

# **PLANNING STATEMENT**

**ROOKERY FARM, MONK SHERBORNE**

Prepared by Pro Vision on The Manydown Company Ltd.

September 2023

**ROOKERY FARM, MONK SHERBORNE**

PLANNING STATEMENT

PROJECT NO. 50997

**PREPARED BY:**

GARETH JOHNS MRTPI

ASSOCIATE DIRECTOR

**CHECKED BY:**

RICHARD OSBORN

ASSOCIATE DIRECTOR

**DATE:**

SEPTEMBER 2023

**PRO VISION**

THE LODGE

HIGHCROFT ROAD

WINCHESTER

HAMPSHIRE

SO22 5GU

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Appendix G - Braintree District Council v Secretary of State for Communities and Local Government [2018] Ref. EWCA Civ. 610 Judgment

Appendix H - City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government & Ors [2021] Ref. EWCA Civ. 320 Judgment

## 1.0 Introduction

- 1.1 This Planning Statement has been prepared by Pro Vision on behalf of The Manydown Company Ltd. (**'the Applicant'** or **'the Estate'**) in support of a full planning application made to Basingstoke and Deane Borough Council (**'the Council'**).
- 1.2 The application relates to land and buildings at Rookery Farm, Monk Sherborne, hereafter referred to as **'the site'**. It seeks full planning permission for the demolition of the existing buildings and replacement with new residential dwellings, together with parking, landscaping and any other associated works and infrastructure.
- 1.3 In summary, the application is being made to redevelop the existing farmyard which currently comprises large buildings with three new well-designed homes. The agricultural operation does not require the existing buildings as the grain stores have been re-located elsewhere on the Estate at 'Lower Farm, Ramsdell'. Therefore, the existing buildings are superfluous and have recently only been used for ad hoc temporary storage.
- 1.4 The Applicant is therefore keen to redevelop the site to ensure that it does not visually deteriorate further and have an adverse impact on the character of the surrounding area and countryside and the setting of the nearby heritage assets and Conservation Area.
- 1.5 The Applicant, as a local landowner with an enduring interest in the development of the site, is keen to deliver a high quality development that engages with the local vernacular. It is our view that a small-scale new build scheme would deliver an enhanced development with considerable planning benefits (e.g. design, heritage, landscape and biodiversity etc.) when compared to the existing situation.
- 1.6 The proposed scheme reflects a traditional vernacular farmstead with 'barn-like' and 'rural agricultural workers cottages' style structures set around a central yard, with brick wall enclosures and enhanced areas of landscaping. The new homes are of a high-quality design that uses familiar local building elements and materials, with a nod to the site's agricultural history.

### **Planning Statement Structure**

- 1.7 The remainder of this Statement is set out as follows:
- Section 2 describes the site and its surroundings and the site's background;
  - Section 3 summarises the scheme proposals;
  - Section 4 considers the prevailing Development Plan context within which the planning application should be considered;
  - Section 5 identifies all other material considerations;
  - Section 6 sets out the planning balance and assesses the scheme proposal against the Development Plan, having regard to other relevant material considerations; and
  - Section 7 concludes the case for granting planning permission.

## Planning Application Submission

- 1.8 This Statement draws upon the findings of various technical information and should be read in conjunction with the accompanying application material to provide a comprehensive understanding of the proposal and its associated benefits.
- 1.9 In addition to this Planning Statement, the following documentation is submitted with the planning application:
- Completed and signed application form and ownership certificates;
  - Community Infrastructure Levy (CIL) Form 1;
  - Site Location Plan (Ref: 50997-XX-P1-01 v3) prepared by Pro Vision;
  - Existing Site Topographical Plan (Ref:9197/01) prepared by P Stubbington Land Surveys Ltd;
  - Proposed Application Drawings prepared by Pro Vision:
    - Proposed Site Plan (Ref: 50997-XX-P1-01 v4)
    - Proposed Ground Floor Plan H1 (Ref: 50997-H1-P2-01 v2)
    - Proposed First Floor Plan H1 (Ref: 50997-H1-P2-02 v2)
    - Proposed Roof Plan H1 (Ref: 50997-H1-P2-03 v2)
    - Proposed Front Elevations H1 (Ref: 50997-H1-P3-01 v2)
    - Proposed Front Elevations H1 (Ref: 50997-H1-P3-02 v2)
    - Proposed Visual H1 (Ref: 50997-H1-P7-01 v3)
    - Proposed Floor Plans H2 (Ref: 50997-H2-P2-01 v5) – *Handed for H3*
    - Proposed Elevations H2 (Ref: 50997-H2-P3-01 v6) – *Handed for H3*
    - Proposed Visual H2 and H3 (Ref: 50997-XX-P7-01 v4)
    - Proposed Site Sections (Ref: 50997-XX-P5-01 v1)
  - Design and Access Statement prepared by Pro Vision;
  - Landscape and Visual Assessment prepared by Enderby Associates;
  - Heritage Impact Assessment prepared by HCUK;
  - Transport Statement prepared by i-transport;
  - Drainage Statement prepared by SLR (Vectos);
  - Preliminary Ecological Assessment (including Biodiversity Net Gain Assessment) prepared by Pro Vision Ecology; and
  - Phase 1 Geo-Environmental Site Assessment prepared by Omnia.

## 2.0 Site Context

### Site and Surroundings

- 2.1 A Site Location Plan is enclosed, which shows the location of the site to the south west of Monk Sherborne, approximately 1km west of Sherborne St John and 5km to the north west of Basingstoke. The site is accessed off Ship Lane to the east.
- 2.2 The site comprises a range of large utilitarian agricultural and commercial style buildings. Whilst they are generally agricultural type buildings, they have a somewhat industrial style given their size and materials. In addition, the vernacular of space, arrangement, form and material do not reflect a typical rural agricultural farmstead. Furthermore, the poor quality and condition of these buildings on the site all contributes to a somewhat disorderly appearance.
- 2.3 Rookery Farmhouse lies immediately to the east of the site. The site is generally surrounded by open fields.

### Statutory and Non-Statutory Designations

- 2.4 The adopted Policies Map demonstrates that the site lies outside any settlement boundary (i.e. within the 'open countryside').
- 2.5 The site is not subject to any specific environmental or landscape designations such as Areas of Outstanding Natural Beauty (AONB), Special Protections Area, or Site of Special Scientific Interest (SSSI). Environment Agency (EA) flood mapping indicates that the site is within Flood Zone 1 (low probability of flooding).
- 2.6 A Public Right of Way ('PRoW') passes through the farmyard generally along the southern and western boundaries.
- 2.7 With regards to heritage, the site is located within the Monk Sherborne Conservation Area and Rookery Farmhouse is designated as a Grade II Listed Building. The Grade I Listed Church of All Saints lies approximately 200m to the south of the site.

### Planning History

- 2.8 The Council's website reveals that there have been several applications associated with the buildings on the site, including:
- BDB/59741 - Certificate of Lawfulness for the change of use of two bays of a redundant farm building to storage of non-agricultural machinery. Approved 3rd May 2006.
  - BDB/59044 - Change of use of workshop from part agricultural and part B2 use to B2 industrial use. Approved 21st October 2004.

### Pre-application

- 2.9 A formal pre-application advice request was submitted by the Estate to the Council in June 2021.
- 2.10 A potential development option - similar to this application proposal, but for four dwellings with a different layout and no central yard - was presented and showed how the site might be

redeveloped. The Council issued their formal pre-application response on the 7<sup>th</sup> September 2021. The main issues raised are summarised below:

#### Principle of Development

- 2.11 The Planning Officer noted that the redevelopment of the site would involve the loss of some employment. However, the Officer acknowledged that the majority of the site had most recently been used for agriculture and that the site was not protected for employment uses in the Development Plan.
- 2.12 The Planning Officer encourages that further information be provided with any planning application regarding what consideration has been given to an employment led redevelopment of the site. The Appellant has considered this further at Section 6 of this planning statement. That said, the Officer concludes that this matter cannot be afforded “*overriding weight*” in the decision-making process.
- 2.13 The Planning Officer explains that Policy SS6 of the Local Plan (2016) sets out when new residential development is appropriate in the countryside. The Planning Officer contends that as the majority of the site is in agricultural, in their view, the site is not ‘previously developed land’. As such, the proposed development would not comply with criteria a) of Policy SS6. The Planning Officer explains that criteria e) of Policy SS6 is the most relevant.
- 2.14 The Planning Officer acknowledges that, at the time, the Council did not have a five year housing land supply. This housing shortfall remains.
- 2.15 However, the Officers adds that, in their view, the site is ‘isolated’ development with reference to the Braintree case law. The Officer explains that, in their view, the site is detached from the village such that it would, both visually and physically, be separated from any meaningful grouping of buildings or dwellings and would be isolated. We strongly disagree with the Planning Officer’s conclusion and further assessment is provided at Section 6 of the planning statement.
- 2.16 The Planning Officer adds that, in their view, any ‘economic’ and environmental benefits would be ‘limited’.

#### Affordable Housing

- 2.17 The Officer confirms that the proposed development does not meet the ‘major development’ threshold and, therefore affordable housing is not required.

#### Design

- 2.18 The Planning Officer provided a number of comments with regards to design and the proposed scheme presented at pre-application. These included concerns that “*the large scale of the properties and the external appearance as suggested through the visualisations presents a scheme of suburban appearance...*”.
- 2.19 The pre-application scheme sought to replicate an historic layout of the farmstead with an informal cluster of barn style buildings. Notwithstanding this, the Planning Officer concludes that the development “*presents a form of development that appears unsympathetic to the character of this countryside location which additionally sits within the conservation area. Concern is therefore raised as to the scale, bulk and massing of the units proposed and the relationship to the character of the area. The layout as proposed appears to simply be trying to*

*maximise the size of the units that could possibly fit across the frontage of the plots without proper regard to the character of the area and assessment of the relationship to the heritage assets”.*

### Summary

2.20 This consultation process has informed the formulation, development and refinement of the scheme. Changes to the scheme as a response to feedback from the Council are reflected in the final Site Layout, and include:

- Reduction in number of proposed dwellings to three and decrease in size, scale and mass of the dwellings;
- Changes to the layout and distribution of development across the site to better reflect a traditional farmstead with a central yard;
- Changes to the proposed dwellings to reflect the farmstead typology and appear less suburban;
- Additional areas of illustrative soft landscaping and planting, including along the boundary;
- Further explanation and clarification on the ‘employment uses’ uses within the site and assessment of the potential for alternative uses, including an employment-led development.
- Further clarification and re-assurance provided with regards to the benefits of the demolition of the existing buildings and the net gain in enhancement to the landscape character and setting of the heritage assets from the proposed development.



## 3.0 The Proposed Development

3.1 The full details of the proposal are set out in the accompanying Design and Access Statement (DAS) and planning drawings. However, this section provides a summary of the proposed development:

### **Amount and Use**

3.2 As illustrated on the Site Layout Plan this application proposes the demolition of the existing commercial and agricultural buildings and replacement with three new dwellings.

3.3 The proposal consists of 1x 4 bed and 2 x 3 bed dwellings.

### **Layout**

3.4 The layout is based on a group of buildings arranged around a central courtyard; reflecting the characteristic arrangement of farm buildings in a traditional rural farmstead. The courtyard formation of the proposed development also follows the historic arrangement and has been designed specifically to relate back to the site's agricultural history.

3.5 It is considered that this type of development is typically found in a transitional landscape between the built-up area of the village and wider countryside, such as this site.

### **Design & Appearance**

3.6 Details of the height, form, design and detailed external appearance of the proposed buildings are established in the proposed drawings that support the application.

3.7 Further, the approach to the design is set out in the DAS, although in summary, the proposal will provide a high-quality development that will successfully integrate into the local context. Further, the material palette reflects the vernacular of traditional barn and rural agricultural workers cottage typology which is prevalent in the local area.

3.8 This simple materials palette is combined with an interesting traditional approach to the form and style of the buildings. This is seen as a sympathetic design response which does not seek to be a pastiche or dilute the authenticity of the historic buildings in this part of the village.

3.9 The Applicant is keen to deliver a development that engages with the local vernacular and responds to the Planning Officer's previous concerns at the pre-application stage that the development would lead to a sub-urban appearance.

### **Access and Parking**

3.10 The development will utilise the existing access to the east. Car parking spaces will be provided in accordance with the Council's standards. Further, there is provision for EV Charging Points.

### **Landscaping**

3.11 The proposed development will be supported by a soft landscaping scheme that forms an integral part of the development. The demolition of the existing commercial and agricultural buildings and reduction in scale and mass of the development provides an opportunity to deliver new planting enabling greater integration into the wider rural countryside. This

includes areas for wildflower meadow, woodland and structural planting to reinforce the site's boundary.

- 3.12 The landscaping will create areas of more natural character that form an integral part of the development, as well as maximising the opportunities to enhance biodiversity.

## 4.0 Development Plan

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 directs Local Planning Authorities to determine planning applications in accordance with the policies of the Development Plan unless material considerations indicate otherwise. Section 38(3) of the Act provides that the Development Plan includes the *“Development Plan documents (taken as a whole) which have been adopted or approved in relation to that area”*.

4.2 The adopted statutory Development Plan for Basingstoke and Deane Borough Council in this case comprises the Basingstoke and Deane Local Plan (adopted in May 2016).

### **The Basingstoke and Deane Local Plan (May 2016)**

4.3 Policy SD1 of the Local Plan confirms that the Council *“...will always work positively with applicants jointly to find solutions which mean that proposal can be approved whenever possible and to secure development that improves the economic, social and environmental conditions in the area”*. The Policy confirms that where the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise.

4.4 The Council, at Policy SS1 of the Local Plan, explains that to provide the 15,300 new homes, they will [inter alia] permit exception sites located outside of defined Settlement Policy Boundaries where it meets criteria set out in the other policies in the Plan or it is essential for the proposal to be located in the countryside.

4.5 Policy SS4 of the Local Plan seeks to ensure that the delivery of residential development will be managed to ensure that a five year supply of sites over the plan period.

4.6 Policy SS6 allows new housing outside of settlement boundaries in certain circumstances. This includes criteria e) that supports small-scale residential development (i.e. up to four dwellings) that meet a locally agreed need. Under this criteria, proposals should be: well related to the existing settlement and would not result in an isolated form of development (ix); and the development will respect the qualities of the local landscape and be sympathetic to its character and visual quality (x); and the development will respect and relate to the character, form and appearance of surrounding development, and respect the amenities of the residents of neighbouring properties (xi).

4.7 Policy CN3 of the Local Plan is permissive of development when the mix of market homes includes a range of house types to meet local requirements and appropriate to local context having regard to the size, location and characteristics of the site and the established character and density of the neighbourhood.

4.8 The Council, at Policy CN9 of the Local Plan, states that development proposals will be permitted where they [inter alia] provide safe and suitable access, provide appropriate parking and do not result in inappropriate traffic generation or compromise highway safety.

4.9 With regards to landscape, Policy EM1 of the Local Plan confirms that development will only be permitted where it can be demonstrated that the proposals are sympathetic to the character and visual quality of the area concerned.

4.10 Policy EM4 of the Local Plan requires development proposals to ensure significant harm to biodiversity and/or geodiversity can be avoided or adequately mitigated. It adds that

development proposals should include “...*proportionate measures to contribute, where possible, to a net gain in biodiversity...*”.

- 4.11 Policy EM6 of the Local Plan ensures development proposals positively manage water quality through the provision of sustainable drainage systems.
- 4.12 The Local Plan, at Policy EM7, requires all new development proposals in areas at risk of flooding must give priority to the use of sustainable drainage systems.
- 4.13 Policy EM10 of the Local Plan sets out a number of design criteria for new development. Proposals should respect their local environment and amenities of neighbouring properties and should contribute positively to local distinctiveness, sense of place and provide high quality amenity for occupants. Development should have due regard to the scale, layout, appearance and history of the surrounding area and the relationship with neighbouring buildings and landscape features and be designed to be visually attractive.
- 4.14 Policy EM11 of the Local Plan notes that all development must conserve or enhance the quality of the Borough’s heritage assets in a manner appropriate to their significance. It goes on to provide a series of criteria which development proposals must meet in order to be permitted.
- 4.15 Policy EM12 of the Local Plan requires that development “...*does not result in pollution which is detrimental to the quality of life, or poses risks to health or the natural environment*”.

## 5.0 Material Considerations

5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires that all material considerations are taken into account in decision-making. The following material considerations are relevant to this planning application and are considered in turn below:

- National policy contained within the National Planning Policy Framework ('the Framework') (September 2023) and the supporting national Planning Practice Guidance ('the PPG') (March 2014, as amended).
- Emerging Basingstoke and Deane Local Plan Update.
- Basingstoke and Deane CIL Charging Schedule (May 2018).
- Monk Sherborne Conservation Area Appraisal (2003).
- BDBC's Supplementary Planning Documents relating to:
  - Design and Sustainability (2018);
  - Housing SPD (2018);
  - Parking Standards (2018); and
  - Landscape, Biodiversity and Trees SPD (2018).
- Basingstoke's and Deane Borough Council's Five Year Housing Land Supply Position.
- Relevant Appeals and Case Law.

### **National Planning Policy Framework**

5.2 The updated National Planning Policy Framework ('the Framework') was published in September 2023. The following sections are of most relevance to the proposed scheme.

5.3 Paragraph 8 of the Framework advises that *'achieving sustainable development means that the planning system has 3 overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

- *an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- *a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
- *an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy'.*

5.4 The presumption in favour of sustainable development is set out at paragraph 11. For decision taking, this means approving proposals which accord with an up-to-date Development Plan without delay (para. 11c).

- 5.5 Where there are no development plan policies, or those policies most important for determination the application are out of date, the proposal should be approved unless one of two exceptions applies (para. 11d), these being:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (Footnote 7); or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies when taken as a whole.

- 5.6 For the purposes of paragraph 11d, Footnote 7 includes those policies in the Framework relating to designated heritage assets.

*“Decision-taking”*

- 5.7 In addition the Framework, at paragraph 38, requires LPAs to *“...approach decisions on proposed development in a positive and creative way”* and *“...seek to approve applications for sustainable development where possible”*.

*“Delivering a sufficient supply of housing”*

- 5.8 The Framework states that to support the Government’s objective of *“significantly boosting the supply of homes”*, it is critical that a sufficient amount and variety of land can come forward *“where it is needed”* (para. 60).

- 5.9 With regards to affordable housing, the Framework states that the *“provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)”*.

- 5.10 Paragraph 74 requires Local Planning Authorities (LPAs) to identify and annually update a *“...supply of specific, deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or their local housing need where the strategic policies are more than five years old”*.

- 5.11 Paragraph 79 confirms that *“to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities”*. Paragraph 80 identifies that local planning authorities should avoid isolated new homes in the countryside unless there are circumstances as set out in the criteria.

*“Promoting Sustainable Transport”*

- 5.12 Paragraph 105 of the Framework requires significant developments to be *“...focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes”*. The paragraph does however add that *“...opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”*.

- 5.13 The Framework, at paragraph 111, explains that *“development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”*.

*“Making effective use of land”*

- 5.14 Paragraph 119 of the Framework promotes the effective use of land to meet the need for homes and other uses.
- 5.15 The Framework, at paragraph 120, that [inter alia] planning decisions should *“give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land”*.

*“Achieving well-designed places”*

- 5.16 The Framework, at paragraph 126, acknowledges that *“the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development proves should achieve”*.
- 5.17 Paragraph 134 confirms that *“significant weight”* should be given to:
- a) *“development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes; and/o*
  - b) *outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings”*.

*“Meeting the challenge of climate change, flooding and coastal change”*

- 5.18 Paragraph 152 describes how the *“...planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change”*.
- 5.19 The Framework notes that *“new development should be planned for in ways that:*
- a) *avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and*
  - b) *can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the government’s policy for national technical standards”* (paragraph 154).

*“Conserving and enhancing the natural environment”*

- 5.20 Paragraph 174 of the Framework confirms that planning decisions should contribute and enhance the natural and local environment as set out in the criteria.
- 5.21 The Framework, at paragraph 176, explains that *“great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues”*.

*“Conserving and enhancing the Historic Environment”*

- 5.22 Paragraph 194 of the Framework requires applicants to assess the significance of any heritage assets affected by a development proposal.
- 5.23 Paragraph 197 advises that local planning authorities should take account of [inter alia] the desirability of new development making a positive contribution to local character and distinctiveness.
- 5.24 The Framework explains that harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (paragraph 200).
- 5.25 Paragraph 206 explains that *“local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”*.

**Planning Practice Guidance**

- 5.26 The Government published the Planning Practice Guidance (PPG) in 2014 and have since updated relevant parts as appropriate. The PPG provides further detailed guidance accompanying the Framework. The following key sections of the PPG have been considered in the preparation of this planning application:
- Climate Change
  - Design
  - Flood risk and coastal change
  - Historic Environment
  - Natural Environment
  - Rural Housing

**Emerging Basingstoke and Deane Local Plan**

- 5.27 The Council is currently preparing a new Local Plan Update. The preparation of the Plan is at an early stage and the Council initially consulted on ‘Issues and Options’ in late 2020.
- 5.28 However, Members decided to postpone a Regulation 18 consultation on the Local Plan Update in September 2022. This has had significant consequences on the timescales for preparation of the Local Plan Update.
- 5.29 In a report to the Economic, Planning and Housing Committee on the 7<sup>th</sup> September 2023, Officers advised that the Regulation 18 Consultation will now take place in January 2024 (rather than Autumn 2023). Furthermore, submission of the Plan to the Secretary of State is expected in Spring 2025 and adoption currently anticipated in Winter 2025/6. The Local Plan Update, therefore, has no weight in decision making.



### **Basingstoke and Deane Community Infrastructure Levy (CIL)**

- 5.30 The Council's CIL Charging Schedule was implemented in June 2018 and is charged on new developments in the area to fund necessary infrastructure requirements, alongside contributions collected via S106 agreements.
- 5.31 The CIL Charging Schedule applies a CIL rate of £200 per sq. m. (indexed linked) for residential development in Zone 4 ('Rest of the Borough') which includes Monk Sherborne.

### **Monk Sherborne Conservation Area Appraisal (2003)**

- 5.32 The Monk Sherborne Conservation Area was designated in 1992 and is supported by a Conservation Area Appraisal (CAA) adopted in 2003.
- 5.33 The Monk Sherborne CAA sets out the special qualities of the Conservation Area that make up its architectural and historic character.
- 5.34 The CAA defines the character of the area as *"an informal arrangement of vernacular residential buildings interspersed with more modern buildings. The occasional glimpse through gaps in the hedges lining the main road, or between buildings, reveals the surrounding countryside and Monk Sherborne Wood. The dispersed settlement pattern and topography result in a Conservation Area of subtle, but distinctive character."*
- 5.35 The CAA also recognises that Rookery Farm forms part of the settlement. The CAA notes that *"the prevailing former use within the Conservation Area was agriculture with the evidence of two farms within the settlement"*. The CAA adds that's *"the village has developed away from the southern grouping of the Church, Manor Farm and Rookery Farm in a linear pattern along Ramsdell Road to the fork at the northern end of the settlement, near The Mole Public House, with the western road leading to Charter Alley and to the north to Pamber"*.

### **Basingstoke and Deane's Supplementary Planning Documents**

#### Design and Sustainability SPD

- 5.36 The above SPD has been considered throughout the iterative design process. It sets out a number of measures to improve design standards and enhance the well-being of residents, whilst increasing the sustainability credentials of the Borough.

#### Housing SPD

- 5.37 The Housing SPD, adopted in August 2018, expands upon the Local Plan housing policies and provides further guidance relating to the mix of affordable and market homes at Principles 2.3 and 3.1 respectively.

#### Parking Standards SPD

- 5.38 Table 1 of the of the SPD confirms the relevant car and cycle standards in the 'Rural' area.

#### Landscape, Biodiversity and Trees SPD

- 5.39 The SPD explains how landscape, biodiversity and tree considerations should be integrated into the development process to ensure that the Council's Local Plan requirements are met and best practice is achieved.

## The Council's Five Year Housing Land Supply Position

- 5.40 The Council's most up to date position on the five year housing land supply is the 'Updated Housing Land Supply Statement (dated, March 2023)'. The Council confirm that, at that time, the authority wide housing land supply position was 4.7 years.

### Relevant Appeals and Case Law

#### Basingstoke and Deane's Five Year Land Supply

- 5.41 The Council acknowledge that they do not have a five year housing land supply. Further, the housing land supply shortfall and the weight to be given to the 'most important' policies has been addressed in several appeal decisions in recent years which are considered below:
- 5.42 In paragraph 24 of the appeal decision (Ref: APP/H1705/W/22/3270565, dated 29<sup>th</sup> March 2023) 'The Street, Bramley' (see **Appendix A**), the Inspector confirms that the Council considered there to be a shortfall of 4.6 years and the Appellant 3.71 years. The Inspector acknowledged that "*the Council accepted that the actual figure may be somewhere between the two*". At paragraph 42, the Inspector concludes that, in their view, the figure is around 4.1 years.
- 5.43 In paragraph 21 of the appeal decision (Ref: APP/H1705/W/21/3281406, dated 29<sup>th</sup> July 2022) at 'Darling Buds of May Nursery' (see **Appendix B**), the Inspector confirmed that the Council is unable to demonstrate a 5 year supply of deliverable housing sites and that Policies SS1 and SS6 of the Local Plan are rendered out-of-date.
- 5.44 In paragraph 91 of the appeal decision (Ref: APP/H1705/W/21/3269526, dated 11<sup>th</sup> August 2021) at 'land to east of Station Road, Oakley' (see **Appendix C**), the Inspector acknowledges that "*there is little evidence before me that a 5 year supply would be achieved before 2024 [i.e. when the BDBC Local Plan Update, at that time, was expected to be adopted] when the shortfall was first identified in 2019*".

#### Replacement of agricultural/commercial buildings to residential use in the 'countryside' and effect on the character of the surrounding area and heritage assets

- 5.45 The following appeals set out Inspectors approach to similar proposals on the principle of new development in the 'countryside', including the effect on the character of the surrounding area and, where appropriate, heritage assets:
- 5.46 In the appeal decision (Ref: APP/H1705/W/21/3287932, dated 7<sup>th</sup> October 2022) at 'Wildwood Farm, Newnham Lane, Old Basing' (Basingstoke and Deane BC) (see **Appendix D**), the Inspector supports the replacement of a commercial yard to nine houses and garages/carports. The Inspector, at paragraph 8, acknowledges that the proposed dwellings would be consistent with the local vernacular and arranged around a courtyard to reflect the sites former agricultural use. Further, this allows for areas of soft and hard landscaping, resulting in a greener and more considered arrangement than the current position.
- 5.47 The Inspector adds that the removal of the existing structures would have a beneficial effect on the landscape character surrounding the site. In conclusion, the Inspector notes that the development would sit comfortably within the wider landscape, reflecting its rural qualities whilst delivering housing for the area (paragraph 9).

- 5.48 In paragraph 18, the Inspector advises that *“the proposal would replace the existing structures with a more considered arrangement of housing, designed to mimic in general terms a cluster of farm buildings, varying in scale and height”*. As such, the Inspector also concludes on this basis that the development would not be harmful to the setting of the identified heritage assets.
- 5.49 An Inspector in the appeal decision (Ref: APP/L1764/A/13/2206384, dated 14th July 2014) at ‘Wolfhanger Farm, Woodlands, Bramdean, Alresford’ (South Downs NPA) (see **Appendix E**) allowed an appeal for demolition of existing agricultural buildings to two new dwellings.
- 5.50 In paragraph 20, the Inspector confirms that the proposed dwellings would be considerably less prominent in the wider landscape than existing buildings on the appeal site. The Inspector adds that the existing buildings due to their scale and arrangement do not reflect the rural character of the area, or make a positive contribution to the natural or scenic beauty. The Inspector explains that the proposal will significantly reduce the extent of the site coverage, extent of hard surfacing and provide additional landscaping (paragraph 23). Subsequently, the Inspector concludes that the proposal will enhance the natural beauty of the National Park, provide significant benefits for wildlife and is a well-considered proposal that responds positively to the context and setting (paragraph 27).
- 5.51 The Inspector concludes that whilst contrary to policy that seeks to control new dwellings in the ‘countryside’, the proposal would not harm the character and appearance of the countryside. It would also enhance the landscape of the SDNP and be beneficial in terms of its effect on biodiversity (paragraph 53).
- 5.52 In the appeal decision (Ref: APP/X0415/W/19/3233363, dated 11th February 2020) at ‘Hentucks Farm, Deadhearn Lane, Chalfont St Giles’ (Chiltern District Council) (see **Appendix F**), the Inspector allowed an appeal for replacement of existing agricultural buildings to three new dwellings.
- 5.53 In paragraphs 4 to 6, the Inspector notes that the site comprises a former agricultural complex, comprising of numerous buildings. The Inspector explains that the proposed scheme will reduce the built form by 45% and concludes that this would result in a *“significant improvement to the openness of the Green Belt at this location”*.
- 5.54 The Inspector acknowledges that the site is also within the Chilterns Area of Outstanding Natural Beauty (AONB). The Inspector states that *“the parties agree that the proposed development would have a positive impact on the appearance of the locality and views within the AONB. This would partly be brought about by the implementation of a comprehensive landscape scheme within the proposed development”*. The Inspector gives this matter great weight in favour of the proposal (paragraph 15).
- 5.55 In paragraph 16, the Inspector acknowledges that residential paraphernalia may be present however this would be screened to some degree. Accordingly, the Inspector considers these matters to be *“neutral factors in the consideration of the appeal”*. The Inspector also agrees that the scheme would not set a precedent for other similar development.

#### Isolated dwellings

- 5.56 The Planning Officer at the pre-application stage concludes that, in their view, the site is ‘isolated’ development and, therefore, contrary to Policy SS6. The following case law are the key authorities on the definition of ‘isolated’.

- 5.57 In March 2018, the Court of Appeal clarified the meaning of “*new isolated homes in the countryside*” (Braintree District Council v Secretary of State for Communities and Local Government [2018] Ref. EWCA Civ. 610) (“the Braintree Judgment” – see **Appendix G**). Lindblom LJ stated the meaning to be: “*a dwelling that is physically separate or remote from a settlement*”. Furthermore, the Court of Appeal upheld the High Court’s decision that the word ‘isolated’ should be given its ordinary meaning as “*far away from other places, buildings and people; remote*”.
- 5.58 This has been reinforced in a more recent Court of Appeal Judgment (City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government & Ors [2021] Ref. EWCA Civ. 320) (“the Bramshill Judgment” – see **Appendix H**), in which the interpretation of the Braintree Judgment was adopted.
- 5.59 In the Bramshill Judgment, Lindblom stated that “*the essential conclusion of this court in Braintree District Council, in paragraph 42 of the judgement, is that in determining whether a particular proposal is for “isolated homes in the countryside”, the decision-maker must consider “whether [the development] would be physically isolated, in the sense of being isolated from a settlement”. What is a “settlement” and whether the development would be “isolated” from a settlement are both matters of planning judgement for the decision-maker on the facts of the particular case.*”
- 5.60 In the Braintree Judgment, Lindblom LJ states that “*what constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a “community”, a “settlement” or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach.*”

## 6.0 Planning Assessment

6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 provides that all decisions must be determined in accordance with the Development Plan, when taken as a whole, unless other material considerations indicate otherwise. Section 39 of the Act requires decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development. The Development Plan is described at Section 4 of this Statement. Further material considerations exist in the form of the Framework, as described at Section 5.

6.2 This Section of the Statement identifies those key issues that are material to the planning balance required in respect of this scheme, and presents the case in its favour under the following headings:

- Compliance with, and weight to be afforded, to the Development Plan;
- Benefits of the Proposed Development;
- Assessing Other Impacts; and
- The Overall Planning Balance.

### **Compliance with, and weight to be afforded, to the Development Plan**

#### The principle of development

6.3 The application proposal is for a small-scale residential development of three dwellings. The site is unallocated for development and lies within the ‘countryside’ for planning purposes, outside any settlement boundary, as shown on the adopted Policies Map.

6.4 Policy SS1 of the Basingstoke Local Plan (2016) focuses development within the settlement boundaries, on site allocations and brownfield land. Housing outside settlement boundaries would need to meet criteria in other policies. Policy SS6 criterion e) of the Local Plan is the most applicable in this instance and confirms that small-scale residential development (i.e. up to four dwellings) in the countryside will be permitted where it meets a locally agreed need. The Policy adds that development should not be ‘isolated’, respect the qualities of the local landscape and will relate to the character, form and appearance of surrounding development.

6.5 The proposal is for a small-scale development of three dwellings. Furthermore, it is considered that the proposal is not ‘isolated’ and the proposed development would deliver an enhancement to the character and appearance of the surrounding area, including a net gain in landscape character and to the historic environment. This is assessed further below. However, as there is no current available evidence of a locally agreed need at Monk Sherborne, any new residential development on the site would be contrary to this criterion.

6.6 It is, in principle, therefore not fully in accordance with Policies SS1 and SS6 of the Basingstoke Local Plan (2016).

6.7 As explained at Section 5 of this Statement, the Council however does not have a five year supply of housing as required by the Framework and as such, the Development Plan policies governing housing supply (i.e. in this instance Policies SS1 and SS6) are automatically ‘out of date’.

- 6.8 Whilst the policies relating to housing provision are ‘out of date’, there is a requirement to undertake an assessment of the weight to be given to these policies.
- 6.9 There has clearly been a fundamental failure of the adopted Development Plan and settlement boundaries to deliver the required housing supply. The Council has not been able to demonstrate the minimum five year housing land supply for a number of years. Furthermore, Inspectors have indicated that there is no plan-led remedy to the housing shortfall expected before the adoption of the emerging Local Plan Update and, in the meantime, the supply position appears to be worsening. The preparation of the Local Plan Update has also been significantly delayed with adoption now expected Winter 2025/6. Therefore, the shortfall is expected to continue for a minimum of 2 years.
- 6.10 Accordingly, the only way to resolve the issue is to grant planning permissions to help improve the housing supply position. Indeed, the Council already accept the need for new development beyond the settlement boundaries and in areas without a ‘locally agreed need’. The Council itself has granted development on such sites (and others have been allowed at appeal) and now relies on them in its housing supply.
- 6.11 However, more still needs to be done to meet the Government’s minimum housing supply target. Accordingly, settlement boundaries and restricting new housing development in the countryside to areas with a ‘locally agreed need’ cannot be rigidly applied by the Council as otherwise they could not demonstrate the housing supply it has now.
- 6.12 With the above in mind, it follows that Policies SS1 and SS6 are ‘out of date’. Accordingly, it is considered that any harm from the minor conflict with these policies cannot attract anything more than ‘limited’ weight.

#### Loss of Employment and Alternative Uses

##### *Non-agricultural Uses (e.g. Commercial Uses)*

- 6.13 The parts of the existing buildings being used for commercial purposes are more akin to ‘hobby’ users rather than commercial enterprises. These are on short term leases which will not be renewed. None of the current occupiers run a full-time business from the units or employ additional staff.
- 6.14 Notwithstanding the above, the Planning Officer at the pre-application stage also acknowledged that the Development Plan does not afford any protection to such sites outside of settlement boundaries. Furthermore, the proposed development would clearly not result in the loss of any significant number of jobs and its loss would have a negligible impact on the overall employment provision and future needs across the Borough.
- 6.15 The Applicant, as requested, has considered alternative commercial uses. However, Policy EP4 of the Local Plan explains that development proposals must be of a scale that is appropriate to the site and location when considering [inter alia] landscape, heritage and environmental impacts, accessibility and impact on the local highway network.
- 6.16 The scale of the existing buildings and the traffic generation that would be generated from commercial uses would typically be harmful to highway safety and the character of the rural roads. The Transport Statement demonstrates that a commercial scheme would lead to 10x more additional traffic than a residential use. Indeed, B2/B8 uses would also likely increase the number of HGV movements on the nearby lanes.

- 6.17 Furthermore, the intensification of these uses could have an impact on the setting of the heritage assets and impact on the amenity of the nearby neighbouring properties.
- 6.18 It is also considered that there would be a need for significant alterations and works to the existing buildings to make them suitable for employment uses. The investment required would unlikely be viable given the expected return from such uses. The site is also in a location that is unlikely to attract potential new employers.
- 6.19 Accordingly, it is considered that the Council would likely resist any re-use of the existing buildings for commercial uses. Furthermore, an employment development would not bring the tangible planning benefits associated with the proposed development and residential use.

#### *Agriculture*

- 6.20 As set out at Section 1, the Estate's grain store operation has been relocated to Lower Farm. Indeed, the Council granted planning permission in 2019 for a new grain store. From this point, the buildings have been largely unused (subject to some limited ad hoc storage). Therefore, the re-use of these buildings for agricultural use is not required for the Estate. Indeed the buildings are of poor quality and not 'fit for purpose' for permanent agricultural use moving forward.
- 6.21 In addition, they would not be suitable for any other agricultural users given their location and that surrounded by the Estate's farmland.
- 6.22 As a result, it is apparent that the site and location would not be attractive to alternative agricultural or commercial uses. Accordingly, without any redevelopment of the site, the existing buildings would remain on site and continue to deteriorate and have a negative effect on the character and appearance of the surrounding area, including the setting of the nearby heritage assets and local landscape character.
- 6.23 These buildings will continue to decay and deteriorate. In some instances dilapidated agricultural buildings in the countryside are not necessarily unattractive. Nevertheless, in this case, due to their prominence at the entrance of the village, their size and scale and the type of materials that they are constructed from it is considered that any assimilation with the landscape would be very gradual and likely to be detrimental to the character of the area. The enduring deterioration of the buildings would also lead to further incongruity with the heritage assets in the locality (see below for further details).
- 6.24 Therefore, it is the Applicant's view that it must be preferable to redevelop the site for new residential development that would provide significant enhancements and provide a resolution to the adverse impact of the existing buildings remaining on the site. Paragraph 8 of the Framework acknowledges that "*the planning system has 3 overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)*..." [our emphasis]. In other words, the planning system is a tool to seek opportunities to bring positive improvements in the quality of the built, natural and historic environment.

#### Summary

- 6.25 In brief, it is considered that the site is a suitable location for the proposed small-scale development, having regard to the Council's housing strategy and five year housing land supply position.

6.26 The principle of small-scale residential development should therefore be accepted on the site.

**Benefits of the Proposed Development**

6.27 It is considered the application scheme for three dwellings based on a farmstead typology with significant areas of soft landscaping and planting would appear to offer a number of tangible benefits. These are assessed further below:

Heritage

6.28 The application is accompanied by a Heritage Impact Assessment prepared by HCUK Group. This demonstrates that the proposal would result in enhancement of the setting of the Listed Buildings and the appearance and historic character of the wider village and Conservation Area.

6.29 The Heritage Statement demonstrates that historically the farmyard was associated with the Grade II Listed Rookery Farmhouse and now comprises a series of 20<sup>th</sup> Century agricultural buildings with no heritage value.

6.30 The Planning Officer at the pre-application stage failed to undertake a thorough assessment of the impact of the existing buildings on the setting of the Conservation Area and nearby heritage assets - an assessment of the incongruity of the existing buildings is clearly part of understanding the way the setting of the Conversation Area and heritage assets are currently experienced.

6.31 The Heritage Statement explains that the existing buildings the site and existing buildings have an entirely negative impact on the settings of the surrounding heritage assets and on the appearance of the Conservation Area. This is due to the buildings scale, industrial character and generally poor quality. Contrary to the Planning Officer’s comments at the pre-application stage, the existing building are in no meaningful sense ‘rural’. As noted above, the vernacular of space, arrangement, form and material do not reflect a typical rural agricultural farmstead. This view is supported by at appeal decisions at Old Basing (Ref: APP/H1705/W/21/3287932 at Appendix D) and Alresford (Ref: APP/L1764/A/13/2206384 at Appendix E).

6.32 The Applicant’s Heritage Statement demonstrates that the proposal would have tangible heritage benefits:

- The proposal would represent a wholly positive change to the setting of the Grade II Listed Rookery Farmhouse. The scheme proposals would enhance the ability to appreciate the structure and its illustrative value and historic legibility as a former farmhouse (i.e. an enhancement with regards to the building’s historic interest and the role that plays within the asset’s special interest and significance).
- The proposal would materially enhance the contribution the site makes to the Conservation Area.
- The proposal would improve the rural character and quality of views from the Grade I Listed Church of All Saints.

6.33 The proposal has been carefully considered to respond to the heritage context and character of the area. Accordingly, the redevelopment of the site will deliver positive benefits in terms



of enhancing the setting of the heritage assets and Conservation Area in accordance with local and national planning policy. This represents betterment than the status quo which is harmful.

- 6.34 Therefore, the heritage benefits should be afforded '**significant**' weight in favour of the proposed development in accordance with paragraphs 8, 197 and 206 of the Framework and Policy EN11 of the Local Plan.

#### Character of the area and landscape

- 6.35 The Landscape and Visual Appraisal (LVA) prepared by Enderby Associates Ltd. demonstrates that the proposed development delivers a significant reduction in built footprint (c. 70%), reduces building height and can be successfully integrated into the rural landscape. It is determined that there will be notable improvements from the proposed development.
- 6.36 The LVA similarly demonstrates that the existing buildings form a prominent and unattractive feature within the Conservation Area and local landscape. Therefore, their removal through the proposed development would be beneficial.
- 6.37 The LVA acknowledges that whilst the use would be more domestic, the proposals would be beneficial in terms of landscape character overall, as they would create a more appropriate form of development that is more in scale with its surroundings and more sympathetic and appropriate to the setting of the farmhouse. Furthermore, would also be a significant improvement in the character and environment of the public right of way.
- 6.38 The LVA concludes that the proposals would result in a 'Slight beneficial effect' on local landscape character once construction is complete, and a 'Moderate beneficial effect' once the proposed planting assimilates the site into its already largely discrete local landscape setting.
- 6.39 With regards to visual effects, the changes that would occur as a result of the removal of the existing building complex and yard and replacement with the three new buildings and associated courtyard would have a beneficial effect on the experience of views by receptors' using the public rights of ways, including part of the St. James' Way long distance trail (part of which currently passes between buildings within the yard).
- 6.40 The LVA adds that the significant new planting accords with the character of the locality and reflects the management guidelines provided in the Landscape Character Assessment.
- 6.41 In summary, the LVA demonstrates that the demolition of the existing buildings and proposed development would have a tangible, beneficial local effect on landscape character and the experience of external views.
- 6.42 As such, paragraphs 8 and 176 of the Framework and Policy EN1 of the Local Plan support development that delivers a 'net gain'/enhancement in landscape character. With that in mind, it is considered that the overall landscape benefits of the new build scheme should be afforded '**significant**' weight in favour of the proposed development in the planning balance. This follows the approach of the Inspectors of the appeals at Section 5 and Appendix D, E and F.

### Biodiversity

- 6.43 Policy EM4 of the Local Plan states that development should seek opportunities to enhance biodiversity. However, the Policy does not set out any specific measurements to achieve.
- 6.44 Paragraph 180d of the Framework confirms that “*opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate*”. In terms of wider legislation, the Environment Act 2021 sets a minimum 10% biodiversity net gain. However, this element of the Act is not yet in place and will only be a requirement from Spring 2024 on small sites.
- 6.45 The proposed development through the creation of areas of wildflower meadow and woodland will significantly enhance the biodiversity on the site.
- 6.46 A Biodiversity Net Gain Assessment has been undertaken. The biodiversity metric results in a considerable net gain of **103.26%** in habitat units and **100%** in hedgerow units. With these measures included the proposed development will provide a significant net gain for biodiversity, far in excess of any policy or future statutory requirement (i.e. 10%). As such, this should be afforded further ‘**significant**’ weight in favour of the proposal.

### Contamination

- 6.47 Paragraph 120c of the Framework notes that planning decisions should support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.
- 6.48 The Phase I Geo-Environmental Site Assessment prepared by Omnia identifies that there may be potential for some contamination on the site and that asbestos is likely to be found in the existing buildings. Further intrusive site investigation is recommended with remediation if necessary.
- 6.49 The health and safety benefits of the removal of asbestos from the existing buildings and remediation of any potential contamination should be afforded in the range of ‘**limited to moderate**’ weight in favour of the proposal.

### Drainage

- 6.50 A Drainage Statement has been prepared by SLR (Vectos) and is submitted in support of this planning application.
- 6.51 The proposed surface water drainage strategy will employ the use of sustainable drainage solutions (e.g. rain garden) and provide storage for the 1 in 100 year plus 40% climate change event without flooding. As well as allowing attenuation, the drainage strategy will also degrade pollutants, which will improve the quality of surface water discharged to ground.
- 6.52 The Surface Water Drainage Statement concludes that the proposed development would not increase the risk of flooding to the site or surrounding areas, in accordance with the Framework and Policy. Indeed, due to the significant reduction in impermeable area it is anticipated that the proposal will offer an improvement in the local drainage regime when compared to the existing situation. This should be afforded, at least, ‘**limited**’ weight in favour of the proposal.

6.53 It is anticipated that a final drainage scheme would be subject of a planning condition on any planning permission.

Other Benefits

6.54 In addition to the above, there are also a number of additional benefits as a result of the proposed development. These include:

*Market Housing*

6.55 The proposal would provide a modest contribution towards the delivery of new housing stock to meet the needs of the present and future generations in Basingstoke and Deane as a whole, but significant in the context of the recognised need in Monk Sherborne itself. Nevertheless, it is still an important contribution given the Council's persistent and significant housing shortfall. Furthermore, there is no plan-led remedy expected in the short term. Due to its scale, the site can be built out quickly helping to address the shortage of deliverable housing land in Basingstoke and Deane in accordance with paragraph 69 of the Framework. In this case, it is considered that the provision of some market housing to the local market should be afforded, at least, '**moderate**' positive weight.

*Economic Benefits*

6.56 Paragraph 81 of the Framework sets out that significant weight should be afforded to supporting economic growth and productivity. The proposed development would have both short-term and long term economic benefits, such as:

- a) the proposed family housing would provide opportunities to attract and retain families who can frequently help support the vitality of the village;
- b) the Confederation of British Industry (CBI) identify that for every £1 spent on construction output, an additional £2.92 of total economic activity is generated (Source: CBI's '*Fine Margins: Delivering financial sustainability in UK construction*', dated February 2020). '*The Economic Footprint of House Building in England and Wales's* (2018) prepared by Lichfields also concludes that for every house built 3.1 jobs are created. As such, the proposed development will help facilitate wider economic stimulus in the Borough (including in this instance in the context of the rural economy) at a time of great national importance due to the current economic outlook;
- c) additional employment provision during the construction phase; and
- d) support and enhancing the vitality and viability of the village to the benefit of existing and future residents through additional economically active residents within the area and increase in local spend.

6.57 With the above in mind, in the context of the rural economy and helping to meet future housing needs to support Monk Sherborne, the economic benefits of the proposal should be afforded in the range of '**limited to moderate**' weight in favour of the proposal.

## Assessing Other Impacts

- 6.58 The following other material considerations are examined below against the prevailing Development Plan, where consistent with the Framework, and national planning policy and guidance.

### Isolated Development

- 6.59 Part ix of Policy SS6 criterion e) requires development to be well related to the existing settlement and not result in an ‘isolated’ form of development.
- 6.60 The Site is not considered to be ‘isolated’ development and is well related to the village of Monk Sherbourne with access to local facilities and services (e.g. Pub, Village Hall, Church and play areas). The Site is also adjacent Rookery farmhouse and close to other properties.
- 6.61 The Council’s own evidence base clearly includes Rookery Farm as part of the settlement in the CAA. The appraisal describes that the *“the prevailing former use within the Conservation Area was agriculture with the evidence of two farms **within the settlement**”* [our emphasis]. Furthermore, the CAA adds that *“the village has developed away from the southern grouping of the Church, Manor Farm and Rookery Farm in a linear pattern along Ramsdell Road to the fork at the northern end of the settlement, near The Mole Public House, with the western road leading to Charter Alley and to the north to Pamber”*.
- 6.62 The Site is generally not far away from other places and people, and is not remote – and therefore cannot be considered as ‘isolated’. Policy SS6 does not set any other criteria regarding sustainability and accessibility and, therefore, it is considered that the proposed development accords with Policy SS6 criterion e) ix) of the Local Plan.

