

Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon

Statement of Case

Appeal By: **Watervale Property Ltd**

Site Address: **Land at the Corner of Fore Street and High Road,
Eastcote**

Proposal: **Erection of a building for the use as a day
nursery/pre-school, providing childcare and
education for children age 0-4 years.**

Our Ref: 73450/APP/2023/431 Your Ref: APP/R5510/W/24/3345878



HILLINGDON
LONDON

www.hillingdon.gov.uk

1.0 Introduction

1.1 This Statement of Case (SoC) is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant planning application reference 73450/APP/2023/431.

1.2 The LPA refused planning permission on 15th February 2024 for the following reasons (RRs) (as stated on the decision notice):

1.3 RR1 – Flood Risk and Sequential Test:

‘The site is located within Flood Zone 2 and 3 and the proposed nursery use represents a more vulnerable development in terms of the flood risk associated with the site. The application fails to demonstrate that the development could not be provided on a reasonably available site at a lower risk of flooding. The development constitutes inappropriate development in an area at risk of flooding without sufficient justification and is contrary to paragraphs 165 and 168 of the National Planning Policy Framework (2023), Policy SI 12 of the London Plan (2021), Policy EM6 of the Hillingdon Local Plan: Part 1 (2012) and Policy DMEI 9 of the Hillingdon Local Plan: Part 2 (2020).’

1.4 RR2 – Loss of Open Space:

‘The proposed development would result in significant loss of protected open space in Eastcote which is identified as a Ward with insufficient open space provision. The loss is not justified and the development is contrary to paragraph 103 of the National Planning Policy Framework (2023), Policy G4 of the London Plan (2021), Policy EM4 of the Hillingdon Local Plan: Part 1 (2012), and Policy DMCI 3 of the Hillingdon Local Plan: Part 2 (2020).’

1.5 RR3 – Impact on Highway Safety:

‘The proposed development does not provide adequate on-site car parking, pick-up and drop-off facilities. The application submission fails to fully demonstrate that the proposal would not give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety. Based on the information submitted, the proposed development is considered to have an unacceptable impact on highway safety. As such, the proposal is contrary to Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020), and Policies T2, T4 and T5 of the London Plan (2021), and is refused in accordance with paragraph 115 of the National Planning Policy Framework (2023).’

1.6 RR4 – Design and Impact:

‘The proposed development, by reason of its scale and prominence, would result in an uncharacteristic form of development that would fail to harmonise with the local character within the Conservation Area and setting of Grade II Listed Buildings. The harm identified is not outweighed by public benefits and the proposed development would not preserve or enhance, but have a detrimental impact on the character, appearance and visual amenities of the area. The

proposed development is contrary to paragraphs 139 and 205-214 of the National Planning Policy Framework (2023), Policy HC1 of the London Plan (2021), Policies HE1 and BE 1 of the Hillingdon Local Plan: Part 1 (2012), Policies DMHB 1, DMHB 4 and DMHB 11 of the Hillingdon Local Plan: Part 2 (2020).'

1.7 RR5 – Impact on Trees:

'The application has failed to justify the need for the layout of development which is likely to result in harm to protected trees, including but not limited to trees T13 and T9 which are category A and B value trees. The application fails to demonstrate that these trees would be protected and retained in the long term. Accordingly, the development could result in adverse and irreversible impacts to landscaping, trees, biodiversity or other natural features of merit, detrimental to the visual amenities of the area and Eastcote Village Conservation Area, contrary to paragraph 136 of the National Planning Policy Framework (2023), Policy G7 of the London Plan (2021), and Policies DMHB 4, DMHB 11, DMHB 12 and DMHB 14 of the Hillingdon Local Plan: Part 2 (2020).'

1.8 RR6 – Impact on Air Quality:

'The proposed development would likely contribute to the production of unacceptable pollutant emissions in the Eastcote Village Air Quality Focus Area. The proposed development would not be air quality neutral or air quality positive and the measures proposed are not sufficient to mitigate the total emissions. As such, the development is contrary to Policy EM8 of the Hillingdon Local Plan: Part 1 (2012), Policy DMEI 14 of the Hillingdon Local Plan: Part 2 (2020), Policy SI 1 of the London Plan (2021) and paragraphs 180(e) and 192 of the National Planning Policy Framework (2023).'

1.9 RR7 – Planning Obligations and Mitigation:

'The applicant has failed to secure Section 106 planning obligations required to mitigate the harm and demands created by the proposed development (in respect of travel planning, air quality, and project management and monitoring). The scheme therefore conflicts with Policy DMCI 7 of the Hillingdon Local Plan: Part 2 (2020); the adopted Planning Obligations Supplementary Planning Document (2014); Policy DF1 of the London Plan (2021); and paragraphs 55-58 of the National Planning Policy Framework (2023).'

1.10 The LPA's case is set out in the Planning Officer's Report, which should be read in conjunction with this statement. A copy of the Officer Report is provided at Appendix 1. A copy of the Decision Notice is provided at Appendix 2. Copies of relevant planning policies are included at Appendix 3.

1.11 The LPA's SoC is not intended to repeat the Officer Report and will focus on addressing matters raised in the Appellant's SoC.

2.0 LPA Comments on Appellant's Statement of Case

2.1 RR1 – Flood Risk and Sequential Test

2.2 Please refer to Section 7.6 of the Officer Report (Appendix 1) for the Local Planning Authorities consideration of flood risk, sequential test and exceptions test during the application process.

2.3 Officers should highlight that the Council have engaged in several rounds of pre-application discussions with the Appellant and consistent advice has been provided in respect of the land use principles, the sequential testing and the appropriate methodology.

2.4 The LPA have considered the Appellant's SoC and have provided a considered response below.

2.5 Relevant Policies

2.6 The determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. In terms of sequential tests for flood risk, Policy EM6 of the Local Plan: Part 1 (2012) outlines that the Council will require new development to be directed away from Flood Zones 2 and 3 in accordance with the principles of the National Planning Policy Framework (NPPF). Policy DME1 9 of the Local Plan: Part 2 (2020) outlines that development proposals in Flood Zones 2 and 3 will be required to demonstrate that there are no suitable sites available in areas of lower flood risk. Where no appropriate sites are available, development should be located on the areas of lowest flood risk within the site. The approach in the Development Plan is consistent with that in the NPPF (2023), select parts of which are outlined below.

2.7 Paragraph 165 of the NPPF (2023) states:

'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.'

2.8 Paragraph 168 of the NPPF (2023) 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.'

2.9 The National Planning Practice Guidance (NPPG) provides further information on the implementation of the sequential test in decision-making. Paragraph 023 includes the following text under the section 'What is the aim of the sequential approach?':

'The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding. Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test. Other forms of flooding need to be treated consistently with river and tidal flooding in mapping probability and assessing vulnerability, so that the sequential approach can be applied across all areas of flood risk.'

- 2.10 There is also additional information relating to sequential testing for individual planning applications within the NPPG. This has been referenced where necessary below.
- 2.11 Site Details
- 2.12 The Local Plan: Part 2 (2020) was adopted in January 2020 and included a site allocation document. The site is not allocated within the Development Plan.
- 2.13 The application site is located within Flood Zones 2 and 3. In addition, the application site is liable for surface water flooding (High, Medium and Low risk). The site is located within the Environment Agency's 20 metre bank top protection area. The site therefore has a mixture of a high and medium risk of flooding. In line with Annex 3 of the NPPF (2023), development proposals for nurseries are classified as a 'more vulnerable use'.
- 2.14 It is agreed by the Appellant that the proposal would be required to pass the sequential test and, if passed, the subsequent exceptions test. It should be noted that in line with the PPG, the proposal is required to pass the sequential test first to be considered under the exceptions test. Commentary on the sequential test is provided below.
- 2.15 Role of Environment Agency
- 2.16 The Environment Agency is clear when providing its comments that it does not provide comment on sequential or exceptions test and this is the responsibility of the LPA. As outlined in the Officer Report (Appendix 1), the withdrawal of the objection does not remove the need for the Council to apply the sequential test and to consider whether it has been satisfied. Where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the

development will be affected either directly or indirectly by flooding. A failure to satisfy the sequential test can be grounds alone to refuse planning permission.

