement of development an assessment of the risks posed by any contamination shall be submitted to and approved in writing by the local planning authority. This assessment shall be undertaken by a suitably qualified contaminated land practitioner, in accordance with *British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice* and the Environment Agency's *Model Procedures for the Management of Land Contamination (CLR 11)* (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include:

- A survey of the extent, scale and nature of contamination.
- The potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems;

- archaeological sites and ancient monuments.

11. No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include:

- An appraisal of remediation options.
- Identification of the preferred option(s).
- The proposed remediation objectives and remediation criteria.
- A description and programme of the works to be undertaken, including the verification plan.

The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the *Environmental Protection Act 1990* in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

12. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

13. The use hereby permitted shall not commence until the means of vehicular access has been constructed and completed in accordance with the approved plans and the said means of vehicular access shall thereafter be retained for access purposes for the lifetime of the development. The access shall include suitable drainage provision within the curtilage of the site, in accordance with details to be first approved in writing by the local planning authority, to prevent the discharge of any surface water onto the adopted highway

14. The use hereby permitted shall not commence until the means of access for pedestrians and/or cyclists onto Clanage Road and onto PROW BCC/382/10, as shown on drawing no: BRT-201-6-S-150 Rev G, have been constructed in accordance with the approved plans and shall thereafter be retained for access purposes only.

15. The use hereby permitted shall not commence until visibility splays 2.4m back from the centre line of the vehicular access and extending 120m southbound and 142m northbound on the nearside carriageway edge have been provided. Nothing shall be erected, retained, planted and/or allowed to grow at or above a

height of 0.6m above the nearside carriageway level within the visibility splays. The visibility splays shall be maintained free of obstruction at all times for the lifetime of the development.

16. The use hereby permitted shall not commence until the 3 parking bays as shown on drawing no: BRT-201-6-S-150 Rev G, on the northern side of the vehicular access into the site, have been constructed. These parking bays shall be retained for parking purposes for the lifetime of the development.
17. Prior to the commencement of development details of a scheme to minimise the impact on bats roosting on the site shall be submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the recommendations in the *Updated Ecological Impact Assessment* by CSA Environmental (September 2020) and shall include the details of a secure structure suitable for non-breeding day roosting and its location, having regard to the effect of lighting within and outside the site. The development shall be carried out in accordance with the approved scheme.
18. Prior to the commencement of development, including site clearance and vegetation removal, a Precautionary Method of Working Statement shall be submitted to and approved in writing by the local planning authority. This shall be prepared by a suitably qualified ecologist. It shall detail the measures to be taken to protect nesting birds, legally protected reptiles, including slow-worms, and any other legally protected and priority species to include badgers and hedgehogs that use the site during the construction period. The development shall be carried out in accordance with the approved Precautionary Method of Working Statement and shall remain in place throughout the construction period.
19. The use hereby permitted shall not commence until details have been submitted to and approved in writing by the local planning authority of the bird boxes, bat boxes and hibernacula to be provided on the site in accordance with the *Updated Ecological Impact Assessment* by CSA Environmental (September 2020). The development shall be carried out in accordance with the approved details.
20. The use hereby permitted shall not commence until a Flood Warning and Evacuation Plan (FWEP) has been submitted to and approved in writing by the local planning authority. The FWEP shall:
 - Be in accordance with the principles contained in the Flood Warning and Emergency Plan (ref: 39560/4005 Revision F).
 - Require that, if the forecast tidal flood level at Avonmouth is predicted to exceed 8.35m AOD in any Flood Alert for the Tidal River Avon, all forthcoming bookings for the site are cancelled or diverted to alternative sites and the relevant websites are updated to reflect the flood warning.
 - Require evacuation procedures for the site to be carried out in any of the following circumstances:

- the forecast tidal flood level at Avonmouth is predicted to exceed 8.65m AOD in any Flood Alert for the Tidal River Avon;
- the forecast tidal flood level is predicted to exceed 8.21m AOD at Avonmouth in any Flood Warning for the Pill and Shirehampton area;
- any Flood Warning is issued for the Tidal River Avon from Sea Mills to Conham.

Every two years from the date of this decision the operator of the site shall review, update and submit the FEP to the local planning authority for approval in writing. The approved FEP shall remain operable for the lifetime of the development.

21. Prior to the commencement of development a Sustainable Drainage Strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include the detailed design, management and maintenance of surface water drainage for the site using sustainable drainage methods.

