

FORMER WESTGATE POLICE STATION, NEWCASTLE UPON TYNE

APPEAL REFERENCES:

APPEAL A: APP/M4510/W/20/3263625 (East)

APPEAL B: APP/M4510/W/20/3263441 (West)

CLOSING STATEMENT

ON BEHALF OF NEWCASTLE CITY COUNCIL

Introduction

1. As in Opening, the Council's position remains that the Appeal proposals represent an unacceptable overdevelopment of the Site and would be harmful both to future residents of the Appeal A site and to existing residents and the wider area.
2. It is clear from the Appellant's evidence that the proposed drive-through restaurant and takeaway, and more particularly its proposed end user Burger King, have dictated the development of the Appeal schemes, from the design of the building to its siting and access arrangements, the limited scope for landscaping on the Appeal sites and the arrangement and glazing of the new residential flats. In order to accommodate the Appellant's overriding desire to squeeze a drive-thru onto the constrained Appeal B site, the opportunity has been squandered to enhance the perception of Newcastle from a major movement corridor and an important route into the city, in an area where significant investment is likely to come forward in the coming years.¹ Further evidence of a poorly considered scheme can be seen in the numerous changes to the Appeal schemes made during the course of the inquiry, including:

¹ Ms Robson, RTS Character and Appearance, Day 2 AM.

- a. A new layout for the road lanes within the Appeal B scheme;
 - b. The alteration of car parking at the rear of the Appeal B scheme from 6 to 3 spaces and then back to 6 again;²
 - c. A change to the proposed opening time for the Burger King from 7am to 8am in response to servicing constraints;
 - d. The proposed introduction of further tree planting at the suggestion of the Appellant's landscape witness in evidence to the inquiry;³
 - e. Proposed realignment of the fin drain, and consequent changes of levels in the site; and
 - f. Moving the doors on the refuse store in the Appeal B scheme to the front rather than the rear of the building.
3. The clear impression is that the Appeal schemes have not been well or carefully considered, but rather reveal an ever-evolving attempt to address the obvious constraints of trying to accommodate too much development onto the site.

Baseline

4. It is now common ground between the parties that there is no real prospect that the police station use will resume, and it is not relied upon as a fall-back position by the Appellant.⁴ Nor is there any realistic possibility that the upper floors of the police tower could be converted into residential units under Class MA of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 SI 2015 No 596. The main use of the site was a *sui generis* police use, which therefore does not fall within the scope of Class MA. Permitted development rights only accrue to the primary use of the site and not to ancillary uses, which are simply uses which are ordinarily incidental to the primary use and do not constitute primary uses in their own right that are capable of attracting permitted development rights. In this regard it is irrelevant that permitted

² Mr Kitchener Appeal A Proof para.3.19. At the start of the inquiry Paul Tucker QC indicated on behalf of the Appellant that the Appellant was not seeking to promote the plan with 3 parking spaces rather than 6.

³ Mr Armstrong RTS Character and Appearance, Day 1 PM

⁴ Appellant Opening, para.32; Paul Tucker QC, XIC Mr Kitchener Day 3 AM, XX Mr Edwards Day 5 AM.

development rights are capable of accruing to part of a building, as the main use of the relevant part of the building was a *sui generis* police station use.

5. Mr Hedley sought to avoid this inevitable conclusion in cross-examination, by suggesting that when he referred to primary and ancillary uses in his proof he had instead meant a mixed use. The position of the Appellant had not been characterised in this way at any stage until Mr Hedley's cross-examination, and was not put to Mr Edwards. It is not a credible position, not least given Mr Hedley's own evidence that the office use was associated with the police station use; that it was used for other police purposes, for example murder squad investigations; and that there would only have been around 20 clerical staff in comparison to 170 police officers.⁵ Even a mixed use would not benefit from permitted development rights, as in that case the relevant floors would be in a *sui generis* mixed police station and office use, and Class MA would not apply.
6. In any event, any application for prior approval would require the Appellant to satisfy the Council that the proposed access arrangements were safe. The Council does not consider that the use of the existing accesses would be safe and there is therefore no realistic prospect that prior approval would be granted.
7. Contrary to the Appellant's previously expressed position,⁶ any non-police use would therefore require planning permission, and the correct baseline for judging the appeal proposals against is no use of the site.
8. However, the Council's concerns relate to the proposed uses in themselves, rather than by comparison to the nil use. For the following reasons, the proposed developments would have unacceptable effects and would conflict with the adopted development plan.

The effect of the proposed access, parking and servicing arrangements on highway safety when the schemes are considered both individually and in combination

9. The baseline against which to assess the appeal schemes is therefore a site which is not in use. Plainly the schemes represent an intensification against that baseline. However,

⁵ XX Mr Hedley, Day 5 PM.

⁶ Mr Hedley Appeal A Proof para.6.18.

the real issue for the Inspector is not whether the appeal schemes are more or less intense than some other use, but rather whether they are too intense to safely be accommodated on the sites.

10. As to the reasons for refusal, the parties agreed that the main issues relate to the access, parking and servicing arrangements on highway safety, which plainly involves interrogation of the internal arrangements and uses of the appeal sites and the interaction of those uses with the surrounding road network. The Appellant understands the nature of those concerns. The Transport Witness Statement produced after the refusal of permission recognised that the highway concerns raised by the Council related to access, parking, servicing and the operation of the drive-thru and the impact of the development on the public highway network.⁷ Those are the very issues addressed in the evidence of Mr McGillivray.

Proposed access

11. The Council has consistently raised concerns about the location of the proposed access junction on Dunholme Road. Highway officers raised concerns about the spacing and safety of the access road in 2019 and again in the pre-application discussions in 2020. They repeatedly informed the Appellant that the junction should be at least 30m from the Westgate Rd/Dunholme Road junction as required by the Council's design standards.
12. The new access junction is just 14.1m from the give way line on Dunholme Road and c.20m from the centre-line of Westgate Road. Whether measured from the centre-to-centre lines or, as Mr McGillivray considers more appropriate, from the centre of the new access to the give way line on Dunholme Road, the spacing falls short of the requirements of the Council's standards for the Design and Construction of Roads and Accesses to adoptable standards.⁸
13. In November 2018, the Council issued a formal consultation response which contained links to relevant guidance documents. In its discussions on the revised layouts in 2020, it again indicated concerns about junction spacing. In September 2020, officers provided

⁷ Appeal A TWS, p.8, para.2.16 (CD8.6).

