

Statement of Case on behalf of the Appellant

**Department of Work and Pensions Dcs Distribution Centre, Manchester Road, Heywood, OL10
2PZ**

On behalf of Trammell Crow Company Logistics (Heywood) Limited

Redevelopment of the site comprising the demolition of all existing logistics units and erection of new storage and distribution units (Use Class B8) with ancillary office space, vehicular, pedestrian and cycle access, external yards, parking, landscaping and associated works

Local Authority Reference 22/01410/FUL

HSP/JGI/JFAR/U0019315 – June 2024

Prepared by: Harry Spawton (Partner) BA (Hons) BTP MRTPI

Authors' Qualifications

The author of this evidence is Harry Spawton. I hold a Bachelor of Arts in Planning Studies and I have a Bachelor of Town Planning from Sheffield Hallam University. I am a Chartered Town Planner being a Member of the Royal Town Planning Institute. I am a Partner in the national firm of Gerald Eve. I have over 24 years' planning experience during which time I have practised in both the public and private sectors. My professional work has been concerned with planning matters, in particular development control and local plan preparation.

My firm and I personally have advised developers, landowners and local authorities on many aspects of planning, including, for example, planning appeals and public inquiries throughout England with respect to commercial and residential development. I am familiar with Heywood generally and the site in particular. I have inspected the site a number of times, as well as the surrounding area.

Endorsements

My evidence for this appeal has been prepared in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinion.

Signed:



Harry Spawton BA (Hons) BTP MRTPI

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1 Introduction

- 1.1 This Statement of Case (“SOC”) has been prepared by Gerald Eve LLP (“GE”) in support of a planning appeal submitted on behalf of Trammell Crow Company Logistics (Heywood) Limited (“the Appellant”) against the decision of Rochdale Borough Council (“the Council”) to refuse planning permission in respect of a full planning application (reference: 22/01410/FUL) for the provision of new storage and distribution units (“the Proposal”) at Department of Work and Pensions Dcs Distribution Centre, Manchester Road, Heywood, OL10 2PZ (“the Site”).
- 1.2 The appeal is submitted in accordance with Section 78 of the Town and Country Planning Act 1990 (as amended).
- 1.3 A site location plan is attached at **Appendix A**.
- 1.4 The description of development that accompanied the full planning application, and which remains current, states:

“Redevelopment of the site comprising the demolition of all existing units and erection of new storage and distribution units (Use Class B8) with ancillary office space, vehicular, pedestrian and cycle access, external yards, parking, landscaping and associated works”.

- 1.5 The Council’s decision to refuse planning permission was taken by Members of the Council’s Planning and Licensing Committee (“Planning Committee”) during its meeting on Thursday, 21 December 2023.
- 1.6 The Planning Officer’s Report to the Planning Committee (**Appendix B**) recommended that planning permission should be granted for the Proposal subject to planning conditions (listed on pages 93-103 of the Officer’s Report).
- 1.7 The single reason for refusing planning permission was given as follows:

“By virtue of its size, scale and form, the proposed development is not well designed and would represent an overdevelopment of the site which is not compatible with surrounding land uses due to the detrimental and unacceptable impacts on the noise environment and the visual amenity of surrounding residents, with particular regard to future residents adjacent the site. Due to this overbearing and unacceptable relationship with surrounding land uses the

application fails to accord with Policy DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.”

1.8 The decision notice was dated and issued to the Appellant on 22 December 2023. This SOC sets out the Appellant’s full case as required under the relevant regulations and has been written in anticipation that the most appropriate mode of appeal should be that of a public inquiry for reasons which are set out at Section 10 of this SOC. It is also written in anticipation that a Statement of Common Ground (“SOCG”) will be agreed with the Council in due course and a draft has been submitted with the appeal.

1.9 This SOC considers the relevant matters to the Appellant’s appeal in the following sections:

- **The Site** – a brief description of Site and its wider surroundings.
- **Background** – a brief overview of the Site’s planning history and the chronology of events, from the Appellant’s acquisition of the Site through to the planning application determination.
- **The Proposal** – confirmation of the proposed development to be considered during the appeal and the benefits of the development coming forward.
- **Post-decision Matters** – a summary of additional work carried out following the Council’s decision.
- **Reason for Refusal** – a summary of the Council’s reason for refusal.
- **Legislative and Policy Context** – confirmation of the relevant planning policy framework for consideration during the appeal.
- **The Appellant’s Case** – a summary of the key arguments for consideration in the Appellant’s case.
- **Third-Party Objections** – a summary of how the Appellant has responded to third party objections to the Proposal.
- **Appeal Procedure** – justification for why the appeal should proceed as an Inquiry.
- **Conclusion**

2 The Site

Site Description

- 2.1 The Site comprises the Heywood Stores, located on Manchester Road, Heywood. It is a brownfield site extending approximately 11.1 ha and comprises nine warehouses (one of which is sub-divided) and four additional buildings (including plant and pumphouse) which have a total collective floor area of 42,304 sqm (GEA) as set out in the submitted Measured Survey prepared by Hollis at **Appendix C**.
- 2.2 A full schedule of the existing and proposed areas has been prepared by GE and is provided at **Appendix D**. It is the Appellant's intention to agree the area schedule with the Council in the SOCG.
- 2.3 Alongside the existing buildings, the Site contains a network of hard surfaced roads and paths used for circulation around the Site and access to the buildings, alongside other areas of hardstanding used for parking and servicing purposes.
- 2.4 The Site was originally built as an RAF maintenance facility but has historically been used for archive storage by the Department of Work and Pension (DWP). There are no restrictions on the number of vehicle movements that could be undertaken each day, the extent of potential height and area of any outside storage, no limits on hours of operation, external lighting, and no requirement to provide or maintain any noise attenuation or landscaping or visual screening to help mitigate against any future use of the site.
- 2.5 Whilst the existing buildings on Site are still functional and capable of use, they are approaching the end of their useful life and require considerable investment to bring them up to modern standards of energy efficiency.
- 2.6 The Site is in an accessible location between Rochdale and Bury and is less than 30 minutes' drive from Manchester City Centre and minutes from the J19 of the M62, which links the site to three main motorways (M60, M62, M66).
- 2.7 From a commercial perspective, this places the Site in an extremely suitable location for logistics development as it is easily accessible to and from the Manchester conurbation and the wider North-West market. The Yorkshire market is also easily accessible with Leeds/Bradford conurbations circa twenty-five miles to the east.

- 2.8 The Site is within Flood Zone 1 and has limited areas of medium and high surface water.
- 2.9 The Site is not within a conservation area and does not contain or affect the setting of any listed buildings. The Site also does not contain any buildings deemed to be a non-designated heritage asset.
- 2.10 The Site is not covered by any specific designations, allocations or associations within the Development Plan other than falling within the defined urban area in the Unitary Development Plan; however, the land has been used as employment land for a long period of time and its character and appearance is established as such.
- 2.11 Rochdale Core Strategy Policy E2 'Increasing Jobs and Prosperity' is clear that existing employment sites (both in and outside existing employment zones) most suited to employment should be protected for continued employment use, unless it can be demonstrated that other non-employment uses would be more appropriate.

Surrounding Development

- 2.12 The Site's wider surroundings include a mixture of housing, a secondary school, industrial estates (including commercial occupiers such as Argos, L'Oreal and Yearsley's Group) and development parcels associated with the South Heywood Masterplan ("the Russell Homes Scheme") application reference 16/01399/HYBR.
- 2.13 The adjoining Russell Homes Scheme was granted outline planning permission in March 2020 for a mixed-use development, including outline consent for up to 1,000 new homes, employment uses (B2/B8) and a new primary school. A copy of the Location Plan, Illustrative Masterplan and the latest approved Land Use and Heights Parameter Plan is included within the Russell Homes Summary provided at **Appendix E**.
- 2.14 Appendix E also contains details of the various landownerships across the Russell Homes Scheme, as the majority of this land is owned by third parties including a parcel owned by the Council.
- 2.15 At the time the Russell Homes Scheme was granted planning permission, the Site was actively used for storage and distribution (Use Class B8) by the DWP. This came to an end in anticipation of the grant of planning permission following positive interaction with officers at the Council. The prospects of this use resuming in some or all of the existing buildings in order to fund ongoing holding costs is being actively pursued at the time of this SOC.

- 2.16 The Parameters Plan for the Russell Homes Scheme shows that residential development will be located on land to the north and west of the Appeal Site. A search of the Council's online Planning Register confirms that no reserved matters applications have yet been submitted for residential development on land adjacent to the Site.
- 2.17 The employment development to be delivered as part of the Russell Homes Scheme will be located on land circa 230m to the northwest of the Site and this will be referred to in this Statement as the 'employment zone'. The Parameters Plan shows that the employment zone has outline planning permission for up to 135,460 sqm (GIA) of employment development (Use Class B2 and B8).
- 2.18 The Parameters Plan shows that the employment zone is split into four sub-zones where different height restrictions will apply:
- Maximum height of 23m above FFL for buildings in the northwestern part of the commercial zone furthest away from the Site. A non-material amendment application (ref: 22/00500/ANM) was approved on 10 June 2022 to allow the employment units in this area to be increased in height from 20m above FFL to 23m above FFL.
 - Maximum height of 21m above FFL – in the centre of the employment zone.
 - Maximum height of 17m above FFL – at the southeast of the employment zone.
 - Maximum height of 19m above FFL – at the south of the employment zone.
- 2.19 For reference the maximum heights of the Proposal are lower than the maximum height parameters of the Russell Homes Scheme:
- Unit 1 and 2 - maximum height of 15.5m to the ridge above FFL.
 - Unit 3 – maximum height of 17.6m to the ridge above FFL.
- 2.20 The employment zone of the Russell Homes Scheme is also located in close proximity to the proposed residential development located at the northwest of the Parameters Plan. The proposed residential development is only separated from the employment zone by the new Queen Elizabeth II Way. Moreover, the proposed residential land is sandwiched between the existing employment uses at the Appeal Site and further existing employment within the industrial estate to the north.
- 2.21 At no point within the application information, nor its consideration by the Council, was it suggested that there was a fundamental incompatibility between those two land uses (residential

and employment). This will be the subject of examination at the public inquiry, if considered appropriate by the Inspector, and relevant evidence may need to be given on oath.

