



Ministry of Housing,  
Communities &  
Local Government

Kieron Gregson  
Carter Jonas  
1 Chapel Place  
LONDON  
W1G 0BG

Our ref: APP/N1730/W/18/3204011  
Your ref: 16/03129/OUT

4 November 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY  
WATES DEVELOPMENTS  
PALE LANE FARM, PALE LANE, FLEET, HAMPSHIRE, RG27 8BA  
APPLICATION REF: 16/03129/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Nick Fagan BSc (Hons) DipTP MRTPI, who held a public local inquiry between 8-16 January 2019 into your appeal against the decision of Hart District Council to refuse your client's application for outline planning permission for the development of up to 700 residential dwellings, site for primary school and local centre, together with associated vehicular, pedestrian and cycle access, drainage, landscape works and provision of general open space. Full details for the provision of Suitable Alternative Natural Greenspace and means of access, in accordance with application ref: 16/03129/OUT dated 17 November 2016.
2. On 14 June 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR12.1-

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12.7, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Procedural matters**

6. The Secretary of State notes that the planning practice guidance relating to prematurity (referenced in IR7.89) was updated on 15 March 2019 by paragraph 014 Reference ID: 21b-014-20190315. The Secretary of State does not consider that this update to the guidance affects his conclusions on prematurity, or his decision on this case overall. He notes that the updated guidance reflects the advice in paragraph 49 of the Framework, which is referred to at IR7.88. Furthermore, the Secretary of State does not consider that the application of the planning practice guidance raises any matters that would require him to reference back to the parties for further representations prior to reaching his decision on this appeal on this matter, and he is satisfied that no interests have thereby been prejudiced.

### **Matters arising since the close of the inquiry**

7. On 6 September 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the emerging Hartley Wintney Neighbourhood Plan (HWNP). He also sought further comments in the event that the HWNP came into force before this decision was issued. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 24 September 2019.
8. Following a referendum on 7 October 2019 the Neighbourhood Plan now forms part of the development plan (Paragraph: 064 Reference ID: 41-064-20170728 of the planning practice guidance).

### **Policy and statutory considerations**

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the 'saved' policies of the Hart District Local Plan (Replacement) adopted in December 2002 and its first alterations adopted in June 2006 (HDLP), as well as 'saved' Policy NRM6 relating to the Thames Basin Heaths Special Protection Area (TBHSPA) in the South East Plan adopted in May 2009, and the HWNP, which came into force in October 2019. The Secretary of State considers that relevant development plan policies include those set out at IR3.2-3.3.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or

their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

13. The Secretary of State notes that the emerging plan comprises the Hart Local Plan: Strategy and Sites 2016-2032 (eLP). The examination hearings concluded on 18 December 2018 and consultation on main modifications concluded on 19 August 2019. The Secretary of State considers that relevant emerging policies include those set out at IR3.6.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State agrees with the Inspector that the emerging plan is at an advanced stage (IR11.52). He has taken into account the Examining Inspector's interim findings that the emerging spatial strategy is capable of delivering the necessary housing requirement over the Plan period, without including the appeal site, and that the Council recommends adoption of the Examining Inspector's interim suggestions. Overall the Secretary of State considers that the emerging policies carry moderate weight.

### **Main issues**

#### *5-year Housing Land Supply / Prematurity*

15. The Secretary of State notes the main parties' agreement that the Council can demonstrate 9.2 years of housing land supply (IR11.6). The Secretary of State has considered carefully the Inspector's analysis at IR11.55-IR11.56 which considers that while this may be reduced as a result of the need to take on Surrey Heath's unmet supply, the reduction would not be significant. He agrees that there would still be a supply of well in excess of 5 years (IR11.55).
16. For the reasons given in IR11.61-11.62, the Secretary of State agrees with the Inspector that although the contribution to open-market and affordable housing provision carries significant weight, there is no need to deliver an additional 700 homes in this location (IR11.56). For the reasons given at IR11.50-11.58, the Secretary of State agrees with the Inspector that the eLP is at an advanced stage (IR11.52) and that allowing the proposed development through this appeal would predetermine the location of a significant urban extension that the plan-making process has decided is inappropriate for the District (IR11.56). He further agrees with the Inspector's conclusion at IR11.58 that the proposed development would be premature. In light of the criteria in paragraph 49 of the Framework, the Secretary of State considers that in this case the prematurity of the proposal can justify refusal.

#### *Heritage*

17. For the reasons given at IR11.36-11.42, the Secretary of State agrees with the Inspector that while the Grade II listed Pale Lane Farmhouse itself would be unaffected, the proposals would result in 'less than substantial harm' to the significance of the Farmhouse (IR11.41). The Secretary of State agrees with the Inspector that considerable importance and weight can be attributed to this harm (IR11.38). Where a development would 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 in line with the heritage test at paragraph 196 of the Framework.

#### *Effect on the countryside and the setting of Fleet*

18. For the reasons given at IR11.10-11.35, the Secretary of State agrees with the Inspector that the effects on the landscape character of the site would be significant and adverse. He further agrees that its visual effects would be prominent and significantly adverse and would have a major adverse effect on the western setting of Fleet because it would unacceptably diffuse the clear and crisp transition between town and country in this location (IR11.34). He agrees with the Inspector at IR11.35 that the proposed development would have a significant detrimental effect on the character of the countryside due to its siting, size and prominence in the local landscape and would lead to the loss of an important area of open land around Fleet contrary to Hart District Local Plan policies RUR2 and CON22.
19. The Secretary of State agrees with the Inspector that policy RUR2 (which deals with the character and setting of the countryside) is out of date because settlement boundaries do not reflect current housing need, and that policy CON22 (which deals with the character or setting of a settlement) is out of date because of inconsistency with the Framework (IR11.1-11.5 and IR11.70-71). The Secretary of State considers that both of these policies carry only moderate weight and further considers that conflict with these policies carries moderate weight (IR11.5, IR11.70). He considers that these are the 'most important' policies in this case, and that as they are out of date, the tilted balance in paragraph 11(d) of the Framework is triggered.

#### *Hartley Wintney Neighbourhood Plan*

20. The Secretary of State has taken into account that the site falls partially within the HWNP area and that the HWNP, which now forms part of the development plan, does not allocate that area for development. He considers that this carries significant weight against the proposal.

#### *Other matters*

#### *Appropriate Assessment under the Habitats Regulations*

21. The Thames Basin Heath Special Protection Area (TBHSPA) is designated for its breeding bird populations of Dartford Warbler, Nightjar and Wood Lark (IR12.3). For the reasons set out in IR12.1-12.3, the Secretary of State agrees with the Inspector that given the proximity of the site to the TBHSPA, there is potential for impacts on these protected species through increased recreational pressure from additional residents and their pets, dogs in particular. The Secretary of State further agrees that the proposed development is likely to have a significant effect on the TBHSPA, which triggers the requirement for an Appropriate Assessment (IR12.3). If permission were being granted, it would be for the Secretary of State as competent authority to carry out an Appropriate Assessment. However, as permission is not being granted, this is not necessary.
22. In order to inform an Appropriate Assessment (were it to be undertaken), the Inspector has helpfully gone on to provide limited consideration of potential mitigation measures at IR12.4-12.7. He has concluded at IR12.7 that the provision of the Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) and related matters prior to the occupation of the first dwelling on the site would be

sufficient to ensure that the proposed development would not have an adverse effect on the integrity of the TBHSPA. In the event that permission were being granted, these conclusions would be considered alongside all other relevant matters by the Secretary of State in the context of an Appropriate Assessment.

#### Best and most versatile (BMV) land

23. For the reasons given at IR11.43-11.49 the Secretary of State agrees with the Inspector that the proposals would result in the loss of 23ha of BMV land. The Secretary of State agrees with the Inspector's conclusions that it is not necessary to lose 23ha of BMV land (IR11.47) and that the loss of this land would be contrary to established policy in the Framework (IR11.49). The Secretary of State considers this carries moderate weight against the proposal.

#### Matters raised by local people

24. The Secretary of State has considered the matters raised by local people as set out at IR12.8-12.17. He agrees with the Inspector's conclusions and considers that these matters do not weigh against the proposal.

