



**Neutral Citation Number: [2025] UKUT 7 (LC)
IN THE UPPER TRIBUNAL (LANDS CHAMBER)
IN THE MATTER OF NOTICES OF REFERENCE**

**Royal Courts of Justice,
Strand, London WC2A 2LL**

14 January 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*COMPENSATION – PLANNING – certificates of appropriate alternative development –
preliminary issue – assessment of planning need for purpose built student accommodation*

BETWEEN:

THE SECRETARY OF STATE FOR TRANSPORT

Appellant

-and-

**QUINTAIN CITY PARK GATE BIRMINGHAM LIMITED (LC-2019-287)
BIRMINGHAM CITY UNIVERSITY (LC-2019-290)
CURZON PARK LIMITED (LC-2019-284)
EASTSIDE PARTNERSHIP NOMINEE COMPANY LIMITED
AND PMB GENERAL PARTNER LIMITED (LC-2019-278/LC-2020-176)**

Respondents

Re: Land at Eastside, Birmingham

**Martin Rodger KC, Deputy Chamber President,
and Peter McCrea OBE FRICS FCI Arb**

15 and 16 October 2024

Guy Williams KC, Nina Pindham and Isabella Buono, instructed by DLA Piper for the Secretary of State

David Elvin KC and Richard Moules KC, instructed by BCLP LLP for Quintain City Park Gate and instructed by Ashurst LLP for Eastside/PMB

Richard Glover KC, instructed by Mills & Reeve LLP, for Birmingham City University

James Pereira KC and Caroline Daly, instructed by Town Legal LLP, for Curzon Park Limited

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The following cases are referred to in this decision:

The Secretary of State for Transport v Curzon Park Limited and others [2020] UKUT 0037 (LC)

Leech Homes Ltd v Northumberland County Council [2020] UKUT 150 (LC); [2021] RVR 21

Leech Homes Ltd v Northumberland County Council [2021] EWCA Civ 198; [2021] 4 WLR 102

Secretary of State for Transport v Curzon Park Ltd & Ors [2023] UKSC 30; [2023] 1 WLR 2762

Urban Edge Group Ltd v London Underground Ltd [2009] UKUT 103 (LC)

Introduction

1. The Tribunal is asked to determine a preliminary issue common to five separate references concerning the entitlement to compensation of the former owners of four neighbouring plots of land at Eastside in Birmingham. Each of the sites was acquired by the Secretary of State for Transport in 2018 for the construction of the new Curzon Street terminus for the HS2 railway.
2. The Eastside Quarter, as it is known, is close to the centre of Birmingham and, had the sites not been acquired, it is likely that they would have been redeveloped for a variety of uses, including commercial, cultural, residential and educational uses.
3. To support their claims for compensation each of the owners applied to the local planning authority, Birmingham City Council ('the City Council') for a certificate of appropriate alternative development under section 17 of the Land Compensation Act 1961. The purpose of a certificate (or 'CAAD') is to determine what planning permissions, if any, could reasonably have been expected to have been obtained for a site if it had not been compulsorily acquired. The availability of such permissions is significant because in determining the compensation the owner is entitled to receive it must be assumed that planning permission for the certified development was available at the valuation date or would have been available at a future date identified in the certificate (section 14(3), 1961 Act).
4. Each application was for a separate development on only one of the four adjacent sites but, in conjunction with other uses, each application identified purpose built student accommodation ('PBSA') as an appropriate alternative form of development. As we will explain, Birmingham has a large student population and Eastside is very close to several of its universities; we also anticipate that we will receive evidence in due course that PBSA is a particularly valuable form of development.
5. As a result of the applications CAADs including an allowance for PBSA were granted by the City Council to Birmingham City University ('BCU'), Curzon Park Ltd ('Curzon Park') and Eastside Partnership Nominee Company Ltd and PMB General Partner Ltd ('Eastside'). The Secretary of State has appealed to the Tribunal against those CAADs.
6. An application by Quintain City Park Gate Ltd ('Quintain') and an earlier application by Eastside for CAADs including PBSA were not determined by the City Council within the permitted time and are the subject of appeals against non-determination by the original applicants with the Secretary of State as respondent.
7. Some sense of the scale of the alternative development which the former owners say would reasonably have been expected on their respective sites can be gained from the certificates granted by the City Council. Quintain's certificate is for development of up to 99,490 sqm including residential, office, hotel and retail uses, together with PBSA providing 1,940 bed spaces. Curzon Park's certificate is for an even larger scheme comprising buildings of up to 41 storeys to a maximum of 181,260 sqm, including up to 37,013 sqm of PBSA providing 1,716 bed spaces.
8. In each appeal the Secretary of State's position is that at the relevant valuation date the need for student accommodation in the centre of Birmingham was fully satisfied by the existing supply of PBSA and by other forms of accommodation available to students and

that a reasonable planning authority would not have granted planning permission for further PBSA at any of the sites. The site owners dispute that proposition and maintain that there was a substantial unmet need for PBSA at each valuation date which could have been satisfied by development at Eastside had their land not been acquired for HS2.

9. The need for further PBSA is therefore an issue common to each of the CAAD appeals. The parties agreed the terms of a preliminary issue which they invited the Tribunal to determine before it considers the full terms of the appropriate certificate for each site and the amount of compensation payable.
10. The parties were represented at the hearing by the counsel and solicitors named above. Expert evidence was given by Mr Martin Hadland MRICS for the Secretary of State, by Mr David Feeney for Quintain, BCU and Eastside, and by Mr Martin Taylor MRTPI for Curzon Park. We are grateful for the assistance of all who participated.

The preliminary issue

11. The preliminary issue agreed by the parties is in these terms:

At each of the respective valuation dates, what was the level of planning need for PBSA and how, as a matter of fact, is each site located in terms of distance and travel time from the existing educational establishments (including other student housing)?

12. The issue is to be determined by reference to the respective valuation dates for the four sites. Numbering the sites from west to east, the dates on which the interests of the four owners were acquired for HS2 (which are the valuation dates) were as follows:

Site	Owner	Interest	Valuation date
Site 1	Quintain	Leasehold	17 July 2018
Site 2	BCU	Leasehold	16 March 2018
Site 3	Curzon Park	Freehold	30 August 2018
Site 4	Eastside	Freehold	26 September 2018

13. Although the valuation dates straddle two academic years during which different numbers of students were enrolled and some small differences existed in the amount of accommodation already available or in the development pipeline, the experts agree that circumstances did not change between March and September 2018 to any material extent so the same answer can be given to the preliminary issue for each site.
14. The experts also reached agreement on the second limb of the preliminary issue concerning distances and travel times between the four sites and eight of the main university centres in the city. That information is recorded in the experts' joint statement to which reference can be made at the later stages of the proceedings.

Planning need

15. The first limb of the preliminary issue invites the Tribunal to determine “the level of planning need for PBSA” at each of the valuation dates. “Planning need” is not a term of art and no national policy statement explains how it should be assessed when the need in question is for PBSA. Mr Feeney proposed that planning need for PBSA was simply “the difference between supply and demand”. Mr Taylor was confident that each of the experts understood what planning need was and used it in the same sense, but as we heard their evidence it seemed to us that the absence of a clear definition was responsible for some of the differences between them. We therefore asked the parties to agree a definition of planning need which we could apply in our assessment of the evidence.
16. After completion of the evidence but before making their closing submissions the parties agreed a helpful statement in which they explained that the focus of the preliminary issue is the first bullet point in policy TP33, the City Council’s development plan policy on PBSA, which requires consideration of whether there is “a demonstrated need for the development” (we will come to the Policy in greater detail shortly). The following propositions were also agreed.
 1. In broad terms, planning need is calculated by comparing demand for and supply of student bedspaces across a geographic area.
 2. The appropriate conclusion of the issue of planning need is numerical.
 3. Planning need relates to the level of need for new PBSA to be met by the proposed development of PBSA on Sites 1-4 (each at its own valuation date).
 4. The reasonable local planning authority applying Policy TP33 would reach a judgment on planning need for PBSA taking into account an estimate of future growth of student demand for PBSA.
 5. Planning need falls to be assessed in the context of the relevant planning policies and guidance as at the valuation dates.
17. The differences between the three expert witnesses are explained by their disagreement over the following fairly discrete topics, namely:
 1. The relevant geographical area across which any need for PBSA should be assessed.
 2. The relevance of other rented accommodation available to students in determining whether a need for PBSA had been demonstrated (with “HMOs”, houses in multiple occupation, being used as a convenient shorthand for all such accommodation).
 3. The period of time over which any need for PBSA should be assessed, and the length of time over which the potential growth in the number of students requiring accommodation should be considered.
 4. To a lesser extent, the rate of growth which should be applied to the number of students requiring accommodation.