2.17 Engagement Prior to Submission

2.18 National policy and guidance is clear that parties should work proactively and engage on providing proportional evidence to allow for the determination of schemes. The LPA provided pre-application advice prior to the submission outlining the need for a sequential test for the proposal. If this was passed, an exception test would then also be needed.

2.19 The LPA also highlighted that there was no known need for this type of development in this location and that, due to the likely existence of alternative options/sites for delivering an uplift in early childcare provision, it was unlikely that one could demonstrate that the proposal could not be provided on a reasonably available site at lower risk of flooding. In the event the Appellant did want to pursue an application, the LPA indicated that they should engage with the Council first to establish agreed parameters. This pre-application advice was issued on 30th November 2022. It was also issued to the consultant (GeoSmart Information) via email for completeness on 1st December 2022. This email has been attached to this SoC at Appendix 6.

2.20 Following this advice, prior engagement on the parameters was not undertaken before submission and hence there remains a significant difference in views on the adequacy of the sequential test between both parties.

2.21 New Sequential Test (15th May 2024)

2.22 The Appellant has submitted a new Sequential Test dated 15th May 2024 in support of their appeal. The application subject to this appeal was refused on 15th February 2024. It is described in Paragraph 1.2 as:

'this report is an amended report which has been drafted for the purpose of a planning appeal, following the refusal of the London Borough of Hillingdon'.

2.23 The Council raises no objection in principle to the introduction of an amended version of the original Sequential Test where this would aid the determination of the scheme. Indeed, updates to relevant policies, clarifications on the original methodology undertaken and responses to the Council's Officer Report are all expected and may assist the planning inspector in the appeal process.

2.24 However, the Council is of the view that the consultant has made a series of substantive and fundamental changes between the two sequential tests. These changes represent a significant divergence in the evidence relied upon to determine the application. They have also been included without justification as to why they were not provided as part of the original Sequential Test. This is deemed to be unreasonable behaviour by the Appellant. Examples of these changes are listed below:

Original Sequential Test (considered in the determination of the refused application subject to this appeal)	Reference 2022	Proposed Sequential Test (New sequential test submitted with the appeal)	Reference 2024
The search parameters are listed. No reference is made in the test to the site being a 'biodiversity sensory nursery' or any other variation of this.	Para 5.6 – 5.16	The Appellant introduces (4.31) the concept that a unique selling point of the development is that it includes biodiversity enhancement. This is described as combining a nursery with trees and biodiversity improvements. The Appellant states (4.38) this is a restriction that must be placed on the search for an alternative site. It states it is unviable to create a nursery without this element. It is clear that this has the consequence of excluding certain brownfield sites in areas that may be at lower risk of flooding. In addition to being spurious, the Appellant has sought to change the parameters of what is being tested without reasonable justification.	Para 4.31 and Para 4.38
The Appellant stated (5.9) what they utilised as a site size parameter, which was said to be between 0.47 ha and 0.31 ha. The next paragraph (5.10) states that this is 'easy to gauge in relation to alternative sites'.	Para 5.9 – 5.10	Site Size has its own heading within the new test. The reference to the site size area has been removed. Para 5.14 now says that the agent would dismiss any larger site on principle. The opening paragraph (5.11) now states that it is <i>'near impossible to ascertain whether a site will be a suitable size to accommodate a nursery of 65 children and 25 staff members, ...'</i> Removing size parameters is considered to be a fundamental shift in the consultant's own position and has been undertaken without reasonable explanation.	Para 5.11 – 5.17
No restrictions are placed on the search parameters related to extending a site, its size or utilising more than one site.	N/A	The Appellant introduces that the <i>'appellant is a separate provider who would not be able to run a functional nursery by extending or utilising multiple different sites. From a viability perspective it would also not be suitable to purchase multiple sites or work alongside an existing and competitor to provide a separate nursery provision on multiple different sites.'</i>	Para 5.22 – 5.24

		The Appellant has sought to influence the sequential test by introducing new personal circumstances, which were previously not established and are not deemed material to whether there are sites at lower risk of flooding that can accommodate nursery places.	
No reference is made to the Appellant utilising a search of current planning applications and approvals as part of their methodology and this is not included within their search.	N/A	The Appellant indicates that a search was undertaken to assess applications that have been made. This has been undertaken by typing 'nursery' into the existing site address search. A full list of the sites covered under this process has not been provided. There are clear flaws with this methodology that could have been outlined to the Appellant. It is obvious this method would not have provided a correct list of recent planning applications proposing development that does or could include a nursery. This is explored further below. Even if the Appellant was minded not to engage with the Council, there are publicly accessible datasets that could have provided this data: The Planning London Datahub London City Hall	Para 5.22 – 5.24

- 2.25 Furthermore, the Appellant has not provided the Council with an updated list of sites that have been assessed within the Sequential Test (2024). Para 5.16 of the 2022 version outlines that 235 sites were assessed. Notwithstanding the poor accessibility and legibility of this information, these were provided as Appendix 2. Para 5.28 of the 2024 version makes it clear that different sites have now been assessed as part of this application, stating that 'over 250 sites have been assessed...'. These sites are not listed anywhere within the report. They may have been drafted within an Appendix, however the 2024 sequential test was not provided with any appendices. This is despite there being a list of appendices on Page 34. Not providing the evidence to substantiate points raised in the sequential test is also deemed to be unreasonable behaviour by the Appellant.
- 2.26 Despite the inconsistencies in the Appellant's position and procedural flaws, the Council has endeavoured to provide commentary on the sequential tests provided to aid the determination of this appeal.
- 2.27 Sequential Test - Methodology

- 2.28 The premise of directing development away from areas at highest risk is a key national, regional and local policy objective. As outlined within the advice provided by the Environment Agency and Paragraph 023 of the NPPG on Flood Risk and Coastal Change:

‘avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.’

- 2.29 Paragraph 029 states that the ‘planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies.’ The guidance is clear that the appropriate area of search should be based on the development type proposed and any relevant spatial policies, rather than the exact development proposed.

- 2.30 The same paragraph also makes it clear that the onus is on the Appellant to identify whether there are any other reasonably available sites within the area of search, that have not already been identified by the planning authority. Paragraph 5.6 of the Appellant’s second Sequential Test (2024) appears to contradict this guidance and suggests it is for the Council to publish sites. It also refers to housing information, despite housing not forming part of this application.

- 2.31 *Need*

- 2.32 Within the second Sequential Test (2024), the Appellant argues (Para 5.79 point 3) that there is no need for an unmet need to be established to undertake a sound sequential test for the purpose of flood risk. Specifically, it states:

‘There could be an overprovision of 1000% in the borough, but if someone proposes a nursery in the flood zone the same process must occur to see if any alternate sites are available.’

- 2.33 The Council disagrees with this assertion for the following reasons. Paragraph 165 of the NPPF (2023) clearly refers to development needing to be ‘necessary’ in areas at risk of flooding. On a simple reading, something cannot be necessary if there is no need for it.

- 2.34 Secondly, Paragraph 007 of the NPPG on Flood Risk and Coastal Change provides clear guidance on how to undertake flood risk as part of plan-making. It makes it clear that where sustainable development can be achieved through new development located entirely within areas with a low risk of flooding, it should be allocated accordingly. In order to establish if there are sufficient areas with a low risk of flooding, a need must be established to measure against. Without a finite need to measure against, every site submitted would be allocated, as there would be a requirement for an infinite amount of land. All Strategic Flood Risk Assessments for plans are therefore undertaken with a need figure to test. It would

therefore not be logical for a site in an area of high flood risk to be subject to a sequential test at planning application stage that did not consider need. This would mean it would be easier to secure development outside of the plan-making process, which would be in contradiction to Paragraph 15 of the NPPF (2023) and result in landowners not engaging with site allocation processes that form a key component of plan-making.