#### Planning conditions

25. The Secretary of State has given consideration to the Inspector's analysis at IR9.1, the recommended conditions set out at the end of the report and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

#### Planning obligations

26. Having had regard to the Inspector's analysis at IR10.1-10.12, the planning obligation dated 13 February 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State considers that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. The Secretary of State agrees with the Inspector at IR10.10 that there is no reason why scheme A should not be the preferred Unilateral Undertaking. However, the Secretary of State does not consider that the planning obligation overcome his reasons for dismissing this appeal.

#### Planning balance and overall conclusion

27. The Secretary of State considers that the proposal is not in accordance with development plan policies relating to development in the open countryside and the countryside setting of Fleet, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

28. As the most important policies in this case are out of date, the tilted balance is triggered. This states that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or (ii) any adverse impacts of granting permission significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

29. The Secretary of State considers that the provision of open market housing and 40% affordable housing carries significant weight in favour of the scheme. Highways improvements and the proposed open space each carry moderate weight. Education and retail provision, along with the economic, environmental and some heritage benefits of the scheme each carry limited weight, while the creation of sustainable drainage systems carries very limited weight.
30. The Secretary of State considers that the proposed development of land which is not allocated for this purpose in the HWNP carries significant weight against the scheme. He considers that the harm to the character of the local countryside and countryside setting of Fleet carries moderate weight against the scheme. The unnecessary loss of BMV land also carries moderate weight against the proposal. The harm to the setting and the significance of the listed Farmhouse carries considerable weight against the scheme. In the light of the healthy housing land supply position, and the fact that there is no need to deliver an additional 700 houses in this location at this time, the Secretary of State agrees with the Inspector that the public benefits of the proposals set out above do not outweigh this heritage harm (IR11.72). The heritage test in paragraph 196 of the Framework is therefore not favourable to the proposal. The proposal would also be premature and meets the tests set out in paragraph 49 of the Framework which justify refusal.
31. In the light of his conclusions on the heritage test, the Secretary of State considers that there is a protective policy which provides a clear reason for refusing the development proposed. The tilted balance is therefore disappplied. Overall, the Secretary of State considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

### **Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a hybrid outline/detailed application for the outline development of up to 700 residential dwellings, site for primary school and local centre, together with associated vehicular, pedestrian and cycle access, drainage, landscape works and provision of general open space. Full details for the provision of Suitable Alternative Natural Greenspace and means of access.

### **Right to challenge the decision**

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
34. A copy of this letter has been sent to Hart District Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Authorised by the Secretary of State to sign in that behalf

## ANNEX A – SCHEDULE OF REPRESENTATIONS

### Representations received in response to the Secretary of State's letter of 6 September 2019

<b>Party</b>	<b>Date</b>
Agent – Carter Jonas	20/09/19
Hart DC (LPA) – Peter Lee	20/09/19
Hartley Wintney Parish Council	19/09/19



# Report to the Secretary of State for Housing, Communities and Local Government

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 7 May 2019

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**Town and Country Planning Act 1990**

**Hart District Council**

**Appeal by Wates Developments**

**Against the decision to refuse a hybrid outline/detailed application for the outline development of up to 700 residential dwellings, site for primary school and local centre, together with associated vehicular, pedestrian and cycle access, drainage, landscape works and provision of general open space. Full details for the provision of Suitable Alternative Natural Greenspace and means of access**

Inquiry Held on 8-11 and 15-16 January 2019

Pale Lane Farm, Pale Lane, Fleet, Hampshire RG27 8BA

File Ref: APP/N1730/W/18/3204011



**File Ref: APP/N1730/W/18/3204011**

**Pale Lane Farm, Pale Lane, Fleet, Hampshire RG27 8BA**

- 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 against the decision of Hart District Council.
- The application Ref 16/03129/OUT, dated 17 November 2016, was refused by notice dated 29 January 2018.
- The development proposed is described as an outline application for the development of up to 700 residential dwellings, site for primary school and local centre, together with associated vehicular, pedestrian and cycle access, drainage, landscape works and provision of general open space. Full details for the provision of Suitable Alternative Natural Greenspace and means of access.

**Summary of Recommendation: That the appeal be dismissed**

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**1. Procedural Matters**

- 1.1. On 14 June 2018 the Secretary of State directed that he would recover this appeal for his own determination. The reason for his direction is that the appeal involves proposals for residential development of over 150 units on a site over 5 hectares (ha), which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. This is one of the grounds set out in the guidelines for recovering appeals in the Ministerial Statement of 30 June 2008 (recorded in Hansard).
- 1.2. I conducted an unaccompanied inspection of the site and its environs on the afternoon of Monday 7 January, the day before the Inquiry opened, including visiting key viewpoints of the site identified in the submitted landscape and visual impact appraisals. I also conducted an accompanied site inspection on the morning of Wednesday 16 January attended by representatives of both the main parties and a number of local residents, which lasted approximately 2½ hours.
- 1.3. It was agreed that the relevant application drawings for this hybrid application are those set out in Condition 4 in the list of agreed conditions<sup>1</sup>.
- 1.4. Two separate sets of Section 106 planning obligations have been submitted by the appellant.<sup>2</sup> These secure a number of benefits on grant of permission and commencement of the development sufficient to overcome the Council's third and fourth refusal reasons. I address this matter in detail below (under the section entitled Obligations).
- 1.5. The Inquiry was adjourned following its last sitting day to await the initial findings of the Inspector examining the emerging Local Plan, and comments from the Council and appellant concerning the relevance of those findings to this appeal. I deal with this issue in more detail in Planning Policy and the parties' respective Cases on prematurity below.
- 1.6. The main parties agreed at the Inquiry sitting that, even if relevant development plan policies are out of date, the 'tilted balance' applying the

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<sup>1</sup> ID1, also reproduced as the Schedule of Conditions below

<sup>2</sup> ID17

presumption in favour of sustainable development set out in paragraph 11d of the National Planning Policy Framework (NPPF) did not apply. That was because NPPF paragraph 177 at the time made clear it was dis-applied where development required Appropriate Assessment (AA) because of its potential impact on a Habitats site.<sup>3</sup>

1.7. However, the appellant also makes clear that if the wording of paragraph 177 was changed as per the Government's Technical Consultation of October 2018<sup>4</sup>, the tilted balance would apply in this appeal if I was to find that the development plan policies were out-of-date and any harm to heritage assets was outweighed by public benefits. The revised NPPF (in paragraph 177) issued on 19 February implements this change and makes clear, in this context, that the tilted balance would apply if an AA has concluded that a plan or project will not adversely affect the integrity of a habitats site. Although my recommendation is to dismiss the appeal, I comment on the AA below in the event that the Secretary of State decides to allow the appeal.

1.8. Consequently, I consider the following to be the matters for consideration:

- 1) Whether the relevant development plan policies are out of date.
- 2) The degree to which the appeal scheme may harm the character and appearance of the countryside and/or the settlement of Fleet.
- 3) Whether any less than substantial harm to the significance of Pale Lane Farmhouse would be outweighed by the public benefits.
- 4) Whether the loss of best and most versatile agricultural land would justify refusal to grant planning permission.
- 5) Whether the appeal scheme is premature and would undermine the plan-making process by predetermining decisions about the scale or location of new development which are central to the emerging Local Plan.
- 6) Dependent on the conclusion on item 1) above, whether: any adverse impacts of granting planning permission would (significantly and demonstrably on the appellant's case) outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

## **2. The Site and Surroundings<sup>5</sup>**

2.1. The appeal site, known as Elvetham Chase, is located partly within the parish of Hartley Wintney and partly within the parish of Elvetham Heath, to the north-west of Fleet. It extends to 59.3ha, is bound to the north by the M3 motorway and to the south by the South Western mainline railway which is set on an elevated embankment approximately 6 metres (m) high. To the east the site is bound by the A323 Fleet Road and to the west by a solar farm.