### Ecology

- 6.63 The application is accompanied by a Preliminary Ecological Statement prepared by Pro Vision Ecology
- 6.64 The Ecological Assessment confirms that the ecological interest of the site is limited and the proposed development is unlikely to have any adverse impacts on designated sites in the locality. Overall there is no material impact on biodiversity, including protected species and that any potential impacts can be appropriately mitigated. Potential mitigation measures include bird and bat boxes, a sensitive lighting scheme and a hibernaculum.
- 6.65 On this basis, the proposal is found to meet national and local policy objectives for protecting, conserving and enhancing biodiversity and features of ecological importance.

### Highways and Access

- 6.66 A Transport Statement has been prepared by i-transport. The Transport Statement demonstrates that:
- The site is well located to a range of facilities and services, and these can be reached via the current PROW network, as well as local public transport facilities, in particular the bus services available along the A339 to the south and to the east in Sherborne St John.

- Safe and suitable access will be provided via the existing at Rookery Farm Lane/Ship Lane.
- The provision of car parking is in accordance with the Council's car parking standards. Furthermore, each dwelling includes an EV Charging Point to encourage the use of electric vehicles. The Framework includes electric vehicles (i.e. low and ultra-low emission vehicles) within the definition of 'sustainable transport modes'.
- The proposed site layout has been designed in accordance with national guidance and the Basingstoke & Deane Borough Council Parking SPD. A swept path analysis has shown that vehicles can satisfactorily enter, exit and park on-site using the allocated parking bays.
- Trip rates have been determined and it has been calculated that the development will generate approximately 1 additional vehicle movement during the peak hours. Therefore, the level of traffic impact that the redevelopment of the site creates will be minimal, and acceptable by the standards of the Framework.

6.67 On the basis of the above, it is considered that the proposals can be accommodated without detriment to the operation of the local transport networks. The proposals therefore accord with policies Policy CN9 and EM10 of the Local Plan.

#### **The Overall Planning Balance**

6.68 The application seeks full planning permission for the demolition of the existing buildings and replacement with three new dwellings at Rookery Farm, Monk Sherborne.

6.69 The adopted Development Plan (i.e. Policies SS1 and SS6 of the Local Plan (2016)) seek to restrict new build development beyond the settlement boundary in the 'countryside'. Accordingly, it is recognised that the proposed development does not fully comply with these policies as the site lies outside any settlement boundary, has not been allocated for development and there is no evidence of a 'locally agreed need'.

6.70 However, it is acknowledged that the Council do not have a five year supply of housing and as such, the Development Plan policies governing housing supply (i.e. Policies SS1 and SS6 in this instance) are automatically 'out of date'.

6.71 With regards to limb i of Paragraph 11 d), footnote 7 of the Framework identifies designated heritage assets 'assets of particular importance'. It is considered that a small-scale residential development would have no significant harm on the setting of the designated heritage assets. Indeed, it has been demonstrated that there is an enhancement (as set out above). Therefore, it does not provide a clear reason for refusing the development in accordance with the policies in the Framework.

6.72 Accordingly, the 'tilted balance' applies in accordance with paragraph 11 d) ii of the Framework – i.e. planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This means that decision taking is weighted in favour of the proposals.

6.73 Given the housing shortfall and status of settlement boundaries as explained above, any harm from the non-compliance with Policies SS1 and SS6 cannot attract anything more than 'limited' weight.

6.74 It is the Applicant’s case that there is no identified harm that comes close to reaching the threshold of significantly and demonstrably outweighing the benefits.

6.75 Table 1. below provides the position of the planning balance and positive/negative weight to be given:

Matter	Positive	Negative
<i>Development beyond the settlement boundary (Policies SS1 and SS6)</i>		Limited
<i>Enhancement to the character of the area, including local landscape character, visual effects and experience of public rights of ways.</i>	Significant	
<i>Enhancement to the setting of the heritage assets and the Conservation Area.</i>	Significant	
<i>Biodiversity Net Gain significantly in excess of 10% (i.e. 103.26% in habitat units and 100% in hedgerow units).</i>	Significant	
<i>Provision of market housing and that delivery of the site can be built out quickly helping to address the shortage of deliverable housing land in Basingstoke and Deane.</i>	Moderate	
<i>Construction jobs/ additional local spend and vitality of the village / wider economic benefits.</i>	Limited to Moderate	
<i>The health and safety benefits of the removal of asbestos from the existing buildings and remediation of any potential contamination.</i>	Limited to Moderate	
<i>The benefits with regards to reduction in impermeable area and improvements in the local drainage regime when compared to the existing situation.</i>	Limited	

Table 1. The Planning Balance

6.76 Furthermore, there are no significant site constraints or adverse impacts that cannot be mitigated in terms of ecology, highways and access. These are afforded ‘neutral’ weight in the planning balance.

- 6.77 Whilst the ‘tilted balance’ applies in this case, we also consider that the scheme accords with the Development Plan as a whole.
- 6.78 A conflict only arises against policies that are ‘out of date’ (i.e. Policies SS1 and SS6) and which only ‘limited’ weight can be afforded. There is minimal harm from the conflict with these policies, particularly as the proposal is appropriate with regards to the settlement strategy, is small-scale development and is not ‘isolated’ development. The proposal complies with the remaining policies in the adopted Development Plan.
- 6.79 As such, this is an application that accords with (rather than breaches) the Development Plan when taken as a whole in accordance with Section 38(6). In this instance, there are no material considerations of sufficient weight that indicate a decision other than in accordance with the Development Plan. Moreover, it is considered that there are tangible benefits of the proposal that weigh further in favour of the proposed development (as explained above).
- 6.80 Indeed, even if the Council were to come to a different view that the proposal does not accord with the provisions of the Development Plan when considered as a whole, then paragraph 11 d) of the Framework still applies and material considerations indicate that permission should be granted. The merits of the proposal are compelling.

## 7.0 Conclusion

- 7.1 This Planning Statement supports a full application for the demolition of the existing buildings and replacement with new residential dwellings, together with parking, landscaping and any other associated works and infrastructure at Rookery Farm, Monk Sherborne.
- 7.2 As set out in this Statement the Council cannot demonstrate, as required by the Framework, a five-year supply of housing and so the 'tilted balance' within paragraph 11 d) ii prevails.
- 7.3 The assessment – in particular with regards to designated heritage assets - demonstrates that the application of policies in the Framework do not provide a clear reason for refusing the development.
- 7.4 The principle of the providing new built homes on the site is acceptable given the significant material considerations and benefits. These are as follows:
- The delivery of much needed new housing, contributing to help address the Council's housing shortfall and towards the Government's objective of boosting significantly the supply of new homes.
  - Due to its scale, the site can be built out quickly helping to address the shortage of deliverable housing land in accordance with paragraph 69 of the Framework.
  - A 70% reduction in built footprint on the site and the proposed development will enhance the rural character of the area.
  - Enhancement to the rural setting and significance of the Conservation Area and Listed Buildings.
  - The biodiversity metric results in a considerable net gain of 103.26% in habitat units and 100% in hedgerow units.
  - Support and enhance the vitality and viability of the nearby village facilities.
  - Local economic benefits in the form of construction jobs and an increased economically active population.
  - The betterment to the exiting situation with regards to surface water drainage and the removal of asbestos from the existing buildings and remediation of any potential contamination.
- 7.5 In all other respects, it is considered that, in principle, there would be no adverse impacts from the proposed development.
- 7.6 Given the above, it is clear that the there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme in providing residential development in this location (in accordance with paragraph 11 d) ii of the Framework). The proposed development also still accords with the Development Plan when taken as a whole.
- 7.7 The merits of the proposed development are overwhelming and the Applicant therefore respectfully requests that planning permission be granted at the Council's earliest opportunity.



Appendix A – Appeal Decision Ref: APP/H1705/W/22/3270565



## Appeal Decision

Inquiry opened on 10 January 2023

Site visit made on 19 January 2023

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/03/2023

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Appeal Ref: APP/H1705/W/22/3302752

The Street, Bramley, Hampshire RG26 5BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
  - The appeal is made by Holly Gardiner of Wates Developments Ltd. against Basingstoke and Deane Borough Council.
  - The application Ref 21/03758/OUT, is dated 7 December 2021.
  - The development proposed is for the demolition of one dwelling and erection of up to 140 dwellings and a community building of up to 250sqm under Use Class E, together with sports and leisure facilities.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of one dwelling and erection of up to 140 dwellings and a community building of up to 250sqm under Use Class E, together with sports and leisure facilities. at The Street, Bramley, Hampshire RG26 5BP, in accordance with the terms of the application, Ref 21/03758/OUT, dated 7 December 2021, subject to the conditions set out in Schedule 2 below.

### Preliminary Matters

2. The application was made in outline with all matters other than access reserved for later determination. While references were made to masterplans and other details in the Design and Access Statement (DAS), these have been treated as illustrative.
3. Following screening by Basingstoke and Deane Borough Council (the Council) and by the Secretary of State, the proposed development was considered to fall under the criteria of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The planning application for the appeal scheme was therefore accompanied by an Environmental Statement (ES), dated March 2022. The ES was produced in accordance with the Regulations, and I am satisfied that the ES reasonably complies with the provisions of Schedule 4 of the EIA Regulations. I have taken into account the Environmental Information, as defined in the EIA Regulations, in determining the appeal.
4. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit the appeal.

The Council confirmed in a letter to the appellant, dated 11 October 2022, its putative reasons for refusal. These comprised matters of landscape character, visual quality and sense of place; heritage concerns, in relation to listed buildings and the Bramley and Bramley Green Conservation Area (the CA); access for pedestrians; store servicing; drainage and infrastructure. A revised plan for the access, the principle of which was accepted, led to the County Highway Authority withdrawing its concerns and subsequently to the Council not pursuing reasons for refusal concerning the access and store servicing.

5. The Inquiry sat for 8 days and heard from the main parties as well as Councillors representing the Ward, District and Parish Councils. Statements of Common Ground (SoCG) in relation to planning matters; landscape; housing land supply; highway matters, with Hampshire Country Council (HCC); and drainage matters, with Thames Water, were agreed between the main parties and relevant consultees. The Council subsequently presented evidence only on landscape, heritage, housing land supply, drainage and planning matters. Nonetheless, issues regarding highway matters and infrastructure remained a significant concern for local residents and Councillors.
6. In addition to two unaccompanied visits I made to view the roads surrounding the site and the wider context of Bramley and Bramley Green, an accompanied visit was made with representatives of both main parties and local councillors. This included the opportunity to visit Stokes Farm, St James Church and the site itself and to take views from the surrounding roads and footpaths.
7. A planning obligation by unilateral undertaking, made under s106 of the Town and Country Planning Act 1990 (the UU), was submitted after closing the Inquiry. This made provision for among other matters, affordable housing, community and sports facilities, travel plans, a rights of way contribution and highway works. It is noted that the Council consider that the contribution to Public Rights of Way (PRoW) is necessary but the appellant does not, and in such circumstances the Council would retain their putative reason for refusal. This will be considered later in this decision.
8. Two appeal decisions on land near to the site relating to a solar farm and a battery storage facility were decided after closure of the Inquiry. The main parties were given the opportunity to comment on these.

#### Main Issues

9. I consider the main issues in this case to be:
  - Whether the proposal complies with the development plan and if not, whether there are any material considerations that would justify a departure from it, including the extent of the housing land supply shortfall;
  - The effect of the proposal on the landscape character and appearance of the area, including the settlement pattern;
  - The effect on heritage assets;
  - Whether the proposal makes adequate provision for foul drainage and other infrastructure requirements; and
  - The effect on transport capacity and highway safety.

## Reasons

### *Background and policy position*

10. The appeal site lies to the western edge of Bramley, a village defined in the Basingstoke and Deane Local Plan, adopted 2016 (the Local Plan) as a larger settlement for which there should be appropriate levels of growth. Policy SS1 sets out anticipated growth with housing to be delivered through development within existing settlements, primarily Basingstoke but also the larger villages, and through allocated or exception sites. In the Local Plan at that time the need for Bramley was envisioned to be at least 200 homes<sup>1</sup>, which could be brought forward on multiple sites or one phased site. There have been a number of recent housing developments in the area, the largest being 200 houses at St James Park to the northeast of the site off Minchens Lane. The Parish Council identify some 351 houses that have been developed in proximity to the appeal site, and a considerably greater number to be delivered within the wider Parish.
11. Bramley benefits from a Neighbourhood Development Plan, made in 2017 (the NDP), which identifies among other matters, the settlement boundary, some key views and vistas, a vision for housing delivery as well as further facilities seen as needed or desired by the local community. The settlement boundary to the western side of Bramley, Figure 6a of the NDP, is drawn tightly around the houses and businesses comprising properties along Minchens Lane, The Street and extending into the area around St James Church. Accordingly, the appeal site, proposed on fields of approximately 21.4 hectares (Ha) located behind The Street, lies outside of the settlement boundary, where Policy H1 of the NDP seeks that development will only be supported where it is in accordance with the relevant Local Plan policies for housing in the countryside.
12. The relevant policy is Policy SS6, which allows for development only where housing would meet one of seven criteria, including exception sites. It is common ground that the appeal site does not comply with this policy.
13. While the Local Plan does not therefore envision development on unallocated, greenfield sites outside of settlement boundaries, the Council accepts that they cannot meet their five-year housing land supply (HLS) requirements. While I deal with the extent of that shortfall below, this does mean that policies which are most important for determining the proposal are out-of-date, as set out in the National Planning Policy Framework (the Framework)<sup>2</sup>. The Local Plan addresses such circumstances in Policy SD1, and the Council, in this case, accept that some housing development will have to be delivered on unallocated, greenfield sites.
14. In terms of the spatial strategy for housing, the most important policies are agreed by the main parties to be Local Plan Policies SS1, SS5 and SS6 and NP Policy H1. Other policies relating to landscape, heritage and infrastructure are dealt with later.
15. Although not argued by the Council, a strong concern expressed by local Councillors was that the spatial strategy, as regards Bramley, has been achieved and that housing, if required should be delivered elsewhere. While this related partly to infrastructure and road network capacity, it also

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<sup>1</sup> Policy SS5

<sup>2</sup> Framework Para 11

concerned, as set out above, the Local Plan promotion of ‘at least 200 houses’ for Bramley; this has been exceeded. As a result, the proposed housing in this scheme would exceed the minimum amount set out in Policies SS1 and SS5.

16. This concern is detailed in the Preface and elsewhere within the NDP and would appear to have contributed to the decision to not allocate any sites within the Plan<sup>3</sup>. There is logic to the development plan seeking not only to focus development on the larger towns and villages, but to assess their needs and spread housing development across the centres in accordance with those needs and sustainability criteria. However, towns and villages require certain levels of housing and growth to support or increase the provision of services and facilities, be that retail or leisure facilities, and the closure of schools, shops, pubs and other facilities in villages due to lack of demand or economic viability is evidence of that. Consequently, to focus all of development into only one of the centres may be to the disbenefit of others where such housing may be necessary for the vitality of that centre.
17. In this context, it would appear that the Council, in drawing up the Local Plan, assessed the needs of Bramley against the level of facilities and the identified levels of housing need, at that time some 72 households, to come up with the figure of 200. However, quite rightly they did not identify this as a maximum, and it is clear that the level of housing need has increased in Bramley<sup>4</sup>.
18. The expectation of 200 houses cannot be considered a maximum and the proposal here must be assessed on whether it represents an appropriate level of growth and whether it accords with relevant policies for protection of the countryside, heritage assets and other issues. These are dealt with in the main issues that follow, but I consider that there is no compelling evidence before me to suggest that delivering in excess of the minimum levels for Bramley would fundamentally harm the spatial strategy or deprive other centres of necessary growth.
19. Consequently, while development outside of the settlement boundary would conflict with Policies SS1 and SS6, the approach I take is to assess compliance with a range of policies most important for determining this proposal and consider these against the principles of Local Plan Policy SD1 and the policies of the Framework taken as a whole to determine whether the acknowledged conflict with the development plan’s **spatial strategy, specifically development** outside of the settlement boundary in the countryside, and any other harms are determinative in this case.
20. Although the Council are developing an emerging Local Plan update, it was common ground between the main parties that this is not at a sufficiently advanced stage to carry weight in relation to this appeal. I see no reason to disagree.

### *Housing Land Supply*

21. A material consideration in how such policy conflict must be assessed is the Framework and in particular the five-year housing land supply (5YHLS) which, to support the objective of significantly boosting the supply of homes, should be clearly set out in planning policy.

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<sup>3</sup> NDP Para 5.23

<sup>4</sup> The SoCG confirms that the number of households on the housing register with a verified local connection is 102.

22. Although it is common ground that the Council cannot currently demonstrate a 5YHLS, the main parties do not agree on the extent of the shortfall. The Council recently published their Annual Monitoring Report (AMR). There are minor differences between the main parties regarding start dates and lapse rates, but it was accepted that these were of minor importance. The principle differences arise in relation to whether specific sites can be considered deliverable.
23. The Framework glossary confirms that 'deliverable' includes all sites with detailed planning permission, or, for non-major development, sites with planning permission, unless there is clear evidence that homes will not be delivered, or major development with outline permission or allocated sites where there is clear evidence that housing completions will begin within 5 years.
24. To summarise the party's positions leading into the round table discussions held at the Inquiry, the Council considered there to be a moderate shortfall of a 4.6 years' supply and the **appellant, a severe shortfall of 3.71 years' supply**. During those discussion, and in their closing statement, the Council accepted that the actual figure may be somewhere between the two.
25. To understand the level of shortfall I have reviewed the disputed sites. It is important to note that such an assessment can only be based on the evidence presented at that time along with some judgment of the likely outturn, which will change over time. Such assessments must always, therefore, be made on a case specific basis.

*Sainfoin Lane*

26. This is an allocated site for 32 houses. Although application was made in December 2021 it does not have planning permission. The Council report that the developer has committed to delivery starting in 2023/24, but the appellant notes the absence of permission and refers to significant technical objections.
27. I have some detail on the technical challenges on the site, and note those identified regarding landscape and highways. In such circumstances, clear evidence is needed to confirm that housing will be delivered within the five years, and in absence of a planning permission, and noting the delay since the application was made, this is of importance to show that the site is deliverable. To that end, the Council have provided little other than the **developer's** estimates, and I consider that the site, at this time, cannot be considered deliverable.

*Elmdene and Fairholme Road*

28. This is a site for 13 houses for which planning permission was granted in February 2022. While I note the appellant refers to a previous permission that was not implemented and that there has been over seven years without development progressing, there is no clear evidence that homes will not be delivered as identified by the developer. I consider that this site is deliverable.

*Upper Cufaude Farm*

29. This is a large, allocated site proposed to deliver up to 390 units. The Council has identified that the developer has just reached completion of another

allocated site and is moving onto this with a view to build out at a similar rate, and they predict some 190 houses in the five-year period.

30. Nonetheless, the appellant notes that there have been no application to address reserved matters or deal with the pre-commencement conditions and they consider that the trajectory is too optimistic.
31. This is clearly a deliverable site, but evidence is still required to demonstrate the quantum of housing that will be achieved. This site has outline permission, and a signed legal undertaking in 2021, and on the Council evidence it is likely that, on completion of their existing development at Vyne Park, the developer will focus on this site. This may mean a start date in 2023, but reserved matters are still required. However, the delivery of housing, at a reduced rate, is anticipated for 2024/25. In absence of a reserved matters application, I do not consider that there is clear evidence that such a programme will be achieved, albeit some housing is likely to be delivered on the site. As such, I consider a **year's** delay to be a reasonable estimate. Consequently, although deliverable, I find this site likely to deliver some 120 units in the five-year period.

*Manydown*

32. This is an allocated site for up to 3,400 houses, of which the Council suggest delivery of some 570 within the five-year period. This site represents the largest point of disagreement between the parties and the appellant argues that there is a long history of delays. They point out that there is a highly complicated planning permission, no developer currently associated with the site and a need for multiple developers to build out at the proposed rate. They suggest this indicates that the site is not deliverable.
33. The Council accept that the site had previously stalled and that the permission is a complex one. However, while they note that Condition 5 has a cascading set of requirements necessary before reserved matters are resolved, they consider many had been addressed and what is described as a master developer has been involved since 2019. As a result, they point to a recently approve planning statement<sup>5</sup>, which includes a 15-year programme of delivery with commencement this year. Despite this, they accepted that the challenges on the site may mean some delay and that 570 may be optimistic.
34. This is an allocated site with permission but awaiting completion of reserved matters, and as such, evidence is required that housing will be delivered. I am satisfied that the Council has shown recent progress, which is indicative of a step change in the deliverability of the site. The involvement of the master developer, while not strictly a housebuilder, is nonetheless an important step in producing planning statements, addressing infrastructure requirements and moving the reserved matters applications forward.
35. However, I do not consider that the evidence provided to me is sufficient to justify the relatively early start to delivery and the rapid increase in numbers. Consequently, while I accept that the site is deliverable, there is likely to be at least a year's delay in resolving matters. This would need to include approval of conditions 5 and 7, the temporary access, required framework submissions and other elements of the outline permission<sup>6</sup>, as well as seeking the

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<sup>5</sup> ID16i

<sup>6</sup> ID16ii



involvement of a range of housebuilders. A start date of 2025/26 would be more realistic and would suggest delivery of approximately 250 units on this site.

*Andover Road*

36. This is a site for 14 houses, which has outline permission and applied for reserved matters approval in July 2021. It would appear to me that in addition to other issues, the need to address nutrient impacts thorough confirmation of neutrality remains an issue. Despite some reassurance from Councillors, there is no substantive evidence before me that this has, or can be resolved.
37. I also note that previous AMRs have considered this site to be non-deliverable and I have no clear evidence to explain why circumstances have changed. Based on the evidence presented to me, I consider that this site is not deliverable at present.

*Evingar Road*

38. This is an allocated site with a hybrid permission which includes 60 houses and a reserved matters application submitted in May 2021. The appellant suggests that this site has significant constraints and has stalled.
39. Nonetheless, the Council argue that there is progress and that the issue of nutrient neutrality has been resolved, albeit no evidence was provided on this. However, a developer is involved who has confirmed a trajectory for delivery starting 2023/24.
40. This is a site that requires clear evidence of deliverability, and in absence of a decision on the reserved matters, and no timetable presented to me of when that might happen, it seems unlikely that housing could be delivered within the coming financial year. Nonetheless, at only 60 houses, even were the start of delivery to be delayed for two years, it would still be built out within the five-year period. With developer involvement, progress on reserved matters and a realistic build out rate, I consider that the site is deliverable.

*Aldermaston Road*

41. This is a site with outline permission for 21 houses. The site is reportedly owned by Homes England and cleared and ready for development. Nonetheless, the appellant notes that it has been marketed with no developers choosing to take up the option.
42. While this site may appear to have a realistic prospect of delivery, the failure of the offer to the market suggests that more evidence is needed to show that it remains deliverable, especially as it was agreed that Homes England would not develop it independently. On this basis, I find that this site cannot be considered deliverable on the basis of the evidence provided at this Inquiry.

*Conclusion on HLS*

43. Such assessments are of their time and cannot be entirely precise, but my assessment of deliverability, made against **the Framework's** expectations, are that there are likely to be some sites that cannot achieve **the Council's** suggested build out rates. Nonetheless, there is sufficient evidence of progress on others to confirm that they can be considered within the assessment of the 5YHLS. To that end, my assessment would suggest a figure around 3,700



which would represent around a 4.1 year supply. I note the Council felt the shortfall was moderate and the appellant, severe. I also note that in the Station Road development in Oakley<sup>7</sup> a similar level was found, which was '**broadly accepted**' to represent a significant shortfall.

#### *Landscape Character and Appearance*

44. The appeal site comprises a large area of agricultural land immediately to the west of the rear gardens of houses along The Street. Notwithstanding the outline application, the issue of the nature of the scheme, for example its layout and design features, was discussed throughout the Inquiry. In particular, the **appellant's** assessments, including that of landscape character and urban design, were based on an illustrative plan in the DAS. Such plans are not binding and at reserved matters stage alternative proposals could come forward modifying details of the layout, design elements, materials or landscaping for example, promoted in the earlier stage of the scheme.
45. On this basis, the Council questioned whether such reliance could be placed on this illustrative proposal. Outline applications with such matters reserved will always have this issue. The responsibility lies with the applicant or appellant to demonstrate that a scheme of suitable quality can be delivered on the site.
46. While the Council suggest that they may not ultimately have control if a different scheme is presented that does not reflect that used in the assessments, I consider that this concern is overplayed. Councils do have the opportunity during pre-application discussions and any subsequent application for reserved matters to address the case put for any changes and consider each matter against the development plan. While I accept that the refusal of a reserved matters application may ultimately lead to an Inspector taking the final decision, the responsibility still lies with the appellant to show how any changes they may promote would still achieve the high quality of design and the appropriate protection of any specific features considered at the outline stage.
47. In my assessment of both landscape and heritage matters, it is clear that there are some key design and layout choices promoted that would need to be respected if future reserved matters applications were to be successfully made, and which would clearly, if not respected, provide reasons to refuse an application. Even in absence of a parameters plan or similar, this would have to include the areas of open space, the principle of the layout, the proposed absence of any buildings over 2.5 stories and, taking into account the general character of the village and its location, the approach to the materials proposed.
48. On that basis, one of the clear design decisions in this case is the extensive provision of large areas of public open space, leisure and recreational facilities, restricting housing to only approximately a quarter, 24%, of the site. The housing, community facilities and community building are proposed in the DAS to be in the eastern part of the site adjacent to the settlement edge, with the surrounding area to the west and south identified as community orchards and meadows with retained and reinforced hedgerow and tree planting.

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<sup>7</sup> APP/H1705/W/21/3269526

49. Currently, the appeal site comprises four large expansive open fields divided by hedgerows. There is only a gentle slope across the site, which remains relatively flat resulting in a visually contained site, other than from immediate local views associated with the public rights of way that lie to three sides of the site, and from the rear of the properties along The Street.
50. It is common ground that the site is not a designated landscape, nor is it **considered a 'valued landscape' in the terms of the Framework**<sup>8</sup>. Nonetheless, such areas of countryside do have a value both in landscape and aesthetic terms and in this case, in relation to the setting of the village itself, the conservation area (CA) to the south and to other listed buildings.
51. At a County level the appeal site is part of the North Hampshire Lowland Mosaic, with the landscape to the east and north of the appeal site classified as being in the Loddon Valley and Western Forest of Eversley character area. At a local level, the most recent assessment is the Basingstoke and Deane Landscape Character Assessment, 2021 (the BDLCA), which identified land to the west of Bramley, including the appeal site, as LCA 4, North Sherborne, and land to the north, east and south of the appeal site as LCA 6, Loddon and Lyde Valley.
52. The appeal site is reflective of a number of the key characteristics for this area as set out in the North Sherborne LCA including the pattern of arable farmland within an undulating landform. Just off site are further elements including characteristic woodland copses and a network of footpaths. The site is a contributor to the LCA strategic aim of conserving the rural pattern of farmland.
53. The BDLCA also considered Bramley with Bramley Green, observing that it is a settlement comprising a number of older parts, once isolated but now absorbed into the larger settlement. While noting the introduction of the railway, settlement growth is associated with housing built in the latter half of the 20<sup>th</sup> Century and into the 21<sup>st</sup> as modest scale urban extensions. It further considers that the north-western edge and setting, which includes the appeal site, is relatively flat with large scale, open fields, although smaller nearer the church, and with large steel pylons as a notable and detracting element associated with the sub-station at Bramley Frith Woods. The Brenda Parker long distance footpath that runs along the northern edge of the site is surfaced at this point providing access to this sub-station.
54. Among the key issues identified for this LCA is the pressure from housing development, including extensions to the existing urban edge such as at Bramley, among other settlements. However, it does state that new development should be associated with the existing settlements and should respond to the existing urban edge, here identified as being **'soft' and well-integrated** into the surrounding landscape.
55. In the Bramley Village Character Assessment the area to the south of the appeal site is classified as Area A, (Silchester Road/The Street passing through the conservation area), whereas the area to the east of the appeal site is classified as Area B (The Street past the conservation area toward the station).

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<sup>8</sup> Framework para 174

56. Set in context, the properties to the part of The Street which adjoins the appeal site present a mixture of styles and heights with generally mature domestic gardens, with a range of boundary treatments, some, such as at Stocks Farmhouse, relatively open to the adjacent fields. Although the main parties' views differed on this, my own view is that the experience of the settlement edge taken from the surrounding footpath network here is one of a relatively soft transition to the agricultural character, where the housing and village is not a strongly perceived or hard and defined feature. It contributes to the characteristics of the landscape and the setting of the settlement.
57. To the southern side, there are smaller fields and more extensive hedgerows and other vegetation towards the older parts of the settlement comprising the CA and the church. Nonetheless, the church tower is viewed from longer distance at points on the Brenda Parker Way but also on approach along footpaths to the south and west of the appeal site. Two further listed buildings, Stocks Farm and Middle Farm are found along the eastern boundary of the site and the Council argue that their settings also contribute to the landscape value of the appeal site.
58. The appellant presented a Landscape and Visual Impact Assessment (LVIA) as part of their application and this was reviewed and updated by their witness to the Inquiry. A number of permissions and appeals were referenced including the St James Park development<sup>9</sup>, the redevelopment of land adjoining Clift Surgery<sup>10</sup> and the Station Road development in Oakley, a greenfield development of 110 homes with surrounding footpaths, a CA and nearby listed buildings; this scheme was also promoted by the appellant.
59. These assessments concluded that the proposal has been landscape led, referring to the level and quality of open space proposed, and while finding the site enclosed and of medium sensitivity, accepted that introducing housing to a greenfield site inevitably leads to some localised harm.
60. The Council argue that the site would be harmful in landscape and visual terms but would also harm the urban setting of the village, a point addressed by the appellant with evidence on the proposed design and layout, albeit within the context that these remained reserved matters.
61. Dealing with the settlement pattern and urban design point, it was apparent that the Council view was that, even restricted to the eastern side of the site, the proposal would be of a depth incompatible with the current linear form found along The Street, which they considered to be the focus.
62. It is clear that Bramley is a sum of three distinct parts, Bramley around the Church, the central part around the level crossing and Bramley Green to the east. While these have coalesced and the village expanded, these core elements, and in particular the areas of Bramley and Bramley Green covered by the CA, retain a distinct historic character. The presence of the large army base to the south has resulted in a sweep of development rather than a purely linear form between these elements.
63. Consequently, I find **the Council's** approach somewhat limited when the development proposed would form part of the accepted agglomeration of elements that make up present day Bramley. Development involving cul-de-

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<sup>9</sup> 14/01075/OUT

<sup>10</sup> APP/H1705/W/22/3300098

- sacs or perimeter blocks is evident in locations all around the settlement, including relatively close to the appeal site, such as Beaurepaire Close or Ringshall Gardens, and is the form of the more recent development, such as St James Close or Cortland Drive. As a consequence, development at depth behind the main road through the village is not uncommon.
64. Nonetheless, this would represent a significant incursion into the countryside to the rear of The Street, and, as noted in the Landscape Sensitivity Assessment for Basingstoke and Deane (2021) (the LSA) development of the appeal site (BRAM001)<sup>11</sup>, would be considered inconsistent with the general pattern of the settlement and the existing pattern of ribbon development along The Street.
65. I took a number of opportunities to walk around the area, and the experience of the village when on The Street, Minchens Lane or the surrounding footpaths is of a rural settlement. There are strong links to open spaces from The Street, for example, or to open countryside elsewhere. These root it in its rural setting. While the appellant argues compliance with national design guide expectations, such findings are dependent on reserve matters, and while I do not doubt that a high quality could be secured in terms of layout or materials, the housing proposed would affect that experience, some connections to open countryside would be eroded and there would be some harm to the setting from this proposal.
66. Turning to landscape character, the methodology adopted by both main parties was generally agreed, although they reached different conclusions. The appellant found the site to be of medium sensitivity increasing to high only at the southern edge, and took an elemental approach to effects, finding major/moderate and negative effects on the eastern part of the site, noted as being logical considering the introduction of housing on a greenfield site here, while effects on the wider landscape, assuming some benefits from new planting, would be minor.
67. The Council argued that the appellant had underplayed the existing value of the landscape, notably in relation to its role in the setting of heritage assets, and considered its sensitivity to be high. However, the principle point of difference was in relation to the treatment of the open space associated with the development. The Council found this would be of a more suburban and managed character and significantly more harmful than the **appellant's** view that the proposed planting, meadows, orchards and wetland features would be of neutral or even positive value. The Council further argued that the value of the site was such that there was no capacity to accommodate housing<sup>12</sup> or the associated open space and finding the landscape effects to be permanent, major/moderate negative with a significant level of change across the whole of the site.
68. There are two matters to address here before considering my own assessment of the landscape effects of the proposal. Firstly, the proposed scheme, albeit in outline form, has obviously sought to respond to the sensitivity of the site. The large areas of open space proposed and the focus of housing to the northern and eastern part of the site is clearly an attempt to focus the acknowledged harmful effects of introducing housing in a greenfield location to the area away

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<sup>11</sup> CD5.4

<sup>12</sup> Notwithstanding **the Council's planning** witness conceding that some linear form development could take place to the rear of The Street

from the CA and listed church to the south and provide a buffer of sorts from the footpaths surrounding the site. It is necessary therefore to address some elements of the proposal separately.

69. Secondly, as the site is not nationally designated for landscape, guidance from both GLVIA3<sup>13</sup> and more recent guidance from the Landscape Institute<sup>14</sup> are useful, but they can only provide a framework for professional judgment.
70. The existing landscape is a managed one; agricultural use will change the nature of the fields throughout the seasons and there will, at times, be evidence of activity within those fields. However, entering into this landscape from access points around the CA, Middle Farm and on Brenda Parker Way, there is a relatively fast transition to a rural character. The village and sounds associated with it fade quickly and the expansive open nature of the fields provide an experience of entering onto the open countryside. Filtered views mean there remains some slight urban influence, but along the path to the west of the site, for example, the overriding experience is a measure of isolation and tranquillity.
71. There are some detracting elements, including the pylons, but I did not find these materially reduced the experience of the landscape here.
72. The introduction of housing would extend the urban influence further into this area, reducing both the strong rural character and elements of tranquillity experienced. I fully accept that there will be a measure of protection to the footpaths through the extensive open space proposed. I also disagree with the Council that such areas must necessarily be harmful to the degree suggested. They would be managed, with paths and possibly benches, marked play areas or equipment. However, while their form would not be as intrusive as housing, and the network of field boundaries would be retained, such features and the associated intensification in use, would materially change the rural character of the site.
73. I visited the other areas of open spaces around the village, including that at Bramley Green. I accept that such open space can retain a more rural character to the urban areas, that is exactly what these areas provide for Bramley. However, at Bramley Green, and in contrast to the open space proposed for this scheme, the space is influenced by the Sherfield Road and the access roads crossing it. It sits more naturally as a functional but beneficial element of the village setting, whereas in the appeal scheme, while providing some mitigation for the introduction of housing, the space brings with it further harmful landscape effects. I accept there are other benefits from this space which I address below, but in landscape terms within this area, which is strongly reflective of the wider landscape character, it cannot be considered of neutral or positive effect.
74. I have considered whether, with the recent decisions on appeals relating to a solar farm<sup>15</sup> and a battery storage facility<sup>16</sup>, there would be a cumulative effect, but note those found the relatively low level and screened structures to have only a localised impact.

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<sup>13</sup> Guidance for Landscape and Visual Impact Assessment – Third edition - 2013

<sup>14</sup> Technical Guidance Note 02/21 – Landscape Institute

<sup>15</sup> APP/H1705/W/22/3304561

<sup>16</sup> APP/H1705/W/21/3289603

75. Overall, I consider that there would be major/moderate negative effects where the housing is proposed and moderate negative effects associated with the open space. I therefore consider that the **appellant's** conceptual approach that the housing would have the typical but inevitable effect of housing within greenfield areas to be essentially true but find that they have underplayed the landscape effects
76. Turning to visual effects, the NDP sets out a number of important viewpoints, 1 to 6, and vistas, 4, 4a and 5, that they considered contribute to the character and **rural setting of Bramley**. **These are reflected in the appellant's chosen** viewpoints, 1-11, a number of which were developed into photomontages, albeit drawing on the illustrative layout. Roughly analogous viewpoints were also assessed by the Council, A-I.
77. A Zone of Theoretical Visibility was produced, and I have no challenge to its accuracy. It confirms that the landform and location of the site means that visual effects are relatively localised. Nonetheless, the site is seen in views from the rear of houses and from the perimeter footpaths that surround the other three sides of the site. I am satisfied that the appellant has identified and assigned sensitivities to the respective receptors in their LVIA and the updated conclusions by their witness.
78. A range of findings are presented in terms of the effect of the proposal. A similar argument remains between the main parties that where an important view or vista is noted, the illustrative layout has generally provided an intervening area of open space as a buffer from the housing, which the appellant considers is effective mitigation while the Council consider these areas to be significantly harmful in their own right.
79. As such, the appellant argues that while the housing would be visible in some views the effects would reduce over time and only one viewpoint, that on the Brenda Parker Way, would experience long-term significant visual effects, although this is one of the NDP important viewpoints. Thus, they find that the proposal would respect the important views and vistas and would complement the existing character of those views. The Council find these harms to be more extensive, ranging from medium high to very high, with the only medium effect being for the lower sensitivity residents along The Street.
80. I walked the footpaths as part of the accompanied visit, but also took the opportunity to visit when the sun was rising to gain a better understanding of the views. As a result of the large fields, extensive views are available across the site from the footpaths, either through gaps in hedgerows or where they run within the field boundaries. These views pick upon features such as the church tower and a generally filtered view of the rear of housing to The Street and Minchens Lane. Some buildings stand out more than others and, in some views, the more recent development of St James Park can be seen.
81. The NDP gives value to these views over the appeal site for an obvious and understandable reason that they provide the open vista as one leaves the urban area. These open views are revealed as you emerge from the area around Middle Farm, walk from or towards the church or appreciate the long views through the relatively sparse hedgerow along Brenda Parker Way.
82. While the housing proposed would be relatively well-contained by the existing hedgerows, and over time the planting would screen it more, there are still



- long sections of the surrounding footpath network from which the proposal would be seen as an extension of the existing settlement edge, and from some points, truncation of the current open views experienced.
83. I find it hard to accept that the introduction of meadow and orchards would complement these existing views, the truncation and erosion would exist, but also cannot fully accept that, while representing a visual change, it would be harmful to the great extent promoted by the Council. As such, I consider that the proposal would fail to complement the important NDP views, but the harm would be moderate in all but the particular case of NDP viewpoint 6 where housing, if developed in line with the illustrative layout, would be prominent and in the foreground.
84. Before drawing these matters together, there was some discussion over the **findings of the Council's own LSA**, in which the appeal site was considered as Site BRAM001. As part of the development of their evidence base for the emerging Local Plan, this assessment considered a number of potential sites for development and scored these sites over a range of criteria. This was then summed to find an overall score to inform the landscape sensitivity of the site to development. The scores were subject to review and alteration if specific elements were felt to be over or under weighted.
85. The appeal site generally scored in the middle of the range except for a low sensitivity score for landform and drainage and higher scores for historic value, settlement pattern and intactness. The presence of the footpaths contributed to a maximum score on type of visual receptors.
86. Overall, the site scored 52 and was considered to have a medium landscape sensitivity, but the summary noted the continuum of rural character extending to the west and the inconsistency with the pattern of the settlement, as addressed above. Medium sensitivity is defined as a site with characteristics susceptible to change but which may be able to accommodate development. For context, another site referred to by the appellant in this Inquiry, Station Road, Oakley, was also scored at 45; a lower score but still of medium sensitivity.
87. **The Council's witness questioned whether the exercise had properly weighted** the relevant criteria and noted that the score placed the site at the upper end of medium. However, while this is a relatively broad-brush approach, nonetheless I consider that the findings, in landscape terms, align with the characteristics of the site, mainly due to the relative visual containment and localised effects.
88. Drawing these matters together, there would be the expected harm associated with the introduction of housing on a greenfield site, there would also be harm to the LCA and village setting through the extension of the urban form and loss of agricultural and rural character as well as visual harm to users of the footpaths and to a more limited extent, the existing residents of The Street. The extensive provision of open space would reduce but not remove this harm and as a result the proposal would conflict with Local Plan Policies EM1 and EM10, and NDP Policy D1 in this regard. These policies seek to ensure that proposals are sympathetic to the character and visual quality of the area and respect the quiet enjoyment of the landscape from rights of way, positively contribute to local distinctiveness and protect, complement or enhance the Bramley Character Areas.

### *Heritage Matters*

89. The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess, s66(1). It also requires, with respect to any buildings or land in a conservation area, that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area, s72(1). This statutory duty is further expressed in policy at a local and national level.
90. There are four designated heritage assets as well as some non-designated assets (NDHA) that have been considered. These are the Church of St James, Grade I, Middle Farm, Grade II, Stocks Farm, Grade II, and the Bramley and Bramley Green Conservation Area (the CA). The NDHAs are buildings within the CA. Through the process of planning application, EIA and the appeal, the relevant heritage assets located around the site have been assessed by a number of different bodies and individuals. These included Historic England (HE), **the Council's** Conservation Officer and the two heritage witnesses to the appeal.
91. The Council argued that, in accordance with the principles set out by the Court of Appeal in *R(Wyatt)v Farnham Borough Council [2022] EWCA Civ983* (Wyatt), great weight must be given to HE's position, which found the harm to the CA, Stocks Farm and the Church to lie in the middle of less than substantial (LTS)<sup>17</sup> harm. Notwithstanding **this, the Council's own** officer suggested a greater level of harm to the Church and the CA, while their own heritage witness to the appeal found lower levels of harm to the CA but higher to Stocks Farm.
92. Despite these differences, the Council argue that their cases align to an extent, indicating material harm to the principle historic assets that accords with the great weight given to the views of HE, and contrary to the **appellant's** own assessment, which the Council suggests represented a significant outlier.
93. In this context, the appellant argues three main points. Firstly, that the HE response should not necessarily be given great weight in light of later evidence, and that their responses to the application strayed beyond their remit to the level that they were unlawful. Secondly, that the **Council's** witness employed an unfounded matrix approach that resulted in double-counting; and thirdly, that the witness's reliance on this, the lack of historical information and limited direct appraisal of the site itself, led to an assessment that underplayed the importance of the full range of contributors to the significance of the assets and led to an over-estimation of harm.
94. Firstly, I see nothing of value **in the argument that HE's** advice at the screening stage of the EIA may have differed from their position as a consultee. Such comments are made with very different expectations and tests in mind. However, there is a principle that evidence presented and tested at an Inquiry carries additional weight for a decision maker. Nonetheless, as a starting point, it is my view that evidence provided from an expert national agency, in this case HE, must be given significant weight. As the body that has a direct role preserving and listing historic buildings and providing much of the

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<sup>17</sup> As per Framework paragraphs 199 and 202



- accepted guidance to authorities and applicants on how to consider assessment of those assets, their views are clearly of importance.
95. However, the appellant refers to the High Court Judgement, *Council of the City of Newcastle-upon-Tyne v SSLUHC [2022] EWHC 2751 (Admin)* (Newcastle) and a review of such case law in the Journal of Planning and Environmental Law<sup>18</sup> (JPL) to suggest that such great weight may not hold in the face of expert witness evidence tested at an Inquiry, especially if the statutory consultee's **evidence** was not itself tested.
96. It strikes me that no matter the views expressed in the JPL or indeed that of the High Court, the starting point should be that of the Court of Appeal, in this case, Wyatt. Here, the judgement sets out the significant weight that can be expected to be given to **the advice of an 'expert national agency', and that** if a decision maker departs from that advice, they must have cogent reasons for doing so, noting that this is a basic point derived from a wealth of case law. By further reference to *Visao Limited v SSHCLG [2019] EWHC 276 (Admin)* (Visao), the Council noted earlier case law that suggests those reasons should be **'cogent and compelling'**.
97. **While in Newcastle, 'substantial reservations' are raised regarding whether the** authorities do establish such a principle, it does not seek to resolve the point, but **notes that with 'ample material', a decision maker, an Inspector in that** case, could disagree with the statutory consultee.
98. To my mind this does not address the matter of whether such advice should be given significant or great weight but goes to the requirements for cogent reasons for a decision taker to step away or disagree with it. This is perhaps at the heart of the arguments made in the JPL. Nonetheless, a statutory **consultee's** views should be given significant weight as a result of their direct involvement, expertise and experience in the relevant matters. However, there is no reason why further evidence, and the testing of that evidence by other parties could not aid the decision maker in reaching a different view, only that to do so, that judgment must be explained.
99. While I accept that in their first letter<sup>19</sup>, in addition to their commentary on the significance of the assets, HE commented on the policy approach, which is acceptable, but also on matters of allocation and need, public benefits and compliance with that policy. Such comments on matters of need and compliance would be outside of their remit and expertise, nonetheless, I do not read this as infecting their analysis of the assets. Similarly, their second letter<sup>20</sup> focusses on the assets, and reaches similar conclusions following the submission of further information. I have therefore given their position significant weight but have reviewed the case in light of the further evidence submitted; my findings are addressed below.
100. Turning to the second issue, the **Council's** witness employed a matrix approach, taking the value of the asset as well as the magnitude of change to derive a level of significance, which was then applied as a grading linked to a spectrum of response within the **Framework's** LTS and Substantial Harm categories. I can see the source of such an approach in landscape studies, EIA

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<sup>18</sup> ID22 - Issue 12 2022.

<sup>19</sup> 8 March 2022

<sup>20</sup> 21 April 2022

approaches and that set out in the ICOMOS guidance<sup>21</sup>. The assessment of harm to significance is quintessentially one of judgement and providing a methodology that would appear to deal with the value of the asset, the scale of the change and a calculation of a relative level of significance is superficially attractive.

101. However, a number of clear issues arose when tested, not least that the concept of categorising harm as LTS or Substantial is a function of the **Framework's** approach, which then provides a clear commentary as to the relative weight that arises from these based on the value of the asset. Taking the value into account in assessing the effect on assets must differ from the approach expected by the Framework as it can only lead to counting the value of the asset twice in calculating the weight to be derived.
102. Furthermore, it is clear that the matrix as presented could not lead to a finding of substantial harm for assets listed below Grade I or II\*; this is plainly wrong, and the suggestion of adding a column to allow for this retrospectively is no answer without a full appraisal of the implications for doing so to the methodology as a whole.
103. Nonetheless, at the heart of the methodology is an approach that seeks to identify the asset, assess its significance, and in this case, the contribution made by its setting, and then to assess the effects of the proposed development, and I have drawn the relevant parts of the assessment out to inform **my own, as I have done with the appellant's own evidence on this matter.**
104. It is common ground that the issues in relation to this case concern matters of setting only. The setting of an asset is the surroundings in which it is experienced and is not fixed. Consequently, while in my view, it can be mapped illustratively at a point in time, it cannot be permanently fixed nor can it, for example, be described as a fixed distance to or from the asset. While views will play an important part in assessing settings, other factors, such as historic relationships, are also relevant, and it is reasonable to take account of cumulative change over time.