5. Whether a reasonable planning authority would use publicly available data on student numbers and accommodation choices or would have regard to a more detailed version of the same data available only under commercial licence.
18. Despite their best efforts to clarify what they mean by planning need, it can be seen that the parties' agreed explanation begs important questions, in particular about the area within which, and the period over which, the relevant need must be established, but also about whether the relevant supply and demand for student bedspaces are for spaces within PBSA or extend to other types of accommodation, including HMOs. With the benefit of hindsight, it might have been preferable for us to have been asked to consider whether the relevant policy as a whole was satisfied, rather than to address only one of its components, but we will do our best within the limits of the evidence to provide a useful answer to the preliminary issue.

The Tribunal's task

19. The legal framework for the preliminary issue is provided by sections 14, 17 and 18 of the Land Compensation Act 1961. In assessing the value of land for the purpose of determining the amount of compensation payable for its compulsory acquisition, section 14(3) provides that it may be assumed that planning permission was in force on the valuation date for any development that is appropriate alternative development, as defined in section 14(4). That is, development for which, on the assumptions in section 14(5) but otherwise in the circumstances known to the market on the valuation date, planning permission could reasonably have been expected to be granted on an application determined on or after the valuation date.
20. As far as they are relevant to these appeals, the assumptions required to be made by section 14(5) are that the scheme underlying the acquisition had been cancelled on the launch date (which in these cases is agreed to have been 25 November 2013), that no action has been taken by the acquiring authority wholly or mainly for the purposes of the scheme, and that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function, or by the exercise of compulsory purchase powers.
21. Section 17 enables the acquiring authority or the landowner to apply to the local planning authority for a CAAD stating that there is, or is not, development that is appropriate alternative development in relation to the land acquired and describing it. Section 18(1) provides a right of appeal to the Tribunal.
22. On any appeal under section 18, the Tribunal must consider the matters to which the certificate relates as if the application had been made to it in the first place, and must confirm, vary, or cancel the certificate and issue a different certificate in its place as it considers appropriate (section 18(2)).
23. As Lewison LJ explained in *Leech Homes Ltd v Northumberland County Council* [2021] EWCA Civ 198, at [21], the direction to proceed as though the application for a certificate had been made to the Tribunal in the first place means that we are "exercising an original jurisdiction rather than a review jurisdiction". In the same paragraph the learned Lord Justice approved what we had previously said about the Tribunal's role in the same case at first instance ([2020] UKUT 150 (LC)):

"... when considering under s.14(4)(b) whether planning permission for the appellant's scheme could reasonably have been expected to be granted at the valuation date, or later, the Tribunal is not required to ask itself how Northumberland County Council is likely to have determined the notional application for consent. The Tribunal must put itself in the position of a reasonable decision maker, properly applying the law. It follows that, if at the statutory valuation date the County Council's officers and members had a particular understanding of the meaning of a relevant planning policy, the Tribunal is not required to adopt that understanding or to interpret the policy in the same way, but must decide for itself what the policy means, and apply it correctly."

24. We must determine the preliminary issue applying ordinary planning principles. These require that we have regard to the development plan, so far as material, and make our determination in accordance with the plan unless material considerations indicate otherwise (section 38(6), Planning and Compulsory Purchase Act 2004). As the Tribunal (George Bartlett QC, President) suggested in *Urban Edge Group Ltd v London Underground Ltd* [2009] UKUT 103 (LC), at [50], in making our determination "evidence of actual decisions made by the planning authority will be relevant and no doubt persuasive". The Supreme Court has made clear at an earlier stage in these proceedings that if we consider that the City Council's own decisions on any of the CAAD applications are of assistance on the question of whether planning permission could reasonably have been expected to be granted, we are not prevented by the assumptions required by section 14(5) from taking those decisions into account (*Secretary of State for Transport v Curzon Park Ltd & Ors* [2023] UKSC 30, at [60]-[61]).

Higher education in Birmingham

25. Birmingham has a flourishing higher education sector and is home to seven institutions with university status: Aston University ('Aston'), The University of Birmingham ('UoB'), University College Birmingham ('UCB'), Newman University ('Newman'), Birmingham City University ('BCU'), the University of Law, and BPP University. The last two mentioned are the Birmingham campuses of larger institutions and the evidence which we heard left them out of account in assessing the need for PBSA because separate data was not available and because any difference they might make was thought to be nominal.
26. In addition to its universities, Birmingham has a large further education sector comprising FE and sixth form colleges. The student housing needs of these institutions were also left out of account both because of a lack of data and on the basis that most of their students reside in their parental home while pursuing further education.
27. The five principal universities are located in three main centres. The main campuses of Aston, UCB, and BCU are located in the City centre itself; Aston and BCU adjoin each other immediately to the north of the Eastside Quarter, while UCB is further to the west. Also in the City centre, but apart from the main cluster are BCU's School of Art and School of Jewellery.
28. UoB is at Edgbaston on the south side of the City. Also to the south, but closer to the City centre, is BCU's smaller City South campus.

29. Finally, Newman, the smallest of the five institutions, is a further 10km southwest of UoB, almost on the fringe of the City. There was agreement that its students do not contribute significantly to the need for PBSA in the City, as most live at home. They therefore tended to be omitted from assessments of demand.
30. The Birmingham Development Plan published in January 2017 recorded that the City's five main universities were attended by around 72,000 students. This figure is rather higher than the total of 65,795 recorded by the Higher Education Statistics Agency ('HESA') (a standalone agency at the valuation dates, since merged into 'Jisc', the Joint Information Systems Committee) but we assume the difference is accounted for by part time students who are omitted from the HESA figures and from the calculations of the expert witnesses.

The policy context

31. The preliminary issue falls to be considered in the context of national and local planning policy and guidance in 2018.

National policy

32. The National Planning Policy Framework ('NPPF') had little specifically to say about student housing either in its original form in force for the two earlier valuation dates or as revised with effect from 24 July 2018. We were reminded of the general presumption in favour of sustainable development and of its importance for both the plan making and development control aspects of the work of a local planning authority. The policy framework directed that the needs of groups with specific housing requirements were to be addressed in the context of the wider objective of significantly boosting the supply of homes (paragraph 59), and that the size, type and tenure of housing needed for different groups, including students, should be assessed and reflected in planning policies (paragraph 61).
33. Strategic policy-making authorities (which include the City Council) were required to establish a housing requirement figure for their whole area, showing the extent to which their housing need could be met over the plan period (paragraph 65).
34. More specific guidance on the assessment of housing and economic development needs was provided in Planning Practice Guidance (PPG) which supported the NPPF. As far as housing is concerned the document (and a revision of 13 September 2018) usefully explained that the objective of identifying need in this context is to identify the future quantity of housing needed, including a breakdown by type, tenure and size. "Need" was to be assessed over the plan period and should consider "future scenarios that could be reasonably expected to occur". Plan makers were advised to examine current and future trends in demographic factors, types of households, housing stock and tenure. Authorities were encouraged to plan for sufficient student accommodation, and in that context attention was drawn to housing provided by private landlords. The PPG acknowledged a relationship between the housing needs of students and those of the wider population and suggested at ID2a-021 that, by releasing properties in the private rented sector, the provision of PBSA might contribute to satisfying general housing targets:

“Encouraging more dedicated student accommodation may provide low cost housing that takes pressure off the private rented sector and increases the overall housing stock.”

Although this observation was addressed to plan makers, Mr Taylor (Curzon Park’s expert witness) regarded it as material to the assessment of housing need generally. We agree and note that the same relationship between PBSA and the general housing market is a theme in the supporting text to Policy TP33 and in the City Council’s November 2019 report on supply and demand in student accommodation, which we were encouraged by the Secretary of State to adopt as a correct statement of how Policy TP33 should be applied in decision making.

35. The PPG also recognised that housing or economic needs are rarely constrained by local authority administrative boundaries, and that their assessment might therefore require coordination between several planning authorities or focus on smaller areas within the boundaries of a single authority. In answer to the question ‘What areas should be assessed?’, it advised that:

“needs should be addressed to the relevant functional area, ie housing market area... Establishing the assessment area may identify smaller sub-markets with specific features, and it may be appropriate to investigate these specifically in order to create a detailed picture of local need.”

The Development Plan

36. The local plan, the Birmingham Development Plan was relatively new in 2018, having been adopted by the City Council in January 2017, and runs until 2031. It includes a specific policy concerning PBSA. Policy TP33 is in these terms:

"Proposals for purpose built student accommodation provided on campus will be supported in principle subject to satisfying design and amenity considerations. Proposals for off campus provision will be considered favourably where:

- There is demonstrated need for the development
- The proposed development is very well located in relation to the educational establishment that it is to serve and to the local facilities which will serve it, by means of walking, cycling and public transport
- The proposed development will not have an unacceptable impact on the local neighbourhood and residential amenity
- The scale, massing and architecture of the development is appropriate for the location
- The design and layout of the accommodation together with the associated facilities provided will create a safe, secure and welcoming living environment."

37. It will be seen that the policy distinguishes between accommodation to be provided on campus, which is to be supported in principle, and accommodation off campus, which will be considered favourably where there is a demonstrated need for the development

and subject to the satisfaction of the other criteria identified in the policy. There is an issue in the BCU appeal about the meaning of “on campus” in this context, as the land which it owned at Eastside is within eight minutes’ walk of its main Parkside building. That is an issue for another day.