2.2. To the east on the opposite side of the A323 is residential development at Elvetham Heath and further south on the opposite side of the railway is Edenbrook Country Park and the Berkeley Homes residential development

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<sup>3</sup> ID4 paras 6 & 37 and ID5 paras 6, 7 & 147 (Appellant's Opening and Closing Statements)

<sup>4</sup> CD3

<sup>5</sup> Largely taken from the main SoCG Section 3

- extending to approximately 37ha. Pale Lane dissects the site in a north east to southwest direction before passing under the railway line.
- 2.3. The appeal site comprises mainly of gently-sloping pasture and arable fields, some of which are bounded by mature and semi-mature hedgerows. The land is undulating in character, albeit with a gradual slope from a local ridge in the north at approximately 75m AOD (Above Ordnance Datum) to the low-lying areas adjacent to the railway line and River Hart valley at 62m AOD in the south and southwest.
  - 2.4. There are three areas of woodland located within the site, including Great Bog Copse, Parkfield Copse and Bushy Hill. Parkfield Copse is designated as both an Ancient Woodland and a Site of Importance for Nature Conservation (SINC) with the Pale Lane Arable Field Margins SINC in the southern part of the Site.
  - 2.5. Pale Lane Farmhouse (the Farmhouse), a Grade II Listed Building is located on the western edge of Pale Lane. Two other buildings, comprising a former dairy and former barn, located in close proximity to the Farmhouse are listed on the County Council's Archaeological and Historic Buildings Record, as is a Second World War pillbox close to the railway bridge over Pale Lane. Other features within the site comprise a motocross track, located within the western parcel, extensive road and field boundary hedgerows and a number of mature free-standing trees, including some veteran trees.
  - 2.6. The nearest bus stops are located on the A323 Fleet Road approximately less than 50m from the junction of Pale Lane with the A323 Fleet Road. The stops are served by routes 7 and 65X. Route 7 comprises two buses per hour during the daytime with less frequent services in the evenings and on Sundays and connects Fleet with Aldershot to the east and Hartley Wintney and Reading to the north. Route 65X is a school/college bus providing Fleet with connections to Hook to the west and Church Crookham and Alton College to the south.
  - 2.7. Fleet is the main town within Hart, located along the M3 corridor between Basingstoke and the Farnborough-Aldershot conurbation, and accessed from Junctions 4A to the east and 5 to the west. Originally centred on Fleet Pond and the triangle of land bounded by Fleet Road, Reading Road North and Elvetham Road (now a Conservation Area and known locally as the Blue Triangle), it has a busy town centre located about 2km southeast of the site.
  - 2.8. Fleet also sits on the Southampton to London mainline railway, offering connections to major surrounding centres and to London with a travel time of approximately 40 minutes. The site is close to two stations, Fleet approximately 2½km to the east and Winchfield about 2½km to the west, both of which have large and very well used car parks for commuters.
  - 2.9. Elvetham Heath, the closest part of Fleet to the site, is a planned residential urban extension of recent origins (1990s) situated to the east of Fleet Road approximately 1km by foot from the site which provides a number of local services and facilities including The Key Centre, The Church on the Heath, the village green, tennis courts, Morrisons supermarket and petrol station, Elvetham Heath Primary School, Elvetham Heath Day Nursery and the De Havilland Arms. Extensive areas of open space, woodland and the Elvetham Heath Nature Reserve are located within this area. The main route through the development is

Elvetham Heath Way, from which lead a series of smaller residential roads and culs de sac based around a predominantly residential area. There is an extensive network of cycle paths and footpaths within the estate.

### **3. Planning Policy**

#### The Development Plan (DP)

- 3.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications must be made in accordance with the DP unless material considerations indicate otherwise. The DP for Hart District Council comprises the 'saved' policies of the Hart District Local Plan (Replacement) adopted in December 2002 and its first alterations adopted in June 2006 (to which I refer together as the HDLP), as well as 'saved' Policy NRM6 relating to the Thames Basin Heaths Special Protection Area in the South East Plan adopted in May 2009.
- 3.2. The main policies at issue are HDLP Policies RUR2 (Development in the open countryside – general) and CON22 (Setting of settlements and recreation). These two policies, which the appellant argues are out of date, are those mentioned in the LPA's first refusal reason relating to adverse impact on the character of the countryside and setting of Fleet.
- 3.3. Other relevant HDLP Policies are CON1 (European designations), CON2 (National Designations), GEN1 (General policy for development), ALTGEN13 (Affordable Housing), RUR35 (Social infrastructure and services) and T14 (Transport and Development). These policies and South East Plan Policy NRM6 are relevant to the planning obligations and this is dealt with in more detail below.

#### The Hart Local Plan: Strategy and Sites 2016-2032

- 3.4. This is the Council's emerging Local Plan (eLP), which is currently being examined. The examination hearings only finished on 18 December 2018. Given that prematurity is a main issue in this case it was decided to adjourn the Inquiry until the Examining Inspector (EI) had issued his interim findings concerning the likely legality and soundness of the eLP. These were anticipated in February.
- 3.5. They were issued to the LPA on 26 February and were forwarded to me and the appellant on 5 March. On 7 March the LPA provided a copy of its Report to the District's Cabinet recommending adoption of the EI's interim suggestions. On 22 March I was provided with the Minutes of the Cabinet meeting on 14 March along with the LPA's comments in relation to the implications for this appeal as regards the prematurity issue. The appellant responded with its comments on 27 March. Consequently, I have taken the EI's interim findings and the LPA's and appellant's comments into account in reaching my recommendation.
- 3.6. The most relevant policy in the eLP is Policy NBE1 (Development in the Countryside). Other policies, which are potentially relevant to the planning obligations, are indicated in paragraph 6.5 of the Statement of Common Ground (SoCG). However, their relevance is limited given that the eLP is not yet adopted and there are similar extant requirements in the DP as set out above.

3.7. The weight that can be given to the eLP is dependent upon the following, as prescribed by paragraph 48 of the NPPF: the stage of preparation of the emerging Plan (the more advanced its preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies set out in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given). It is agreed that the submission version of the AP will be subject to Main Modifications (MM) consultation.

#### **4. Relevant Planning History<sup>6</sup>**

- 4.1. As part of the need to find sites for new homes over the eLP period to 2032, within the Refined Options for Delivering New Homes (2016) the Local Planning Authority (LPA) considered the site, along with many other sites identified either by landowners/developers or through a basic map search, as a possible strategic urban extension adjacent to Elvetham Heath on the edge of Fleet, being capable of significantly contributing to the housing need and provision of on-site open space and Suitable Alternative Natural Greenspace (SANG). However, it was not taken forward through the draft allocation process.
- 4.2. The appellant has continued to promote the site to each stage of the Council's eLP. Most recent submissions were made in response to the proposed submission draft (Regulation 19) in March 2018. At the same time, since late 2015, the appellant has been discussing and pursuing the application scheme with the LPA.

#### **5. The Proposals<sup>7</sup>**

- 5.1. The appeal application was submitted in hybrid form, with detailed planning permission sought for the provision of an area of 14ha to create a SANG and for the provision of means of access to the site and outline planning permission sought for the erection of up to 700 dwellings, a proposed primary school and local centre, together with associated vehicular, pedestrian and cycle access, drainage works, landscaping and provision of amenity areas.
- 5.2. The illustrative layout/masterplan and the parameter plans listed as application plans in Condition 4 below indicate that 23.5ha of the site (or 40%) would be developed for residential purposes, 33.16ha (or 56%) would be green infrastructure (including public open space, a 14ha SANG and other open areas) and the proposed school would occupy 2.63ha (or 4%) of the site.
- 5.3. The site comprises the majority of the land to the south of the M4, north of the main railway line and west of the A323 Fleet Road in two main parcels either side of Pale Lane and Pale Lane Farmhouse and a small sliver of land next to the A323 immediately west of the Elvetham Heath roundabout necessary to secure highway improvements set out in the S106 agreement.