- 2.22 Further detail on the Russell Homes Scheme and its relationship with this Proposal is provided at **Appendix E.**

3 Background

The Appellant

- 3.1 The Appellant, Trammell Crow Company (TCC), is a leading global commercial real estate developer and a wholly owned subsidiary of CBRE Group. The Appellant employs 700 professionals in twenty-seven major cities throughout the United States and Europe. The company serves users of and investors in office, industrial and logistics, healthcare, life sciences and mixed-use projects.
- 3.2 The Appellant acquired the Site in May 2022. This marked the Appellant's group's third investment in the UK following the delivery of successful industrial schemes in Sheffield totalling approximately 42,340 sqm and Milton Keynes totalling approximately 31,587 sqm.
- 3.3 When the Appellant acquired the Site, it had already received positive pre-application feedback from the Council (sought by the Site's previous landowner) which confirmed that redeveloping the Site for further employment uses was acceptable in principle, subject to addressing detailed design and technical matters. That pre-application advice, dated 24 November 2021, is attached at **Appendix F**.
- 3.4 The Site also benefits from a Certificate of Lawfulness (21/01298/CPE) issued by the Council on 14 December 2021 (PREAPP/00104/21), confirming that the Site's lawful use is for Use Class B8 storage and distribution (**Appendix G**).

Pre-Application Discussions

- 3.5 In line with best practice, the Appellant took a proactive approach to pre-application engagement with the Council to discuss their proposals.
- 3.6 The Appellant submitted a formal request for pre-application advice on 29 March 2022 (PREAPP/00042/22) and an initial pre-application meeting was held with the Council's Planning Officer on 4 April 2022.
- 3.7 The Planning Officer provided initial pre-application feedback via email on 8 April 2022 which reaffirmed the Council's earlier pre-application advice that redevelopment of the Site for redevelopment to provide further employment uses was acceptable in principle.
- 3.8 A series of further pre-application meetings were held with the Planning Officer over the course of six months to inform the detailed design of the Proposal. During pre-application discussions, the

Planning Officer highlighted several areas that the Proposal would need to address. These included, but are not limited to:

- Ensuring that adequate acoustic mitigation is provided.
- Ensuring that there is adequate separation distance between the Proposal and adjacent residents.
- Ensuring that building heights would not result in unacceptable impacts.
- Ensuring that adequate landscaping is provided.

3.9 The Appellant made several amendments to the Proposal to address the above feedback prior to submission of the planning application. This included:

- Moving Units 1 and 2 further away from the northern boundary by 3m to match the footprint of the existing units (therefore not reducing the separation distance)
- Developing enhanced acoustic mitigation in the form of a series of acoustic barriers (3-5m high) that are proposed as green wall treatments and will contribute to BNG.
- a detailed landscaping scheme involving the retention of existing trees and substantial new tree and hedgerow planting along all boundaries.

3.10 The Appellant also submitted additional technical information such as 3D models, additional viewpoints, a Daylight and Sunlight Note and a draft Noise Impact Assessment to support the Proposal's design.

EIA Screening Opinion

3.11 Whilst pre-application discussions with the Planning Officer were ongoing, the Appellant submitted a formal screening request to the Council in June 2022 to understand whether the Proposal would comprise Environmental Impact Assessment (EIA) development.

3.12 The Proposal falls under the definition of 'Industrial Estate Development Projects' as set out under Schedule 2, Class 10 (a) of the EIA Regulations (2017) and exceeds the applicable thresholds (i.e. the site area is greater than 5 ha).

3.13 The Council formally issued its screening opinion on 14 October 2022 confirming that the Proposal, whether alone or in cumulation with the existing and proposed development, would be unlikely to give rise to significant effects on the environment and an EIA was therefore not required.

3.14 A copy of the screening opinion is attached at **Appendix H**.

Planning Submission

3.15 The planning application was submitted by GE on behalf of the Appellant on 1 November 2022 (ref: 22/01410/FUL).

3.16 During the determination period a series of further amendments were made to the Proposal in negotiation with the Planning Officer. This included:

- Reducing Unit 3 in length to the south by a total of 13.05m from the original scheme to move further away from future residential development.
- Reducing the height of Unit 3 by 3.5m in total.
- Incorporating a 5m high landscape bund and subsequent amendments to its width and length.
- Adding additional landscaping to the 5m high bund to increase screening.
- Adding an additional 2m high retaining wall to the south of the bund, in order to increase the overall height of the screening.
- Altering the orientation of Unit 3 by 1 degree, thereby moving the unit further away from the future residential adjacent to the western boundary.
- Reinforcing the landscaping buffer to the north of Units 1 and 2 and adding an additional line of trees to the north.

3.17 Over the course of the application, several comments were submitted by local residents. Further detail on this is provided in Section 9 'Third Party Objections'.

3.18 Various comments on a range of issues were raised over time by a third-party objector, Russell Homes, who, we understand from the Council, submitted a total of nineteen objections throughout the application process. As explained in Section 2, Russell Homes is a neighbouring landowner with land interests abutting the Site.

- 3.19 Russell Homes were at all times professionally represented by specialist consultants but chose to repeatedly make late representations to the application when it was presented to committee in 2023, resulting in deferral of its consideration by members on two separate occasions.
- 3.20 Detail of the objections submitted by Russell Homes is included in the subsection below alongside Sections 8 and 9 of this Statement.
- 3.21 In addition, an accurate summary of all objections received from Russell Homes to date is provided in the Additional Commentary and Additional Commentary Part II Sections of the Officers Report (paragraphs 91 – 205).

Planning Committees

Planning Committee 27 September 2023

- 3.22 The planning application was due to be considered at Planning Committee on 27 September 2023 with a recommendation for approval subject to conditions (Officer's Report at **Appendix I**).
- 3.23 Following a suite of late objections soon after publication of the committee report, the Planning Officer changed the recommendation to 'deferred' whilst the contents of the objections were considered.
- 3.24 The late objections were submitted by Russell Homes and comprised a letter dated 27 September 2023 and a supporting letter from JLL dated 25 September 2023.
- 3.25 The Appellant submitted its response to the Russell Homes objection in the form of a letter prepared by Taylor Wessing dated 20 October 2023 (**Appendix J**).
- 3.26 Following review of the submitted information, the Planning Officer was satisfied that all matters included in the objection had been addressed in their Report to Planning Committee.

Planning Committee 23 November 2023

- 3.27 The planning application was due to be considered at the next Planning Committee on the 23 November 2023 with a recommendation for approval but was deferred again due to various late representations submitted by Russell Homes on the evening prior to the Planning Committee on 22 November 2022 (**Officer's Report at Appendix K**).

- 3.28 The Russell Homes objections for the first time included a detailed viability assessment prepared by Knight Frank which asserted that the Proposal would negatively impact sales values of the proposed houses in the Russell Homes Scheme.
- 3.29 The Council received independent legal advice in relation to the objections and instructed Continuum to undertake an Independent Viability Assessment, which is appended as a Supplementary Report to the Officer's Report (**Appendix L**).
- 3.30 Following receipt of this advice, which concluded that the Russell Homes' objection has not been robustly demonstrated and that there is a lack of a detailed evidence base that would be required for a Planning Practice Guidance Compliant Viability Assessment, the Planning Officer was satisfied that all matters included in the Russell Homes objection had been addressed in their Report to Committee. This is set out in the 'Additional Commentary and Additional Commentary Part II' section of the Officer's Report (paragraphs 165 – 205).

Planning Committee 21 December 2023

- 3.31 The planning application was considered at the Planning Committee on 21 December 2023. The application had no objections from statutory and non-statutory consultees in relation to all technical matters (refer to page 27 of the Officer's Report) and had a recommendation for approval following the series of comprehensive reviews.
- 3.32 The Council's decision to refuse planning permission for the Proposal was taken by Members of the Council's Planning Committee, against Planning Officer advice, for the above quoted reason for refusal, which appears to place reliance upon the repeated objections of Russell Homes, despite the clear recommendation of officers.
- 3.33 The Appellant's Case against the reason for refusal is set out in **Section 8** of this Statement.

4 The Proposal

Summary of the Proposal

- 4.1 The Proposal comprises the demolition of the existing warehouse buildings and associated site clearance, and the erection of three modern storage and distribution units (Use Class B8).
- 4.2 The three units will be predominantly dark grey, with light grey, light green and dark blue horizontal panelling to visually break up the massing.
- 4.3 The three units are contained within two separate buildings, with associated alterations and improvements to infrastructure including an enhanced site access, service yards and car parking areas, the provision of landscaping including tree planting, wildflower meadows, Sustainable Urban Drainage (SUDs) ponds and associated works.
- 4.4 Units 1 and 2 would be semi-detached (Unit 1 to the east, Unit 2 to the west). The building would measure 117m in length and 71m in width, with additional single storey offices to the east and west elevations measuring approximately 36m in length and 12m in depth. The ground to eaves height would be 12m (+141.100 AOD) and 15.5m to the ridge (+144.650 AOD).
- 4.5 Unit 3 would measure 280m in length and 116m in width. The ground to eaves height would be 16.3m (+145.800 AOD) and 17.6m to the ridge (+147.100 AOD). The main office is to be accessed via an external link bridge located at first floor level.
- 4.6 The Proposed Site Plan submitted with the application (ref. S2-P13) shows that the proposed buildings would result in a total GEA of 45,393 sqm of distribution space (44,637 sqm GIA), which includes ancillary office space.
- 4.7 The total floorspace (GEA) of the existing units is 42,304 sqm GEA (41,628.3 sqm GIA) as confirmed in the Existing Area Schedule (**Appendix D**). The Proposal therefore leads to a total uplift in floorspace (GEA) of +3,089 sqm i.e. a 7% increase in floorspace compared to the existing buildings.

Benefits of the Proposal

- 4.8 The Proposal will optimise and make best use of an existing brownfield site in accordance with National Planning Policy.

- 4.9 Whilst the existing units on Site are still functional and capable of use, they are approaching the end of their useful life and would require considerable investment to bring them up to modern standards of energy efficiency.
- 4.10 In their current format the existing units do not appeal to the entire market, especially modern occupiers looking for a long-term commitment. This is due their floorplate sizes, loading arrangements and eaves heights. This is explained in the Marketing Opinion prepared by Jason Print, Partner in Industrial Agency at GE during the course of the planning application (**Appendix M**). The existing buildings would inevitably command much lower rents in the market.
- 4.11 Mr Print has prepared an additional report for the purposes of this appeal which summarises the current industrial market context (**Appendix N**). The report explains that there is good demand across both the national and north-west markets, for industrial property including demand for speculatively developed units, but in contrast there is a low supply of modern industrial units to meet the demand.
- 4.12 A search of units with comparable floor sizes to each of the three proposed units proposed was undertaken. It identified that there are only two units in a 10-mile radius that are comparable to Unit 3 and one of which is under offer, whilst there is strong interest in the second.
- 4.13 There are only six units in a 10-mile radius of the Site which are comparable to Units 1 and 2, and two of these are under offer, whilst one is in poor condition.
- 4.14 The shortfall in existing supply is recognised in Places for Everyone, with paragraph 6.34 stating that the existing supply of industrial and warehousing sites is insufficient to meet the overall identified need planned.
- 4.15 The Proposal has therefore been designed to meet modern commercial requirements, using energy efficient and sustainable materials resulting in a sleek and contemporary design. It will have improved boundary treatments in the form of fencing, acoustic mitigation, and significant levels of new landscaping. The landscaping will include a landscaped bund to the south of Unit 3, substantial tree planting, including reinforced tree planting along all boundaries as shown in the submitted Landscape Masterplan.
- 4.16 The above measures will improve the existing situation at the Site for existing residents adjacent to the Site, as there are currently limited boundary treatments in place, meaning that the existing

units are clearly visible from some of the neighbouring properties to the north of Units 1 and 2 along Bader Drive and White House Close.