- 2.35 Thirdly, if there was an overprovision of 1000%, this would mean there was very significant vacant/underoccupied floorspace in the borough, which could be utilised as alternative sites for this type of development if at lower risk of flooding.
- 2.36 Fourthly, there is a requirement for the LPA to establish a catchment area. If no evidence is provided on the need for the type of development, it would not be possible to estimate a catchment area.
- 2.37 *Catchment Area*
- 2.38 As previously outlined, the Appellant did not engage with the Council regarding the agreed parameters after the pre-application advice was issued in November 2022 and before undertaking the sequential test. Despite the second Sequential Test (2024) stating that establishing a need was not required, the original submission included a report by Watervale Property Ltd, which included information on a proposed catchment area (see Page 6). This area is significant and covers multiple local planning authorities.
- 2.39 However, confusingly the Appellant's sequential test ignores this catchment area and does not reference it within either sequential test. Instead, the test utilises the whole borough area. It states that this was because this was agreed with the Council prior to the test. There is a clear disconnect here between the sequential test and the rest of the Appellant's submission.
- 2.40 The West London Strategic Flood Risk Assessment (SFRA) states in Section 4.2.1 that the default area should be the whole of the LPA area in question. This can be reduced where justified by the functional requirements of the development or relevant objectives of the Local Plan. The Appellant did not progress any coherent and consistent justification for altering from the default and therefore the policy indicates that sequential test should be for the whole of the London Borough of Hillingdon.
- 2.41 *Search Parameters*
- 2.42 A sequential test will often have broad search parameters included within it, to help shortlist sites if possible. The Council therefore does not raise an objection to the principle of using search parameters to try and manage large datasets. However, Paragraph 028 of the NPPG is clear that reasonably available sites are those suitable for the type of development, rather than the specific development being sought. In this case, that is space for new early year childcare provision.
- 2.43 However, the Council's Officer Report (Appendix 1) highlighted that deliberately restrictive search parameters had been utilised, with the result being the early

discounting of sites that may have been suitable. As outlined above, within the second Sequential Test (2024) the Appellant has changed/introduced three search parameters, which the Council deem to be unreasonable behaviour. These are explored in more detail below.

- 2.44 The first parameter that the Appellant has introduced (4.31) is that a unique selling point of the development is the inclusion of biodiversity enhancement. This is described as combining a nursery with trees and biodiversity improvements. The Appellant states (4.38) this is a restriction that must be placed on the search for an alternative site. It states it is unviable to create a nursery without this element. Furthermore, Para 4.33 indicates that whole urban areas have been discounted on this basis. Whether the site actually provides a biodiversity enhancement is explored elsewhere in this appeal, however it is clear that this is not a fundamental requirement to providing early years child provision. It appears simply to be a case to argue for the development of open space in an area of flood risk, contrary to national, regional and local policy.
- 2.45 The second parameter is that the Appellant has removed the site size constraints from the previous Sequential Test and now states in (5.14) that the agent would simply dismiss any larger site on principle. It is not considered that this demonstrates the level of flexibility required to meaningfully undertake a sequential test exercise. Previously a 20% threshold either side of the site area was utilised, which was deemed arbitrary and without justification, although was more flexible than the approach advocated in the second Sequential Test.
- 2.46 Thirdly, the Appellant has introduced a constraint (4.34) that dismisses sites on the basis of the Appellant's personal circumstances and ownership model. Paragraph 028 of the NPPG is clear that a series of smaller sites and/or part of a larger site may be reasonably available sites and ways of meeting the same development type. The Appellants decision to exclude sites on this basis is therefore clearly contrary to national guidance. There are a number of early year childcare providers who viably operate across multiple sites.
- 2.47 *Data Sources for Finding Sites*
- 2.48 The Appellant outlines that they have utilised the following data sources to find sites:
- Local Plan Part 1 (2012);
 - Local Plan Part 2 (2020);
 - The London Borough of Hillingdon 5-year supply of deliverable housing sites (2022);
 - London Strategic Housing Land Availability Assessment (2017); and
 - The London Borough of Hillingdon Brownfield Land Register (2021)
- 2.49 As a point of clarity, this is not the most recent 5-year housing supply document, as there is one on the Council website for March 2023.
- 2.50 More importantly though, none of these documents have been produced with the aim of identifying sites for early years childcare provision. The Local Plan does not

allocate specific sites for early years childcare. Officers are not aware of any Local Plan that seeks to allocate sufficient sites for this specific type of development.

- 2.51 The final three documents all provide information on sites that may be suitable for housing. They are based on known sites suitable for housing and therefore are inherently made up of sites which have approval for residential development. You will note from the first Sequential Test (2022) (Appendix 2) that a significant number of sites were removed at the initial screening stage on the principle that:

'The Site is identified within the latest Hillingdon housing site assessment as undergoing "detailed planning permission" and as such as has been removed from the search.'

- 2.52 The Council has not been provided with a list of the stated 250 initial site assessments in the second Sequential Test (2024), although there is nothing to indicate this was also not the process from reading the methodology. The process undertaken by the Appellant has therefore been entirely pointless, as all it does is automatically screen out identified sites on mass because they have planning permission, which is an inherent reason for them being identified in the first place. The assertion that the Appellant has undertaken a meaningful assessment of 233 and 250 sites is therefore not agreed.

- 2.53 Paragraph 5.14 of the Sequential Test (2022) and Paragraph 5.4 of the Sequential Test (2024) indicate that a commercial land search was carried out. Page 1 of Appendix 2 (2022) outlined that the consultant would use a minimum of five agents who individually or collectively cover the area of search. Despite this, both tests conclude that there was not a single suitable site identified during this process. Importantly though, the sites that make up the 233 shown are based solely on those from the Local Plan and housing documents previously referenced above. Therefore, not a single site was even identified by the commercial land search to be included within the preliminary testing. It is not conceivable that 5 commercial land agents could not come up with even one site to go into the preliminary testing phase. Furthermore, no evidence has been provided on who these land agents were, their credentials and the basics of how that search was undertaken. The information therefore indicates that it was extremely unlikely that a commercial land search has even been undertaken and there is no evidence for the Council to review. This is considered to be unreasonable behaviour by the Appellant.

- 2.54 Paragraph 5.22 of the Sequential Test (2024) introduces a new source of sites. This is said to have arisen from a search of planning applications, by typing 'nursery' into the Location field of the London Borough of Hillingdon planning search. A full list of the sites covered under this process has not been provided. An extract is included which indicates some of the sites that have been uncovered through this approach. It is obvious this method would not have provided a correct list of recent planning applications proposing development that does or could include a nursery, because the search has not been undertaken on the planning description field. By undertaking it on the Location field, the Appellant is just picking up existing site addresses that are nurseries, which are then being proposed for an alternative use. Half of the list are just an assortment of different

applications listed on a road called 'Nursery Way', rather than having any material relevance to this type of development.