38. Text supporting Policy TP33 draws attention to the size of the City’s higher and further education sectors and places importance on the growth of the universities and their role in stimulating the business sector. The City Council expressed a wish “to ensure that there is a sufficient supply of good quality accommodation which meets the needs of all members of the student community, which is provided in a suitable and sustainable location, is well designed and provides a high quality living experience in attractive buildings which enhance the local area.” In view of that statement, and the language of the policy as a whole, we do not accept Mr Williams KC’s description of TP33 as “restrictive” so far as off-campus PBSA is concerned; the policy seems to us to be more affirming or receptive than that. Provided the relevant conditions are met, including a demonstrable need, proposals for off campus provision will be considered favourably.
39. It is convenient at this point to deal shortly with Mr Hadland’s evidence that the first and second bullet points of the policy are connected. The explanation of that connection in his original report seemed to be that the policy required that a need be demonstrated in relation to a particular university, which may read more into the policy than is justified. In his later report Mr Hadland distanced himself from this position, confirming in cross-examination that nothing in his evidence should be taken as relevant to compliance with the second bullet point (which concerns proximity). In their agreed note on “planning need” the parties confirmed that they did not wish the Tribunal to reach a conclusion on how well located the four sites are at this stage, and we have heard no evidence directed specifically to that issue other than the raw data agreed between the parties in response to the second limb of the preliminary issue. We will therefore approach the assessment of the need for PBSA without considering the second TP33 bullet point.
40. Student accommodation was of course only one small part of the development plan. Policy PG1 set the wider context by recognising that the City Council’s objectively assessed housing need over the period to 2031 was for 89,000 additional homes, of which only 51,100 were planned for within the plan period. The policy acknowledged that it was not possible to deliver the 37,900 shortfall within the City boundary.
41. The striking discrepancy between the City’s general need for housing and its capacity to meet it is relevant to our assessment of the need for PBSA. We have previously seen that the relationship between the housing needs of the general population and the needs of students is recognised in the PPG which supports the NPPF. The same relationship is identified in the supporting text to policy TP33 which explains that student households are included in the City’s general housing requirement and when student accommodation is provided as self-contained studio apartments or clusters it counts towards meeting the City’s housing requirement. The City Council explained that it would therefore continue to monitor the development of PBSA and its contribution to meeting the City’s housing requirement. That is a further indication that the City’s general orientation towards PBSA was favourable.

The Strategic Housing Land Availability Assessment

42. The potential for PBSA to take pressure off the supply of general needs housing and to contribute to meeting the City's housing requirement was recognised again in the City Council's annual Strategic Housing Land Availability Assessment ("SHLAA"). Mr Williams KC correctly cautioned that the SHLAA is not, in itself, a decision-making document, but it is nevertheless a formal document required by national planning policy, which explains how a local planning authority intends to meet its housing requirements.
43. The July 2018 SHLAA, published a year after the development plan was adopted, acknowledged that a significant amount of housing demand originated from the City's large student population. It included an assessment of the number of students on full-time courses at the City's universities, which was 66,217, of whom around 44% were not in need of "bespoke accommodation" because, for example, they lived at their own or a parental home. These figures were said to give rise to a "minimum demand for bespoke accommodation of around 36,892 bed spaces". By "bespoke accommodation" we understand the authors to mean PBSA and not simply accommodation of any type. To meet that demand the City currently had around 21,811 bed spaces in PBSA with a further 5,518 in the pipeline. The SHLAA confirmed that the 'pipeline' figure of 5,518 PBSA bedspaces comprised 3,104 bedspaces in 1,464 flats or apartments which were already under construction, plus a further 2,414 bedspaces in 926 units for which permission had been granted.
44. Mr Hadland accepted that the SHLAA appeared to indicate that in July 2018 BCC considered there was a shortfall of around 15,000 bedspaces before any pipeline was considered.
45. The document then noted once again that student households are included in the City's general housing requirement and that student accommodation can be included towards meeting that requirement, based on the amount of accommodation it releases in the housing market. It provided the following assessment of how much accommodation might be released for general use by the provision of additional PBSA:

"4.9 In 2016/17, the most recent year for which information is available, there were 15,280 students residing in "other rented" /HMO accommodation which could be released to the general housing market through the provision of additional purpose built accommodation. The number of bed spaces in the "other rented"/HMO properties varies. In the city centre many students rent single bed apartments while family homes are more frequently occupied by students elsewhere. A dwelling in the general housing market can therefore be freed up through the provision of a purpose built, one person apartment or a cluster flat containing five, six or more bed spaces. The city council's approach is, therefore, to count self-contained units of accommodation not bed spaces despite this significantly undercounting the number of students being accommodated."
46. The thrust of policy, both in the PPG and in the SHLAA, appears therefore to have viewed PBSA as a means of encouraging the release of student HMO accommodation to meet general housing needs. No target was set or projection made, nor did TP33 mention this as an objective, but, encouraged by national policy, BCC certainly appears

to have regarded the release of housing to the general market as a desirable byproduct of the development of additional PBSA.

47. The City Council was obviously conscious that a significant portion of the student population did not live at home, on campus, or in “bespoke accommodation” and was accommodated instead in “other rented” accommodation, which included HMOs. It was also alive to the risks of over-concentration of students in particular areas, especially those popular with University of Birmingham students. Long before the publication of the development plan or the 2018 SHLAA the City Council had given itself power to ameliorate those risks. In parts of Selly Oak, Edgbaston and Harborne to the south and west of the University of Birmingham, an Article 4 direction removed permitted development rights in November 2014 preventing any change from a use class C3 dwellinghouse to a class C4 HMO without planning permission.
48. This direction did not have retrospective effect and we do not see it as part of any wider strategy to make a proportion of student occupied HMOs available to meet general housing need. It was partly for this reason that Mr Hadland did not treat HMO accommodation as a source of future supply. On the other hand, by creating an obstacle to a further proliferation of HMOs the direction was supportive of the City Council’s ambition to encourage a supply of good quality, well designed accommodation in attractive buildings in suitable and sustainable locations.

How the City Council applied its own policy

49. In the months around the valuation dates and after, the City Council granted several planning permissions for PBSA. Each application was supported by a needs assessment intended to satisfy the requirements of policy TP33. It also granted the four CAADs which are the subject of these appeals by the Secretary of State. As we have already explained, in deciding whether planning permission could reasonably have been expected to be granted for PBSA, we are entitled to have regard to those decisions.
50. In chronological order, these were as follows.
51. In April 2017, planning permission was granted for a 6-7 storey PBSA development accommodating 102 bedspaces on the corner of Cheapside and Moseley Road, Digbeth. The development was specifically to cater for students of the South and City College whose permanent residence was outside the city. The experts placed no weight on this small, bespoke application.
52. In January 2018, planning permission was granted for 290 bedspaces at the ‘Nautical Club’, 3-4 Bishopsgate Street in the Five Ways area of the City centre. The application was supported by a needs assessment by Savills dated October 2017. The officer’s report to the Planning Committee noted that the City’s full time student population had been growing “strongly and consistently” over the past couple of decades and stood at 63,000. Reference was made to 5,582 bed spaces in the pipeline before officers commented:

“Using the 2015/16 student population and assuming that every single bed in the pipeline comes forward, the student to bed ratio will become 2.2 (i.e. 2.2 students per bed space). Although not every student will need

accommodation, it is still considered that there is scope for more purpose built student accommodation in the City Centre.”

53. Two months later, in March 2018, planning permission was granted for 1,023 bedspaces at Vesey Street, another central location close to Aston University. The application was supported by an October 2017 needs survey prepared by *wyg*. The officer’s report of 1 March saw no reason to disagree with that assessment which suggested that only 50% of the full time students of Aston and BCU would have access to purpose built accommodation and that additional student accommodation was needed. Despite previous approvals on the site for student accommodation, and the presence of other PBSA in the immediate vicinity the officer agreed with “strategic colleagues” that the principle of student accommodation was acceptable in that location.
54. Also in March 2018 permission was granted for 399 bedspaces at Upper Dean Street in the City centre, a little to the southwest of Eastside. The application included reports on the Birmingham student market prepared by Knight Frank in 2014 and December 2017. The officer’s report for the committee noted that permission had previously been granted for PBSA on the site in 2015, before the Development Plan had been adopted. The updated assessment was said to show an undersupply of PBSA with only 20% of the City’s full time student population being offered PBSA accommodation. The officer advised that the proposal would comply with policy TP33 and was acceptable in principle.
55. The Nautical Club, Vesey Street and Upper Dean Street planning permissions were all granted before the first of our valuation dates, for BCU’s site, which falls on 16 March 2018, the day after the planning committee meeting approved the Upper Dean Street. In aggregate, 1,712 PBSA bedspaces were consented by BCC in the first three months of 2018.
56. The following month, planning permission was granted in April 2018 for up to 61 studio apartments over six storeys at 168 Bridge Street West, a location to the north of the City centre, outside the inner ring road. The application was supported by a needs assessment dated September 2017 by ‘Student Tenant Find’, and a CBRE report – ‘Birmingham Student Supply and Demand’. The needs assessment concluded that even after taking account of pipeline PBSA bed spaces approximately 21% of the student population could not be accommodated in PBSA, and that additional accommodation was therefore required. The officer’s report for the 12 April 2018 committee meeting accepted that there remained a current need for PBSA whilst not necessarily accepting the specific figures identified in the needs assessment.
57. The valuation dates for the Quintain, Curzon Park, and Eastside references fall next in the chronology on 17 July, 30 August, and 26 September 2018.
58. In October 2018, planning permission was granted for 556 bedspaces at Lancaster Street under reference 2018/08221/PA. We have little detail of this application, which was referred to at paragraph 5.27 of the officer’s report for the BCU CAAD, which we discuss below.