#### *Bramley and Bramley Green Conservation Area*

105. Designated in 1983, a Conservation Area Appraisal (CAA) was produced following a review in 2003. The two parts of this CA are well separated, and the proposal would have no effect on that part associated with Bramley Green.
106. In relation to Bramley, a range of listed buildings are identified noting the importance of the Church and the open spaces in the village centre and identifying the open countryside to the north as creating an important setting for the village.
107. Although now part of the wider settlement, this original part of Bramley is largely uninfluenced by more modern development, notwithstanding some newer buildings within the CA. Its origin as a hamlet growing into a rural village of some significance is clear with the presence of the Church, the large Vicarage, Grays House, and other higher status buildings such as the Manor House, which forms another important part of the village. The presence of

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<sup>21</sup> ID3 – International Council on Monuments and Sites – Guidance on Heritage Impacts for Cultural World Heritage Properties

Church Farm and Street Farm within the CA reinforces its rural character. The CA map includes key views and vistas which include that out from the churchyard, from the western fields looking towards the Church and from the School House looking north

108. The significance of the CA, although primarily drawn from its architectural and historic interest, notably in the cluster of buildings and spaces around the Church, Grays House, Church Farm and the Old Bells, also depends on its close relationship with the surrounding agricultural land. In this regard, I note the specific inclusion of open land to the north, west and east of the Church within the CA.
109. This land remains as open land, albeit used for grazing and horses, and immediately adjoins the southern field of the appeal site, which itself includes the footpath section running from Middle Farm, and is within the CA.
110. Although it is not clear if the CAA reference to open countryside to the north refers solely to the fields drawn within the CA boundary, I am of the view that the well-established footpaths running within the northern edge of the CA and approaching from the north, as well as views north from the School House mean that the setting of the CA definitely extends out into the appeal site.
111. To the eastern side of the CA lies Middle Farm and a number of associated NDHAs. While intervisibility between the listed building and the appeal site is effectively precluded, there are more complete views with the NDHAs and the footpath emerges from this grouping into the southern fields of the site. Here, the central and southern fields materially contribute to the rural setting of the CA.
112. Longer distance views towards the CA from Brenda Parker Way can make out the Church and other buildings on the northern edge, but not their relationship to the CA as a whole. While the clarity of these view can change during the day and the season, I do not consider they contribute to the experience of the CA in the same way as the relationship to the central and southern fields does.
113. Development within these fields would have a direct effect on the CA where the footpath lies within it and on the rural setting in which the original parts of the village and its Church are experienced. The open land and vegetation along the northern edge of the CA limits intervisibility, particularly from within the historic core, but nonetheless there would be some harm to that setting through an erosion of the open countryside and rural character to the north.
114. It is important that there is a conscious response in urban design terms to the setting of assets, and to this extent, the illustrative plans for this proposal promote the retention of open space including a community orchard within the southern field. There was debate over the acceptability of an orchard here, and while its use may be proposed as a community one and involve increased use and activity of the area, orchards are a feature of traditional agricultural practice and indeed historic maps provide reference to such associated with land now developed around Middle Farm. However, the subtle differences arising from the increased use, potential provision of hard surfacing for walking routes or more manicured approach to land use will erode the rural character somewhat. Development of housing to the central field will increase the urban presence in views from within and on approach to the CA, and while the

effect of this will decrease over time with landscaping, there will be a direct loss of open countryside from this part of the setting.

115. While HE originally found the level of harm to be in the middle of the range of LTS harm, the appellant categorises it at the low end as did the Council at the Inquiry. My own view is that retention of the southern field as open land would be necessary to limit harm to the setting to the lower end of LTS and, in this case, the comprehensive review of the historic development of the village and its surroundings presented at the Inquiry leads me to a slight departure from the views of HE.

#### *Church of St James*

116. This is a Grade I Church, described in its listing as Norman with 12<sup>th</sup> century origins and a number of later additions. This small village church stands within a pastoral setting to the north of the CA. The main entrance, a later porch addition, and the larger windows face south towards the vicarage and the core of the village, while the graveyard to the north and its extension to the west is set on the edge of the countryside. There are a grouping of NDHAs around the School House to the north of the Church and a more recent, albeit sensitively designed Church hall lies a short distance to the east

117. The significance of the Church derives from the architectural and historic importance of the building, and its high value derives not just from its age but also particular physical features of the building. Nonetheless, to understand its function as a village church within a rural context, the setting also contributes. However, while historic mapping shows that the Church once stood in a more exposed area, the introduction of buildings around School House/Old School House and the development of barns to Church Farm and the Church hall itself, have all contributed to **some change in the Church's setting**. It retains its rural, edge of village character, and while its strongest relationships are into the village and the buildings and spaces there, an important relationship remains to the open land to the north, as set out in the CAA.

118. Although the Church and its setting are best appreciated from the western field within the CA and the identified views in the CAA, it, or more particularly its tower, is experienced in a number of views from the north. These are available from existing nearby footpaths, but also development of the site would open views of the tower and there are, as set out above, some views across the whole of the appeal site from the Brenda Parker Way.

119. While the long distance views do not, to my mind, assist in understanding the setting of the Church and its relationship to the village, set as they are within extensive vegetation and with other buildings to the foreground, there is a clear experience for those walking in from the north, west or east on the perimeter footpaths, that you are approaching a rural village with a Church building of some importance set on its edge.

120. The extension of urban character through introduction of housing in the fields on the centre and eastern part of the site would erode that experience, but only as walkers traverse past the development, while the more managed landscapes proposed within the open spaces of the development would alter the experience only somewhat. The Church would be experienced less within an open rural context, and more as part of the wider village. However, these are not substantial changes within the wider context **of the Church's setting**.

The debate over the recent permission for a garage to the north of the Church does not alter my views on this.

121. While HE originally found the level of harm to be in the middle of the range of LTS harm, the appellant categorises there to be no harm, finding that any views would not be illustrative of the historic or architectural interest of the Church. The Council found the impact to be minor, but elevated this to the middle of the LTS range through use of their matrix. My own view is again that retention of the southern field as open land would be necessary to limit harm to the setting, but the footpaths would experience change as set out above. The Church would be experienced less as a rural Church and more as a part of the village, in something of a continuum of the enclosure that has taken place since its origins. For reasons set out above, the harm would be at the lower end of the LTS spectrum, and again I consider that, in this case, the comprehensive review of the historic development of the Church and its surroundings presented at the Inquiry leads me to a slight departure from the views of HE.

#### *Middle Farm*

122. Middle Farm is a Grade II listed farmstead located alongside The Street and sitting at the north-eastern end of the CA. Noted as a timber framed building with 16<sup>th</sup> Century origins the house is no longer a farm and much of the immediate surroundings have been developed, albeit over some considerable period with some being conversion of former barns and considered NDHAs in their own right. A footpath passes just north of the house and enters into the southern field of the appeal site and the CA.

123. Any farmhouse must draw on its relationship to its agricultural lands to inform its historic context. However, the extent of development surrounding the site and its position now on the main road through the village, means that I consider there would only be a very minor change in the experience of the asset, principally for those using the nearby footpath.

124. The significance of this asset derives from its architectural interest, with some artistic and historic interest, the latter, in part, illustrated by a now mostly severed connection with its farmlands. Accordingly, the introduction of public open space to the southern fields would have a limited effect on the appreciation of this asset's role as one of the early farms in the village. I find this to be at the lower end of LTS harm to the significance of Middle Farm. I appreciate **that the Council's witness found this relationship of slightly more value**, although also at the low end of LTS and I note HE did not consider Middle Farm.

#### *Stocks Farm*

125. Stocks Farm is a Grade II listed farmhouse dating from the early 19<sup>th</sup> Century. It is located off Minchens Lane and consequently off the main route through the village. Now in residential use, it is reported to have ceased operating as an agricultural business over 30 years ago. The farmhouse sits in a large domestic curtilage including a pond, swimming pool and tennis court. The garden has an open boundary to the appeal site.

126. Near the driveway entrance is a well preserved, and listed, granary sitting on straddles, while to the north of the farmhouse there are a number of courtyard barns and outbuildings, most now converted to commercial use.
127. **The appellant's review of title** maps show the land associated with the farmhouse as including the northern and eastern fields of the appeal site proposed for housing, while parts of its other lands, including those to the north are now also built on, including the development at St James Park.
128. It is in this context of a loss of a direct link between the farmhouse and its former landholdings that the Council promoted a moderate impact on the setting, translated through their matrix to an impact at the upper end of LTS harm. This is greater than the medium level of harm identified by HE and the low level of LTS harm identified by the appellant.
129. The significance of the farmhouse derives primarily from its architectural and artistic, as well as its historic interest. While the functional links to the farmlands have been separated and patterns of use changed by the conversion of the outbuildings and the farmhouse itself, as well as the introduction of new housing, nonetheless there is a legible relationship between Stocks Farmhouse and the land to the west.
130. As such, while a considerable element of the farmhouse's setting is informed by the relatively intact buildings to the north and by the listed granary to the east, this visual relationship with the land to the west is a component. It is also important to take account of cumulative change over time. Much of the farmhouse lands locally, and with visual links, have been lost either to housing, parking or recreational use; the appeal site is the last remaining direct link and, in my view, this means that this element cannot be discounted when considering the significance of Stocks Farm.
131. I accept that farmhouses can still be appreciated even without direct access to farmlands, Middle Farm is one such case, but those relationships are a part of identifying and illustrating their historic context. Here the proposal would erode that. This is not a matter of designed views, which are rarely an important element of a farmhouse which develops over time according to the needs of the business, with main facades often facing away from the functional areas.
132. As set out above, urban design responses are important in such circumstances, and this is acknowledged **by the appellant's approach as set out** in the illustrative plans. These propose a separation of the housing blocks adjacent to the boundary with Stocks Farm and use of the area for a green corridor and drainage features. This would help retain something of an open character, but this area would not have the same character as the open fields, housing would still be present and the suggestion that a distant view through the site to other open meadow areas as being mitigation is not realistic.
133. However, the relationship of the farmhouse to the land has been significantly altered, partly through development to the north and east, but also the extensive development of the residential curtilage in which it sits. The functional relationship to the farm buildings remains clearly legible, although the visual appreciation of the historic link with the site and surrounding land is now relatively weak. There is no longer a functional link with the appeal site



134. Overall, I consider that there would be harm to the setting of Stocks Farm which would reduce the legibility and appreciation of its value as an important farmhouse within the village. However, the relatively large curtilage and the proposed layout, to be secured later through reserved matters, would retain an open aspect. This would result in harm in the lower part of the range of LTS harm to the significance of the asset, although I concur with the position of HE, not in magnitude, but in that the harm to Stocks Farm would be greater than that to the other assets.

#### *Initial Conclusion on Heritage Assets*

135. The appeal site sits adjacent to a number of heritage assets which are important components of Bramley and which demonstrate much of its historic development as a rural village. While I have found the harm to some towards the lower or even lowest parts of the range of LTS harm, that to Stocks Farm would be somewhat greater, while harm to the Grade I listed church must reflect the greater importance of that particular asset. Harm to heritage assets must be given the considerable importance as weight commensurate with the acknowledgement that heritage assets are an irreplaceable resource.

136. To this extent, the proposal would conflict with Local Plan Policies EM10 2c and EM11 as well as Policy D1 of the NDP. These seek to conserve or enhance heritage assets and protect the local historic environment. It is important to note that the Framework sets out the great weight that should be given to such assets but also that such LTS harm should be tested against the public benefits of the scheme; I address this in my planning balance below.

#### *Foul Drainage*

137. I am satisfied, despite the ongoing concerns of a number of those objecting to this proposal, that the **Council's** Community Infrastructure Levy (CIL) approach and further commitments in the **appellant's** submitted UU could address the additional pressure on infrastructure and service provision in the village; I address this in more detail below.

138. However, on the basis of the evidence provided by the Parish Council and the discussions between the Council, the water company, Thames Water, and the appellant, including a submitted SoCG on this matter, there is clearly an issue with foul drainage capacity in the village.

139. **The appellant's case is that there is a** duty on Thames Water under s94 and s37 of the Water Industry Act 1991 (the WIA) to provide capacity to accommodate new developments; this is agreed in the SoCG. Thames Water have indicated that they have a scheme for network reinforcement in place for Bramley, although requiring internal approval, they consider it could be delivered within their standard timescales of 18-20 months. As a result, the appellant is seeking a condition to address this matter, with temporary arrangements were the Thames Water scheme to be delayed.

140. Notwithstanding this, it is clear that there remains considerable concern within the village that such improvements will be delivered on time and will address not just the impact of the proposed scheme but the existing and ongoing problems that residents in various locations across Bramley are dealing with now. Even during the period of the Inquiry there was evidence of

sewers discharging within the village<sup>22</sup>. The local Council representatives referred me to considerable levels of correspondence<sup>23</sup> with Thames Water and set out their own concerns that any improvements will not achieve the necessary benefits for the whole village. They point to developments at St James Park, Bramley View and Centenary Park all taking place without a comprehensive scheme to address the issues.

141. I have considerable sympathy with local residents who have been affected but must consider the commitments that have been made by both the water company and the appellant in relation to this specific case. To that end I have a clear commitment from Thames Water that they have a solution awaiting implementation and that it will be delivered within their normal timescales, unless there is, what they described, as a complex solution being needed, in which case they would agree an infrastructure phasing plan.
142. This is an expected requirement on the water company who have a statutory duty to accommodate new developments. This duty is enforceable under s18 of the WIA, in this case by Ofwat. In planning terms, while I note the concerns of the local councillors that neither Thames Water nor the enforcing authority are meeting those commitments, the Framework specifically requires that in taking planning decisions it should be assumed that separate pollution control regimes, in this case including the WIA, should operate effectively<sup>24</sup>. This does not mean that a proposal to operate with an unsustainable or inappropriate foul drainage scheme cannot be considered, but does apply where a proposal is to connect to a mains drainage network and there is no objection from the water undertaker.
143. The point of disagreement with the Council concerns the wording of the condition that would ensure that the proposal is delivered in line with the provision of upgrades to the foul drainage network. In this case, I consider that a **'Grampian' condition** could meet the relevant tests and could address concerns regarding the risk of pollution.
144. However, initial proposals, on which there was disagreement, related to the **appellant's suggestion** that should the anticipated improvements not be delivered, that the scheme could still deliver up to 50 units with provision for tankering the foul drainage. The scheme would require storage and a pumping station on site. At the round table session, it was established that it would be feasible that the storage capacity could hold foul flows from up to 50 units and allow for a daily, or more frequent, tankering of waste away to a suitable treatment works. However, this would represent a materially less sustainable solution and, as it would entail additional costs and environmental risks, and in my view, is not one suitable to be considered as a long-term solution.
145. At the time of the production of the SoCG, the Council remained concerned **that the appellant's proposed condition expressly allowed for temporary** measures as opposed to an infrastructure phasing plan that would link the delivery of housing with the provision of sufficient capacity. Following the round table discussion at the Inquiry, **a revised version of the appellant's** condition was presented identifying a timescale for improvements and specific triggers for implementation of agreed temporary measures.

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<sup>22</sup> ID17

<sup>23</sup> ID9

<sup>24</sup> Framework paragraph 188



146. To my mind, the focus must be on delivery of capacity improvements to align with occupation of any housing. The Planning Practice Guidance (PPG) notes that local authorities should consider how development should be phased where the timescales for improvement works do not align with development needs. However, developers should also be able to have confidence in their investment decisions and cannot be unfairly disadvantaged by delays which may be outside of their control.
147. As such the proposed revised condition seeks phasing of the occupation to delivery of improvement or submission of an infrastructure phasing plan, in this case, to include timescales for implementation and temporary measures for up to 50 houses. To my mind, a phasing plan should only be considered if the water undertaker is unable to deliver within its stated expected timeframe of 18 to 20 months, as set out in the SoCG, and it is important that any plan or temporary measures be agreed in writing with the Council. In such circumstances, I consider that this condition would meet the relevant tests and ensure that development of this site would not lead to exacerbation of the known sewerage issues within Bramley. It would therefore comply with Local Plan Policies CN6, EM6, EM12, which seek to ensure that infrastructure is provided by new development which should protect water quality and not result in pollution detrimental to quality of life.

#### *Highway Safety and Capacity*

148. This is not a matter of contention between the appellant and the Council following the submission and acceptance of the revised detailed design for the access. Nonetheless, I appreciate there are a number of ongoing concerns regarding The Street and the highway capacity through the village, with the potential for associated use of less suitable alternative routes.
149. On this matter, the appellant and the highway authority, Hampshire Country Council, agreed a SoCG. This confirmed that, subject to the original transport Assessment and two further addendums (the TA), details of the revised access arrangement, revised junction capacity testing, additional travel plan information and footway improvements, among other matters, they, and subsequently the Council, had no objections to the proposals.
150. Bramley is a village with some facilities and services, including the pub, shop, bakery and a range of community facilities. It has very good and accessible train links and is of a scale that most places are walkable. Indeed, I walked the route from the proposed access to the train station and over the level crossing and found it a relatively short and easy route, notwithstanding some issues with the pavements and crossing points, some of which are identified for improvement under this scheme.
151. Principle concerns remaining related to the excessive speeds of some drivers on The Street and the contribution the scheme could make to congestion in the village associated with operation of the level crossing. A wider issue was raised in relation to the increasing use of the rail line resulting in a greater number of crossing closures needing a strategic solution to the crossing. However, this is not a matter that could be addressed in relation to a single development, but is a matter that may be considered at a plan level and may involve solutions more associated with the road and rail network than development.

152. It is clear that the TA identified that speeds above the speed limit are a potential issue along The Street. While it can be argued that enforcement should ensure that speed limits are observed, I am satisfied that the junction and associated visibility spays have been designed to respond to these higher speed levels. I note that the design has been informed by an independent Stage 1 Road Safety Audit and would be subjected to further assessment before construction.
153. Turning to the issue of congestion. The TA made some assumptions on the levels of traffic likely to be associated with the scheme utilising industry standard approaches based on the TRICS<sup>25</sup> database. From this, an assessment of the split of drivers turning right and left out of the entrance was applied to assess the contribution of new traffic from the proposal to existing levels of traffic in the village. This was compared with the existing traffic flows based on survey data. Following discussions at the Inquiry, I am satisfied that these figures are reasonable and have allowed for the influence of the pandemic on travel levels.
154. While this strongly suggests that the scheme would not lead to a severe impact or unacceptable impacts on highway safety, local residents and Councillors remained concerned about the effect on queueing at the level crossing.
155. This train route is a busy one, evidence given at the Inquiry suggested some 36 freight movements and 96 passenger movements a day and that these are likely to increase. The TA considered existing capacity and queueing associated with level crossing closures and found that while there would be some additional cars added, the effect on using alternate routes would be minimal.
156. As suggested by interested parties, the level crossing would appear to close on some occasions for a longer period to allow for two trains to pass. It is unavoidable that at these times queue lengths will be increased and the scheme would add some additional cars to this queue. In addition to the perceived disruption residents suggest would be involved, there were concerns **expressed regarding "rat-runs" triggered by these queue lengths**. However, the assessment identified this would be around 30 extra cars per hour and would add only around two vehicles to the back of the maximum queue at the level crossing.
157. There are clearly a number of routes that can be taken to head towards Basingstoke as an example, from Bramley. The use of Minchens Lane as an alternative to bypass the crossing would place cars onto a noticeably poorer route with limited passing paces and forward visibilities. Nonetheless, the time delays do not appear to support a significant change to such routes over the well-established and, even with some queueing, faster route available to access the A33. On balance, while there could be some effect in delays; this position is agreed with the highway authority who found any increase to be within the capacity of the crossing; overall, I cannot conclude that these effects would meet the test of being severe in terms of the Framework<sup>26</sup>.

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<sup>25</sup> The Trip Rate Information Computer System

<sup>26</sup> National Planning Policy Framework – Paragraph 111

## Other Matters

158. A number of concerns were put forward by local residents and other interested parties of which most have been addressed in the main issues above. However, among those put to this appeal, two remain: the development of a greenfield site and impact on ecology; and the overall impact on infrastructure, and in particular the capacity of the GP surgery.
159. While I note that an application was made for the site to be a Local Green Space<sup>27</sup>, it is not recorded as such in the NDP<sup>28</sup> and there is no evidence before me that it is to be taken forward as such in the emerging Local Plan. In terms of ecology, while the proposal would build on current agricultural land, there is substantial evidence, in the biodiversity net gain calculations for example, that there would be an overall positive effect on biodiversity, albeit that cannot be species specific, and some species reliant on open farmland may be affected while other species may benefit very significantly. On balance, I do not consider that this weighs against the proposal.
160. Turning to infrastructure, I deal below with the contributions that will be made by the scheme and I note that it expressly seeks to address facilities identified in the NDP<sup>29</sup> as needed or desired by the community. This includes the community building which has been proposed, although not secured, as another retail outlet to the west of the settlement. Nonetheless, I also note the very real concerns regarding the GP surgery.
161. Proposal such as this contribute to an overall infrastructure requirement in accordance with plans set out by the Council, who have not objected on this basis. While I do not have sufficient evidence to conclude that the provision of storage in the community building to support the capacity for the surgery is secured, I do note that it is a proposal and overall, I conclude that additional pressure on infrastructure does not weigh materially against the proposal.

## Planning Balance

162. That this is a sensitive site would not be an overstatement. There are heritage assets of value, direct public access to a network of public footpaths to three sides, including ones of obvious local use and a longer distance network regional value. The effect of that sensitivity is a proposal that includes an exceptionally high level of open space to provide separation, screening and the provision of facilities sought by the community.
163. I have found harm to heritage assets and have given this weight in accordance with my statutory duties and Framework expectations. Nonetheless, this harm would generally be to the lower end of LTS and must be considered against the public benefits of the proposal.
164. The scheme would provide important public benefits, including the provision of new and affordable homes in a district with an acknowledged shortfall in housing land supply, together with the provision of other community facilities. It would also provide considerable biodiversity benefits, additional footpath links and secure some pedestrian improvements within the local area.

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<sup>27</sup> ID 11

<sup>28</sup> NDP - Illustration 6d

<sup>29</sup> NP Paragraph 5.35

165. Although the main parties differed on the descriptors to be applied to the scale of these benefits, I have taken on board their arguments, including in relation to the proposed facilities meeting or otherwise the needs of the community.
166. I give very significant weight to the benefits of the housing, notably in acknowledgement of the specific need in Bramley for affordable housing and in the district for market housing. I give significant weight to the economic benefits that would arise, and I give moderate weight to the community facilities as, while they would appear to be sought by the community, some, and possibly all in relation to the allotments, are in part to meet the needs of the development. I also give moderate weight to the biodiversity benefits, as although these would be considerable, they are a result of the need to create buffers around the housing to reduce harms to the heritage assets.
167. Nonetheless, set against my findings of heritage harm, even taking account of the importance of the Grade I listed church, I consider that these public benefits, taken in the round, would outweigh the LTS harm I have identified.
168. Turning then to the main issues and compliance with the Development Plan. I have generally found the relevant policies to be consistent with the Framework, including Policy SD1 that has a direct link to the Framework and the presumption it sets out in favour of sustainable development. Notwithstanding my findings on highway matters and drainage, I have found that the proposal does not align with the settlement strategy, Policy SS1 and Policy SS6, and would result in harm to the landscape character and appearance of the area contrary to Local Plan Policies EM1 and EM10 and NDP Policy D1. I have set out that this harm would be moderate to major adverse and I consider this to be of moderate weight against the proposal. I have also found harm to heritage assets contrary to Local Plan Policies EM10 and EM11 and NDP Policy D1. I have found this harm to be significant.
169. In addition, the appellant identified nearly 18Ha of the site as best and most versatile (BMV) agricultural land. Any development of a greenfield site will result in the loss of countryside, either of agricultural, recreational or ecological value. In this case, while much may be retained as open land, it would be lost from production other than for community use, and the loss of BMV consequently represents moderate harm against the proposal.
170. I have found benefits arising from the provision of housing, biodiversity, community facilities and economics that can be considered holistically as being of very significant weight in favour of the proposal. Nonetheless, overall, I consider that the proposal would not accord with the development plan and must be considered in accordance with Local Plan Policy SD1 against other material considerations, including the Framework.
171. As a result of the HLS position, those policies most relevant must be considered out-of-date and the tests under paragraph 11d) apply. My finding regarding heritage assets means that there are no policies within the Framework which provide a clear reason for refusal. The proposal therefore falls to be considered under paragraph 11d)ii.
172. In such circumstances, the adverse impacts I have identified do not significantly and demonstrably outweigh the very significant weight I have

identified in terms of the **proposal's** benefits; the presumption in favour of sustainable development applies.

173. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. However, in this case other considerations indicate the decision should be taken otherwise than in accordance with the development plan.

### Planning Obligation

174. The Council has an adopted CIL Schedule, but additional contributions are addressed in the submitted Unilateral Undertaking (UU). This additionally sets out the provision of 40% affordable housing, which the Council have accepted would ensure appropriate provision, the provision of equipped play space, multifunctional green spaces, the skate park, bowling green and clubhouse, allotments and community building. It further secures the highway works including pedestrian and crossing improvements.
175. The Council raised concerns regarding the community building use, but I note that the UU requires Council agreement of a marketing, maintenance and management plan which should allow sufficient control over the intended use. However, it would remain dependant on commercial opportunities to determine whether it would be a shop, storage for the surgery or some other use for the community. Concerns regarding the allotments are adequately addressed in the requirement to approve the specification.
176. The UU also addresses contributions in relation to monitoring requirements and specifically to a School Travel Plan and to public rights of way, and I have considered these matters in light of the Framework, paragraph 57, and the statutory tests introduced by The Community Infrastructure Levy (CIL) Regulations, 2010.
177. In terms of these contributions, I note the justification in the HCC repsonsen dated 21 July 2022<sup>30</sup>n and in principle acceptance by te appeant in the SoCG; I see no reason to disagree.
178. However, as set out above, the appellant questions the extent of the rights of way contribution sought. It is obvious that the introduction of housing here and links to the footpath network would result in increased pressure on these footpaths from new residents as well as from increased use by people from outside the development attracted by and accessing the new facilities proposed.
179. A detailed submission was made<sup>31</sup> confirming the costings and intended delivery associated with the sums sought. On this basis, I am satisfied that this contribution meets the relevant tests
180. The S106 agreement is a material consideration. I am satisfied those provisions relating to affordable housing, community facilities and financial contributions meet the three tests of the 2010 Regulations, in that they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Each may be justified by reference to the objectives of

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<sup>30</sup> CD2.9

<sup>31</sup> ID19

the relevant parts of the development plan. I have therefore taken it into account in determining the appeal.

## Conditions

181. Turning to conditions. I have had regard to the advice in the Planning Practice Guide and the suggested conditions, which were discussed at the Inquiry. In addition to standard commencement conditions, for an outline application (Conditions 2, 3 and 4), I have imposed a plans condition as this is necessary in the interests of certainty and highway safety (1). Specifications for the Reserved Matters are required to ensure delivery of a high-quality development (5), including landscaping (6) and site levels (7).
182. Pre-commencement conditions are required. I have imposed these in the interest of ensuring appropriate controls during the construction period related to living conditions and highways safety (8), as well as servicing of the community building (9) and highway improvements (10), also to accord with proposals and secure highway safety. Tree protection shall be secured through an approved protection plan (11) and, in light of the past historic connections of the site, archaeological surveys, and, if required, mitigation programmes are also necessary (12 and 13). Similarly, a condition requiring a contaminated land assessment is required, along with any required remedial works (14) and verification (15), to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. Finally, to address flood risk, I have imposed a pre-commencement condition to prepare a drainage strategy (16) and to include future maintenance and management responsibilities (17).
183. To protect and enhance species and habitats on site, I have imposed conditions to ensure compliance with the prepared strategies and assessments, subject to verification surveys prior to works commencing on site (18 and 19), and to protect bats, I have imposed a condition requiring a lighting scheme (20). For highways safety and to ensure an appropriate provision I have imposed a condition seeking details of refuse and recycling provisions (21), and to ensure sustainable water use, one requiring details of construction to maximise efficiency (22). To address any noise concerns from required mechanical heating or ventilation, an internal noise rating is set out (23). Accessible and adaptable housing standards are required for a minimum of 15% of properties (24)
184. Prior to occupation, the access and appropriate visibility splays must be secured (25), as well as the future management and maintenance of streets within the development (26), in the interest of highways safety. Finally, it is necessary to address the foul drainage restrictions associated with the sewerage capacity issues within Bramley (27), as considered in my drainage section above.
185. I have chosen not to impose two conditions suggested by the Council which expressly dealt with matters that will be subject to Reserved Matters applications. Furthermore, there was discussion at the Inquiry over whether a condition requiring compliance with the DAS should be imposed, although no such condition was formally tabled. This scheme is highly dependent on a design which delivers on the ambition of extensive and protective open space of ecological value as set out in the DAS. I am satisfied that the requirement to comply with this ambition is sufficiently clear that a condition would be

unnecessary and, as set out above, I consider that the Council would be in a strong position to resist any deviation from the principal layout and delivery of facilities encompassed in the illustrative masterplan.

#### Conclusion

186. The appeal scheme would conflict with the development plan taken as a whole. However, in this instance, material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan.

187. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Mike Robins*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Charles Banner KC  
and Nick Grant

Counsel for and instructed by Wates  
Developments Ltd

They called:

Jeremy Smith  
BSc(Hons) PGDip LA, MCLI

Landscape: Director - SLR Consulting Limited

Richard Burton  
AOU BA(Hons) DIPLA CMLI

Urban Design: Director - **Terence O'Rourke Ltd**

Gail Stoten  
BA(Hons) MCIA FSA

Heritage: Director - Pegasus Planning Group

James Bevis  
MEng CMILT

Transport/Highways: Partner of i-Transport LLP

Alan Brackley  
BEng(Hons) CEng FICE  
FIStructE FCIHT

Drainage: JNP Group Consulting Engineers

Asher Ross  
BSc(Hons) MPhil MRTPI

Planning: Director - Wates Developments Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Heather Sargent  
of Counsel

Instructed by Basingstoke and Deane Borough  
Council

She called:

Dr David Hickie  
BSc(Hons) MA PhD CMLI  
ASLA CEnv MIEMA IHBC

Landscape and Heritage:  
Principal Consultant David Hickie Associates

Tim Dawes  
BA(Hons) MRTPI

Planning Matters:  
Planning Director Planit Consulting

### INTERESTED PARTIES:

Mr Carne  
Cllr Flooks  
Cllr Bell  
Cllr Tomblin  
Cllr Durrant  
Cllr Robinson

Local Resident – Stokes Farmhouse  
Parish Councillor – Chair of Planning Committee  
Bramley Parish Council  
Parish and Ward Councillor  
Parish and Ward Councillor  
Ward Councillor – Chair of Development Control Committee



## SCHEDULE 1: DOCUMENTS

Inquiry Documents and Core Documents are available on [22/00029/FTD | Outline planning permission Stocks Farm The Street Bramley Hampshire \(basingstoke.gov.uk\)](https://www.basingstoke.gov.uk/planning-permission/stocks-farm-the-street-bramley-hampshire)

### INQUIRY DOCUMENTS

ID1	Notification Letter
ID2	British Standard 7913 – 2013 – see core document CD.5.16
ID3	ICOMOS guidance on heritage
ID4	Extract GLVIA 1
ID5	<b>Council’s Case Law Authorities</b> a) Wyatt b) Visao Limited
ID6	<b>Council’s Opening Statement</b>
ID7	<b>Appellant’s Opening Statement</b>
ID8	Cllr Bell’s comments
ID9	Package of sewerage statements and emails from the Parish Council
ID10	Future Development Challenges – Overview
ID11	Local Green Space – Site Promotion Form
ID12	Councillors Tomblin’s comments
ID13	<b>Cllr Robinson’s comments</b>
ID14	Housing Land Supply Statement of Common Ground
ID15	Basingstoke and Deane Borough Council: Updated Housing Land Supply Position (January 2023)
ID16.1	17/00818/OUT Manydown Decision Notice
ID16.2	23/00032/FUL Manydown Planning Statement
ID17.1	Sewage problems in Bramley, Feb 2023
ID17.2	Sewage Photos Bramley
ID17.2	Sewage Photos Bramley
ID18	Use Class Order – Extract
ID19	Countryside Planning Service – Right of Way Contribution Calculation
ID20	Council Closing Statement
ID21	Appellant Closing Statement
ID22	JPL Article
ID23	Case Law – Swainsthorpe Parish Council, R v Norfolk County Council [2021] EWHC 1014 (Admin)

Submitted after the Inquiry

ID24	Unilateral Undertaking signed and dated 1 February 2023
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## CORE DOCUMENTS

### CD1: Application Documents

- CD1.1 – Planning Statement
- CD1.2 – Design and Access Statement
- CD1.3 – Landscape and Visual Appraisal
- CD1.4 – Transport Assessment
- CD1.5 – Framework Travel Plan (May 2022)
- CD1.6 – Heritage Statement (March 2022)
- CD1.7 – Flood Risk Assessment and Drainage Strategy
- CD1.8 – Utilities Appraisal
- CD1.9 – Environmental Statement
- CD1.10 – Foul Water Drainage Strategy (31 January 2022)
- CD1.11 – 1st Transport Assessment Addendum (5 May 2022)
- CD1.12 – 2nd Transport Assessment Addendum (17 August 2022)

### CD2: Council / Consultee Documents

- CD2.1 – Council Screening Report (Ref: 21/03344/ENSC)
- CD2.2 – Updated Housing Land Supply Position (March 2022)
- CD2.3 – **Council's Putative Reasons for Refusal**
- CD2.4 – 1st Historic England Response (8 March 2022)
- CD2.5 – 2nd Historic England Response (21 April 2022)
- CD2.6 – **Council's Historic Environment Response (3 May 2022)**
- CD2.7 – **Council's Landscape Team Response (26 April 2022)**
- CD2.8 – HCC Highways 1st Response (31 March 2022)
- CD2.9 – HCC Highways 2nd Response (21 July 2022)
- CD2.10 – HCC Highways 3rd Response (19 October 2022)
- CD2.11 – Council Annual Monitoring Report 21-22 (December 2022)

### CD3: Planning Policy

- CD3.1 – Basingstoke and Deane Local Plan 2011-2029
- CD3.2 – Bramley Neighbourhood Development Plan 2011-2029 (March 2017)
- CD3.3a – Conservation Area Appraisal Bramley and Bramley Green
- CD3.3b – Conservation Area Map Bramley and Bramley Green
- CD3.4 – Housing SPD (2018)
- CD3.5 – Landscape, Biodiversity and Trees SPD (2018)
- CD3.6 – Planning Obligations and Infrastructure SPD (2018)
- CD3.7 – Heritage SPD (2019)
- CD3.8 – National Design Guide

### CD4: Case Law / Judgements

- CD4.1 – APP/H1705/W/21/3269526, Land to the East of Station Road, Oakley, Hampshire Station Road Decision
- CD4.2 – APP/H2265/W/20/3256877, Land West of Winterfield Lane, East Malling ME19 5EY Winterfield Lane Decision
- CD4.3 – APP/H2265/W/20/3256877, Land between Woodchurch Road and Appledore Road, Tenterden, Kent TN30 7AY Tenterden Decision
- CD4.4 – APP/D0121/W/21/3286677, Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU Yatton Decision

- **CD4.5** – APP/H1705/W/21/3276870, Land Adjacent to Two Gate Lane, Basingstoke RG25 3TG Two Gate Lane Decision
- **CD4.6** – APP/H1705/W/21/3274922, Land west of Pond Close, Overton RG25 3LY Pond Close Decision
- **CD4.7** – APP/H1705/W/20/3256041, Land south of Silchester Road and west of Vyne Road, Bramley RG26 5DQ Silchester Road Decision
- **CD4.8** – APP/A1720/W/20/3254389, Land east of Posbrook Lane, Tichfield, Fareham PO14 4EY Posbrook Lane Decision
- **CD4.9** – APP/L3815/W/22/3291160, Land south of Clappers Lane, Earnley, Chichester PO20 7JJ Clappers Lane Decision
- **CD4.10** – APP/H1705/W/22/3300098, Land adjoining Clift Surgery, Minchens Lane, Bramley, Basingstoke, Hampshire RG26 5BH Clift Surgery Decision
- **CD4.11** – Council of the City of Newcastle Upon Tyne v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 2752 (Admin) (01 November 2022 Newcastle HC Judgement)

CD5: Other / Misc

- **CD5.1** – Landscape Institute and IEMA: Guidelines for Landscape and Visual Impact Assessments Version 3 (2013)
- **CD5.2** – Assessing Landscape Value Outside National Landscape Designations (Landscape Institute Guidance Note 02/21)
- **CD5.3** – Basingstoke and Deane Landscape Character Assessment (2021)
- **CD5.4** – Basingstoke and Deane Landscape Sensitivity Study (2021)
- **CD5.5** – Basingstoke and Deane Green Infrastructure Study (2018)
- **CD5.6** – **Natural England’s National Landscape** Character Area (NCA) 129: Thames Basin Heath
- **CD5.7** – Hampshire County Integrated Character Assessment (May 2012)
- **CD5.8** – Basingstoke, Tadley and Bramley Landscape Capacity Study (February 2008)
- **CD5.9** – ILP Guidance Note 01/21 – The Reduction of Obtrusive Light (2021)
- **CD5.10** – Historic England The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (2nd Edition)
- **CD5.11** – English Heritage Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment (London, April 2008)
- **CD5.12** – Historic England Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2 (2nd Edition, Swindon, July 2015)
- **CD5.13** – Historic England Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12 (Swindon, October 2019)
- **CD5.14** – Planning Practice Guidance: Historic Environment (PPG) (revised edition, 23rd July 2019)
- **CD5.15** – Secretary of State Screening Direction
- **CD5.16** – BSI Guide to the Conservation of Historic Buildings (2013)

CD6: Appeal Documents

- **CD6.1** – **Appellant’s Statement of Case**
- **CD6.2** – **Overarching Statement of Common Ground**
- **CD6.3** – **Council’s Statement of Case**

- **CD6.4** – Statement of Common Ground between Appellant and Hampshire County Council (Highways)
- **CD6.5** – Statement of Common Ground between Thames Water, Basingstoke and Deane Council and the Appellant (Drainage)
- **CD6.6** – Statement of Common Ground between Appellant and Basingstoke and Deane Council (Landscape)

## SCHEDULE 2: CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - **Site Location Plan** –Application Boundary
  - **Proposed Site Access Arrangement**, No: ITB15312-GA-001 Rev F
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 3) Applications for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) Applications for the approval of reserved matters shall be supported by a statement of how the development will be of a high quality of sustainable design. This will include reference to how the layout, design and construction of the development will involve the efficient use of natural resources through reducing resource requirements in terms of energy demands and water use; the consideration of opportunities for renewable and low carbon energy technologies; the use of passive solar design to maximise the use of the sun's energy for heating and facilitate sustainable cooling of buildings; and the mitigation of flooding, pollution and overheating.
- 6) Applications for the approval of landscape reserved matters shall be accompanied by a hard and soft landscape plan, ground levels and contours across the site and an implementation programme.

The development shall be carried out and thereafter maintained in accordance with the details so approved, (and in accordance with the separate Landscape Management Plan secured under any agreed Unilateral Undertaking, to include detailed long term design objectives, management responsibilities and maintenance schedules for all landscape areas to address all operations to be carried out in order to allow successful establishment of planting and the long term maintenance of the landscaping in perpetuity, and including provisions for review at least every five years).

Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved, to be agreed in writing by the local planning authority.
- 7) Applications for the approval of reserved matters shall be accompanied by a measured survey and a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground levels and finished floor levels in relation to a nearby agreed datum point which shall be submitted to and approved in writing by the local planning

authority. The development shall be carried out in accordance with the approved details.

- 8) No development shall take place (including site preparation and any groundworks) until a site-specific Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The approved Management Plan shall be adhered to throughout the construction period. The Management Plan shall include:
- **Procedures for maintaining good public relations including complaint management;**
  - **public consultation and liaison;**
  - **arrangements for liaison with the Council's Environmental Protection Team;**
  - **all works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the local planning authority, shall be carried out only between the following hours: 0730 Hours and 1800 Hours on Mondays to Fridays and 0800 and 1300 Hours on Saturdays and at no time on Sundays and Bank Holidays;**
  - **deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above;**
  - **mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works;**
  - **procedures for emergency deviation of the agreed working hours;**
  - **an undertaking to require all contractors to be 'Considerate Contractors' when working in the Borough by being aware of the needs of neighbours and the environment;**
  - **control measures for dust, dirt and other air-borne pollutants;**
  - **measures for controlling the use of site lighting whether required for safe working or for security purposes;**
  - **the approved plan shall be adhered to during the demolition / construction period of the development;**
  - **means of direct access (temporary or permanent) to the site from the adjoining maintainable public highway;**
  - **the parking and turning of vehicles of site operatives and visitors off carriageway, timeframes of delivery to be provided;**
  - **loading and unloading of plant and materials away from the maintainable public highway, where appropriate;**
  - **storage of plant and materials used in constructing the development away from the maintainable public highway;**
  - **the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;**
  - **a scheme for recycling and disposing of waste resulting from construction work, the management and coordination of deliveries of**

plant and materials and the disposing of waste resulting from construction activities so as to avoid undue interference with the operation of the public highway, particularly during the Monday to Friday AM peak (0630 to 0930) and PM peak (1600 to 1830) periods;

- **the routes to be used by construction traffic** to access and egress the site so as to avoid undue interference with the safety and operation of the public highway and adjacent roads, including construction traffic holding areas both on and off the site as necessary;
- **method of cleaning wheels and chassis** of all HGV's, plant and delivery vehicles leaving the site;
- **means of keeping the site access road and adjacent public highway** clear of mud and debris during site demolition, excavation, preparation and construction. No vehicles shall leave the site in a condition whereby mud, clay or other deleterious materials shall be deposited on the public highway.

The scheme shall be implemented in accordance with the approved details and shall be installed and operational before any development commences and retained in working order throughout the duration of the development.

- 9) No development shall take place until a Service Management Plan including details of how the servicing of the use Class E unit will be managed, including limits on the maximum size and weight of vehicle which will serve the unit, has been submitted to and approved in writing by the local planning authority. The maximum size of vehicle serving the Class E unit shall not exceed 7.5T box van or a 7.5T rigid vehicle. The development shall be operated in accordance with the approved Service Management Plan for the lifetime of the development.
- 10) No development shall take place on the site until a scheme has been submitted to and approved in writing by the local planning authority detailing pedestrian and cycle connections to the surrounding network and improvements to the local pedestrian facilities on the highway including tactile paving provision and the upgrading of the bus stops, together with a scheme of delivery. The approved connections and highway works shall be implemented in accordance with the scheme of delivery agreed above.
- 11) No development or other operations (including site preparation and any groundworks) shall commence on site until a Tree and Hedgerow Protection Plan has been submitted to and approved in writing by the local planning authority to secure protection to trees and hedgerows which are to be retained on or close to the site (including the new access). These details shall include an Arboricultural Impact Assessment (AIA), an Arboricultural Method Statement (AMS) and a **Tree/hedge Protection Plan, all prepared in accordance with BS5837:2012 "Trees in relation to design, demolition and construction"**. The approved tree and hedgerow protection shall be erected prior to any site activity commencing and maintained until completion of the development. No development or other operations shall take place other than in complete accordance with the Tree and Hedgerow Protection Plan.



- 12) No development shall take place on site until an archaeological evaluation of the site has been carried out in accordance with a written scheme of investigation which has first been submitted to and approved by in writing the local planning authority. The results of the investigation shall inform mitigation required in connection with condition 13.
- 13) No development shall take place on site until a programme of archaeological mitigation (if required) has been submitted to and approved in writing by the local planning authority. The programme of archaeological mitigation shall be carried out in accordance with the approved details.
- 14) No works pursuant to this permission (excluding demolition, removal of existing hardstanding and any underground infrastructure) shall commence until there has been submitted to and approved in writing by the local planning authority: -
- (a) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the desk study in accordance with BS10175: 2011- Investigation of Potentially Contaminated Sites - Code of Practice; and, unless otherwise agreed in writing by the local planning authority,
- (b) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed. The scheme must include a timetable of works and site management procedures and the nomination of a competent person to oversee the implementation of the works. The scheme must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 and if necessary, proposals for future maintenance and monitoring.
- Important note: Unless part (a) identifies significant contamination, it may transpire that part (a) is sufficient to satisfy this condition, meaning parts (b) need not be subsequently carried out. This would need to be agreed in writing by the local planning authority. If during any works contamination is encountered which has not been previously identified it should be reported immediately to the local planning authority. The additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)'.  
<https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>
- 15) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the local planning authority a verification report carried out by the competent person approved under the provisions of condition 14(b) that any remediation scheme required and approved under the provisions of condition 14(b) has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority such verification shall comprise:
- as built drawings of the implemented scheme;



- **photographs of the remediation works in progress;**
- **certificates demonstrating that imported and/or material left in situ is free of contamination.**

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 11(b).

- 16) No development shall take place until a detailed surface water drainage scheme for the site, based on the principles within the Flood Risk Assessment and Drainage Strategy ref: C86573-JNP-XX-XX-RP-C-1001, has been submitted and approved in writing by the local planning authority. The submitted details should include:

- **A technical summary highlighting any changes to the design from that within the approved Flood Risk Assessment.**
- **Detailed drainage layout drawings at an identified scale** indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients.
- **Detailed hydraulic calculations for all rainfall events, including the listed below.** The hydraulic calculations should take into account the connectivity of the entire drainage features including the discharge location. The results should include design and simulation criteria, network design and result tables, manholes schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events.

The drainage features should have the same reference that the submitted drainage layout.

- **Evidence that Urban Creep has been considered** in the application and that a 10% increase in impermeable area has been used in calculations to account for this.
- **Confirmation on how impacts of high groundwater will be managed** in the design of the proposed drainage system to ensure that storage capacity is not lost, and structural integrity is maintained.
- **Confirmation that sufficient water quality measures have been included** to satisfy the methodology in the Ciria SuDS Manual C753.
- **Exceedance plans demonstrating the flow paths and areas of ponding** in the event of blockages or storms exceeding design criteria.

The development shall be carried out in accordance with the approved details.

- 17) Details for the long-term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the dwellings. The submitted details shall include;
- a) Maintenance schedules for each drainage feature type and ownership
  - b) Details of protection measures.
- 18) The recommendations and procedures contained within the Dormouse Mitigation Strategy by Ecology Solutions dated May 2022 shall be subject to a verification survey prior to works commencing on site. The verification survey report shall be submitted to and approved in writing

- by the local planning authority. Development should be undertaken in line with those recommendations, including any approved modifications arising from the survey.
- 19) The recommendations and procedures contained within the Ecological Assessment by Ecological Solutions dated 12/2021, shall be subject to a verification survey prior to works commencing on site. The verification survey report shall be submitted to and approved in writing by the local planning authority. Development should be undertaken in line with those recommendations, including any approved modifications arising from the survey.
  - 20) No development above ground floor slab level shall commence on site until a fully detailed lighting scheme has been submitted to and approved in writing by the local planning authority. The lighting scheme shall include full lighting specifications and address the cumulative effects of external lighting sources upon nocturnal animals sensitive to external lighting (such as owls, bats and dormice). The lighting shall be installed before the development is first occupied and shall thereafter be operated and maintained in accordance with the approved scheme.
  - 21) No development above slab level shall take place on site until details of the refuse and recycling storage and collection facilities have been submitted to and approved in writing by the local planning authority. All dwellings shall provide for 1 number 140ltr refuse 2-wheeled bin, 1 number 240ltr recycling 2-wheeled bin and 1 number glass recycling box within their respective curtilages with a transit route between the storage and collection point not more than 15 metres carrying distance from the carriageway. The areas of land so provided shall not be used for any purposes other than the storage (prior to disposal) or the collection of refuse and recycling. The approved details shall be constructed and fully implemented before the use hereby approved is commenced and shall be thereafter maintained in accordance with the approved details.
  - 22) No development above ground floor slab level shall commence on site until a Construction Statement detailing how the new homes shall meet a water efficiency standard of 110 litres or less per person per day (unless otherwise agreed in writing with the local planning authority through a demonstration that this requirement for sustainable water use cannot be achieved on technical or viability grounds) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 23) Where it is necessary to install mechanical ventilation heat recovery (MVHR) the internal noise levels associated with any mechanical units and associated ductwork shall not exceed noise rating (NR) 25. The ventilation system shall be designed to ensure that noise from external sources is not conducted into any habitable room.
  - 24) A minimum of 15% of the properties (an appropriate housing mix) shall be built to accessible and adaptable standards (M4(2) compliant) to enable people to stay in their homes as their needs change. No development above ground floor slab level shall commence on site until details of which properties are to be built to such standards are submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 25) No dwelling shall be occupied until the means of vehicular access to the site has been constructed in accordance with the approved plans (Drawing No. ITB15312-GA-001 Rev F). No structure, erection or planting exceeding 1.0m in height shall thereafter be placed within the visibility splays shown on the approved plans. These splays shall be maintained at all times thereafter. The access road and turning area shall be constructed to the equivalent of adoptable standards that thereafter maintained to a suitable condition to withstand repeated use by delivery vehicles or a waste collection vehicle of a minimum gross weight of 26 tonnes.
- 26) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established, details of which shall have first been submitted to and approved in writing by the local planning authority.
- 27) No dwelling hereby permitted shall be occupied until
- 1) the network reinforcement works necessary to accommodate the development are operational and the existence of sufficient sewage capacity is confirmed in writing to the local planning authority by the sewerage undertaker or
  - 2) an infrastructure phasing plan to ensure no exacerbation of sewage flooding in Bramley has been submitted to and agreed in writing with the local planning authority. The infrastructure phasing plan shall include details of the proposed infrastructure together with timescales for implementation, as well as trigger points for when any temporary measures may be brought into effect and details of what those temporary measures comprise.