- 2.55 Even with the Appellant electing to not engage with the Council on this data source beforehand, the option was still available to utilise publicly accessible datasets that could have provided this data, such as the Planning London Datahub ([The Planning London Datahub | London City Hall](#)).
- 2.56 The Sequential Test (2024) also introduces (Para 5.24) testing of existing local nurseries to ascertain whether they can accommodate the proposed development as a viable alternate site. However, the Appellant has only elected to look at the 4 sites within the Officer Report (Appendix 1), despite these being referenced as just those 'within the immediate area alone'. The Appellant has already identified a series of existing nurseries within what it deemed a reasonable catchment area within the report by Watervale Property Ltd. An evident approach would have been to utilise those to test whether existing sites used as nurseries have potential to expand to meet this type of development.
- 2.57 *Conclusion*
- 2.58 In conclusion, the Council consider that a Sequential Test has not been properly undertaken for the site and therefore the Appellant continues to fail to demonstrate that the development could not be provided on a reasonably available site at a lower risk of flooding. This approach has been concluded based on:
1. The decision for the Appellant to not seek to coherently evidence an identified need to demonstrate that the proposal was necessary in line with policy and provide a basis for establishing a catchment area and parameters to test.
 2. There remain significant discrepancies between assertions made in the sequential tests and the overall submission, including the report undertaken by Watervale Property Ltd.
 3. The introduction of a series of restrictive search parameters that serve only to arbitrarily limit the number of sites explored. Many of these search parameters have been introduced only as part of this appeal.
 4. The use of inappropriate data sources to seek to inflate the number of sites that were subject to meaningful testing. On the evidence provided, the Council do not believe a commercial search was undertaken.
 5. Failure to seek accurate data sources, including those advocated by national guidance, for establishing a meaningful list of alternative sites to test.

- 2.59 In reference to the second Sequential Test (2024) in particular, the Council deems that its introduction constitutes unreasonable behaviour, on the basis that it:
- Seeks to materially alter the type of development being tested.
 - Includes misleading information that inflates the degree of testing that has been undertaken.
 - Contains assertions that are not supported by the evidence.
 - Withholds information on the sites that were supposedly assessed, including Appendix 2.
- 2.60 Sequential Test - Alternative Sites
- 2.61 Paragraph 029 of the NPPG on Flood Risk and Coastal Change makes it clear that the onus is on the Appellant to identify whether there are any other 'reasonably available' sites within the area of search. This includes sites not already identified by the LPA, such as sites currently available on the open market. It is therefore not the decision maker's responsibility to demonstrate alternative sites when an Appellant has failed to undertake a meaningful sequential test.
- 2.62 Notwithstanding this, throughout the application process, the Council has suggested that this type of development could be met by exploring the following types of sites. Examples of each have been included (with planning reference numbers) to demonstrate they can be viably undertaken:
- 2.63
- The optimisation of existing nursery schools, particularly via refurbishment or extension to existing buildings:
 - Ref: 76613/APP/2022/37 – Old Creche, Hillingdon Hospital
 - Ref: 2297/APP/2021/2704 – Nursery at Minet Junior School
 - The change of use of large residential properties to early years childcare. Examples of this have been accepted within the borough, including:
 - Ref: 18414/APP/2016/2486 – Cornerways, Green Lane
 - The utilisation of vacant or underutilised non-residential floorspace currently in Use Class E, for which there is a significant quantum within the borough at present:
 - Ref: 33664/APP/2022/941- St Marys Church Hall
 - Ref: 1313/APP/2018/1364 – West Drayton Youth Football Club
 - Ref: 62020/APP/2020/3432 – Forge House
 - The redevelopment of large strategic sites, where an element of non-residential development has been proposed at ground-floor level:
 - Ref: 331/APP/2022/2553 – Canteen Building, Former Nestle Factory

- 2.64 Noting the above, if a sequential test was undertaken properly, it is deemed that there would almost certainly be alternative options for meeting this type of development in areas at lower risk of flooding.
- 2.65 For context, Officers should also highlight that the Council launched a call for sites exercise to gather information on land that individuals or organisations may consider to have development potential. This exercise ran from Friday 26 May to Friday 29 September 2023, and as part of the Regulation 18 consultation from 29 April to 24 June 2024. Officers have no record of a submission for this site as part of the call for sites exercise. Given the significant planning policy constraints on this site, the local plan review process would be a more appropriate process to realise some form of development on this site.
- 2.66 Exceptions Test
- 2.67 As concluded above, Officers consider that it is possible for the development to be located in areas with a lower risk of flooding. Therefore, in line with Paragraph 169 of the NPPF (2023), the next stage of undertaking an exception test was not reached and did not form part of the refusal reasons.
- 2.68 However, if the Inspector is minded to make an alternative decision on the sequential test, and in response to the Appellant's SoC, the exceptions test has been considered below as part of the Council's SoC.
- 2.69 Paragraph 170 of the NPPF (2023) states:
- The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:*
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*
 - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*
- 2.70 The Appellant makes the case that the proposed development meets the requirements of points a) and b) listed under paragraph 170 of the NPPF (2023). With regard to point a), the Appellant SoC states at paragraph 7.19 that the following wider sustainability benefits outweigh the flood risk:
- a) Provision of new day nursery/pre-school education for children aged 0-4 years*
 - b) Extensive biodiversity enhancement*
 - c) Benefits to the local economy and job provision*
 - d) Making the site accessible to the community*
 - e) Maintenance and protection of protected trees and planting of new trees, plants and hedging*
- 2.71 Points a) to e) are considered in turn below.

- 2.72 a) Provision of new day nursery/pre-school education for children aged 0-4 years
- 2.73 The Council recognises the value of suitable day care facilities for pre-school children and notes that there is a general need. However, the level of need and methodology utilised in the Nursery Feasibility Report submitted at the application stage is not agreed. The detailed consideration of need is set out above in this SoC, as well as the detailed Planning Policy Officer comments set out within Appendix 5. The point on need is therefore significantly diminished and cannot weigh significantly in favour of the proposed development as a sustainability benefit.
- 2.74 b) Extensive biodiversity enhancement
- 2.75 The Appellant's SoC has highlighted the benefits of the scheme as a rebuttal to the reasons for refusal. The Appellant has concluded:
- 8.8. In striking the planning balance, the benefits of the development are considered to comfortably outweigh harm or perceived harm.*
- 2.76 In part, the Appellant has reached this conclusion because it is stated that the development will result in a net gain in biodiversity (see for example, paragraphs 7.35; 7.37; 7.39; 7.47).
- 2.77 The application was submitted in February 2023. At the time of the submission there was no requirement for the application to demonstrate biodiversity net gain (BNG). BNG is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). However, the secondary legislation to setting out the BNG requirements for development was dated 12 January 2024 which enacted the statutory processes from 12 February 2024 for major developments and 2 April 2024 for non-major developments.
- 2.78 The statutory requirement for 10% BNG is applicable to all new developments (subject to some exemptions). Developments that fail to achieve the 10% BNG requirement would likely result in a reason for refusal.
- 2.79 The Council considers that the Appellant's presentation of BNG for the development does not properly reflect the wider biodiversity policy requirements. The Appellant over emphasises the benefit of the scheme to reach the conclusion of 'significant benefits' in the planning balance.
- 2.80 The Appellant has produced a (1) biodiversity net gain report and (2) an ecological survey.
- 2.81 *Biodiversity Net Gain Report - General*
- 2.82 The BNG Report sets out the baseline position and then provides the post development plan. The summary gains are set out on page 2 of the BNG Report, including:

- *A net gain of 0.24 habitat units which is an increase of 13.96% from the baseline units*
- *A net gain of 1.37 hedgerow units which is an increase of 135.33% from the baseline units.*

- 2.83 Two different plans showing the current baseline are presented within the BNG Report (Appendix A) and the Ecological Survey (Figure 1, Appendix A). Neither of the plans show the existing trees onsite (cross referenced with the arboriculture survey).
- 2.84 The site contains scattered trees, scrubland and is bordered by a hedgerow. The site is not in use and has naturalised over time. The habitats on site are consistent with a derelict site.
- 2.85 *Biodiversity Net Gain – Proposed*
- 2.86 The BNG approach that is relied upon results in a reduction in area of natural habitat and open space predominantly necessary to accommodate the new built structure, play space, car parking and access areas. There will also be a reduction of the existing hedging. To offset this, the approach is to provide a more diverse mix of new planting in the landscaping area within the site which includes the provision of new species rich hedgerows. The BNG assessment concludes that the post development scenario will make a significant improvement on the pre-development situation.
- 2.87 The recent legislation requires any BNG secured to be retained and maintained for 30 years to ensure delivery. The BNG report does not commit securing the BNG for the 30 years.
- 2.88 *Ecological Survey*
- 2.89 The BNG report focuses on habit loss and creation. The Ecological Survey provides more information on presence or absence of particular species. In particular, bats (5.22), hedgehog (5.50), and invertebrates (5.57).
- 2.90 Bat surveys were undertaken and revealed the site to be of high value for activity with trees presenting low to moderate potential for bat roosts. Further bat surveys were recommended (5.33) but these do not appear to have been undertaken.
- 2.90 *Status of BNG and Information Provided*
- 2.91 The BNG report was undertaken in 2023 and predates the formal requirement for assessing and delivering BNG. In particular, it must be noted that the metric used for the BNG report uses version 3.1. This was superseded in early 2023 by 4.0, which in return was replaced by the statutory biodiversity metric calculation tool:

To accurately apply the biodiversity metric formula, you must use the statutory biodiversity metric calculation tool or small sites biodiversity metric tool (SSM) for small sites.