The Sustainable Drainage Strategy shall comply with the following design requirements:

- No soakaways, attenuation ponds or septic tanks as a means of storm or surface water disposal shall be constructed within 5m of Network Rail's boundary or at any point which could adversely affect the stability of its property and infrastructure.
- Storm or surface water shall not be discharged onto Network Rail property, culverts or drainage.
- Surface water flows or runoff shall be directed away from Network Rail property and infrastructure.

The drainage system shall be implemented in accordance with the approved Sustainable Drainage Strategy prior to the commencement of the use and shall be managed and maintained as approved for the lifetime of the development.

22. Prior to the commencement of development a scheme detailing flood resilience and resistance measures in respect of the amenity and reception buildings shall be submitted to and approved in writing by the local planning authority. This shall be in accordance with section 5.3 of the *Flood Risk Assessment* by Stantec (May 2020). It shall include that ground floor finished floor levels for the amenity and reception buildings be set at a minimum of 500mm above the levels shown on the proposed site layout (drawing no: BRT-2016-S-150 Rev G). The development shall be carried out in accordance with the approved scheme and the flood resilience and resistance measures shall be retained for the lifetime of the development.
23. Prior to the commencement of development, including site clearance and vegetation removal, protective fences shall be erected around the retained trees in the position and to the specification shown on the Tree Protection Plan (drawing no: BHA_688_02 Rev A) in the *Arboricultural Method Statement* by Barton Hyett Associates (December 2020). Once installed, photographs shall be

submitted to and approved in writing by the local planning authority in order to verify that the approved tree protection measures are in place.

The approved fences shall be in place before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall remain in place until all equipment, machinery and surplus materials have been removed from the site.

Within the fenced areas there shall be no scaffolding, no stockpiling of any materials or soil, no parking or operating of machinery, vehicles or other equipment, no changes to the soil level, no excavation of trenches, no site huts, no fires lit, no dumping of toxic chemicals and no retained trees shall be used for winching purposes.

If any retained tree is removed, uprooted, is destroyed or dies during the construction period, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

24. All works within the root protection area of retained trees shall follow the detailed methodology with the *Arboricultural Method Statement* by Barton Hyett Associates (December 2020). In the instance that major roots are found then further consultation with an arboriculturist will be required. Any changes to the specified methodology shall be agreed in writing by the local planning authority.
25. Prior to the commencement of development a site meeting shall be held with the Council and attended by the developer's arboricultural consultant and the designated site foreman to discuss details of the working procedures. A schedule of visits shall be drawn up to ensure the developer's arboriculturist is present during key stages of the development which include, but are not limited to:
 - Removal of tree protection fencing;
 - installation of no-dig pitches within the root protection area of trees T9, T11, T12 & T16

Copies of written site notes and/or reports detailing the results of site supervision and any necessary remedial works undertaken or required shall be submitted to and approved in writing by the local planning authority. The remedial works shall be carried out as approved prior to the commencement of the use of the site.

26. The use hereby permitted shall not commence until the lighting strategy has been implemented in accordance with the *Lighting Specification* (September 2020) and *Proposed Lighting Layout* (Drawing no: DM118) by Graham White Lighting Consultancy. The lighting strategy shall remain in place for the lifetime of the development.

27. No development shall commence until a Sustainability Statement has been submitted to and approved in writing by the local planning authority. The Sustainability Statement shall demonstrate how sustainable design principles and climate change adaptation measures have been incorporated into the design and construction of the buildings to secure a 20% reduction in carbon dioxide emissions. The Sustainability Statement shall be in general accordance with the measures outlined in the *Sustainability & Environmental Overview* submitted by the Caravan and Motorhome Club.

The development shall be carried out in accordance with the approved Sustainability Statement before the site is first occupied.

28. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall provide for:
- a 24-hour emergency contact number;
 - arrangements for the parking for site operatives and visitors;
 - provisions for the loading, unloading and storage of plant, waste and construction materials;
 - measures to prevent mud from being carried onto the highway;
 - arrangements for the supervision of large vehicles and loads turning into and out of the site;
 - methods of communicating the Construction Management Plan to staff, visitors and neighbouring businesses;
 - measures to re-use and recycle materials, and arrangements for the disposal of construction waste.

The approved Construction Management Plan shall be adhered to throughout the construction period.