Appendix B – Appeal Decision Ref: APP/H1705/W/21/3281406



## Appeal Decision

Site visit made on 25 April 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

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Appeal Ref: APP/H1705/W/21/3281406

The Darling Buds of May Nursery, Hyde Lane, Headley, Thatcham, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by Mr Surinder Ghalley of The Darling Buds of May Nursery against the decision of Basingstoke and Deane Borough Council.
  - The application Ref 20/02209/PIP, dated 11 August 2020, was refused by notice dated 24 February 2021.
  - The development proposed is demolition of existing utility building and redevelopment for up to nine dwellings (Use Class C3) on land neighbouring Darling Buds of May Nursery, accessed from Hyde Lane, Headley.
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### Decision

1. The appeal is allowed and permission in principle is granted for residential development comprising a minimum of 5 and a maximum of 9 dwellings at The Darling Buds of May Nursery, Hyde Lane, Headley, Thatcham, Hampshire in accordance with the terms of the application, Ref 20/02209/PIP, dated 11 August 2020.

### Procedural Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first ('permission in principle') stage establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted<sup>1</sup>. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. The application includes a schematic layout to demonstrate how the site might be developed. I have treated this information as illustrative.
5. Natural England has recently updated its advice in relation to nutrient level pollution in a number of existing and new river basin catchments. Basingstoke and Deane Borough Council has been previously identified as an affected local planning authority. However, the application site lies within the Kennet

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<sup>1</sup> PPG Paragraph: 012 Reference ID: 58-012-20180615

catchment area which does not drain to the Solent. As such, Natural England is satisfied that the proposal is not likely to result in significant impacts on designated sites in the Solent due to nutrient impacts. Based on the information before me, I have no reason to take a different view.

### Main Issue

6. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development.

### Reasons

7. The site comprises a parcel of land on the western side of Hyde Lane. It is accessed via an existing vehicular track which also serves The Darling Buds of May Nursery. The land is flat and open, and predominantly hard surfaced. A small utilities building adjacent to the eastern boundary supports the current use of the land as a touring caravan and motorhome site.
8. The site lies outside of any Settlement Policy Boundary (SPB) and is considered to be within the countryside by Policy SS1 of the Basingstoke and Deane Local Plan 2011-2029 (BDLP). This policy directs new housing to locations within defined SPBs and sites that have been allocated within the development plan, including neighbourhood plans.
9. Policy SS6 of the BDLP sets out the circumstances where new housing would be permitted in the countryside. Criterion a) of the policy would permit development proposals on 'previously developed land', provided that: i) They do not result in an isolated form of development; and ii) The site is not of high environmental value; and iii) The proposed use and scale of development is appropriate to the site's context.
10. The majority of the site is hard surfaced. The officer report notes the lack of planning history for the caravan storage (sic) use, but concedes that over the passage of time this part of the site has become previously developed. I concur with this assessment and consider that Policy SS6 criterion a) is engaged.
11. The Council contends that the proposal would constitute an isolated form of development. The Glossary to the BDLP defines 'isolated' as where there is a significant separation between the proposed dwelling and the nearest settlement. A dwelling is considered to be isolated if it is not well served by public transport (e.g. within 500 m of a bus stop or train station) or well served by services and facilities (e.g. within 1 km of an SPB, which generally contains facilities such as schools, post offices, doctors surgery, etc).
12. The site does not adjoin a settlement, rather it forms part of the nursery which contains a range of buildings and structures, including a bungalow. There is also a nearby cluster of development at Knightsbridge Farm and 4 Kingdoms Adventure Park and Family Farm. There are bus stops within 100 m of the site entrance from which regular services operate to Newbury and Basingstoke. Greenham Business Park is also within walking distance (approximately 800 m using pavements) and this provides employment opportunities. Having regard to the circumstances of this case, and taking into account the development plan and relevant court judgments<sup>2</sup>, I do not consider this site to be isolated.

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<sup>2</sup> Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610  
City and Country Bramshill Ltd v SSHLG and others [2021] EWCA Civ 320

13. The Council does not suggest that the site is of high environmental value and I saw that it is well-contained in landscape and visual terms. From Hyde Lane, the roofs of existing buildings at the nursery are visible above mature roadside hedging. The layout and scale of the proposed development would be a matter for technical details consent. Nevertheless, I am satisfied that it would be possible to develop the site for housing without adversely affecting landscape character. An established band of trees would hide the development in views from open countryside to the west and from a public footpath to the north the scheme would be partially screened by intervening vegetation. Insofar as the dwellings may be visible (and the extent to which they are will depend upon the ridge heights agreed at the technical details stage), the built form is likely to be read as part of the nursery complex. Contrary to the concerns of the Landscape Officer, domestic paraphernalia would not be visible from outside of the site.
14. A high quality scheme, incorporating single-storey buildings if necessary, would have limited impact on the character and appearance of the area and avoid conflict with Policies EM1 and EM10 of the BDLP insofar as these seek to ensure that proposals are sympathetic to the character and visual quality of the area. The proposed use and scale of development is appropriate to the site's context.
15. The appellant has submitted a revised Flood Risk Assessment (FRA) to rebut the Council's concerns over the inadequacy of the information submitted with the original application. The FRA demonstrates that the developable part of the site, upon which the dwellings would be built, is within Flood Zone 1, classed as land having a low probability<sup>3</sup> of river or sea flooding. The ground levels on the site are above the predicted flood levels for the 1 in 100 + 35% climate change allowance and the 1 in 1000 year storm events. Furthermore, the available evidence indicates that most of the site has a very low risk of flooding from surface water, with only the very extreme western boundary being vulnerable.
16. The flood mapping also demonstrates that the road into the site, through the existing nursery, is within Flood Zone 2. This land has a medium probability of flooding, meaning that access to the development could be restricted in flood conditions. However, there is the opportunity to reinstate an old access onto a section of Hyde Lane which is in Flood Zone 1. This would provide access for emergency services during a design flood, and would also allow residents to safely access and exit their dwellings.
17. The FRA recommends that the finished floor levels of the new dwellings are set at 300 mm above existing ground level to ensure they are not at risk from the peak level storm events predicted. This would need to be addressed at the technical details consent stage, but would not affect my findings in relation to the visual impact of the proposed development.
18. Accordingly, I find the proposal to be acceptable in flood risk terms. Although the location of the access within Flood Zone 2 fails the sequential test set out within the National Planning Policy Framework (the Framework), the breach is a purely technical one as safe access is achievable. The development would not place its occupants at unacceptable risk and would not result in an increase in surface water flooding and flood risk elsewhere. There would therefore be no conflict with the aims of Policy EM7 of the BDLP or national policy.

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<sup>3</sup> Less than 1 in 1,000 (0.1%) annual probability

19. Overall, I conclude that the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development. There are no substantive conflicts with the development plan in relation to the principle of development.

#### Other Matters

20. The parish council and interested parties have raised a range of concerns, including in connection with the impact on the setting of a listed building, the ability of Hyde Lane to cope with additional traffic and the oversubscription of the local school. Whilst I have taken account of these matters, there is no compelling evidence before me to indicate that they would make the principle of development unacceptable. The Council retains control over the design and layout of the development through the technical details consent. Given that the precise number of dwellings will be established at that stage, and that the site is easily large enough to accommodate the minimum figure of 5 dwellings, there is no basis for concluding that the site would be overdeveloped.

#### Planning Balance and Conclusion

21. There is a broad level of compliance with the development plan in relation to the location, the proposed land use and the amount of development. Although the site lies outside of SPBs, it nevertheless adheres to policy relating to new housing on previously developed sites in the countryside.
22. Even had that not been the case, the Council is unable to demonstrate a 5 year supply of deliverable housing sites<sup>4</sup> and therefore paragraph 11 (d) of the Framework is engaged. Policies SS1 and SS6 of the BDLP are rendered out-of-date. The appeal scheme would make efficient use of previously developed land to bring social and economic gains through the delivery of between 5 and 9 new homes. There are no adverse impacts that would significantly or demonstrably outweigh these benefits. The proposal would thus comply with the presumption in favour of sustainable development set out in Policy SD1 of the BDLP and the Framework.
23. For the reasons given above, I conclude that the appeal should be allowed. The duration of the permission is 3 years and applications for technical details consent must be determined within the duration of the permission granted.
24. Whilst noting the Council's suggested list of informative notes, no conditions are applicable, since the PPG makes clear that it is not possible for conditions to be attached to a grant of permission in principle, whose terms may only include the site location, the type and amount of development.

*Robert Parker*

INSPECTOR

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<sup>4</sup> According to the appellant, the housing land supply stands at 4.44 years and this figure is uncontested.



Appendix C – Appeal Decision Ref: APP/H1705/W/21/3269526



## Appeal Decision

Inquiry held on 22 to 24 June and 29 June to 2 July 2021

Site visit made on 6 July 2021

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11<sup>th</sup> August 2021

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Appeal Ref: APP/H1705/W/21/3269526

Land to East of Station Road, Oakley RG23 7EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Wates Developments Ltd against the decision of Basingstoke & Deane Borough Council.
  - The application Ref 20/00004/OUT, dated 19 December 2019, was refused by notice dated 9 October 2020.
  - The development proposed is up to 110 residential units (Class C3) with all matters reserved except for access.
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### Decision

1. The appeal is allowed and planning permission is granted for up to 110 residential units (Class C3) with all matters reserved except for access at Land to East of Station Road, Oakley RG23 7EH in accordance with the terms of the application, Ref 20/00004/OUT, dated 19 December 2019, subject to the 27 conditions set out in the attached schedule.

### Application for costs

2. At the Inquiry, an application for costs was made by Wates Developments Ltd against Basingstoke & Deane Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application was made in outline with all matters reserved except for access. I have had regard to the site plan submitted with the application (ref P19039-RFT-00-ZZ-DR-A-0106 Rev P02) but consider that all the details shown are illustrative apart from the existing access road between Station Road and Canterbury Gardens. The same applies to the design and access statement.
4. The application was refused for 4 reasons and 7 main issues were identified at the pre-inquiry case management conference. Before the Inquiry opened, the Council confirmed that it would not be contesting the third reason for refusal based on additional clarification provided by the appellant with regards to traffic movements and contributions towards sustainable transport modes. However, interested parties continued to raise concerns regarding such matters and so the relevant main issues have remained.
5. The Council also indicated that the fourth reason for refusal could be resolved through the submission of a S106 and the existing Community Infrastructure Levy (CIL) charging schedule. A completed and executed S106 was submitted

shortly after the close of the Inquiry and is assessed below. Although not a reason for refusal or a main issue, this decision also addresses the effect of the development on designated European sites in terms of nitrates.

6. A new version of the National Planning Policy Framework (NPPF) was published on 20 July 2021. The parties were given the opportunity to comment on any relevant changes and I have taken these comments into account.

#### Main Issues

7. The main issues are:
  - i) the effect of the development on the character and appearance of the area;
  - ii) the effect of the development on the setting and significance of Church Oakley Conservation Area;
  - iii) the effect of the development on highway safety and access;
  - iv) whether the development would promote sustainable transport modes;
  - v) whether the development would make adequate provision for community and infrastructure needs arising from the development;
  - vi) the extent of the **shortfall in the Council's 5 year housing land supply; and**
  - vii) the overall planning balance having regard to the development plan and national policy.

#### Reasons

##### *Policy and planning context*

8. The appeal site adjoins the settlement policy boundary (SPB) for Oakley as set out in the Basingstoke and Deane Local Plan 2011-2029 (LP) and revised by the Oakley and Deane Neighbourhood Plan 2011-2029 (NP). It is thus regarded to lie within the countryside for planning purposes. LP Policy SS1 seeks the provision of 15,300 dwellings within the plan period. The provision is focused within SPB, as well as regeneration sites, greenfield site allocations, and neighbourhood plans. Housing outside SPB would need to meet the criteria set out in other policies or be essential for the proposal to be located in the countryside. LP Policy SS6 allows for new housing in the countryside where it meets one of a number of exceptions, none of which are applicable to this proposal. Thus, the development would conflict with LP Policies SS1 and SS6. The intention of the LP is to maintain the existing open nature of the countryside, prevent the coalescence of settlements and resist the encroachment of development into rural areas.
9. LP Policy SS5 apportions a minimum number of houses to neighbourhood plan areas, including at least 150 homes in Oakley. NP Policies 1 and 3 allocate land for approximately 150 dwellings across 5 sites in the NP area, including 45 at Park Farm (hereafter referred to as Canterbury Gardens) and 15 at the village hall on Andover Road. There is no allocation covering this site.
10. LP Policy SS4 seeks to ensure a supply of deliverable housing sites and triggers a review of the LP if a future supply cannot be demonstrated. The Council has acknowledged that the housing target of 15,300 dwellings will not be met within the plan period and so a review is underway. There has been an initial public consultation in autumn 2020 but the new local plan is not expected to be

examined and adopted until spring 2024. Therefore, very little weight can be afforded at present to the content of the new plan.

11. The site is located on the western side of Oakley. It lies to the east of Station Road and immediately south of the railway line cutting between Basingstoke and Andover. North of the railway line is the Beach Park play area, Oakley Village Hall, and the B3400 Andover Road. To the east of the site are housing estates associated with the late 20<sup>th</sup> and early 21<sup>st</sup> century expansion of Oakley, including the immediately adjacent Canterbury Gardens development. The historic settlement of Church Oakley and its conservation area lies to the south, while to the west and north-west of the site is open countryside leading to the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
12. A large part of the site was the subject of an appeal decision<sup>1</sup> from 1988 for residential development of around 250 dwellings. The appeal was dismissed for a number of reasons including adverse effects on the landscape, the conservation area, and highway safety. The parties referred to this decision at various points during the Inquiry and I have regard to it where necessary. The Canterbury Gardens development was also part of the land from the 1988 appeal decision. Following the NP allocation, it subsequently gained permission for 48 homes. Most of the homes have now been completed and are occupied.

### *Main Issue 1: Character and appearance*

#### *The existing context*

13. The site is situated within the Oakley/Steventon Down Landscape Character Area in the Basingstoke and Deane Landscape Character Assessment 2021 (BDLCA). Its key characteristics include a mosaic of arable farmland, mixed woodland and managed parkland, with an unspoilt, rural and remote character, and medium to large scale arable fields enclosed within a generally intact and well-managed hedgerow and woodland structure. Key issues include pressure for housing development including extensions to Oakley encroaching into the character area. The BDLCA aims to retain **the area's** rural character and, where possible, limit the effect **of Oakley's expansion on the landscape and separate** identity of Church Oakley by retaining existing boundary hedges and trees.
14. The Oakley Village Design Statement 2004 (VDS) forms part of the NP evidence base and contains a number of guidelines in terms of the landscape setting of the village. They include the preservation of the visual relationship between Oakley and the surrounding countryside such that its identity and a self-contained community is kept, with further development generally kept with the present village boundaries and previously built upon land.
15. The North Wessex Downs AONB is approximately 600m from the site. It covers a large area from the Chilterns to the edge of Salisbury Plain with chalk downlands and grassland alongside wooded plateaux. The AONB Management Plan 2019-2024 identifies intense pressure for development throughout the AONB and its setting that threatens the character and quality of its landscape. The AONB Position Statement on setting outlines examples of adverse impacts on the setting of the AONB and notes that such impacts might not be visual.
16. The site is predominantly grassland, used by horses for grazing. The access road and pavement to Canterbury Gardens crosses the appeal site from Station

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<sup>1</sup> APP/H1705/A/88/083281

Road, while there is a balancing pond for the new homes within the north-east corner of the appeal site. The site is enclosed by mature boundary vegetation on most sides apart from either side of the access road junction with Station Road. The south-eastern part of the site is a separate field enclosed on all sides by planting with another area of paddock immediately to the west next to the Peter Houseman Recreation Ground (the recreation ground).

17. The site is relatively flat and open but falls to the south and west towards Church Oakley and Andover Road respectively. Church Oakley is largely screened from the site by the topography and existing vegetation, while parkland and estate farmland to the south-west are hard to distinguish. Likewise, development to the north of the railway line is largely screened from the site by vegetation. In contrast, the housing at Canterbury Gardens is visible on the other side of the boundary hedge while the access road has a suburbanising effect. Thus, in landscape terms, the site has edge of settlement character in contrast to the more remote and rural countryside to the west of Station Road. There was some doubt at the Inquiry whether the site lies within an area influenced by existing lighting, but there are still suburban influences.
18. While the site is not identified as a valued landscape for the purposes of NPPF paragraph 174(a), it has moderate value in terms of the green and undeveloped nature of the paddocks and fields within it, and high value in terms of the boundary vegetation that is in keeping with the qualities of the character area. Both aspects are susceptible and sensitive to change. The wider landscape character area has moderate to high value due to its aforementioned qualities, but the site makes a limited contribution to the character area due to its location and appearance and the extent of boundary screening.
19. Station Road is used by pedestrians, cyclists and horse riders for recreational purposes. However, the site is only particularly visible from Station Road at the bridge over the railway line and along the first part of the road frontage from the bridge. As the road drops into Church Oakley, the site is hidden by vegetation. Due to the falling topography and intervening hedgerows, the site is not very visible from Footpaths 6 and 7 between the Church of St Leonard (the church) and The Beach Arms Hotel on Andover Road. The church and the rest of the settlement at Church Oakley screens the site in the panoramic views from the south-west that are protected by NP Policy 8.
20. There are glimpses of the south-eastern part of the site from Footpath No 9b with Canterbury Gardens houses behind the trees and hedgerows, but these are seen in the context of existing modern housing and the school buildings to one side. Views north to the site from the very edge of the recreation ground are across an intervening paddock area with mature boundary vegetation largely screening Canterbury Gardens. The site can be seen at the western end of Canterbury Gardens but very much framed by the new housing in the foreground. There are unbroken views from the new housing itself, but these are private views and restricted to a relatively limited number of properties overall. Thus, in visual terms the site is well-contained, only seen in close-up views and is influenced by adjoining built development. This diminishes the value of viewpoints from Station Road, Canterbury Gardens, and along nearby footpaths, and lessens their susceptibility and sensitivity to change.
21. There are no public views of the site from within the AONB. Nevertheless, it is possible to see the AONB in views from within and across the site. The site and

the nearest part of the AONB lies within the same landscape character area. Intervening structures such as the sewage works and railway viaduct do not dominate views. Moreover, travelling between Oakley and the AONB, it is **possible to experience the site as part of one's route by a range of transport modes**. The use of the land for grazing is compatible with the overall rural land use within the AONB. Therefore, the site can be considered to lie within the **AONB's setting and contribute to this setting. However, the site is a relatively small part of the surrounding countryside and is well-contained, and so it only makes a modest contribution to this setting.**

*The effect of the development on character and appearance*

22. The design and access statement indicates that most properties could be two storeys, with those nearest to Station Road and the recreation ground being single storey. The illustrative site plan shows that development could be excluded from the south-west part of the site next to Station Road and the paddock next to the recreation ground. There might be some loss of boundary planting to form the access through to the south-eastern part of the site, but otherwise planting could remain and be reinforced.
23. An illustrative landscape masterplan (ref O-1) submitted with the **appellant's** landscape proof suggests pulling housing away from Station Road with a belt of trees along the road frontage. This plan has not been subject to public consultation but is an indication of an alternative approach. Therefore, while none of the illustrative documentation can be secured at the outline stage, they nevertheless provide helpful assistance. Indeed, the **evidence of the parties' witnesses** was informed greatly by the illustrative material.
24. The development of up to 110 dwellings would inevitably erode a large part of the grassland paddocks and fields, and result in harm to this landscape feature. However, the development could retain and reinforce much of the boundary vegetation with little overall harm. The vegetation would also ensure that the development would be well-screened in views from footpaths to the south, west and east. The development would be very noticeable initially from the railway bridge and first part of Station Road past the site given the present limited extent of screening. However, as planting matures, it would soften the overall effect, while single storey properties would reduce the height of built development along this edge. A tree belt could be no wider than existing boundary planting and would not look out of keeping in the wider landscape.
25. There would be a further encroachment of modern Oakley westwards into the countryside beyond the limit of development formed by housing at Canterbury Gardens and north of the railway line on Andover Road. However, it would be contained and seen within the context of Canterbury Gardens and the existing access road. There would be the opportunity to provide large open space buffers within the site nearest to Church Oakley to avoid coalescence or any **other adverse visual or landscape effects. Given the site's limited contribution** to the wider landscape character area, the development would only have a minor adverse effect on its qualities.
26. There would be a change in landscape character and the rural use of the land **within the AONB's setting and some reduction in the rural approach to and from the AONB**. However, the development would occupy a relatively small and well-contained parcel of land not visible in any public viewpoints from the AONB. Thus, **the development would have an acceptable effect on the AONB's**

setting and so would accord with the AONB Management Plan as well as the AONB Position Statement on setting. It would be sensitively located and designed to avoid or minimise adverse impacts on the AONB in line with NPPF paragraph 176.

27. While the proposed development would also intrude into open land, this land is not as unspoilt or remote from the built-up area of Oakley as was the case in 1988. This is chiefly because of the effect of Canterbury Gardens, which now sits to the west of Footpath 9b and the boundary hedgerow adjoining the footpath, and the access road that is a significant feature within the site. As a consequence, the site does not have such a strong role in defining the setting of the village. Moreover, the policy context has altered and the landscape protection policies mentioned by the Inspector do not exist today. Therefore, I am content that the 1988 decision does not preclude the development in terms of the character and appearance of the area.
28. Drawing everything together, the development would result in some harm to landscape and visual receptors, especially at construction stage and within the first few years. However, given the moderate value of the site, other than its boundary vegetation, and its limited contribution to the wider landscape area including the AONB, and its overall visual containment, the harm would not be significant. By year 15 and beyond, the establishment of additional planting would mean the effects would be no greater than moderate in terms of any visual or landscape receptor. At reserved matters stage, it would be possible to achieve a suitable layout and scale of development combined with sympathetic landscaping and appearance. This would ensure successful integration with surrounding development without unacceptable effects on local landscape character and scenic quality of the area.
29. It is possible within the realms of planning policy and guidance for a decision-maker to consider the short-term effects arising from the construction and operation of a development on the character and appearance of an area. The Council referred me to an appeal decision<sup>2</sup> and a court judgment<sup>3</sup> in this regard. My decision has taken into account such effects. However, it is also necessary to consider the long-term effects of development which the above appeal decision also did. In some cases, the combination of short and long term effects may result in an overall finding of harm but in other cases, such as here, it may not. **I note that the Council's landscape team objected to the development at the application stage but I have assessed the proposal on the evidence before me at the Inquiry.**
30. In conclusion, the development would have an acceptable effect on the character and appearance of the area. Therefore, it would accord with LP Policy EM1 which permits development that is sympathetic to the character and visual quality of the area, and respects, enhances and is not detrimental to the landscape having regard to, amongst other things, the qualities within the **Council's landscape character assessment and the setting of a settlement** including important views. The development would respect the sense of place, tranquillity and remoteness and the quiet enjoyment of the landscape from public footpaths in line with the policy and would maintain the integrity of existing settlements and prevent their coalescence. The development would

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<sup>2</sup> APP/H1705/W/19/3226286 (Land north of Goddards Lane)

<sup>3</sup> HJ Banks & Co Ltd v SSHCLG [2018] EWHC 3141 (Admin)



**also be in accordance with the policy's approach to the AONB which follows national planning policy and the AONB Management Plan.**

31. The development would accord with LP Policy EM10 which seeks to deliver high quality development. While this policy is arguably more applicable at the reserved matters stage in this instance, the development would nevertheless be able to respect the local environment and contribute positively to local distinctiveness and sense of place. Given its limited landscape and visual effects, the development would be in keeping with NPPF paragraph 174(b) which recognises the intrinsic character and beauty of the countryside.
32. While the development would not be within the village boundary or on previously built upon land as required by the VDS, it would preserve the visual relationship between Oakley and the surrounding countryside and maintain its identity and self-contained community. Finally, the retention of boundary hedges and trees and a sympathetic layout secured at reserved matters would **limit the effect of Oakley's expansion on the landscape and** the separate identity of Church Oakley as required by the BDLCA.

### *Main Issue 2: Church Oakley Conservation Area*

#### *The significance and setting of the conservation area*

33. LP Policy EM11 requires all development to conserve or enhance the quality of **the borough's heritage assets in a manner appropriate to their significance.** Proposals that affect heritage assets will be permitted where, amongst other things, they demonstrate a thorough understanding of the significance, character and setting of conservation areas and how this has informed proposals to achieve high quality new design which is respectful of historic interest and local character.
34. Church Oakley Conservation Area incorporates the historic settlements of Church Oakley and East Oakley on the south-western side of modern Oakley. Rectory Road forms the east-west spine of the conservation area from the village pond at East Oakley past many listed and other historic buildings, including the church (Grade II\*), and through to the junction with Andover Road. The conservation area also includes the southern built-up part of Station Road and a large number of fields and other areas of open space such as the recreation ground. The site adjoins the conservation area along two parts of its southern boundary next to Station Road and north of the recreation ground.
35. The Conservation Area Appraisal 2004 (CAA) succinctly describes the historic character of the conservation area as essentially a small residential and rural based community that has developed over time. East Oakley has merged with modern Oakley but retains a historic village character around the pond. Church Oakley is no longer physically separate from East Oakley but has a stronger rural character given the lack of adjoining modern development. The built form **and layout of the two settlements contribute greatly to the conservation area's** character and appearance as well as to its significance.
36. The fields and open spaces within the conservation area provide a strong visual and functional link between the historic built form and its rural and agricultural surroundings. It is unusual for large areas of undeveloped space to fall within a conservation area boundary, but nevertheless they make a positive contribution to significance and provide views to and from the wider



- countryside. The spaces vary in character and appearance from the attractive open fields in the southern and western parts of the conservation area to the more enclosed and unremarkable amenity space of the recreation ground.
37. The CAA describes how Church Oakley is situated in a shallow valley on an east-west axis in an undulating landscape of farmland. It goes on to say that this setting gives significant views of the conservation area in a rural context, particularly from the north-west and south. I consider that visual elements are important to the setting of the conservation area, such as the panoramic views of the church to the south-west. Nevertheless, other elements may be of similar importance as set out in national guidance<sup>4</sup>, including patterns of movement as well as historic and functional relationships.
38. The parties agree that the site lies within the setting of the conservation area but disagree on whether it makes any contribution to its significance. Due to the valley topography and intervening buildings and vegetation, the intervisibility between the site and the conservation area is limited. The vista towards the site from within the recreation ground as marked on the CAA map is in fact a view of dense boundary vegetation especially in summer months. There are only glimpses of the site from between the trees on the northern edge of the recreation ground and conservation area. This view takes in a small area of paddock with little visibility of the rest of the site.
39. There are glimpses of the site boundary vegetation from Footpaths 6 and 7 to the west of Station Road. From within the larger part of the site, it is possible to glimpse the top of the church between the trees even in summer months but it is not a prominent view. The rest of Church Oakley is heavily screened from the site. Therefore, the site does not provide significant views to or from the conservation area.
40. Station Road and Footpath 9b form two of the approaches to and from the conservation area and both travel along the edge of the site. The experience of Station Road changes from the more municipal northern end with the village hall and park, to an undeveloped and rural middle section from the bridge to the settlement edge of Church Oakley, and finally the built form of the conservation area along the southern end.
41. The middle section of Station Road allows for views across the wider countryside to the west as well as across the site either side of the access road before the road drops into a sunken lane with dense hedging either side. The rolling countryside to the west and the sunken lane provide a strong rural context for the approach to and from the conservation area. In contrast, the rather flat and enclosed site with the backdrop of Canterbury Gardens and the presence of the access road makes a lesser contribution to this approach.
42. The route of Footpath 9b is more or less consistent with a historic route that appears on the 2<sup>nd</sup> edition Ordnance Survey map of 1896. Back then, the footpath passed through fields from Andover Road and the railway line in the **north to Church Oakley in the south. Today, the route's surroundings have** changed substantially. Between Andover Road and the conservation area edge at the recreation ground, the footpath is flanked by modern housing and fencing along both sides for much of its length. The only remaining undeveloped part is the south-eastern field of the appeal site. While this

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<sup>4</sup> Planning Practice Guidance Reference ID: 18a-013-20130723 and **Historic England's** Good Practice Advice Note 3

provides some greenery, the footpath is now an almost wholly suburban approach to and from the conservation area.

43. It is evident from tithe map records that most of the site and surrounding fields in the early 1840s was in the ownership of Park Farm much as it is today. The arable use noted in 1841 may not be the case now, but there continues to be an agrarian and agricultural use as grazing land. It is not clear whether the ownership and use has remained broadly unchanged across the intervening 180 years, but nevertheless it is an indication of a functional relationship between the site and the conservation area. However, it is difficult to appreciate that relationship other than from the tithe map given that there is little visibility between the site and the buildings at Park Farm to the south.
44. It is incorrect to say that the site makes no contribution to the significance of the conservation area despite falling within its setting. There is some intervisibility, the site is located on two approaches to the conservation area, and there is a historic functional relationship. However, for the reasons given above, the contribution made to the significance is no greater than moderate given the limited views and suburban influences.

*The effect of the development on the conservation area*

45. The illustrative site plan suggests that housing could be kept away from the parts of the site nearest to the conservation area at Station Road and the recreation ground. The CAA vista from the recreation ground and the view from its northern boundary would be unlikely to alter greatly if housing was confined to the south-eastern part of the site on the other side of the paddock behind an existing dense hedgerow. From Footpaths 6 and 7, it would be possible to see the roofs of houses along the current open part of the Station Road frontage, but this could be mitigated with single storey properties and the establishment of hedging and/or a tree belt.
46. The view of the church from within the site could be blocked by housing but it **is only a glimpse that does not contribute greatly to one's appreciation of the conservation area**. Moreover, it may be possible to retain views of the church from within the site depending on the layout and scale of development.
47. The approach along Station Road would become more developed past the site and new housing would be visible either side of the access road. However, with the establishment of planting along the road frontage, any negative effect would be lessened. Views across the wider countryside to the west would not be affected and one would still drop into the sunken lane section before reaching Church Oakley and the edge of the conservation area. Therefore, the rural context of the approach would not diminish significantly.
48. The construction of housing within the south-eastern part of the site would remove the last undeveloped part of Footpath 9b but given the existing suburban housing and the fact that the nearest part of the conservation area is the recreation ground means that any adverse effect would be very limited. The development effects would include lighting at night and this could intrude into conservation area views and approaches. However, the limited views and the opportunity to enhance screening would lessen any negative effect.
49. The change in use of the land from an agrarian use associated with Park Farm to residential would erode the functional relationship identified in historic map

evidence as well as the predominant land use surrounding the conservation area. There would be a further encroachment of modern Oakley towards the conservation area as part of cumulative change within the setting of this heritage asset. However, due to the limited impact on views between the site and conservation area, the existing suburban influences, and the ability to mitigate through planting and the precise layout and scale of housing, the adverse effects arising from the change of use and the cumulative growth would not be significant in this instance.

50. The 1988 appeal decision found there would be harm to the conservation area through development of land between modern Oakley and Church Oakley. As noted above, the surrounding context has changed particularly with the development of Canterbury Gardens and the access road and how the site is perceived from both Station Road and Footpath 9b. Therefore, the degree of harm would not be the same.
51. In conclusion, the development would have a harmful effect on the significance of the conservation through changes within its setting. The harm would be less than substantial and no greater than low to moderate due to the limited effects I have identified. Nevertheless, NPPF paragraph 202 requires such harm to be weighed against the public benefits of any proposal. NPPF paragraphs 199 and 200 place great weight on the conservation of designated heritage assets irrespective of the level of harm, with clear and convincing justification for any harm. These matters are considered as part of the planning balance below and will also inform my conclusion against LP Policy EM11.

### *Main Issue 3: Highway safety and access*

#### *Existing highway context*

52. Station Road connects Andover Road to Church Oakley. There are no speed restrictions until the edge of Church Oakley where a 30mph limit applies. The road is two-way nearest to Andover Road but then narrows to effectively a single vehicle width at the railway bridge. The road widens past the site and the access road and then narrows to single width again as the road drops into Church Oakley. The T-junction with Rectory Road is next to the church and the **St Leonard's Centre. The latter is used for various purposes including a play school.** Rectory Road is narrow in several places.
53. There are two approaches by road from the site to the centre of Oakley. One is via Station Road north to Andover Road and the other is Station Road south to Rectory Road. Traffic survey data from March 2017 and September 2019 indicates peak hour flows of around 30-40 two-way movements in the evening peak hour. Despite the lack of speed restrictions, the surveys record 85<sup>th</sup> percentile speeds of around 30mph near to the site access and approximately 20mph over the bridge.
54. Station Road lacks pavements for much of its length, but is used by pedestrians, cyclists and horse riders including those accessing the wider countryside as well as the village hall and Beach Park via the new links through Canterbury Gardens. Weekday survey data has been supplemented with weekend data from the Early May Bank Holiday weekend in 2021 to take account of busier times for non-motorised users and the partial occupation of Canterbury Gardens. The 2021 data indicates up to 27 two-way pedestrian movements and 23 two-way cycle movements in any given hour and a few

horse riders. It is important to note that Station Road is not the only route that pedestrians can take to the village hall and Beach Park from Oakley, with Footpath 9b and Andover Road providing a reasonable alternative.

55. There are relatively few passing places along Station Road other than entrances to fields and properties. There is some damage to roadside verges and evidence of signage being knocked over by larger vehicles. The southern end of Station Road can be busy at specific times associated with the use of the church and the **St Leonard's Centre. This includes the daily playschool drop off and pick up**, but also when funerals or other less regular events take place. Photographic evidence shows that the road can become very congested especially if on-street parking coincides with larger vehicles trying to move through. Visibility at the Rectory Road junction can be poor particularly with any parking. It is also apparent that some rat running takes place via Rectory Road and Trenchards Lane to junction 7 of the M3 and could increase with substantial new development planned at Manydown.
56. Visibility either side of the railway bridge is affected by the curve and rise of the road. The walls of the bridge mean that most motor vehicles travel in the centre of the road when crossing. The forward visibility over the bridge allows sufficient stopping time taking into account average traffic speeds even in wet conditions. Nevertheless, there remain some issues with motor vehicles being able to see other road users on or after the bridge. Concerns have also been raised about traffic speeding along Andover Road above the 40mph speed limit, with visibility to the west for vehicles exiting Station Road restricted by vegetation and topography.

*Effect of the development on highway safety and access*

57. The appellant has made the assumption that the majority of traffic generated by the development would head north on Station Road and over the railway bridge. This is based on similar assumptions made for Canterbury Gardens and is informed by trip rates and distribution data. A split of 90% north and 10% south has been tested for robustness, although the main parties accepted that an 80:20 split was possible.
58. The development in combination with committed development and background growth would result in around 100 motor vehicles per hour (vph) travelling north in the weekday peak hours based on a 90:10 split. At the same time, around 20 non-motorised users would travel north. Traffic demand at the weekend would generally be lower for motor vehicles at around 60vph and up to around 50 movements for non-motorised users.
59. While a 90:10 split may be artificially high, it does seem likely that the majority of motorised traffic would head north rather than south as Andover Road provides main road access through to Basingstoke and the M3. It is also the quickest route to Pack Lane which is another well-used route to Basingstoke. Having experienced Trenchards Lane, it is a very long and narrow country lane with poor visibility and limited passing places, making it less attractive as a rat run. People accessing services in the centre of Oakley may choose to drive via Rectory Road, but footpath links through the site and Canterbury Gardens would be extensive and present realistic alternatives to the car.
60. The Rectory Road junction is undoubtedly busy at times, but this appears to be confined to key points of the day or for specific events. People living at the

development would have options to avoid Rectory Road altogether should they wish. There has been an increase in delivery vehicles in recent years, but these typically follow a set route and aim to have multiple deliveries to one location to reduce the number of vehicles on the road network. A stop sign at the Rectory Road junction could be beneficial but based on the lower levels of projected traffic it does not appear to be necessary.

61. The projected increases northbound from the site would be noticeable and potentially pose some issues for crossing the railway bridge in particular. However, pedestrians can use an alternative route to avoid Station Road. Furthermore, the appellant has put forward a series of mitigation measures.
62. Additional signage and road markings either side of the railway bridge to indicate the narrowing roadway would increase the amount of warning to drivers. The signage could include reference to horse riders and cyclists as well as pedestrians in the road if deemed necessary. The clearance of vegetation next to the walls on the bridge and replacement with tarmac would provide additional width for different road users to pass one another more easily. A chicane build out to the south of the bridge would slow traffic and provide opportunities for vehicles to give way on the approach to and from the bridge with reasonable forward visibility. There would be no obvious priority at the chicane meaning that drivers should proceed slowly and with care.
63. Improvements to the western visibility splay at the junction of Station Road and Andover Road can be achieved by cutting back roadside vegetation. This should have no effect on the tree belt next to the allotments. While it would not address the issue of vehicles exceeding the 40mph speed limit, the visibility would be improved to the benefit of highway safety and so would be a necessary measure. A stop sign would not be needed at this junction based on the achievable visibility splays.
64. The mitigation measures also include signage and funding of a Traffic Regulation Order to reduce the speed limit to 30mph along the entirety of Station Road. While it is possible some drivers might try to maintain 30mph along the road including over the bridge, in reality most would continue to travel at lower speeds to reflect the road conditions. Therefore, it would be necessary along with all of the above mentioned measures. These measures have been assessed by road safety auditors and found to be acceptable.
65. Interested parties have noted **the railway bridge on St John's Road where a separate footbridge is provided for pedestrians. However, St John's Road** appears to serve a greater number of houses in Oakley and so is not directly comparable. Other suggestions like traffic lights for the bridge, road widening to two lanes, and one-way systems would likely increase traffic speeds.
66. The 1988 appeal decision was based on a proposal to close Station Road to through traffic with 150 dwellings served by the railway bridge. The Inspector found that the bridge was of substandard width unable to accommodate a footway, with uncertainties regarding who has right of way. While the dimensions of the bridge have not altered since 1988, highway guidance and standards have changed markedly. Manual for Streets for example encourages narrower widths and uncertainties within road layouts to decrease traffic speeds. Therefore, the previous appeal decision does not alter my findings.



67. In conclusion, the development would have an acceptable effect on highway safety and access. Therefore, it would accord with LP Policy CN9 which, amongst other things, requires proposals to integrate into existing movement networks, provide safe, suitable and convenient access for all users, avoid compromising highway safety, and mitigate impacts on the highway network. It would also comply with NPPF paragraphs 110 and 111 which seek safe and suitable access to the site for all, the mitigation of any significant impacts on highway safety, and to avoid unacceptable impacts on highway safety.

*Main Issue 4: Sustainable transport modes*

68. LP paragraphs 4.36 and 4.37 describe Oakley as a relatively large village with a range of local facilities including a primary school (infants and juniors), local shops, a **doctors' surgery and regular bus services between Basingstoke, Andover and Winchester**. There are also sports and leisure facilities such as the village hall and the recreation ground.

69. While people may choose to drive to the above services and facilities, the development would benefit from the access road and pavement into Canterbury Gardens which already links into Footpath 9b and through to the 20<sup>th</sup> century housing estate along Highland Drive. The development would provide for further links onto Footpath 9b via the south-eastern part of the site which can be secured by condition. Therefore, it would be reasonable and realistic to walk or cycle from the site to the centre of Oakley as well as walk to bus stops on Andover Road, Pack Lane and Oakley Lane.

70. The S106 would provide a contribution towards dropped kerb and tactile paving crossings along Highland Drive which would improve the accessibility and attractiveness of the route to the village centre. The contribution would also improve the existing bus stops on Pack Lane and Oakley Lane with shelters, better access and real time passenger information boards to increase the desirability of using public transport to access other settlements.

71. It is possible that the separate contribution towards the Station Road enhancements discussed above may have some monies leftover after the works have been completed based on preliminary cost estimates. The S106 allows for such monies to be spent on improving bus services along Andover Road as well as surfacing pedestrian routes between the site and Oakley including further improvements to Footpath 9b. This would further assist with increasing the attractiveness and likelihood of sustainable modes of transport being used by occupants of the development.

72. The S106 would ensure the implementation of a travel plan that would seek to encourage sustainable transport modes via initiatives such as residential information packs (including vouchers towards cycling and bus/rail travel) and car sharing. The S106 would also make provision for an electric car club to operate from within the site.

73. Based on the above measures, the development would satisfactorily promote a range of sustainable transport modes. This would help to address concerns regarding air pollution and the climate emergency. Therefore, it would accord with LP Policies CN9 and EM10 which, amongst other things, seeks to promote opportunities for sustainable transport modes and improve accessibility to services, offer maximum flexibility in the choice of travel modes, and provide well connected and accessible places. The development would also follow NPPF

paragraph 110(a) which requires proposals to take up appropriate opportunities to promote sustainable transport modes, and NPPF paragraph 112(a) and (b) which give priority to pedestrian and cycle movements, as well as facilitating access to and use of public transport, and seek to address the needs of people with disabilities and reduced mobility.

#### *Designated European sites*

74. The site lies within the catchment for the River Test which flows into the Solent. There are a number of designated European sites within or adjacent to the Solent. The Solent Maritime Special Area of Conservation (SAC) is important for its major estuarine systems and habitats. The Solent and Southampton Water Special Protection Area (SPA) and Ramsar site contains estuaries and adjacent coastal habitats important for breeding gulls and terns and wintering waterfowl while the wetland habitats support passage birds too. The Solent and Dorset Coast SPA occupies the entirety of the Solent and is important for breeding terns. These designations are most directly affected by water flows from the River Test given their location.
75. There is also the Solent and Isle of Wight Lagoons SAC which is important for its coastal lagoons habitats, the Portsmouth Harbour SPA and Ramsar site which is important for its estuary habitats that support wintering waterfowl, and the Chichester and Langstone Harbours SPA and Ramsar site which is important for its habitats which support wintering waterfowl and breeding terns. However, these designations are towards the western and eastern sides of the Solent and so are more peripheral to water flows from the River Test.
76. Potential adverse effects on the above European sites include an increase in nutrient levels leading to eutrophication and a decline in water quality that can affect important habitats and species. There is potential for sewage generated by the proposed dwellings resulting in increased levels of nutrient nitrogen entering the Solent via the River Test. This would result in likely significant effects on the integrity of the European sites in combination with other plans and projects. As such, it is necessary to carry out an appropriate assessment (AA) as part of my decision.
77. As part of the AA, it is necessary to consider whether any potential effects could be addressed through specific mitigation measures. The appellant has proposed converting 14.5ha of arable land into woodland as set out in the Nutrient Nitrogen Offsetting Strategy dated 16 July 2020 and the Nutrient Mitigation Area Management Plan dated 27 April 2021. This would stop the application of artificial fertilisers and the release of nitrogen into the River Test catchment. The woodland would be fenced off and managed in perpetuity for the lifetime of the development, with annual monitoring for the first 20 years of **the development's occupation and monitoring every 5 years for the next 60** years. The strategy and plan would be secured via the S106 and Natural England (NE) has confirmed that it is satisfied with the proposed measures.
78. The nitrogen calculations that have informed the strategy and plan have been based on the development achieving a water use efficiency standard of 110 litres per person per day. Therefore, it would be necessary to ensure that this standard is secured by planning condition as NE has requested. The calculations are also based on 100% of the sewage being treated at the nearby Ivy Down Wastewater Treatment Works (WwTW) which has a higher nitrogen permit level than other WwTW. Some of the waste from Ivy Down gets sent by

tanker to Fullerton WwTW where it is treated and sold as fertilisers to farmers **who are potentially outside the Solent's catchment**. That may mean less than **100% of the development's sewage actually reaches the Solent, but this** underlines the robustness of the calculations.

79. NE has sought a condition or obligation that all wastewater must be treated at Ivy Down because the calculations are based on Ivy Down being the sole recipient of sewage. However, the developer has no control on the sewage once it leaves the site as this is the sole responsibility of the water company. As such, a condition or obligation would not be enforceable. Nonetheless, the calculations are based on 100% going to Ivy Down as the worst case scenario. It is the nearest WwTW and other WwTW have lower nitrogen permit levels meaning less can be released, while some nearby WwTW are not in the Solent catchment at all. Should it transpire in the future that some wastewater is going to another WwTW in the Solent catchment, this would require reassessment of the nitrogen calculations and a revised Habitats Regulations Assessment in consultation with NE and the Council.
80. Taking all of the above into account, I am satisfied that the mitigation measures would be effective and can be secured via condition and the S106. I am also satisfied that NE has been adequately consulted on the information and measures that have informed this AA. As a consequence, and based on the above mitigation measures, the development would not result in a significant effect on the aforementioned European sites. Therefore, it would accord with LP Policy EM4 which seeks no adverse impact on the integrity of designated European sites.

*Main Issue 5: Community and infrastructure needs*

81. The Transport Contribution and Additional Transport Contribution would be spent on improvements to Station Road, local bus stops and services, and routes through to the centre of Oakley. The Travel Plan and Car Club would enhance sustainable modes of transport for future occupants of the housing. These obligations would comply with LP Policy CN9 as set out above.
82. The Tree Works Plan and the Landscape Management Plan deal with the management of trees and landscape features on site beyond the construction stage. These plans would safeguard the character and appearance of the site and wider area in line with LP Policies EM1 and EM5 which deal with landscape and green infrastructure. The Biodiversity Management Plan would provide for the management of existing and new habitats within the site, including details on achieving a biodiversity net gain. It would overlap with the nitrate and landscape management plans to ensure compatibility. This would benefit nature conservation in accordance with LP Policy EM4 and NP Policy 10.
83. The On-Site Open Space obligation would provide for public open space within the site while the Allotments obligation would either provide on-site allotments or pay a contribution towards their provision in the local area. The obligations would accord with the requirements in LP Policies CN6 and EM5 on infrastructure provision including green infrastructure, while the allotments obligation would also accord with NP Policy 6 which encourage new allotments. The Nitrate Mitigation obligation would ensure the provision and management of the nitrate mitigation land in accordance with the management plan as discussed above. It would accord with LP Policy EM4.



84. The Affordable Housing obligation would ensure that 40% of the total dwellings are affordable, of which 70% would be rented units and 30% intermediate housing, and 15% would meet enhanced accessibility or adaptability standards. This would be in accordance with LP Policy CN1 on affordable housing.
85. Finally, the Employment Skills Plan would seek to provide training and employment opportunities for local people. This requirement was not covered in the reason for refusal and LP Policy EP1 on economic growth and investment **is not explicit on the need for such a plan. However, the Council's Planning Obligations Supplementary Planning Document (SPD) 2018** explains that the policy provides the framework for training and employment and that a skills plan will be sought for residential schemes of 100 homes or more.
86. Given the policy requirements, I am satisfied that all of the above obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. They would accord with Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 57. Therefore, I can take all of the obligations into account as part of my decision. I am also satisfied that the CIL charging schedule covers contributions towards education, off-site community facilities, and off-site playing fields in accordance with LP Policies CN7 and CN8.
87. In conclusion, the development would make adequate provision for community and infrastructure needs arising from the development. Therefore, it would accord with LP Policies CN1, CN6, CN7, CN8, CN9, EM1, EM4 and EM5 and NP Policies 6 and 10, as well as the Planning Obligations SPD.