The Quintain CAAD(s)

59. BCC failed to determine Quintain’s CAAD application of 11 February 2019 within the required two-month period, but it did issue a Certificate (“the purported Quintain CAAD”) on 29 May 2019. Included as AAD were 52,147 sqm of student accommodation, or 1,940 bed spaces, in a development of up to 99,490 sqm. The purported Quintain CAAD is subject to appeal by the Secretary of State.
60. The officer’s report of 23 May 2019, recommending the grant of the requested certificate, said this:

“9.17 Considering the period after the relevant date (17th July 2018), there have been applications for in excess of 1000 student bed spaces across the City, with one scheme approved in October providing some 556 spaces within the City Centre. Given that the development would likely be a multi-phase scheme progressing over a number of years, coupled with the City’s support of the expansion of the City’s universities (BDP TP36), it is reasonable to assume that significant further expansion of the student residential offer would be required. Eastside is ideally located for two of the City’s key universities and its continued focus as a learning quarter is supported in policy. Therefore, subject to the amenity, design and highway considerations ... at the relevant date it is likely that the principle of student residential could have been satisfactorily demonstrated.”

The Curzon Park CAAD

61. Curzon Park’s application for a CAAD was made on 18 April 2019, resulting in a certificate dated 18 June 2019. This certified that up to 181,260 sqm of mixed-use space would be appropriate alternative development, including 37,013 sqm of PBSA.
62. The officer’s report of 18 June 2019 was in similar terms to that prepared for the Quintain CAAD.

The BCU CAAD

63. On 21 December 2018, BCU made an application for a CAAD for its site, in which it sought confirmation that 88,829 sqm of mixed-use development was appropriate alternative development, including 66,187 sqm (2,279 bedspaces) of PBSA. On 31 July 2019 BCC granted the certificate.
64. The officer’s report dated 18 July 2019 said this:

“9.19 In terms of quantum, the proposal clearly represents a significant number of student bed spaces. To show a need the applicant has submitted evidence to demonstrate rising demand for student accommodation to serve BCU leaving a shortfall in 2020/21. There has been a significant growth in the development of PBSA, particularly in and around Birmingham City Centre. Between 1 April [2018] and 31 March 2019 a total of 1,166 student bedspaces have been completed in the city centre. At April 2019 2,667 bedspaces were under construction and a further 658 bedspaces have planning permission but are not yet started. The existing available supply of student accommodation in the city centre (including this 2018/19 completions) is 13,915 (University and private student accommodation). If

all accommodation under construction and not yet started was built out the supply of bedspaces could reach 17,240.

9.20 Furthermore, members will also recall that a positive CAAD was issued for the [Quintain] site confirming that on 17th July 2018 a total of 1,940 bed spaces could reasonably have been expected to gain planning consent on the adjacent site.

9.21 As such, ... at the relevant date it is likely that the principle of student residential would have been supported as proposed.”

The November 2019 officers' report to the planning committee

65. The Council received more detailed and considered advice from its officers on the application of Policy TP33 in a report to its planning committee dated 21 November 2019. Headed “student accommodation supply and demand”, the report provided relevant background information and clarified the evidence which officers considered was needed to provide ‘an up to date demonstration of the need for any development’.
66. Mr Williams KC submitted that the advice contained in the November 2019 report properly interpreted and applied Policy TP33 and he invited us to adopt the same approach. He suggested that the report supported the position taken by Mr Hadland on each of the issues which divided the experts. We will consider whether that suggestion is correct when we deal with those issues.
67. The assessments of demand in the report were taken from the publicly available HESA data for 2017/18. The supply of accommodation was analysed both by reference to the city as a whole and by reference to sub-areas, the largest of which were the city centre and Selly Oak/ Edgbaston. The report’s broad conclusions noted the increase in demand over the previous 10 years and advised that demand was set to increase over the next 5 years if the universities’ future growth plans were implemented. Based on the total number of students requiring accommodation, but without distinguishing between different types of accommodation, and comparing that figure to the total supply of PBSA (existing, under construction and consented) the report concluded that there was an overall deficit of 8,837 PBSA bedspaces in the city. This PBSA deficit, or “residual demand” as the authors described it, was currently being satisfied by other types of accommodation (specifically HMOs, although that was shorthand for rented accommodation which was not PBSA or provided by the universities themselves). Interestingly, the analysis in the paper was expressly predicated on the assumption that all current and future potential demand for student accommodation would be for PBSA rather than for HMOs in the private rented sector. Because there was sufficient accommodation in the City to house all students, any new PBSA would primarily be to serve a growth in student numbers, to rectify a mismatch in the type of accommodation which is available and that which is needed, to respond to changing student preferences or to replace existing PBSA.
68. The report included an appendix which recommended information which should be provided to demonstrate a need for PBSA. It was suggested that this evidence should be specific both as to the university to be served by a proposed development, the particular subset of students who were to be accommodated and as to area, so evidence about the overall student population or city wider need alone would not be sufficient. This advice

may be contrasted with the needs assessments provided to support the applications for PBSA consents to which we have previously referred which were largely based on city-wide needs assessments.

69. It was emphasised by Mr Pereira KC that the November 2019 report would not have been known to the market at any of the valuation dates, some 14-16 months previously. That is obviously correct, but it does not seem to us to be an obstacle to reliance being placed on it for the purposes suggested by Mr Williams KC. We are not concerned at this stage with market perception, but with the interpretation of policy TP33 and the evidence required to demonstrate the need referred to in its first bullet point. We are in the position of a decision maker at the valuation date asked to determine whether planning permission should be granted for PBSA. An interpretation of its own policy which the planning committee adopted in 2019 might also have been a correct approach at an early date, whether it was applied in decisions made at that earlier date or not. If we are satisfied that it is the correct interpretation of Policy TP33 we should adopt it whether or not it was the approach being taken at around the valuation date.

The Eastside CAAD

70. The City Council failed to determine Eastside's first CAAD application of 22 February 2019 (for 44,000 sqm including 1,105 student bedspaces) within the required two-month period, Eastside made a second application on 18 November 2019, which sought confirmation that up to 30,143 sqm of mixed use space would be appropriate alternative development. The City Council issued a CAAD on 16 January 2020 for a maximum of 30,747 sqm including 24,870 sqm of student accommodation, or 871 bed spaces. This Certificate is also subject to appeal by the Secretary of State.
71. The officer's report of 7 January 2020 was quite categorical in its assessment of the need for PBSA and said this:

“9.6 Considering the period after the relevant date (26th September 2018), consent has been granted for Purpose Built Student Accommodation (PBSA), including a development sited close to the proposals (365 bedspaces, reference 2018/10465/PA). [HESA] data shows that the overall demand for accommodation in Birmingham was 36,218 bedspaces in 2017/18. With the number of students expected to increase over the next 5-10 years there is clearly a demand for student accommodation and given the growing presence of education establishments in the city centre there is a need for PBSA. Eastside is ideally located for two of the City's key universities and its continued focus as a learning quarter is supported in policy. Therefore, subject to the amenity, design and highway considerations ...at the relevant date it is likely that the principle of student residential would have been supported as proposed.”

(The development for 365 bedspaces under reference 2018/10465/PA has not been further referred to in the evidence.)

72. Clearly in the first half of 2018, the Council was willing to grant permission for PBSA, being satisfied that there was a demonstrable need, and that the requirements in TP33 were being met by evidence of an existing city wide demand for student accommodation coupled with the expectation of growth in the institutions closest to the application site.

73. The officer's report granting the Quintain, Curzon and BCU CAADs, in the summer of 2019 can, we think, fairly be taken to indicate how the Council was applying its own policy at the valuation dates in March to August 2018.
74. Although the November 2019 report was more demanding in terms of the evidence which would be required to support an application for PBSA, it has not been shown to have reduced the Council's perception of need, which the Eastside CAAD suggests had not changed.
75. That sets the scene by showing how BCC was treating applications for PBSA between April 2017 and January 2020. We will now consider how the experts assessed the need for PBSA in 2018.