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<sup>6</sup> Main SoCG Section 4

<sup>7</sup> Largely taken from the parties' SoCs and the D&AS

- 5.4. The SANG would occupy the western part of the site and be laid out and operational prior to occupation of the first dwelling, as would the erection of a 3.5m high acoustic fence along the northern site boundary at the top of the slope abutting the M3. Three phases of construction are proposed: first, the construction of circa 241 units to the east of Pale Lane; second, circa 209 units to the west of Pale Lane; and last, circa 250 units on the northern part of the site south of the M4. It is anticipated that the site will take 8-9 years to build out.
- 5.5. Buildings would be between 1½ and 3 storeys high, with the highest buildings the closest to the railway line as well as 2 to 2½ storey dwellings next to the A323 and immediately south of the M4. These locations would also have the highest density development (up to 40 dwellings per ha). There would be six areas of residential development separated from each other by a central open space running approximately southeast-northwest through the site including the retained woodland area at Bushy Hill, Parkfield Copse and Great Bog Copse and by existing mature hedgerows.
- 5.6. The field on the opposite side of Pale Lane from the Farmhouse would be retained as open land for school playing fields, the primary school itself indicated as being up to 2 storeys and sited next to residential development at its south-eastern end. To the south of this, on the other side of the central open space, is the indicative location of the local centre, which would include retail floor space and floor space to provide a nursery/pre-school for up to 60 pupils as required in the S106 agreement.
- 5.7. Vehicular access to the site would be from a new 3-arm roundabout located about halfway down Fleet Road just to the north of Great Big Copse. An access road would loop westwards, bisect Pale Lane and then loop northwards and eastwards through the site off which would be a series of culs-de-sac similar in design to those at Elvetham Heath as well as access to the SANG. Pale Lane itself would be closed off to through traffic between the Farmhouse and the new access road and would be used only for pedestrians and cyclists. A bus route, secured by the S106 agreement, would loop through the eastern part of the site. A number of dedicated footpaths/cycleways would provide access through the open space corridors.
- 5.8. Sustainable urban drainage (SUDs) would be provided for surface water drainage in the form of a series of drainage basins/ponds situated in the SANG, to the southern open space next to the railway embankment and within the central open space. The three main areas of woodland would be retained and there would be a 15m open landscaped buffer to Parkfield Copse, the ancient woodland. Tree belts to the north and west boundaries of the site would be retained. Foul drainage would be to two pumping stations located along the site's southern boundary, which would pump it to Kingsley Square in Elvetham Heath. There would also be a new wide tree belt planted to shield the Farmhouse and ancillary buildings from the northern block of residential development.
- 5.9. The SANG would comprise a car park providing 10 spaces and one disabled bay with informal gateway and picnic area next to it; a central meadow with natural open vegetation managed through a mix of cutting cycles; a meandering path through the woodland canopy at Bushy Hill and new woodland along the ridge; ponds along the lower slopes with amenity areas for dog walkers and

timber decking at key viewing points; and informal seating along a circular path at least 2.3km in length around the outer perimeter of the central meadow. It would be easily accessed by the footpaths/cycleways within the development.

## 6. The Case for Hart District Council<sup>8</sup>

6.1. The Council's case is set out under eight headings, which are considered in turn below. Any emphases in the text below are the Council's, as are the footnotes.

### The vital importance of need and the public's consent for development in a plan-led system

6.2. The NPPF exhorts all those involved in planning to boost significantly the supply of homes. That is a vitally important task. It illustrates that sustainable proposals for housing development can be a force for good. However, the government has never sought to encourage the delivery of as many houses as possible, whether market or affordable, at any cost. It is always necessary to take account of each dimension of sustainable development. That means proposals for new homes must be weighed in the balance with the government's policy to recognise the intrinsic beauty and character of the countryside<sup>9</sup>, the benefits that may be yielded from the best and most versatile agricultural land<sup>10</sup>, and the great weight that should be accorded to the conservation of designated heritage assets<sup>11</sup>. If those policy objectives are to be truly honoured and not mere rhetoric then any harm done to the countryside, good quality agricultural land and listed buildings should be justified. In the terms of paragraph 171, footnote 53 of the Framework, such harm should be "necessary".

6.3. In determining what is necessary it is critical to remember that planning is intended to be genuinely plan-led<sup>12</sup>, and that the government's ambition to build 300,000 homes per year is intended to be achieved with the consent of local communities through the plan-led system.<sup>13</sup> Hart is preparing a new Local Plan. It has reached an advanced stage. It has engaged and enjoys the support of local people. It identifies the need for new housing through the requirement. The requirement is specified by Policy SS1. It requires a minimum of 6,208 new homes to be provided between 2016 and 2032. The appellant does not contest the requirement. That is important because the requirement is the primary input into the calculation of the 5-year housing land supply (5YHLS). On behalf of the appellant, Mr Taylor conceded the Council can demonstrate a 10YHLS.<sup>14</sup> That is, it is able to demonstrate 200 per cent of the minimum supply of housing land required to secure a sufficient supply and mix of sites.<sup>15</sup> That is an exceptional and highly commendable achievement. It demonstrates tough decisions have

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<sup>8</sup> Largely taken from ID3 (LPA's Closing Statement)

<sup>9</sup> NPPF, para 170(b)

<sup>10</sup> Ibid

<sup>11</sup> NPPF, para 193

<sup>12</sup> NPPF, paras 12 & 15

<sup>13</sup> Response by the Rt. Hon James Brokenshire MP, BBC Radio 4 "Any Questions" on Friday 11 January 2019

<sup>14</sup> Taylor XX

<sup>15</sup> See NPPF, para 67

been made. Local people have responded positively and constructively to the government's mission of providing every household with a decent home.

- 6.4. The appellant has sought to ignore this reality. Nowhere in its evidence does it acknowledge the fundamental and vitally important fact that there really is no need for its scheme. Ten years-worth of housing land is available now. Mr Taylor sought to escape from this difficulty by arguing that the need for affordable housing provides an excuse for crowbarring a further 700 dwellings into the district's housing land supply. The basis of that argument is that the existing supply will not deliver the target of 40% affordable homes on all new sites so as to make a meaningful contribution to the agreed affordable housing need of 306 dwellings per annum (dpa). However, Mr Taylor agreed that if the absolute number of affordable houses that will be delivered over the next six years is expressed as a percentage of the annual affordable housing need, the delivery of affordable homes will exceed 40% of that need. That result is a better outcome than the delivery of 40% affordable housing on all qualifying sites (that is sites of more than 15<sup>16</sup> or 11<sup>17</sup> dwellings) because it is a product of what is delivered on every site, irrespective of its size. That is a consequence of the sheer volume of "oven ready" housing land that is available to developers in Hart. It overcomes the difficulty that in the past not every site that was granted planning permission achieved the guideline target of 40% affordable housing that is specified by saved Policy ALTGEN13 of the adopted HDLP.
- 6.5. Thus, if one asks the question, "does the undisputed affordable housing trajectory submitted by Mr Hawes indicate that the adopted and draft policy targets will be met or exceeded, having regard to the policy objective that in broad terms 40 per cent of most new housing should be affordable", the answer is "yes".
- 6.6. Ironically, in re-examination Mr Taylor was invited to quibble with this analysis. He was invited to focus on the fact that not every planning permission has achieved the guideline target of 40% affordable housing. In responding to those questions, Mr Taylor missed the point that the purpose of the appeal proposal is merely to add to the volume of market housing that would be delivered and thereby to affordable housing delivery. However, since the consented volume of market and affordable housing greatly exceeds what is required over the next 5 years, and meets the Local Plan requirement, the marginal annual contribution of the appellant's additional 280 affordable homes is unnecessary.<sup>18</sup>
- 6.7. Local people know the draft Local Plan has made provision for sufficient market and affordable homes. They know the consensus is that they should not be provided on green field urban extensions. They know that the democratic and consultative plan-making process has specifically ruled out Pale Lane. That

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<sup>16</sup> Under Policy ALTGEN 13

<sup>17</sup> Under draft Policy H2

<sup>18</sup> It is also to be observed that the percentage of affordable housing that is delivered on new sites will always be less than 40% because only sites of a certain size must deliver this target. To compare the percentage of affordable housing that has been delivered on all sites (@25%) with the 40% policy target is therefore unhelpful and potentially misleading



generated a massive 869 objections to the scheme. The proposal does not enjoy the consent of the public. It is not needed. The sections that follow indicate why these facts point unambiguously to the refusal of planning permission.