#### *Main Issue 6: Housing land supply*

88. The Council accepts that it is unable to demonstrate a 5 year supply of deliverable housing sites. However, the parties disagree on the extent of the shortfall based on a number of disputed sites and the approach to establishing the housing requirement. By the time of the Inquiry, the appellant was willing to accept that the housing requirement is based on the standard methodology (SM) approach required by NPPF paragraph 74 for local plans that are more **than 5 years old. The appellant's hybrid approach of using the LP figure for the first year** is not advocated in national policy or guidance, but in reality, it make little difference to this appeal in terms of the shortfall and 5 year supply (around 200 homes and 0.2 years respectively).
89. Based on the SM and the different positions on disputed sites, the appellant argues that the 5 year supply is 4.11 years (a shortfall of 816 homes) while the Council argues it is 4.83 years (a shortfall of 154 homes). It was broadly **accepted that the shortfall based on the appellant's figures is significant rather than severe, whereas the shortfall based on the Council's figures is moderate.**
90. NPPF paragraph 11(d) is triggered regardless as there is no 5 year supply whatever position is reached on the disputed sites. Even if I were to agree with **the Council's figures**, both parties have confirmed that significant weight can be afforded to the provision of housing as part of this development. Therefore, it has not been necessary to consider the disputed sites in any detail to reach a precise finding on the extent of the shortfall.
91. The shortfall was first identified in the 2018/19 Annual Monitoring Report published around 2 years ago. The inability to meet housing supply targets has

triggered a review of the LP and the new plan is not due to be adopted until spring 2024. The Council is taking action to boost housing supply including the LP review, the promotion of strategic sites, and seeking to remove barriers to planning permission. Recent annual completion rates have exceeded the LP target and the shortfall in supply is not as low as has been argued at recent appeals<sup>5</sup>. However, there is little evidence before me that a 5 year supply would be achieved before 2024 when the shortfall was first identified in 2019. Therefore, it would not be appropriate to lessen the weight to be given to the provision of housing on the basis of an alleged short-term deficit in the 5 year **housing land supply. Moreover, even if the Council's figures on the shortfall are preferred, there would still be a deficit if this appeal was allowed.**

#### *Other matters*

92. The development would likely increase the demand on village services and **facilities such as the schools and doctors' surgery and could add to traffic and parking** in the village centre. However, I have little evidence to show that the effects would be unacceptable. Furthermore, the development would make a financial contribution via CIL towards education and off-site community and playing fields facilities.
93. Oakley has grown markedly in recent decades while Basingstoke has expanded and continues to expand towards the settlement. The LP utilises strategic gaps to maintain the separation and identity of Oakley from Basingstoke. The development would be located on the other side of Oakley but would not be such a significant expansion that the village status or qualities would be lost. Whilst previously developed land should be prioritised wherever possible, this does not mean that suitable greenfield sites should be ignored. The NP does not provide for the development of this site. However, the NP covers a wide range of topics and sites and so would not be rendered worthless if permission were to be granted.
94. The site is at low risk of flooding from any source and it would be possible to achieve sufficient surface water drainage based on the evidence before me. Adequate foul water drainage would be provided in consultation with Southern Water. On that basis, the development would not exacerbate existing flooding problems in the local area or result in any negative sewage effects. The existing grassland that covers much of the site has limited ecological value in **contrast to the greater biodiversity potential of the site's trees and hedgerows.** Subject to the details at the reserved matters stage, much of this boundary vegetation would remain and be enhanced, while areas of public open space would be created. Housing designs and layouts, including lighting, could also take into account adjoining habitats and species. As a consequence, the development would not have a negative ecological effect.
95. There would be a sufficient vegetation buffer between any development and existing housing along with ample scope at the reserved matters stage to adequately mitigate any negative effects on the living conditions of neighbouring occupiers including in terms of privacy, light and noise. There would be some disturbance from the construction phase, but this can be managed via a planning condition. While there may be increased levels of crime within the village, I have insufficient evidence that this development would exacerbate those levels.

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<sup>5</sup> APP/H1705/W/19/3226286 and APP/H1705/W/20/3248187

*Main Issue 7: Planning balance*

96. The NPPF sets out a presumption in favour of sustainable development. Paragraph 11(d) states that where there are no relevant policies, or the policies which are most important for determining the application are out of date (including where a 5 year housing land supply cannot be demonstrated), planning permission should be granted unless one of two exceptions apply. The first is that the application of NPPF policies that protect areas or assets of particular importance (such as designated heritage assets) provides a clear reason for refusing the proposal. The second exception states that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
97. **Notwithstanding the appellant's apparent change of view since the statement of common ground, I consider that LP Policies SS1, SS4, SS5 and SS6 and NP Policy 1 are most important policies as they deal with the distribution of housing, the triggering of a Local Plan review if a future housing supply cannot be demonstrated, and the apportionment of housing numbers to neighbourhood plan areas and sites. These policies are out of date due to the lack of a 5 year supply of deliverable housing sites. Given that the housing land supply position is not severe, even on the appellant's figures, I consider that moderate weight can still be afforded to these policies and any conflict with them. The number of dwellings allocated and permitted within Oakley has already exceeded the 150 homes in LP Policy SS5 and NP Policy 1. However, this figure is a minimum and so this does not affect the weight to either policy.**
98. The appellant argues that LP Policies EM1, EM10, EM11 and CN9 are also most important policies since they deal with the substantive issues at stake in this appeal. Even if I were to agree, NPPF paragraph 11(d) is already triggered by virtue of the housing land supply position. Moreover, even if they were out of date for the same reason as the SS policies, I consider that full weight should be afforded to these policies because they are consistent with the relevant parts of the NPPF. This includes LP Policy EM11 as whilst it does not set out the heritage balance exercise of the NPPF, it does not preclude such an exercise from taking place.
99. I concur with the parties that significant weight can be given to the provision of up to 66 market and 44 affordable homes regardless of the extent of the shortfall and mindful of the affordable housing need where many households are on the waiting list. I also agree that the economic benefits from the construction and subsequent occupation of the homes also carries significant weight. The development would have access to a range of services and facilities by a variety of sustainable transport modes.
100. The development as shown on the indicative plans would provide a considerable amount of public open space. The exact purpose of the space has yet to be defined and the site is sandwiched between Beach Park and the recreation ground. Therefore, only limited weight can be attributed to this benefit. There would be a biodiversity net gain of over 60%. This would be starting from a fairly low base given the current grassland site which is used for grazing, but nevertheless represents a reasonably significant benefit.
101. The early delivery of homes can be encouraged by a condition shortening the timeframes for the commencement of development, but it cannot be otherwise guaranteed. While the appellant can point to its track record in delivering

homes, there are a number of factors that could affect delivery rates.

Therefore, I only afford limited weight to this benefit. The delivery of up to 11 bungalows can be secured by condition and this form of housing stock is actively sought by the NP. However, the relatively limited numbers involved means that this benefit can only be afforded moderate weight.

102. Finally, the electric car club would be provided as part of the S106 to address the effects of the development and encourage sustainable modes of transport. It would reduce emissions but the provision may only constitute a single parking space within the development. Therefore, only limited weight can be attached to this benefit.
103. Overall, the benefits of the development can be afforded significant weight. The harm to the significance of the conservation area would be less than substantial and no greater than low to moderate in magnitude. Although great weight should be given to the conservation of designated heritage assets irrespective of the level of harm, the heritage balance indicates that the public benefits would outweigh the harm on this occasion. There would be no conflict with NPPF paragraph 202 and the clear and convincing justification for the harm as required by NPPF paragraph 200 would be demonstrated. Therefore, the development would have an acceptable effect on the significance and setting of the conservation area and would not conflict with LP Policy EM11.
104. The first exception in NPPF paragraph 11(d)(i) would not apply as a consequence of the heritage balance. Turning to the second exception in 11(d)(ii), it is appropriate to consider the low to moderate harm to the **conservation area as the wording in 11(d)(ii) refers to "any adverse impacts"**, notwithstanding the lack of conflict with NPPF paragraphs 199, 200 and 202 or LP Policy EM11. Any harm to character and appearance would be no greater than moderate and there would be no conflict with NPPF paragraphs 174(b) or 176 or LP Policies EM1 or EM10. Only moderate weight can be afforded to the loss of best and most versatile agricultural land given the lower grade of much of the site and its relatively limited geographic extent.
105. The development would be contrary to LP Policies SS1, SS5 and SS6 and NP Policy 1 due its location within the countryside. However, this conflict only carries moderate weight for the reasons given above. The effect on highway safety and sustainable modes of transport would be acceptable and there would be no conflict with NPPF paragraphs 110, 111 or 112 or LP Policies CN9 or EM10.
106. The adverse impacts can be afforded moderate weight, but they would not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. As such, the presumption in favour of sustainable development would apply in line with NPPF paragraph 11. Concluding on the planning balance, while the development would conflict with LP Policies SS1, SS5 and SS6 and NP Policy 1, there are sufficient material considerations to indicate that permission should be granted.

#### Conditions

107. Conditions 1 to 3 are necessary to clarify the reserved matters still to be approved as well as set out the timeframe for applications to be submitted and the development implemented. The timeframes are shorter than the standard amount to encourage the earlier delivery of housing. As all the plans are

illustrative, it is not necessary to include a condition listing specific plans. The red line site plan merely identifies the site and contains no details that the development would have to accord with. I have found that the illustrative material would be broadly acceptable and note that the appellant intends to pursue something similar at the reserved matters stage. However, an alternative arrangement could come forward at this stage that is equally or even more acceptable than the current illustrative material. Therefore, it is not necessary for a condition to require broad accordance with the current material.

108. Conditions 4 to 9 address information needed at the reserved matters stage. They are necessary in the interests of achieving acceptable effects on character and appearance (4, 5 and 6), sustainable design and transport (7 and 8), and housing mix (9).
109. Conditions 10 to 15 are pre-commencement requirements, all of which cover necessary arrangements to be addressed before construction begins. Condition 10 is necessary to ensure that details of internal access and circulation routes are provided, as only the existing access road to Canterbury Gardens has permission so far. Condition 11 is necessary to ensure construction work has an acceptable effect on highway safety and the living conditions of neighbouring occupiers, while Conditions 12 and 13 are necessary due to the archaeological interest of the site. Conditions 14 and 15 are necessary to ensure the adequate provision of surface and foul water drainage.
110. The remaining conditions cover matters that need to be addressed before all or part of the development is occupied. Condition 16 is necessary to safeguard **the area's character and appearance**. Conditions 17 and 18 are necessary to deal with any land contamination. Conditions 19, 20 and 21 are necessary to ensure acceptable noise effects from the adjoining railway line. Conditions 22, 23 and 24 are necessary to ensure adequate cycle and car parking provision along with appropriate street management. Condition 25 is necessary to ensure proper refuse storage and collection, while Condition 26 is necessary to ensure water efficiency standards as part of the measures for nitrates mitigation. Finally, Condition 27 is necessary to ensure that external lighting has an acceptable effect on nocturnal species including bats.

#### Conclusion

111. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Tom Gilbert-Wooldridge*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT

Sasha White QC and Anjoli Foster of Counsel, instructed by Wates Developments Ltd.

They called:

James Bevis MEng CMILT CIHT  
Partner, i-Transport LLP

Asher Ross MRTPI  
Planning Director, JLL

Jeremy Smith BSc (Hons) Dip LA CMLI  
Director, SLR Consulting Ltd

Gail Stoten BA (Hons) MCIfA FSA  
Executive Director, Pegasus Planning Group

Benjamin Kite BSc (Hons) MSc CEcol MCIEEM PIEMA  
Ecological Adviser, EPR

Beth Gascoyne  
Cripps Pemberton Greenish

### FOR THE COUNCIL

Alistair Mills of Counsel, instructed by Basingstoke and Deane Borough Council.

He called:

David Mason MBA BSc (Hons) CEng MICE DipEM  
Director, DM Mason Engineering Consultants Ltd

Andy Blaxland BA (Hons) DipTP DipMgt MRTPI  
Director, Adams Hendry Consulting Ltd

Christine Marsh BA (Hons) DipLA CMLI  
Associate Landscape Architect, Hankinson Duckett Associates

Jack Hanson BA MA AssocIHBC  
Associate Director, Node Urban Design Ltd

Laura Callan  
Associate, ET Planning Ltd

### INTERESTED PARTIES WHO SPOKE AT THE INQUIRY

Dr Robert Craig      Local resident

Richard Blacker      Local resident

Alina Sechrest      Local resident

Barbara Bedford      Local resident

Diane Taylor      Councillor, Basingstoke and Deane Borough Council

## INQUIRY DOCUMENTS

- ID1 **Appellant's opening statement**
- ID2 **Council's opening statement**
- ID3 Manydown Overview Committee 16 June 2021 Public Document Pack
- ID4 Development Control Committee 9 June 2021 Public Document Pack
- ID5 Local Plan Update Newsletter Issue 3 Summer 2021
- ID6 **Transcript and photographs relating to Dr Craig's statement**
- ID7 **Transcript relating to Mr Blacker's statement**
- ID8 Road safety matters from Ms Sechrest
- ID9 **Transcript relating to Councillor Taylor's statement**
- ID10 Email from Council dated 23 June 2021 regarding CIL contributions and the CIL infrastructure list
- ID11 Updated Housing Land Supply Positions
- ID12 **Response from appellant to Inspector's nitrates queries dated 30 June 2021**
- ID13 Citation, conservation objections and data form for the Solent and Isle of Wight Lagoons Special Area of Conservation
- ID14 Latest draft conditions listed dated 1 July 2021
- ID15 Updated draft Section 106 agreement
- ID16 Biodiversity Net Gain Calculation Explanatory Note
- ID17 **Council's closing submissions, including court judgments<sup>6</sup>**
- ID18 **Appellant's closing submissions**
- ID19 Email from Natural England dated 2 July 2021 regarding the **Inspector's** nitrates queries

## DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

1. Response from the parties **to Natural England's email of 2 July 2021**
2. Completed and executed Section 106 agreement
3. Letter from the appellant dated 2 August 2021 with comments on the new NPPF
4. Letter from the Council dated 3 August 2021 with comments on the new NPPF

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<sup>6</sup> East Staffordshire BC v SSCLG [2017] EWCA Civ 893; HJ Banks & Co Ltd v SSHCLG [2018] EWHC 3141 (Admin); Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386; Sykes v SSE [1981] 42 P&CR 19; Wiltshire Council v SSHCLG [2020] EWHC 964 (Admin)



## SCHEDULE OF CONDITIONS (27)

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 18 months from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 1 year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) Applications for the approval of reserved matters shall be supported by an Arboricultural Impact Assessment prepared in accordance with the **BS5837:2012 "Trees in relation to design, demolition and construction"** (or equivalent document if replaced). The assessment shall be based upon a comprehensive survey of all the trees on and adjacent to the site and shall demonstrate which trees can be retained and which trees are to be removed. Development shall be carried out in accordance with the approved details.
- 5) Applications for the approval of reserved matters shall be accompanied by a measured survey and a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground levels and finished floor levels in relation to a nearby agreed datum point which shall be submitted and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Applications for the approval of reserved matters shall be accompanied by full details of both hard and soft landscape works including ground levels or contours; means of enclosure; parking layouts; vehicle and pedestrian access and circulation areas; location and design of play areas; hard surfacing materials and minor artefacts and structure (e.g. furniture, refuse or other storage units, signs, lighting, external services).

Soft landscape details shall include planting plans with specification (including cultivation and other operations associated with plant and grass establishment), schedules of plants noting species, plant sizes and proposed numbers/ densities where appropriate, a schedule of tree planting to include the specification of tree planting pits where appropriate with details of any irrigation or drainage infrastructure, tree root barriers (if necessary) to prevent damage or disruption to any proposed hard surfacing or underground services, drains or other infrastructure and details of the location of external lighting sufficient to demonstrate how lighting is to be achieved without conflict to proposed tree planting, with allowance for reasonable growth.

The hard and soft landscaping details shall be accompanied by an implementation programme.

All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of the relevant part of the development or in accordance with the timetable agreed with the local



planning authority which shall include appropriate planting to be undertaken at the earliest opportunity.

Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved, to be agreed in writing by the local planning authority.

The development shall be carried out and thereafter maintained in accordance with the details so approved, and in accordance with the separate Landscape Management Plan, to include detailed long term design objectives, management responsibilities and maintenance schedules for all landscape areas to address all operations to be carried out in order to allow successful establishment of planting and the long term maintenance of the landscaping in perpetuity, and including provisions for review at least every five years.

- 7) Applications for the approval of reserved matters shall be supported by a statement of how the development will be of a high quality of sustainable design. This will include reference to how the layout, design and construction of the development will involve the efficient use of natural resources through: reducing resource requirements in terms of energy demands and water use; the consideration of opportunities for renewable and low carbon energy technologies; the use of passive solar design to **maximise the use of the sun's energy for heating and facilitate** sustainable cooling of buildings; and the mitigation of flooding, pollution and overheating. The development shall be carried out in accordance with the statement.
- 8) Applications for the approval of reserved matters shall be accompanied by a scheme for the provision of Electric Vehicle Charging Infrastructure for both unallocated and allocated parking spaces. The development shall then proceed in full accordance with the approved scheme.
- 9) Applications for the approval of reserved matters shall be accompanied by details of how the development provides for an appropriate housing mix including 10% bungalows and 15% Accessible and Adaptable Homes in accordance with Policy CN1 and CN3 of the BDBC Local Plan 2011-2029. The development shall be implemented in accordance with the approved details.
- 10) No development shall take place until full details of accessibility within the site, including circulation routes and the pedestrian accesses from the site to footpath 9b adjacent to Caithness Close and adjacent to the north east corner of the Peter Houseman Recreation Ground have been submitted to and agreed in writing by the local planning authority. The full details shall include the links to the development, siting, width and construction details based on a topographical survey. The development hereby approved shall not be occupied until the approved works have been fully constructed in accordance with the approved details and made available for use and shall thereafter be retained in accordance with the approved details.
- 11) Prior to the commencement of the development, including any site clearance, groundworks or construction, a site specific Construction Environmental Management Plan to manage the impacts of construction

during the life of the works shall be submitted and approved in writing by the local planning authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise. The development shall be carried out in accordance with the approved plan. The plan should include, but not be limited to:

- **Procedures for maintaining good public relations** including complaint management, public consultation and liaison;
- **Arrangements for liaison with the Council's Environmental Protection Team;**
- **All works and ancillary operations which are audible at the site** boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 07:30 and 18:00 on Mondays to Fridays and 08:00 and 13:00 on Saturdays and; at no time on Sundays and Bank Holidays;
- **No impact pile driving in connection with the** construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday – 09:00 to 17:00 unless in association with an emergency or with the prior written approval of the local planning authority.
- **Deliveries to and removal of plant, equipment, machinery** and waste from the site must only take place within the permitted hours detailed above.
- **A waste disposal policy**
- **All aspects of species mitigation as required within Chapter 4 Impact Assessment** of the Ecological Impact Assessment by Ecological Planning & Research Ltd dated 18/12/2019.
- **Preparation of a Construction Method Statement with details, schedules** and drawings that demonstrates safe and coordinated systems of work affecting or likely to affect the public highway and or all motorised and or non-motorised highway users, has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period.

The Statement shall include for:

- i. the parking and turning of vehicles of site operatives and visitors off carriageway (all to be established within one week of the commencement of development);
- ii. loading and unloading of plant and materials away from the maintainable public highway;
- iii. storage of plant and materials used in constructing the development away from the maintainable public highway;
- iv. wheel washing facilities or an explanation why they are not necessary;
- v. measures to control the emission of dust and dirt during construction;
- vi. a scheme for recycling and disposing of waste resulting from construction work; and

- vii. the management and coordination of deliveries of plant and materials and the disposing of waste resulting from construction activities so as to avoid undue interference with the operation of the public highway, particularly during the Monday to Friday AM peak (08.00 to 09.00) and PM peak (16.30 to 18.00) periods;
- viii. details of the route to be taken by all vehicles associated with the works on the site including cars, light and heavy goods vehicles. The details shall include how non-motorised road users will be protected from harm.
- 12) No development shall take place until the applicant has secured the implementation of a programme of archaeological assessment in accordance with a Written Scheme of Investigation that has been submitted to and approved by the local planning authority in order to recognise, characterise and record any archaeological features and deposits that may exist here. The assessment should take the form of trial trenches located across the whole of the application area. The investigation shall be carried out in accordance with the details so approved.
- 13) No development (including site preparation) shall commence on site until a programme of archaeological mitigation in accordance with the approved written scheme of investigation as secured under condition 12 has been submitted to and approved in writing by the local planning authority. The programme of archaeological mitigation shall include where appropriate, details of a post-excavation assessment, specialist analysis and reports, the method of archaeological recording of archaeological remains to mitigate the impact of development and details of any publication and public engagement. The development shall be carried out in accordance with the approved details.
- 14) No development shall commence until a detailed surface water drainage scheme for the site, based on the principles within the drainage assessment, has been submitted and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and maintained thereafter. The submitted details should include:
- a) Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients.
- b) Detailed hydraulic calculations for all rainfall events, including the listed below, which should take into account the connectivity of the entire drainage system. The results should include design and simulation criteria, network design and result tables, manholes schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features should have the same reference that the drainage layout.
- c) Evidence that runoff exceeding design criteria has been considered. Calculations and exceedance flow diagram/plans must show where above ground flooding might occur and where this would pool and flow.

d) Evidence that Urban Creep has been considered in the application and that a 10% increase in impermeable area has been used in calculations to account for this.

e) Information evidencing that the correct level of water treatment exists in the system in accordance with the Ciria SuDS Manual C753.

f) Maintenance regimes of entire surface water drainage system including individual SuDS features, including a plan illustrating the organisation responsible for each element (including the drainage under the highway). Evidence that those responsible/adopting bodies are in discussion with the developer. For larger/phased sites, we need to see evidence of measures taken to protect and ensure continued operation of drainage features during construction.

and

If infiltration is proposed with any subsequent Reserved Matters of Full Planning Application, a ground investigation report shall be carried out. The ground investigation report should include:

g) Infiltration testing in accordance with the BRE365 methodology (2016 publication), which should be carried out at a depth and location commensurate with the proposed drainage features.

h) Groundwater monitoring between autumn and spring, which should demonstrate that there will be at least 1m unsaturated zone between base of the storage structures.

15) No development shall commence on site until either;

- **All foul water network upgrades required to accommodate the** additional flows from the development have been completed, evidence of which shall have first been submitted to and approved in writing by the local planning authority, including confirmation from Southern Water; or
- **A development and infrastructure phasing plan, which has been agreed** by Southern Water, has been submitted to and approved in writing by the local planning authority to allow additional development to be occupied. Where a development and infrastructure phasing plan is agreed no occupation of dwellings shall take place other than in accordance with the agreed development and infrastructure phasing plan.

16) No development above ground slab level shall commence until details of the types and colours of external materials and finishes to be used, including colour of mortar, together with samples, have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter maintained in accordance with the details so approved.

17) With the exception of the demolition of existing buildings, the removal of existing hardstanding and any underground infrastructure, no works pursuant to this permission shall commence until there has been submitted to and approved in writing by the local planning authority: -

(a) a desk top study carried out by a competent person documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175: 2011;

(b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the desk study in accordance with BS10175: 2011; and

(c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed. The scheme must include a timetable of works and site management procedures and the nomination of a competent person to oversee the implementation of the works. The scheme must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 and, if necessary, indicate proposals for future maintenance and monitoring.

If during any works contamination is encountered which has not been previously identified it should be reported immediately to the local planning authority. The additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'.

- 18) The development hereby permitted shall not be occupied until there has been submitted to the local planning authority verification that any remediation scheme required and approved under the provisions of condition 17(c) has been implemented fully in accordance with the approved details. Such verification shall comprise;

- as built drawings of the implemented scheme;
- photographs of the remediation works in progress; and
- certificates demonstrating that imported and/or material left in situ is free of contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 17(c).

- 19) No development above ground floor slab level shall commence on site until a scheme for protecting the proposed dwellings from rail traffic noise has been submitted to and approved in writing by the local planning authority. Any proposed mitigation scheme shall have regard to the Basingstoke & Deane 'Noise assessments and reports for planning applications - Guidance note for developers and consultants'. Mitigation proposals will consider and utilise where possible, reduction in noise exposure achieved by effective site layout, building orientation, the use of physical barriers, utilising open space as a buffer, internal room configurations and any other available mitigation strategies.

The following noise levels shall be achieved with mitigation in place.

- a) Internal day time (07:00 – 23:00) noise levels shall not exceed 35dB LAeq, 16hr for habitable rooms (bedrooms and living rooms with windows open\*).
- b) Internal night time (23:00 – 07:00) noise levels shall not exceed 30dB LAeq with individual noise events not exceeding 45dB LAfMax (windows open\*),
- c) Garden areas shall not exceed 55 dB LAeq, 16hr.

\* Where it is predicted that the internal noise levels specified above will not be met with windows open despite mitigation strategies, an alternative method of mechanical ventilation must be specified to supply outside air to habitable rooms with windows closed, and relieve the need to open windows. Background and passive ventilators, and system 3 extraction systems are not considered adequate for this purpose. Methods may include a system 4 MVHR system with cool air by-pass, or standalone mechanical units supplying outside air to each affected habitable room.

- 20) No dwelling which forms part of the scheme for protecting specific dwellings from rail traffic noise as approved by the local planning authority under condition 19 shall be occupied until all the works which form part of the scheme have been completed. The approved scheme shall be thereafter maintained.
- 21) No dwelling which forms part of the scheme for protecting specific dwellings from rail traffic noise as approved by the local planning authority under condition 19 shall be occupied until a post completion noise survey relating to that specific dwelling has been undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the local planning authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set in condition 19. A method statement should be submitted to and approved by the local planning authority prior to the survey being undertaken.
- 22) Notwithstanding the approved plans, no part of the development shall be occupied until cycle parking facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority, such drawings to show the position, design, materials and finishes thereof. Development shall be carried out, and thereafter maintained, in accordance with the approved details.
- 23) Notwithstanding the approved plans, no part of the development shall be occupied until vehicle parking facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority, such drawings to show the position, design, materials and finishes thereof. Development shall be carried out, and thereafter maintained, in accordance with the approved details.
- 24) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established - details of which shall have first been submitted to and approved in writing by the local planning authority.
- 25) No part of the development shall be occupied until refuse storage and collection facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority. Such drawings shall show the position, design, materials and

finishes thereof. Development shall be carried out, and thereafter maintained, in accordance with the approved details.

- 26) Prior to occupation of the dwellings hereby approved, a Construction Statement detailing how the new dwellings shall meet a water efficiency standard of 110 litres or less per person per day shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 27) No part of the development shall be occupied until an environmentally sensitive lighting plan has been submitted to and approved in writing by the local planning authority. The plan shall be in line with recommendations made under Guidance note 8 by The Bat Conservation Trust and Institute of Lighting Professionals and the development shall be carried out in accordance with the approved plan and maintained thereafter.





## Costs Decision

Inquiry held on 22 to 24 June and 29 June to 2 July 2021

Site visit made on 6 July 2021

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11<sup>th</sup> August 2021

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Costs application in relation to Appeal Ref: APP/H1705/W/21/3269526  
Land to East of Station Road, Oakley RG23 7EH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Wates Developments Ltd for a partial award of costs against Basingstoke & Deane Borough Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for up to 110 residential units (Class C3) with all matters reserved except for access.
- 

### Decision

1. The application for an award of costs is refused.

The submissions and responses by the parties

2. The **applicant's costs application and the Council's response to it were made in writing before the close of the Inquiry. The applicant's final comments on the Council's response were made orally before the Inquiry closed and can be summarised as follows:**
3. **The applicant disputed the Council's claim that improper conduct had occurred** in terms of the approach made by the applicant to the Council seeking its withdrawal of the first reason for refusal. The approach was made in confidence and **in response to hearing the concessions made by the Council's landscape witness.** The applicant indicated that the withdrawal of the reason for refusal would have resulted in no costs application being made because the withdrawal would have affected the overall planning balance. The applicant also disputed **the Council's allegations of threatening and bullying behaviour and disputed the criticisms made against the applicant's barrister in terms of how he had characterised some of the Council's witnesses.**

### Reasons

4. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant has raised substantive matters only based on two submissions.
5. The first submission is that the Council acted against the advice of its professional officers and statutory consultees without producing credible evidence to justify such a departure. The second submission is that the Council



- relied upon two reasons for refusal which are unconvincing, unsupported by an objective analysis and which will not stand up to scrutiny at Inquiry. These submissions are considered below. I make no comment on the **parties'** alleged conduct or behaviour in connection with the costs application as this has no **bearing on my consideration of the application's merits.**
6. Planning committees are not bound to follow the recommendations of their officers if they think there are sufficient grounds. On this occasion, a number of reasons for refusal were identified informed in part by internal and external consultation responses. While two of the four reasons for refusal were subsequently not contested based on further information supplied by the applicant, the Council put forward evidence at appeal to justify the reasons for refusal. In doing so, it was entitled to use external consultants if that was an appropriate approach. While my appeal decision comes to a different view on the reasons, the Council's actions in defending them were not unreasonable.
  7. As for the quality and robustness of the evidence put forward, the applicant **contends that the concessions made by the Council's landscape witness during cross-examination negated the entire reason for refusal.** However, the point that the effects at Year 15 were insufficient to justify the reason for refusal does not mean that the effects before or after that year were irrelevant. The **Council's landscape witness did not** concede her entire case on that basis. My decision weighs up the short and long terms effects of the development and concludes the landscape effects would be acceptable. However, it was not unreasonable for the Council to maintain a different position.
  8. **The applicant also contends that the Council's heritage witness** inflated the importance of the site and its role in contributing to the significance of the conservation area via setting. However, setting is an important consideration and influenced by many factors. Although **the Council's heritage witness went further in their assessment than others had,** this does not undermine the credibility of their evidence. My decision concurs that there would be a degree **of harm to the conservation area's significance, albeit insufficient to justify dismissing the appeal.** Therefore, it was not unreasonable for the Council to have maintained the position it held during the appeal process.
  9. **The applicant also criticises the approach of the Council's planning witness in how they carried out the weighing of harms and benefits in the planning balance.** However, they were entitled to maintain a position that the harms **significantly and demonstrably outweigh the benefits based on the Council's position regarding landscape and heritage matters.** Ultimately, this appeal **turned on one's planning judgment.** Even though I have allowed the appeal, **the Council's evidence was not unconvincing,** unsupported or unreasonable.
  10. In conclusion, the Council has not prevented or delayed development which should clearly be permitted, or failed to produce evidence to substantiate each reason for refusal, or made vague, generalised or inaccurate assertions about **the proposal's impact.** No unreasonable behaviour has been demonstrated and no unnecessary or wasted expense in the appeal process has been incurred. Therefore, no award of costs is made.

*Tom Gilbert-Wooldridge*

INSPECTOR

Appendix D – Appeal Decision (Ref: APP/H1705/W/21/3287932)



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## Appeal Decision

Site visit made on 16 May 2022

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

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Appeal Ref: APP/H1705/W/21/3287932

Wildwood Farm, Newnham Lane, Old Basing RG24 7AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Michael Jeffries against the decision of Basingstoke & Deane Borough Council.
  - The application Ref 20/03374/FUL, dated 1 December 2020, was refused by notice dated 22 July 2021.
  - The development proposed is Demolition of existing buildings and redevelopment of the site with 9 houses.
- 

### Decision

1. The appeal is allowed and planning permission is granted for Demolition of existing buildings and redevelopment of the site with 9 houses at Wildwood Farm, Newnham Lane, Old Basing RG24 7AT in accordance with the terms of the application, Ref 20/03374/FUL, dated 1 December 2020, subject to the conditions in the attached schedule.

### Main Issues

2. The main issues are (i) the effect of the proposal on the landscape character of the area; and (ii) whether the proposal would make an adequate provision for affordable housing.

### Preliminary Matter

3. During the course of the appeal the Appellant submitted a S106 Undertaking to seek to address the second main issue. I shall return to this later in my decision.

### Reasons

#### *Effect on landscape character*

4. The '**Basingstoke and Deane Landscape Assessment**' as referred to in the adopted Local Plan was published in 2001. However, this was updated in 2021 and has recently been published as the '**Basingstoke and Deane Landscape Character Assessment**'. The appeal site, and surrounding landscape to the east and north-east of Basingstoke are within the assessment's '**Loddon and Lyde Valley**' Landscape Character Area (Area 6). The landscape surrounding the appeal site, comprises mainly arable farmland, but is interspersed with significant blocks of woodland and other tree cover which contribute to the

wooded character and scenic quality of the local area. However, there are a number of human influences within the area which detract from the quality of the landscape to varying degrees including the filtered settlement edge of Old Basing and dwellings along Newnham Lane, pylons, the South West Main Line railway, and the A30 and M3 to the south. The area also includes a number of **existing small groups of buildings, such as along Newnham Lane and at Hodd's Farm and Poors Farm.**

5. The character area profile identifies that elevated plateaux and upper valley slopes are characterised by extensive open tracts of large, low-hedged fields with high woodland cover. Scattered across the rural landscape are frequent small clusters of buildings composed to varying degrees of housing including traditional farmhouses and more modern dwellings, and agricultural structures including large sheds, similar to the arrangement on the site. These groups of buildings are often associated with adjacent tree cover, including woodland, such as the existing Wildwood Farm site. Properties within the locality are accessed by private access tracks, and a network of rural lanes.
6. The appeal site comprises an irregular shaped piece of land forming part of Wildwood Farm which is used as a large commercial yard with development and storage spread across the site. Within the site there are few landscape features, those present are generally limited to a small area of rough grass, small groups of trees within the site and occasional mature trees along the site boundaries. The appeal site makes a very limited contribution to the landscape.
7. Views of the appeal site are restricted within the wider landscape by layers of vegetation including woodland blocks and boundary hedges and trees which surround the site, along with rising ground to the south. There are views of the appeal site at varying distances from the nearest footpaths to the south of the appeal site. Gaps between tree cover occasionally allow more distant views towards the site from the Loddon valley floor, but from here the site forms a minor part of the wider view. The appeal site is detectable from the Old Basing Conservation Area and raised ground within Oliver's Battery, but is largely obscured by intervening vegetation. The appeal site is not visible, or is difficult to perceive, from the majority of public rights of way routes in the local area, other than to the north of the railway where the site can be seen between gaps in vegetation.
8. At completion, the appeal site would change from a commercial yard consisting of a large shed with industrial style cladding, various other unattractive structures and storage, significant hardstanding and limited internal or boundary landscape features, to nine houses and associated garages or carports. The proposed dwellings would vary in size, orientation and design, consistent with the local vernacular and arranged around a courtyard to reflect the sites former agricultural use. This would allow for areas of soft and hard landscaping along with private amenity spaces, resulting in a greener and more considered arrangement than the current position.
9. The removal of the existing structures would have a beneficial effect on the landscape character surrounding the site. Whilst there would be a short-term change in the appearance, I do not consider that the proposal would itself be harmful to the area or have a detrimental impact on the landscape. In any event, the development would be increasingly softened and obscured by maturing proposed planting, in keeping with other existing groups of buildings

set within tree cover in the local area. Over time and once planting has established the proposed development would have a very limited effect on landscape character and views. The development would sit comfortably within the wider landscape, reflecting its rural qualities whilst delivering housing for the area.

10. I find that the proposal would replace existing unattractive site structures with dwellings in keeping with the local vernacular and would include planting characteristic of the wooded landscape surrounding the site. Tree cover within the landscape surrounding the site would largely obscure the proposal from the wider, more open landscape characteristic of the Loddon Valley to the north-east and would not have an adverse impact on any iconic views. Accordingly, it would comply with Policy EM1 of the Basingstoke and Deane Local Plan 2011-2029 and Policy OB&L 7 of the Old Basing and Lychpit Neighbourhood Plan 2015-2029 and the National Planning Policy Framework (2021) insofar as those policies relate to landscape and iconic views.

#### *Provision of affordable housing*

11. A Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990 has been submitted relating to the provision of affordable housing. The UU binds the owner to covenants with Basingstoke and Dean Borough Council. The Community Infrastructure Levy (CIL) Regulations require that any planning obligation providing for contributions, such as those set out above, must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
12. In this case the UU would secure 4 affordable housing dwellings on site which is in excess of the Council policy requirement of 3.6 units. I am satisfied that the UU would ensure that a suitable level of affordable housing would be provided and that the provisions of the submitted UU would meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests in the Framework.
13. Accordingly, the proposal would comply with Policies CN1 and CN6 of the Basingstoke and Deane Local Plan 2021-2029 which require new development to contribute towards the provision of additional services and facilities, including affordable housing as addressed in Policy CN6.

#### *Other matters*

14. The lawful use of the site is commercial, as confirmed in Certificates of Lawfulness granted in 2013 and 2014. The character of the Appeal Site is clearly commercial in nature rather than agricultural. Historically the commercial yard was part of the wider Wildwood Farm but the use of the land subsequently diversified away from agricultural uses on this portion of the farm, albeit retaining its status as a single planning unit. The Appeal Site is physically distinct from the surrounding land which remains in agricultural use and I am satisfied that the appeal site would be properly described as previously developed land.
15. The Old Basing Conservation Area (the CA), was designated in 1973 in recognition of its special architectural and historic interest. The CA is **approximately 400m to the west of the site and includes Oliver's Battery, Basing House ruins and Pyotts Hill Entrenchment. Oliver's Battery is located**

within approximately 600m of the site and consists of the remains of a motte and bailey castle in the form of landform, including a raised area with mature trees. The 2021 Old Basing CA Appraisal and Management Plan Supplementary Planning Document identifies the eastward view from the raised ground within **Oliver's Battery as a 'Vista' with an 'important wider view'**.

16. The site is not visible from the majority of the CA, including from the Grade I listed **St Mary's Church and the Basing House Great Barn at Grange Farm**, and the majority of Grade II listed buildings. However, the site is likely to be identifiable from the south-east facing upper storey windows of Lower Mill Farm, which is a Grade II listed building on the eastern edge of the CA. From these windows, the site structures are likely to be glimpsed at a distance of approximately 550m, seen with a backdrop of trees and forming a small element within the wider view.
17. The view eastwards towards the site from **the majority of Oliver's Battery** Scheduled Monument is contained by boundary vegetation along the edge of the CA. **The view from an area of raised ground within the Oliver's Battery is identified as a 'Vista' with an 'important wider view' by the 2021 Old Basing Conservation Area Appraisal and Management Plan Supplementary Planning Document.** In this view, the roof of the shed within the site is detectable in the distance but forms a minor part of the wider view and is seen in context with a storage building within Old Basing and Lychpit recreation ground at closer range.
18. The proposal would replace the existing structures with a more considered arrangement of housing, designed to mimic in general terms a cluster of farm buildings, varying in scale and height. Whilst it would change the long range views from within the CA and the Scheduled Monument through the introduction of a different built form, I am satisfied that the proposal would not be harmful to the setting of the CA or the important wider view from the Scheduled Monument.
19. The landscape buffer is outside the area of development, however it is within the same ownership. I am satisfied, having regard to the ownership of the land and evidence provided, that it would be possible to secure the landscaping by way of planning condition.
20. I have had regard to other concerns raised by interested parties, and other matters addressed by the Council at the application stage, including refuse, contamination, flooding and drainage, and highway implications. I note the proposed use of planning conditions to ensure certain matters are acceptable. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issues and, taking account of the evidence before me, I have not identified other matters of such significance as to result in further benefits or harms to be factored into the planning balance.

#### Conclusion and Conditions

21. I have found that the proposal would comply with the development plan when taken as a whole and accordingly the appeal should succeed.
22. I have had regard to the conditions suggested by the Council. Where necessary, I have amended the wording to ensure they accord with the relevant tests of conditions set out in the Framework.

23. I have imposed a condition specifying the approved plans to provide certainty. During construction, conditions are necessary to ensure that trees are protected, hours of construction and deliveries are controlled, along with the provision of a construction method statement, to safeguard existing trees and hedgerows, to avoid risks to highway safety, and to preserve living conditions of nearby occupiers. Due to the previous use of the appeal site, I consider it necessary to impose conditions in respect of contamination to ensure that any contamination is properly identified and remedied to allow residential occupation of the site.
24. It is further necessary to require the submission of details relating to habitat creation enhancement and management, and the Wildlife protection and Mitigation Plan, in the interests of biodiversity and protected species. A condition requiring details of water efficiency measures is also necessary in the interests of promoting sustainable water usage.
25. Conditions requiring details of proposed external materials, soft and hard landscaping, and boundary details, are necessary to ensure a satisfactory appearance and to preserve the landscape character of the area.
26. Conditions are necessary for the implementation of parking and turning areas in accordance with the approved plans, cycle storage, and provision of required visibility splays at the site entrance, in the interests of highway safety. A condition requiring the provision of electric charging points is necessary to secure sustainable modes of transport. A condition securing accessible and adaptable standards is necessary to ensure that the development allows for the varied and changing needs of its occupants. A condition is required to ensure provision of bin storage to ensure proper waste management.
27. Finally, having regard to the landscape character of the area, and the importance of the design and arrangement of the proposal, it is necessary to restrict permitted development rights.
28. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal is allowed.

*J Ayres*

INSPECTOR



### SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - P01 Rev A - Location Plan
  - P02 Rev B - Block Plan
  - P05 Rev E - Proposed Site Plan
  - P06 Rev C - Proposed Site Plan - Roof Plan
  - P09 Rev A - Access Plan
  - P10 Rev A - Detached carports plans and elevations
  - P11 Rev A - Garage plans and elevations
  - P12 Rev A - Garage plans and elevations (plots 8 and 9)
  - P20 Rev A - Plot 1-4 Plans
  - P21 Rev A - Plot 1-4 Elevations
  - P30 Rev A - Plot 5 Plans
  - P31 Rev A - Plot 5 Elevations
  - P40 Rev A - Plot 6 Plans
  - P41 Rev A - Plot 6 Elevations
  - P50 Rev A - Plot 7 Plans
  - P51 Rev A - Plot 7 Elevations
  - P60 Rev A - Plot 8 and 9 Plans
  - P61 Rev A - Plot 8 and 9 Elevations
- 2) The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
- 3) No development above slab level shall take place until details/specification of the types and colours of external materials to be used, together with samples (where appropriate), have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the details so approved.
- 4) Notwithstanding the approved plans no hard landscaping works shall commence on site until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The approved surfacing shall be completed before the adjoining buildings are first occupied and thereafter maintained in accordance with the details so approved.
- 5) Notwithstanding the approved plans prior to installation a plan indicating the positions, design, materials and type of screen walls/fences/gates/hedges and enclosures to be erected or planted, shall be submitted to and approved in writing by the Local Planning Authority. The approved screen walls/fences/gates/hedges and enclosures shall be erected or planted before the dwellings hereby approved are first occupied and shall subsequently be maintained as approved. Any trees or plants



which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, details of which shall be agreed in writing by the Local Planning Authority before replacement occurs.

- 6) Notwithstanding the approved plans no soft landscaping works shall commence on site until a scheme of landscaping which shall specify species, planting sizes, spacing and numbers of trees/shrubs to be planted (including replacement trees where appropriate) shall be submitted to and approved in writing by the Local Planning Authority. The works approved shall be carried out in the first planting and seeding seasons following the first occupation of the building(s) or when the use hereby permitted is commenced. In addition, a maintenance programme detailing all operations to be carried out in order to allow successful establishment of planting, shall be submitted to and approved in writing by the Local Planning Authority before commencement of the landscaping works. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to the occupation of the first dwelling hereby approved, visibility splays of 2.4m x 90m shall be provided at the access onto Newnham Lane, in accordance with drawing reference P09 Rev A (dated Nov 20) (Access Plan). Within these splays nothing between 1 metre and 3 metres shall be placed, built, planted or allowed to grow. These visibility splays shall thereafter be maintained in such condition.
- 8) Prior to occupation of the dwellings hereby approved, parking provision and turning areas in accordance with those shown on drawing P05 Rev E (dated Nov 20) shall be made within the site and shall be retained thereafter for such purposes. For the avoidance of doubt, this includes parking spaces to be provided within garages and carports.
- 9) No works other than site surveying shall take place until there has been submitted to and approved in writing by the Local Planning Authority: -
  - (a) a desk top study carried out by a competent person documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2011; and, unless otherwise agreed in writing by the Local Planning Authority,
  - (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the desk study in accordance with BS10175:2011- Investigation of Potentially Contaminated Sites - Code of Practice; and, unless otherwise agreed in writing by the Local Planning Authority,
  - (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed. The scheme must include a timetable of works and site management procedures and the nomination of a competent person to oversee the implementation of the works. The scheme must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 and if necessary proposals for future maintenance

- and monitoring. If during any works contamination is encountered which has not been previously identified it should be reported immediately to the Local Planning Authority. The additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'. The development shall then be continued in accordance with the approved remediation scheme.
- 10) The development hereby permitted shall not be occupied/brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of condition 9(c) that any remediation scheme required and approved under the provisions of condition 9(c) has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise; - as built drawings of the implemented scheme; - photographs of the remediation works in progress; - Certificates demonstrating that imported and/or material left in situ is free of contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 9(c), unless otherwise agreed in writing by the Local Planning Authority.
  - 11) No work relating to the construction of the development hereby approved, including works of demolition or preparation prior to operations, shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays
  - 12) No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place before the hours of 0730 nor after 1800, Monday to Friday, before the hours of 0800 nor after 1300, Saturdays nor on Sundays or recognised public holidays.
  - 13) A minimum of one of the dwellings hereby approved shall be built to accessible and adaptable standards. No development shall commence on site until details of which property is to be built to such standards are submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
  - 14) The development hereby approved shall not be occupied until a Construction Statement detailing how the new homes shall meet a water efficiency standard of 110 litres or less per person per day has been submitted to and approved in writing by the Local Planning Authority, unless otherwise agreed in writing with the Local Planning Authority through a demonstration that this requirement for sustainable water use cannot be achieved on technical or viability grounds. The development shall be carried out in accordance with the approved details.
  - 15) The dwellings hereby approved shall not be occupied until details of cycle storage as required in accordance with the Parking Supplementary Planning Document (2018), have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before occupation or the use commences, whichever is the

sooner, and shall be thereafter retained and maintained in accordance with the approved details.