The experts' approaches

76. Each expert arrived at a variety of quantitative measures of PBSA need by deducting from a calculated demand pool the actual or assumed supply of bedspaces. In some instances, this included growth in demand, and growth in supply - PBSA in the 'pipeline' (schemes under construction or having planning permission at the valuation dates).
77. To summarise the views of the three experts, Mr Hadland, for the Secretary of State, believed that there was no demonstrated need for PBSA in 2018, while Mr Taylor for Curzon Park calculated that there would be a need for 21,300 – 22,700 bedspaces by the year 2031, and Mr Feeney for Quintain, Eastside and BCU assessed a need for 22,666 bedspaces in 2016/17 and 21,433 in 2018/19.

Supply

78. Helpfully, the position as to supply of PBSA bed spaces was uncontroversial. The experts agreed that in the 2016/17 academic year, there were 20,849 operational bedspaces available across the city, and in 2017/18 there were 22,082. Both figures included 305 bedspaces at Newman (which did not grow between the two years). They also calculated the 'pipeline' – by adding the beds to be provided in developments that were under construction or subject to an extant planning permission but subtracting any beds in developments that were known to be closing ahead of the next academic year (BCU's Oakmount and Westmount sites). The pipeline at the BCU valuation date of March 2018 was 5,333. Before the other three valuation dates, planning permission was granted for 61 further beds at 168 Bridge Street West, bringing the pipeline up to 5,394.
79. The total city wide PBSA bedspaces, including pipeline, were therefore 27,415 at the BCU valuation date, and 27,476 at the later dates. For ease, we will use the higher figure from hereon, but nothing material turns on us doing so.
80. The agreed supply of PBSA within the city centre was 12,406 bedspaces, with 4,494 in the pipeline, totalling 16,900.
81. There was disagreement about whether HMOs and other rented accommodation which was not PBSA should be included in the assessment of supply, but we will return to that topic separately.

Demand

82. In assessing demand, the experts each referred to data published by HESA based on its survey of the accommodation students reported they were living in at the start of the relevant academic years. Unfortunately the experts did not refer to the same data. HESA makes its raw data publicly available without charge, but for a fee it also offers licenced commercial subscribers access to a more detailed version of the same survey results, containing additional information and allowing more sophisticated analysis. Mr Hadland and Mr Taylor used the public data to assess the number of students who were *likely* to require PBSA – what might be termed a ‘bottom up’ approach.
83. Mr Feeney considered the public HESA data to be unreliable, and preferred to use the licensed data set, but he provided evidence using both sources to allow comparison with the other experts’ assessments. He started with the *total* number of students and deducted those students whom he considered were *unlikely* to require PBSA – a ‘top down’ approach.
84. The HESA data is based on a survey of all students in higher education at the start of the academic year. It is completed by students themselves, and it was common ground that the questions which they are asked are ambiguous with the result that the raw data is not always reliable. It has been described by researchers at Sheffield Hallam University as unreliable (although they also described it as ‘the best available measure of a student’s housing type in their first year and at least acts as proxy to identifying those students (a) living with their parents, and (b) maintaining their own home.’).
85. The main difference between the two versions of the HESA data is that the commercial product provides details missing from the publicly available material including, in particular, information about each student’s home postcode. This, Mr Feeney said, allowed a more detailed level of analysis stripping out certain groups of students. He had used the licenced data in every planning needs assessment he had carried out in the last 15 years.
86. At the start of Mr Hadland’s evidence, he said that in all the work his practice had done, they had ‘never been asked to purchase, or to use, any commercial data available from HESA, and as a practice we have never purchased it’. We initially took this to mean that he preferred not to use the commercially available data, either because he did not think it was necessary to do so or because it was not reliable. But at the end of his evidence, in answer to questions from us, he clarified his position. He explained that while he had never been asked by clients or planning officers to use it, he and his firm spent many hours ‘tidying up’ the HESA data by reference to postcodes, and that as regards the licenced HESA data, he had used it but had never bought it. Contrary to our initial impression he regularly used the licenced version in his work for universities, and confirmed that if it were available, he would use it. He accepted that if he were in the position of the Tribunal, standing proxy for a reasonable planning authority, and was presented with the licensed data, he would have regard to it.
87. Local planning authorities do seem to base decisions on the need for PBSA on the public HESA data, and it appears on many occasions the City Council have done so. However, based on the evidence and Mr Hadland’s clarification, putting ourselves in the shoes of the reasonable planning authority, given that the licenced HESA data is in evidence and available to us, we should have regard to it.

88. The limitations of the public data set became apparent during the evidence. As Mr Taylor pointed out, it suggested that in 2016/17 there were 16,100 students in PBSA, implying an unrealistically low occupancy rate of 73%, based on 22,082 beds being available that year. Mr Feeney agreed, noting that Unite Students was reporting an occupancy rate of around 98%.
89. The publicly available HESA data showed that students attending the five main universities reported that they were living in the following subcategories of accommodation at the start of the 2016/17 academic year. There are rounding and summation errors in the data, but adjusted for these as best we can, the figures are as follows:

	AU	BCU	UCB	UoB	NU	
Provider maintained	2,495	2,010	1,030	4,855	170	10,560
Private-sector halls	1,510	1,510	125	2,410	0	5,555
Other rented	860	3,395	610	11,400	165	16,430
Parental home	3,550	7,740	1,290	3,575	1,345	17,500
Own residence	1,010	4,990	970	3,185	365	10,520
Other	685	0	90	950	40	1,765
Not in attendance	1,190	65	50	0	5	1,310
Not known	290	0	40	2,250	0	2,580
Total	11,590	19,710	4,205	28,625	2,090	66,220

Mr Hadland's assessment of PBSA need

90. Mr Taylor calculated the demand pool for PBSA by aggregating students in 'provider-maintained property', 'private sector halls', 'other rented accommodation', 'other', and all the 'not knowns'. These totalled 36,885 students, or 56% of the total. Mr Hadland applied a similar approach but apportioned the 'not knowns' pro-rata to the other categories, coming to 35,462. Mr Feeney said he would also include all of the 'not knowns', but the resulting difference is marginal.
91. The experts made different assumptions about growth and the rate and period over which it should be assessed. Mr Hadland's method of calculating demand for PBSA was to allow for growth over five years from 2016/17 (thus, four years from the valuation dates) using the historic growth figures extrapolated forward, but to balance this, on the supply side he included the 'pipeline' of PBSA beds due to come on stream. Mr Taylor did the same, but accounted for growth until 2031, the end of the local plan period. We deal with growth in more detail later.

92. While all three experts provided evidence on both a city-wide and a sub-market approach, Mr Hadland’s preference was to restrict the demand pool to students living in the city centre who were attending BCU, Aston, and UCB, adding *some* students from UoB who resided in the city centre. Mr Feeney and Mr Taylor consider a city-wide approach to be more appropriate.
93. Using the public HESA data for 2016/17 Mr Hadland calculated the demand pool for PBSA in the city centre for 2016/17, and 2021/22 (assuming a growth rate between those years of 17.9% for Aston, BCU and UCB, and 17.1% for UoB). He then added the remaining UoB students to come to a city-wide demand pool, as follows:

	2016/17	2021/22
Aston	5,687	6,705
BCU	6,915	8,153
UCB	1,843	2,208
UoB (city centre)	1,254	1,468
Total (city centre)	15,699	18,534
UoB (other)	20,034	23,460
Total (city wide)	35,733	41,994

94. The agreed supply of PBSA within the city centre was 12,406 bedspaces, with 4,494 in the pipeline, totalling 16,900. Mr Hadland was sure that HMOs should be added to this supply, effectively eliminating any need for additional PBSA. If that assumption is not made, Mr Hadland’s figures show a 2021/22 city centre PBSA shortfall of **1,634** beds (18,534 – 16,900).
95. As regards the UoB sub-area alone, comparing the 2021/22 demand pool of 23,460 students with the agreed supply of 10,271 bedspaces (9,371 operational beds excluding HMOs, plus 900 in the pipeline) produces a shortfall of **13,189** bedspaces.
96. On Mr Hadland’s figures, the total shortfall across the city, therefore, was **14,823** bedspaces by 2021/22 if (contrary to his view) HMOs are discounted.
97. Including HMOs, which Mr Hadland initially calculated as numbering 5,395¹ in the city centre, and 10,853 in his UoB sub-market, the city centre would have an over-supply of **3,761** bedspaces (the demand from 18,534 students being met by a supply of 22,295 bedspaces). The UoB sub-market would have a shortfall of **2,336**, (demand of 23,460 being only partially met by supply of 21,124). City-wide there would therefore have been a net oversupply of **1,425** bedspaces.

Mr Taylor’s assessment of PBSA need

98. Mr Taylor’s approach differed from that of Mr Hadland in several ways. First, he included Newman in his city-wide calculations. Secondly, he made a deduction of 3% to the supply figure to allow for flexibility, in-year moves etc. Thirdly, while using a

¹ This was later revised to 3,265 in a later note, which we account for below.

similar growth rate to Mr Hadland's, he projected growth in demand to the end of the development plan period in 2031 and stressed that this growth projection was a minimum and would likely be higher.