⁸ CD16.1.

a consultation response explaining that “*Any proposal would need to be design[ed] to NCC highway design standards. That is (1) junction spacing of 30m for this category of road*”.⁹ Given those long-standing concerns, it is surprising that the Transport Assessments submitted by the Appellant say nothing about the safety of the junction spacing and make no mention of the Council’s design standards.¹⁰

14. The TWSs submitted after the refusal of permission also make no mention whatsoever of the Council’s design standards and nor does the Road Safety Review commissioned by the Appellant. This may be because Mr Kitchener was simply not aware of those standards. Certainly, that is the impression given by his written evidence in which he recognises the Council’s case that the junction spacing should be at least 30m but says that the Council “*offer no policy or design guidance justification for this statement*” and that “*NCC have no guidance on junction spacing for residential streets*”.¹¹ Plainly that was wrong and Mr Kitchener was forced to argue that he had meant the Council had no “*appropriate*” guidance. Given the stark absence of any mention of the guidance in any of the Appellant’s transport documents, Mr Kitchener’s belated back-track is not credible. If he had thought the guidance to which the Council had repeatedly referred was not appropriate, one would have expected him to explain the rationale for that somewhere in the TAs, the TWSs or his proofs of evidence. The more likely explanation is that Mr Kitchener was simply not aware of the guidance until it was produced as part of the inquiry process. Certainly, it does not appear to have played any part in influencing the design of the access arrangements.

15. In fact, the design of the access junction has been dictated, not by safety considerations, but by the Appellant’s desire to accommodate a Burger King restaurant on the site. Given the Council’s concern that the Burger King building should not be north of the existing building line, the TA for Appeal B explains that the Appellant was left with a “*window*” on the northern part of the site in which to accommodate the access.¹² Rather than starting with highway safety considerations and identifying the safest location for the new

⁹ CD7.8.

¹⁰ The only cursory consideration of the new access in the TA’s is as follows: for Appeal A, p.22, para.4.6 of the TA (CD3.2); for Appeal B, p.21, para. 4.6 (CD 9.2).

¹¹ Appeal A Transport proof, p.6, paras 3.5 – 3.6.

¹² Appeal B TA, p.4, para. 1.9 (CD9.2).

junction, the Appellant started with its desire to accommodate a hot-food takeaway and allowed that to drive the design of the access.

16. The Council's design guidance sets mandatory standards for the design and construction of new accesses to which developers must adhere when proposing new or reconfigured works on the existing highway.¹³ It was produced in 2015, after MfS2 (which was published in 2010) and the Council will plainly have taken account of guidance in that document as well as local circumstances, in coming to the view that spacing standards were appropriate in Newcastle.
17. The parties agree that Dunholme Road constitutes a "*Residential street*" within the guidance and that Westgate Road is on the same side in that it is parallel to the proposed access road. The guidance explains that the spacing of junctions on various types of road "*shall*" (i.e. must) be provided in accordance with the standards in Table 4.4 which, given that Dunholme Rd is a residential street, require a distance of 30m between the centre line of the access and the centre line on Westgate Road. The Appellant's access junction falls short of that standard.
18. Mr McGillivray's evidence is that the minimum standards in the guidance should be applied with particular care in the circumstances of this case. Generally, when two parallel streets approach a main street, vehicles will be required to give way to vehicles on the main street and drivers will approach the give-way line on the minor street understanding that and knowing that there may be vehicles travelling both ways along the principal road. By contrast, on Westgate Road, vehicles travelling west and wishing to turn into Dunholme Rd will not have to stop at a give-way sign and will not have to look to their right before turning. Equally, vehicles travelling east will not have to look to their left before turning. In those circumstances, Mr McGillivray's evidence was that it was even more important to ensure adequate spacing and that any measurement should be taken from the kerb-line on Westgate Road to the centre of the new access. As a matter of fact, that is the measurement presented by both the Appellant and the Council in all of their written evidence to the inquiry. Measured in that way, the new access is just 14.1m from Westgate Road.

¹³ Design guidance, pages 8 and 54 (CD16.1).

19. Mr Kitchener's view was that vehicles on Westgate Road wishing to turn into Dunholme Road were likely to be slowing in a similar way to a vehicle approaching a give-way line on a minor road. If that is right, then he accepted the same standards set out in the guidance should apply (i.e. spacing of 30m). On either basis, the proposed access falls short of the mandatory requirements in the guidance.
20. The purpose in setting those standards is to ensure that drivers have adequate time to see and anticipate vehicles turning from other junctions and to allow them time to make sensible decisions to avoid conflict with those vehicles. Given the nature of the uses proposed on the appeal sites and the constrained nature of the sites, it is particularly important to ensure appropriate junction spacing because of the likelihood of vehicles having to wait to get into and out of the site which means there is every chance of vehicles spilling out of the site and queuing back onto Dunholme Road, further decreasing the stopping distances available to cars turning in from Westgate Road.
21. It would only take 2 – 3 cars queuing on Dunholme Road for egress from the site to be blocked. Vehicles may wait patiently at the give-way line within the site, which itself will cause blocking within the site, but they may well try to nudge out and force a way into the queue of north-bound vehicles, thereby blocking the south-bound lane on Dunholme Rd. Vehicles may need to wait on Dunholme Road to get into the site, to allow pedestrians to cross the site access or because of queuing traffic within the site. Vehicles on Westgate Road turning right into Dunholme Road to access the appeal sites will be indicating right and will have very little time to then indicate left to show their intention to turn into the site such that vehicles behind them will have even less time to react. All of these issues reveal why it is so important to ensure appropriate junction spacing in the interests of highway safety.
22. Given the proposed introduction of a new access on Dunholme Road, it is also important to understand the existing conditions on that road so as to assess the interaction between the new access and the adjoining road network. The Appellant's assessment of turning movements between Westgate Road and Dunholme Road consists of a single, snap-shot survey undertaken in June 2020 when the country was in lock-down and over a lunch-time period, which does not represent the peak period for a residential street. Mr Kitchener accepted that the survey results were not representative of typical conditions,

yet he has not made any upward adjustment to the figures or sought to carry out any further surveys since restrictions have been eased. He accepted in cross examination that the turning counts shown in figures 14 – 16 of the TA were not robust and it was those figures that informed his assessment of mean max queues on Dunholme Road. He also accepted that just because a junction operates within capacity does not mean that there will be no queuing at the junction. The inquiry has no representative evidence before it of the propensity for queuing or length of queues on Dunholme Road and so no way of knowing how often 2 or 3 vehicles will be waiting in the north-bound lane of Dunholme Road and so preventing egress from the appeal site.