- 4.17 The Proposal will deliver a substantial net gain in biodiversity in the form of +21.74% in Habitat units and +34.11% in hedgerow units, which is far in excess of current planning policy requirements.
- 4.18 The Proposal will provide a betterment in relation to surface water flood risk on the site through the use of site-specific drainage strategy.
- 4.19 The Proposal will offer EV charging in the form of 21 live spaces and currently meets BREEAM 'Very Good', however the Appellant is seeking to agree to a planning condition to meet BREEAM Excellent in order to comply with the recently adopted Places for Everyone (see section 5). This could be achieved through the incorporation of additional PV panels.
- 4.20 The Proposal will result in significant socio-economic benefits which are detailed in the Socio-Economic Statement prepared by Hatch, which was submitted with the planning application. These benefits are summarised below.
- 4.21 Construction activity associated with the Proposal is estimated to generate demand for up to 390 workers over a 13-month building period. This will provide local residents working in the construction sector to secure employment on and off site and will generate revenue for businesses supplying directly and indirectly to the development.
- 4.22 Once completed and fully occupied, the Proposal could deliver around 590 full-time equivalent jobs across a full spectrum of occupations from senior managers and professionals to skilled occupations and process/elementary roles. Occupiers would be expected to generate skills development and training opportunities such as apprenticeships as part of their operations.
- 4.23 Off-site benefits will include supply chain activity to the local economy and expenditure of local residents who are part of the workforce. The Socio-Economic Statement states that this effect has the potential to support an additional three hundred jobs across Rochdale Borough and Greater Manchester.
- 4.24 The Proposal could deliver around £960,000 in collectible business rates, with the Council and public sector partners benefiting from a share of any additional business rates revenue collected.

- 4.25 Finally, the direct Gross Value Added (GVA) the Proposal could generate is estimated to be £30 million per annum, representing an additional contribution to the output generated by Rochdale's economy.
- 4.26 The above benefits demonstrate the Proposal's alignment with PfE Policies JP-J1 and JP-J2 which seek to ensure long-term economic growth across the Greater Manchester boroughs, alongside paragraph 85 of the NPPF.

5 Post-Decision Matters

- 5.1 Following the Council’s decision on 22 December 2023, additional technical work has been undertaken to address the Council’s reason for refusal and recent case law, particularly guidance with respect to surface water flooding.
- 5.2 The Appellant has also suggested some additional planning conditions based on a detailed review of Places for Everyone, which was adopted by the Council after the planning application was determined, but which now forms the most up to date part of the Development Plan.
- 5.3 Finally, several of the plans submitted with the planning application have been updated for clarification only and do not change the scheme.
- 5.4 Details on these matters are set out below.

Additional Technical Work

- 5.5 The following technical work has been carried out and has been submitted with this appeal in order to respond to third parties and address the Council’s reason for refusal:
- Updated LVIA photographs - details of which is included at **Appendix O**.
 - Updated Noise Monitoring – details of which is included at **Appendix P**.
 - Viability Assessment - details of which is included at **Appendix Q**.

Surface Water Flooding

- 5.6 As noted in Section 3, whilst the site is in Flood Zone 1 for flooding from rivers and seas, there are areas of the site subject to medium and high levels of surface water flooding. Whilst there is no objection from the Council or consultees on flood risk grounds, in light of recent case law¹ and updates to Planning Practice Guidance², the Appellant instructed Alyn Nicholls to undertake a Flood Risk Sequential Assessment (“Sequential Assessment”) with respect to surface water flooding and this is provided at **Appendix R**. The scope of the Sequential Assessment was agreed with the Council via email correspondence on Friday 24 May.

¹ Mead Realisations Limited v The Secretary of State for Levelling Up, Housing and Communities & Anor [2024] EWHC 279

² Paragraph: 023 Reference ID: 7-023-20220825.

Places for Everyone

- 5.7 Places for Everyone (PfE) is a strategic joint Development Plan covering nine of the Greater Manchester authorities, including the Council. It was adopted on 20 March 2024 and now forms part the most up to date part of the Council's Development Plan.
- 5.8 A full assessment of the PfE policies has been undertaken and is provided at the Planning Policy Assessment at **Appendix S**.

BREEAM

- 5.9 Following the PfE assessment the Appellant will need to make some minor amendments to the scheme to meet the 'BREEAM Excellent' Target which is set out in Policy JP-S-2 – Carbon and Energy. The Appellant is seeking to agree as part of the SOCG with the Council that this can be addressed by an appropriately worded planning condition.

Net Zero

- 5.10 Alongside the BREEAM Target, PfE Policy JP-S-2 – Carbon and Energy also seeks new development to demonstrate operational net zero carbon emissions through the submission of an Energy Statement. The Appellant is seeking to agree as part of the SOCG with the Council that this can be addressed by an appropriately worded planning condition.

Drainage

- 5.11 Some minor amendments are also needed to the drainage strategy to achieve greenfield runoff rates in accordance with PfE Policy JP-S-4 – Flood Risk and the Water Environment of the PfE.
- 5.12 The Appellant is seeking to agree with the Council as part of the SOCG, that an alternative drainage strategy can be secured by an appropriately worded planning condition, which would replace the currently proposed condition 06 (see page 97 of the Committee Report).

Minor Updates to Plans

- 5.13 The following updates have been made to the submitted plans post-determination:

- AOD Heights have been added to the existing and proposed site sections (sheets 1 of 2 and 2 of 2) for ease of reference.
- Unit numbers added to the existing site layout drawing (ref: 21157-ASA-00-ZZ. ZZ-D-A-0002 P1) for ease of reference.

5.14 Following the minor updates above the list of approved documents listed in draft Condition 2 will need amending to reflect the above changes. It is proposed that the final list of approved documents will be agreed with the Council in the SOCG.

6 The Reason for Refusal

6.1 Whilst a single reason for refusal has been provided (quoted above), it comprises several different components which can be broken down as follows:

- The Proposal comprises an over-development of the site and is not “well designed,” due to its “size, scale and form” and is not compatible with surrounding land uses and is overbearing. These are design matters.
- The Proposal imposes detrimental and unacceptable impacts on the “noise environment,” with particular regard to future residents adjacent to the site. This is a residential amenity and noise matter.
- The Proposal imposes detrimental and unacceptable impacts on the “visual amenity” of surrounding residents, with particular regard to future residents adjacent to the site. This is a landscape and visual amenity matter.
- As a result, the application fails to accord with Policy DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.” It is the Appellant’s intention to agree with the Council in the SOCG that the relevant NPPF paragraphs are 135 and 139 (in relation to design matters only) and the Proposal’s compliance with paragraphs 180 and 191 (in relation to noise) is agreed.

6.2 It will be immediately obvious that the reason for refusal is vague and unparticularised. This is exactly the sort of approach which has long been deprecated. In 2006, the Government’s then advisor the Commission for Architecture and the Built Environment issued guidance entitled “Design at Appeal” in which it observed:

“When a scheme is examined at appeal, written or oral evidence will need to say why it is or is not seen as appropriate. ...

It is important to use easily understandable language; both in reasons for refusal and appeal evidence. Generalised or generic terms such as ‘out of keeping’ or ‘overdevelopment’ should be avoided as they are meaningless when not substantiated by site specific information. The design, and why it is appropriate or inappropriate, should be described in as much detail as possible.”

- 6.3 Given the vague wording of the reason for refusal, the Appellant has sought clarification from the Council as to precisely what the concerns are relating to the design of the Proposal and is awaiting a response. The Appellant reserves the right to respond to the Council's reasoning during the proof of evidence stage.

Evidence

- 6.4 The various elements of the reason for refusal will be addressed by the following technical experts who will provide oral evidence:
1. Design Matters – Richard Routh, Architect, Ashton Smith Architects
 2. LVIA Matters - Kit Patrick, Director, TPM Landscape Ltd
 3. Planning Matters (including scheme benefits) – Harry Spawton, Partner, Gerald Eve LLP
- 6.5 Since the decision notice was issued, the Council resolved at its meeting of the Planning and Licensing Committee ("Committee") on 23 May 2024 that it will not contest the Appeal on grounds of noise impacts and that this will be agreed with the Appellant in the SOCG.
- 6.6 The Council's supplementary report to the Committee (**Appendix T**) sets out the Council's reasoning for not pursuing the matter of an unacceptable impact on the noise environment. Paragraph 3.1 explains that *"the Council cannot offer any evidence to support this part of the reason for refusal, potentially resulting in a significant award of costs against the Council."*
- 6.7 In light of the above, the Appellant does not propose to call a noise witness unless otherwise raised by the Council or a Rule 6 Party.
- 6.8 The Appellant has also instructed other experts relating to Viability and Highways (as appended to this Statement of Case at **Appendix Q and Appendix X**). The Appellant is not proposing to call these witnesses unless raised by the Council or a Rule 6 Party.

7 Legislative and Policy Context

- 7.1 This section briefly summarises the relevant planning policy framework for decision making purposes.
- 7.2 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that in dealing with such an application the authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 7.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Development Plan

- 7.4 The relevant Development Plan documents in this instance comprise:
- Saved Policies of the Rochdale Unitary Development Plan (2006).
 - Rochdale Core Strategy (2016); and
 - Places for Everyone (2024)
- 7.5 The reason for refusal only identifies one Development Plan policy that the Council considers the Proposal to be in breach of: Policy DM1 of the Rochdale Core Strategy.
- 7.6 The Appellant's intention is to seek to reach common ground with the Council in respect of the Core Strategies policies, and to identify which specific criterion of Core Strategy Policy DM1, which is referenced in the reason for refusal, the Council considers the Proposal to breach.
- 7.7 The Appellant's intention is to seek to reach common ground with the Council in respect of the PFE policies, and to identify which criterion of PFE Policy JP-P1 the Council considers the Proposal to breach. Whilst not referred to in the reason for refusal, given PFE adoption date, the Appellant considers this policy to be similar in nature to Core Strategy Policy DM1
- 7.8 The Appellant's intention is to seek to reach common ground with the Council that the Proposal complies with all other relevant Development Plan Policies.

Supplementary Planning Documents

7.9 Beyond the policies of the Development Plan, the following Supplementary Planning Documents (SPD) are also relevant material considerations to the determination of this planning appeal, as outlined on page [25] of the Officer's Report.