The tools remove the need for a user to manually calculate the change in biodiversity value.

The tool will summarise the results of the calculation and inform a user whether the biodiversity net gain objective has been met. (Table 2, page 12, the Statutory Biodiversity Metric User Guide -

[https://assets.publishing.service.gov.uk/media/65c60e0514b83c000ca715f3/The Statutory Biodiversity Metric - User Guide .pdf](https://assets.publishing.service.gov.uk/media/65c60e0514b83c000ca715f3/The_Statutory_Biodiversity_Metric_-_User_Guide_.pdf))

2.92 Consequently, for the BNG Report to be applicable to the current legislative framework, an updated version utilising the statutory metric tool would be required.

2.93 Notwithstanding the above, the Council understands the broad contention of the Appellant to be that the biodiversity ‘after’ the development will be improved from the ‘before’ scenario and therefore this should be given significant weight in the planning balance. The principle of this will be considered below along with a consideration of the detail of what has been provided.

2.94 *BNG Principle*

2.95 BNG is now a statutory requirement that requires the improvement of habitats and habitat management to provide a greater opportunity for biodiversity to thrive. Natural England state the following:

Biodiversity Net Gain (BNG) is an approach to development, land and marine management that leaves biodiversity in a measurably better state than before the development took place. Currently, although certain sites are protected, there are limited mechanisms to value, maintain, enhance or create wider habitats. As a result, habitats continue to be lost to development, reducing nature’s ability to connect and thrive. In the future, most developments will need to deliver a minimum 10% BNG.

BNG is additional to existing habitat and species protections. Intended to reinforce the mitigation hierarchy, BNG aims to create new habitat as well as enhance existing habitats, ensuring the ecological connectivity they provide for wildlife is retained and improved. (Biodiversity Net Gain Brochure, Natural England - https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure_Final_Compressed-002.pdf

2.96 The mitigation hierarchy within the NPPF (paragraph 186) places avoidance of harm at the heart of environmental management. BNG is a form of mitigation/compensation to offset the harm. BNG is therefore an approach that allows for improvement to biodiversity opportunity where development is proposed. Paragraph 180 of the NPPF states planning decisions should contribute to and enhance the natural and local environment. Excessive planning weight should not therefore be attributed to reaching the policy compliance that BNG will achieve.

2.97 In addition, with regards to biodiversity paragraph 186(d) states:

(d) development whose primary objective is to conserve or enhance biodiversity should be supported;

2.98 It is the Council's belief that the approach of 186(d) means that the support referenced could manifest itself in 'significant positive weight' in a planning decision. This appeal does not relate to an application where biodiversity enhancement is the primary objective.

2.99 Furthermore, BNG is not the primary route for securing biodiversity management. The Local Government Association's 'frequently asked questions' states:

BNG does not change existing protections, so current legal and policy provisions relating to development impacts on the natural environment, including protected sites and species, and priority species and habitats, all need to be considered in relation to habitat loss. A development cannot avoid this requirement by virtue of delivering a net gain. If there are protected species on-site then these should be approached and managed in the same way as they are currently. BNG and the Biodiversity Metric calculations would then be additional to this.

2.100 BNG is therefore not an opportunity to provide the positive weight in a planning balance to offset the failure to provide protection. Instead, BNG is now a statutory obligation that seeks to provide a more favourable biodiversity outcome should a site need to be developed. As set out above, this is secondary to the need for protection. Performing satisfactorily on the second tier of the mitigation hierarchy does not allow for the disregard for the primary objective.

2.101 *Species not considered in BNG*

2.102 In addition, BNG is not about specific species protection, rather it is about habitat creation to provide an opportunity. As set out in the Natural England BNG brochure:

BNG creates and connects habitats in which species can thrive and in doing so can help wildlife adapt to climate change.

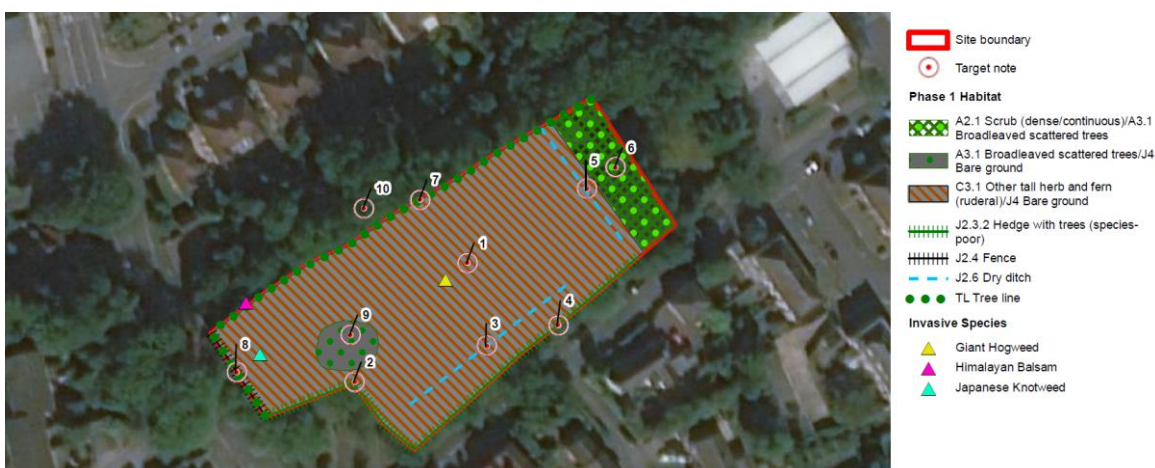
2.103 BNG is about creating the opportunity for wildlife; there is no guarantee that the species prevalent on a site prior to site clearance to accommodate a development will then return post completion. Consequently, the BNG assessment does not factor in the specific species that are present on a site.

2.104 For example, the Ecological Report for the planning submission identifies a number of likely species present on the site. In particular, bats (5.22), hedgehog (5.50), and invertebrates (5.57) whilst the BNG report 'scores' the existing habitat as being limited:

Eastcote					
A-1 Site Habitat Baseline					
Condense / Show Columns			Condense / Show Rows		
Main Menu			Instructions		
Habitats and areas				Distinctiveness	Condition
Ref	Broad Habitat	Habitat Type	Area (hectares)	Distinctiveness	Condition
1	Heathland and shrub	Bramble scrub	0.07	Medium	Condition Assessment N/A
2	Urban	Vacant/derelict land/ bareground	0.15	Low	Poor
3	Urban	Urban Tree	0.04	Medium	Good
4	Sparsely vegetated land	Ruderal/Ephemeral	0.13	Low	Moderate
5					
6					
7					
8					
9					
Total habitat area			0.39		