The weight to be attached to the scheme's conflict with the development plan

- 6.8. The development plan comprises the saved policies of the HDLP and the saved policy on the Thames Basin Heaths Special Protection Area (Policy NRM6) of the South East Plan (2009). Each of these plans is chronologically dated. That does not mean relevant policies should be considered out of date and accorded only limited weight. Instead, the weight that should be attached to them should reflect their degree of consistency with the Framework.<sup>19</sup>
- 6.9. The most important policies are HDLP RUR2 (read with RUR1) and CON22. RUR1 defines the areas that are covered by policies that apply to rural areas by reference to settlement boundaries. RUR2 restricts development in the open countryside outside the settlement boundaries unless it is specifically provided for by other policies of the Local Plan and will not have a *"significant detrimental effect on the character and setting of the countryside by virtue of its siting, size and prominence in the landscape"*.
- 6.10. CON22 restricts development which would adversely affect the character or setting of a settlement or lead to the loss of important areas of open land around settlements, where, inter alia, it would *"otherwise have a serious adverse effect on the character or setting of the settlement"*.<sup>20</sup>
- 6.11. The settlement boundaries that are defined by RUR1 are now out of date because the pattern of development that is anticipated by the Proposals Map does not reflect the planning permissions that have been granted and the development that has taken place to meet housing needs after the end of the Plan period. The result is that RUR2 and other policies for the rural area apply to a smaller area than is indicated on the Proposals Map. However, the Framework admits the application of a more restrictive policy for housing development in the countryside. Therefore, policy RUR2 is consistent with the Framework. Further, since the sole purpose of policy RUR1 is to define the land to which rural area policies apply, in practical terms it should be taken to reflect the edge of the district's main built up areas.
- 6.12. In the circumstances, the parties agree that policies RUR1 and RUR2 should be accorded moderate weight.<sup>21</sup> This accords with the decision of the Inspector in the Netherhouse Copse appeal<sup>22</sup> upon which the appellant places particular reliance.<sup>23</sup>

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<sup>19</sup> NPPF, para 213

<sup>20</sup> The policy that is set out in the published plan contains two typographical errors. The words "...of the development..." in the sixth line of the policy should be deleted, and in subparagraph (ii) "our" should be "out" (Lee EIC)

<sup>21</sup> Lee EIC and XX; Taylor PoE, p.30, para 5.13; see also p.31, para 5.15 (RUR2) and p.56, para 6.1 (RUR2)

<sup>22</sup> CD23 – APP/N1730/W/17/3167135 dated 6<sup>th</sup> October 2017 at paras 63 (RUR1) and 64 (RUR2)

<sup>23</sup> Taylor PoE pp.30-31, paras 5.9-5.14

- 6.13. Turning to policy CON22, whilst this policy does not adopt the hierarchical approach to the protection of the landscape that is now found in paragraphs 171 to 173 of the Framework, it is consistent with the Secretary of State's policy that sustainable development should promote good design and recognise the intrinsic character and beauty of the countryside. Therefore, it should also be accorded moderate weight. This is expressly conceded by Mr Taylor<sup>24</sup>. It also reflects the decision of the Netherhouse Copse Inspector.<sup>25</sup>
- 6.14. Mr Taylor concedes that the appeal proposal conflicts with policy RUR2.<sup>26</sup> On that basis he concludes the scheme "is not in accordance with the development plan as a whole".<sup>27</sup> As will be seen, the proposal also conflicts with CON22. However, for the purposes of the Planning and Compulsory Purchase Act 2004, section 38(6) that point is academic. The admitted conflict with the adopted plan triggers a statutory presumption that planning permission will be refused unless other material considerations indicate to the contrary.

#### The harm that would be caused to the character of the countryside and the setting of Fleet

- 6.15. The appellant places reliance on the Hart Landscape Capacity Study, which concluded that a much larger area incorporating the appeal site (designated WI-02) has a medium to high capacity for development.<sup>28</sup> However, that assessment was made subject to the caveat that not every part of that area, which spans more than one landscape character area<sup>29</sup>, should be taken to be capable of accommodating development. Nor does it indicate an acceptable size, location or disposition of land uses. Therefore, it is of little value in helping to evaluate the level of harm that would be caused by the scheme.
- 6.16. A more useful starting point is the Hart Landscape Character Assessment (LCA).<sup>30</sup> This forms the basis of the appellant's analysis of landscape character.<sup>31</sup> The appeal site is located entirely within the *Hart Valley Character Area*. This area falls within what are known as Category B Landscape. They generally have "attractive qualities" and a "strong sense of place". The LCA indicates that it is important to conserve these landscapes, reducing the influence of negative features through the control of development and land use change.<sup>32</sup> Mr Smith concedes the appeal site is an exemplar of a Category B landscape: he accepts in terms that it is in a "good condition" and of "good scenic quality".<sup>33</sup> The particular

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<sup>24</sup> Taylor PoE, p.31, para 5.15

<sup>25</sup> CD23. The inspector's use of the word "limited" in para 66 of his decision letter to describe the weight to be given to CON22 must be read with the conjunction "also", from which it should be understood that the weight to be given to CON22 is "also limited" to the "moderate" weight he attaches to CON21, RUR1, RUR2 and RUR3 in paras 63,64 and 65.

<sup>26</sup> Taylor PoE, p.49, para 5.99 and p.56, para 6.2.

<sup>27</sup> Ibid., pp 49 and 56.

<sup>28</sup> CD18, p.147

<sup>29</sup> See Smith PoE Drawing EC-002

<sup>30</sup> CD17

<sup>31</sup> Ibid.

<sup>32</sup> Ibid. p. 24, paras 4.7-4.8

<sup>33</sup> Smith PoE p.24 para 96 and XX

qualities of the site that merit this description are recorded in Mr Smith's Table D1.<sup>34</sup> In essence its attractiveness derives from "the gently undulating, enclosed, pastoral nature of the site, with mature woodlands".<sup>35</sup> The better quality enclosed fields fall within LCZ4 and to a lesser extent LCZ1 (which is said to be adversely affected by noise from the M3 Motorway). The most attractive woodlands run roughly north-west to south-east across the centre of the site.

*Impact on the landscape as a receptor*

6.17. So what will be the impact of the development of the landscape as a receptor? On behalf of the appellant, Mr Smith frankly concedes the answer is: -

"...that the development of green fields for residential use would result in *at least* localised negative landscape effects, due to the inevitable change in character from open and predominantly rural to more enclosed and predominantly suburban".<sup>36</sup>

6.18. Mr Smith's concession understates the harm. The key points to note are: -

(1) The suburbanisation of this good quality landscape will be focused on the parts of the appeal site that are of greatest scenic value. That is, the enclosed fields of LCZ4 and LCZ1.<sup>37</sup> Taken as a whole, built development in these areas will cover around 30.8 hectares (52 per cent) of the appeal site<sup>38</sup>.

(2) The impact of suburbanisation would be exacerbated by the extent to which housing impinges on the setting of attractive woodland blocks, especially Parkfield Copse.

(3) Mr Smith sought to downplay this impact by describing it as "localised". That is not apt in the consideration of impact on landscape as a receptor. Nor is it factually correct. Mr Smith accepts that assessed at the level of the Hart Valley LCA the size and scale of the landscape impact would be of medium magnitude. He also concedes it would be "prominent". Moreover, under XX he agreed that prominence is not merely a function of the field of view; it is also related to the intensity with which it is viewed from busy transport corridors. He accepted three transport corridors afford frequent views of the site (Fleet Road, the railway and Pale Lane, in that order).

(4) Mr Smith also sought to downplay the scheme's overall landscape impact by claiming landscape benefits would be yielded by the improvement of LCZ5 (the moto-cross track) and the woodlands. However, to the extent that visibility is relevant to the assessment of landscape as a receptor, LCZ5 is notably inconspicuous. And the landscape character of the woodlands as they stand is recognised to be so high it is doubtful whether the management scheme that is proposed by the appellant would be perceived to deliver an improvement in character.

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<sup>34</sup> Ibid. Appendix p.28

<sup>35</sup> Ibid, row 2

<sup>36</sup> Smith PoE para 103

<sup>37</sup> See ES LVIA Fig.4.4 Land use parameter plan

<sup>38</sup> Smith PoE, p.13, para 52

6.19. It is simply not credible to contend that the loss of 30.8 hectares of good quality, scenically attractive countryside constitutes anything other than a significant, harmful effect on the landscape as a receptor.

6.20. Mr Smith conceded under XX that a "localised effect" is not necessarily to be equated with one that is not prominent. He agreed that a view across a limited area might nevertheless be prominent if it is seen by a large number of people. That was an important concession because the urban sprawl of the development will be seen by large numbers of people. Specifically, Mr Smith recognised the site is appreciated from three transport corridors: -

(1) By very large numbers of people who are passengers on the many trains that pass the site on the London to Southampton mainline. The LVIA that was submitted with the Environmental Statement recognises the railway provides an important opportunity to experience the site. It is said to "add to the travel experience".<sup>39</sup> What adds to that value is views towards a rural setting and the listed Pale Lane Farmhouse. In short, it provides an attractive rural setting to Fleet from which many people who visit or travel past it will form their impression of the town.

(2) By large numbers of people who drive, cycle and walk past the site along Fleet Road and the footpath that runs alongside it, for whom the site "adds to their travel experience."<sup>40</sup>

(3) By local people who enjoy using Pale Lane on foot and by bicycle, as well as by car. This meandering rural road (as the appellant describes it) is the way in which the landscape is truly accessed and experienced by local people.