- Climate Change Adaptation SPD (June 2012)
- Biodiversity and Development SPD (updated 2017)
- Guidelines & Standards for Residential Development (GSRD) SPD (2016)

7.10 It is the Appellant's intention to agree with the Council in the SOCG that the Proposal accords with the above SPDs.

National Planning Policy Framework

7.11 The NPPF, dated December 2023, sets out the Government's planning policies to inform all planning decisions and is a significant material consideration in the determination of planning applications.

7.12 The reason for refusal states that the Proposal fails to accord with the NPPF, without stating specific chapters or paragraphs.

7.13 In light of the reason for refusal, the Appellant considers the relevant paragraphs of the NPPF to be 135 and 139 (in relation to design matters) and paragraphs 180 and 191 (in relation to noise).

7.14 The Appellant's intention is to seek to reach common ground with the Council in respect of the above.

7.15 Alongside these paragraphs, it is also necessary to consider paragraph 11 of the NPPF, which outlines the presumption in favour of sustainable development, and paragraph 12 which reinforces that local planning authorities may take decisions that depart from an up-to-date Development Plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Consideration of Policy

7.16 A full assessment of the relevant policies listed above is provided at **Section 9** of this Statement.

7.17 An assessment of the Proposal's compliance with the remaining relevant Development Plan policies (i.e. those not relevant to the reason for refusal) has been prepared by Harry Spawton, Partner at GE (and Author of this SoC) and is included at **Appendix S**.

8 The Appellant's Case

8.1 The Appellant's Case can be summarised into two main limbs which are expanded on in the subsections below:

- **Limb 1:** The Appellant considers that the Proposal is compliant with the Development Plan as a whole and that there are no material considerations of sufficient weight indicating that planning permission should not be granted.
- **Limb 2:** Should the Inspector consider there is conflict with the Development Plan as a whole, the Appellant considers that there are material considerations which justify a departure from the Development Plan and any other material considerations so as to warrant planning permission being granted.

Limb 1 – The Proposal is compliant with the Development Plan as a whole

Background

8.2 The subject of whether a development proposal “fully accords” with a Development Plan taken as a whole has been the subject of various decisions of the Courts. Development proposals are often unable to satisfy every single policy objective that could be deemed directly relevant. It is therefore important to establish how and when a large-scale proposal satisfies the requirements of Section 38(6).

8.3 In the decision of *Edinburgh v Secretary of State*³, Lord Clyde addressed the approach to be taken in respect of Section 18A of the Town and Country Planning (Scotland Act) 1972, which was the Scottish equivalent to Section 38(6) at the time, stating:

“In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the Development Plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the Development Plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the Development Plan. There may be some points in the plan which support the proposal but

³ *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447

there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it." (emphasis added).

- 8.4 With reference to the above extract, Sullivan J set out his High Court judgement of R v Rochdale⁴ stating:

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

- 8.5 Those cases are now embodied by Section 38(6) of the 2004 Act which requires a judgment of compliance against the Development Plan taken "as a whole".
- 8.6 Following the requirements of Section 38(6), the Appellant has considered how the Proposal accords with the Development Plan and whether there are material considerations indicating that planning permission should not be granted.

The Development Plan

- 8.7 The Appellant's case is that the Proposal does not breach any of the policies cited in the reason for refusal, and that there is strong policy support for the Proposal in key policies, such that whilst there is some limited conflict with one non-contentious policy, the Proposal accords with the Development Plan taken as a whole and that there are no contrary material considerations of sufficient weight which would warrant the conclusion that planning permission should not be granted.

⁴ Regina v Rochdale Borough Council ex parte Milne [2000] EWHC 650

- 8.8 As Core Strategy Policy DM1 is referred to in the reason for refusal, an assessment of the Proposal's compliance with this policy is provided in the subsection below. For the avoidance of repetition, references are made, where appropriate, to the Officer's Report at **Appendix B**.
- 8.9 Since determination of the Proposal, PfE has been adopted and it is considered that Policy JP-P1 is relevant insofar as it relates to design and noise criteria. As such this policy is also considered as part of the assessment.
- 8.10 Finally, an assessment of the Proposal in the context of Core Strategy Policy G8 is provided, specifically with respect to surface water flooding and the application of the sequential test.
- 8.11 A review of the Proposal's compliance with the remaining relevant Development Plan policies has been prepared by Harry Spawton and is attached at **Appendix S**.

Policy DM1 – General Development Requirements

- 8.12 Policy DM1 sets out 13 specific requirements (listed A – M) which all development proposals will be expected to demonstrate. The full wording of Policy DM1 is provided below:

"All development proposals, including changes of use of land and buildings, extensions and alterations, will be expected to demonstrate that they:

- a) Are of high-quality design and take the opportunity to enhance the quality of the area.*
- b) Are compatible with surrounding land uses, both in terms of its impact upon those uses and the impact of the surrounding land uses upon the amenities of future residents / users.*
- c) Do not adversely affect the amenity of residents or users through visual intrusion, overbearing impact, overshadowing or loss of privacy.*
- d) Mitigate against any impacts due to noise, air, dust, light and odour pollution, traffic generation or inadequate access, where such mitigation is identified as being necessary.*
- e) Provide satisfactory vehicular access with adequate parking, manoeuvring, and servicing arrangements taking into account of the proposed use and location.*
- f) Do not have an adverse impact on health, through its impact or the effect of existing problems e.g. land contamination, or poor air quality.*
- g) Provide, or demonstrate the availability of, the service and community infrastructure necessary to meet local needs e.g. local shops, community, leisure and sport facilities and provision of open space.*

- h) Minimise opportunities for crime against people or property.*
- i) Take account of ground conditions including unstable or contaminated land - where a potential risk exists, a survey should be carried out and any necessary remedial measures identified and carried out.*
- j) Incorporate, where appropriate, high-quality landscape schemes;*
- k) Have assessed whether the development may be affected by ground instability.*
- l) Have considered the availability of water and wastewater infrastructure, and any need for additional capacity; and*
- m) Do not lead to impacts detrimental to the conservation interests of European Protected Sites.*

8.13 The Council's reason for refusal is clear that the alleged issues arising from the Proposal relate to the Proposal's impact on the amenity of existing and future residents in terms of:

- design (size, scale and form);
- noise environment; and
- visual amenity

8.14 As such, it is assumed that the Council only concludes that there is conflict with certain criteria of Policy DM1 and not the policy as a whole.

8.15 The Appellant will seek to agree this with Council in the SOCG, but it is considered that based on the reason for refusal, the alleged conflict is in respect of policy requirements **A – D** only, albeit within these criteria there are elements which are not relevant.

8.16 The elements not relevant to the reason for refusal are struck through below:

- a: Are of high-quality design and take the opportunity to enhance the quality of the area;*
- b. Are compatible with surrounding land uses, both in terms of its impact upon those uses
~~and the impact of the surrounding land uses upon the amenities of future residents / users;~~*
- c. Do not adversely affect the amenity of residents or users through visual intrusion,
overbearing impact, ~~overshadowing or loss of privacy;~~*
- d. Mitigate against any impacts due to noise, ~~air, dust, light and odour pollution, traffic
generation or inadequate access,~~ where such mitigation is identified as being necessary;*

- 8.17 As explained in Section 6, the Council will no longer be pursuing the matter of an 'unacceptable impact on the noise environment' and therefore the Proposal's compliance with criteria D will be agreed in the SOCG. An assessment of the Proposal's compliance with criteria D is still provided below for completeness.
- 8.18 The remaining elements of Policy DM1 which have been struck-through above are also dealt with in Section 10 for completeness.
- 8.19 Each requirement of criteria A to D is assessed in turn below.

Policy DM1: Criteria A

- 8.20 Criteria A of Policy DM1 requires development proposals to demonstrate that they "*Are of high-quality design and take the opportunity to enhance the quality of the area*". Design quality relates to a range of factors other than simply aesthetic appearance, including functionality and energy efficiency.
- 8.21 Given the vague wording of the reason for refusal as mentioned Section 6, it is the Appellant's intention to seek clarification from the Council in the SOCG as to precisely what the concerns are relating to the design. The Appellant expects to agree with the Council that the Proposal comprises high quality design, as the proposed units are obviously more attractive than the existing units, using high quality, sustainable, external materials constructed to BREEAM level Very Good (with a view to secure BREEAM Excellent by way of planning condition) and utilising improved design features, such as blue panelling at higher levels to break up the physical and visual massing.
- 8.22 It is therefore considered that it is the size, scale and form of the development that is in dispute between the Parties with regards to Criteria a).
- 8.23 An Architectural Statement has been prepared by Richard Routh, Architect at Ashton Smith, in support of the Proposal and justifies the Proposal's compliance with all aspects of Criteria A (see **Appendix U**).
- 8.24 In summary, the Statement sets out that the size, scale and form of design of the Proposal has been influenced by a number of external factors comprising a functionally high-quality design, such as:
- the need to meet modern institutional standards for logistics development, which require larger floorplates;

- taller ceiling heights; and
- space for accommodating the activities required to operate the building such as two-way HGV access, maintenance access and service yard.

- 8.25 The design has balanced these functional requirements with the need to transform the existing Site, through the replacement of the existing outdated industrial buildings that are already visible from the neighbouring properties due to limited existing boundary treatments.
- 8.26 The size and scale of the new units must ultimately meet modern industrial standards which require open plan flexible warehouse space. The Architectural Statement explains that the Use Class B8 institutional standards are based on *“creating an open plan flexible warehouse space using an 8m wide structural frame grid for a portal frame internal height of 8m upwards all depending on the footprint size. Typically, 50,000ft² building would have 10-12.5m haunch and a 35-40m service yard. Buildings between 300,000 and 500,000ft² would have a 15m+ haunch height with 50m wide yards including parking opposite.”* The size of the Proposal has therefore been designed with these requirements in mind.
- 8.27 The building form has been guided by the footprint of the existing units on the Site as the units are orientated and laid out in a similar layout, with Units 1 and 2 following the same building line. The warehouse area is typically rectangular allowing vehicle delivery inbound and outbound to dock to one and sometimes both sides of the building. The office is positioned to allow building users short travel distances to their workplace and easy access to the car parking area. The office outlook is crucial too as it needs to provide building users accessible views and daylight. Within larger distribution units, additional transport offices positioned centrally within the service yard provide access and views to the service yard operation. For these reasons, the building form is created and is typically a very efficient and logical layout.
- 8.28 The external form of the units has been guided by the Site’s existing constraints, particularly the existing and future residential development as well as the public realm. This has resulted in the use of improved design features, such as the use of composite cladding panels (which are modern, clean, robust building material) of different banded colours. The use of different colours helps to break up the massing of the unit through a combination of blues and greys which help to blend the units into the skyline and mitigate their visual impact.