PDF Page 39, Tab A-1, BNG Report

- 2.105 The details provided for the baseline position does not capture whether the 'urban trees' are highly valuable to bat species, or whether the 'sparsely vegetated land' accommodates the protected mammals (hedgehog) or protected invertebrates (stag beetles) that the ecological report indicates are likely to be present.
- 2.106 In particular, the presence of bats in the existing site raises its value significantly. It is noted that further surveys have been recommended (5.33 Ecological Report) which the Council has not seen. Bats still retain some of the highest level of protection in the UK and any adverse impacts are to be considered in liaison with Natural England and under licence if required.
- 2.107 The above illustrates the fact that BNG is concerned with habitat opportunity only and with limited regard for the current species on site. Therefore, in addition to the overarching principles of BNG set out above, BNG should be treated carefully in any weighting given to a planning balance.
- 2.108 To illustrate further, the baseline habitat position is set out in the BNG Report (PDF Page 17, Appendix A)

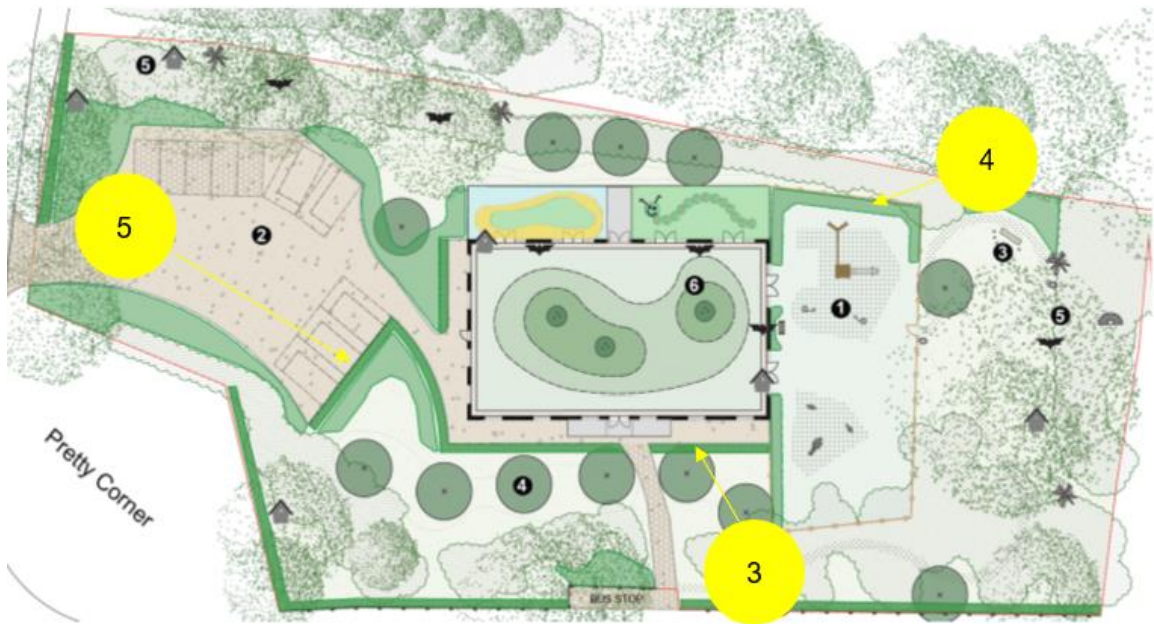


- 2.109 The baseline position shows an unused derelict site with a mature, albeit species limited hedgerow, on the southern boundary that wraps around to the west ending in a tree line on the western boundary. The bat survey information highlighted a significant amount of bat activity in this area. The site is therefore functioning very well in terms of actual species support even if the fauna onsite has been given a diminished status (see 1.5 of Ecological Report).
- 2.110 Figure 2 of the BNG Report (PDF Page 20) presents the post development scenario. An area of the existing mature hedgerow is to be removed for access purposes (annotated 1 on the plan below) and another section is removed on the southern border further to the west (number 2).



- 2.111 In addition, new hedgerow will be created within the site immediately in front of the building (3 on the second plan overleaf), around the children's play space (4) and bordering the car park (5). This additional hedgerow has been entered into the BNG metric and graded in such a way as to achieve the 113% improvement and in part; this is used by the Appellant to present the 'significant' gain argument.
- 2.112 The newly created hedgerow, in a highly used location needs to be considered in a more rational context than a simple data entry exercise. Whilst there will be a greater quantity of hedgerow with a better planting mix, the time taken for this to mature along with the fact it will be within a heavily used development site detracts from its significance value. In that regard, it is also noted that the correct statutory biodiversity tool allows for a greater degree of professional opinion as to the value and role of the newly created habitat. This allows for the recognition of the differing value a newly planted native rich hedgerow could have, for example where it is provided in a high value setting, linking existing valuable corridors that would not

be exposed to much human interaction versus a similar planted hedgerow in an urban environment for example near a car park or outside a building.



2.113 Securing BNG

2.114 BNG is now a statutory requirement to be assessed at the planning stage. However, there is a requirement to secure the BNG for a period of 30 years. This removes the potential for subsequent changes on site to reduce the BNG and undermine the primary objective of the legislation. The Government guidance states:

On-site gains

For significant on-site habitat enhancements, developers must have a legal agreement or planning condition.

If developers use a planning condition, this is separate to the condition which requires them to achieve 10% BNG.

Your legal agreement for on-site gains must last for at least 30 years from the date you complete the development.

<https://www.gov.uk/guidance/legal-agreements-to-secure-your-biodiversity-net-gain>

2.115 There is no clear evidence as to how the BNG will be robustly secured and maintained over the next 30 years. This should be an enforceable requirement.

2.116 If BNG is to be relied upon by the Appellant then this would at least need to be secured for the 30 years in accordance with the new statutory requirements. If this is not to be secured, then this further weakens the case for assigning significance to the BNG proposals.

2.117 *Conclusion*

2.118 The Council considers that the position presented by the Appellant in relation to BNG is not appropriate. The proposals will not result in protection of the existing habitat and importantly the species currently using the site.

2.119 The BNG proposals are limited to a small increase in trees at the expense of existing trees some of which have a reasonable prospect of supporting bats.

2.120 The BNG proposals include new diverse planting but within an active nursery site where many elements would be in close proximity to human interaction thus reducing the realistic value of the BNG opportunity created.

2.121 As a consequence, the Council does not consider the BNG proposals should provide any substantial positive weight in the decision the making of the Inspectorate.

2.122 *c) Benefits to the local economy and job provision*

2.123 The Appellant makes the submission at paragraph 7.40 of their SoC that the nursey will deliver significant benefit to the local economy through the provision of 25 jobs. The Appellant also notes that the existing site is of no value to the community.

2.124 Officers are unable to verify the staffing figures provided but accept that the jobs generated by the proposal would be of some benefit. In isolation, this point is not, however, considered to justify the need for a 'more vulnerable use' in the form of a nursery to be provided on a site with high and medium risk of flooding. As addressed in the Council's consideration of the sequential test, there are alternative sites where such benefits could also be realised. This consideration is not unique to this proposal on this site.

2.125 *d) Making the site accessible to the community*

2.126 The Appellant states at paragraph 7.41 of the SoC that the proposal will provide public benefit by making the site accessible to the community. Officers would emphasise that nurseries are listed under Use Class E for commercial, business and service uses, not Classes F.1 or F.2 for learning or community uses. As per the Officer Report, the proposed use is considered to fall under Class E(f) only and would not provide the same access that a community use would. In practical terms, use of the site for a nursery would not make it completely accessible to the public, noting the sensitivities around ensuring that children are safe and that general members of the public cannot just freely access the site without restriction. The weighting of this point is therefore considered to be diminished.

2.127 *e) Maintenance and protection of protected trees and planting of new trees, plants and hedging*

2.128 The Appellant makes the submission at paragraph 7.42 of the SoC that the proposal will protect the landscape and TPO trees from anti-social behaviour and ensure maintenance. As per RR5, the LPA have significant doubts that TPO trees T13 and T9 would be protected and retained in the long term. Officers would not assign significant weight to this point.