#### *Visual impact*

6.21. The appellant has played down the visual impact of the scheme by arguing the development would not be widely visible from a distance. The Council accepts the ZTV that is appended to Mr Smith's rebuttal provides a generally fair representation of the area from which the development would be seen. That impact cannot properly be described as "localised"; the development will be seen to extend a finger of development to the west of Fleet from numerous points in the landscape well to the north, west and south of the town; such views will not be precluded by the presence of the railway embankment or the line of the M3, although they may be mitigated as on and off-site landscaping matures over time.

6.22. Whether or not the impact will be "localised" it will be prominent and harmful. That is a function of its sheer scale and visibility to large numbers of people. That impact is exacerbated by poor design. More particularly, the scheme is infected by at least 8 fundamental design errors: -

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<sup>39</sup> LVIA p.75, para 5.5.65

<sup>40</sup> Ibid. p.74, para 5.5.63

(1) 2 and 2.5 storey, high density development<sup>41</sup> would be sited so as to occupy the ridgeline that runs along the northern edge of the site. This would be visible from Pale Lane looking north-west. It would also be visible from Fleet Road in views to the north-west from Copse Close and to traffic heading east and west, seen through the visually permeable hedge line along the south side of Fleet Road.

(2) Views from Fleet Road would be further compromised by the opening up of the site access to form a new roundabout. This would involve stripping out around 120m of historic hedgerow, which would afford views of housing deep into the site – drawn deliberately by the creation of designed “focal points”.

(3) 2 and 2.5 to 3 storey development would be laid out on either side of Pale Lane at medium and high density. The impact of this error would be magnified by the appellant’s failure to take proper account of topography: there is a local high point to the west of Pale Lane in the vicinity of the Pill Box. Existing roadside boundaries are visually permeable opening up long views of houses to the east and west. This would not be mitigated by new landscaping<sup>42</sup>. The result would suburbanise and destroy the ambience of what the appellant characterises as a “meandering rural road”. The appellant grossly underestimated this impact by omitting to consider pedestrians or cyclists as visual receptors, Mr Ratcliffe having confirmed that the road is well used for that purpose.

(4) Attractive woodland blocks, including the historic Parkfield Copse and Great Bog Copse, would in future be hemmed in by houses; they will become rural woodlands, severed from the historic landscape.

(5) In a similar vein, the historic field pattern will be submerged and obscured by a sea of houses.

(6) A key focal point in the landscape, the historic Pale Lane Farmhouse, will be surrounded by urban development, rather than contributing to the timeless quality of the existing landscape as it has evolved over time whilst remaining essentially rural in character.

(7) The land that is devoted to housing development, LCZ1 and LCZ4 is the most visible, being located adjacent to, and clearly visible from, the railway, Fleet Road and Pale Lane.

(8) Overall, the appellant’s design philosophy is fundamentally misconceived. It is founded on the false premise that the opening up of views to suburban development would be beneficial. As Mr Smith agreed, that is directly contrary to the received wisdom that replacing existing fields and structural vegetation with new buildings and landscaping should be assessed as a negative, and at best neutral effect.<sup>43</sup>

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<sup>41</sup> See ES LVIA Figs 4.5 and 4.8, respectively building height parameter plan and building density parameter plan

<sup>42</sup> See ES LVIA Fig 4.7 Landscape parameter plan

<sup>43</sup> Smith PoE, p.31, para 126

### *Impact on the setting of Fleet*

- 6.23. CON22 restricts development which would, amongst other things, have a “serious adverse effect on the character or setting” of a settlement.<sup>44</sup>
- 6.24. Approaching Fleet from the north-west, built development is virtually absent from view until the built gateway to Fleet is reached, signposted “Fleet” at Elvetham Heath roundabout. That lack of visibility is attributable to the embankment and thick tree screen that runs along the north-east side of Fleet Road. This is only broken by partial views of new development on previously developed land at Copse Close.
- 6.25. Passing under the M3 road bridge, views to the south-east are of open, elevated land to the north of Pale Lane Farmhouse. The Farmhouse then comes into view. It is succeeded by attractive views of an enclosed pastoral and woodland landscape, which is terminated by Great Bog Copse.
- 6.26. The effect is to create an attractive arboreal backcloth to the western approaches to Fleet and a crisp transition between town and country. This would be replaced by a sprawling suburban finger of development projecting into the countryside to the west of Fleet. Unlike existing development, it would be clearly visible through and above the existing hedge-line and the proposed roundabout to the estate.
- 6.27. Adopting the approach of Mr Smith, the replacement of the attractive rural setting with a projecting urban development is sensibly to be regarded as exerting a serious adverse effect on the setting of Fleet. The scheme plainly conflicts with CON22.

### Harm to the setting and significance of the Grade II listed Pale Lane Farmhouse

- 6.28. The parties agree that the development would cause less than substantial harm to the Grade II listed Pale Lane Farmhouse. The law requires that that harm should be given “considerable importance and weight” in the planning balance.<sup>45</sup>
- 6.29. That being the case, the residual issue is the extent of that less than substantial harm. Dr Cooper accepted that absent effective mitigation the harm to significance caused by the scheme’s impact on setting would be towards the middle of the “less than substantial scale”.<sup>46</sup> In his view, that degree of harm is avoided by the planned mitigation. In essence, the approach is to “retain the legibility and visual separation of the listed building”.<sup>47</sup> This is to be achieved by employing three (in reality, two,) devices viz.: (a) excluding areas from built development; (b) open space allocations; and (c) “sympathetic boundary treatment”. The design objective is to “...allow the building to be readily

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<sup>44</sup> CON22 para (iv)

<sup>45</sup> *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council and the Secretary of State for Communities and Local Government and others* [2014] EWCA Civ 137.

<sup>46</sup> Cooper XX

<sup>47</sup> Cooper PoE, p.32, para 5.12

understood as a former rural building sitting within its own green space and as a building which pre-dates the proposed development".<sup>48</sup>

6.30. The Council's case is that the appellant's mitigation will not work. On behalf of the Council, Dr Barker-Mills expressed the opinion that the functional relationship of the farmhouse with the outbuildings and the land that used to be farmed with it remains clearly legible. There has been little change to the historic pattern of field boundaries,<sup>49</sup> which reflects the enclosed landscape within which the farmhouse was set. The commercial use of the former farm buildings has not removed their agricultural character.<sup>50</sup> Being able to see and appreciate the rural character of the setting to the south and north of the farmhouse enhances the understanding of their former function. That is not affected by changes to the fabric of the farmhouse itself. Nor is it undermined by the M3 Motorway and the railway, each of which pre-date the listing, are part of the landscape, and do not sever the farmhouse from the lands in its immediate vicinity. The continued use of that land for agriculture is illustrative of its historic functional relationship with the listed building. The result is that the building's setting makes a major contribution to the significance of the building.<sup>51</sup>

6.31. Viewed in that way, the design philosophy that underpins the mitigation is fundamentally misconceived in three respects: -

(1) It severs the last link between the asset and its original setting, a result that is warned against by Historic England in Planning Note 3 (Second Edition).<sup>52</sup>

(2) Specifically, the important historic association between the farmhouse and fields to the south-east will be replaced by the urban form of school playing fields and a school, with houses beyond, obscuring views of Great Bog Copse. Similarly, the inter-visibility of the farmhouse and fields to the north and west will be severed by a hedge (NB Dr Cooper appeared unaware of the view over fields to the rear of the farmhouse from the house and its former outbuildings<sup>53</sup>).

(3) The result of severing that link is the most that can be achieved by the planned mitigation is the preservation of a *rural* building, in a partly open *suburban* setting of a school and its playing fields. The harm caused to the farmhouse's setting thus strips it of its historic significance as a particular kind of dwelling intimately associated with the land around it.

The failure of the Appellant's scheme of mitigation leads to the conclusion that in reality the level of less than substantial harm that would be caused by the development is much greater than that conceded by Dr Cooper. His finding of "major/ moderate" impact using the methodology specified by the Highways Agency's *Design Manual for Roads and Bridges* indicates that "the resource or its perception is significantly modified (in the case of a moderate impact) or totally

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<sup>48</sup> Cooper PoE, p.32, para 5.13

<sup>49</sup> Barker-Mills, PoE, p.12, para 4.16

<sup>50</sup> Ibid. p.12, para 4.17

<sup>51</sup> Ibid, p.13, para 4.18

<sup>52</sup> CD6, p.4

<sup>53</sup> Cooper XX

altered (if there is a major impact). To argue that this harm is mitigated by severing the asset from its illustrative functional setting is simply not credible. The scheme will cause serious, albeit less than substantial harm, to the listed building.