- 16) Tree Protection measures, including fencing, ground protection, supervision, working procedures and special engineering solutions shall be carried out in accordance with the Arboricultural impact assessment & method statement written by Harrison Arboriculture (document ref: 351149112/16/2020); to include Tree Protection Plan Ref: 351149112/16/2020 TPP Version 0.1 Rev A dated 15 December 2020).
- 17) No works other than site surveying shall take place until full details of a habitat creation, enhancement and management scheme to achieve the species enhancements and biodiversity net gain, as shown in the submitted DEFRA biodiversity offsetting metric, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the details so approved. The details shall include: - The recommendations given in Section 5 of The Ecology Co-op's Ecological Appraisal dated 7th Dec 2020 - The proposals for on-site habitat creation and enhancement to achieve the biodiversity net gain as shown in the submitted DEFRA biodiversity offsetting metric (including sources of planting stock and its origin). - The provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery) submitted; and - A management and monitoring plan (to include for the provision and maintenance of the submitted offsetting measures in perpetuity). The written approval of the Local Planning Authority shall not be issued before the arrangements necessary to secure the delivery of the agreed offsetting measures have been executed. The scheme shall be implemented in full accordance with the requirements of the scheme or any variation so approved and thereafter retained in perpetuity.
- 18) Notwithstanding the submitted Ecological Appraisal, no works other than site surveying shall take place until a Wildlife Protection and Mitigation Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the following: (a) details of how mature trees and woodland habitats adjacent to the area of the proposed development will be protected during the construction works. (b) details of the timing/ecological watching brief/felling procedures required to address the protection of breeding birds, dormice, great crested newts and reptiles before and during any development works. A method statement to reduce the chance of disturbing any potential bat roosts if any trees are likely to be impacted by the proposed development should also be included. (c) details of mitigation proposals for mitigating any potential adverse effects on dormice, bats or birds and any features that they are dependent on. This is to include details of measures that will be taken to avoid light spillage along the potential bat commuter routes and dormice habitat. (d) provisions for the supervision and monitoring of the plan, including briefing construction personnel, and the name and contact details of the person responsible for this; No development or other operations shall take place other than in complete accordance with the approved Wildlife Protection and Mitigation Plan, unless otherwise agreed in writing by the Local Planning Authority. No habitat or other landscape features that are to be retained as part of the

approved Wildlife Protection and Mitigation Plan shall be damaged or destroyed or removed without the prior written approval of the Local Planning Authority, for the duration of activities permitted by this planning consent. If a habitat or other landscape feature is removed or damaged in contravention of this condition, a scheme of remedial action, with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the incident. The scheme of remedial action must be approved by the Local Planning Authority before practical completion of the development and implemented in accordance with the approved timetable.

- 19) No works other than site surveying shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the waste removal and construction period. The Statement shall provide for: i) the parking of vehicles of site operatives and visitors, ii) loading and unloading of plant and materials, iii) storage of plant and materials used in constructing the development, iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate, v) wheel washing facilities, vi) measures to control the emission of dust and dirt during construction, vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 20) The dwellings hereby approved shall not be occupied until details of a scheme for the storage (prior to disposal) of refuse and recycling containers (1 number 240ltr refuse 2-wheeled bin, 1 number 240ltr recycling 2-wheeled bin and 1 number glass recycling box), and details of the refuse/recycling collection point(s) have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before occupation or the use commences, whichever is the sooner, and shall be thereafter retained and maintained in accordance with the approved details.
- 21) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and reenacting that Order with or without modification) no building, structure or other alteration permitted by Class A; B; C; D; E; or F; of Part 1; of Schedule 2 of the Order shall be erected on the application site without the prior written permission of the Local Planning Authority on an application made for that purpose.
- 22) Prior to occupation of the dwellings hereby approved, details of electric vehicle charging provision shall be submitted to and approved in writing by the Local Planning Authority. Such details should include the specification, appearance and siting of any charging points. Where charging points are not proposed, details of parking areas which can be conveniently retrofitted at a later date shall be provided. This includes details demonstrating that that electrical connections within the site are suitable for future use for electric vehicle charging. The development shall be carried out and thereafter maintained in accordance with the approved details.

END OF SCHEDULE

Appendix E – Appeal Decision (Ref: APP/L1764/A/13/2206384)

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## Appeal Decision

Inquiry held on 4,5,6,27, & 28 March 2014

Site visit made on 28 March 2014

**by Lesley Coffey BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 July 2014**

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**Appeal Ref: APP/L1765/A/13/2206384**

**Wolfhanger Farm, Woodlands, Bramdean, Alresford, SO24 0JJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr J Humphrey against the decision of the South Downs National Park Authority.
  - The application Ref SDNP/12/01248/FUL, dated 9 July 2012, was refused by notice dated 30 April 2013.
  - The development proposed is the demolition of the existing redundant farm buildings and construction of 2No Arts & Crafts dwellings with detached garages, landscaping and associated works.
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**This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 11 June 2014**

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing redundant farm buildings and construction of 2No Arts & Crafts dwellings with detached garages, landscaping and associated works at Wolfhanger Farm, Woodlands, Bramdean, Alresford, SO24 0JJ in accordance with the terms of the application, Ref SDNP/12/01248/FUL, dated 9 July 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

### Procedural Matters

2. At the Inquiry the appellant submitted plan 1477/P102 to indicate the extent of the residential curtilages of the proposed dwellings. I am satisfied that this plan would not be prejudicial to either party and I have taken it into account in reaching my decision
3. A Unilateral Undertaking under S106 of the Act submitted by the appellant covenants to make a financial contribution of £109,600 towards the off-site provision of affordable housing. I am satisfied that the obligation would deliver the intended contribution and would comply with the tests within Regulation 122. I have therefore taken it into account in reaching my decision.

### Main Issues

4. I consider the main issues to be:

- The effect of the proposal on the landscape of the South Downs National Park and the character and appearance of the surrounding countryside;
- Whether the proposal would provide a suitable mix of dwellings; and
- Whether the proposal is acceptable having regard to national and local planning policies that seek to restrict new housing in the countryside and the location of the site in the SNDP.

## **Reasons**

5. The appeal site is situated within a small hamlet about 3.5 km from Bramdean and about 4.7 km from West Tisted. It lies within the South Downs National Park and is situated close to Bramdean Common.
6. The access to the site is situated between the former farm house to Wolfhanger Farm (now a private dwelling) and a pair of semi-detached cottages known as Romlus and Remus. The appeal site extends to about 5.5 hectares and is occupied by six large poultry buildings arranged in two blocks, together with a number of other ancillary buildings. These comprise three older buildings towards the upper part of the site and three more recent buildings towards the lower part of the site. The topography has been significantly altered to accommodate these buildings by way of cutting into the slope and through the creation of bunds to screen the lower buildings. The buildings have been disused since the previous poultry use ceased in about 2010.
7. Wolfhanger Farm was part of a larger business started by the Appellant's grandfather to produce eggs and breed commercial egg laying stock. At full capacity it accommodated 24,000 Barn layers, 150,000 intensive cage layers and 6500 Free Range layers. Following changes in EU legislation which came into effect in 2011, and banned the use of the old style battery cages, the appellant concentrated production on other sites. The buildings include asbestos insulation and muck boards. In addition, some of the ancillary buildings are constructed from asbestos and two of the older buildings still have asbestos roofs.
8. The proposal is to demolish the existing buildings on the site and to replace them with two detached dwellings, each with a detached garage and a leisure room. The residential curtilage of the dwellings would be limited to an area of lawn, a courtyard and a kitchen garden. The remainder of the land would be used as an orchard and meadow areas. The existing access would be re-aligned to serve the upper dwelling, whilst a new driveway, utilising the existing access to Wolfhanger Cottages, would serve the lower dwelling. In addition, the topography of the site would be altered to reflect its previous profile.
9. National Parks have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. The purposes of the National Parks are to conserve and enhance their natural beauty, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of their special qualities by the public. In carrying out these purposes, National Park Authorities also have a duty to foster the economic and social well-being of local communities.
10. The Framework states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued

landscapes. Paragraph 115 requires great weight to be given to conserving landscape and scenic beauty within National Parks.

11. The development plan for the area includes the Winchester District Local Plan Part 1 Joint Core Strategy (JCS), adopted March 2013, and the Winchester District Local Plan Review 2006 (WDLPR). The JCS was prepared jointly with the National Park Authority and was adopted in March 2013. Policy CP19 of the JCS requires new development to be in keeping with the context and setting of the landscape of the SDNP. It states that the emphasis should be on small scale proposals that are in a sustainable location and well designed. Development which would have a significant detrimental impact on the rural character and setting of settlements and the landscape should not be permitted unless it can be demonstrated that the proposal is of overriding national importance, or its impact can be mitigated.

*Landscape of the South Downs National Park and the Character and Appearance of the Surrounding Countryside*

12. Three separate landscape assessments cover the part of the SDNP in which the appeal site is located. The *South Downs National Park Integrated Landscape Assessment Technical Report* (2011) identifies the appeal site as coming within the Bramdean Woodlands Landscape Character Area. The key characteristics are noted as a gently undulating chalk downland landscape with enclosures bounded by hedgerows, and a high proportion of woodland which contributes to the enclosed character of the landscape. The settlement pattern within the area is characterised by scattered farmsteads and hamlets.
13. The *Hampshire County Council Integrated Landscape and Townscape Character Assessment* (2011) and the *Winchester District Landscape Character Assessment* identify similar features and note the intimate character of the landscape due to the varied scale of field enclosures combined with wooded lanes and woodland copses and the undulating topography.
14. There are numerous public footpaths and other rights of way in the locality of the appeal site. The appellant submitted a Landscape and Visual Impact Assessment to illustrate the impact of the proposed development on the landscape character of the area.
15. The existing buildings on the site provide about 9000 sq metres of floorspace. The upper poultry buildings pre-date those towards the lower part of the site and occupy much of the space between the former farm dwellings and the eastern boundary of the site. There are also a number of smaller ancillary buildings situated close to these buildings. A substantial conifer hedge separates this part of the appeal site from the adjacent dwelling (Wolfhanger Farm) and lies outside of the appeal site. Due to their age and materials these buildings have a soft muted appearance.
16. It is proposed to restore the levels of this part of the site, and as a consequence the proposed dwellings would sit lower within the landscape than the existing buildings on this part of the site. The eaves level would be comparable with that of the existing poultry buildings although the roof would be higher. The proposed upper dwelling would not be noticeable from the bridleway adjacent to the site due to the screening provided by the topography and the proposed lower dwelling. The most prominent public view would be from the bridleway to the east. From this viewpoint the dwelling would be



- noticeable, but, due to its oblique angle and proposed materials together with its considerably smaller footprint, it would be less prominent within the landscape than the buildings it would replace. The proposed planting which includes a small orchard would further mitigate views of the dwelling. Like the existing buildings it would also be noticeable in views further to the north east, but from these viewpoints it would be seen against a backdrop of trees and it would not be conspicuous with the wider landscape.
17. The existing buildings on the lower part of the site are relatively recent, and although they were previously used for poultry rearing they are very substantial steel clad buildings and industrial in scale. The topography in the vicinity of the lower house would also be restored, and as a consequence, the proposed dwelling would sit considerably lower in the landscape by comparison with the existing buildings. Whilst the highest point of the proposed dwelling would be marginally higher than the poultry buildings, the proposed dwelling would have a much reduced footprint and would be significantly smaller in scale.
  18. The bridleway adjacent to the northern boundary of the site is situated at a lower level than the adjacent land, and permits views up towards the site. The lower buildings on the site are a prominent feature of these views which are filtered by the vegetation adjacent to the boundary. The proposed dwelling will also be visible from the bridleway, however, it would be sited further from the entrance to the gated paddock, where views are most open, and would be set within a restored landscape. As at present, most views would be glimpsed views through the existing vegetation, which it is proposed to augment. Due to the arrangement of the proposed buildings around a courtyard area, the variations in the roofline and the restored landscape, the proposed dwelling would be considerably less intrusive in views from the bridleway than the existing poultry buildings.
  19. There would be more noticeable views from the bridleway to the north east. From this viewpoint the bulk of the existing poultry buildings is clearly evident and the substantial reduction in scale would be beneficial to the natural beauty of the SDNP.
  20. The proposed dwellings would be considerably less prominent in the wider landscape than existing buildings on the appeal site. Agricultural buildings are part of the established landscape within the SDNP, which includes other buildings similar in design to those on the lower part of the site. The Council suggest that the gradual decline of the existing buildings would be less harmful to the beauty of the SDNP than the appeal proposal. Dilapidated agricultural buildings are not uncommon within an agricultural landscape and in some instances are not unattractive. Nevertheless, due to the scale of the existing buildings and the manner in which the landscape has been altered to accommodate them, they do not reflect the rural character of the area, or make a positive contribution to the natural or scenic beauty of the SDNP.
  21. The potential for harm to the beauty of the SDNP arises not only from the proposed buildings, but also from any changes to the character of the land surrounding the dwellings. The curtilage of both dwellings is defined on plan number 1477/P102. The remainder of the site would be retained as meadows with a small orchard, and the proposed hedges to the boundary of the site would limit views of the residential curtilages. Subject to a condition in relation

- to the maintenance of the land outside of the residential curtilages I am satisfied that the proposal would maintain the downland character of this part of the SDNP.
22. The SDNP is not designated as a dark skies area. Nonetheless, in order to limit any intrusion of the landscape, the dwellings have been positioned so that only one or two small windows would face towards the open land between the appeal site and West Tisted. Such views would also be filtered by the existing and proposed trees.
  23. Overall, the proposal would significantly reduce the extent of site coverage and would replace the artificially steep banks on the site with a gentler slope closer to the original landform. It would also reduce the extent of hard surfacing on the site, and provide additional landscaping, which together would be beneficial to the biodiversity of the area. Whilst the proposed dwellings may be noticeable in some longer distance views these would largely be views of the roofs of the dwellings and would be seen against the backdrop of the trees. Therefore the proposal would not be conspicuous in such views.
  24. Although most development in the locality either fronts the road or has a visual link with the road, with the exception of the north-western part of the site the appeal site is largely located to the rear of these dwellings. The north-western part of the site is steeply sloping and a dwelling in this location would be likely to have a much greater impact on the landscape by comparison with the appeal proposal which would occupy a similar position to the existing buildings on the site.
  25. Amongst other matters WDLPR policy DP3 requires the design of new development to respond positively to the character, appearance and variety of the local environment. The area of the SDNP where the appeal site is located is characterised by sporadic development and includes small hamlets such as the one in which the appeal site is located. The dwellings within the immediate locality of the appeal site are generally small-scale, former agricultural dwellings, and which although not unattractive, are architecturally undistinguished. However, as acknowledged by the Bramdean and Hinton Ampner Village Design Statement, individual dwellings within the surrounding area vary in terms of size and appearance and include several larger dwellings.
  26. The proposed dwellings would be considerably larger than those in the immediate area, but would benefit from spacious plots appropriate to their size and scale. The dwellings would use traditional materials and would incorporate a number of traditional features such as casement windows, chimney stacks and dormer windows. Although the Council is critical of the design approach which adopts an Arts and Crafts ethos, it is apparent that a number of other dwellings similar in character have been permitted in the SDNP in recent years. I consider the design approach, including the landscaped setting to be compatible with the character of the wider area.
  27. Overall the proposal would enhance the natural beauty of the SDNP through the restoration of the topography and the substantial reduction in the extent of the built form. It would also provide significant benefits for wildlife. It is a well considered proposal that responds positively to the context and setting of the landscape of the SDNP. I therefore conclude that the proposal would not conflict with JCS policy CS19 or policy DP3 of the WDLPR.

28. The Council suggest that the proposal may constitute major development for the purposes of paragraph 116 of the Framework and as such should only be permitted in exceptional circumstances. Major development is not defined within the Framework, however, notwithstanding the size of the proposed dwellings, I do not consider them to represent major development in that any effect they may have on the SDNP would be local to the area and not the SDNP overall.

*Whether the Proposal Would Provide a Suitable Mix Of Dwellings*

29. Policy CP2 provides that new residential development should meet a range of community housing needs and deliver a wide choice of homes with priority being given to the provision of new affordable housing. Amongst other matters, it requires a majority of homes to be 2 or 3 bedrooms, unless local circumstances indicate that an alternative approach should be taken. Although policy CP2 does not explain what 'local circumstances' encompasses, I agree with the Inspector the Rooksacre decision<sup>1</sup> this that it is intended to allow for some flexibility and policy CP2 does not expect each site to provide a majority of 2 and 3 bedroom dwellings.
30. It is evident that there would be considerable costs associated with the removal of the asbestos and the restoration of the landscape. There may also be a need to address any contamination that may have occurred as a consequence of the previous use. In light of the costs associated with the removal of the existing buildings, a scheme that would deliver 2 and 3 bedroom dwellings on the site would be likely to result in a greater number of dwellings overall. Such an approach would be likely to have a greater effect on the character of the SDNP by comparison with the appeal proposal, due to the need to accommodate parking, refuse storage, and domestic paraphernalia associated with a greater number of households. Should such development take the form of individual houses it may also involve the subdivision of the site to form private gardens and this could add to the harm to the character of the landscape.
31. The proposal would contribute to the provision of smaller houses elsewhere within the SDNP through the affordable housing contribution. Therefore taking account of the need to conserve and enhance the natural beauty of the SDNP, and the affordable housing contribution, I conclude that the proposal would provide and satisfactory mix of dwellings and would not conflict with policy CP2.

*Whether the proposal is acceptable having regard to national and local planning policies that seek to restrict new housing in the countryside;*

32. The JCS identifies the appeal site as coming within the countryside where policy MTRA4 restricts development to a number of specified uses which do not include new dwellings. Policy H3 of the WDLPR has a similar intent and seeks to restrict new residential development to the defined built up areas of specified settlements. The appeal site does not come within these settlements. This approach is consistent with paragraph 55 of the Framework which provides that isolated new housing in the countryside should be restricted unless it is justified by special circumstances.

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<sup>1</sup> Appeal Decision APP/L1765/A/13/2194825

33. Whilst the proposal is clearly contrary to local and national planning policies in relation to new dwellings within the countryside the appellant has put forward a number of other factors which need to be weighed in the balance.
34. The buildings on the site were constructed for intensive caged egg production. Following changes in EU legislation such cages needed to be replaced by enriched cages, barn or free range egg production. Although one of the buildings was used for free range egg production in the past, this was reliant on renting land from an adjoining landowner. Due to the limited size of the site, and in particular the limited amount of open ground available, the appeal site is unsuited to free range egg production.
35. The appellant submitted a report which assessed the viability of a range of alternative agricultural and commercial uses for the site. This report was independently assessed on behalf of the Council, and both reports were reviewed by Mr D'Oalley on behalf of the appellants. It was common ground that the continued use of the site for egg production would require significant financial investment. It was concluded that colony egg production was not viable due to the size of the holding, the age of the buildings and the current market situation. Whilst the market is cyclical and returns may be higher in the future, in the absence of a long term contract, the level of investment required is unlikely to be forthcoming. In these circumstances egg production on the appeal site is unlikely to be economically viable.
36. The reports also considered a range of alternative agricultural uses including intensive beef production, pig rearing, mushroom farming, intensive fish farming, rabbit farming, and equine uses. The absence of any additional agricultural land suitable for grazing, or the production of feed, means that the site is unlikely to be viable for a number of uses such as beef production or equine uses. The cost of asbestos removal and/or the limited amount of grazing land available, together with the financial risk relative to the level of investment required, indicate that these alternative uses are unlikely to be viable.
37. Whilst the Council did not dispute these findings, it considered that they represented a snap-shot in time, and that it is necessary to market the site to establish whether there is a viable alternative agricultural use. The site has been marketed since October 2013. During this period there have been 54 brochures sent out, 154 brochures downloaded and 4 viewings, none of which gave rise to any offers.
38. The appellant has also given consideration to alternative non-agricultural uses. Policy CE17 of the WDLPR sets out the matters the Council will take into account when considering the change of use of non-residential buildings in the countryside to employment generating uses. These include that the general form and bulk of the building is in keeping with the locality, that the buildings can accommodate the proposed use without substantial reconstruction, that the site is not in a remote location, and that the type of traffic generated can be accommodated without harming the character of rural roads. The accompanying text explains that large buildings and those in remote locations are unlikely to be suitable for conversion.
39. The buildings on the appeal site are of a substantial scale, with those on the upper part of the site providing 3,230 sq metres of floorspace and those on the lower part of the site 5,600 sq metres. Whilst the buildings on the lower part

- of the site may be suitable for re-use, those at the upper part of the site are in poor condition. Both groups of buildings are likely to require substantial works to accommodate alternative uses in addition to the removal of the asbestos.
40. The site is accessed by a network of narrow rural lanes. A previous proposal for the use of four of the buildings for a Use Class B8 storage and distribution use was refused by the Council in May 2011 on the grounds that it was an unsustainable form of development due to its distance from urban areas and would result in an over-reliance on the use of private cars.
  41. The parties agree that the previous use of the site as a poultry farm generated about 44 vehicle movements a day, whilst the road that passes the site carries about 300 vehicles per day. At the time of the previous application the Highway Authority assessed the proposal on the basis of the trip rates for commercial uses set out in the *Transport Contributions Policy document published by Hampshire County Council* (September 2007). On this basis, a B8 use occupying 470 sq metres of floorspace would generate a similar number of trips to the previous use and the majority of the existing floorspace would remain un-used. The appellant submits that a development of this scale would not generate sufficient income to remove the asbestos from the site. In addition the un-used buildings would remain and the topography would not be restored.
  42. The Council consider that if only part of the buildings were used, the asbestos elsewhere on the site could remain. The extent to which asbestos would need to be removed for reasons of health and safety would be dependent on the nature of the proposed use, and it is probable that it would be necessary to remove it beyond the area to be utilised. In addition any un-used buildings on the site would either need to be maintained, or removed, in order to ensure that the site could be occupied in a safe manner.
  43. It may be that some non-agricultural uses could occupy the site without giving rise to a significant increase in traffic. However, the *Review of Employment Prospect, Employment Land and Demographic Projections* (2011), prepared on behalf of the Council by DTZ, identified a total demand for B8 floorspace of 900 sq metres per annum spread across the whole district. Therefore taking account of the low demand for B8 floorspace, the constraints of the appeal site, together with the possible conflict with policy CE17 ( due to the size of the existing buildings and the remote location of the appeal site), I consider the potential for a commercial use of the site is limited. This was acknowledged by the Council's report at the time of the application.
  44. The Council is critical of the Appellant's marketing exercise, in that the sale particulars include an agricultural covenant which is not in place at present, and that the site as marketed is smaller than the appeal site. I share some of the Council's concerns as to the robustness of the marketing exercise. Notwithstanding this, the limited interest in the appeal site, when taken together with the constraints identified in the reports above, indicate that there is little prospect of an alternative agricultural use being established on the appeal site. Furthermore, the limited demand for B8 floorspace, together with the constraints in relation to traffic generation and the need to remove asbestos, would weigh against the likelihood of a non-agricultural use occupying the site.

45. Humphrey Farms are a large local employer and invested in their other sites at Twyford and North Kingsworthy. Both sites include a number of small business premises. It is intended that the proceeds from the sale of the site would be re-invested within the business. Whilst this would be beneficial to the economic and social well-being of the SDNP, there is no mechanism in place to ensure that the funds generated by the appeal proposal would be used for this purpose. Notwithstanding this, it is apparent from evidence presented to the inquiry, and from my visits to North Kingsworthy and Twyford, that the company has a strong record of investment in the SDNP in relation to employment uses and the provision of affordable housing. Therefore this matter adds some weight in favour of the proposal.
46. The proposal would reduce the number of HGV movements in the narrow lanes that surround the site by comparison with the previous use of the site. Whilst this would be a benefit of the proposal, there is limited evidence to indicate that such movements previously gave rise to nuisance or raised concerns in relation to highway safety.
47. The removal of the existing buildings and the hard-standing would greatly increase the openness of the appeal site. Together with the creation of areas of meadow grassland, small orchards and additional planting the proposal would enhance the biodiversity of the site.

*Overall findings in relation to housing*

48. The appeal site lies in the countryside where local and national policies seek to strictly control new dwellings. It occupies a remote location with no facilities or public transport within walking distance. There are some facilities at West Tisted, including a primary school, GP surgery, shop and post office. Therefore although the site is not in a particularly sustainable location, and future occupants would be reliant upon the use of a car, it is not especially remote from services.
49. The site is not well located in terms of access to major roads, and there are few facilities within the immediate area to attract potential new employers. Notwithstanding the limitations of the marketing report, it would seem that the appeal site is not attractive to alternative agricultural or employment users. In the absence of a viable alternative use for the buildings, the Council suggest that they could be removed and the land restored. However, given the costs involved, including the need to remove asbestos from the site, I consider that in the absence of an economically viable use of the site the buildings are likely to remain.
50. The alternative would be for the buildings to decay overtime. The Council suggest that agricultural buildings are a common feature of the landscape and the decline of the buildings on the appeal site would not be harmful to the natural beauty of the park. I disagree. Whilst the upper buildings are smaller in scale and over time could perhaps be assimilated into the landscape, those on the lower part of the site would take many years to decline, and would remain a prominent feature within the landscape for the foreseeable future.
51. Moreover, this approach would be contrary to the aims of the Framework which has a presumption in favour of sustainable development. This has three dimensions: environmental, social and economic. Paragraph 9 advises that pursuing sustainable development involves seeking positive improvements in

the quality of the built, natural and historic environment, as well as in people's quality of life. It also supports the effective use of land through the re-use of previously developed land, provided that it is not of high environmental value. Although the appeal site is situated within an area of high environmental quality, the site itself is not of high environmental value. The appeal proposal would improve the quality of the natural and built environment as well as the living conditions of nearby residents through the removal of the traffic and any other nuisance associated with the previous use. This benefit is evident from the support for the proposal from those residing close to the appeal site and also from the Parish Council.

52. I have found above that the proposal would not harm the character and appearance of the countryside. It would also enhance the landscape of the SDNP and be beneficial in terms of its effect on biodiversity. Therefore taking account of the benefits of the proposal in relation to the SDNP, and the absence of available alternative uses, the principle of housing is acceptable.

#### *Other Matters*

53. Both parties referred to a number of appeal decisions. Whilst I have taken these into account, they each rely on the individual merits of the proposal and therefore they do not later my conclusions above.
54. Low level summer roosts of Common Pipistrelle bats and an unknown Myotis species were recorded within buildings 2 and 3. The removal of these buildings would result in the loss of these roosts. The Extended Ecological Phase 2 Assessment and the Phase 2 Bat Report detail measures to avoid harm to the bats during construction and to provide compensatory roosts within the development. Bats are a European Protected Species and therefore the proposal needs to satisfy the tests set out under the Conservation of Habitats and Species Regulations 2010. In the event of a breach of Article 12, the appellant would need to apply to Natural England for a derogation licence based on the exceptions set out in Article 16. On the basis of the submitted evidence I am satisfied that the proposal would comply with the relevant tests and there is no evidence to suggest that a licence would not be granted. I therefore conclude that the proposal would provide adequate mitigation in relation to bats.

#### *Conditions*

55. I have considered the conditions put forward by the parties in the light of the policies within the Framework. In order to safeguard the character and appearance of the SDNP details and samples of the materials to be used should be submitted for approval. Although the submitted plans provide an indication of the levels on the site, the proposal would significantly alter the existing contours of the site, and therefore details of levels should be submitted for approval.
56. In order safeguard the rural character of the area the curtilage of the site should be limited to the area shown on plan number 1477/P102. Although the appellant has submitted details of the proposed landscape strategy, further details are necessary in view of the sensitive location of the appeal site. The scheme should include details of any trees and hedgerows to be retained. A condition in relation to landscape maintenance is also necessary for the same reason. A detailed arboricultural method statement is required in order to

- safeguard the trees to be retained and protective fencing should be erected prior to the commencement of development.
57. Permitted development rights in relation to extensions and curtilage buildings should be restricted in order to minimise the effect of the proposal on the surrounding landscape. The garages should be retained for parking for the same reason.
58. In the interests of highway safety the visibility splays at the junction of the access to the lower house should be provided and permanently retained. Details of measures to keep mud off of the roads during construction should be submitted for approval. Details of drainage proposals should be submitted for approval In the interests of sustainability. For the same reason the dwelling should achieve at least Level 4 for water and Level 5 for energy rating under the Code for Sustainable Homes.
59. In the interests of biodiversity the proposal should be implemented in accordance with the measures outlined in the submitted ecological assessment and the Phase 2 Bat Report. For the same reason, and in order to safeguard the character of the SDNP, details of external lighting should be submitted for approval. An assessment to establish the extent of any soil contamination should be submitted, together with measures for its remediation, in order to protect the health of future occupants. I agree with the Council that the subdivision of the meadow areas could be harmful to the appearance of the landscape and therefore permitted development rights in relation to boundary treatment should be restricted. For the avoidance of doubt and in the interest of proper planning the proposal should be implemented in accordance with the approved plans.

### **Conclusion**

60. For the reasons given above I conclude that the appeal should be allowed.

*Lesley Coffey*

INSPECTOR



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Trevor Ward  
of Counsel  
Instructed by  
Howard Bone Head of Legal Services

He called

Elaine Walters	Winchester City Council
Alison Farmer	Landscape Consultant
Richard Brogden	Bruton Knowles
John Hearn	Winchester City Council
Steve Opacic	Winchester City Council

### FOR THE APPELLANT:

Paul Stincchcombe QC  
Of Counsel  
Instructed by Pro-Vision

He called

Jonathon Humphrey	Appellant
Christopher D'Olley	Carter Jonas
James Cleary	Pro-Vision
Merrick Denton-Thomas	

### INTERESTED PERSONS:

Councillor Verney  
Mrs Dunnings

## **DOCUMENTS**

1. Unilateral Undertaking dated 3 March 2014 submitted by the Appellant
2. Guidance note in respect of school transport submitted by the Local Planning Authority
3. County Council's comments in relation to Bats submitted by the Local Planning Authority
4. Marketing report in relation to the appeal site submitted by the Appellant
5. Winchester District Local Plan Review policy CE.17 submitted by the Local Planning Authority
6. Winchester City Council and South Downs National Park Authority JCS policy CP11 submitted by the Local Planning Authority
7. Cash Flow summary dated 26 March 2014 in relation to appeal proposal submitted by the Appellant

8. Winchester City Council response to Natural England Bat licence query submitted by the Local Planning Authority
9. Bruton Knowles Addendum Report
10. Elaine Walters Supplementary Proof dated 24 March 2014
11. Marketing brochure for the appeal site submitted by the Appellant
12. Winchester Housing Market & Housing Need Assessment update Final Report 2012 submitted by the local planning authority
13. Code for Sustainable Homes Pre-Assement submitted by the appellant
14. Location of primary schools in relation to the appeal site submitted by the Appellant

## **PLANS**

1. Plan no 1477/P102 submitted by the Appellant

**Appeal Ref: APP/L1765/A/13/2206384**

**Schedule of conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) Prior to the commencement of development, details and samples of the materials to be used in the construction of the external surfaces of the dwellings, leisure rooms and garages hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until details of existing and proposed finished levels of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The residential curtilages as shown on plan number 1477/P102 shall not be extended without the prior written approval of the Local Planning Authority.
- 5) Prior to the commencement of the development hereby permitted, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include existing and proposed finished levels or contours, means of enclosure, including any retaining structures, a planting specification, trees and hedges to be retained, surface materials, and programme of implementation. The landscaping scheme shall be implemented in accordance with the approved details and the programme of implementation. Any trees or shrubs that fail within 5 years shall be replaced on a like for like basis, or as otherwise first agreed in writing with the Local Planning Authority.
- 6) No development shall take place until a schedule of landscape maintenance for the areas outside the residential curtilages shown on plan number 1477/P102 has been submitted to and approved in writing by the Local Planning Authority, this shall include landscape maintenance for a minimum of 10 years. The schedule shall include details of the arrangements for its implementation. Landscape maintenance shall be carried out in accordance with the approved schedule.
- 7) Prior to the commencement of development, an Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. The Arboricultural Method Statement shall include the details of the specification and location of tree protection, shown on a tree protection plan (TPP). The TPP shall also show root protection areas of all retained trees and details of pruning or removal of trees and hedges both within and overhanging the site. The arboricultural method statement shall provide details of any construction activities that may require works within the protected root areas. All works shall be carried out in strict accordance with the approved details.

- 8) Prior to the commencement of any works, including demolition, protective fencing as shown on plan number ECO1 within the EcoUrban Aboricultural Implications and Method Statement (dated 5 July 2012), shall be erected on the site and shall be retained for the duration of the construction period.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no development permitted by Class A, B, C and E of Part 1 of the Order shall be carried out without the prior written consent of the Local Planning Authority.
- 10) The garages shown on the approved drawings shall be kept available for the parking of vehicles at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order) or not, shall be carried out in such a position as to preclude vehicular access thereto.
- 11) Before the lower dwelling hereby permitted is first occupied, visibility splays of 2 metres by 33 metres to the north and 2 metres by 23 metres to the south, shall be provided at the junction of the Lower House access and public highway. The splays shall be kept free of obstacles at all times. No structure, erection or vegetation exceeding one metre in height above the level of the adjacent highway shall be permitted within the splays.
- 12) Prior to commencement of development details of measures to prevent mud or other debris on the highway shall be submitted to and approved in writing by the Local Planning Authority. Such measures as agreed shall be implemented in full prior to the commencement of development and retained for the duration of construction works.
- 13) Prior to the commencement of development hereby approved, details of the method of disposal of foul and surface water shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the dwellings.
- 14) Prior to the commencement of development, a statement outlining the proposed sustainable design and construction to comply with policy CP11 of the Local Plan Part 1 - Joint Core Strategy shall be submitted to and approved in writing by the Local Planning Authority. The statement shall include the measures required to achieve a minimum Code for Sustainable Homes (CSH) for Housing Level 4 for Water and Level 5 for Energy. Thereafter the development shall be implemented in accordance with the approved details.
- 15) The development hereby permitted shall be implemented in accordance with the ecological measures as outlined in section 6 of the Phase 1 Ecological Assessment, the Extended Phase 1 Ecological Assessment and Phase 2 Great Crested Newt and Reptile Survey report by PV Ecology (June and October 2012) ) and the with the mitigation and enhancement measures set out within sections 6.4 to 6.12 of the Extended Phase 1 Ecological Assessment and Phase 2 Great Crested Newt and Reptile Survey Report (PV Ecology, October 2012) thereafter the proposed mitigation measures shall be retained at all times.

- 16) The development shall be implemented in accordance with the measures detailed in section 6 of the Phase 2 Bat Report (PV Ecology June 2012). Thereafter the compensation measures shall be permanently maintained and retained in accordance with the approved details.
- 17) No external lighting of any description, whether permanently fixed, portable, freestanding or temporary shall be installed or operated other than that which has received prior written approval from the Local Planning Authority.
- 18) Prior to the commencement of development a contaminated land assessment (and associated remediation strategy if relevant), shall be submitted to and approved in writing by the Local Planning Authority. It shall comprise:
  - a) A desk top study and conceptual model documenting all the previous and existing land uses of the site and adjacent land;
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study;
  - c) A remedial strategy detailing the measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a suitably qualified person to oversee the implementation of the works.
- 19) Before the dwellings are occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.
- 20) Development shall cease on site if, during any stage of the works, potential contamination is encountered which has not been previously identified, unless otherwise agreed in writing with the Local Planning Authority. Works shall not recommence before an assessment of the potential contamination has been undertaken and details of the findings along with details of any remedial action required (including timing provision for implementation), has been submitted to and approved in writing by the Local Planning Authority. The development shall not be completed other than in accordance with the approved details. Upon completion of the works identified in the contaminated land assessment and before the dwelling is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no fence, wall, or other means of enclosure permitted by Class A of Part 2 of the Order shall be erected

outside of the residential curtilage of the dwellings hereby permitted without the prior written consent of the Local Planning Authority.

- 22) The development hereby permitted should be carried out in accordance with the following plans: S01 Existing Unit 1 plans elevations; S02 Existing Unit 2 plans elevations; S03 Existing Unit 3 plans elevations; S04 Existing Unit 4 plans elevations; S05 Existing Unit 5 plans elevations; S06 Existing unit 6 plans elevations; S07 Existing outbuildings plans elevations; S08 Existing Site Section; P101 Site location plan; P102 (Rev E) Proposed block/site plan; P103 (Rev A) Proposed ground floor Upper House; P104 (Rev A) Proposed first floor Upper House; P105 (Rev A) Proposed roof plan Upper House; P106 (Rev A) Proposed elevations Lower House; P107( RevB) Proposed elevations rear Upper House; P108 (RevB) Proposed side elevations Upper House; P109 Proposed ground floor Lower House; P110 (RevA) Proposed first floor Lower House; P111 (RevA) Proposed roof plan Lower House; P112 Proposed elevations front Lower House; P113 Proposed elevations rear Lower House; P114 Proposed elevations side Lower House; P115 Leisure Room details; P116 (RevA) Garage details; P117 (RevC) Proposed site section; P118 Existing block plan; P119 Proposed block Plan; 400-01 (RevC) Landscape proposals and 1477/P102.

Appendix F – Appeal Decision (Ref: APP/X0415/W/19/3233363)



## Appeal Decision

Hearing Held on 20 November 2019

Site visit made on 20 November 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

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Appeal Ref: APP/X0415/W/19/3233363

Hentucks Farm, Deadhearn Lane, Chalfont St Giles HP8 4HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul Higgs, Millbank Homes (Chalfont) Limited against the decision of Chiltern District Council.
  - The application Ref CH/2017/1957/FA, dated 19 October 2017, was refused by notice dated 17 January 2019.
  - The development proposed is the demolition of existing buildings and erection of 3 detached houses with associated car barn and alterations to existing site access.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of 3 detached houses with associated car barn and alterations to existing site access at Hentucks Farm, Deadhearn Lane, Chalfont St Giles HP8 4HG in accordance with the terms of the application, Ref CH/2017/1957/FA, dated 19 October 2017, subject to the conditions in the attached Schedule.

### Procedural Matter

2. **The Council's second reason for refusal referred to the lack of a financial contribution towards affordable housing.** At the hearing, a completed Unilateral Undertaking (UU) was submitted, securing the provision of the required contribution. The Council confirmed at the hearing that it was content that this UU was complete and addressed the reason for refusal. I agree. As such, this matter is not referred to as a main issue below.

### Main Issues

3. The main parties agree that the proposal would be inappropriate development in the Green Belt, as defined within the National Planning Policy Framework (the Framework). Based on what I have seen I have no reason to find otherwise. Accordingly, the main issues in this case are the effect of the proposal on openness and whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.



## Reasons

### *Openness*

4. The site is a former agricultural complex, comprising of numerous buildings arranged throughout. I observed many of these buildings to be substantial, whilst there were also a variety of more modest structures present. At the time of the submission of the application, the buildings provided a total of 4748 cubic metres (m<sup>3</sup>) of built form with a further 375m<sup>3</sup> provided by other miscellaneous structures. It was agreed that since the planning application was submitted that a number of the buildings have been removed from the site. Following this, the remaining existing buildings provide 4401m<sup>3</sup> of built form, with 271m<sup>3</sup> of miscellaneous structures.
5. The proposed scheme would provide four buildings, comprising three dwellings and a garage barn, which would have a combined volume of 2576.6m<sup>3</sup>. This would result in an approximately 45% reduction in the built form, compared to that which currently exists. The Council, in its officer's report, acknowledges that the reduced footprint of the proposed development would have a positive impact on the openness of the Green Belt. There would also be an approximately 40% reduction in the amount of hardstanding in the site. Whilst the hardstanding would have a limited effect on openness, the reduction would nonetheless diminish the developed appearance of the site.
6. Based on the above, I find that there would be a substantial reduction in the quantum of built form at the site which would result in a significant improvement to the openness of the Green Belt at this location.

### *Other considerations*

7. The appellant cites that there is a lack of viable alternative uses for the site. As part of the appeal, information has been submitted in respect of any possible viable re-use of the site. This considered re-instituting an agricultural use, as well as an equestrian use and the potential for an alpaca farm. The appellant contends that there are a number of factors which would prevent the successful future use of the site and these include the presence of ground contamination, which has been confirmed as originating from the previous agricultural use of the site, the size of the holding extends only to 1.8 hectares which necessitates an intensive form of agriculture reliant on production within buildings rather than from the land. Additionally, it is contended that the existing buildings present on site were purpose-built for battery egg production and as a consequence are not suitable for other forms of agricultural use.
8. It is further asserted that in order to facilitate a future intensive agricultural operation on the site, a significant amount of investment would be required in order to provide new buildings. It has previously been suggested that an alpaca farm could be established on the site. However, it is highlighted by the appellant that the appeal site is too small and the example that was provided as a comparable, was only made viable by the inclusion of a visitor attraction. As such, this option is also discounted. The Council has not sought to counter the information that has been provided in this regard and provides no evidence to the contrary. Whilst the Council did highlight that there is no evidence of marketing of the site or offers to rent the land, based on the information as I set out above, together with the length of time since an agricultural operation ceased at the site, I consider that it has been sufficiently demonstrated that

the future use of the site for an agricultural, or associated use, would not be viable. The lack of a viable alternative use of the site is a matter which I consider attracts moderate weight.

9. Reference is made to the condition and appearance of the existing buildings on the site and that, in the absence of a viable use, they will remain and continue to detract from the character and appearance of the area. I was able to observe that the majority of buildings are in a poor state of repair, as well as the areas surrounding the buildings also having been utilised for the deposition of various materials. As such, the site has a distinctly unkempt appearance. However, I am conscious that the site has deteriorated into its current state due to the lack of use. There would, in my view, be other methods of improving the appearance other than necessitating its redevelopment through dwellings. Thus, whilst I agree that there would be an improvement to the visual appearance of the site, I accord this matter only limited weight.
10. It has also been contended that the principle of residential development on site could be secured by the conversion of a number of the existing buildings. The appellant states that this would however not be a preferable option, as the benefits to openness and the visual appearance of the site would not be as great as those that would result from the current appeal scheme. I am particularly conscious that no application has been made to the Council in respect of the conversion of the existing buildings and as such it has not been established which buildings, if any, could be converted. Moreover, there is no information before me in respect of the possible layout of the site. At this time, the potential for there to be the conversion of existing buildings is theoretical only and I have no information before me to demonstrate that a conversion scheme is possible or likely. Consequently, this matter carries little weight in favour of the proposal.
11. The appellant contends that the proposal would represent an innovative design solution. The Framework advises at paragraph 131, that great weight should be given to innovative designs which promote high levels of sustainability, so long as they fit in with the overall form and layout of their surroundings. The proposed scheme seeks to reflect the character of the buildings that currently occupy the site and has been designed in such a way as to replicate their siting. As the existing structures have been present on site for a considerable time and are part of the pattern of development in the area, which also includes nearby dwellings, the proposal would fit in with the form and layout of the surroundings. The design idiom of replicating the form of the existing agricultural buildings, including silos, that are within the site currently is, in my view, an innovative approach to the design of the development.
12. It is also highlighted by the appellant that the units have been designed to meet or exceed standards in respect of the reduction in carbon dioxide emissions through sustainable design, construction and renewable energy technologies. This includes high performing insulation, the use of air source heat pumps and improved air tightness over Building Regulation standards. This demonstrates that the scheme would also promote high levels of sustainability. Consequently, great weight should be attached to this, as advised by the Framework.
13. As discussed above, in respect of openness, the proposal would result in a reduction in built form and hardstanding present within the site. The layout of

- the development would also improve visual permeability through the site, although the benefit in this particular respect would be tempered, due to the restricted public views into and through the site currently. Nonetheless, I accord this improvement to openness, moderate weight.
14. A number of environmental improvements have been put forward as part of the scheme, including the removal of soil contamination within the site, as well as an improvement to biodiversity. It is acknowledged that the contamination is the result of previous agricultural use of the land, rather than from any of the unauthorised uses that have taken place at the site in the past. The remediation of such contamination would likely be necessary in order to accommodate a future use of the site. The improvements to biodiversity would also be a benefit of the proposed scheme. These matters are therefore accorded moderate weight. The removal of Japanese Knotweed as well as the removal of existing structures, some of which contain asbestos, whilst preferable, could be achieved by other means and as such attract only minimal weight in favour of the scheme.
  15. The site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). The appellant emphasises that paragraph 172 of the Framework indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in, inter alia, Areas of Outstanding Natural Beauty. The parties agree that the proposed development would have a positive impact on the appearance of the locality and views within the AONB. This would partly be brought about by the implementation of a comprehensive landscaping scheme within the proposed development. I concur that there would be a positive effect in this regard and thus, this matter attracts great weight in favour of the proposal.
  16. The scheme does not include the provision of fences between the residential plots and any residential paraphernalia that may be present would be screened to some degree by the inclusion of earth mounds, landscaping and rockery berms together with woodland planting. Whilst this is acknowledged, this would only mitigate the appearance of the development and would not be necessary in the absence of the proposed scheme for dwellings. As such, I consider these matters to be neutral factors in consideration of the appeal. It has also been contended that the scheme would not set a precedent for other, similar development. I agree that each case should be considered on its merits, in light of the specific circumstances of that case. However, this is also a neutral factor and does not lend weight to the proposal.
  17. The Council state that the circumstances of this site could be replicated on other sites and are not unique. However, whilst rarity can be a factor, other considerations are not required to be unique in order to be special. That the circumstance could, in theory, be found in relation to other sites is not a negative factor.
  18. Following the submission of the completed UU, the scheme would deliver a contribution towards affordable housing. I am satisfied that the UU accords with the planning obligation tests as laid out in paragraph 56 of the Framework and Regulation 122 of the CIL Regulations. As the contribution would only be delivered should the scheme come forward, this matter is a benefit of the scheme. Given the scale of the contribution, I accord this benefit limited weight.

19. There was discussion at the hearing in respect of the accessibility of the site and the ability of occupants of the proposed development to walk to services. The access to the site would not be served by any pedestrian footways and I acknowledge that there are existing dwellings nearby which similarly are not served by any footways. However, the introduction of further dwellings without good pedestrian access to services is, in my view, not to be encouraged. I note the appellant highlighted that there is the opportunity for pedestrians to take refuge in existing driveways when meeting cars and that the lack of footways was part of the character of the semi-rural location. This tempers the extent of the harm that would result in this regard. Nonetheless, the harm in respect of the lack of pedestrian accessibility is a matter to which I attribute moderate weight.

#### Other Matters

20. The Council have raised concern that the re-use of the site for agricultural purposes has not been demonstrated, nor that the current agricultural use is defunct. I observed that the majority of buildings within the site were in a poor state of repair and consider it unlikely that any future agricultural use would come forward without significant financial investment. In any event, there is no policy requirement to demonstrate that the existing use is no longer continuing. As such, this matter has little bearing on my decision.

21. At the hearing, the Council provided a copy of policy GB16 of the Chiltern District Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2001), Consolidated September 2007 and November 2011, which it considered to be indirectly relevant to the appeal. However, this policy specifically refers to the extension of existing residential curtilages, which is not the case in this instance. As such, I do not consider this policy is relevant to my consideration of the proposals.

22. I was also provided with a copy of a previous Inspector's **decision**<sup>1</sup> at the site. However, that decision was made in respect of an Enforcement Notice served on predominantly commercial uses. I acknowledge that the Inspector in that case found that the considerations were not sufficient to establish very special circumstances. I have however considered the totality of the other considerations in the case that is before me, which considered on their merits, distinguish this current scheme from that which was previously enforced against.

#### Green Belt Balance

23. The proposal would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

24. The harm by reason of inappropriateness, together with the harm in respect of the lack of pedestrian accessibility, carry significant weight against the proposal.

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<sup>1</sup> T/APP/X0415/C/99/1022280

25. I have identified above that there are numerous factors which weigh in favour of the proposal and I have attributed weight to each. Whilst the matters individually carry minimal, limited, moderate or great weight, when considered together I find these considerations persuasive. Collectively, I accord substantial and decisive weight to the other considerations which support the proposal. There would also be an improvement to openness. Overall, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.
26. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites; it was stated at the hearing that the Council currently has a 3.69-year supply. The Framework, at paragraph 11 is clear that in such circumstances, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Land designated as Green Belt is included within the list of policies that protect areas or assets of particular importance and which provide a clear reason for refusing the proposed development. The proposal would be inappropriate development, but I have found that the very special circumstances necessary to justify the development exist. Thus, the Framework, as a material consideration, does not provide a clear reason for refusing the development. Consequently, the presumption in favour of sustainable development, as envisaged by paragraph 11, applies in this case. As I find above, the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits.
27. I note that Policy GB2 of the Chiltern District Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2001), Consolidated September 2007 and November 2011) only allows development within the Green Belt subject to a number of stated criteria. There is no reference to very special circumstances justifying inappropriate development. As such, I consider this policy to be inconsistent with the Framework. This inconsistency tempers the weight that I attach to this policy. I accord substantial weight to the policy of the Framework and in this instance consider that it indicates a decision other than in accordance with the development plan

#### Conditions

28. A list of draft conditions was provided prior to the hearing and as set out in the **Council's Statement of Case**. Additional suggested conditions were also set out **in the Appellant's Statement of Case** and provided after the hearing. There was a discussion on the suggested conditions at the hearing. I have considered the conditions in light of the advice of the Planning Practice Guidance and the six tests.
29. I have imposed a condition in relation to the commencement of development and in the interests of clarity a condition to ensure compliance with the submitted plans.
30. In order to ensure that the development has a satisfactory external appearance and to protect the appearance of the AONB, I have also imposed a materials condition, which is to include details of roofing materials and hard landscaping. A condition is also required in respect of means of enclosure within the site. Rather than being pre-commencement conditions, I consider that such details can be agreed prior to above ground works taking place. For the same reason,

I have imposed a condition requiring details of all site levels to be agreed. This however needs to be a pre-commencement condition.