The Road Safety Review

23. The Road Safety Review¹⁴ relied upon by the Appellant to demonstrate the safety of the access junction carries very little, if any weight. It certainly provides no reassurance to the Inspector that the access arrangements are safe.
24. First, it is not a Road Safety Audit. There is no clear evidence from the Appellant as to why it commissioned a review rather than a formal and well-recognised Audit. Given the long-standing concerns expressed by the Council, it would surely have been prudent to commission a formal Audit.
25. Second, the review explains that it will identify potential hazards and make recommendations to reduce the likelihood of injury collisions arising from those hazards,¹⁵ yet it contains no recommendations at all.
26. Third, the review indicates that the identified conflicts could be mitigated through a “*revised development layout being considered*” yet it does not tell us what revised layout is being considered; does not identify any plans showing a revised layout; and Mr Kitchener explained that he had not suggested or discussed any revisions with the author of the review. Unfortunately, Mr Kitchener had not seen fit to ask the reviewer what they meant by that or whether a revised layout was recommended.

¹⁴ Appendix 2 to Mr Kitchener’s proofs.

¹⁵ Road Safety Review, para.1.1.2.

27. Fourth, the review suggests that the reduction of three accesses in a site with no use to a single access for a site with multiple proposed uses “*may have an overall benefit and construed [sic] as safer than the existing situation*”. It cannot sensibly be suggested that the presence of 3 accesses in a site with no active use is somehow less safe than the introduction of four active land uses operating through a single junction.
28. Table 2.1 of the review identifies a number of hazards associated with the development. The first is the risk associated with vehicles slowing down to turn left into the development – so that is vehicles coming from Westgate Road and turning into Dunholme Rd and then wanting to turn into the appeal site. It also mentions a conflict associated with vehicles queueing back towards Dunholme Rd because of vehicles waiting to turn right into the Drive-thru. So that is vehicles coming north on Dunholme Rd wanting to turn right into the drive-thru and so causing queues behind them to the south. It identifies a risk of collisions giving rise to serious injury associated with development traffic ‘blocking back’ onto Westgate Road from Dunholme Road, i.e. vehicles wishing, but being unable, to enter the site and queueing back along Dunholme Road and onto Westgate Road. The review indicates that there is a risk of serious injury occurring every 3 – 10 years as a result of that phenomenon and so plainly the phenomenon itself of queueing back onto Westgate Road is likely to take place much more often than that. The next two hazards relate to the combined increase in vehicles and pedestrians crossing Dunholme Road, the site access or Westgate Rd as a result of the development. Again, those hazards give rise to a risk of collisions causing serious injury every 3 – 10 years. The final hazard identified in the report is associated with the increase in vehicles turning into Westgate Road from Dunholme Road where driver visibility may be restricted by the presence of the existing bus stop to the right (east). Again, this gives rise to the risk of collisions causing serious injury, potentially every 3 years. The report notes that visibility may be impeded by a stationary bus and/or passengers waiting at the bus stop, which may result in ‘looked but failed to see’ type accidents. Buses use those stops, and thereby impede visibility every few minutes throughout the day.¹⁶

¹⁶ Appeal A TA, p.19, para.3.47 (CD 3.2).

29. Records of collisions giving rise to injury indicate that in the five years between 2015 and 2020, there were 3 collisions at the Westgate Road/Dunholme Road junction, of which one was serious. The new access has the potential to cause four serious collisions, potentially every three years. Mr Kitchener accepted in cross examination that even on the basis of the Appellant's evidence, the new access gives rise to a material increase in the risk of collisions with serious consequences for those involved. It will be for the Inspector to judge whether it is acceptable to introduce a new junction which gives rise to those safety impacts. The Council's clear view is that the proposed access gives rise to unacceptable safety impacts and should not be allowed.

Servicing and Parking – Appeal A

30. The servicing arrangements for Appeal A also give rise to safety concerns. As shown on the plan at CD6.1,¹⁷ the turning area proposed for service and delivery vehicles is at the north east corner of the site and would bring large vehicles into close contact with pedestrians and cycle parking at the only point of pedestrian access to the site. The pavement at that location is narrow, at 1.8m. Given the nature of the scheme, there will be numerous servicing and delivery vehicles using that area throughout the day to serve the dentist, two shops and 15 residential units, and their relationship with pedestrians and cyclists is far from satisfactory.
31. The Appellant envisages that servicing and delivery vehicles would enter that north west corner in a forward gear and then reverse into the hatched area to the immediate north of the dentist. In order to enter the turning area, the vehicles would have to, not only sweep out into, but actually travel down a stretch of the opposing lane. Pedestrians and other vehicles would therefore be faced with large vehicles travelling on the wrong side of the road. Furthermore, the tracking drawings show that the service and delivery vehicles would pass extremely close to the parking bays marked 12, 13, 14 and 15 on the plan. That would present a safety risk to pedestrians at the rear of their vehicles – say, loading shopping or taking out a pushchair.
32. The appeal scheme does not include any dedicated bays for the larger vehicles associated with servicing and delivery, which would have to undertake their loading and unloading

¹⁷ Drawing 20-13/P105C.

activities in the hatched area. Vehicles dwelling in that area would prevent any other service vehicles from turning in the site and those other vehicles would be forced to wait in the central lanes until that vehicle had swung back out (crossing again into the opposing lane of traffic) before they could manoeuvre into the turning area.

33. While Mr Tucker sought to suggest that these constraints could easily be managed through the use of a banksman to guide service and delivery vehicles, Mr Kitchener accepted that it was not credible or realistic to expect that food or Amazon-type delivery drivers would have banksmen to guide them.
34. The arrangements for servicing and delivery bring large vehicles into conflict with other users, both pedestrian and vehicular and are a consequence of the Appellant's desire to cram too much development into the constrained site of Appeal A. They could easily be overcome by an arrangement which omitted the Burger King drive-thru and accommodated a mixed use scheme across the wider site.
35. As to parking, the Council understood from Mr Kitchener's proof that the Appellant proposed a reduction in parking spaces to the rear, from 6 to 3.¹⁸ It became apparent at the inquiry that the Appellant's primary position was, in fact, that 6 spaces would be provided. That would not be acceptable. Even on Mr Kitchener's evidence, it would require "*careful manoeuvring*" which residents should not have to contend with on a regular basis. In fact, it would be extremely difficult to manoeuvre into those spaces given the bollards present, and if any other vehicle was already parked in any of the bays. Indeed, it would be impossible if there were any vehicles parked on Back Lane. Even if the spaces were reduced to 3, the manoeuvre would be tight, and as Mr Kitchener accepted, impossible if there were any parked vehicles on Back Lane.