End of conditions 1-28

ANNEX FOUR: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT (HRA)

INTRODUCTION

1. The *Conservation of Habitats and Species Regulations* 2017 (as amended) (the Habitats Regulations) and the *Conservation of Offshore Marine Habitats and Species Regulations* 2017 (as amended) (for plans and projects beyond UK territorial waters (12 nautical miles)) require that where a plan or project is likely to have a significant effect on a European site⁴⁵ or European marine site either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

PROJECT LOCATION

2. The application proposes a 62 pitch site for caravans and motorhomes to replace its existing 56 pitch site at Baltic Wharf, Bristol. It would also include accommodation for a warden couple, a reception building and amenity block. The site is on the eastern side of Clanage Road (A369) and is currently occupied by derelict buildings and hardstandings associated with its former use as a police dog and horse training centre. The southern area comprises former paddock grassland and a manège. There are various mature trees within the northern part of the site and a line of Leyland Cypress trees along the Clanage Road frontage.
3. To the west of the site is Ashton Court, which is a Grade II* Registered Park and Garden. It rises steeply up from Clanage Road and comprises parkland studded with trees and woodland. The site is close to the River Avon, which runs

¹ Regulation 8 of the Habitats Regulations 2017, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the '2019 Regulations'), defines European sites and European marine sites. European sites include: Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) already existing at 31 December 2020; any Site of Community Interest (SCI) placed on the EU Commission's list or any site proposed to the EU prior to 31 December 2020; and any SAC or SPA designated in the UK after 31 December 2020. European marine sites are defined as European sites consisting of marine areas. As a matter of policy, the Government also applies the Habitats Regulations procedures to possible SACs (pSACs), potential SPAs (pSPAs), Ramsar sites and proposed Ramsar sites, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

European sites in the UK will no longer form part of the EU's 'Natura 2000' ecological network. The 2019 Regulations have however created a 'national site network'. The national site network includes existing SACs and SPAs, and new SACs and SPAs designated under the Habitats Regulations 2017 (as amended), as noted above. Ramsar sites do not form part of the national site network, but all Ramsar sites are treated in the same way as SACs/SPA as a matter of policy.

through a wooded gorge to the north of the site. This joins Leigh Woods on the western side of the river to the north of Clifton Suspension Bridge.

4. The application site is not within any designated site but there are a number of European sites of importance to nature conservation within its vicinity. Their relative location and qualifying features are described below.
 - a) **The Avon Gorge Woodlands Special Area of Conservation (SAC)** is about 280m to the north. Its qualifying features include:
 - i. The Annex 1 habitat Tilio-Acerion forests of slopes, screes and ravines. It is important because of the high concentration of small-leaved lime, the presence of rare whitebeams, including two unique to the Avon Gorge, and other uncommon plants such as green hellebore.
 - ii. Other Annex 1 habitats present as a qualifying feature but not a primary reason for selection include semi-natural dry grasslands and scrubland facies on calcareous substrates.
 - b) **The Severn Estuary SAC** is about 5.9 km to the north-west. Its qualifying features include:
 - i. The Annex 1 habitats estuaries, mudflats and sandflats not covered by seawater at low tide and atlantic salt meadows (*Glauco-Puccinellietalia maritmae*).
 - ii. Other Annex 1 habitats present as a qualifying feature but not a primary reason for selection include sandbanks which are slightly covered by sea water all the time and reefs.
 - iii. Annex II species that are a primary reason for selection of this site include sea lamprey (*Petromyzon marinus*), river lamprey (*Lampetra fluviatilis*) and twaite shad (*Alosa fallax*).
 - c) **The Severn Estuary Special Protection Area (SPA)** is about 5.9 km to the north-west. It qualifies under:
 - i. Article 4.1 of the Birds Directive by supporting internationally important wintering population of Bewick's swan (*Cygnus columbianus bewickii*).
 - ii. Article 4.2 as a wetland of international importance by regularly supporting over 20,000 waterfowl.
 - iii. Article 4.2 by regularly supporting in winter internationally important numbers of the following 5 species of migratory waterfowl: white-front goose (*Anser albifrons albifrons*), shelduck (*Tadorna tadorna*), gadwall (*Anas strepera*), dunlin (*Calidris alpina*) and redshank (*Tringa tetanus*).
 - iv. The Severn Estuary also supports nationally important wintering populations of a further 10 species and is important for its waterfowl assemblage.
 - d) **The Severn Estuary Ramsar site** is about 5.9 km to the north-west. Its qualifying features include:

- i. Ramsar Criterion 1 – Due to the immense tidal range (the second-largest in the world) this affects both the physical environment and biological communities.
 - ii. Ramsar Criterion 3 – Due to unusual estuarine communities, reduced diversity and high productivity.
 - iii. Ramsar Criterion 4 – This site is important for the run of migratory fish between sea and river via the estuary. Species include salmon (*Salmo salar*), sea trout (*Salmo trutta*), sea lamprey (*Petromyzon marinus*), river lamprey (*Lampetra fluviatilis*), allis shad (*Alosa alosa*), twaite shad (*Alosa fallax*) and eel (*Anguilla Anguilla*). It is also of particular importance for migratory birds during spring and autumn.
 - iv. Ramsar Criterion 8 – The fish of the whole estuarine and river system is one of the most diverse in Britain, with over 110 species recorded. Salmon, sea lamprey, river lamprey, allis shad, twaite shad and eel use the Severn estuary as a key migration route to their spawning grounds in the many tributaries that flow into the estuary. The site is important as a feeding and nursery ground for many fish species, particularly allis shad and twaite shad, which feed on mysid shrimps in the salt wedge.
 - v. Ramsar Criterion 5 – Assemblages of international importance: Species with peak counts in winter: 70919 waterfowl
 - vi. Ramsar Criterion 6 – species/populations occurring at levels of international importance. Species with peak counts in winter: Tundra swan (*Cygnus columbianus bewickii*), Greater white-fronted goose (*Anser albifrons albifrons*) Common shelduck (*Tadorna tadorna*) Gadwall (*Anas strepera strepera*) Dunlin (*Calidris alpina alpina*) Common redshank (*Tringa totanus totanus*).
 - vii. Species/populations identified subsequent to designation for possible future consideration under criterion 6, Species regularly supporting during the breeding season, lesser black-backed gull (*Larus fuscus graellsii*) (breeding season), ringed plover (*Charadrius hiaticula*) (spring/autumn) and Eurasian teal (*Anas crecca*) and northern pintail (*Anas acuta*) (winter).
- e) **The North Somerset and Mendip Bats SAC** is about 12 km to the south-west. Its qualifying features include:
- i. The Annex 1 habitats include semi-natural dry grasslands and scrubland facies on calcareous substrates, as well as *Tilio-Acerion* forests of slopes, screes and ravines.
 - ii. Other Annex 1 habitats present as a qualifying feature but not a primary reason for selection, include caves not open to the public.
 - iii. Annex II species that are a primary reason for selection of this site are the lesser horseshoe bat (*Rhinolophus hipposideros*) and greater horseshoe bat (*Rhinolophus ferrumequinum*).

HRA IMPLICATIONS OF THE PROJECT

5. The likely impacts and impact pathways on each site are as follows:

a) **The Avon Gorge Woodlands SAC:**

- i. The site is in close proximity to the SAC and there are direct footpath links. The proposal could increase recreational pressure on the habitats forming qualifying features of the SAC.
- ii. Habitats sensitive to nitrogen deposition may be affected by the increase in traffic movement where they occur within 200m of a road. The site is on Clanage Road, which passes directly adjacent to the SAC some 300m north of the application site.

b) **The Severn Estuary SAC, SPA and RAMSAR:**

- i. The application site is about 5.9 km from the Severn Estuary sites. Recreational pressure is a known threat to their qualifying features. The HRA published in connection with the withdrawn *West of England Joint Spatial Plan* stated that, further to discussions with Natural England, development within 7km of these sites had most potential risk of generating damaging recreational pressure
- ii. Although road networks pass within 200m of the protected sites, the application site is sufficiently distant that any traffic associated with the development would have sufficiently diffused, so as to have no appreciable effect on traffic-derived nitrogen deposition at the European sites.
- iii. Although the application site is within the water catchment of the Severn Estuary, the proposals would not result in a significant increase of impermeable land cover.

c) **The North Somerset and Mendip Bats SAC:**

- i. The SAC lies about 12 km from the application site and therefore there would be no disturbance to key species or deterioration of habitats.
- ii. Should the application site be used for significant roosting, foraging or commuting activity by horseshoe bat populations connected with the SAC, the proposed development could, in the absence of mitigation, undermine the conservation interests of species forming qualifying features.

PART 1 - ASSESSMENT OF THE LIKELY SIGNIFICANT EFFECTS

6. **The Avon Gorge Woodlands SAC**

- a) It is unlikely that the development on its own could generate sufficient visitor pressure to undermine the conservation objectives of the SAC. The vehicular movement associated with the development would not be sufficient to meet the 1,000 average annual daily traffic screening threshold advocated by Natural England.
- b) The emerging *Bristol Local Plan Review Draft Policies and Development Allocations Document* envisages 33,500 new homes to be delivered in Bristol

by 2036. Whilst this is only a draft at present, the increase in population combined with that arising from the application proposal could potentially result in recreational pressure that would cause damage to the sensitive habitats of the SAC.