- 8.29 To further mitigate the visual impacts and enhance the quality of the area for surrounding residents, a detailed Landscaping Scheme was prepared by TPM in conjunction with the architect and noise consultant (BWB) and submitted with the application. The Landscaping Scheme will enhance the Site's boundary treatments through substantial hedge and tree planting, retention of existing boundary trees, a landscaped bund along the southern boundary and the introduction of various acoustic barriers with built in green walls.
- 8.30 As a result, the Proposal is of a high-quality design and enhances the quality of the area for adjacent residents through the replacement of the unattractive and outdated units with a modern design together with improved boundary treatments that provide enhanced visual screening for existing and future residents.

Policy DM1: Criteria B

- 8.31 Criteria B of Policy DM1 requires development proposals to demonstrate that they "*Are compatible with surrounding land uses, both in terms of its impact upon those uses and the impact of the surrounding land uses upon the amenities of future residents / users*".
- 8.32 It is the intention to agree in the SOCG that the impact of the surrounding land uses upon the amenities of future users associated with the Proposal is not relevant (i.e. the surrounding existing and future residential will not have a detrimental impact upon the Proposal).
- 8.33 It is the Appellant's intention to agree with the Council in the SOCG that the Proposal is compatible with surrounding land uses including:
- Existing residents to the north of Units 1 and 2 (along White House Close and Bader Drive)
 - Existing residents to the east of Unit 3 (along Oldbury Close, White House Close and Bader Drive)
- 8.34 It is the Proposal's compatibility with the Russell Homes' future residential development to the west and south of Unit 3 and its impact on future residential amenity that is in dispute between parties.
- 8.35 The Architectural Statement (**Appendix U**) justifies the Proposal's compliance with Criteria B. This includes details of the Proposal's compatibility with all the surrounding land uses mentioned above in terms of the impacts on both existing and future residents (from a design perspective).

8.36 In summary, Units 1 and 2 will have the same building line as the existing buildings, maintaining the separation distances between existing residents to the north of 29m. This significantly exceeds the minimum separation distances set out in the Guidelines and Standards for Residential Development SPD which at section 4.1 confirms will be applied to all new residential developments *and* developments which affect existing residential properties:

- A. 21m between directly facing principal windows of habitable rooms, at an upper floor level AND 10.5m between a principal window at an upper floor level directly facing the boundary of the curtilage.
- B. 14m between a principal window and any directly facing two storey elevation which does not contain a principal window to a habitable room.
- C. 10m between a principal window and any directly facing single storey elevation which does not contain a principal window to a habitable room.⁵

8.37 Whilst the proposed eaves heights of Units 1 and 2 are higher than the existing units in this location (by 4.95 m) this must be balanced against the modern and high-quality external materials that will improve the appearance and visual impact of the buildings in the outlook from existing residences. In addition, there is substantial new hard and soft landscaping proposed along the boundary with the existing residents to the north which will further mitigate effects when compared to the current situation. The new access road to the north of Units 1 and 2 will also be positioned at a lower level (+129.2m AOD) compared to the existing road (+129.9m) and further away from existing properties. As such Units 1 and 2, are compatible with the existing residents to the north.

8.38 The Architectural Statement includes details of the relationship between Unit 3 and future residents associated with the Russell Homes Scheme.

8.39 As the Russell Homes Scheme is in outline only and no reserved matters applications have been submitted in relation to elements adjoining the Site, illustrative separation distances were submitted during the determination period through the following drawings prepared by Ashton Smith Architects:

- 21157-ASA-00-ZZ. ZZ-D-A-0004_(S3-P13) - EXISTING AND PROPOSED SITE SECTIONS 1 OF 2

⁵ The SPD does state that where buildings of three or more storeys are proposed, or there is a marked difference in levels, it may be necessary for the minimum distances set out in (ii) and (iii) above to be increased. The SPD does not state how much they should be increased by,

- 21157-ASA-00-ZZ. ZZ-D-A-0005-(S3-P15) - EXISTING AND PROPOSED SITE SECTIONS 2 OF 2

- 8.40 These sections utilised the location of future housing as outlined on the originally approved Illustrative Masterplan for the Russell Homes Scheme and an assumed standard garden length of 10m.
- 8.41 Based on these measurements, the minimum separation distances between the proposed residential development and the proposed Unit 3 as part of the Proposal are as follows:
- Future residential development to the south of unit 3 – 47.3 m
 - Future residential development to the west of unit 3 – 51 m
- 8.42 The proposed separation distances significantly exceed the minimum separation distances contained within the Guidelines and Standards for Residential Development SPD. It should also be noted that these distances relate to just a handful of properties which would be closest to the Proposal, with the vast majority of future dwellings significantly exceeding these distances.
- 8.43 The submitted Landscape Statement (**Appendix O**) and Viability Statement (**Appendix Q**) make clear that employment uses are one of the characteristics of this area, regardless of whether the Appeal is allowed or not. The Site is an existing unconstrained employment site, which is adjacent to a major relief road (Queen Elizabeth II Way) and the H-Park industrial site to the west and Heywood Distribution Park to the north-west. The Proposal is therefore not out of context with the surrounding area and the industrial character of the Site will remain. In addition, industrial buildings in the area will increase as future phases of the Russell Homes Scheme come forward.
- 8.44 Finally, the Noise Statement (**Appendix P**) confirms that noise levels at the Site will be acceptable, meaning that the Proposal is compatible with surrounding residents from a noise perspective.
- 8.45 The Appellant has demonstrated through the above evidence, that the Proposal accords with Criteria B in that it is compatible with the surrounding land uses in terms of design, land use and noise.

Policy DM1: Criteria C

- 8.46 Criteria C of Policy DM1 requires development proposals to demonstrate that they "*Do not adversely affect the amenity of residents or users through visual intrusion, overbearing impact, overshadowing or loss of privacy*".

- 8.47 Whilst it comprises a single criterion, criteria C can be broken down into the following amenity related components:
- Visual Intrusion
 - Overbearing impact
 - Overshadowing
 - Loss of privacy
- 8.48 Whilst there is disagreement between parties as to whether the Proposal adversely affects the amenity of existing and future residents in terms of visual intrusion and overbearing impact, based on the reason for refusal, it is the Appellant's intention to agree in the SOCG that the Proposal does not adversely affect the amenity of existing and future residents through overshadowing or loss of privacy.
- 8.49 The issue of whether the Proposal is overbearing is addressed in the Architectural Statement at **Appendix U**. The Statement demonstrates that due to a combination of the elevational treatments such as the use of different coloured bands of cladding in a mix of blue and grey to blend into the skyline, together with the proposed landscaping mitigation, there will be no overbearing impact on adjacent residents.
- 8.50 Turning to visual intrusion, a Landscape and Visual Impact Assessment (LVIA) Rev E was submitted with the application (**Appendix V**). The LVIA factors in mitigation measures including substantial landscaping, tree planting along all boundaries, fencing on some boundaries, and provision of a significant 1:3 landscaped bund.
- 8.51 During the course of the application, the Council instructed Ryder Landscape to undertake an independent review of the LVIA and its conclusion. Following initial comments from Ryder Landscape in June 2023, some minor amendments were made to the Appellant's LVIA to address the comments raised (see the Landscape Statement at **Appendix O** for full detail).
- 8.52 Following these amendments, Ryder Landscape issued their final consultation response (received August 2023). Page 15 of their response concludes:
- "In summary I think RBC can rely on the LVA document for wider and general landscape and visual effects..."*

- 8.53 At the time of the Planning Committee, there were no objections from Ryder Landscape or any other consultees in respect of landscape and visual impacts based on the latest LVIA (Rev E). This is reflected in Paragraph 41 (page 52) of the Officer's Report.
- 8.54 Following determination, a Landscape Statement has been prepared by Kit Patrick (**Appendix O**). The Landscape Statement contains justification and technical evidence in response to the reason for refusal which demonstrates that the Proposal will not adversely affect the amenity of existing and future residents through visual intrusion. It also contains a summary of the extensive amount of information submitted throughout the application process to support this conclusion.
- 8.55 Paragraphs 6.43 – 6.45 of the Landscape Statement provide a summary of the Proposal's visual impacts in regard to existing residents. In Mr Patrick's view, the change in scale of the Proposal will not be substantial, and the proposed mitigation screening will reduce impacts to acceptable levels, as agreed by the Council's Planning Officer and informed by the opinion their expert external landscape consultant. Accordingly, Mr Patrick's view is that the Proposal would not represent detrimental and unacceptable impacts on the visual amenity of surrounding existing residents.
- 8.56 A summary of the Proposal's visual impacts in relation to future residents (of the Russell Homes Outline Scheme) is provided at paragraphs 6.46 – 6.60 of Mr Patrick's Landscape Statement. As the Russell Homes scheme is in outline only, the Landscape Statement notes that in the absence of detail the impacts of the Proposal on future residents can only be considered at a "relatively superficial level" and it is not possible to definitively assess potential changes to the views of potential future residents, where the layout is not defined. Nonetheless informed judgments can be properly formed.
- 8.57 In forming his judgement, Mr Patrick states that it is worth noting that the residential land of the Russell Homes Scheme abuts existing large commercial units in the north-western boundary (Planning Approval refs 19/01374/FUL and 14/0440/REM) and is most likely to face a large commercial unit on the south-eastern boundary (the southern half of the site of Planning Approval 22/00787/REM). Large commercial units will therefore be a feature of the landscape and as part of the views of the future residents, regardless of whether the Appeal is allowed.
- 8.58 The Landscape Statement concludes at Paragraph 7.10 by stating that *"any impacts to both the existing residents and potential future residents adjacent to the site are capable of mitigation through design of the building and layout, and through additional native planting and screening"*

bunding, which will be successful in reducing any potential impacts to visual amenity. This has been assessed by both the local planning authority technical officers, and also external landscape consultants on behalf of the council, who concluded that any potential impacts to visual amenity had been reduced to acceptable levels, and thus recommended the proposal for approval. I am not aware of any evidence to the contrary of this opinion."

- 8.59 The combination of the above technical evidence demonstrates that the Proposal will not result in an overbearing or visual impact on existing and future occupiers in accordance with Criteria C.