99. Using alternative growth figures from the previous five and ten years, Mr Taylor projected that by 2031, the number of students in the city centre institutions could reach between 56,651 and 57,928; while both growth figures suggested around 102,000 students across the whole of Birmingham.
100. Applying his 3% reduction to the total supply figures, Mr Taylor projected an available supply of bedspaces by 2031, including pipeline, of 26,652 across the city, of which 16,393 would be in the city centre sub-area.
101. Mr Taylor assumed a demand pool equal to just under 56% of total student numbers based on the current proportion of students who could be in need of PBSA. He therefore calculated a city-wide shortfall of between 29,486 and 29,606 bedspaces by 2031 depending on which growth figure was adopted. If the need analysis was carried out on a university by university basis, the shortfall would increase to between 29,571 and 30,852 bedspaces across Birmingham.
102. Repeating the exercise for the city centre, using the average growth rate, a shortfall of between 6,692 and 7,219 bedspaces by 2031 was arrived at. However, if growth were applied on a university basis, Aston's higher growth rate pushes the city centre shortfall up to 8,613.
103. Mr Taylor then carried out a sensitivity analysis to account for HMOs (including other rented accommodation), which the HESA data suggested were home to around 14% of students. This ranged from an assumption that all those students in HMOs in 2016/17 would remain there (a '0% market shift'), through to all students moving to PBSA (a '100% market shift'). The latter assumption would leave all of Mr Taylor's conclusions above unchanged. But even if the proportion of students housed in HMOs remained unchanged by 2031, Mr Taylor calculated that there would still be a shortfall of around 13,000 bedspaces across the city, and a shortfall of between 1,827 and 2,254 in the city centre submarket.
104. He considered it appropriate to add 50% of the number of students currently housed in HMOs to his demand pool, thus arriving at a need for PBSA by 2031 of **21,300** to **22,700** bedspaces across the city, of which between **4,300** to **6,200** would be in the city centre sub-area.
105. Mr Taylor noted that while 44.5% of students from the UK are currently housed in PBSA or in other rented accommodation the proportion of overseas students in those forms of accommodation is notably higher at 66.7%. He therefore suggested that if the universities succeed in their ambition of attracting a higher proportion of international students to Birmingham, the need for PBSA would be likely to increase. He also thought that a proportion of the 10,250 'own residence' students, which the HESA data did not break down, might also be included in PBSA need. For these reasons, Mr Taylor said his projected PBSA shortfall figures should be considered as a minimum.

Mr Feeney's assessment of PBSA need using the public HESA data

106. Given that the two other experts had assessed demand using the public HESA data, Mr Feeney helpfully provided two calculations using the same material (noting that he considered the public data unreliable). On that basis he calculated 2016/17 demand pools of 38,015 students city-wide, and 15,900 for the city centre.
107. City wide, Mr Feeney compared his demand pool with the agreed supply figures for 2016/17 (20,849) and 2017/18 (22,082), to arrive at PBSA shortfalls of **17,166** and **15,933** respectively.
108. For the city centre, he compared his demand pool with a supply figure of 9,356 to arrive at shortfalls of **6,504** and **5,980** for the two years.
109. In his first report, Mr Feeney did not account for growth, saying that it was not his practice to do so in preparing planning need reports, so his 2017/18 figure might be too low because it compared 2016/17 demand with 2017/18 supply, but neither did he account for pipeline supply. He also made no allowance for HMOs.
110. We can now summarise the views of the experts based on the public HESA data:

	Mr Feeney		Mr Hadland	Mr Taylor
Year of assessment	2016/17	2017/18	2021/22	2031
<u>City wide</u>				
PBSA surplus (+) or need (-)	-17,166 (ex HMOs)	-15,933 (ex HMOs)	-14,823 (ex HMOs) +1,425 (inc HMOs)	-21,300 to -22,700 (50% HMOs)
<u>City centre sub-market(s)</u>				
PBSA surplus (+) or need (-)	-6,504	-5,980	-1,634 (ex HMOs) +3,761 (inc HMOs)	-4,300 to -6,200

111. It can be seen that, based on the public HESA data, the critical issue is the proper treatment of HMOs. All three experts agree that there is substantial a city-wide need for PBSA whichever year of assessment is chosen, which would be fully or partially met if HMOs and other private rented accommodation are taken to be an acceptable substitute. The picture in the city centre is similar, with all three experts finding a significant need for additional PBSA provision if HMOs and the like are not taken into account as meeting part of the need.

Mr Feeney's assessment of PBSA need using the licensed HESA data

112. Mr Feeney did not consider the public HESA data reliable. His firm subscribes to a licenced version of the data, which he said facilitated a more detailed analysis of student populations. In his view, the weakness of the public HESA data is its reliance on students correctly selecting the type of accommodation in which they are living from the descriptors provided. This results in significant inaccuracies, meaning the level of

demand is under assessed. For example, 27,785 students said that they were living at home or in their own residence, and would presumably therefore be commuting into university, but only 25,960 students were ordinarily domiciled in the West Midlands region. The licenced data revealed that the 27,785 who claimed to be living at home included students whose homes were in the north of Scotland, the north-east of England, Devon, Cornwall and other distant areas. Additionally, an improbable 18% of international students stated that they were living at home or in their own residence in 2016/17. Mr Feeney considered that a significant proportion of the surprising entries were the results of misunderstandings by the students concerning the information being requested of them. He also considered that, to the extent that these entries were accurate, students living so far from their place of study and facing long commutes should realistically form part of the demand pool for PBSA.

113. In forming his own assessment of PBSA need, Mr Feeney began with the total student population of 65,795, from which he excluded those who would be unlikely to require PBSA accommodation, because they were living in their own residence, with parents, or in non-PBSA accommodation in an area from which they could readily commute (the West Midlands, Worcestershire, or Warwickshire). He also excluded 990 students who were not studying in Birmingham, for example because they were studying temporarily abroad, or on placement, or were distance learners or at franchised partner institutions.
114. In Mr Feeney's view, those students living within the West Midlands, Worcestershire or Warwickshire who were not in PBSA were making a conscious choice, despite some lengthy commute times. He nevertheless considered that 1,280 students in the West Midlands who were not living with parents or in their own home could potentially be drawn into PBSA over time. Similarly, there was potential for the cohort who were temporarily absent to be drawn into PBSA over time. Mr Feeney therefore considered that his total demand pool of 43,515 students could be considered conservative.
115. Mr Hadland considered that Mr Feeney's use of the licensed HESA data led him to overstate the demand. Some students might live further afield than the immediately adjoining counties yet choose to commute. For instance, Leicester is 60 minutes by train, and Derby 45 minutes representing potential commuting options, particularly for those students with limited contact time. Many international students, Mr Hadland said, chose to live with family or friends and make longer commutes to avoid the costs of accommodation.
116. Using the licenced data, Mr Feeney calculated PBSA need of **22,666** bedspaces by comparing his demand pool of 43,515 with the agreed supply of 20,849 in 2016/17, or **21,433** using the 2017/18 supply of 20,082. For the city centre, Mr Feeney calculated a PBSA need of **9,649** and **9,125** respectively. In arriving at these initial figures Mr Feeney did not take account of growth or pipeline supply.
117. Mr Feeney then considered the pipeline of PBSA schemes for which planning consent had already been granted. In his experience, only 65-70% of approved schemes are delivered, and (although this would not have been known at the valuation dates) of the 16 schemes with permission in 2018 only 12, or 89% of the bedspaces, were eventually built out. Nevertheless, comparing his demand pool with the available number of bedspaces including those in the pipeline, he arrived at a city-wide PBSA need of **16,228** in March 2018, and **16,167** at the other 2018 valuation dates. For the city centre, his

figures were **5,512** and **5,451** respectively. These figures, as he pointed out, accounted for growth in supply (excluding HMO's), but not for growth in demand.

118. Mr Feeney maintained that a reasonable planning authority considering a PBSA needs assessment would not account for growth in the way the other experts had. Nevertheless, in response to the other experts' evidence, he projected growth to 2022/23, by which time the market would have expected the 2018 PBSA pipeline to be built out and ready for occupation (a year later than Mr Hadland's assessment). He also projected growth to 2030/31, as had Mr Taylor.
119. Making these adjustments as at March 2018 led Mr Feeney to assess a City wide planning need in 2022/23 of **25,239** bedspaces, and a need of **25,178** as at the later valuation dates; his equivalent figures with growth projected to 2030/31 were **37,935** and **37,874**.
120. For the city centre, on the same basis, Mr Feeney's figures were **9,607** and **9,546** to 2022/23, and **15,468** and **15,407** to 2030/31.
121. In Mr Taylor's second report, he used the licensed data to produce 'heat maps' to show where in the city students studying at the various different institutions were concentrated. These demonstrated a not insignificant overlap between the city centre and the UoB area for students living in private-sector, provider maintained, and HMO accommodation. This added to his argument that the market was fluid between geographical areas and that the appropriate way of assessing need was therefore on a city-wide basis.