- c) There could also be an in-combination effect on air quality arising from increased traffic movements, which could exceed the 1,000 average annual daily traffic movements referred to above. However, the application development is a replacement for the existing facility at Baltic Wharf. The main route to the existing site from the M5 motorway is along Clanage Road, which passes close to the SAC. The net increase arising from the application proposal would be 6 pitches and this would generate an insignificant number of additional traffic movements when considering the in-combination effect.

7. **The Severn Estuary SAC, SPA and RAMSAR**

- a) It is unlikely that the development on its own could generate sufficient visitor pressure to undermine the conservation objectives of the protected sites.
- b) The emerging *Bristol Local Plan Review Draft Policies and Development Allocations Document* envisages 33,500 new homes to be delivered in Bristol by 2036. Whilst this is only a draft at present, the increase in population combined with that arising from the application proposal could potentially result in an increase in recreational pressure that would cause damage to the sensitive habitats of the protected sites.

8. **The North Somerset and Mendip Bats SAC**

- a) In the absence of mitigation, the disturbance and degradation of supporting habitats outside the SAC could undermine conservation objectives.

9. In summary the potential for likely significant effects would be as follows:

- a) **The Avon Gorge Woodlands SAC and the Severn Estuary SAC, SPA and RAMSAR site** – increased recreational pressure when considered in-combination with other plans and projects.
- b) **The North Somerset and Mendip Bats SAC** – impacts to functionally linked land when considered in isolation.

PART 2 – FINDINGS IN RELATION TO THE ADVERSE EFFECTS ON THE INTEGRITY OF THE PROTECTED SITES

The Avon Gorge Woodlands SAC

- 10. The proposal provides new overnight accommodation within about 280m of the SAC. Furthermore, the application site shares direct footpath links with the SAC with a walk of about 514m along a public right of way. It has therefore been concluded through screening that the proposed development has the potential to result in a minor increase in recreational pressure at the SAC. Although unlikely to be capable of generating sufficient pressure in isolation to undermine

the conservation objectives of the SAC, this could act in combination with wider projected residential growth (particularly in the Bristol urban centre) to produce a likely significant effect.

11. The proposed caravan and motorhome touring site is proposed specifically as a replacement for that existing at Baltic Wharf. This existing site also shares direct footpath links with the Avon Gorge Woodlands SAC and the walk is about 1.4 km along the Avon Gorge Trail public right of way. However, the application site is closer to the SAC and the proposal will result in a very minor increase in capacity. A suitably precautionary inference is therefore of a very minor increase in recreational access at the SAC above baseline conditions.
12. In respect of public access and disturbance, and specifically the threats these pose to the qualifying features of the SAC, the *Site Improvement Plan* for the SAC states as follows:

"The site suffers major pressures from public access. Most legal access isn't a problem and the main issues result from inappropriate and often illegal access, an example of which is the use of the steep side of the Gorge on the North Somerset side for downhill mountain biking. Other negative aspects of access ranges from overall visitor pressure to vandalism. Future close monitoring and security work is needed involving various parties, to ensure the site remains protected. 'Legal' or permitted access still needs close monitoring and engagement to ensure that no damage to sensitive SAC habitats occurs. There is increasing pressure to encourage more people onto the site to appreciate it. This could quite conceivably increase over the coming years due to increased interest and a desire to engage further. There are many opportunities to improve safe multi-user access to certain areas of both sides of the Gorge, and also further possibilities to link both sides together by promoted routes. The understanding of the National and European significance of the site through engagement, promotion and interpretation is key to its sustainable use. Clearly the SAC features should be at the forefront of all future public engagement and access decisions. Nitrogen deposition from dog fouling could lead to further specific local impacts."

13. In light of the above, the HRA of the withdrawn West of England Joint Spatial Plan determined that uncertainty remained over the likelihood for adverse effects on the integrity of the SAC, in relation to recreation pressures from the combined level of projected development. It was concluded, however, that adverse effects on integrity of this SAC from recreation pressure could be avoided. This is provided that the green infrastructure network promoted through the Plan was achieved; provided that consideration was given to additional recommendations for green infrastructure provision; and provided that developer contributions were used to help with management and monitoring actions to be agreed between Natural England and key delivery partners.