Parking and operation of the hot-foot takeaway – Appeal B

36. The Appellant's analysis of likely queuing associated with the drive-thru in its TA is far from robust. It relied on the TRICs database, using the category of fast-food drive-thrus.

¹⁸ Mr Kitchener's Appeal A proof, p.8, para.3.19 says: "*Whilst the original layout of the spaces was workable, it did require careful manoeuvring to access the spaces. I have therefore carried out a review of these spaces and proposed, on Drawing 20-098.008, included in Appendix 1 to this PoE, that the spaces are reduced in number from six to three, and rotated through 45-degrees to provide additional manoeuvring space.*"

That led it to conclude that there would be a maximum of 3-4 vehicles in the drive-thru during peak periods.

37. Mr McGillivray carried out his own assessment of trip generation based on the TRICs database, selecting fast-food drive-thrus which he considered to be comparable to the appeal scheme in terms of those in urban locations, close to key transport corridors. While he did not provide details of the precise selection criteria, his written evidence (at paragraph 3.199 of his proof) confirmed that he selected sites which he considered to be comparable and that he did not seek to develop forecasts which showed higher trip rates. The results of his analysis showed double the number of arrivals and departures compared to the Appellant's figures.¹⁹ The point he wished to demonstrate was that the selection criteria input to the database has the potential to considerably alter the outcome. That is why it is so important to undertake scoping discussions and to carry out surveys of actual drive-thrus to corroborate the TRICs analysis.
38. When the Appellant carried out surveys, they revealed a peak queue of 9 vehicles at a comparable Burger King drive-thru. The Council's own surveys revealed a maximum queue of 11 vehicles at a KFC in Newcastle and 9 at a Burger King in South Shields.
39. The drive-thru lane can accommodate 5 – 6 vehicles within the circulatory lane, from the collection point. This means that even assuming a maximum queue of 9 vehicles, 3 – 4 would have to wait in the car park. Noting that a KFC could come forward on the appeal site, and taking a maximum queue of 11 observed at a local KFC, 5 – 6 vehicles would have to wait in the car park.
40. If 3 or 4 vehicles are waiting in the car park, cars will be unable to access or egress the parking spaces to the north or south of Appeal site B. At peak periods, the car park is expected to accommodate up to 39 vehicles associated with the restaurant per hour.²⁰ Those vehicles will not be able to get into or out of the parking spaces while there are 4 vehicles queueing to get into the drive-thru and will be severely inhibited from doing so if there are 3 or even 2 vehicles waiting in that lane. In those circumstances, vehicles may wait patiently in their spaces for a gap to appear, but even a basic understanding of driver

¹⁹ Mr McGillivray's proof, paragraph 3.202.

²⁰ Appeal B TA, p.25, para 5.18 indicates that each space can accommodate 3 vehicles per hour over peak periods. Given the reduction of parking spaces from 16 to 13, that means 39 vehicles per hour (13 X 3 = 39).

behaviour indicates that some vehicles will try to reverse part-way out of their spaces to indicate their intention to get out in the hope that other drivers will allow them a space. Vehicles reversing out of the northern spaces will block the lane which is intended to provide access to the Appeal A site. Vehicles hovering back to allow others to reverse increase the risk of cars spilling out of the appeal site and onto Dunholme Road and even Westgate Road.

41. The appeal scheme also includes 2 holding bays to accommodate drive-thru drivers with a longer dwell time. Typically, those bays would be expected to be within eyesight of the collection window so that staff can indicate to drivers where they should wait. That is not the case here. The holding bays are to the north of the site which means that drivers wishing to access them will have to drive directly over the main site access to get to them. Drivers entering the site would not expect to find a car driving from the circulatory lane across the mouth of the site, and a gap in all three of the car park lanes would be required to enable those vehicles to access the holding bay. If more than one vehicle were waiting patiently at the give-way line rather than nudging onto Dunholme Road, cars would be blocked in the circulatory lane.
42. In summary, the arrangements for the drive-thru and car parking are overly constrained and counter-intuitive. The Appellant's arrangements try to cram an inappropriate development into a confined site with a single access and egress point. Because of the inevitable frustration that arises from not being able to get into or out of a parking space; or of being held up by vehicles queuing for the drive-thru; or inhibited from leaving the site because of queueing on Dunholme Road, drivers are more likely to undertake ill-advised manoeuvres. Rather than minimising conflict, the appeal scheme designs in conflict between vehicles which puts both drivers and pedestrians at unacceptable risk.

Servicing – Appeal B

43. The servicing arrangements for Appeal B have been something of a moveable feast. The Appellant's noise evidence suggested that deliveries were likely to take place between 7am and 7pm.²¹ In light of Mr Kitchener's swept path analysis (at page 9 of his Appeal B proof), the Appellant changed its position to a proposal that all deliveries would take

²¹ Ms Alderson Appeal B proof, p.4, para.2.22.

place between 7am and 8am because the Appellant recognised that it would be impracticable to accommodate delivery and servicing movements when cars were parked in the car park. That meant that on the fourth day of the inquiry, it was forced into accepting that its previous opening hours for the restaurant would have to change from between 7am and 10pm to between 8am and 10pm.

44. There is no evidence before the inquiry that Burger King is able to accommodate all of its servicing and delivery activity within a single hour. Indeed, Ms Alderson has provided information as to delivery times associated with Burger King restaurants which indicates that a number of companies delivering to Burger King do not make deliveries before 8am.²² Furthermore, there appears to be no contingency to cater for the very real prospect of delivery vehicles being delayed which, given the inherent uncertainties of traffic on the network, is plainly likely from time to time. In order to leave the site, a delivery vehicle would have to reverse over the accessible parking bays and would overrun ten of the fifteen parking spaces to complete the manoeuvre. Plainly that would be dangerous if there were any cars wishing to use those spaces because the delivery had been delayed and the cars had started to arrive to use the restaurant or drive-thru.
45. Even if deliveries took place outside of the restaurant opening hours, the drawing at Appendix 1 to Mr Kitchener's rebuttal shows that a delivery vehicle associated with the hot food takeaway would have to use the whole width of the exit lane to enter the site. That would mean that a vehicle leaving the Appeal A site would be faced with a large oncoming truck in the wrong lane.