Discussion

Area of assessment

122. One point of difference between Mr Hadland on the one hand and Mr Taylor and Mr Feeney on the other was whether it was appropriate to assess "planning need" for PBSA by reference only to the city centre, or the city as a whole. In determining where our focus should be, we bear in mind the PPG advice to assess needs by reference to the 'relevant functional area' (or housing market area) and its observation that establishing the assessment area may identify smaller sub-markets with specific features.
123. The City Council's SHLAA identified its total housing need at 89,000 homes – of which it would only be able to provide 51,000 within its boundary over the plan period to 2031. That part of the development plan was city-wide, indeed beyond the city's boundaries.
124. Although the development plan defines the centre as one specific area of the city, policy TP33 does not differentiate between areas, it applies across the city. The supporting text explains how PBSA can contribute towards the city's housing requirements as a whole.
125. During 2018, the City Council appears to have been content to look only at the broadest picture when considering planning applications for PBSA. At both Upper Dean Street and the Nautical Club it received needs assessments which referred only to the City's full time student population. We do not read the officer's report at Vesey Street as endorsing a sub-market assessment; as Mr Elvin submitted in closing, the report simply identifies that there would be sufficient need from the adjoining Aston and BCU.

126. Although it had previously been satisfied with relatively unfocused evidence of need, the City Council's planning committee was advised by its officers in November 2019 that consideration should be given to the local area around the university to be served, and that evidence of city wide need alone ought not to be accepted as sufficient. That advice may or may not have been intended as a corrective to previous practice, but in either case we do not read it as suggesting that city wide need was thought to be irrelevant, merely that it would not be sufficient to focus only on the bigger picture. That seems to us to be no more than policy TP33, properly applied, will inevitably require since the first bullet point is concerned with the need for the proposed development, without limit on where that need may come from, while the second focusses on the capacity of the site, in terms of its location, to meet that need. A focus on the city centre, to the exclusion of the wider picture, or vice versa, would therefore be unlikely to address the requirements of the policy as a whole.
127. It was common ground that the route of the B4215, A456 and A4540 main roads which cut across the city below the centre, forms a relevant boundary zone. To Mr Hadland it appeared that University of Birmingham students were generally accommodated to the south of that line, while students from the three city centre universities were generally housed to the north, although with some overlapping from either side.
128. Mr Hadland's experience was that students generally tend to seek PBSA within a maximum 20-minute walk from their place of learning. He produced a plan showing the separation zone, and circles equivalent to the radius of a 20-minute walk, although he said that he had not rigidly applied these to define the boundary of his sub-market. But Mr Taylor's heat maps demonstrated that around 18% of University of Birmingham ('UoB') students lived beyond a 20-minute walking distance and the agreed supply data included over 1,000 bedspaces at Hamstead Hall and Oscott Gardens which are 80 and 69 minutes' walk from the BCU campus. Mr Feeney also showed that both UoB and BCU entered into nomination agreements for PBSA beds at further distances – generally around 35-45 minutes' walk away, but in one case much further. It was therefore understandable that in cross-examination Mr Hadland sought to row back from his original reliance on walking distances as a way of demarcating relevant sub-areas.
129. We accept Mr Taylor's evidence that the role of sub-areas within a planning needs assessment is not to carve up the planning need and isolate it to within pre-defined areas so that only developments within those pre-defined areas can be regarded as satisfying it. In applying the PPG, the City Council is required to have regard to the whole of its administrative area, both in policy making and decision-taking. We have no doubt that the whole city forms the functional assessment area for the assessment of general housing need. The assessment of need for PBSA is one aspect of that wider housing need and for the reasons advanced by Mr Taylor it too should be assessed across the city as a whole. As he demonstrated, there is fluidity within the student housing market, with 'bleed' across various notional sub-market boundaries. There also exists what he called a dynamic network in which new provision in one location can free up bed spaces within another to meet different needs.
130. In addition, Mr Hadland's approach, when considering the issues in the round, produces inconsistencies, in that he considered the demand side from a limited geographic area, but supply from a wider area. That is likely to result in an underestimate of demand.

131. While these considerations seem to us to militate against too localised an approach to the assessment of need, they cannot diminish the fact that we are dealing with notional applications for specific sites. We have no difficulty in accepting the general proposition that, given a choice, most students are likely to prefer to be accommodated somewhere which is convenient to their place of study. It is clear from the Council's own November 2019 report that it was advised to have regard both to the citywide picture and to the locality of a particular site. If it could be demonstrated that a need existed in one location which could be satisfied by a site in close proximity to that location, then it might not be necessary to consider any wider need unless there was a suggestion of an oversupply somewhere else. If the need was not concentrated in one area, but was spread across the city, then a judgment might be required about how and where it should best be met. The necessary assessment is less blinkered and more nuanced than some of the evidence acknowledged. In short, we consider that it is likely to be appropriate to have regard both to the need for PBSA in the city as whole and to any specific need in a particular location, and we can see nothing in policy TP33 which rules that out.

Time horizon and rate of growth

132. It is common ground that a reasonable planning authority applying TP33 would reach a judgment on planning need for PBSA taking into account an estimate of future growth of student demand for PBSA. The only disagreements are over what period and at what rate growth should be accounted for.
133. Mr Hadland and Mr Taylor came to a similar view that there had been historic growth in student numbers of around 18%, or 3.1% per annum CAGR (compound annual growth rate) between 2016/17 and 2021/22. They both then assumed that growth would continue at the same rate, extrapolating forward, Mr Taylor commenting that this was a conservative estimate which should be considered a minimum.
134. Mr Taylor projected growth using the previous five and ten year aggregate compound growth rates, although for the whole of the city there was little between the two – 3.10% and 3.08% respectively – with both projecting student numbers at around 101,500 by 2030/31.
135. Mr Feeney considered these growth estimates to be unrealistically low. By analysing student numbers in the city centre (to compare with those of Mr Hadland), he calculated that the three city centre universities grew total student numbers by 20%, numbers of students from outside the region (and therefore more likely to require PBSA) grew by 25%. His analysed growth figure, based on the licenced data, was 25.7% between 2014/15 and 2021/22.
136. A number of factors feed into an assessment of growth. There was a general consensus that while at the valuation dates the UK was part way through a 'demographic dip' in the population of 18-year-olds, slightly more pronounced in the West Midlands than nationally, and that this was set to continue until the early 2020's, in fact the number of full-time undergraduates was increasing, both nationally and at the Birmingham universities which have seen a consistent increase in students of just over 3% when the number of 18-year-olds was in decline.
137. Universities at the higher end of the league tables, for instance UoB and Aston, are thought to be better placed to respond to the population decline. By 2030 the number of

18-year-olds is likely to exceed 750,000, some 15% higher than the number at the valuation dates. We were also referred to the investment that the Birmingham universities were making to their campuses, for instance BCU's new campus facilities and investment in facilities by UoB, Aston and UCB.

138. Having regard to this evidence we think it more likely than not that in 2018 it would have been assumed that the future growth of student numbers in Birmingham would be at a higher rate than that seen historically, and in any event we prefer Mr Feeney's evidence on growth, based on his licenced data. Predicting growth using the historic growth rates as Mr Hadland and Mr Taylor did would underestimate student numbers in the future, and all things being equal, therefore underestimate the need for PBSA (as Mr Taylor warned might be the case).
139. As regards the period over which growth should be assessed, Mr Hadland allowed for anticipated growth in the demand pool over a period of four years from the valuation dates (five years from the date of the data) because it allowed for a three-year long stop for planning permissions, allowed a reasonable time for PBSA under construction or with consent to become operational at which point such estimates of planning need would become material, and finally because universities consider that any projections beyond a five-year horizon are made with significantly lower confidence. Little if any reliance, he said, was placed on projections over a longer period. In his experience, universities find their own student growth numbers difficult to predict. He noted that as part of the November 2019 planning report, BCC had engaged in consultation with the universities, but he accepted that there was no evidence that the council had access to any forecasts when making its decisions at around the valuation dates.
140. Mr Taylor considered it appropriate to project growth in student numbers to the end of the local plan period (2031), on the basis that a reasonable planning authority would not confine themselves to what is in effect a four year period. The NPPF requires strategic policies, including TP33, to 'provide a clear strategy for bringing sufficient land forward, at a sufficient rate, to address objectively assessed needs over the plan period'. Paragraph 60 requires authorities to conduct housing needs assessments for different groups including students (61), and then to assess how those needs can be met over the plan period (65). Paragraph 22 of the NPPF directs that strategic policies should 'look ahead over a minimum 15 year period from adoption'.
141. In cross-examination, Mr Hadland accepted that, on the material before us, using the plan period would be a reasonable basis to proceed, and it would be in accordance with government policy. He also accepted that the CAAD schemes (as currently certified), are of a size which would be phased over a number of years and this would suggest the period of growth considered should project beyond a four-year period.
142. However, the period over which growth is assessed on the demand side of the calculation, must have some regard to the availability of evidence of growth in supply. We take two things from the evidence. First, even without the benefit of hindsight which Mr Feeney referred to, at the valuation dates it cannot sensibly have been thought that all of the pipeline would necessarily be delivered. That would weigh in favour of need for PBSA being under-assessed. But secondly, assessing growth to the end of the plan period based solely on the agreed pipeline – schemes under construction or with planning permission – is likely to under-assess supply, as it assumes no other schemes will come forward during the period, which we consider very unlikely. We will

therefore place greater weight on growth in the shorter term, which would have been assumed with more confidence at the valuation date.