#### Why the scheme is premature and would undermine the emerging Local Plan (eLP)

6.32. These comments on the prematurity issue incorporate the Council's comments on the eLP EI's initial findings in his letter of 26 February.<sup>54</sup>

6.33. The planning system should be genuinely plan-led. To that end, paragraph 48 of the Framework allows decision makers to give weight to relevant policies in emerging plans. Further, in the circumstances specified in paragraphs 49 and 50, and paragraph 21b-014-20140306 of the Planning Practice Guidance (PPG), planning permission may be refused on the grounds that an application is premature in circumstances which include (but are not limited to) situations where: -

(1) the development is so substantial, or its cumulative effect would be so significant, that to grant planning permission would undermine the plan making process by pre-determining decisions about the scale, location and phasing of new development that are central to an emerging plan; and,

(2) The emerging plan is at an "advanced stage".

6.34. The NPPF and PPG indicate that the litmus test of whether a plan is at an advanced stage is that it should have been submitted for examination. The eLP examination has been completed. The inspector has given his interim findings. He has indicated the eLP's OAHN is likely to be sound and that the Plan's spatial strategy would deliver the required housing including that of Surrey Heath, the adjoining Borough's, unmet need. The Council, at its Cabinet meeting on 14 March, agreed to the EI's proposed modifications to the eLP, crucially including the deletion of Policy SS3, which seeks to deliver the proposed new settlement at Murrell Green/Winchfield. Therefore, viewed sensibly, the Plan is at a very advanced stage.

6.35. The proposal extends to 59 hectares. Some 31 will be developed with around 700 new homes, a school and a local centre. Mr Taylor inevitably conceded it is a "large scheme".<sup>55</sup> That is an understatement. A further 700 homes would result in the delivery of 40 per cent more homes on "new land" than is required (i.e. other than completions and commitments).<sup>56</sup> That would be a substantial over-provision compared with the quantum of new land that is planned for.

6.36. The scale, location and phasing of new housing is unquestionably central to the emerging Plan. That is evidenced by the Non-Technical Summary of the SA Interim Report of August 2018. It identifies a Preferred Option, Option 1b. That

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<sup>54</sup> ID8

<sup>55</sup> Taylor PoE, p.40, para 5.55

<sup>56</sup> Requirement (6,208) – completions and commitments (4,436) = requirement for new land of 1772  
700/1772 = 39.5%



option is reflected by the draft Local Plan's sustainable development strategy in policy SS1.

6.37. The Non-Technical Summary identifies alternative approaches to the strategy in SS1<sup>57</sup>. Three of those include Pale Lane. Mr Taylor agreed that they represent different spatial strategies. Wates advanced Pale Lane at the EIP with the object of persuading the inspector to allocate Pale Lane and to delete the Area of Search promoted by policies SS1 and SS3. That argument was underpinned by the contention that the Local Plan ought to provide for more housing to increase the supply of affordable housing during the plan period. However, the EI makes clear that is unnecessary because it could result in open market dwellings being provided when there is no evidence of any need, which could lead to an imbalance between homes and jobs in the District and unsustainable commuting patterns. The EI has therefore made it clear that there is no need in principle to alter the eLP's spatial strategy. To do so, by for example including this site as a major extension as referred to in Option 3 of the SA, would result in a significant change to the Plan's spatial strategy contrary to its Policy SS1. To do so via this appeal would therefore undermine the well-advanced plan-making process, which rules out the necessity for such a large strategic extension.

#### Unjustified harm to the best and most versatile agricultural land (BMV)

6.38. The appeal site contains some 23 hectares of BMV. It is concentrated in LCZ4. That is, on the land earmarked for housing development and a school (including its playing fields). Mr Taylor confirmed that if the appeal is allowed most of this land would be lost irreversibly to built development.

6.39. Mr Taylor sought to justify the harm that would be caused to best quality land by arguing that in the recent past it has not been used for intensive agricultural production. That may be so. But as Mr Taylor agreed, that is a function of the prevailing economic circumstances. Provided it is protected, agricultural land is a long-term asset. That is why it is afforded protection under paragraph 170 b) of the Framework.

6.40. What form does that protection take? Curiously, flesh is put on the bones of paragraph 170 b) by footnote 53 of the Framework, which appears to relate to paragraph 171, but is conceded by the appellant to be relevant to this issue. As Mr Taylor agreed, the Secretary of State's approach is that it should be "necessary" to bring about the loss of agricultural land, especially that which is of good quality. Necessity connotes a need for development. There being no need for what the appellant proposes, the scheme does not accord with the Framework's policy for BMV.

#### The Planning Balance

6.41. During the Inquiry the need to carry out three balancing exercises was referred to. First, that mentioned in ID21b-014 -20140306 of the PPG in relation to prematurity (but which is not reflected by paragraphs 49 and 50 of the Framework). Second, that which arises under paragraph 196 of the Framework in the event of a finding of less than substantial harm to a listed building (in order

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<sup>57</sup> See p.4

to determine whether the presumption in favour of sustainable development should apply). Third, the statutory section 38(6) balance.

6.42. Mr Taylor confirmed the inputs into the balance mentioned by ID21b-014 are the same as those that go into the section 38(6) balance.<sup>58</sup> He was also of the view that whilst the inputs into the paragraph 196 balance might differ from the section 38(6) balance to some extent they would be roughly the same. He is right. There is no need to carry out three separate balances. Turning, therefore, to the statutory balancing exercise under section 38(6): -

(1) The starting point is the scheme's agreed conflict with the development plan. The relevant policies attract moderate weight. That leads to a statutory presumption that planning permission will be refused unless other material considerations indicate otherwise.

(2) The scheme would harm the character of the landscape around Fleet. That harm would affect a large area of attractive countryside in a good condition. By virtue of the design and layout of the scheme (notably the density, height and mix of development, the inadequacy of the proposed landscaping and the interaction with topography and busy transport corridors) this harm would be prominent irrespective of whether it is properly regarded as "localised"<sup>59</sup>, which it is not. Therefore, the harm the scheme would cause to the landscape should be accorded substantial weight.

(3) The scheme would harm the attractive arcadian setting of Fleet. The crisp transition from town to country would be eroded. Whilst that setting is not remarkable in the sense anticipated by CON22 (i)-(iii) the result would still be a serious adverse effect on the appearance of the western edge of Fleet. This attracts at least limited to moderate weight.

(4) The less than substantial harm that would be caused to Pale Lane Farmhouse should be given great weight. That is especially so in the light of Dr Barker-Mills evidence that the harm could be avoided by keeping land to the south-east of the farmhouse free of development. Dr Cooper's response that this land is required for development because of scheme-wide considerations was vague and non-specific; he did not explain why SANG could not be laid out as suggested by Dr Barker-Mills.

(5) The effect of the scheme in undermining the preparation of the Local Plan should be given great weight. Local Plans are the cornerstone of the planning system. The scheme would subvert the plan by introducing a different spatial strategy and a form of development in a location that has been resoundingly rejected by the public. On the other hand, if there is any merit in the appellant's case that its land should come forward for development, it may still be advanced through the plan-making process. This application is plainly premature.

(6) The irreversible harm that would be caused to BMV should be given substantial weight. It is wholly unnecessary. It does not avail the appellant to

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<sup>58</sup> Taylor XX Day 5

<sup>59</sup> And admitted by Taylor and Smith

argue similar quality land has been earmarked for development elsewhere. In such instances development was necessary. This distinction is obvious.

(7) Set against those weighty objections only limited weight should be afforded to the provision of market and affordable housing. There is no need for the harm that would be caused by bringing forward the site now.

(8) The “usual” employment related benefits cited under paragraph 5.108 of Mr Taylor’s evidence should be accorded limited weight; they too must be tempered by reference to the harm that the underlying development will cause.

(9) The provision of a new primary school, the secondary school contribution, LEAPS, NEAPS, SANG, a neighbourhood centre and local shops, monitoring fee, healthcare contributions and the installation of a sustainable drainage system ought to attract very limited weight. Each is primarily mitigation.

(10) The wider highway improvements associated with the scheme and the improved public transport links should also attract little weight. They are also primarily mitigation.