14. The Shadow HRA went on to provide a non-exhaustive list of measures that could make up a package of mitigation to address recreational pressures; both at the Avon Gorge Woodlands SAC and other European sites (including those at the Severn Estuary). These included (i) maximising the integration of open space at strategic development locations, (ii) use of Suitable Alternative Natural Greenspace (SANG) and (iii) a strategic approach to recreation mitigation through developer contributions, zones of influence and site management (including wardening and opportunities to improve education). The West of England authorities, including Bristol City Council, proposed to use a tailored approach incorporating the above measures, and through continued collaboration with Natural England and European site managers, to review and implement these mechanisms to inform local development plans.
15. In the case of Bristol, the *Site Allocations and Development Management Local Plan* is presently undergoing a review to set out how the City will meet the requirement for 33,500 new homes in Bristol by 2036. At the present time, no HRA has been published of the consultation draft policies and development allocations. However, in light of the foregoing in respect of the Joint Structure Plan, it is clear that a strategic package of mitigation will be necessary, and is achievable, to mitigate the adverse effects on the SAC that would otherwise result from residential development of this scale. While the details of the strategic mitigation cannot be known at the current time (due to the early stage of the Local Plan review) it is clear that mitigation will be implemented as required under the Habitats Regulations.

The Severn Estuary SAC, SPA and RAMSAR site

16. The *Site Improvement Plan* for the Severn Estuary SAC cites public access and recreation as a pressure currently impacting, or threatening the condition, of qualifying features at the sites. It states as follows:

"Public access and recreation (including third party activities) may have an impact on bird species sensitive to disturbance, causing displacement from feeding, roosting and moulting areas, and if severe could affect long term survival and population numbers and distributions within the Estuary. There are a wide range of recreational activities within the site (walking, dog walking, horse riding, biking, beach activities, angling, wildfowling, other shooting (e.g. clay pigeon), that may cause damage to habitats where pressure is high."
17. The HRA of the withdrawn West of England Joint Spatial Plan stated that, further to discussions with Natural England, development within 7km of the Severn Estuary sites (and other European sites around Bristol) had "most potential risk" of generating damaging recreational pressure. However, this catchment area was not based on any region-specific assessment or visitor survey data. Rather, the 7km figure was taken from the *Thames Basin Heaths Special Protection Area Delivery Framework*, which was itself based on visitor survey data for lowland heathland sites in the southeast of England. As a catchment for recreational visitors, the 7km distance from the SAC should therefore be interpreted with caution.

18. Visitor studies conducted in the Stroud District of the Severn Estuary designation in 2015/2016 represent a key component of the emerging evidence base on the likely effects of increased recreational pressure on the qualifying features of the Severn Estuary (Southgate and Colebourn, 2016). The majority of groups interviewed during surveys were visiting the area for dog walking or walking, in keeping with similar studies at the Solent, Exe Estuary and in north Kent. Given the relatively rural nature of the survey area, with low housing density, it was found that a relatively high proportion of groups interviewed had come from outside the District on day trips, or would regularly travel further to access points, relative to designations with a higher density of development in close proximity (such as the Thames Basin Heaths). The average distance travelled by local residents was 4.9km, whilst those from outside the local area travelled on average 28.9km. Dog walking was the most popular purpose for those living within 2km, with average distance travelled to access points of 4.4km. Visitors travelling by car lived on average 17.5km away from their access point. Travel distances for both walkers and drivers were higher on average for those reported for the Solent, Exe Estuary and in north Kent.
19. With regard to the proposed development, the application site is about 5.9 km linear distance from the Severn Estuary designations at their closest point. The shortest walking routes to the closest points of the designations are about 8.7 km via the River Avon Trail, or about 9.5km via the Severn Way. On this basis, given that a return route (reaching only the closest boundary of the Estuary designations) would be a minimum of about 17.4 km, it is clear that site occupiers would be unlikely to visit the Estuary on foot from the Site.
20. It is likely that a number of site occupiers desiring a coastal walk would travel by car to the closest or most accessible points of access to the Estuary, as is equally likely to be the case for users of the existing touring site at Baltic Wharf, which the proposals are to replace. Given that the proposals will result in a net increase of only six pitches, it can be concluded that there would be a negligible increase in public access, and no appreciable effect on recreational pressures acting on the qualifying features of the Severn Estuary designations.
21. Furthermore, as with the Avon Gorge Woodlands, the HRA of the withdrawn West of England JSP determined that adverse effects on the integrity of the Severn Estuary sites, in relation to projected residential development in the surrounding districts, could be avoided through the implementation of strategic mitigation measures. In the case of the Severn Estuary sites, this was envisaged to entail the use of developer contributions within defined zones of influence to help implementation of a Recreation and Avoidance Mitigation Strategy, to be agreed between Natural England and key delivery partners. As such a scheme will be required in order to facilitate the projected levels of residential growth within Bristol and the surrounding districts, in-combination effects will be avoided.