Cumulative impacts

46. Throughout the application and pre-application process, the Council has asked for a comprehensive assessment of the cumulative impacts of Appeals A and B. Mr Kitchener suggests in his proof that a cumulative assessment is provided in the TA.²³
47. In fact, there is no cumulative impact in the TA or anywhere in the Appellant's transport evidence. Section 6 provides an assessment of the junction capacity at Westgate Road /

²² Ms Alderson's Appeal B proof, p.9, para.3.18.

²³ Mr Kitchener's Appeal A proof, p.9, para 4.1. While he refers to section 4 of the TA in that paragraph, he clarified in cross examination that he had meant to refer to section 6 of the TA as providing the cumulative impact assessment.

Dunholme Road. The conclusion that it reaches is that the junction operates within capacity.²⁴ That is the full extent of any cumulative impact assessment from the Appellant. It is woefully inadequate. It tells the Inspector nothing about the internal operation of the appeal schemes; the tensions between them; or their interaction with the surrounding road network.

48. The problems summarised above with the operation of each of the sites apply with even more force when considering the cumulative impacts of squeezing four unrelated land uses onto a site which is too constrained to safely accommodate them.

Alternatives

49. Plainly the Inspector must consider the acceptability of the schemes before her, and in the Council's submission, should refuse each of the appeals because of their unacceptable safety impacts. However, the Appellant has sought to suggest that if the appeals are dismissed there is a risk that the sites will be consigned to continued non-use and dereliction. Insofar as the transport arrangements are proposed, the Council rejects that suggestion. It is perfectly possible to design a scheme over the sites that would be acceptable. Indeed, in pre-application discussions in 2020, the Council confirmed that a new access off a suitably upgraded Back Lane would be likely to resolve its safety concerns.
50. That suggestion was rejected by the Appellant. The brief given by the Appellant to the transport consultants was that both the Burger King and the mixed use development on Appeal A had to be accommodated, which left only a narrow window for the access junction at an unsafe distance from Westgate Road. If there was no drive-thru, it would be entirely possible to design a site layout with a single access on Back Lane that complied with the Council's standards on junction spacing to serve a mixed use development with more generous parking and servicing arrangements. The removal of the drive-thru characteristics would also significantly reduce the risk of vehicles blocking back onto Dunholme Road from within the site.

²⁴ Appeal A TA, p.33, para.6.14 (CD3.2).

51. Rather than pursuing the current, unsafe, arrangements, the dismissal of these appeals may require the Appellant to re-consider whether the proposed mix of uses can safely be accommodated and come up with an alternative, less intense scheme which ensures the safety of road users. That outcome would certainly be in the public interest.

The effect of the development proposed on the health and wellbeing of local people and communities

52. The Appeal B scheme would increase access by school children to an unhealthy eating outlet and would have a harmful effect on the health and wellbeing of local people and communities by introducing a fast food takeaway in an area which suffers from high levels of deprivation and has above average levels of childhood obesity. It therefore conflicts with Policy CS14 of the CSUCP, the Hot Food Takeaway SPD, para.92 of the NPPF and para.4 of the PPG on Healthy and safe communities.
53. Policy CS14 of the CSUCP requires both that development should contribute to a healthy living environment by, among other things, promoting and facilitating active and healthy lifestyles, and by controlling the location of, and access to, unhealthy eating outlets. Para.12.10 of the supporting text explains that one of the ways in which the location of unhealthy eating outlets may be controlled is through further LDDs or SPDs. Policy HFT1 of the Hot Food Takeaway SPD refers back to Policy CS14 and states that *“hot food takeaways which are located outside of a centre in the retail hierarchy will not be permitted within a designated school exclusion zone”*.
54. As a matter of fact, and as accepted by the Appellant,²⁵ the Appeal sites are outside a centre in the retail hierarchy and part of the Appeal B site falls within the exclusion zone for the Bahr Academy. Policy HFT1 is therefore engaged and indicates that the site is, in principle, an inappropriate location for a hot food takeaway. There is nothing in the text of the SPD to support the Appellant’s interpretation that the policy does not apply where the “building” or the “entrance” to the hot food takeaway is outside the school exclusion zone, and the Appellant’s approach also fails to have regard to the reality that the entrance

²⁵ CD 17.2 Statement of Common Ground p.9. Paul Tucker QC indicated on behalf of the Appellant that the plan in Mr Edwards Proof at para.12.4 was agreed, RTS Health Day 4 PM.

to the hot food takeaway itself is located only a matter of metres from the edge of the exclusion zone.

55. The Appellant's points regarding propensity of Bahr Academy students to access the site are bad and should be disregarded. In relation to the likelihood that Muslim girls will favour local halal options over the proposed Burger King, Ms Choudhury gave clear evidence to the effect that those following a halal diet would nonetheless be willing to eat vegetarian options at Burger King, McDonalds and the like, and noted the propensity of children to favour multi-national brands²⁶ – it might be said that there was none at the inquiry better placed to give evidence than she on this matter. Certainly, her evidence was not questioned by the Appellant.
56. Even if, which is disputed, HFT1 does not apply, the Inspector will have seen for herself and heard evidence from locals as to the large number of school children that congregate near the site in order to take the bus to school.²⁷ This is clearly a site which is highly accessible for children and young people, many of whom will be unsupervised by parents. It is also located in an area of above average levels of childhood obesity and in the third most deprived ward in Newcastle. As explained by Mr Stobbs, there is a direct correlation between deprivation and obesity, which leads to greater ill health and health inequalities across the city. Those who are overweight or obese at primary school age are more likely to remain so as teenagers and into adulthood and treating the consequences of this is a huge cost to the NHS.²⁸ In an area where deprivation and obesity are already high, the aim should be to make the environment more rather than less healthy and capable of supporting behaviour and choices to encourage weight loss and healthier, active lifestyles, in line with Policy CS14.²⁹ In this context, para.92(c) NPPF and para.4 of the PPG on Healthy and Safe Communities further underpin the inappropriateness of the Appeal sites as a location for a hot food takeaway.

²⁶ RTS Health, Day 4 PM.

²⁷ Supported by the surveys undertaken by the Rule 6 Party, see Moore Proof p.13 Fig.2.

²⁸ RTS Health, Day 4 PM.

²⁹ RTS Health, Day 4 PM.