Policy DM1: Criteria D

- 8.60 Criteria D of Policy DM1 requires development proposals to demonstrate that they *"Mitigate against any impacts due to noise, air, dust, light and odour pollution, traffic generation or inadequate access, where such mitigation is identified as being necessary"*.
- 8.61 It is the Appellant's intention to agree with the Council in the SOCG that the Proposal fully accords with Criteria D.
- 8.62 Following the Council's Planning Committee on 23 May 2024, the Council is no longer pursuing the matter of noise as an element of the reason for refusal and it will be agreed in the SOCG that there are no unacceptable impacts in respect of noise. Notwithstanding this, matters relating to noise are outlined below for completeness.
- 8.63 A Noise Impact Assessment (NIA) prepared by BWB was submitted with the application (**Appendix W**). The NIA concludes that the main external sources of noise from the Proposal would be HGV movements, unloading and loading of HGVs and fixed external plant items. Escape from inside the building will be avoided by self-closing doors, insulation and an operational statement to ensure that loading and unloading will not take place with bay doors open.
- 8.64 The NIA identified mitigation measures to be incorporated into the Proposal to ensure that noise levels associated with the Proposal are acceptable. This includes the provision of 3m and 5m high acoustic barriers across various locations of the Site.
- 8.65 With these mitigation measures in place, the NIA concludes that 'a low impact' has been predicted for all nearby noise receptors and that that noise need not be a determining factor in granting planning permission for the Proposal.

- 8.66 Multiple third-party objections were submitted in relation to noise, including resident objections and Technical Responses prepared by E3P, dated 1 December 2022 and 18 July 2023, and letters received from Avison Young, dated 13 January 2023, 26 April 2023 and 4 May 2023, all on behalf of Russell Homes.
- 8.67 The Appellant submitted responses including an updated Noise Assessment dated 06 June 2023 and Noise Rebuttal dated 3 November 2023.
- 8.68 The Environmental Health Officer (EHO) was consulted on multiple occasions to review all submitted information. The EHO's consultation response dated November 2023 (referenced paragraph 162, page 81 of the Officer's Report) states that subject to planning conditions:
- "The redevelopment of the Heywood Stores site will greatly improve the acoustic performance of the building material, introduce strong mitigation measures and will allow the setting of conditions to protect existing and future noise sensitive receptors. As such this section has no objections in principle to the proposal."*
- 8.69 The Appellant accepted a planning condition to ensure that noise levels meet the predicted standards set out in the NIA, the exact wording of which is to be agreed with the Council in the SOCG.
- 8.70 At the time of the Planning Committee, there were no outstanding issues or objections raised in respect of noise by the EHO, the Planning Officer or any of the statutory and technical consultees.
- 8.71 Following, determination of the Appeal, technical Evidence has been prepared by Mark Maclagan, Technical Director at the Waterman Group ("the Noise Statement") in support of the Proposal which sets out how the Proposal complies with Criteria D (at **Appendix P**).
- 8.72 The Noise Statement includes additional noise monitoring undertaken in March 2024, which confirms that the background noise levels are higher than those recorded in BWB's initial assessment. The Noise Statement explains that this is because the BWB's original noise measurements were conducted before the link road (Queen Elizabeth II Way) was completed and operational.
- 8.73 The difference in noise levels generated by the Proposal is therefore lower than originally anticipated and considered acceptable by the EHO and Planning Officer.

- 8.74 In relation to the objections raised by Russell Homes, it is important to note that the Russell Homes residential scheme itself is positioned close to existing employment uses at Yearsley Distribution which is an existing Use Class B8 unit to the northwest of their scheme.
- 8.75 Given this location, the Russell Homes scheme is subject to a planning condition which requires a scheme of noise mitigation measures to be submitted prior to the commencement of development for all phases. The Noise Statement at Appendix P confirms that the predicted noise levels from the Yearsley Scheme are higher than those predicted by the Proposal, and this is set out in Table 4-2 of the Noise Statement.
- 8.76 This ought to have been known to the Council and provides a further reason for concluding that their position on noise was grossly misplaced.
- 8.77 In light of the above, the Appellant's case is that noise levels for both existing and future residents are acceptable and their compliance with Policy DM1 (specifically criteria D) subject to the agreed mitigation measures and planning conditions.
- 8.78 The Appellant also intends to agree with the Council in the SOCG that there is no conflict in respect of the remaining matters referred to in Criteria D, i.e. air, dust, light and odour pollution, traffic generation and access, given the range of technical information submitted with the planning application and technical consultee responses which do not raise any issues in relation to these matters.

Places for Everyone (PfE)

- 8.79 As noted, PfE was adopted on 21 March 2024 and now forms part of the Council's Development Plan. It is the Appellant's intention to agree with the Council in the SOCG that the Proposal complies with the relevant PfE policies and a full assessment by Harry Spawton is contained at **Appendix S** which demonstrates the Proposal's compliance with relevant policies.
- 8.80 The only policy considered relevant to the Reason for Refusal is Policy JP-P1 and the full wording is provided below. For the avoidance of doubt, this policy is not referred to in the Reason for Refusal.

"We aim to become one of the most liveable city regions in the world, consisting of a series of beautiful, healthy and varied places, each having the following key attributes that all development, wherever appropriate, should be consistent with:

1. *Distinctive, with a clear identity that:*
 - A. *Conserves and enhances the natural environment, landscape features, historic environment and local history and culture;*
 - B. *Enables a clear understanding of how the place has developed; and*
 - C. *Respects and acknowledges the character and identity of the locality in terms of design, siting, size, scale and materials used.*
2. *Visually stimulating, creating interesting and imaginative environments which raise the human spirit through the use of green space, public art and quality design*
3. *Socially inclusive:*
 - A. *Responding to the needs of all parts of society*
 - B. *Enabling everyone to participate equally and independently;*
 - C. *Providing opportunities for social contact and support; and*
 - D. *Promoting a sense of community*
4. *Resilient, capable of dealing with major environmental events.*
5. *Adaptable, able to respond easily to varied and changing needs and technologies.*
6. *Durable, being built to last and using robust materials that reflect local character, weather well and are easily maintained.*
7. *Resource-efficient with:*
 - A. *A low carbon footprint;*
 - B. *Efficient use of land;*
 - C. *Minimised use of new materials;*
 - D. *High levels of recycling*
8. *Safe, including by designing out crime and terrorism, reducing opportunities for anti-social behaviour and by ensuring that developments make appropriate provision for response and evacuation in the case of an emergency or disaster.*
9. *Supported by critical infrastructure, such as energy, water and drainage and green spaces.*
10. *Functional and convenient, enabling people and uses to act efficiently with minimal effort, and responding to needs relating to servicing, recycling facilities, refuse collection and storage.*
11. *Incorporating inclusive design within all spaces with support for tackling inequality and poverty to form part of creating sustainable places.*

12. *Legible, being easy to understand and navigate, with the protection and enhancement of key views and new development well-integrated into the place.*
13. *Easy to move around for those of all mobility levels, particularly by walking and cycling, with enjoyable routes free from obstacles and disorienting stimuli, and with places to rest.*
14. *Well-connected to other places, particularly by public transport and digital infrastructure enabling everyone to take advantage of the employment, cultural and leisure opportunities across Greater Manchester and beyond.*
15. *Comfortable and inviting, with indoor and outdoor environments:*
 - A. *Offering a high level of amenity that minimises exposure to pollution; and*
 - B. *Addressing microclimate issues such as sunlight, indoor air quality, overheating, shade, wind and shelter*
16. *Incorporating high quality and well managed green infrastructure and quality public realm, with:*
 - A. *Opportunities for recreation and outdoor play for children, and interaction between the generations;*
 - B. *Public and private spaces clearly distinguished;*
 - C. *Development clearly defining, and promoting activity within, public spaces;*
 - D. *High quality landscaping with schemes*
17. *Well-served by local shops, services and amenities, including education and health facilities.”*

8.81 It is the Appellant’s intention to agree with the Council in the SOCG that only the following criteria of Policy JP-P1 are relevant to the reason for refusal:

- *Criteria 1 C) - Distinctive, with a clear identity that respects and acknowledges the character and identity of the locality in terms of design, siting, size, scale and materials used*
- *Criteria 15 A) - Comfortable and inviting, with indoor and outdoor environment offering a high level of amenity that minimises exposure to pollution.*

Policy JP-P1 – Criteria 1(C)

8.82 Criteria 1(C) requires new developments to acknowledge the character and identity of the locality in terms of design, siting, size, scale and materials used.

- 8.83 For the avoidance of repetition, paragraphs 8.19 – 8.58 of this Statement provide justification for the Proposal in terms of the above requirements, and this is supported and expanded on in the Architectural Statement at **Appendix U**. As such, the Proposal complies with Criteria 1 (C).

Policy JP-P1 Criteria 15 (A)

- 8.84 The relevant aspect of Criteria 15 relates to new developments offering a high level of amenity that minimises exposure to pollution. In regard to pollution, it is the Appellant's intention to agree with the Council in the SOCG that this is only relevant in respect of noise.
- 8.85 As explained in paragraphs 8.60 – 8.78 of this SOC, since the determination of the application, the Council is no longer pursuing the matter of noise as an element of the reason for refusal, and it will be agreed in the SOCG that there are no unacceptable impacts in respect of noise.
- 8.86 For completeness paragraphs 8.62 – 8.76 of this Statement provide justification for the Proposal in terms of the above requirements of Policy JP-P1 Criteria 15 (A) and this is supported and expanded on in the Noise Statement at **Appendix P**. As such, the Proposal complies with Criteria 15 (A).

Other Planning Policies

- 8.87 As noted at paragraph 8.10, a review of the Proposal's compliance with the remaining relevant Development Plan policies has been prepared by Harry Spawton and is attached at **Appendix S**. This demonstrates that the Proposal is compliant with all but one policy, this being Core Strategy Policy G8.
- 8.88 Policy G8 relates to matters of flood risk and drainage and outlines various criteria to minimise the impacts of current and future flood risk from new development, both on-site and off-site.
- 8.89 Where tension exists is in relation to existing surface water flooding, where there are elements of medium and high risk from the existing context of the site, and the need to undertake and pass the sequential test. It should be noted that the Environment Agency online maps, from which the risk of surface water flooding are derived, are based on LIDAR survey rather than detailed topographical information, and critically do not include any below ground drainage system. This means that the risk levels highlighted on the maps do not reflect the actual risk to the site, which will be reduced when below ground systems accounted for.

- 8.90 Whilst there is no objection from the Council or consultees on this matter, the Appellant instructed Alyn Nicholls to undertake a Flood Risk Sequential Assessment (“Assessment”) with respect to surface water flooding and this is provided at **Appendix R**.
- 8.91 The outcome of this is that there is one suitable alternative site of marginally better surface water flooding. As such, the proposal does not meet the express terms of the sequential test.
- 8.92 This policy tension should, however, be considered in the context of the policy aims. Policy G8 seeks to minimise the impacts of current and future flood risk from new development, both on-site and off-site. As a result of the Proposal and its associated drainage strategy, there would be a betterment to the extent of surface water flooding with a low risk of surface water flooding on-site and very low risk of any flooding impacting adjacent land. As such, whilst the Proposal does not accord with the sequential test, there is considered to be no actual land use harm arising from such conflict.
- 8.93 Furthermore, a planning fallback position exists and if the Appeal was dismissed the existing units could be used for use class B8 without requiring planning and without needing to deliver the wider flood/surface water strategy. As such the ‘risk’ would actually be higher than what it would be if the site was redeveloped and the below ground systems are accounted for, which result in betterment.
- 8.94 In light of the above, whilst there is a limited conflict with elements of Policy G8 of the Core Strategy, it is not considered that such conflict would render the Proposal to be non-compliant with the Development Plan when read as a whole. The Proposal accords with the vast majority of relevant planning policies, with only a minor technical breach with no actual land use harm arising from it. In addition, it should be stressed that the Proposal will result in a betterment for the Site when the proposed below ground systems are accounted for.