2.129 *Flood resistance and resilience*

2.130 The Appellant's SoC states that mitigation measures would reduce flood risk of the site and local area, including constructing the building within Flood Zone 2 set back from higher risk areas, raising of the building, utilising flood resilient building materials, and securing a Flood Warning and Evacuation Plan. As per the comments provided by the Environment Agency (dated 13th November 2023), flood resistance and resilience measures could be secured to make the development safe.

2.131 Conclusion (RR1 – Flood Risk and Sequential Test)

2.132 The point should be emphasised that the site as it exists already provides value, especially with reference to sustainability benefits. The undeveloped nature of the site mitigates against the risk of flooding by acting as a source of sustainable water attenuation. In connection with the adjoining Site of Nature Conservation, the site supports habitats of ecological value, including mature trees, hedgerow, deadwood and dry ditches, which provide valuable opportunities for a range of species, including bats, birds and invertebrates (as per the Ecological Appraisal submitted during the application process). Furthermore, the land is designated as an important part of the Eastcote Village Conservation Area, contributing to its heritage significance and visual amenity. The site also constitutes open space in the Eastcote ward, which when viewed as a whole is insufficient in open space, as per the London Borough of Hillingdon Open Space Strategy 2011 - 2026. The Hillingdon Local Plan: Part 1 (2012) defines all open spaces of public value. The definition covers a broad range of types of open spaces within the borough, whether in public or private ownership and whether public access is unrestricted, limited or restricted. It is clear that the site as it exists already contributes to wider sustainability benefits to the community and the proposal would significantly undermine such benefits.

2.133 It is noted that the Appellant states at paragraph 7.52 of the SoC that a dispute about methodology for the Sequential Test, and whether all land and buildings used for Use Class E should be included, is not an adequate reason to refuse planning permission for a child nursery to which the Environment Agency raises no objection. The LPA would highlight the Environment Agency's comments (dated 13th November 2023) provided as follows:

"We have withdrawn our objection to this application on flood risk grounds, but this does not remove the need for you to apply the sequential test and to consider whether it has been satisfied. Where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be

affected either directly or indirectly by flooding. A failure to satisfy the sequential test can be grounds alone to refuse planning permission." (emphasis added)

- 2.134 Whilst the Appellant may demonstrate that the development could be made safer in flood risk terms, wider sustainability benefits would not exist to outweigh flood risk. The existing site already significantly contributes to wider sustainability benefits and such benefits would be undermined by the proposal. As such, Officers consider the development to have failed to fulfil the requirements of either the sequential test or the exceptions test. Fundamentally, the development is unacceptable in principle and should be refused for this reason. This significantly weighs against the scheme in the planning balance.

2.135 RR2 – Loss of Open Space

- 2.136 Please refer to Section 7.6 of the Officer Report (Appendix 1) for consideration of the significant loss of protected open space. For context, it should be emphasised that the Eastcote Ward as whole is deficient in open space according to the London Borough of Hillingdon Open Space Strategy 2011 – 2026. The Strategy does not state that there are any areas of surplus open space within Eastcote, rather it states that a further 33 hectares of unrestricted open space is required by 2026 to meet the standard and meet the anticipated population growth.
- 2.137 The Appellant's SoC appears to contest that the site is not open space in paragraphs 7.56 and 7.59. As per the Officer Report (Appendix 1), definitions for open space are set out within the Hillingdon Local Plan: Part 1 (2012) and London Plan (2021). The Appellant's Planning, Design and Access Statement (Dated February 2023) also identified the site as private open space and as such the relevant planning policy test has been applied, namely paragraph 103 of the NPPF (2023). The Appellant's SoC maintains that the benefits of the scheme outweigh the perceived low value of the site. Officers would again emphasise that the existing open space is of high value from flooding, ecological, visual amenity, and heritage significance perspective.
- 2.138 The Appellant also states at paragraphs 7.57 and 7.61 of the SoC that the development only occupies 11% of the site. The LPA would highlight that this measure only includes the proposed building and would contest that the development would occupy significantly more of the site, physically occupying at least 50% of the site and impacting the site in its entirety. Hence, the development would result in the loss of significantly more valuable open space.
- 2.139 Officers contend that the loss of valuable open space continues to significantly weigh against this scheme in the planning balance and consider that it should be refused as such.

2.140 RR3 – Impact on Highway Safety

- 2.141 Please refer to Section 7.3 of the Officer Report (Appendix 1) for consideration of the unacceptable impacts on highway safety. As previously covered, the primary reason for refusal relates to the provision of insufficient on-plot car parking and pick-up and drop-off facilities to cater for the demands of staff and

parents/carers driving to the site by private car. The Highway Authority anticipates that this would give rise to adverse impacts upon the highway network to the detriment of traffic congestion, parking stress and highway safety, justifying a reason for refusal as per paragraph 115 of the NPPF (2023). Further commentary is provided in this SoC in order to consider the likely real-world impact which would manifest as a result of the proposal, in the worst-case scenario, which is the ultimate concern for the LPA.

- 2.142 The proposal would offer just 9no. on-plot car parking spaces and, in the view of Officers, would not offer any dedicated pick-up and drop-off facility. The Appellant contends that the car parking spaces and the travel space within small car park proposed could be used for pick-up and drop-off. However, Officers maintain that the car parking spaces would inevitably be occupied by staff and to pick-up and drop-off children within the travel space of a car park would not be considered fit for purpose or safe.
- 2.143 Taking account of the low PTAL and on-plot car parking provision, it is considered very likely that most members of staff and parents/carers would drive to the site and upon arrival would either park or pick-up and drop-off on-street. The Appellant contends that having just 9no. car parking spaces on-plot is not an issue as sufficient car parking is available on-street. To demonstrate this the Appellant has undertaken a parking survey using the Lambeth Methodology. This measures the amount of kerb space available for use and counts the number of cars parked. The Appellant reports that there are 104no. kerbside car parking spaces available for use. The busiest 15-minute period was found to be 08:45 to 09:00h when a total of 63no. cars were recorded as being parked. This identified an overall parking stress of 61%. If parking stress reaches 85% then parking along a road is said to have reached capacity. Based on there being sufficient kerb space to park 104no. cars, it is considered that capacity is reached when 88no. cars are parked. With 63no. cars counted as parked, there is space to cater for another 25no. cars before the 85% capacity is reached ($63 + 25 = 88$). Officers would highlight that some of these 25no. spaces could be up to 200 meters away (a 2 minute walk) from the site.
- 2.144 The Appellant reports in their Transport Statement that, according to TRICS, the morning peak time for vehicular movements would be between 08:00 and 09:00h when there would be 26no. vehicular arrivals and 19no. departures. To test a worst-case scenario the Appellant has assumed that half of arrivals, equal to 13no., would arrive between 08:45 and 09:00h. Nine of these cars could park on-plot with 4no. being displaced on-street. However, this assumes that all 9no. spaces are vacant which is most unlikely as these spaces would be occupied by staff. Instead, Officers consider it much more likely that cars would have to wait on the highway to enter, requiring that one car enters as one car leaves. Inevitably, this will increase traffic congestion to the detriment of highway safety conditions.
- 2.145 The Appellant's Transport Note January 2023 paragraph 4.11 states "that trips to nurseries tend to be undertaken as part of a linked trip, proceeding to the parent / carers workplace, afterwards for example". The Highway Authority is mindful of the real-world process, requiring parents/carers to find somewhere to park, helping the child get out of the car, retrieving the child's day bag, locking the car and

accompanying the child to the nursery. At the nursery the parent/carer must register their child and walk back to their car before continuing their journey to work. To determine the availability of parking on-street the Appellant has followed the Lambeth Methodology parking survey which generally covers an area of 200m (or a 2-minute walk) around the site. In the worst-case scenario, in traffic conditions worsened by road works or accidents, the Highway Authority anticipates that somebody travelling late to work, for example, would not consider a parking space 200m away from the nursery as a genuine offer. Instead to save time it is expected that they would seek to park as close to the nursery as possible, which may be in an errant and injudicious manner. Some of the 25no. car parking spaces available between 08:45 and 09:00h would be simply too far away to be considered a genuine parking opportunity. Accordingly, in the worst-case scenario, the proposal does not mitigate against the associated highways safety risks by providing fit for purpose pick-up and drop-off facilities or off-site highway improvements to facilitate effective active travel to and from the site.