The effect on the character and appearance of the sites and the surrounding area, including the detailed design of the buildings in both schemes

The effect on biodiversity of the sites and the level of green infrastructure provision

57. Planning policy places an increasingly strong emphasis on good and beautiful design and on ensuring that development contributes to and enhances the character and appearance of an area. This is particularly important on this major movement corridor into Newcastle city centre, where Policy DM20 requires development to enhance the perception of the city. The most recent iteration of the NPPF emphasises the importance of “*fostering well-designed, beautiful and safe places*” as part of the social objective of sustainable development, and states that planning permission should be refused where development is not well-designed. Similarly, CS15 and DM20 require the delivery of “*high quality and sustainable design*”, including by “*securing opportunities to improve the character and quality of an area*” and “*incorporating hard and soft landscaping as an integral part of design, maximising tree planting, where appropriate, and providing for its long-term maintenance*”.³⁰
58. Proper recognition and response to context is key to good design – the NPPF explains that development should be sympathetic to local character and history, and that even outstanding or innovative designs must fit in with the overall form and layout of their surroundings to be successful.³¹ Context is the first of the ten characteristics of good design listed in the National Design Guide,³² which at para.41 explains that “*well-designed new development responds positively to the features of the site itself and the surrounding context beyond the site boundary*” (emphasis added). At Local Plan level, Policy CS15 requires development to “*respond positively to local distinctiveness and character*” and Policy DM20 indicates that good design will be achieved, in part, by using materials, colours, tones and textures appropriate to the characteristics of the area.
59. Even a cursory glance at the design of the Appeal B scheme indicates that the Appellant has failed to have regard to context and has not heeded these policies. The charred wood and dark colour of the materials, large expanses of a single material, non-domestic scale

³⁰ DM20 points 1 and 4.

³¹ NPPF paras.103(c) and 134(b).

³² CD 16.7.

windows and box-like shape have no reference point in the surrounding area. As explained by Ms Robson, buildings which front Westgate Road take cues from the residential properties behind, resulting in a predominantly residential character – for example in the domestic scale windows of Angel Heights, the pitched roof of the Prospect Medical Group building and the traditional materials and tones incorporated in more recent developments.³³

60. It became clear in the course of Mr McGregor’s evidence that the only real design cue he had responded to was the police station itself and in particular its conversion as proposed in the Appeal A scheme.³⁴ This is clearly the wrong approach: it was agreed by all design experts that the former police station is a negative landmark, and as explained by Ms Robson the current development on the site is very much of its time (when there was a lesser emphasis on high quality design) and is completely different to its surroundings. The Appeal B scheme fails to look beyond the site boundary as required by the National Design Guide. Furthermore, as the Appellant has chosen to divide the site it must justify each scheme on its own merit: and the Appeal B design will not relate to anything if the Appeal A scheme is refused.³⁵

61. Mr McGregor also sought to justify the choice of materials for the hot food takeaway on the basis of his own personal preference. This completely disregards the importance of local context for achieving a considered and high quality design response, and also ignores the impact of the building in its location for those who will have to live with it in the future, well after Mr McGregor’s involvement in the scheme has ceased.³⁶ While Mr McGregor sought to distance himself³⁷ in his oral evidence from the Appellant’s previously expressed position that the design had been inspired by a Burger King located in a vastly different context in the Teesbay Retail Park in Hartlepool,³⁸ as explained by

³³ RTS Character and appearance, Day 1 PM. The Beacon, which does not follow all of the surrounding design cues, still incorporates traditional materials, is of a high architectural quality and has a community function which meets the social objective of sustainable development as set out in the NPPF.

³⁴ RTS Character and appearance, Day 2 AM.

³⁵ Ms Robson, RTS Character and appearance, Day 2 AM.

³⁶ Dr McAlpine, RTS Character and appearance, Day 2 AM.

³⁷ Mr McGregor said it was “not the basis for our design”, RTS Character and appearance, Day 2 AM.

³⁸ Mr Hedley Appeal B Proof para.6.18.

Ms Robson a comparison between the proposed development and the images in the Design and Access Statement speaks for itself.³⁹

62. The proposed hot food takeaway will be in a prominent location on a major movement corridor where there is a policy requirement for particularly high quality design⁴⁰ – whereas the best Mr McGregor could say about his design was that it was “*a logical solution to quite a difficult problem*”.⁴¹ It is not of sufficient design quality to promote the perception of Newcastle as an attractive and interesting place, and fails to comply with Policies CS15, DM20 and the NPPF. While it is not for the Council to come up with an alternative scheme, the ability of other modern development on Westgate Road to take cues from and relate successfully to the surrounding context demonstrates that the site is capable of supporting a well-designed development.

63. In relation to landscaping, the proposed developments fail to promote or enhance distinctive landscape character as required by Policy CS18, which on Westgate Road includes trees to the front of the road and in gardens, and landscape areas fronting the road that have sufficient width for trees and shrubs.⁴² The fact that landscaping has not been the driving force behind the design of the Appeal schemes, is evident, for example, in Mr Armstrong’s proposal of pre-grown 200mm or 400mm “instant” hedges and his comment that the Appellant has “*looked to maximise planting bearing in mind usage of the site*”.⁴³ It is entirely clear that the Appellant has sought to maximise the built form on the site, squeezing in landscaping in the limited spaces left around the site. The appeal schemes cannot, on any stretch of the imagination, be described as landscape-led design.

64. While it is accepted that biodiversity net gain will be achieved on both Appeal Sites, as recognised by the Inspector in the RTS on character and appearance, this is distinct from landscaping, which is dealt with by separate policies in the development plan. In fact, the main contributor to the relatively large uplift in biodiversity net gain is a green roof, which will neither have a softening effect on the development as seen from the major

³⁹ CD 9.7 p.5.

⁴⁰ DM20 point 3 and para.6.6.5.

⁴¹ RTS Character and appearance, Day 2 AM.

⁴² Mr Jones, RTS Character and appearance, Day 1 PM. This is also reflected in DM20, point 8.

⁴³ Mr Armstrong, RTS Character and appearance, Day 1 PM.

movement corridor Westgate Road and neighbouring roads,⁴⁴ nor have multifunctional benefits or enhance connectivity and accessibility as required by Policy DM27.