31. In order to safeguard the appearance of the AONB and deliver biodiversity improvements, a condition is required in respect of landscaping and the delivery of biodiversity features. It was agreed at the hearing that such details could be agreed prior to the occupation of the dwellings. A condition is also required in respect of the implementation of these details.
32. In order to ensure that established trees and hedging within the site is protected, in the interests of protecting the character and appearance of the countryside, a condition is required to ensure the development is carried out in accordance with the arboricultural report. In the interests of protecting the health of future occupiers, conditions are required to ensure contamination present within the site is adequately dealt with.
33. In the interests of highway safety, a condition is required in respect of the laying out of the vehicular access to the highway and provision of visibility splays, as well as in respect of the provision of parking within the site. So that the openness of the Green Belt is safeguarded, conditions are also necessary preventing the erection of fences, walls and buildings in the future. A condition is also necessary preventing domestic paraphernalia outside of residential curtilages. I consider the situation of this case comprises the exceptional circumstances necessary to justify such restrictions.

#### Conclusion

34. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

*Martin Allen*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Nick Sutton

Maven Planning

Alistair Field

Reading Agricultural Consultants

### FOR THE COUNCIL:

Emma Showan

Senior Planning Officer, Chiltern  
District Council

Melanie Beech

Principal Planning Officer, Chiltern  
District Council

## DOCUMENTS

- 1 Chiltern District Council and South Bucks District Council – Housing and Economic Land Availability Assessment (HELAA), June 2019
- 2 Copy of Policy GB16.
- 3 Appeal Decision T/APP/X0415/C/99/1022280
- 4 Additional condition – email dated 21 November 2019



### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

1603-100-00	Site Location Plan
1603-100-01, Rev PL1	Existing Site Plan
1603-100-02	Existing Aerial View of Site
1603-100-03	Existing Site Photographs
1603-100-04	Existing Elevations AA, BB and CC
1603-100-05	Existing Elevations DD, EE and FF
1603-101-01-PL1	Proposed Site Location Plan
1603-101-02A	Proposed Site Entrance Plan
1603-101-02-PL1	Proposed Site Plan
1603-101-03	Proposed House 1 Plans & Sections
1603-101-04	Proposed House 1 Elevations
1603-101-05	Proposed House 2 Plans and Sections
1603-101-06	Proposed House 2 Elevations
1603-101-07, Rev PL1	Proposed House 3 Plans and Sections
1603-101-08, Rev PL1	Proposed House 3 Elevations
1603-101-09	Proposed Garage Barn, Parking Plan and Proposed Elevations
1603-102-01	Proposed Main Entrance View CGI and Existing View
1603-102-02	Proposed House 1 CGI and Existing View
1603-102-03	House 1 Existing and Proposed East Elevation
1603-102-04	House 1 Existing and Proposed West Elevations
1603-102-05	House 1 Existing and Proposed South Elevations
1603-102-06	Proposed House 1 Cross Section BB and North Elevation
1603-102-07	Proposed House 2 CGI and Existing View
1603-102-08	House 2 Existing and Proposed South Elevations
1603-102-09	House 2 Existing and Proposed East Elevations
1603-102-10	Proposed House 3 CGI and Existing View
1603-102-11, Rev PL1	House 3 Existing and Proposed West Elevation
1603-102-12, Rev PL1	House 3 Existing and Proposed South Elevations
1603-102-13, Rev PL1	House 3 Existing and Proposed North Elevation
1603-102-14	Garage Barn Existing and Proposed Elevations
1603-600-01, Rev PL1	Area and Built Volume Schedule
- 3) No above ground level development shall take place until full details of all external facing materials and roofing materials, together with any hard



landscaping, have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.

- 4) Prior to the commencement of any works on site, detailed plans, including cross section as appropriate, showing the existing ground levels and the proposed slab and finished floor levels of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed datum point, located outside the application site. Thereafter the development shall not be constructed other than as approved in relation to the fixed datum point.
- 5) No above ground level development shall take place until full details of the means of enclosure to be retained or erected as part of the development shall be submitted to and approved in writing by the Local Planning Authority. The boundaries shall then be erected and retained in accordance with the approved details.
- 6) There shall be no occupation of any dwelling hereby approved until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The landscaping scheme shall incorporate biodiversity features including the provision of artificial bird features incorporated into the fabric of the buildings and on trees on site.
- 7) All planting, seeding or turfing, as well as biodiversity features, comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby approved shall be implemented in accordance with the tree and hedge protection measures described in the Arboricultural Method Statement in sections 15.0-29.0 of the arboricultural report dated 28th September 2017 Ref CC/648 AR3516 and the Tree Protection Plan dated 28.09.2017 Ref TPP-CC/648 AR3516 by Chalice Consulting Ltd. This shall include the erection of tree protection fencing in accordance with the Tree Protection Plan.
- 9) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
  - i) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.

- ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. This should include an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, pests, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments.
  - iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
- 10) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The monitoring and maintenance programme shall be implemented as approved.
- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 9, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 9, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 10.
- 12) No part of the development shall be occupied until
  - the altered access has been sited and laid out in accordance with the approved drawing (WSP Drawing 2646-SK01, Rev P03 dated 9 March 18) and constructed in accordance with Buckinghamshire County **Council's guide note "Private Vehicular Access Within Highway Limits"** 2013, and
  - minimum vehicular visibility splays of 79m from 2.4m back from the edge of the carriageway from both sides of the modified access onto Gorelands Lane have been provided in accordance with the approved plans.The visibility splays shall be kept clear from any obstruction between 0.6 metres and 2.0 metres above ground level.

- 13) Prior to occupation of the development, space shall be laid out within the site for parking and turning for cars, in accordance with the approved plans. This area shall be permanently maintained for these purposes.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or buildings shall be erected within the site, unless planning permission is first granted for such development.
- 15) No residential garden equipment or other residential paraphernalia (such as **barbeques, outbuildings, refuse and recycling bins or areas, children's play equipment, garden furniture**) shall extend beyond the 'private garden' areas outlined in red in the approved Landscaping Proposals Report – Revision D, dated 11 April 2018, by ME Landscape Studio.”

Appendix G – Braintree District Council v Secretary of State for Communities and Local  
Government [2018] Ref. EWCA Civ. 610 Judgment

Case No: C1/2017/3292

Neutral Citation Number: [2018] EWCA Civ 610  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**  
**MRS JUSTICE LANG DBE**  
**[2017] EWHC 2743 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28 March 2018

**Before:**

**Lord Justice McCombe**  
**and**  
**Lord Justice Lindblom**

-----  
**Between:**

**Braintree District Council**

**Appellant**

**- and -**

**(1) Secretary of State for Communities and  
Local Government**

**(2) Greyread Ltd.**

**(3) Granville Developments**

**Respondents**

**Dr Ashley Bowes** (instructed by **Sharpe Pritchard LLP**) for the **Appellant**  
**Mr Stephen Whale** (instructed by **the Government Legal Department**) for the

**First Respondent**

**Mr Paul Shadarevian Q.C. and Mr John Dagg** (instructed by **Ellisons Solicitors**) for the  
**Second and Third Respondents**

Hearing date: 14 March 2018  
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**Judgment**

## **Lord Justice Lindblom:**

### *Introduction*

1. Did an inspector determining a planning appeal misinterpret and misapply government policy in paragraph 55 of the National Planning Policy Framework (“the NPPF”) that local planning authorities “should avoid new isolated homes in the countryside unless there are special circumstances ...”? That is the central question in this appeal. It involves no controversial issue of law.
2. With permission granted by Lewison L.J. on 8 January 2018, the appellant, Braintree District Council, appeals against the order of Lang J., dated 15 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the first respondent, the Secretary of State for Communities and Local Government, allowing appeals by the second and third respondents, Greyread Ltd. and Granville Developments, respectively under section 174 and section 78 of the 1990 Act. Granville’s section 78 appeal was against the council’s refusal, on 13 April 2016, of an application for planning permission for the erection of two detached single-storey dwellings on the sites of two agricultural buildings with landscaping on land to the east of Lower Green Road, Blackmore End, Wethersfield in Essex.
3. The site is in the village of Blackmore End, but was outside the settlement boundary defined in the emerging development plan. It lies between Wright’s Farmhouse to the north and Lealands Farmhouse to the south. Two pre-fabricated agricultural buildings that had once stood on the site were demolished in 2015. Greyread’s section 174 appeal was against an enforcement notice issued by the council on 25 April 2016 against an alleged breach of planning control on the same site, involving, on one part of the site, the demolition of a cattle shed and the partial erection of a single-storey building, the laying of footings and a concrete base, and on the other, the demolition of a cattle shed and the laying of footings and a concrete base.
4. The two appeals were dealt with together, on the parties’ written representations. The inspector undertook a site visit on 17 January 2017. His decision letter allowing the appeals, and granting planning permission for the development, is dated 3 February 2017.

### *The issue in the appeal*

5. The council’s challenge to the decision was on a single ground, which was that the inspector had misunderstood and therefore misapplied the policy in paragraph 55 of the NPPF. That argument, rejected by Lang J., is now pursued in this court. The crucial issue is the meaning of the word “isolated” in the expression “new isolated homes in the countryside”.

### *Paragraph 55 of the NPPF*

6. Paragraph 55 of the NPPF is in section 6, “Delivering a wide choice of high quality homes”. It states:

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
  - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
  - reflect the highest standards in architecture;
  - significantly enhance its immediate setting; and
  - be sensitive to the defining characteristics of the local area.”

7. The corresponding guidance in paragraph 50-001-20160519 of the Planning Practice Guidance (“the PPG”) states:

“How should local authorities support sustainable rural communities?”

- It is important to recognise the particular issues facing rural areas in terms of housing supply and affordability, and the role of housing in supporting the broader sustainability of villages and smaller settlements. This is clearly set out in [the NPPF], in the core planning principles, the section on supporting a prosperous rural economy and the section on housing.
- A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
- Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence ... .
- [The NPPF] also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas [NPPF Part 4 “Promoting sustainable transport” para 34].”

*The council’s refusal of planning permission and statement of case*

8. The council refused planning permission for three reasons. The relevant part of the decision notice, in the first reason for refusal, states:

“1. ... Guidance on new development within rural areas is also set out in [the NPPF]. ... Para.55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. ...

The site is located in the countryside beyond any defined settlement boundaries and in a location where there are limited facilities, amenities, public transport links and employment opportunities. ... The proposal would introduce new housing development beyond the defined settlement limits and would be contrary to the objectives of securing sustainable patterns of development and the protection of the character of the countryside. Development at this location would undoubtedly place reliance on travel by car. ... .”

9. In its statement of case, under the heading “Environmental Considerations (Reason 1)”, the council amplified that reason for refusal. Having noted that Greyread and Granville had in their statement of case referred to paragraph 55 of the NPPF, it acknowledged that “the NPPF encourages LPAs to be responsive to rural circumstances and to plan housing developments to reflect the local need”. It went on to say:

“As highlighted by the appellant [the NPPF] also requires the intrinsic character and beauty of the countryside to be recognised, seeks to support the transition to a low carbon future in a changing climate, conserving and enhancing the natural environment and reducing pollution. This is in addition to actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

Quite clearly, as with many planning decisions, there is a need to balance all material considerations and it is highly likely that future occupants of the two dwellings proposed would be heavily reliant upon the private motor car to access everyday services, community facilities and sources of employment.

... .”

#### *The inspector’s decision letter*

10. The inspector identified four main issues in the section 78 appeal: first, “[the] effect of the development on the character and appearance of the area”; second, “[the] effect on the setting of neighbouring listed buildings”; third, “[accessibility] to services and facilities”; and fourth, “[the] overall balance and whether the appeal proposal constitutes sustainable development in the countryside” (paragraph 2).
11. Before dealing with those four issues, the inspector considered relevant planning policy in the development plan and in the NPPF. He said that Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (adopted in September 2011) “strictly controls development outside town development boundaries and village envelopes to uses appropriate to the countryside”, and that Policy RLP2 of the Braintree District Local Plan Review (adopted in July 2005) “has a similar effect” (paragraph 3). He referred to the policies in paragraphs 49 and 14 of the NPPF (paragraph 4), noted that the council “now acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites”



(paragraph 5), concluded that “[on] the most favourable analysis, deliverable housing sites fall significantly below the 5-year supply required by the Framework”, and that “Policies CS5 and RLP2 ... must be considered out-of-date so that Framework paragraph 14 is also engaged” (paragraph 6).

12. On the first main issue, the effect of the development on the character and appearance of the area, the inspector said (in paragraphs 8 and 9 of his decision letter):

“8. Blackmore End is a recognisable village and is characterised by linear development extending along several roads. There is a dispersed pattern of development along Lower Green Road. The Council refers to the change to village character and to the suburbanising effect it considers would result from the development. However, the site has previously been occupied by two agricultural buildings and the two dwellings would reflect the footprint of those buildings. The proposed dwellings would be single storey and would be of a simple form. The site is well screened in views from the road by hedging, although the provision of visibility splays would reduce that to some extent. Much of the appeal site would remain undeveloped and further planting could be required by condition. A condition could also control extensions and further buildings, so that the site could retain much of its open character. The fenestration and doors shown on the submitted drawing would give the dwellings an inappropriate suburban character. However, there is scope to require revised details of those matters, allowing a more appropriate design to be achieved. Details of materials could also be controlled by condition to reflect local character.

9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan’s approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers.”

13. On the second main issue, the inspector concluded that there would not be material harm to the settings of the grade II\* listed Wright’s Farmhouse to the north of the site or to the setting of the grade II listed Lealands Farmhouse to the south (paragraph 13).

14. On the third main issue, the accessibility of services and facilities, he concluded (in paragraph 14):

“14. Blackmore End has a very limited range of services and facilities. There is, for example, no local shop, the nearest being about 2 miles away. In its emerging Local Plan the Council identifies 5 Service Villages. They do not include Blackmore End, the nearest being Sible Hedingham which is about 4 miles away. It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas.”

15. Under the heading “The Overall Balance and Sustainable Development”, the fourth main issue, the inspector stated his main conclusions (in paragraph 16):

“16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the dwellings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the test set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework’s presumption in favour of sustainable development.”

*Did the inspector misinterpret and misapply the policy in paragraph 55 of the NPPF?*

16. The relevant legal principles are clear and uncontentious. They need not be set out at length. The interpretation of planning policy, whether in the development plan or in statements of national policy, is ultimately a matter for the court. When the meaning and effect of a planning policy are contested, the court must avoid the mistake of treating the policy in question as if it had the force or linguistic precision of a statute – which it does not – and must bear in mind that broad statements of policy do not lend themselves to elaborate exegesis. The court’s task is to discern the objective meaning of the policy as it is written, having regard to the context in which the policy sits (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 19 to 22, Sullivan L.J.’s judgment in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] P.T.S.R. 274, at paragraph 18, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraph 24, and the judgment of Lord Gill at paragraphs 72 to 74). The application of policy, however, is for the decision-maker, on a true understanding of what the policy means, but with freedom to exercise planning judgment as the policy allows or requires – subject to review by the court on *Wednesbury* principles alone (see my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraphs 41 and 42).

17. The court will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance (see Lord Carnwath’s judgment in *Suffolk Coastal District Council*, at paragraph 25). Nor will it engage in – or encourage – the dissection of an inspector’s planning assessment in the quest for such errors of law (see my judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraph 7). Excessive legalism in the planning system is always to be deprecated (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraphs 22 and 50).

18. The policy with which we are concerned – the policy in paragraph 55 of the NPPF – has already received some attention in this court – though only slight. In *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, Lewison L.J., in paragraph 15 of his judgment, said the relevant definition of previously developed land took as its starting point that the proposed development would be within the curtilage of an existing permanent structure, and it followed, therefore, that “a new dwelling within that curtilage will not be an ‘isolated’ home” for the purposes of the policy in paragraph 55.
19. In the court below, Lang J. recorded the council’s argument, in the light of the policies in paragraphs 28 and 55 of the NPPF and the corresponding guidance in the PPG, that “in applying [paragraph 55 of the NPPF], and considering whether proposed development amounted to “new isolated homes in the countryside”, it was irrelevant that the development was located proximate to other residential dwellings”, and that “[the] key question was whether it was proximate to services and facilities so as to maintain or enhance the vitality of the rural community” (paragraph 22 of the judgment).
20. The judge noted that the word “isolated” in paragraph 55 is not defined in the NPPF. In her view, however, it was to be given its “ordinary objective meaning of “far away from other places, buildings or people; remote” ...” (paragraph 24 of the judgment). As for the “immediate context” of the policy, she said “[this] suggests that “isolated homes in the countryside” are not in communities and settlements and so the distinction between the two is primarily spatial/physical” (paragraph 25). In its “broader context” the policy was, in her view, seeking to “promote the economic, social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles [in paragraph 17 of the NPPF] of “recognising the intrinsic character and beauty of the countryside” and “supporting thriving rural communities within it” ...”. Thus the council’s “analysis of the policy context [was] far too narrow in scope” (paragraph 26). The policy in favour of locating housing “where it will “enhance or maintain the vitality of rural communities”” was “not limited to economic benefits”. The word “vitality” was “broad in scope and includes the social role of sustainable development ...”. The council’s restriction of “isolated” homes to those that were “isolated from services and facilities” would “deny policy support to a rural home that could contribute to social sustainability because of its proximity to other homes” (paragraph 27). Paragraph 55 of the NPPF “cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them” (paragraph 28). She concluded that the council was “seeking to add an impermissible gloss to [paragraph 55 of the NPPF] in order to give it a meaning not found in its wording and not justified by its context” (paragraph 29). She saw support for her interpretation of the policy in what Lewison L.J. had said about it in his judgment in *Dartford Borough Council* (paragraphs 30 and 31).
21. It followed, in the judge’s view, that the inspector’s understanding of the policy, in paragraph 9 of his decision letter, was correct (paragraph 32). She saw nothing unlawful in the remainder of his assessment of the proposal on its planning merits (paragraphs 33 to 37). She was satisfied, therefore, that the inspector had “correctly interpreted [paragraph 55 of the NPPF], and applied it properly to the facts and matters which arose in this appeal” (paragraph 38).

22. For the council, Dr Ashley Bowes submitted that the policy in paragraph 55 of the NPPF establishes a presumption against “new isolated homes in the countryside”, which competes with the “presumption in favour of sustainable development” in paragraph 14. It is capable of disengaging the so-called “tilted balance” in that paragraph, because it is one of the “specific policies” in the NPPF that “[indicates] development should be restricted” (see my judgment in *Barwood v East Staffordshire Borough Council*, at paragraph 22). If a proposal offends the policy in paragraph 55, its prospects of gaining planning permission may therefore be much reduced. Dr Bowes submitted that the inspector, having failed to grasp the true meaning of the policy in paragraph 55, also failed to apply the policy for the “presumption in favour of sustainable development” in paragraph 14 of the NPPF, and that his decision was therefore unlawful.
23. Dr Bowes’ main submission was that Lang J.’s construction of the policy in paragraph 55 was incorrect, that the word “isolated” in the third sentence of paragraph 55 can mean either physical or functional isolation, and that, in the application of the policy, both of these two concepts are relevant and significant. The judge’s focus on physical isolation, as opposed to functional, was in error. A decision-maker must always consider two questions: first, “whether the site is physically isolated relative to settlements and other development”, and secondly, of equal importance, “whether the site is functionally isolated relative to services and facilities”. Only if both of those questions are answered in the negative will the proposal comply with the policy – unless “special circumstances” are demonstrated. To consider only the first question would be to ignore, and fail to give effect to, the basic purpose of the policy, which is to sustain the rural economy by supporting local services and facilities. The Government’s intention here, Dr Bowes submitted, was that new housing in rural areas should be located so as to support those services and facilities, and thus maintain and enhance the vitality of rural communities. As the guidance in paragraph 50-001-20160519 of the PPG makes plain, housing has an “essential” role to play in ensuring the viability of those services and facilities. Therefore, Dr Bowes contended, under the policy in paragraph 55 of the NPPF, housing that would be “isolated” from services and facilities should be avoided unless there are “special circumstances”.
24. This argument seems somewhat different from that presented to the judge. The contention before her, as I understand it, was that the fact of a site’s presence within a rural settlement, close to other dwellings, was irrelevant under the policy in paragraph 55, at least if the settlement lacked services and facilities of its own.
25. Lang J.’s analysis was supported by Mr Stephen Whale for the Secretary of State and Mr Paul Shadarevian Q.C. for Greyread and Granville.
26. In my view the judge’s conclusions were sound, and her understanding of the policy in paragraph 55 correct.
27. Our task, as Mr Whale and Mr Shadarevian submitted, is to construe the words of the policy itself, reading them sensibly in their context. This is not a sophisticated exercise, and it need not be difficult. It is, in fact, quite straightforward. Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted. As this case shows, over-interpretation of a policy can distort its true meaning – which is misinterpretation.
28. The first thing to be said about the policy in paragraph 55 is that it is expressed in general and un-prescriptive terms. It does not dictate a particular outcome for an application for

planning permission. It identifies broad principles and indicates a broad approach. Local planning authorities are advised what “should” be done. The policy is not expressed as containing a “presumption”, and I would not read it as creating one. Rather, it indicates to authorities, in very broad terms, how they ought to go about achieving the aim stated at the beginning of paragraph 55: “[to] promote sustainable development in rural areas”. It does not set specific tests or criteria by which to judge the acceptability of particular proposals. It does not identify particular questions for a local planning authority to ask itself when determining an application for planning permission. Its tenor is quite different, for example, from the policies governing the protection of the Green Belt, in paragraphs 87 to 92 of the NPPF. The use of the verb “avoid” in the third sentence of paragraph 55 indicates a general principle, not a hard-edged presumption.

29. Secondly, the policy explicitly concerns the location of new housing development. The first sentence of paragraph 55 tells authorities where housing should be “located”. The location is “where it will enhance or maintain the vitality of rural communities”. The concept of the “vitality” of such a community is wide, and undefined. The example given in the second sentence of paragraph 55 – “development in one village” that “may support services in a village nearby” – does not limit the notion of “vitality” to a consideration of “services” alone. But it does show that the policy sees a possible benefit of developing housing in a rural settlement with no, or relatively few, services of its own. The third sentence of the paragraph enjoins authorities to avoid “new isolated homes in the countryside”. This is a distinction between places. The contrast is explicitly and simply a geographical one. Taken in the context of the preceding two sentences, it simply differentiates between the development of housing within a settlement – or “village” – and new dwellings that would be “isolated” in the sense of being separate or remote from a settlement. Under the policy, as a general principle, the aim of promoting “sustainable development in rural areas” will be achieved by locating new dwellings within settlements and by avoiding “new isolated homes in the countryside”. The examples of “special circumstances” given in the policy illustrate particular circumstances in which granting planning permission for an isolated dwelling in the countryside may be desirable or acceptable. But what is perfectly plain is that, under this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of “sustainable development in rural areas” than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.
30. Thirdly, the adjective “isolated”, which was the focus of argument before us, is itself generally used to describe a location. It is not an unfamiliar word. It is commonly used in everyday English. Derived originally from the Latin word “insula”, meaning an “island”, it carries the ordinary sense of something that is “... [placed] or standing apart or alone; detached or separate from other things or persons; unconnected with anything else; solitary” (The Oxford English Dictionary, second edition). This was the meaning favoured by the judge (in paragraph 24 of her judgment), and there is no dispute that in this respect she was right.
31. In my view, in its particular context in paragraph 55 of the NPPF, the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, “isolated” in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a “community”, a “settlement”, or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in a particular case, a group of dwellings constitutes a settlement, or a “village”, for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may “support services” in another. It does not stipulate that, to be a “village”, a settlement must have any “services” of its own, let alone “services” of any specified kind.
33. Does this reading of the policy in paragraph 55 fit the broader context of the policies for sustainable development in the NPPF and guidance in the PPG? I think it does.
34. Paragraph 7 of the NPPF refers to the “three dimensions to sustainable development: economic, social and environmental”, in which the “social role” involves “supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being ...”. Of the 12 “core land-use planning principles” in paragraph 17, the fifth is to “take account of the different roles and character of different areas ... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it”. The eleventh is “actively [to] manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable”. And the twelfth is to “take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”. Paragraph 28 states that local and neighbourhood plans should “promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship”. The policy in paragraph 29 recognizes that “different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”. And the policy in paragraph 34 says that “[plans] and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised”, but that “this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas”.
35. None of those policies suggests a different understanding of the policy in paragraph 55 from mine. Indeed, if anything, I think they tend to confirm it.
36. In my opinion the language of paragraph 55 is entirely unambiguous, and there is therefore no need to resort to other statements of policy, either in the NPPF itself or elsewhere, that might shed light on its meaning. Mr Whale suggested that the use of the PPG to assist in construing policies in the NPPF would be inappropriate in principle. This is not something we have to decide, because the meaning of the policy we are dealing with here is plain on its

face and requires no illumination from the PPG or any other statement of national policy or guidance. But I doubt that it would be right to exclude the guidance in the PPG as a possible aid to understanding the policy or policies to which it corresponds in the NPPF. There may be occasions when that is necessary. But this, in my view, is not such a case.

37. In any event, the interpretation of the policy that I consider to be right seems entirely consistent with the guidance on plan-making in paragraph 50-001-20160519 of the PPG, including the proposition that “settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence”.
38. This all seems at one with Lewison L.J.’s observation about the policy – brief as it was – in paragraph 15 of his judgment in *Dartford Borough Council*.
39. I do not accept Dr Bowes’ argument that the word “isolated” in paragraph 55 must be understood as meaning either (a) “physically isolated” or (b) “functionally isolated” or “isolated from services and facilities”; that the decision-maker must therefore address two questions – first, whether the proposed new dwelling would be physically separate or remote from any other dwelling, and secondly, whether it would be isolated from services and facilities; and that if the proposed development would be either separate or remote from other dwellings or separate or remote from services and facilities, it offends the policy. This would be a strained and unnatural reading of the policy. In my view it is neither necessary nor appropriate to gloss the word “isolated” by reading an additional phrase into paragraph 55 whose effect would be to make the policy more onerous than the plain meaning of the words it actually contains. No such restriction is apparent in the policy, or, in my view, implicit in it.
40. On the interpretation suggested by Dr Bowes, the question of whether a proposed new dwelling on a site within a rural settlement would be an “isolated” new home under the policy would depend, or at least potentially depend, on the presence or absence of services in that particular settlement, rather than, say, in a neighbouring village. This could have the surprising consequence that a proposed dwelling on a site within a settlement, perhaps with several existing dwellings either side of it or surrounding it, would have to be regarded as a “new isolated [home] in the countryside”, simply because that settlement did not have any “services” of its own, whereas a similarly located dwelling in a smaller settlement that happened to have “services” of some kind within it – perhaps a shop or a public house – would not be “isolated”. Dr Bowes did not seek to deny this. And it would also follow that each and all of the existing dwellings in a settlement without “services” of its own would then have to be regarded as “isolated” too. It seems to me that this would be not merely an artificial construction of the policy, but also wholly unrealistic. I cannot accept that the Government intended the policy to have such an effect, or, if it did, that it would have failed to spell this out in paragraph 55.
41. Reading the policy as I would read it, as we were urged to do by the Secretary of State through Mr Whale, and as I think the Government plainly did intend, reflects common sense – as well as being the literal and natural construction. As the judge acknowledged (in paragraph 27 of her judgment), a policy directed to enhancing and maintaining the “vitality” of rural communities is a policy that embraces the “social” dimension of sustainable development. And as she said, to restrict the concept of an “isolated home” to one that is

“isolated from services and facilities” would be to deny the policy’s support – indeed, would turn it against – proposed dwellings that “could contribute to social sustainability because of [their] proximity to other homes”. This would seem contrary to the aim of the policy to maintain and enhance “the vitality of rural communities”, and would diminish the acknowledged benefit of development in one settlement supporting “services” in another.

42. I therefore reject Dr Bowes’ submission that the inspector took too narrow a view of the expression “new isolated homes in the countryside”. To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be “functionally” isolated as well as “physically”. He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. And he did that.
43. None of the descriptive parts of paragraphs 8 and 9 of the decision letter is said to be wrong in fact. There is no dispute that the inspector was right to describe Blackmore End as he did in paragraph 8 of his decision letter: “a recognisable village”. As he said in paragraph 9, there were “a number of dwellings nearby”. It is also undisputed that Blackmore End is not a settlement without any services and facilities. The inspector found, in paragraph 14 of the decision letter, that the settlement “has a very limited range of services and facilities”. That Blackmore End is indeed a settlement, and that there are dwellings a short distance to the north of the appeal site, others a short distance to the south, and another on the other side of the road, to the west, is obvious when one looks at a map. And it is not contested, or contestable, that if the word “isolated” in paragraph 55 of the NPPF means physically isolated in the sense of being isolated from a settlement, the inspector was entitled – as a matter of fact and planning judgment, if not simply as a matter of fact – to conclude at the end of paragraph 9 that “the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers”.
44. In the circumstances, there was no need for “special circumstances” to be identified to justify a development of “new isolated homes in the countryside”. This was not such a development.
45. In my view therefore, the inspector did not misinterpret or misapply the policy in paragraph 55 of the NPPF. His understanding of the policy was accurate, and his application of it impeccable.
46. Nor did he fail to apply the policy for the “presumption in favour of sustainable development” in paragraph 14, given the agreed absence of a five-year supply of housing land (see paragraph 22(2) of my judgment in *Barwood v East Staffordshire Borough Council*). Even if one were to assume that the policy in paragraph 55 fell within the ambit of the exception in paragraph 14 for “specific policies” in the NPPF that “indicate development should be restricted” – which may or may not be so – the inspector, having understood the policy correctly and applied it lawfully, concluded in paragraph 9 of his decision letter that the proposal did not offend it. And he went on, in paragraph 16, to conclude not only that there were no “adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole” – the first exception, or the first limb of the exception, in paragraph 14 – but also, expressly, that there were no “specific policies in the Framework which indicate that the development should be restricted” – the second exception, or the second limb. He was satisfied that the proposal amounted to “sustainable development”. And he was also satisfied that it earned the



“presumption in favour of sustainable development”. This conclusion demonstrates a true understanding and proper application of the policy in paragraph 14 of the NPPF.

47. As Mr Shadarevian pointed out, when one reads the decision letter fairly as a whole, it is clear that in assessing the proposal on its planning merits the inspector considered all three dimensions of “sustainable development”: the “economic” role, the “social”, and the “environmental”. He did not neglect the fact that Blackmore End “has a very limited range of services and facilities”. He found it was “likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment”. He acknowledged that “this weighs against the development”. But he also recognized that it was “consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas” (paragraph 14 of the decision letter). And in drawing together his conclusions on the main issues when he came to consider “The Overall Balance and Sustainable Development”, he took into account his finding that “[accessibility] to services, facilities and employment from the site other than by car would be poor” (paragraph 16). Those conclusions did not, however, lead him to the view that any policy of the NPPF was breached. This was a matter of planning judgment for him. I do not think his approach can be faulted. His conclusions are not vitiated by any misinterpretation or misapplication of NPPF policy. They are unassailable in a legal challenge.

48. In my view therefore, the inspector made no error of law, and the judge was right to uphold his decision.

### *Conclusion*

49. For the reasons I have given, I would dismiss this appeal.

### **Lord Justice McCombe**

50. I agree.

**Appendix H – City & Country Bramshill Limited v Secretary of State for Housing, Communities  
and Local Government & Ors [2021] Ref. EWCA Civ. 320 Jugdmen**



Neutral Citation Number: [2021] EWCA Civ 320

Case No: C1/2020/0160

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**(PLANNING COURT)**  
**THE HONOURABLE MR JUSTICE WAKSMAN**  
**[2019] EWHC 3437 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 09/03/2021

Before:

**SIR KEITH LINDBLOM, SENIOR PRESIDENT OF TRIBUNALS**  
**LORD JUSTICE PHILLIPS**  
and  
**LORD JUSTICE ARNOLD**  
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Between:

**City & Country Bramshill Limited**

**Appellant**

- and -

**(1) Secretary of State for Housing, Communities and  
Local Government**

**Respondents**

- and -

**(2) Hart District Council**

- and -

**(3) Historic England**

- and -

**(4) The National Trust for Places of Historic Interest or  
Natural Beauty**

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**James Strachan Q.C. and Ned Helme** (instructed by **Pinsent Masons LLP**) for the **Appellant**  
**Guy Williams** and **Alistair Mills** (instructed by the **Government Legal Department**)  
for the **First Respondent**  
**Ben Du Feu** (instructed by **Historic England Governance and Legal**)  
for the **Third Respondent**  
**Melissa Murphy** (instructed by **Sharpe Pritchard LLP**) for the **Fourth Respondent**

Hearing dates: 1 and 2 December 2020

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**Judgment Approved by the court  
for handing down**

## **The Senior President of Tribunals:**

### *Introduction*

1. This appeal raises questions on the interpretation and application of policies in the National Planning Policy Framework (“NPPF”) against the development of “isolated homes in the countryside” and on the assessment of harm and benefit to “heritage assets”.
2. The appellant, City & Country Bramshill Ltd., appeals against the order of Waksman J., dated 20 December 2019, partly allowing and partly dismissing applications and appeals under sections 288 and 289 of the Town and Country Planning Act 1990 (“the 1990 Act”) and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”), which challenged the decisions of an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government, on 33 statutory appeals, under sections 78 and 174 of the 1990 Act, against refusals of planning permission and enforcement notices issued by the second respondent, Hart District Council, relating to development at Bramshill Park in Hampshire. The third and fourth respondents, Historic England and the National Trust, were objectors.
3. The site, which extends to about 106 hectares, lies between the villages of Hazeley and Eversley. It was previously used as a national and international police training college. On it stands a grade I listed Jacobean mansion and various other buildings. It also contains a grade I registered park and garden. The proposed development included the conversion of the mansion to 16 apartments and the adjoining stable block to five (appeal 1), or its conversion to a single dwelling (appeal 2), or to class B1 office space (appeal 3); the construction of 235 houses in place of some of the existing buildings (appeal 4), 14 more to the south-west (appeal 5), and nine to the north of an existing lake (appeal 6); the use of 51 residential units – once occupied by staff employed at the training college – as separate dwellings (appeal 7), retaining those against which the council had taken enforcement action alleging a material change of use without planning permission (appeals 8 to 33).
4. The inspector held a long inquiry into the appeals, which ended in February 2018. In her decision letter, dated 31 January 2019, she allowed appeals 2 and 3, granting planning permission for those proposals. She also allowed appeals 15 and 17 to 33, quashing the enforcement notices in those appeals. She dismissed appeals 1, 4 to 14 and 16. In a separate decision letter dated 14 March 2019 she dismissed City & Country Bramshill’s application for costs against the council. City & Country Bramshill challenged her decisions on appeals 4 to 14 and 16, and on the application for costs. Waksman J. upheld the challenges to the decisions on appeals 7 to 14 and 16. He rejected those to the decisions on appeals 4 to 6 and on costs. The appeal before us is against that part of his order. Permission to appeal was granted by Lewison L.J. on 28 February 2020.

### *The issues in the appeal*

5. The grounds of appeal raise four principal issues: first, whether the inspector erred in law in her interpretation and application of the policy against “isolated homes in the countryside” in paragraph 79 of the version of the NPPF published in July 2018 (ground 1); second, whether she erred in her approach to “sustainability” (ground 4); third, whether,

in performing the duty in section 66 of the Listed Buildings Act and applying the corresponding policies in the NPPF, she failed to comply with a “principle” identified by this court in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061, [2017] 1 W.L.R. 411 (ground 2); and fourth, whether she erred in her approach to applying development plan policies for the protection of the historic environment, in particular policies CON11, CON12, CON17 and CON18 of the adopted local plan for Hart district (ground 3). It is also contended that the decision on the application for costs was unlawful.

*The inspector’s “Overall Conclusions” on appeals 4, 5 and 6*

6. The inspector’s decision letter runs to 433 paragraphs. Her “Overall Conclusions” on appeals 4, 5 and 6 were these (in paragraph 417):

“417. Appeals 4, 5 and 6 would not provide appropriate sites for development being in an unsustainable location and resulting in isolated housing in the countryside. They would be harmful to the character and appearance of the area and would not preserve the special qualities of the listed buildings, their settings or the [registered park and garden (“RPG”)]. These matters are not outweighed by public benefits. They would not be in accord with [local plan] policies GEN1, GEN3, GEN4, T14, CON12, CON17 and national planning policy.”

*The policy in paragraph 79 of the NPPF*

7. Under the heading “Identifying land for homes”, paragraph 72 of the July 2018 version of the NPPF stated:

“72. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. ...”

8. In a passage headed “Rural housing”, paragraphs 78 and 79 stated:

“78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:  
a) there is an essential need for a rural worker ... to live permanently at or near their place of work in the countryside;

- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future use of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality ...”.

Those two paragraphs re-appeared in the version of the NPPF published in February 2019.

9. The previous policy, in paragraph 55 of the original version of the NPPF published in March 2012, was in slightly different terms. It stated:

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: ...”.

10. The interpretation of the policy in paragraph 55 of the original version of the NPPF was considered by this court in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, [2018] 2 P. & C.R. 9. In that case I said (in paragraphs 29 to 32):

“29. ... [Under] this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of “sustainable development in rural areas” than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.

...

31. In my view, in its particular context in paragraph 55 of the NPPF, the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is or is not “isolated” in this sense is a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definition of a “community”, a “settlement”, or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in

a particular case, a group of dwellings constitutes a settlement or a “village” for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. ...”

and (in paragraph 38):

“38. This all seems at one with Lewison L.J.’s observation about the policy – brief as it was – in paragraph 15 of his judgment in [*Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, [2017] P.T.S.R. 737].”

and (in paragraph 42):

“42. ... To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be “functionally” isolated as well as “physically”. He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. ... .”

11. Though it was not referred to either in evidence or in argument before the inspector, the decision of this court in *Dartford Borough Council* has been relied upon by City & Country Bramshill in these proceedings. The “sole issue” in that case, as Lewison L.J. said (in paragraph 1 of his judgment), was “the meaning of “previously developed land” ... as defined by the glossary” in the NPPF. In his view, the expression “[land] in built-up areas” in the definition could not mean “land *not* in built-up areas” (paragraph 9). And he saw no conflict between that definition and the policy in paragraph 55 of the NPPF (paragraph 14). He said (in paragraph 15):

“15. ... [The] definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that the new dwelling within that curtilage will not be an “isolated” home. There will already be a permanent structure on the site. ...”.

#### *The inspector’s conclusions on the location of the proposed development*

12. The first of the “main issues” identified by the inspector was “[whether] the proposals would provide appropriate sites for development having regard to planning policies that seek to control the location of new development and their sustainability credentials” (paragraph 23 of the decision letter).

13. She described the site and the buildings on it, noting that it “contains an extensive range of modern buildings ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She also described the proposals in each of the appeals, and the relationships between one proposal and another. For example, she noted that the proposal in appeal 4 would provide 235 houses to the north-west of the mansion “utilising some of the existing buildings ...” (paragraph 31), that the proposal in appeal 7 sought permission for “the use of 51 residential units on the site as C3 dwelling houses”, 26 of which were the subject of the enforcement notices in appeals 8 to 33, and that “[the] buildings concerned are also included in appeal 4 for adaptation/demolition” (paragraph 35).



14. She said the council's reasons for refusal of planning permission for the development in appeals 1, 4, 5 and 6 "[related] to the alleged unsustainable location of the site by virtue of its remote position away from nearby settlements with services and facilities", and in appeal 7 "the provision of new isolated dwellings in the open countryside" (paragraph 54). She referred to the policy in paragraph 103 of the July 2018 version of the NPPF, which, she said, "seeks to focus significant development on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of sustainable transport modes", and the policy in paragraph 110, that "[encouragement] should be given to the effective re-use of land that has been previously developed ..." (paragraph 57).
15. On the policy in paragraphs 78 and 79 of the NPPF she concluded (in paragraphs 58 to 61):
  - “58. In rural areas, to promote sustainable development housing should be located where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless they are to serve one of [the] identified special circumstances including where such development would represent the optimum viable use of a heritage asset or would be appropriate enabling development to secure the future of the heritage assets; or where the development would re-use redundant or disused buildings and enhance its immediate setting. [Here a footnote refers to paragraph 79 of the NPPF.]
  59. Although the development plan policies relating to settlement boundaries are out of date, there is no dispute between the parties that the site is located outside any settlement area and is not in the vicinity of the boundary of any settlement. It is in the countryside.
  60. Nonetheless the appellant considers that the proposals would not result in isolated homes in the countryside under the meaning given in paragraph 79 of the [NPPF]. I have taken into account the findings of *Braintree* [Here a footnote refers to the first instance judgment in *Braintree District Council*] which remain relevant to the revised [NPPF] as the text in the revision remains essentially the same. It was held in the judgement that the word isolated should be given its ordinary objective meaning of “far away from other places, buildings or people; remote”. A distinction was also made in the judgement between “rural communities”, “settlements” and “villages” on the one hand and “countryside” on the other. At the Court of Appeal it was agreed that the [NPPF] does not define a community, settlement or village or that a settlement or development boundary must have been fixed in an adopted or emerging local plan. It was held that it should not necessarily have any services or public transport within easy reach. Whether in any particular case a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker. [Here there is a footnote referring to this court's decision in *Braintree District Council*.]
  61. In the cases before me, whilst I acknowledge that the site contains existing buildings, it is evidently not a rural community, settlement or village but rather a discrete group of buildings used in the past for a specific purpose as a residential institution centred on a historic house. It is remote from other settlements and villages and surrounded by open countryside. In my assessment residential

development in this location would result in new isolated housing in the countryside.”

16. She acknowledged that paragraph 79 of the NPPF “allows for certain exceptions” (paragraph 62). But in the light of her conclusion that the proposals in appeals 4, 5 and 6 did not “represent the optimal viable use of a heritage asset or provide appropriate enabling development to secure the future of the heritage asset”, she concluded that “these proposals do not fall under the special circumstances allowed by paragraph 79” (paragraph 63).
17. The development in appeal 4, the inspector said, “would extend beyond what can be considered as the curtilage of previously developed land”, and this weighed against its “sustainability credentials” (paragraph 67). The proposals in appeals 5 and 6 did “not comprise the use of previously developed land” (paragraph 68).
18. On “sustainable transport”, having considered the distance of the site from services and facilities (paragraphs 69 to 80), the inspector said the section 106 agreement showed “a commitment to measures that would assist in providing alternative transport modes for some of the appeals” (paragraph 81). But there was “no evidence as to how likely these particular measures would be to reduce the use of the private car”. They “would provide some choice”, but “this would be limited”. The proposals did not “offer a genuine choice of transport modes as required by national and local policies” (paragraph 82).
19. Turning to City & Country Bramshill’s contention that the development “would represent an improvement in greenhouse gas emissions in comparison to the site’s previous use” (paragraph 83), the inspector said (in paragraphs 84 to 87):

“84. The appellant contends that due to the nature of the trips that were undertaken in association with the previous use (and that could still be undertaken) it is relevant to sustainability to consider how the proposals would result in a reduction in greenhouse gas emissions due to the nature of the trips in the extant and proposed uses. I was not provided with evidence of the comparative greenhouse gas emissions of the previous and proposed uses. I was provided with information on trip rates by both main parties although the appellant acknowledges that it is not possible to define the ultimate origin and destination of trips from the former use. [Here a footnote refers to paragraph 337 of the closing submissions for City & Country Bramshill.] The appellant instead relies on the national and international nature of the former use that is alleged to have resulted in far greater emissions arising from trip lengths and international flights.

85. The Council claims that the proposals would result in more trips than the former use. This is largely due to the residential nature of the police college which did not generate regular trips off site. The Council did not provide information on trip lengths. I reach no conclusion on whether the existing or proposed uses would generate greater trip numbers as these do not assist in concluding on the relative greenhouse gas emissions arising from each as this would depend on distance and type. In addition it is likely that residents would travel abroad for holidays.

86. The offer of electric charging points to facilitate the use of electric cars would have the potential to assist in reducing greenhouse gas emissions. However, this would be reliant on individual occupants purchasing such cars and I have no evidence before me as to the likelihood or extent of this and the associated effect on greenhouse gas emissions.
87. As such I am unable to conclude that greenhouse gas emissions would be less with the appeal schemes before me as I do not have sufficient information before me. However, even if I did reach such a conclusion, this one factor would not lead me to a conclusion that the schemes would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes.”

20. The inspector then returned (in paragraph 88) to the policies of the NPPF bearing on the sustainability of the site’s location:

“88. The [NPPF] should be read as a whole and seeks to direct development to locations which are or can be made sustainable, where services are accessible and where the natural environment is protected. I do not consider that the various measures proposed are of such weight to outweigh the conclusion that the site is in an inappropriate location in the countryside for new residential development, divorced from services and facilities. Appeals 4, 5, 6 and 7 would result in isolated homes in the countryside. Whilst the travel plan and proposals for electric charging points would potentially provide some choice of travel, given the lack of facilities within walking distance of the site, the distance to the bus stops and the unattractive nature of the road network to walk and cycle, the site’s location is not one that is or can be made sustainable. The developments would not enhance or maintain the vitality of the local communities or result in strong and vibrant rural communities. I conclude that the site would not be an appropriate and sustainable location for housing development in Appeals 1, 4, 5, 6, and 7-33.”

21. In her conclusions on the first “main issue”, therefore, the inspector said the proposals in appeals 1, 4, 5, 6 and 7 to 33 “would not provide appropriate sites for housing development in respect of their location and sustainability credentials”, and “would not be in accord with ... the objectives of national planning policy” (paragraph 91). However, the site in appeal 2 “would be an appropriate site for a single dwelling”, and that in appeal 3 “an appropriate site for offices given the fallback position”. Both of those proposals were “in accord with local and national policies in this regard” (paragraph 92).

22. Later, when dealing with the ground (c) appeals against the enforcement notices, she considered the lawfulness of the uses to which the notices related (paragraphs 363 to 376).

*Did the inspector misinterpret and misapply the policy for “isolated homes in the countryside” in paragraph 79 of the NPPF?*

23. For City & Country Bramshill, Mr James Strachan Q.C. argued – as he did before Waksman J. – that in concluding the proposals would create “isolated homes in the countryside” the inspector misinterpreted the policy in paragraph 79 of the NPPF.