The North Somerset and Mendip Bats SAC

22. The SAC is designated primarily for the protection of internationally important populations of greater and lesser horseshoe bats. The SAC was designated on the basis of the size of the populations represented (3% of the UK greater horseshoe bat population) and its good conservation of structure and function, having both maternity and hibernation roost sites. This SAC contains an exceptional range of the sites used by the populations, comprising two maternity sites in lowland north Somerset and a variety of cave and mine hibernation sites in the Mendip Hills. The limestone caves of the Mendips also provide a range of important hibernation sites for lesser horseshoes.
23. For spatial planning, it is crucial to understand that the SAC designation applies only to a very small element of the habitats required to support the horseshoe bat populations. Radio tracking studies have demonstrated that the species populations of the SAC utilise habitats well beyond the confines of the designation for foraging and dispersal between roost sites. Furthermore, not all roost sites used by the SAC bat populations occur within the spatial designation of the SAC. In summary, supporting habitats in the landscapes surrounding the designated parcels are vital to supporting the horseshoe bat populations associated with the SAC.
24. To facilitate decision making, guidance provided by North Somerset Council (2018) uses the best available data to map a Bat Consultation Zone and Juvenile Sustenance Zones of the SAC bats. The application site lies outside the Juvenile Subsistence Zones, but inside Band C of the Bat Consultation Zone. The applicable band appears to relate to subsidiary roosts within the Avon Gorge Woodlands.

Bat Activity Surveys

25. The Applicant's ecology advisor (CSA Environmental) have completed automated static monitoring surveys of baseline bat activity at the application site, with findings reported in the accompanying Bat Survey Report (**Document CD 1.29**)
26. Initially, three seasonal monitoring periods were programmed for May, July and September 2020. However, upon identification of horseshoe activity on-site, a supplementary monitoring period was programmed for August 2020. In addition, three bat roost surveys (each utilising five surveyors) were undertaken of on-site buildings between May and July 2020. This updated a preliminary roost assessment and roost survey of the same buildings in 2016, prior to the application site being vacated by the Avon and Somerset Constabulary Mounted Police and Dog Section.
27. Bat activity surveys at the site have confirmed the presence of both horseshoe species associated with the SAC. In each case activity levels were low, particularly for greater horseshoe bats. In the south-west of the site, lesser horseshoe bats were recorded 78 times over the 19 monitoring nights, with a

further 15 contacts recorded in the north-east. At the latter location this species was absent on the majority of nights (12 out of 20 nights monitored), while in the south-west they were recorded on 14 of the 19 nights. The frequency, regularity and timing of lesser horseshoe contacts suggest that these bats are using other areas early in the night and using the site in low numbers, later in the night for occasional foraging and general dispersal (as distinct from commuting). Fifty one contacts of greater horseshoe were recorded in the north-east of the site (over 13 of the 20 monitoring nights) and six in the south-west (over four of the 19 monitoring nights). Again, the timing and irregularity of contacts indicate that greater horseshoe bat activity represents individual bats dispersing through the landscape and is not taken to represent commuting behaviour.

28. Preliminary roost assessments and bat roost surveys have confirmed the presence of two lesser horseshoe night roosts at the application site, and two further non-breeding day roosts within on-site buildings. Each have been assessed as being under occasional/opportunistic use by individual or low numbers of bats (with three of the four identified only through the presence of droppings and DNA analysis).
29. The findings of surveys carried out at the application site indicate that, in the absence of mitigation, re-development of the site has the potential to result in the degradation of habitat used by a small number of greater and lesser horseshoe bats for occasional foraging and dispersal. There is also the potential for the permanent destruction of lesser horseshoe roost sites, used on an occasional/opportunistic basis for non-breeding/hibernating day and night roosting.
30. It is noteworthy that all roosts at the site are known to have been established recently, since the buildings were only vacated in 2016; the same year in which negative surveys were conducted.
31. In order to mitigate the effect of the loss of these roosts on the local bat populations, it is proposed that a permanent, dedicated and purpose-built roost structure be erected in the unlit northern corner of the application site, as far as possible from the proposed caravan pitches. This structure would be built of brick, and of a specification to be agreed with Natural England under the terms of a statutory EPS derogation licence. Subject to this provision, it is unlikely that the loss of the occasional non-breeding/hibernating lesser horseshoe roosts within the existing vacant buildings would adversely affect the integrity of the SAC population.
32. Similarly, it should be noted that the former use of the site resulted in far greater disturbance than at the current time, with extensive use of flood lighting in and around the central buildings and car park to the north. Bat activity has likely therefore increased markedly since the site became vacant in 2016. Notwithstanding this, it is important that the proposed re-development does not