“HMOs”

143. As we have seen, the experts use ‘HMOs’ as a shorthand for all forms of private rented accommodation other than PBSA. In summary, Mr Hadland included all HMOs in his supply calculation, Mr Feeney excluded all, and Mr Taylor took 50% as a conservative estimate of the contribution HMOs make to supply.
144. Mr Hadland and Mr Taylor both took ‘other rented accommodation’ as calculated in the HESA data as a proxy for HMOs. Mr Hadland, fairly, noted that the data was likely to also include some accommodation that would not fall within the HMO regime, for instance one or two-bedroomed flats, but as he was interested in other housing options available to students, this did not affect his analysis.
145. In his first report, based on the public HESA data, Mr Hadland calculated that 5,395 students in the city centre were living in ‘other rented accommodation’. This was later revised to 3,265.
146. Mr Feeney’s evidence was that only 1,470 of the students reporting in the public HESA data that they were in other rented accommodation were living in the city centre – which he considered comprised postcodes B1 – B6. In a subsequent note, Mr Hadland accepted that his figure required adjustment, but thought Mr Feeney’s figure too low. Widening the postcode range, Mr Hadland came to a revised ‘HMO’ figure of 3,812 students.
147. Mr Taylor noted that the data showed 16,430 students in ‘other rented accommodation’ across the city, which represented 25% of the total student population; and this was the figure quoted in the SHLAA. In the case of UoB, the figure was much higher at 40%.
148. As we have described in paragraphs 34, 41 and 45 above, the desirability of moving students out of the general private sector into PBSA to increase the overall housing stock is reflected in national policy in the PPG, and in the City Council’s SHLAA, and its Article 4 direction. We are therefore confident that in assessing the need for PBSA, one relevant consideration to which a decision maker should have regard is the beneficial impact which additional high quality student accommodation is likely to have in freeing up other accommodation to meet more general housing needs.
149. In cross-examination, Mr Hadland accepted a series of propositions put to him by Mr Pereira which in combination forced him to accept that the consequence of applying national policy guidance was that existing HMOs should not be counted as part of existing supply when assessing planning need for PBSA.
150. We are nevertheless sceptical as to whether all students living in ‘other rented’ accommodation should be included in the assessment of demand for PBSA. Whatever changes in student behaviour planning policy may wish to encourage, PBSA will not suit all students, or their resources, and it is unrealistic to assume a demand for PBSA from all of those who are not living at home.

Drawing the threads together

151. Notwithstanding the parties' suggestion that "planning need" should be expressed as a specific figure we are not satisfied that it is either necessary or possible to do so on the evidence we have heard, and we will express our own conclusions in broader numbers. Policy TP33 requires that a need for PBSA be demonstrated by reference to a particular development involving a particular number of bedspaces. To provide that demonstration it is not necessary to quantify the total need for PBSA, whether in the city as a whole or in the city centre. If a need can be demonstrated for at least as much accommodation as the particular proposal is intended to provide, and if the application site is well located to satisfy that need, the extent of any greater need is unlikely to be of much significance. The evidence we have heard has not been focussed on a particular development and addresses the larger question, not the narrower one; nor is the evidence sufficiently robust, or the question sufficiently well formulated, in our judgment, to support definitive figures in the way the experts have sought to do. But it is not necessary for us to be as precise as they have been in order to assess whether there was sufficient need for PBSA to persuade a reasonable planning authority to grant consent for each of the Eastside sites viewed in isolation.
152. Our starting point is that, as was common ground, the publicly available HESA data is unreliable. We agree with Mr Feeny that it is likely to underestimate demand, for all the reasons rehearsed above, but the most telling of which, in our view, is first that the data would suggest an occupancy rate of only about 73% (16,100 students in 22,082 bed spaces) whereas PBSA occupancy is generally over 90%. Secondly, the public data implied that 18% of international students were living at home, which cannot be correct. In our judgment, inevitably that means that by relying only on the public data Mr Hadland has underestimated demand.
153. We are satisfied that it would have been assumed in 2018 that future growth would be at a higher rate than that seen in previous years, for the reasons we outlined above. We prefer Mr Feeny's evidence on growth and think that the growth rate which was largely agreed between Mr Hadland and Mr Taylor is too low – as Mr Taylor thought likely. That would again point to demand being higher than Mr Hadland allowed for.
154. The period to which growth should be applied is connected, in our view, to how supply is also likely to change – from the pipeline. Whilst it might be permissible in terms of planning policy to project growth through to the end of the plan period in 2031 (as Mr Hadland was persuaded to accept in cross examination) it is not obligatory to do so when considering an application for a specific site. We consider it is illogical to take account of growth over a period which is too long to enable a reliable assessment of likely supply over the same period.
155. We are concerned with the need for PBSA at the valuation dates, not at some date in the relatively distant future. BCC was prepared to grant planning permission on a number of occasions without growth being quantified in the supporting needs assessments. An expectation of future growth, and future supply, is part of what a reasonable planning authority would take into account in the round, but we are not persuaded that it is necessary or helpful to quantify it over four or ten years into the future.
156. Putting ourselves in the position of a decision maker considering the need for PBSA on the valuation dates, we are confident that growth in student numbers – whether over four years or longer – at the Birmingham universities would be significant, and higher than in previous years. The substantial shortfall which was demonstrated on current figures

would be expected to increase unless sufficient additional PBSA was made available. Those considerations would contribute to demonstrating a need for PBSA.

157. Mr Feeney assessed PBSA need on five different bases. His first, second and fifth methods were based on the licensed public HESA data, which we consider more reliable than those methods (Mr Hadland's, Mr Taylor's and Mr Feeney's third and fourth versions) which were based on the publicly available data set.
158. Of his first two methods, it seems to us that comparing 2016/17 demand with supply in the same year is more logical than his second version, which compares demand for that year with supply for 2017/18 without accounting for growth. And for similar reasons we place less weight on Mr Feeney's fifth method, which accounted for the pipeline supply without accounting for growth in demand.
159. So, we take Mr Feeney's shortfall figures of **22,666** for the city as a whole, and **9,649** for the city centre, as our starting points. But we think there is something to Mr Hadland's observation that some students would be willing to commute from out of the area. Derby, for instance, is a short train ride away, and commutable for an enthusiastic student. That may reduce the need figure, but doing the best we can on the evidence, we consider it would still be at a level in the late teens or around **20,000** for the city, or around **9,000** for the city centre.
160. Part of that need would continue to be met by HMOs or other forms of privately rented accommodation. But given the size of the shortfall and the contribution made by PBSA to freeing other privately rented accommodation for the wider housing market, we do not consider the availability of HMOs undermines the obvious and substantial need for additional PBSA at the valuation date. A planning need has been demonstrated for far more PBSA than any one of the sites would be capable of accommodating.
161. That need is made out whichever expert's evidence is preferred. For example, in the city centre, even if Mr Hadland was correct to include all 'other rented' accommodation in his assessment of supply, his revised figure for HMOs of 3,265 bedspaces would result in a shortfall in excess of 5,500 bedspaces. For the city as a whole, even if it is assumed that there is no demand for PBSA from any of the 16,430 students who reported that they were in 'other rented' accommodation, a shortfall of more than 3,500 would arise.
162. Assuming that some of the students accommodated in HMOs would prefer to live in PBSA, thus reducing the 'other rented' accommodation, as Mr Taylor did, or removing it entirely as Mr Feeney advocated, would significantly increase the shortfall.
163. Even if it is assumed that no HMO student should be included in the demand pool for PBSA, which we do not consider a sensible assumption, applying what can be considered a reasonable level of growth of 20% over five years from the valuation dates would result in an additional need in the order of 4,500 bedspaces. In the light of that as a reasonable prediction, the agreed pipeline of 5,394 bedspaces would not be enough to result in a surplus, on either a city centre or city-wide basis, and we are doubtful that all of the pipeline would be built out. As we have said, estimating growth beyond ten years faces the difficulty that an extended pipeline is unknown.

164. On any view, therefore, we are persuaded that a need has been demonstrated at each of the valuation dates for substantial further PBSA, such that the first bullet point of policy TP33 would not have been problematic for any of the Eastside sites.
165. That assessment is consistent with the view the City Council took as planning authority: its SHLAA, for instance, assumed a shortfall of 15,000 bedspaces in July 2018, and each of the planning permissions and CAADs it granted was predicated on a substantial need for PBSA. For the reasons we have given we are satisfied that those decisions were consistent with the City Council's own policy and that the need they identified was real.

Martin Rodger KC
Deputy Chamber President

Peter McCrea OBE FRICS FCI Arb

14 January 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.