65. The landscape enhancement required by Policies CS18, DM27 and DM28 cannot simply mean “any” enhancement would be sufficient. Otherwise, a single additional blade of grass could be said to satisfy the policy. Rather, enhancement must be meaningful.⁴⁵ In this regard it is noteworthy that no new trees are proposed in either the Appeal A or Appeal B schemes, notwithstanding the identification of the incorporation of trees in developments as a facet of good design in para.131 of the NPPF and the emphasis on including new trees and increasing canopy cover in Policy DM28 and the Newcastle City Council Tree Strategy respectively.⁴⁶
66. As explained by Mr Jones, new tree planting is appropriate on the Appeal A site to continue and replace the landscape buffer to Westgate Road which was removed after the applications were refused, and would also comply with the advice in para.86 of the National Design Guide that well-designed car parking should incorporate green infrastructure, including trees, to soften the visual impact of cars. The landscape buffer along the northern edge of the site was previously 1.3m – it is mostly absent on the Appeal A site and what is proposed on the Appeal B site is only 400m wide; does not extend to all of the Westgate Road frontage and is not capable of accommodating additional trees.⁴⁷ If incorporated, new tree planting would assist with softening built form, mitigating pollution and introducing multifunctional habitats. On behalf of the Appellant Mr Armstrong confirmed that in his view, contrary to Appellant’s previous landscaping plan, more trees *should* be planted on the Appeal A site.⁴⁸ There is still no clarity about any new or revised landscape plan that could accommodate trees or multifunctional and connected green infrastructure.

⁴⁴ As accepted by Mr Armstrong in response to a question from the Inspector, RTS Character and appearance, Day 1 PM.

⁴⁵ The off-site provision and enhancement of green infrastructure secured in the s.106 obligation is required to secure compliance with Policy DM30 of the Development and Allocations Plan, as the development does not provide any onsite amenity space for future residents, and is therefore not relevant to the Inspector’s assessment of compliance with Policies DM27 and DM28.

⁴⁶ CD 16.2 p.15 Policy T2.

⁴⁷ RTS Character and appearance, Day 1 PM.

⁴⁸ In response to a question from Isabella Tafur, RTS Character and appearance, Day 1 PM.

67. Regarding the Appeal B scheme, the Appellant's original proposal was for a fin drain, trench and permeable paving within the root protection area (RPA) of the four retained trees. The default position in BS 5387 is that development must not take place within RPAs unless there is an overriding justification. No such justification was put forward in oral evidence on behalf of the Appellant. It is common ground that the proposed fin drain and trench, to a depth of 600-800mm, could result in the possibility that the four retained trees would have to be removed.⁴⁹ Indeed, Mr Armstrong went so far as to say that in his view the location of the fin drain needed to be revised as it would otherwise be "*far too damaging to the root system*".⁵⁰ While the Appellant has now put forward a plan showing a revised location for the fin drain, it is not clear how this plan will affect other aspects of the development. In particular, it is not clear whether the requirement to build up levels to accommodate the new drainage proposals would affect the proposed landscaping around the site or threaten the existing trees, and is therefore contrary to BS 5387.⁵¹ Furthermore, it does not resolve the Council's concerns around permeable paving, to a depth of 0.5m, which may have a similarly damaging effect on the root systems of the retained trees.
68. As a result of the risk that the trees will need to be removed, the Appeal B scheme fails to comply with Policies CS18, DM27 and DM28 which all require the protection of green infrastructure assets including trees. Due to the foreseen risk of removal, the proposed development is also in conflict with BS 5837 and para.131 NPPF. The trees are now also protected by provisional TPOs.⁵² Furthermore, the unchallenged evidence of Mr Jones was that the mitigation proposed by the Appellant's arboriculturalist would not be sufficient, as it would not be possible to fit 6 new trees in the proposed landscape scheme, and any new trees would not provide the same level of visual amenity as the existing trees for some time.

⁴⁹ CD 15.3; Mr Jones Proof paras.4.15-4.16.

⁵⁰ RTS Character and appearance, Day 1 PM.

⁵¹ BS 5387 provides at Table B.1, p.44 that details for all special engineering within RPAs and other relevant construction details must be provided as part of the planning application and cannot be conditioned.

⁵² See also CD 16.2 NCC Tree Policy, Policies T1, T2, T3 and T4.

Residential amenity

69. As already explained, given that it is common ground that the police use is not relied on as a fall-back, the baseline for considering the impact to amenity is in comparison to a vacant site. In any case, the only (and consistent) evidence before this inquiry on the effects of the actual use of the site by the police, from those who have lived adjacent to the site for very many years, is that regardless of the number of officers in the building the site did not generate a great deal of noise,⁵³ and that it was “*extremely unusual*” to see any staff in the windows in the main tower block as the blinds were almost always down.⁵⁴ Even by comparison with the former use, the proposed developments would therefore result in a material worsening of residential amenity.
70. Regarding the impact of the Appeal A scheme on existing residents, for those living in the new flats on the southern side of the building, the gardens and rear elevations of the properties on Lynnwood Avenue will be their only outlook. As both schemes involve residential use, there is greater propensity for residents to be in their flats and for overlooking to occur at the very times residents of Lynnwood Avenue will be at home. The nearest sensitive receptor to the Appeal sites, 14 Lynnwood Avenue, has a rear room which as Ms Jubb explained is a self-contained living and bedroom space with a window only 6m from the Appeal site boundary. While that window is currently obscure glazed, there is nothing to stop it being replaced with a clear glass pane in future.⁵⁵
71. But for the Appellant’s desire to accommodate a drive through takeaway onsite, it would have been possible to reconfigure or obscure the windows on the southern elevation, which are most sensitive for overlooking concerns, with larger windows on the western elevation. The Appellant’s comparison to the Pottery Lane development is not an appropriate one – as recognised by the Inspector it will not have any impacts on existing receptors, and it is in a wholly different townscape context.⁵⁶

⁵³ On the first day of the Inquiry, Ms Wright stated that “noise from the police station was never considerable” and there were “occasionally raised voices” but this was “spasmodic in nature”. Mr Gany noted that “there was minimum noise and disturbance when the police station was operational, it was no more than we get now with an unoccupied building”. See also Statement of Ms Jubb, paras.16-17.

⁵⁴ Ms Jubb, RTS Residential Amenity, Day 4 AM.

⁵⁵ The Appellant relies on a retrospective planning permission which imposes a condition requiring the windows in the south elevation to be glazed with obscure glass at all times (Mr Hedley Appeal A Proof para.6.23 and Appendix 11). The window facing the appeal site is on the north elevation.

⁵⁶ Mr Edwards Proof para.8.8.