Other Material Considerations

NPPF

- 8.95 In light of the reason for refusal, it is the Appellant’s intention to agree in the SOCG that the relevant NPPF paragraphs 135 and 139 (in relation to design matters) and paragraphs 180 and 191 (in relation to noise). Within these paragraphs, only certain criteria are relevant.
- 8.96 The full wording of the NPPF paragraphs is included in the SOCG and as such only the relevant criteria is set out below to keep the assessment concise.

Paragraphs 135 and 139 (Design)

8.97 Paragraph 135 states that:

“Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.*
- b) are visually attractive as a result of good architecture, layout*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).”*

8.98 It is the Appellant’s intention to agree with the Council in the SOCG that the Proposal will function well, insofar as it meets the relevant standards for modern logistics development. For the avoidance of repetition, paragraphs 8.14-8.54 of this Statement provide justification for the Proposal in terms of the above requirements.

8.99 Paragraph 139 states that:

“Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

- a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
- b) outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”*

8.100 The Appellant has demonstrated that the Proposal complies with the relevant Development Plan Policy DM1 [and Policy JP-P1,] as set out in the sections above. As such, the Proposal accords with the relevant design paragraphs of the NPPF.

Paragraphs 180 and 191 (Noise)

8.101 Paragraph 180 states that:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

[...]

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution...”

8.102 Paragraph 191 states that:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

A. mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.”

8.103 As noted previously, paragraphs 8.60 – 8.78 above confirms that all noise impacts associated with the development can be adequately controlled to achieve acceptable noise levels via appropriately worded planning conditions. As such, the Proposal is acceptable and would not give rise to detrimental or unacceptable noise impacts. The Proposal accords with the relevant noise paragraphs of the NPPF.

8.104 Alongside those paragraphs directly related to the reason for refusal, it is also considered necessary to consider paragraph 168 of the NPPF in light of the surface water flooding on site. Paragraph 168 states:

“The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

- 8.105 As noted in paragraphs 8.88-8.94 of this SOC, the Proposal fails to satisfy the sequential test in relation to surface water flood risk, owing to one suitable alternative site of marginally better surface water flooding.
- 8.106 Whilst there is conflict with this one element of the NPPF, there are several important factors to consider as set out in the Sequential Assessment at paragraph 8.8:
- The risk of surface water flooding on the Site is relatively modest and is capable of being addressed in the design of development to minimise the risks on site and reduce the risks elsewhere;
 - Redevelopment would result in betterment against the fallback position where the existing surface water flood risk would not need to be addressed;
 - The overarching objective of national policy in respect of flood risk is to ensure that the risk of flooding is minimised and addressed. This objective is secured by the Proposal;
 - The redevelopment of Site is highly sustainable in terms of location and the recycling of brownfield land;
 - The Proposal would meet a demonstrated need and contribute to the local economy in terms of job creation and training.
- 8.107 When factoring in these considerations, it is considered that the harm arising from the technical breach is limited and therefore the non-compliance with the sequential test should be afforded very limited weight in the planning balance. As a matter of very limited weight, it is not considered sufficient to outweigh the statutory presumption in favour of granting planning permission in this case.

Limb 1: Summary

- 8.108 Section 38(6) of the 2004 Act outlines that the determination shall be made in accordance with the Development Plan unless material considerations indicates otherwise
- 8.109 The above subsections, together with the planning assessment at **Appendix S**, demonstrates that the Proposal complies with the Development Plan when read as a whole.

- 8.110 The assessment of other material considerations in the form of the NPPF, together with the planning assessment at **Appendix S**, demonstrates that there are no material considerations of sufficient weight which would indicate that planning permission should not be granted.
- 8.111 In summary, the Proposal accords with the Development Plan and the planning balance is such that there is no basis to disapply the statutory presumption that planning permission should be granted.

Limb 2: If the Proposal is not compliant with the Development Plan as a whole, material considerations justify the departure from the Development Plan, and other material considerations, to warrant planning permission being granted.

- 8.112 If the Proposal is found to be non-compliant with the Development Plan as a whole, the Appellant's secondary case is that there are material considerations weighing in favour of development meaning that planning permission should be granted. Such a position accords with Section 38(6) of the 2004 Act, and paragraph 12 of the NPPF, which permits a decision maker to depart from the Development Plan if material considerations indicate so.
- 8.113 The material considerations weighing in favour of granting planning permission are set out below.

Planning Benefits

- 8.114 There are numerous planning benefits arising from the Proposal which are set out below:
- The reuse of a vacant brownfield site for continued employment use in a sustainable location. This is afforded **significant weight**.
 - The provision of high quality and modern employment space, contributing to the borough's economic resilience and growth and promoting Rochdale as a destination to invest, whilst also contributing to the identified need for modern industrial units as evidenced by Places for Everyone and the report prepared by Jason Print at **Appendix N**. This is afforded **significant weight**.
 - Socio-economic benefits, including on-site benefits through the creation of 390 construction jobs, 590 full-time equivalent jobs and £30 million GVA per annum. Off-site benefits will include supply chain activity to the local economy and expenditure of local residents who are part of the workforce. The Socio-Economic Statement states that this effect has the potential to support an additional three hundred jobs across Rochdale Borough and Greater Manchester. This is afforded **significant weight**.

- Sustainable and energy efficient design, with a minimum BREEAM rating of Excellent (to be secured by condition), the use of photovoltaics and 21 EV charging points proposed. This is afforded **moderate weight**.
- A predicted biodiversity net gain score of +21.74% in Habitat units and +34.11% in hedgerow units which is in excess of current planning policy requirements. This is afforded **significant weight**.
- Providing a betterment in relation to surface water flood risk on the site through the use of site-specific drainage strategy. This is afforded **limited weight**.

8.115 Overall, these socio-economic and environmental benefits to the local area and wider region are material considerations which carry significant weight in favour of granting planning permission.

Fallback Position

- 8.116 The Site has a legitimate fallback position, and this should be considered as a material consideration in the determination of the application. It is an important material consideration in weighing the planning balance to assess the comparative land use effects of such a fall back and the proposed development. Not to do so would be to leave an important material consideration out of account.
- 8.117 The Site currently comprises an existing brownfield Site with a well-established employment use which has been used historically by DWP for storage purposes. Accordingly, there are no restrictions on the number of vehicle movements that could be undertaken each day, the extent of potential height and area of any outside storage, no limits on hours of operation, external lighting, and no requirement to provide or maintain any noise attenuation or landscaping or visual screening to help mitigate against any future use of the site.
- 8.118 In the event that the appeal is dismissed however, those are all factors that would necessarily be identified as potential benefits of the existing buildings when seeking to secure future tenancies.
- 8.119 The Officer's Report (on paragraphs 16-23 on page 45) reflects this position and rightly sets out that the fallback position should have 'substantial weight' in determination.

9 Third Party Objections

9.1 Although not mentioned in the reason for refusal, third-party objections were submitted in relation to the following key topic areas:

- Highway Impacts
- Viability of the Russell Homes's Scheme
- Reduction of Existing House Prices
- Ecology and Trees
- Air Quality
- Heritage
- Lighting
- Impacts caused by rats

9.2 Pages 40 – 42 of the Officer's Report provide a summary of resident comments received over the course of the consultation period, whilst the 'Additional Commentary' Sections of the Officer's Report (paragraphs 91 – 205 on page 64) accurately summarises the position in respect of the issues raised by Russell Homes.

9.3 The sub-sections below provide further detail on the Appellant's position in response to issues raised by third parties.

Highway Impacts

9.4 Concerns were raised by residents that the Proposal would lead to an increase in congestion on the new Queen Elizabeth II Way link road and junction with Manchester Road and could result in dangers to pedestrians and car drivers.

9.5 A Transport Assessment (TA) prepared by BWB was submitted with the application and included an assessment of trip generation associated with the Proposal. The TA concluded that with the new link road in place, the residual increase in vehicle trips as a result of the Proposal can be accommodated with *negligible* change to the operation of the local road network.

- 9.6 Russell Homes also submitted a series of highway objections over the course of the application which included Technical Notes prepared by Focus Transport (dated December 2022, 23 March 2023, May 2023) and VISSIM modelling of the Site's access prepared by the Modelling Group (26 April 2023 and 15 May 2023) together with an associated VISSIM Report prepared by Focus Transport (April 2023)
- 9.7 The Appellant submitted responses (prepared by BWB) to the objections, and this included a revised Transport Assessment (dated March 2023) and a review of the VISSIM modelling data (dated 14 June 2023).
- 9.8 The Local Highway Authority (LHA) was consulted on multiple occasions and reviewed all information submitted by both the objector and the Appellant.
- 9.9 The latest consultation response from the LHA (dated October 2023 – para 160, page 80 of the Officer's Report) confirms that the LHA continues to have no objections to the application, subject to conditions, which the Appellant has agreed to.
- 9.10 Transport for Greater Manchester raised no objection to the application (received 30 November 2022).
- 9.11 National Highways raised no objections to the application (received 29 November 2022).
- 9.12 The Officer's Report (pages [64-72]) accurately summarises matters in respect of highways, and it is the Appellant's case that the Proposal is acceptable in highway terms.
- 9.13 This is supported by an additional highways note prepared by BWB which is submitted at **Appendix X**.

Viability

- 9.14 Russell Homes submitted several objections regarding the impact of the Proposal on the viability of its future development, contained in a summary letter prepared by Avison Young and a supporting Viability Impact Statement (VIS) prepared by Knight Frank, dated 16 November 2023.
- 9.15 The VIS is supplemented by a letter from JLL dated 26 September 2023 and a Valuation report dated November 2023. In addition, a Noise Impact Assessment has been prepared by E3P dated 12 October 2023.