- 2.146 The original planning application for this proposal generated a total of 60 objections from local residents. A recurrent issue raised was the presence of existing traffic and highway problems caused by parents/carers dropping off and picking up children attending Coteford Infant School and 4 Street Nursery nearby. These establishments are situated along Fore Street just 120 metres away from the application site. As already covered, the Lambeth Methodology for determining car parking supply is based on a catchment area of 200 meters, in which case the parents/guardians of children attending the proposed nursery would be competing against the parents/guardians of Cotewood Infant School and 4 Street Nursery for somewhere to park on a first come first served basis. This further worsens the worst-case scenario, ultimately to the detriment of highways safety conditions.
- 2.147 Based on the information submitted, the proposed development is considered to have an unacceptable impact on highway safety. The scheme is considered contrary to Policies DMT 1 and DMT 2 of the Hillingdon Local Plan: Part 2 (2020), and Policies T2, T4 and T5 of the London Plan (2021) and should be refused in accordance with paragraph 115 of the National Planning Policy Framework (2023). Again, this weighs significantly against the scheme in terms of the planning balance.

2.148 RR4 – Design and Impact

- 2.149 Please refer to Section 7.2 of the Officer Report (Appendix 1) for consideration of design and the associated impact on the local character within the Conservation Area and setting of Grade II Listed Buildings.
- 2.150 The Appellant's SoC agrees that the proposed development will cause less than substantial harm to the significance of the Conservation Area but maintains that public benefits outweigh the harm identified, as per the requirements outlined under paragraph 208 of the NPPF (2023). Alongside the agreed less than substantial harm to the significance of the designated heritage asset, Officers would emphasise the significant planning policy conflict which would arise from the inappropriate development in an area at risk of flooding (as per the failure to pass a sequential test and exceptions test as addressed in RR1), the loss of

valuable open space, the unacceptable impact on highway safety, the potential harm posed to protected trees, and the production of unacceptable pollutant emissions in the Eastcote Village Air Quality Focus Area without sufficient mitigation. The wider sustainability benefits proposed by the Appellant, which are also proposed as public benefits, are also not considered to significantly weigh in favour of the proposals (as per RR1). It is maintained that the benefits identified by the Appellant could be realised on an alternative site without such fundamental land use issues arising and all the planning policy conflicts significantly weigh against any public benefits identified. Officers fundamentally disagree that there are any clear public benefits to outweigh the significant harm identified.

2.151 RR5 – Impact on Trees

- 2.152 Please refer to Section 7.6 of the Officer Report (Appendix 1) for consideration of the considered harm to protected trees posed by the proposed development.
- 2.153 As previously covered, the potential encroachment of development on protected trees is avoidable and unnecessary. If a hierarchical approach is to be applied, the impact on protected trees (and by extension biodiversity), should be avoided in the first instance if possible. Only if avoidance is not possible should mitigation be applied and then if mitigation is not possible, compensation would apply. The application submission does not demonstrate that the specific design proposed is necessary and, in the opinion of Officers, the harmful impacts posed should be avoided.
- 2.154 The Appellant refers in paragraph 7.14 of the SoC to the ability to secure tree protection and enhancement details by condition. The LPA should highlight that if there are fundamental concerns with a proposal and the harmful impact that such a proposal could have on protected trees, it would be wholly inappropriate to accept the development and leave the detailed consideration to the discharge of a condition. If there are fundamental concerns with a proposal, it cannot be considered acceptable subject to a condition as it would fail the tests of a planning condition, namely that it would make the development acceptable.
- 2.155 The potential for avoidable harm is unacceptable and weighs against the scheme in the planning balance.

2.156 RR6 – Impact on Air Quality

- 2.157 Please refer to Section 7.6 of the Officer Report (Appendix 1) for consideration of unacceptable pollutant emissions in the Eastcote Village Air Quality Focus Area.
- 2.158 The Appellant's submission at paragraph 7.16 of the SoC states that the LPA do not dispute the Air Quality Impact Assessment (Dated February 2023) submitted under the original planning application. Officers should highlight for clarity that this report omitted air quality neutral calculations which are required as per the current GLA Air Quality Neutral 2023 guidance (please refer to Appendix 3) and did not take into consideration the requirements of the LBH Air Quality Local Action Plan (please refer to Appendix 3).

- 2.159 The Appellant's submission at paragraph 7.19 of the SoC contends that the site is not located within an Air Quality Focus Area. Officers have provided Site Map for Designations in Appendix 4, including a map for the designation of the site as part of the Eastcote Village Air Quality Focus Area. The source for this map can be found in Figure 7 (page 23) of the Hillingdon Air Quality Action Plan (also appended in Appendix 3).
- 2.160 Whilst it is the case for the site, it should also be highlighted that a site can also be located outside of an Air Quality Focus Area and be deemed to have an unacceptable impact on that area by virtue of the impacts that arise from that development, for example by vehicle movements through an Air Quality Focus Area.
- 2.161 The Council's Air Quality Officer comments and calculations are provided at Appendix 5 for the Inspectors information and review. The Council's damage cost value due is calculated using Department for Environment, Food and Rural Affairs pollution damage cost calculator toolkit and follows the required LBH standard practice, specified in agreement with the Council's Air Quality Officer.
- 2.162 It is noted that the Appellant is agreeable to paying towards air quality improvement measures, however, the £190,436 fee is not agreed and a fee equal to £27,164 is instead proposed. Whilst there may be some scope for a discounted fee to be agreed based upon the base figure of £190,436, what is effectively an 85% reduction (although calculated using a different methodology) to the proposed £27,164 fee would not be agreeable on the basis of securing some greening of the site alongside a travel plan. Significantly, the GLA Air Quality Neutral 2023 guidance has not been used by the Appellant to calculate this reduced fee.
- 2.163 Noting the above considerations, it cannot be agreed that this reason for refusal has been sufficiently resolved. This is only possible if suitable quantifiable air quality mitigation measures in terms of emission reductions and/or an offset payment is secured. Accordingly, the air quality policy conflict and harm continue to weigh against the scheme in respect of the planning balance.

2.164 RR7 – Planning Obligations and Mitigation

- 2.165 Please refer to Section 7.6 of the Officer Report (Appendix 1) for consideration of the planning obligations considered necessary, directly related and reasonable to mitigate the harms identified and make the development acceptable in planning terms.
- 2.166 As per Policy DMCI 7 of the Hillingdon Local Plan: Part 2 (2020), applications that fail to secure appropriate planning obligations to make the proposal acceptable will be refused. Given that Officers are respectfully requesting that the appeal is dismissed, it follows that the failure to secure the necessary planning obligations constitutes a further reason for refusal.

2.167 Planning Balance

- 2.168 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. It is not considered that there are any material considerations to depart from development plan policy. For the reasons outlined within the main body of the Officer Report (Appendix 1) and this SoC, Officers conclude that the significant planning policy conflict and resultant harm clearly outweighs any benefits in the planning balance.

3.0 Conclusion

- 3.1 For the reasons set out in the Officer Report (Appendix 1) and this SoC, the proposed development is unacceptable, and the Inspector is respectfully requested to dismiss the appeal.
- 3.2 If the Inspector considers the appeal should be allowed, and without prejudice to the Council's case, a list of recommended planning conditions is included at Appendix 7.

4.0 Appendices

- 4.1 Appendix 1 – Officer Report
- Appendix 2 – Decision Notice
- Appendix 3 – Copies of Relevant Planning Policies
- Appendix 4 – Site Maps including Designations
- Appendix 5 – Copies of Relevant Consultee Responses
- Appendix 6 – Sequential Test Email Correspondence
- Appendix 7 – The LPA's Recommended Conditions