72. In relation to noise, it was confirmed by Ms Alderson that there has been no modelling of the noise impacts of servicing the Appeal A scheme – so it is simply not possible to know how much noise will be generated either by vehicles servicing the site or by the movement of large commercial bins.⁵⁷ Any noise generated will have a particularly serious effect on the habitable room to the rear of the property at 14 Lynnwood Avenue, just 6m away and opposite the proposed bin storage area. It was clear from the evidence given by Mr Hedley in the roundtable session on residential amenity that the issue of refuse collection from the proposed Appeal A development and its impact on existing residents simply had not been considered by the Appellant. It is not appropriate to defer this important issue to conditions. In any event, it is not at all clear that a condition requiring bins to be moved to the end of Back Lane at the time when the collection vehicles arrive would be practical or enforceable. Nor is there any space for those bins to be left at the side of the road. As explained by Ms Wallis, intermittent loud noises from the Appeal B scheme, such as car door slams, may also have a disturbing effect on existing residents.
73. With regard to the impact on future residents, the outlook for flats 1, 6 and 11 is sub-standard, with two high levels windows in the western elevation of the living room and obscured glass in the kitchen. Again, the Appellant’s desire to accommodate a drive thru takeaway and restaurant next door has constrained the development of the site: if it was not necessary to mitigate against noise impacts of the development it would be possible to include larger windows on the western elevation.
74. In relation to noise, as accepted by Ms Alderson, it will be necessary to keep all windows closed in the new flats in order to achieve an acceptable noise environment, due in part to noise generated by the plant situated on the top of the Appeal B building. In the summer months in particular, future residents will be faced with the invidious choice between an unacceptable noise environment created by the neighbouring drive-thru restaurant and takeaway, or the inability to ventilate and cool down their rooms by opening the window. By putting the onus on residents of the Appeal A scheme to ensure they have an acceptable noise environment (by closing the window) the Appeal B scheme

⁵⁷ RTS Residential amenity, Day 4 AM.

fails to mitigate and reduce to a minimum the potential adverse impacts resulting from the noise it creates, in conflict with para.185 NPPF. Servicing of the Appeal B scheme will cause further disturbance to residents of the Appeal A scheme between 7am and 8am, at a time when some may still be sleeping.

75. For these reasons the proposed developments will have an unacceptable impact on the residential amenity of existing and future occupiers and therefore conflict with Policies CS14 of the Core Strategy, DM23 and DM24 of the Development and Allocations Plan and Policies HFT4 and HFT6 of the Hot Food Takeaway SPD.

Alternative development

76. The Council's unchallenged case is that, in practical terms, a residential or mixed use scheme is capable of being delivered on the site with a safe and suitable access and which resolves the Council's concerns on design, landscaping and noise. The Appellant's basis for claiming that such a development would not come forward – a letter from marketing agents Sanderson Weatherall – is not supported by any viability assessment. It indicates – as acknowledged by Mr Hedley⁵⁸ – that the agreement entered into with Burger King was a driver for the redevelopment of the Site, which may well have precluded further exploration of comprehensive redevelopment of the site for alternative uses. It reports on the outcome of a marketing exercise in 2017 and 2019 and fails to account for the effect of future potential investment in the area, for example on the Centre for Ageing and Vitality site opposite the Appeal sites. The letter from marketing agents should be given limited weight in the Inspector's determination. To the extent that it is relevant at all, it must be noted that it does not indicate that, in the author's view, a residential conversion of the tower alone is unviable.

Planning balance

77. The proposed over-development of the former police station site will result in the Appeal schemes, individually and cumulatively, having an unacceptable impact on highway safety. In those circumstances, given the serious risks posed to neighbouring residents,

⁵⁸ RXN Mr Hedley, Day 5 PM.

users of the site and passers-by, the only reasonable conclusion is that in line with para.111 NPPF, planning permission for the proposed developments should be refused.

78. Furthermore, it is common ground that the development plan is up to date and in accordance with the NPPF; that the Council has a health land supply in excess of 9 years; and that all relevant policies for the determination of the application should be given full weight.⁵⁹ Given the policy conflict identified above, the starting point under s.38(6) of the Planning and Compulsory Purchase Act 2004 is that planning permission should be refused. Other material considerations, including the NPPF, the PPG on Healthy and Safe Communities and the Hot Food Takeaways SPD also support this conclusion.
79. Regarding the planning benefits relied on by the Appellant, in relation to Appeal A the starting point on the Appellant's case must now be, as indicated by Mr Hedley in cross-examination, that the residential conversion part of the Appeal A scheme will not come forward without cross-subsidy from the Appeal B scheme. Therefore, when considering the Appeal A scheme in isolation, the Inspector should give no weight to the benefits relied on by the Appellant, as these will not materialise unless Appeal B is also allowed.⁶⁰ The corollary is that if the Inspector finds the Appeal B scheme is unacceptable, planning permission should not be granted for the Appeal A scheme.
80. While Mr Hedley claimed for the first time in his oral evidence that Appeal A was not independently viable, this is not the view expressed in the Sanderson Weatherall letter relied on by the Appellant. That letter suggests that a residential conversion with commercial and D1 use such as the Appeal A scheme could come forward without cross-subsidy from a neighbouring hot food takeaway use. In such a scenario the weight to be given to the benefits of such a scheme is nonetheless to be tempered. The Appeal A development will generate a relatively small number of jobs; a large proportion of which will only endure for the duration of construction works. The weight to be given to the provision of housing on a brownfield site is reduced in the light of the Council's very healthy housing land supply. Planning obligations are only relevant to the determination

⁵⁹ XX Mr Hedley, Day 5 PM.

⁶⁰ While Mr Hedley indicated in cross-examination that in his view the retail units did not depend on cross-subsidy by a hot food takeaway use, it is fanciful to think that the ground floor part of the Appeal A scheme would be built out while leaving the rest of the existing police station tower as it is.

of applications where they are necessary to make the development acceptable in planning terms – as they mitigate the harmful effects of development, they are not benefits and can only be accorded limited weight. The benefits relied on are not capable of outweighing the statutory presumption that planning permission should be refused where proposals conflict with the development plan.

81. Regarding the Appeal B development, this will generate even fewer jobs, of which again a large proportion will only endure for the duration of the construction work. Jobs in the hot food takeaway will, in the main, be low-skilled. As Mr Stobbs explained, a hot food takeaway will not bring in robust sustainable employment to the local area, and these are not the kind of jobs that will help those who are currently in work but nonetheless find it necessary to access the local West End Food Bank.⁶¹ The weight to be given to reuse of a brownfield site is further reduced by the fact there is no identified need for a hot food takeaway on the Appeal B site. None of the benefits relied on by the Appellant are of sufficient weight to outweigh the conflict with the development plan.
82. For all these reasons, the Council invites the Inspector to dismiss the appeals.

Isabella Tafur
Esther Drabkin-Reiter

Francis Taylor Building
Inner Temple
London EC4Y 7BY

24 November 2021

⁶¹ RTS Health, Day 4 PM.