inhibit the dispersal of horseshoe bats across the site and through the immediate landscape.

33. External lighting proposals accompany the planning application. Modelling prepared in September 2020 by Graham White Lighting Consultancy represents the spatial illuminance of the proposed lighting. This demonstrates that, particularly in the case of the widespread low-level lights, illuminance very quickly falls below 0.5 lux. The main lighting impact, as would be expected, is clustered around the site entrance and proposed reception building/toilet block. This localised increase is significant by comparison to the existing conditions, with the site being largely unlit due to being vacant. However, this central area and the wider site were extensively flood lit during its former use. The proposed lighting therefore represents a betterment in ecological terms relative to the former use. The modelling outputs have been shared in consultation with the Council's Nature Conservation Officer, who is satisfied that light levels would appear satisfactory and could be controlled by a planning condition (**Documents CD 2.11; CD 2.12; CD 2.13; CD 4.08**).
34. Although the site has been vacant and become overgrown in recent years, it is considered that the proposed Landscape Strategy represents an enhancement of suitable bat habitat relative to the former site use, where land cover was almost exclusively dominated by flood-lit buildings, hardstanding and grazed paddock. The proposed landscape strategy would incorporate 46 new trees and replace the conifer trees along Clanage Road with a native species-rich hedgerow. Species-rich hedgerow would also be planted to strengthen the poorly vegetated southern boundary and improve east-west connectivity for bats at this location. Thicket planting would be planted along the north-western boundary of the Site and a wildflower pocket would be sown along the western boundary, further increasing habitat diversity at the site and supporting the invertebrate prey on which bats feed.

Natural England Response

35. Natural England's response to the Council, dated 5 October 2020, is as follows:

"The assessment of potential effects of the proposed development on Avon Gorge Woodlands Special Area of Conservation (SAC); Severn Estuary Special Protection Area (SPA), SAC, Ramsar site; and North Somerset & Mendip Bats SAC appears robust and, provided the mitigation measures it identifies are appropriately secured in any permission given, Natural England considers the HRA/AA conclusion that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of the European sites in question is reasonable.

Natural England notes that the HRA has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA. Our advice is based on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority". (Document CD 4.17).

36. The Secretary of State will note that there are various planning conditions recommended in respect of ecology. Of particular relevance in relation to the bats are conditions 17, 19 and 26, which respectively relate to provision of a secure structure where bats can roost, provision of bat boxes and implementation of the submitted lighting strategy.

CONCLUSIONS ON HRA

37. The proposed development has the potential to result in very minor increases in public access at the Avon Gorge Woodlands SAC, as well as the Severn Estuary SAC, SPA and Ramsar site. In addition, it has the potential to degrade and destroy habitats used by horseshoe bat populations associated with the North Somerset and Mendip Bats SAC.
38. In such circumstances the Secretary of State will have to undertake an Appropriate Assessment of the implications of the proposed development on the qualifying features of the European sites, in light of their published conservation objectives if he wishes to grant planning permission.
39. The proposal would replace the Applicant's existing site at Baltic Wharf. Condition 6 requires that the two sites cannot operate together. There would be an increase of six pitches and therefore no likely significant effects in isolation on the integrity of the Avon Gorge Woodlands SAC or the Severn Estuary SAC, SPA or RAMSAR site. The likely significant effects associated with projected residential development will be avoided through a programme of strategic mitigation. It can therefore also be concluded that the proposed development would have no adverse effect in-combination with other plans and projects on the integrity of the aforementioned sites.
40. Baseline survey work has been undertaken to quantify and characterise the activity of horseshoe and other bat species at the application site, as has lux modelling of the proposed lighting strategy. On the basis of the evidence available and the proposed mitigation measures outlined here-in, it may be concluded that there would be no adverse effect on the integrity of the North Somerset and Mendip Bats SAC as a result of the proposed development



Department for Levelling Up, Housing & Communities

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.