24. Mr Strachan made three main submissions. First, the inspector failed to comply with the “principle” stated by Lewison L.J. in paragraph 15 of his judgment in *Dartford Borough Council*, which was binding on her even though that case had not been mentioned at the inquiry. She did not grapple with the fact that the proposed housing would be on “previously developed land” within the curtilage of existing permanent structures, and so would not be “isolated homes in the countryside”. As she was reminded in City & Country Bramshill’s closing submissions, this was conceded in cross-examination by the council’s witness Mr Archibald, and, for the development in appeals 4, 5 and 6, by its witness Mr Stevenson. Secondly, she failed to consider whether there was a “cluster” of dwellings forming a “settlement” on the site, as envisaged in *Braintree District Council*. There were already at least 18 residential units in lawful use as independent dwellings (those in appeals 15 and 17 to 33), and at least 17 more containing staff accommodation, which could also be used as new dwellings. So to describe the proposed new housing as “isolated homes” was not rational. The judge’s analysis here (in paragraphs 40 to 42 of his judgment) was incorrect. And thirdly, the inspector also failed to consider how the housing proposed in appeal 4, with or without the additional housing in appeals 5 and 6, could rationally be regarded as the creation of “isolated homes in the countryside”. The judge was wrong to suggest (in paragraphs 32 and 44 of his judgment) that the number of houses proposed was irrelevant to the question of whether the proposal was for “isolated homes”. It is implicit in this court’s reasoning in *Braintree District Council* that a decision-maker should consider whether the number of dwellings proposed would be sufficient to avoid “isolation”.
25. Mr Strachan contended therefore that the inspector’s conclusion in applying the policy in paragraph 79 of the NPPF was irrational. No reasonable decision-maker could have regarded the proposed housing as “isolated homes in the countryside”. But in any event, the inspector’s reasons on this “principal important controversial issue”, were deficient.
26. Finally, Mr Strachan submitted that having upheld the challenge to the inspector’s decision on appeal 7 and having also remitted the decisions on appeals 8 to 14 and 16 for redetermination, the judge should also have quashed the decisions on appeals 4, 5 and 6. Those other decisions had implications for the “isolated homes” issue in appeals 4, 5 and 6. If the inspector had allowed appeal 7, the use of the buildings on the site for 51 dwellings would have been lawful, as well as the residential use of the mansion itself.
27. I cannot accept those submissions. In my view, as Mr Guy Williams submitted for the Secretary of State, there is nothing in the inspector’s conclusions to suggest that she misinterpreted the policy in paragraphs 78 and 79 of the NPPF, nor did she misapply it. She clearly adopted the interpretation given by this court in *Braintree District Council*. And she applied the policy reasonably and lawfully to the proposals before her. She made no error of law in either respect, and there is no reason here for the court to intervene.
28. The principles on which the court will act in a challenge to an inspector’s decision on a planning appeal are well established (see *St Modwen Developments v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] P.T.S.R. 746, at paragraph 6). The court will not be drawn into an unduly legalistic approach (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, [2018] P.T.S.R. 88, at paragraph 50). It will never trespass into areas of planning judgment, except to consider whether such judgment has been exercised lawfully, and it will keep in mind that the inspector appointed by the Secretary of State to make the decision will have

brought his or her own expertise to the task (see *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 W.L.R. 1865, at paragraph 25). Where national or development plan policy is the focus of argument, it must tell apart grounds that genuinely allege a misinterpretation of policy and those presented in that guise, which are, in truth, only a complaint about the way in which the policy has been applied (see *Hopkins Homes Ltd.*, at paragraph 26). It will read the decision letter fairly, with due tolerance for minor imperfections or infelicity. It will not expect elaborate or lengthy reasons for every conclusion, but consider “whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given” (see the speech of Lord Bridge of Harwich in *Save Britain’s Heritage v Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, at p. 167). It will keep in mind that the decision letter is directed to parties familiar with the evidence and submissions in the case (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953, at paragraph 36). It will not expect every piece of evidence, every concession made in cross-examination, and every submission of counsel to be mentioned. That would be wholly unreal.

29. I would reject the suggestion that the inspector was not entitled to apply the paragraph 79 policy to all the housing proposals before her, and not merely those to which the council was opposed on the grounds of alleged conflict with that policy. She was considering each appeal on its merits, without being confined by the council’s reasons for refusal or the reasons it had given for taking enforcement action (sections 78, 79(1) and 174(2)(a) of the 1990 Act). She was entitled to apply the policy in paragraph 79 to each of the housing proposals before her. And it was appropriate to do so when she was considering, as part of her first “main issue”, the sustainability of the site’s location for housing. Her formulation of that issue put squarely in play, for all of the proposed housing, the policies of the NPPF bearing on the sustainability of the site’s location, including the policy in paragraph 79. No unfairness or other illegality arose from proceeding as she did.
30. One must remember that the concept of “isolated homes in the countryside” is not a concept of law. It is a concept of national planning policy. It is not defined in the NPPF. It does not lend itself to rigorous judicial analysis (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraph 26). As with many other broadly framed policies in the NPPF, its application will depend on the facts of the case, and decision-makers will have to exercise their planning judgment in a wide variety of circumstances (see the judgment of Lord Carnwath in *R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [2020] P.T.S.R. 221, at paragraph 39). The court’s role, therefore, both in interpreting the policy and in reviewing its application, is limited (see *Hopkins Homes Ltd.*, at paragraphs 24 to 26). As Lord Reed said in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983 (in paragraph 18), where decision-makers are required to exercise judgment in applying a policy to a given set of facts, “their exercise of their judgment can only be challenged on the ground that it is irrational or perverse”.
31. Fortunately, we are not faced with having to interpret the paragraph 79 policy. That has already been done by this court in *Braintree District Council* – though for the predecessor policy in paragraph 55 of the 2012 version of the NPPF. In *Braintree District Council* the central issue in the appeal was the meaning of the expression “new isolated homes in the countryside”. In this case, the contentious phrase – now in paragraph 79 – is simply “isolated homes in the countryside”. In substance, however, the policy is unchanged.

32. There is, therefore, no need for any further discussion of what is meant by the concept of “isolated homes in the countryside” in this policy. The essential conclusion of this court in *Braintree District Council*, in paragraph 42 of the judgment, is that in determining whether a particular proposal is for “isolated homes in the countryside”, the decision-maker must consider “whether [the development] would be physically isolated, in the sense of being isolated from a settlement”. What is a “settlement” and whether the development would be “isolated” from a settlement are both matters of planning judgment for the decision-maker on the facts of the particular case. This understanding of the policy, in its context, is not disturbed by what Lewison L.J. had earlier said in *Dartford Borough Council* (at paragraph 15). His observation was obiter, as was my comment about it in *Braintree District Council* (at paragraph 38). No conflict of authority exists between the decisions in those two cases.
33. To adopt remoteness from other dwellings, instead of remoteness from a settlement, as the test for “isolated homes in the countryside” would seem inconsistent with the Government’s evident intention in producing the policy in paragraph 79. It would mean, presumably, that the policy would not apply to a development of housing in the countryside – large or small – on land next to an individual dwelling remote from the nearest settlement, because although the new homes might be “isolated” from the settlement, they would not be “isolated” from existing development. It would prevent the policy from applying to the development of additional dwellings, one or two at a time, on sites next to other sporadic rural housing, again on the basis that they would not then be “isolated”. It might even prevent the policy from applying to a proposal for two or more dwellings on a single, undeveloped site in the countryside, because none of them would itself be “isolated” from another dwelling, and the development as a whole would therefore not be “isolated”. If this were so, only the development of a single dwelling, on its own, separate from any other dwelling already built or proposed nearby, would engage the policy. This would be hard to reconcile with the Government’s aim, as policy-maker, to “promote sustainable development in rural areas”.
34. The policy in paragraphs 78 and 79 of the NPPF aligns with that in paragraph 72. Their common theme is the need for the planning system to promote sustainably located housing development. Neither policy favours the unplanned and unsustainable development of housing in the countryside, away from existing settlements. As paragraph 72 indicates, it is for plan-making to achieve the “supply of large numbers of new homes” by “planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities”. This is within the remit of “strategic policy-making authorities”. It is their job to “identify suitable locations for such development where this can help to meet identified needs in a sustainable way”.
35. In this case the inspector’s application of the policy in paragraphs 78 and 79 was, in my view, impeccable. It shows that she understood those policies correctly. Her relevant conclusions sit within her assessment of the appropriateness and sustainability of the proposed development in this location. To get the full sense of those conclusions, one must read her assessment on this first “main issue” in its entirety. When this is done, no error of law emerges in her handling of the policy in paragraphs 78 and 79.
36. In dealing with appeals 1, 4, 5 and 6, she began by identifying the basic objection underlying the relevant reasons for refusal in the council’s decision notices, namely that the

proposed development was in an “unsustainable location ... by virtue of [the site’s] remote position away from nearby settlements with services and facilities” (paragraph 54 of the decision letter). She then referred to the general policy background for sustainable development, including paragraphs 103 and 110 of the NPPF, which emphasise, respectively, the importance of “[focusing] development on locations which are or can be made sustainable ...” and “[encouraging] ... the effective re-use of land that has been previously developed ...” (paragraph 57). It was with these principles in mind that she went on to apply the policy in paragraphs 78 and 79.

37. She summarised the policy accurately (paragraph 58). She recorded, as the parties had agreed, that the site was “located outside any settlement [,] ... not in the vicinity of the boundary of any settlement [, and] in the countryside” (paragraph 59). She then dealt with the assertion that “the proposals would not result in isolated homes in the countryside”. She confirmed that she had taken into account both the first instance judgment and the decision of the Court of Appeal in *Braintree District Council*, setting out the court’s basic conclusions on the interpretation of the policy. In the light of the Court of Appeal’s decision, she directed herself, rightly, that the question of “[whether], in a particular case, a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker” – a reference to paragraph 32 of the judgment (paragraph 60). It is clear, therefore, that she had in mind what had been said about the possibility of a “cluster of dwellings” being a settlement, which appears in the same paragraph of the judgment. She understood that it was for her to determine whether the group of buildings on the site was or was not a settlement.
38. She stated her findings of fact on the relevant questions, and the conclusion she had come to in the exercise of her planning judgment. The salient facts were that the site “contains existing buildings”; that it was “evidently not a rural community, settlement or village”, but “a discrete group of buildings used in the past ... as a residential institution centred on a historic house”; and that it was “remote from other settlements and villages and surrounded by open countryside”. None of these findings are attacked in these proceedings. The conclusion based on them, as a matter of planning judgment, was equally clear: that “residential development in this location would result in new isolated housing in the countryside” (paragraph 61). And it was later repeated (in paragraphs 87 and 88). It is invulnerable in a legal challenge. Mere disagreement is not enough to unseat it.
39. Rightly, the inspector went on to consider, for each appeal, whether the proposal fell within any of the specified exceptions in the policy. Once again, she exercised her own planning judgment, concluding that no valid exception was demonstrated for the proposals in appeals 4, 5 and 6 (paragraph 63). There is no error of law in those conclusions.
40. The inspector’s reasons are clear and complete. They express and explain the findings and conclusions required of her under the policy. She did not have to record all the evidence and submissions she had heard, or set out the concessions made by particular witnesses and the submissions of counsel in the light of those concessions. She had to set out her main findings of fact on the evidence before her, and state her conclusions. That is what she did.
41. It is not a valid criticism of her that she made no mention of *Dartford Borough Council City & Country Bramshill* did not rely on that case at the inquiry, and no one else seems to have referred to it. She was aware of it – because it is touched upon in the judgment in

*Braintree District Council*, which she had obviously read. But she did not have to say anything about it, for it established no “principle” relevant to her assessment.

42. In summary, therefore, the findings of fact and conclusion in paragraph 61 of the decision letter were lawful findings and a lawful conclusion in the application of the paragraph 79 policy, on its true interpretation. So too were the inspector’s findings and conclusions on the possible exceptions to the policy.
43. Her conclusion in paragraph 61 of the decision letter was clearly intended to apply to each of the proposals for housing, and to each dwelling proposed. It does not depend on the number of dwellings in any single part of the total scheme, or any of the permutations possible within that scheme, or the total number of dwellings capable of being provided if all the appeals were allowed. It goes for all of them, individually and together. It relates simply to “residential development in this location”. Such development would, as the inspector put it, “result in new isolated housing in the countryside” – because each and all of the dwellings proposed were, as she had found, “isolated” from any settlement.
44. Each of the proposals for housing was, in her planning judgment, objectionable for that reason. From this it follows that a successful challenge against one or more of her decisions in the relevant appeals on some other ground does not invalidate her conclusion on this issue, or her decision, in any of the others. It is therefore wrong to contend, as Mr Strachan did, that the judge, having decided to quash some of the decisions, ought therefore to have quashed others as well on the basis that the outcome on this issue might have been different if the inspector had allowed those other appeals. That is a misconception.
45. Implicit in the inspector’s conclusion in paragraph 61 of the decision letter is that the proposed new housing, when added to the remaining buildings on the site, would not form a settlement. This is put beyond doubt in her conclusions on the site’s lack of sustainability. Despite the various measures proposed, she did not accept that the scheme would “overall comprise sustainable development” – because of the site’s “isolated location ... and the lack of alternative transport modes” (paragraph 87). She found that “[appeals] 4, 5, [and] 6 ... would result in isolated homes in the countryside”, that “the site’s location is not one that is or can be made sustainable” and that “[the] developments would not ... result in strong and vibrant local communities”. And she concluded that “the site would not be an appropriate and sustainable location for housing development in Appeals ... 4, 5 [and] 6 ...” (paragraph 88) and that those proposals did not accord with “the objectives of national planning policy” (paragraph 91). It would be difficult to imagine any firmer conclusion that those proposals were in conflict with the policies of the NPPF for the location of housing development, including the policy in paragraph 79.
46. It cannot be said that in applying the paragraph 79 policy the inspector neglected the presence of the existing buildings on the site and the existing residential uses, or did not have in mind what the different consequences would be if some of the appeals succeeded and others failed. When describing the site, she referred to the “extensive range of modern buildings [,] ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She acknowledged that it contained a “discrete group of buildings” once used as a “residential institution” and “centred on a historic house” (paragraph 61). It was on this basis that she considered whether, in its present state, the site was a settlement. She was also aware of the extent of “previously developed land” on the site, the existing residential uses, the status of those uses, and the “fall-back” on which City & Country



Bramshill relied. She referred several times to the areas of “previously developed land” (paragraphs 65, 66, 67, 68 and 89). She had regard to “the site’s previous use” (paragraphs 83 and 84), and to the “extant” or “previous” or “former” uses, in contradistinction to the uses “proposed” (paragraphs 83 and 84). She referred to the “fallback position” of the extant class C2 use (paragraph 92). And when dealing with the ground (c) appeals against the enforcement notices, she had to consider the lawfulness of the uses enforced against (paragraphs 363 to 376). That she had the “fall-back” well in mind is indisputable.

47. In these circumstances it is, I think, impossible to suggest that her findings and conclusions in the application of the policy in paragraphs 78 and 79 of the NPPF were flawed because she had somehow overlooked the relationship between various proposals, or, in particular, the relationship between appeals 4 and 7 and the potential consequences of either or both of those appeals, or any others, succeeding.
48. Nor can it be suggested that if she had not gone wrong when determining appeal 7 – as the judge held she did – and had allowed that appeal, her conclusions in applying that policy might have been different. In considering the effect of the policy on the proposals, she explicitly took account of the buildings already on the site, regardless of whether they were still in active use, and this necessarily included the buildings in appeal 7 (paragraph 61). She assumed that the buildings on the site remained in place, not that any of them had been removed or replaced by new development. And when considering whether any of the proposals qualified as an exception to the policy, she referred to individual buildings on the site, including buildings that were now “disused”, such as those in appeal 7 (paragraph 64). Her approach was consistent, and in my view perfectly sound.

*Was the inspector’s approach to sustainability unlawful?*

49. Mr Strachan argued that the inspector erred in her approach to the sustainability of the development in the appeals she dismissed – in particular, by failing to take proper account of the accepted “fall-back” use of the site as a residential institution. The judge was wrong to reject this argument (in paragraphs 152 to 155 of his judgment).
50. Mr Strachan submitted that the inspector failed to see the significance of the “fall-back” for her consideration of sustainability, traffic movements and the reduction in greenhouse gas emissions (in paragraphs 82 to 87 of the decision letter). Even if she was unable to find the proposed development superior to the “fall-back” in terms of traffic congestion and greenhouse gas emissions, she should have had regard to the “fall-back” when considering whether it was “locationally unsustainable”. To ignore the “fall-back” was irrational. To say she was “unable to conclude that greenhouse gas emissions would be less with the appeal schemes” because she did not have “sufficient information” was wrong. There was, in fact, a good deal of evidence on this issue, which was referred to in City & Country Bramshill’s closing submissions, including Mr Archibald’s concession that both the police college use and an alternative Class C2 use would be less sustainable in its generation of greenhouse gas emissions than the proposed development. The inspector gave no adequate reasons for disagreeing with relevant expert evidence. Her reference (in paragraph 87) to the “isolated location of the site” was based on her misunderstanding of NPPF policy on “isolated homes”. She ought to have considered whether the perceived “lack of genuine alternative transport modes” could properly be an objection here – not only because this could also be said of the “fall-back” but also because the policy for “sustainable transport”

in paragraph 103 of the NPPF was directed to reducing congestion, which was not in issue, and greenhouse gas emissions, on which she came to no firm conclusion.

51. That argument is not cogent. I need not repeat what I have said on the previous issue, though it is also relevant here. The inspector was not legally at fault in her understanding and application of national planning policy for the location of housing development. Nor did she err when considering whether the site was “locationally sustainable”.
52. Her assessment on “sustainable transport”, which resulted in her conclusion (in paragraph 82 of the decision letter) that the proposed development would not provide a “genuine choice of transport modes as required by national and local policies”, betrays no legal error. As the judge concluded (in paragraph 155 of his judgment), she was entitled to take the view – as she plainly did – that the reliance placed by City & Country Bramshill on its commitment to providing “alternative transport modes” did not support a different conclusion (paragraphs 81 and 82 of the decision letter). This was a reasonable and lawful exercise of planning judgment.
53. As I have said, it is clear that the inspector took account of the “fall-back” when assessing the locational sustainability of the proposed development. One sees this in her conclusion on the assertion that the development would reduce greenhouse gas emissions “in comparison to the site’s previous use”. She dealt with this issue even though she had concluded, applying the policy in paragraph 103 of the NPPF, that the development would not provide a choice of transport modes to reduce congestion and emissions (paragraph 83 of the decision letter). She referred to the “trips ... undertaken in association with the previous use (and that could still be undertaken) ...”. And in assessing “sustainability”, she compared greenhouse gas emissions generated by the “extant and proposed uses”. But this exercise was impeded by the lack of evidence on the “former use”, largely because, in spite of the “national and international nature” of that use (paragraph 84), it was not possible to ascertain the origins and destinations of trips to and from the site and calculate “relative greenhouse gas emissions” (paragraph 85), or to conclude that they would now be “less” (paragraph 87) (my emphasis). That she had the “fall-back” well in mind is also confirmed by her conclusions on the office use proposed in appeal 3. Here she twice referred to the “fall-back”, comparing it with the appeal proposal. She concluded that “given the fallback position of the extant C2 use of the site ... which includes B1 uses that would be comparable to the proposed use”, the latter “would not be unacceptable on the grounds of its location or sustainability credentials” (paragraph 90). The site was “appropriate ... for offices given the fallback position” (paragraph 92).
54. Nor can it be said that she neglected the evidence given by the council’s witness Mr Archibald on which Mr Strachan relied in his closing submissions. She attached a footnote to paragraph 84 of her decision letter, referring to paragraph 337 of those submissions, which is in a passage where Mr Strachan emphasised concessions made by the council’s witnesses in response to his questioning. To suggest she did not have in mind all the relevant evidence, including that given in cross-examination, and the submissions based upon it, simply because she did not refer to it all, is, I think, impossible.
55. It is quite clear, therefore, that the inspector did not ignore the existence of the “fall-back”, nor did she overlook relevant evidence and submissions. She considered the “fall-back”, with as much help as the parties could give her. Her references to the “previous use ... that could still be undertaken” and to the “extant” and “former” use are obviously to the “fall-

back” use of the site as a residential institution. On the evidence before her, she sought to compare that use with the proposals for residential development in the appeals. Doing the best she could, she was unable to come to a reliable view on the relative effects on greenhouse gas emissions. This was a conclusion reasonably open to her, as a matter of planning judgment. It is nowhere close to irrational.

56. And anyway it was not decisive. The inspector’s critical conclusion on the first “main issue” was that the site was inherently unsustainable as a location for housing. As she said, even if it had been shown that the proposed development would generate lower levels of greenhouse gas emissions than the “fall-back”, this would not have led her to conclude that it “would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes” (paragraph 87 of the decision letter). This too, as a matter of planning judgment, was a wholly reasonable conclusion.

*The section 66(1) duty and relevant policy for “heritage assets”*

57. Section 66(1) of the Listed Buildings Act provides:

“66. (1) In considering whether to grant planning permission ... for development which affects a listed building or its setting, the local planning authority or ... the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

58. In chapter 16 of the NPPF, “Conserving and enhancing the historic environment”, paragraph 190, under the heading “Proposals affecting heritage assets”, urged local planning authorities to “identify and assess the particular significance of any heritage asset that may be affected by a proposal ...”, and to “take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal”. The “Glossary” defined “Conservation (for heritage policy)” as “[the] process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance”. Paragraphs 193 to 196 stated:

“193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

...

b) assets of the highest significance, notably ... grade I and II\* listed buildings, grade I and grade II\* registered parks and gardens ... should be wholly exceptional.

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:  
[Four considerations were then set out, which are not relevant in this case.]

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

59. Policy CON11 of the local plan states that “[development] that would adversely affect a Scheduled Ancient Monument, other site of archaeological importance or its setting will not be permitted”. Policy CON12, “Historic Parks and Gardens”, states:

“... DEVELOPMENT THAT WOULD ADVERSELY AFFECT HISTORIC PARKS AND GARDENS OR THEIR SETTINGS ... WILL NOT BE PERMITTED.”

Policy CON17, “Listed Buildings and Buildings of Local Interest – extension or alteration”, states:

“... PROPOSALS FOR THE EXTENSION OR ALTERATION OF LISTED BUILDINGS OR BUILDINGS OF LOCAL INTEREST, WILL NOT BE PERMITTED UNLESS:  
(i) The scale of the building is not materially changed;  
(ii) Design is appropriate to the character and setting of the building.”

Policy CON18, “Listed Buildings or Buildings of Local Interest – Change of Use”, states:

“IN ORDER TO ENSURE THE PRESERVATION OF THE BUILT STRUCTURE, THE CHANGE OF USE OF A LISTED BUILDING ... WILL ONLY BE PERMITTED IF IT IS IN KEEPING WITH THE BUILDING AND WILL NOT MATERIALLY AFFECT FEATURES OF HISTORIC OR ARCHITECTURAL IMPORTANCE.”

60. There is ample case law on the section 66 duty. In *Barnwell Manor Wind Energy Ltd. v East Northamptonshire District Council* [2014] EWCA Civ 137, [2015] 1 W.L.R. 45 Sullivan L.J. said (at paragraph 22) that the judgment of Glidewell L.J. in *The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303 was “authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give “considerable importance and weight””. This conclusion was, he said (in paragraph 23), “reinforced” by a passage in the speech of Lord Bridge of Harwich in *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 A.C. 141 (at p.146E-G). He added (in paragraph 28) that the “general duty” in section 66(1) “applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance”. *South Lakeland District Council* was a case concerning the statutory requirement – now in section 72(1) of the Listed Buildings Act – that “special attention

shall be paid to the desirability of preserving or enhancing [the] character or appearance [of a conservation area]”. Lord Bridge (at p.150B-E) endorsed the observation of Mann L.J., in this court, that “[the] statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved”.

61. In *Jones v Mordue* [2015] EWCA Civ 1243, [2016] 1 W.L.R. 2682, Sales L.J. said (at paragraph 28):

“28. ... [The] express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF [as originally issued in 2012] are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. ... Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs ... which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions ... then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. ... .”

62. In *Palmer* it was argued that the local planning authority had failed to consider likely harm to the setting of a listed building by noise and smell from the proposed poultry sheds. Lewison L.J. said (in paragraph 5 of his judgment) that giving “considerable weight” to harm to the setting of a listed building “does not mean that the weight that the decision-maker must give to the desirability of preserving the building or its setting is uniform”. It “will depend on, among other things, the extent of the assessed harm and the heritage value of the asset in question: [*Barnwell Manor*, paragraph 28; *R. (on the application of Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), [2015] J.P.L. 22, paragraph 49]”. He went on to say (in paragraph 29) that the “clear thrust” of the officers’ relevant advice to the planning committee had been that “if the [proposed] mitigation measures were put in place there would be no adverse effect on the setting of the listed building”. He continued:

“29. ... I would accept ... that where proposed development would affect a listed building or its setting in different ways, some positive and some negative, the decision maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting. That is what the officers concluded in this case. ... .”

*The inspector’s conclusions on the likely effects of the development on “heritage assets”*

63. The inspector’s third “main issue” was “[whether] the works and development would preserve the listed buildings and registered park and garden or their settings, or any features of historic interest which they possess” (paragraph 23 of the decision letter). In a footnote she recited section 66(1) of the Listed Buildings Act, and paraphrased paragraphs 193 and 194 of the NPPF.

64. At the inquiry, the council accepted that the local plan policies for protecting the historic environment were not wholly consistent with the corresponding policies in the NPPF. The inspector noted that there was “disagreement on the weight to be applied to policies CON11, CON12, CON17 and CON18”; that the council agreed with City & Country Bramshill that these policies were “inconsistent with the [NPPF] due to the absence of consideration of the public benefit balance where harm is identified”; but that the council, the National Trust and Historic England said they “should be given moderate weight given that their primary objective is the preservation of designated assets which is in accordance with the [NPPF] and [the Listed Buildings Act]” (paragraph 45). She continued:

“46. Whilst the [NPPF] sets out a clear balancing exercise to be undertaken and which is absent in the relevant development plan policies, the statutory requirement ... relates to the special regard the decision maker should have to the desirability of preserving the building, its setting or its special features. Whilst I find policies CON11-CON18 to lack the balancing requirement of the [NPPF], they contain the statutory requirement. Given this, I find that the policies should be given significant weight.”

65. She confirmed that in considering the effects of the development on the listed buildings she had had regard to section 66(1) of the Listed Buildings Act, which, she said, “requires special regard to be had to the desirability of preserving buildings or their settings or any features of special architectural or historic interest which they possess” (paragraph 121). Although the registered park and garden did not have the same statutory protection, it was, she said, “recognised as a heritage asset” in the NPPF (paragraph 122). She described the relevant policies of the NPPF, including those in paragraphs 193 to 196:

“122. ... The [NPPF] recognises such assets as an irreplaceable resource, and states that they should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Chapter 16 of the [NPPF] sets out the approach in determining applications (or appeals) in respect of such assets. It states that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation with the more important the asset the greater the weight [should] be. Any harm or loss should require clear and convincing justification. The [NPPF] sets out the criteria to be considered where either substantial or less than substantial harm are identified.”

She referred (in paragraph 123) to a difference of approach in the relevant evidence:

“123. Historic England and the National Trust provided their evidence on the basis that paragraphs 195 and 196 of the [NPPF] would always be engaged where any element of harm was identified. The appellant held that this was not the correct approach based on the findings of *Palmer*. The appellant’s case is that an “internal heritage balance” should be carried out where elements of heritage harm and heritage benefit are first weighed to establish whether there is any overall heritage harm to the proposal. Paragraphs 195 and 196 would only be engaged where there is residual heritage harm. This should then be weighed against the public benefits of the scheme.”

She then (in paragraph 124) quoted the passage I have mentioned in paragraph 29 of Lewison L.J.'s judgment in *Palmer*, and went on to say (in paragraphs 125 to 127):

- “125. In my assessment the judgement does not necessarily bring me to a conclusion that an internal heritage balance should be carried out in the manner that the appellant advocates. The case clearly involved a wholly different context and set of circumstances and the conclusions relating to harm were based on avoidance through mitigation measures rather than any assessment of whether the benefits of the development outweighed any harm. However, the judgement clearly does reinforce that a balancing exercise needs to be carried out but it does not direct the decision maker to only one method by which that should be done.
126. I note the cases that have been drawn to my attention, some of which do follow the approach advocated by the appellant and some do not. These are clearly cases where alternative approaches have been taken based on the particular circumstances of each case. Nonetheless, irrespective of these decisions, the statutory duty to preserve the building should be given considerable importance and weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*].
127. The cases before me are complex with multiple works involved. Some of the benefits to the assets are not proposed with the individual developments themselves but are put forward as a part of other developments subject to separate decisions. In this context, I have adopted a straightforward application of paragraphs 190 and 193-196 of the [NPPF]. I have firstly identified the significance of the assets. I have then assessed whether each development proposal would, of its own doing, lead to substantial or less than substantial harm to that significance. Subsequent to making this assessment of harm, I have then considered whether this harm is outweighed by the public benefits of the individual proposal and provided in other proposals subject to other decisions. Paragraph 20 of the Planning Practice Guidance “Conserving and enhancing the historic environment” (the PPG) explains what is meant by public benefits (which may include heritage benefits) and that all types of public benefits can be taken together and weighed against harm.”
66. In her conclusions on appeal 4 the inspector considered the likely effects of the development on the registered park and garden and on “the setting of the various listed buildings” (paragraph 199). She concluded that it would be “harmful” both to “the visual appearance, planned design and function of the RPG” (paragraph 211) and to “the setting of all the listed buildings within the ensemble by virtue of the harm that would arise to the RPG” (paragraph 214). She considered “the harm to the significance of the setting of the listed buildings ... less than substantial”, and “weighed that harm against the public benefits of the proposal” (paragraph 215). There was “no dispute between the parties that the removal of modern buildings and parking areas and the re-instatement of the original link between the house and garden by re-aligning Reading Avenue would be of benefit to the RPG and the setting of the listed buildings” (paragraph 217). The college buildings were “clearly harmful to the RPG’s form, layout and characteristics and to the setting of the listed buildings”. The “removal of the buildings and the restoration of the park and garden would clearly be in the public interest”. She gave these matters “considerable

weight”. But the “dispute” lay in “the weight to be attributed to that benefit given the alternative development proposed” (paragraph 218). She judged “[the] benefits in removing buildings and re-aligning Reading Avenue ... not ... sufficient to outweigh the alternative and greater harm caused by developing this unspoilt part of the RPG”. The “permissive path” would be “of benefit in providing access into the Bramshill estate ...” (paragraph 221). The proposed “site wide management plan would be in the public interest” (paragraph 222). An appropriate “landscape and habitats management plan” would be “of clear benefit to the overall restoration of the RPG and wider ecological interests”. But she did “not find that this would outweigh the harm that ... would arise from the proposed development” (paragraph 223). She concluded (in paragraph 226):

“226. I find that appeal 4 would be harmful to the RPG and the setting of the listed buildings and would not preserve their special qualities. This harm would not be outweighed by public benefits. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”

67. A similar exercise followed for appeal 5. The inspector referred to the harm that would be caused by extending development into “open parkland”, which “would result in most of the parkland being developed” (paragraph 228). The development would “intensify and extend the harms” she had identified in appeal 4. It would be “an inappropriate development ... harmful to the RPG and the setting of the listed buildings”. This would be “less than substantial” harm, but “at the higher end of the scale” (paragraph 229). She considered the “public benefits” in the funding of repair works to the mansion and other listed buildings and curtilage buildings. But she concluded (in paragraph 235):

“235. ... [The] public benefits of appeal 5 do not outweigh the harm that I have identified. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”

68. In appeal 6, her approach was the same. The development would be located to the north-west of the lake, which was, she said, “one of the major features of the RPG”, had “largely [survived] in its original form” and was “of historic aesthetic and architectural significance” (paragraph 236). Though it would “not destroy or remove the presence of the lake and island ...”, and would “not interfere with the ability of those using the RPG to continue to go on a journey along the embankment and walks that were part of the Jacobean layout of the garden” (paragraph 240), the development would “reduce the aesthetic significance of the feature and wider RPG ...”, and “result in the engineered embankment being less legible and thus reduce its significance”. The harm would be “less [than] substantial but of the highest order” (paragraph 241). The “public benefit” would be the funding of £2 million for repairs to the mansion. As there was “an acceptable use for the mansion ... which would not require cross-subsidy”, the inspector saw “no justification for allowing appeal 6 with its associated harm” (paragraph 243). She concluded:

“243. ... [The] public benefits arising from appeal 6 would be clearly outweighed by its resulting harm. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”



*Did the inspector err in performing the duty in section 66(1) of the Listed Building Act and applying the policies for “heritage assets” in the NPPF?*

69. Before the judge, City & Country Bramshill argued that the inspector had erred in failing to carry out a “net” or “internal” heritage balance. Only if “overall harm” emerges from the weighing of “heritage harms” against “heritage benefits” must the “other public benefits” of the development be weighed against that “overall harm” under the policy in paragraph 196 of the NPPF. Support for this submission was to be found in paragraph 29 of the judgment of Lewison L.J. in *Palmer*. The inspector should have given “great weight” to the “heritage benefits”, to reflect the “great weight” that paragraph 193 of the NPPF requires to be given to the “conservation” of a designated heritage asset. This argument, however, did not impress Waksman J.. In his view, the decision in *Palmer* “did not impel [the inspector] to undertake an internal initial balancing exercise under paragraph 193”. Indeed, he “would have regarded that as an error of law” (paragraph 120 of the judgment). The balancing exercise itself was “a classic application of planning judgment” (paragraph 121).
70. Mr Strachan repeated the same argument before us. Relying on the first instance decision in *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin), he submitted that the *Palmer* “principle” applies both to the statutory obligation in section 66(1) and to relevant policies in the NPPF and the development plan. The inspector failed to see this. Paragraph 193 of the NPPF required “great weight” to be given to the “conservation” of a heritage asset, including enhancement of its significance. Paragraph 196 required the likely effect on the significance of the heritage asset to be assessed, which could only be done by weighing any harm to that significance against any benefits to it. If there was no “net harm”, the policy in paragraph 196 was not engaged. The definition of “Conservation (for heritage policy)” in the NPPF did not exclude “countervailing benefits”. It implied that “great weight” must attach both to any harm to the significance of the heritage asset and to any enhancement of it – such as the appeal proposals would achieve. The judge was wrong (in paragraph 112 of his judgment) to distinguish *Palmer* on the basis that the “principle” relates not to “separate benefits” but only to “mitigation measures to negate the adverse effects which would otherwise arise”. The “principle” in *Palmer* extends to cases in which there are separate elements of harm and benefit to the significance of a heritage asset.
71. Like the judge, I cannot accept those submissions. It is not stipulated, or implied, in section 66(1), or suggested in the relevant case law, that a decision-maker must undertake a “net” or “internal” balance of heritage-related benefits and harm as a self-contained exercise preceding a wider assessment of the kind envisaged in paragraph 196 of the NPPF. Nor is there any justification for reading such a requirement into NPPF policy. The separate balancing exercise for which Mr Strachan contended may have been an exercise the inspector could have chosen to undertake when performing the section 66(1) duty and complying with the corresponding policies of the NPPF, but it was not required as a matter of law. And I cannot see how this approach could ever make a difference to the ultimate outcome of an application or appeal.
72. Section 66 does not state how the decision-maker must go about discharging the duty to “have special regard to the desirability of preserving the building or its setting ...”. The courts have considered the nature of that duty and the parallel duty for conservation areas in section 72 of the Listed Buildings Act, and the concept of giving “considerable importance and weight” to any finding of likely harm to a listed building and its setting.

They have not prescribed any single, correct approach to the balancing of such harm against any likely benefits – or other material considerations weighing in favour of a proposal. But in *Jones v Mordue* this court accepted that if the approach in paragraphs 193 to 196 of the NPPF (as published in 2018 and 2019) is followed, the section 66(1) duty is likely to be properly performed.

73. As was submitted by Mr Williams, and by Mr Ben Du Feu for Historic England and Ms Melissa Murphy for the National Trust, one does not find any support for Mr Strachan’s argument in those paragraphs of the NPPF. The concept in paragraph 193 – that “great weight” should be given to the “conservation” of the “designated heritage asset”, and that “the more important the asset the greater the weight should be” – does not predetermine the appropriate amount of weight to be given to the “conservation” of the heritage asset in a particular case. Resolving that question is left to the decision-maker as a matter of planning judgment on the facts of the case, bearing in mind the relevant case law, including Sullivan L.J.’s observations about “considerable importance and weight” in *Barnwell Manor*.
74. The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of “substantial harm” and “less than substantial harm” to a “designated heritage asset”. What amounts to “substantial harm” or “less than substantial harm” in a particular case will always depend on the circumstances. Whether there will be such “harm”, and, if so, whether it will be “substantial”, are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying “harm” or gauging its extent. It distinguishes the approach required in cases of “substantial harm ... (or total loss of significance ...)” (paragraph 195) from that required in cases of “less than substantial harm” (paragraph 196). But the decision-maker is not told how to assess what the “harm” to the heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a “designated heritage asset” or its setting.
75. This understanding of the policies in paragraphs 193, 195 and 196 reflects what Lewison L.J. said in *Palmer* (at paragraph 5) – that the imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law.
76. Identifying and assessing any “benefits” to weigh against harm to a heritage asset are also matters for the decision-maker. Paragraph 195 refers to the concept of “substantial public benefits” outweighing “substantial harm” or “total loss of significance”; paragraph 196 to “less than substantial harm” being weighed against “the public benefits of the proposal”. What amounts to a relevant “public benefit” in a particular case is, again, a matter for the decision-maker. So is the weight to be given to such benefits as material considerations. The Government did not enlarge on this concept in the NPPF, though in paragraph 196 it gave the example of a proposal “securing [the heritage asset’s] optimum viable use”.
77. Plainly, however, a potentially relevant “public benefit”, which either on its own or with others might be decisive in the balance, can include a heritage-related benefit as well as one that has nothing to do with heritage. As the inspector said (in paragraph 127 of the decision letter), the relevant guidance in the PPG applies a broad meaning to the concept of

“public benefits”. While these “may include heritage benefits”, the guidance confirms that “all types of public benefits can be taken together and weighed against harm”.

78. Cases will vary. There might, for example, be benefits to the heritage asset itself exceeding any adverse effects to it, so that there would be no “harm” of the kind envisaged in paragraph 196. There might be benefits to other heritage assets that would not prevent “harm” being sustained by the heritage asset in question but are enough to outweigh that “harm” when the balance is struck. And there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with.
79. One must not forget that the balancing exercise under the policies in paragraphs 195 and 196 of the NPPF is not the whole decision-making process on an application for planning permission, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Buildings Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision-maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise (see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447).
80. Within that statutory process, and under NPPF policy, the decision-maker must adopt a sensible approach to assessing likely harm to a listed building and weighing that harm against benefits. Lewison L.J. was not suggesting anything else in *Palmer*. He was not seeking to establish any principle. He was saying that, in circumstances such as he was considering, a decision-maker, having considered both “positive” and “negative” effects on a listed building and its setting, “may legitimately” find there would actually be no harm. He was not saying that a decision-maker must go about the balancing of harm, if harm is found, against benefits in any particular way. There is no “*Palmer* principle” of the kind suggested by Mr Strachan. The court was simply endorsing the pragmatic and lawful approach taken by the local planning authority in the circumstances of that case. An “internal” balancing exercise was appropriate because the apprehended “harm” could be avoided through the mitigation measures proposed, and there would be “no overall adverse effect on the listed building or its setting” (paragraph 29 of Lewison L.J.’s judgment).
81. But as Waksman J. recognised here (at paragraph 111 of his judgment), “[this] is quite different from balancing an admitted or found adverse impact . . . against separate beneficial effects . . .”. The inspector grasped this. Having correctly identified the statutory duty in section 66(1) (in paragraph 121 of the decision letter) and the relevant provisions of national policy in the NPPF (in paragraph 122), she described the parties’ dispute on the correct approach (in paragraph 123). She referred (in paragraph 124) to Lewison L.J.’s judgment in *Palmer*. As she said, that case involved “a wholly different context and set of circumstances”. It was a case of “avoidance [of harm] through mitigation measures”. She acknowledged that “a balancing exercise [needed] to be carried out”, but she also recognised that there was not “only one method by which that should be done” (paragraph 125), and there were cases “where alternative approaches have been taken based on the particular circumstances of each case”. She then reminded herself that in any event “the statutory duty to preserve [a listed building] should be given considerable importance and

weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*]” (paragraph 126). All of that was correct.

82. The inspector adopted a methodical approach to the proposals before her, which, as she said, were “complex with multiple works involved”, and with “benefits” to heritage assets “not proposed with the individual developments themselves but ... put forward as a part of other developments subject to separate decisions”. She conscientiously applied the policies in paragraphs 190 and 193 to 196 of the NPPF, first identifying “significance”; then assessing whether each proposed development would, “of its own doing”, lead to “substantial” or “less than substantial harm” to that significance; then considering whether that harm was “outweighed by the public benefits”, not only of the “individual proposal” itself but also “provided in other proposals subject to other decisions”, bearing in mind the broad scope of “public benefits” in the relevant guidance (paragraph 127).
83. That approach cannot be faulted. In the circumstances of this case, it was the most realistic. It gave full credit to benefits that might potentially outweigh any harm likely to be caused to the heritage assets affected by the proposals. The inspector recorded her relevant findings and conclusions for each of those heritage assets. Her conclusions were based on a sequence of legally impeccable planning judgments. They reflected both a correct understanding and a lawful application of the NPPF policies, including the policy in paragraph 196. She plainly had those policies in mind, properly directed herself on them, worked through the requirements in them, and in this way – as Sales L.J. envisaged in *Jones v Mordue* (at paragraph 28) – succeeded in discharging the duty in section 66(1). Whether she could have taken another approach to performing that duty, or to applying the corresponding policies in the NPPF, is not the issue here. We need only be satisfied that the approach she did take was lawful. In my view, it clearly was.
84. I also reject the submission that the inspector failed to attach lawful weight to the benefits for heritage assets, contrary to the concept of “conservation” in the NPPF. Her approach to the question of weight, in paragraph 122 of the decision letter, was faithful to NPPF policy, and consistent with the principles in the case law. She expressly directed herself, as a general principle applicable to all the heritage assets she was dealing with, that she had to give “great weight ... to the [designated heritage] asset’s conservation”. It was with this general self-direction in mind that she went on to undertake a proper weighting of both harm and benefits to each of the heritage assets she had to consider.
85. Having directed herself impeccably on the law and on the relevant policies, she was entitled to exercise her own planning judgment in attributing appropriate weight to the particular benefits of the proposals before her, including their benefits for heritage assets. And she did so. In paragraph 218 of the decision letter, for example, when considering appeal 4, she said she gave “considerable weight” to the removal of existing buildings and the restoration of the park and garden. She was not constrained – by statute, authority or policy, including the definition of “Conservation (for heritage policy)” in the NPPF – to give more weight than she did to any of the heritage-related benefits of the proposals, or to any other benefit. None of the conclusions she reached on heritage-related benefits was unlawful. None of them was inconsistent with the lawful performance of the section 66(1) duty, or with the reasonable and lawful application of the relevant policies in the NPPF, including the definition of “Conservation ...”.

*Did the inspector misapply development plan policies for the historic environment?*

86. The argument on this issue was that the inspector erred in giving “significant weight” to policies CON11, CON12, CON17 and CON18 of the local plan, despite it being agreed at the inquiry that they were inconsistent with NPPF policy on heritage assets because they did not provide for “public benefits” to be balanced against harm. City & Country Bramshill had said they should carry “little” weight; the council, Historic England and the National Trust, “moderate weight”. No one suggested “significant weight”. Mr Strachan submitted that it was unfair for the inspector to depart without warning from the parties’ understanding of the issue between them. They should have had the opportunity to deal with this question knowing that she disagreed with both sides. She also misapplied the local plan policies. Those policies do not match the section 66(1) duty, or national policy. The words “will not be permitted” in policy CON12 and “will not be permitted unless ...” in policy CON17 do not reflect the statutory language or the policies in the NPPF. The judge was wrong (in paragraph 129 of his judgment) to conclude that the inspector was “essentially ... applying” NPPF policy when she found conflict with policies CON12 and CON17. She acknowledged (in paragraph 46 of the decision letter) that the “balancing requirement” in the NPPF was absent from those policies. But she failed to carry out any balancing exercise when considering whether the proposals were contrary to them.
87. I do not find those submissions persuasive. The absence of an explicit reference to striking a balance between “harm” and “public benefits” in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for “designated heritage assets” in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.
88. In performing the duty under section 66(1), the inspector was free to give such weight to the local plan policies as she reasonably judged appropriate. Indeed, she was obliged to do so. She was not bound to a particular conclusion by the evidence and submissions she had heard. The parties had a reasonable opportunity to deal with the matter at the inquiry, and they took that opportunity. No unfairness arose. The inspector acknowledged the disagreement between them on weight (in paragraph 45 of the decision letter), and she clearly had regard to their competing views when forming her own conclusion. She did not have to declare her view – or provisional view – on weight and give the parties a chance to address it, simply because she disagreed with both sides. Fairness did not compel that (see *Secretary of State for Communities and Local Government v Hopkins Developments Ltd.* [2014] EWCA Civ 470, [2014] P.T.S.R. 1145, in particular the judgment of Jackson L.J. at paragraphs 62(iv) and 75, and the judgment of Beatson L.J. at paragraphs 88 and 97).
89. The inspector’s conclusion on weight, though it was not urged on her by either side at the inquiry, was nonetheless a lawful conclusion. This was a matter of planning judgment for her as decision-maker. Her conclusion was rational, and adequately reasoned. To attach “significant” weight to the local plan policies, as she did (in paragraph 46 of the decision letter), was not unreasonable. She acknowledged that those policies lacked the “balancing requirement” of the NPPF, but added that “they contain the statutory requirement”. By this

she clearly meant that they embodied the objective of preserving listed buildings and their settings, in accordance with the duty in section 66(1). She was not saying she interpreted them as shutting out the balancing exercise under paragraphs 195 and 196 of the NPPF. She went on to apply that balancing exercise in the assessment that followed, and she did so meticulously. Her assessment culminated in paragraph 417 of the decision letter, with the conclusion that the harm to the listed buildings and their settings and the registered park and garden were “not outweighed by public benefits.”

90. In short, the inspector did not fall into error in discharging the decision-maker’s duties under section 38(6) of the 2004 Act, section 70 of the 1990 Act, and section 66(1) of the Listed Buildings Act. Her approach was not contrary to any relevant case law, including this court’s decision in *Palmer*. She did not misinterpret or misapply either the local plan policies or the policies in paragraphs 193 to 196 of the NPPF. Her conclusions in applying both development plan and national planning policy for heritage assets – that the proposals in appeals 4, 5 and 6, did not accord with either – are unimpeachable.

*The inspector’s decision on the application for costs*

91. On the application for costs made by City & Country Bramshill against the council, the inspector said (in paragraph 14 of her decision letter of 14 March 2019):

“14. A large part of this ... application is concerned with the case put to the Inquiry in respect of the merits of the proposals and the view that the position taken by the Council was unreasonable with reference to various events. I have not considered the respective positions on merits again here as a difference of view on compliance with policy or the weight to be given to material considerations are not for the costs regime. The substantive issue is whether the Council acted unreasonably at appeal, and in particular whether it defended its position on each reason for refusal with evidence, whether it acted contrary to well-established case law, and reviewed its case following the lodging of the appeals.”

She went on to reject every contention of unreasonable conduct (paragraphs 15 to 21).

*Should the inspector’s decision on the application for costs be quashed?*

92. Mr Strachan submitted that in making her costs decision the inspector relied on her decisions in the appeals. Though she did not address the merits again, her consideration of the reasonableness of the council’s stance at the inquiry inevitably depended on her conclusions in the appeals themselves. Some of her decisions were quashed by the judge; others are now the subject of appeal to this court. Her errors of law in those decisions undermine her decision not to award costs to City & Country Bramshill.
93. I cannot accept those submissions. I see no reason to upset the inspector’s decision on costs. She approached the application in the conventional way. Her decision did not depend on the grounds the council had relied upon in opposing the appeals having succeeded or failed when considered on their merits, but on whether they could reasonably be advanced. The decision is unsurprising. And it is also legally sound. It is not invalidated by the

outcome of these proceedings in the court below, nor cast into doubt by any of the issues raised in the appeal to this court. It was, and remains, a perfectly lawful decision.

*Conclusion*

94. For the reasons I have given, I would dismiss this appeal.

**Lord Justice Phillips**

95. I agree.

**Lord Justice Arnold**

96. I also agree.