- 9.16 The VIS asserts that due to noise and visual impacts, the Proposal would both reduce future house prices and result in the loss of approximately sixty-six houses, which would in turn put in jeopardy the delivery of the Russell Homes Scheme.
- 9.17 The Council instructed a third party (Continuum) to undertake an Independent Viability Assessment (IVA) in light of the VIS put forward by Russell Homes and this is attached at **Appendix Q**.
- 9.18 In summary, the IVA concluded that Russell Homes' viability case has not been robustly demonstrated and there is a lack of detailed evidence base that would be required for a Planning Practice Guidance compliant Viability Assessment.
- 9.19 The Appellant has also instructed Alder King to undertake an additional review of Russell Homes' Viability Assessment, and this is attached at **Appendix Q of this Statement**.
- 9.20 In summary, Alder King's Assessment firstly emphasises that the scheme is in outline only and there is an ability to change the design, layout and density of housing numbers in any future reserved matters application,
- 9.21 In relation to noise and visual, Alder King's Assessment refers to the conclusions of the TPM (Landscape) and Waterman (Noise) Reports attached at **Appendix O and P** which disputes the arguments made by Russell Homes.
- 9.22 The Alder King Assessment concludes that the Russell Homes' residential site is sandwiched between two pre-existing commercial estates and is now intersected by a major relief road. As such, the pricing achieved at the Russell Homes site already reflects the issues raised by Knight Frank and would not change following the redevelopment of the Site and therefore not have a material impact on the deliverability of the wider masterplan.
- 9.23 Notwithstanding all of the above, the impact of development on the value of a nearby property is not of itself a planning matter unless it gives rise to a demonstrable land use consequence.
- 9.24 Planning Practice Guidance (reference ID: 21b-008-20140306) is clear that:

"The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations."

Loss of Residential Property Value

- 9.25 Concerns were raised by local residents regarding the Proposal resulting in a reduction of existing house prices. As above, the impact of development on the value of a nearby property is not a material consideration. Even so, there is no available evidence to suggest that the Proposal would impact the property value in any case.

Ecology and Trees

- 9.26 Comments were submitted by residents that the loss of trees on site would result in impacts on nature conservation.
- 9.27 The application was submitted with the support of both an Ecological Impact Appraisal (EclA) and Arboricultural Impact Assessment (AIA) and the Officer's Report accurately summarises matters in respect of Ecology (paragraphs 73-77) on page 61.
- 9.28 Although the Proposal will result in the loss of a number of trees, the majority of trees shown to be removed on the Tree Retention Plan are of limited arboricultural value and graded as category C accordingly.
- 9.29 The new landscaping and planting scheme will compensate for the loss of tree material through additional tree planting to replenish and improve the canopy cover initially lost.
- 9.30 The Greater Manchester Ecology Unit (GMEU) were consulted at an early stage in the application process and confirmed no objection to the development (04 January 2023 – page 31 of the Officer's Report). The GMEU response concludes that the Proposal could achieve a net gain in biodiversity and confirmed that no further ecology surveys were required prior to determination of the application.
- 9.31 The Planning Officer determined that subject to conditions ensuring the proposed landscape planning is carried out in accordance with approved plans, suitably maintained over a defined period and ensuring appropriate steps are taken to avoid any disturbance of nesting birds, the development is acceptable in respect to biodiversity.

Air Quality

- 9.32 Concerns were raised by interested parties regarding the impacts of the Proposal on air quality. An Air Quality Assessment was prepared by BWB and submitted with the application.

- 9.33 Subject to mitigation measures, the Assessment concludes that the impacts of the construction phase would be not 'significant.' The Assessment concludes that the impacts of the development on local air quality during the operational phase are 'negligible.'

Heritage

- 9.34 A concern was raised by a local resident that the loss of the existing Gatehouse on the Site would result in a loss of local history/heritage.
- 9.35 The Gatehouse is not Listed, nor is it a non-designated heritage asset (as noted in the Officer Report in the 'representations received' table on page 41). Nevertheless, the Conservation Officer requested that a Heritage Statement was submitted to ascertain its significance.
- 9.36 A subsequent Heritage Statement was prepared and submitted by Wessex Archaeology. The Statement confirms that the Gatehouse holds limited significance, however it recommends that a pre-demolition photographic survey should be undertaken which would be secured through an appropriately worded planning condition and this was accepted by both the Conservation Officer and the Council.
- 9.37 Thus, if it was considered that the Gatehouse could be argued to have some, albeit limited, heritage worth, then such a condition would adequately mitigate for its loss and would in any event be substantially outweighed by the public benefits which would arise from the appeal proposals.

Lighting

- 9.38 Concerns were raised by residents that the Proposal would result in light pollution impacts. The Street Lighting team were consulted on the application and no objections were received subject to conditions which have been agreed between the Appellant and the Council.

Impacts caused by Rats

- 9.39 A comment was submitted by residents that the construction and demolition stages of development would result in impacts caused by rats.
- 9.40 No evidence was submitted to substantiate this claim and no concerns were raised by technical consultees.
- 9.41 A condition of the planning approval will be to secure a demolition method statement to ensure that all demolition is carried out in accordance with the British Standards and BS Codes of Practice:

BS6187; 2011 Code of Practice. Where any unexpected species is located by any personnel on site (including rats) all works within that area must cease immediately. Site management must be immediately informed along with the Safety Health and Environment (SH&E) Department and the necessary steps taken to remove species from the site. No further work may take place within that area until confirmation has been given by the SH&E Department and site management.

Other Matters

9.42 The Appellant briefly summarises its position in respect of the following technical matters for completeness. These matters do not feature within the general topic areas around which objections to the planning application were lodged and we are seeking to confirm this between the Appellant and the Council within the SOCG.

- **The Principle of Development** –the principle of industrial development is acceptable in principle given its current use and the Appellant will seek to agree this in the SOCG, as per paragraphs 1 – 15 (page 42) of the Officer’s Report and the pre-application advice feedback received.
- **Archaeology** – the Council and the Greater Manchester Archaeological Advisory Service (GMAAS) agreed with the Appellant’s submitted archaeological assessment. GMAAS confirmed on 14 June 2023 that the Proposal does not threaten the known or suspected archaeological heritage, and on this basis, there is no reason to seek to impose any archaeological requirements upon the Appellant.
- **Crime and Security** – a Crime Impact Statement was submitted with the application and there are no objections from Greater Manchester Police who were consulted on the application.
- **Flood Risk and Drainage** - the Site is within Flood Zone 1 and has areas of medium and high-risk surface water as a result of the existing buildings and levels. However, with the Proposal, the Site will have a much lower risk and give rise to off-site betterment. The Flood Risk Assessment (FRA) and Drainage Strategy that accompanied the planning application were supported by the Lead Local Flood Authority and no objections were raised by United Utilities as the statutory drainage undertaker, subject to conditions, which were accepted by the Appellant.

- **Ground conditions** – no sources of significant contamination were identified, and the geo-environmental investigations concluded that the Site is sufficiently stable for development purposes. The Coal Authority confirmed no comment as the application site is not in defined High Risk Area.
- **Planning Conditions** – the Appellant supports the use of planning conditions to control the delivery and operation of the Proposal. The list of conditions set out within the Officer's Report (pages 93 - 103) was agreed by the Appellant prior to the Planning Committee's determination of the planning application. Following review of the agreed planning conditions the Appellant has suggested some additional conditions (in relation to drainage, sustainability and photographic record of the gatehouse), as well as minor updates to the list of agreed plans under Condition 2, to ensure that the decision is robust. It is the Appellant's intention to agree this with the Council in the SOCG.

10 Appeal Procedure

10.1 The Appellant considers that an Inquiry is the most appropriate appeal procedure for determining this case for the following reasons:

- The issues raised by the Council's reason for refusal, and in particular by third party objector, are complex and will require the submission of additional highly technical data to be provided as evidence.
- It is anticipated that third party objectors will seek to play an active role in the inquiry and will present expert evidence which will need to be rebutted and tested.
- These matters can only be properly tested through the formal questioning of expert witnesses in relation to the following detailed technical matters: Noise, Landscape and Visual Impacts, Design, Viability (of the adjacent development) and Planning. If considered appropriate by the Inspector relevant evidence may need to be given on oath.
- Furthermore, it is likely that detailed legal submissions will need to be made in respect of a number of areas including:
 - The relevance of potential alternative forms of development;
 - The Fallback position;
 - The extent to which parties raising a positive assertion of harm have an obligation to evidence such harm;
 - Disclosure – a complaint to the Information Commissioner Officer (ICO) has recently been upheld in this regard.
- There is substantial public interest in the Proposal and a significant number of third-party representations have been submitted, particularly from the prospective developers of the neighbouring site, Russell Homes (refer to Section 3), who are expected to play an active part in any inquiry.
- There is claimed to be a complex relationship between the Site and potential future residents of Russell Homes' Scheme which has outline planning permission (refer to Section 3).

- Due to the number of representations received, it is likely that interested parties will request 'rule six status'.

10.2 On the basis that the Planning Inspectorate agrees to this appeal being dealt with under the Inquiry procedure, the Appellant will submit detailed Proofs of Evidence prepared by the following technical experts to address the reasons for refusal:

1. Design Matters – Richard Routh, Architect, Ashton Smith Architects
2. LVIA Matters - Kit Patrick, Director, TPM Landscape Ltd
3. Planning Matters – Harry Spawton, Partner, Gerald Eve LLP

10.3 Since the decision notice was issued, the Council resolved at its meeting of the Planning and Licensing Committee on 23 May 2024 that it will not contest the Appeal on grounds of noise impacts and that this will be agreed with the Appellant in the SOCG.

10.4 In light of the above, the Appellant does not propose to call a noise witness unless otherwise raised by the Council or a Rule 6 Party, in which event the Appellant would call the following technical expert:

1. Noise Matters – Mark MacLagan, Technical Director, Waterman Infrastructure & Environment Ltd

10.5 In addition, we have also submitted the following evidence to address matters raised during the determination period, which may warrant the calling of expert evidence:

1. Viability Matters – James Mackay, Head of Valuation and Viability, Alder King
2. Highways Matters – Matthew Addison, Technical Director, Transport and Land Development), Pell Frischmann (formerly Associate Director, Transport and Infrastructure Planning at BWB).

10.6 Summaries of the above technical matters are appended to this Statement of Case.

11 Conclusions

- 11.1 For the reasons provided in this Statement, it is the Appellant's case that the submitted appeal should be allowed, and planning permission should be granted subject to the list of planning conditions identified in the SOCG.
- 11.2 Limb 1 of the Appellant's Case shows that the Proposal does not breach any of the policies cited in the reason for refusal, and there is strong policy support for the Proposal in key policies, such that whilst there is some limited conflict with one non-contentious policy, the Proposal accords with the Development Plan taken as a whole.
- 11.3 The assessment of other material considerations demonstrates that there are no material considerations of sufficient weight which would indicate that planning permission should not be granted.
- 11.4 The planning balance is such that there is no basis to disapply the statutory presumption that planning permission should be granted.
- 11.5 Limb 2 of the Appellant's Case Appellant's Case explains that even if the Proposal is not compliant with the Development Plan as a whole, there are material considerations which justify a departure from the Development Plan, and other material considerations, so that planning permission should be granted.
- 11.6 It is respectfully requested that planning permission should be granted.