(11) In relation to the preceding submissions on highway improvements, it is accepted that the decision of Lang J in *Amstel Group Corporation v SSCLG and North Norfolk District Council* [2018] EWHC 633 (Admin) (which draws upon the decision of Bean J in *R (Welcome Break Group Limited) v Stroud District Council* [2012] EWHC 140 (Admin)) provides some indication that the wider benefits of a scheme may be material to what is now the paragraph 196 balance under the Framework. In principle, they must therefore be relevant to planning and capable of being weighed in the s.38(6) balance provided they are closely related to the scheme in question. Be that as it may, they do nothing to tip the balance in favour of the appellant, whose case is heavily outweighed by the harm that the scheme would cause.

## **7. The Case for the Appellant, Wates Developments<sup>60</sup>**

### Introduction

- 7.1. The purpose of the planning system is to contribute to the achievement of sustainable development<sup>61</sup>. In order that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development<sup>62</sup>. That presumption is to be applied in preparing development plans and in decision taking. Paragraph 11 of the NPPF provides a mechanism to ensure that the overarching aim of facilitating sustainable development is not frustrated in areas where development plans do not make sufficient land available to meet development needs or are otherwise inconsistent with up to date Government policy.
- 7.2. The mechanism by which the NPPF ensures that development needs continue to be met in areas where development plans do not make adequate provision to meet housing and other requirements, or where development plans are otherwise

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<sup>60</sup> Largely taken from ID5 (Appellant’s Closing Submissions) including Footnotes

<sup>61</sup> NPPF paragraph 7

<sup>62</sup> NPPF paragraph 10

inconsistent with Government policy, is by indicating that, in cases where policies most important for determining an application are out of date, the benefits and detriments of a proposal are to be weighed and assessed against the policies in the NPPF taken as a whole, and a balanced judgement arrived at.

7.3. Hart is an area in which the current development framework fails to meet the objectives set by Government policy:

- a. The current development plan covers the period from 1996 to 2006.
- b. The plan is based upon out of date Government guidance.
- c. It has not been possible to meet the need for housing within settlement boundaries. As a result, the Council and inspectors have granted permission for development outside those boundaries<sup>63</sup>.

7.4. As result the decision on this application cannot be guided by application of development plan policies. A balanced judgement has to be made.

- a. In making such a balanced judgement the statutory duty imposed by section 38(6) of the Planning and Compulsory Purchase Act 2004 must be adhered to. Regard must be had to the development plan<sup>64</sup>, and therefore the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- b. The first task is to consider whether the proposal accords with the development plan when considered as a whole. There are two development plan policies in dispute, RUR2 and CON22<sup>65</sup>. For the reasons given below CON22 is complied with. RUR2 is not complied with as the site lies outside settlement boundaries as defined in the development plan. It is accepted that failure to comply with RUR2 causes the proposal to fail to comply with the development plan when considered as a whole<sup>66</sup>.
- c. The weight to be given to the development plan and to other material considerations is a matter for the decision maker.
- d. In this case, the only material breach of a development plan policy is the breach of RUR2. RUR 2 is an out of date policy as is reflected in the numerous decisions taken by the Council and inspectors to grant planning permission outside settlement boundaries. The weight to be given to that policy is much reduced, whether described as moderate or given some other description.
- e. In contrast the weight to be given to the other material considerations is significant, in particular the opportunity to deliver market and affordable housing without causing other than localised significant landscape or visual impact. That last point is reflected in the fact CON22 is complied with. It may be said to be notable that the benefits of providing market and affordable housing

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<sup>63</sup> Annotated version of Lee Appendix 10 as put to Peter Lee in XX – ID7

<sup>64</sup> Section 70(2)(a) Town and Country Planning Act 1990 ("TCPA 1990")

<sup>65</sup> Lee XX

<sup>66</sup> Taylor PoE 5.99

can be achieved without causing other than limited localised significant landscape and visual effects.

f. In those circumstances the other material considerations clearly outweigh the very limited conflict with the development plan.

### *The Main Issues*

7.5. At the start of the Inquiry the issues were identified as follows:

- a. Whether the relevant development plan policies are out of date.
- b. The degree to which the appeal scheme may harm the character and appearance of the countryside and/or settlement of Fleet.
- c. Whether any less than substantial harm to the significance of Pale Lane Farmhouse would be outweighed by public benefits.
- d. Whether the loss of best and most versatile agricultural land would justify refusal to grant planning permission.
- e. Whether refusal of planning permission is justified on the grounds of prematurity.
- f. Whether any adverse impacts of granting planning permission would outweigh the benefits.

### *Appropriate Assessment*

7.6. As, absent mitigation, a significant effect on European sites cannot be excluded, it is necessary for the competent authority (the Secretary of State) to undertake an appropriate assessment (under the Habitats Regulations<sup>67</sup>). The information to inform such an assessment has been provided<sup>68</sup>.

7.7. The main parties are agreed that subject to the provision of the onsite SANG and the payment of a SAMM contribution the relevant policies are satisfied<sup>69</sup>. The Council has indicated they do not raise any issue relating to assessment under the Habitats Regulations and they are satisfied that there is sufficient information to allow the Secretary of State to undertake an appropriate assessment and to conclude that there will be no adverse impact on the integrity of the Thames Basin Heaths SPA<sup>70</sup>. On the basis of that information the Secretary of State can be sufficiently certain that the measures proposed will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the Thames Basin Heaths SPA.

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<sup>67</sup> Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017. For the purposes of the assessment the Secretary of State is required to consult Natural England – regulation 63(3).

<sup>68</sup> Taylor Ap.1

<sup>69</sup> SoCG 7.20

<sup>70</sup> The Council's position was clarified by Tim Leader, the Council's advocate on Day 1

Whether the relevant development plan policies are out of date

7.8. In the reasons for refusal that remain in dispute, as confirmed by Mr Lee, the Council rely upon two local plan policies, RUR2 and CON22.

*RUR2*

7.9. In order to consider whether RUR2 is out of date it is first necessary to consider the meaning of the words used. That is a matter of law. Policy statements, such as development plan policy, should be interpreted objectively in accordance with the language used, read as always in its proper context<sup>71</sup>.

7.10. Mr Lee argued that the first part of RUR2, which relates to settlement boundaries, is out of date, but that the second part was not. Mr Lee sought to derive support from the Broden Stables decision letter<sup>72</sup> where the inspector refers to the first limb of RUR2. It is important to note that, when referring to the first limb the inspector was referring to agreement between the parties. On a proper reading of RUR2 it is clear that it provides that development outside settlement boundaries will not be permitted unless two conditions are met. The last part of the policy does not introduce a separate test of whether development in general would have a significant detrimental effect on the character and setting of the countryside, it is an additional requirement to be met by development that is specifically provided for by other policies in the local plan (agriculture, forestry etc.). Mr Lee said that such a construction of the words is logical<sup>73</sup>. Such a construction is not merely logical it is the plain meaning of the words.

7.11. As a result, the issue is not whether part of RUR 2 is out of date, but whether RUR2 is out of date. It is out of date for two reasons:

- a. Its wording is inconsistent with NPPF policy;
- b. Its effect is to restrict development so as to prevent land being used to meet housing needs.

7.12. The local plan makes plain that the function of RUR2 is to protect the countryside for its own sake in accordance with PPG7<sup>74</sup>. As agreed by Mr Lee in cross-examination:

- a. RUR2 is based upon and is intended to implement the PPG7 policy of protecting the countryside for its own sake.
- b. The 2012 NPPF (and 2018 NPPF) takes a different approach – it does not include a blanket ban on protection of the countryside for its own sake.

7.13. There is no reason to depart from the view of the Telford inspector (whose decision was upheld by the High Court) that a policy which stated that outside

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<sup>71</sup> *Tesco v. Dundee* [2012] UKSC 13 at paragraph 18

<sup>72</sup> Appendix PL4 paragraph 10 of the DL

<sup>73</sup> Lee XX

<sup>74</sup> CD9 pages 20 and 46

settlements development would be strictly limited and, in the countryside, strictly controlled was not up to date and in conformity with the NPPF<sup>75</sup>. Similarly, in the post NPPF 2018 Woolpit decision the inspector held that a policy which perpetuated the theme of protection of the open countryside for its own sake was inimical to the balanced approach which the NPPF exhorts<sup>76</sup>. It is clear that RUR2 was based on the policy in PPG7 that the countryside be protected for its own sake. That policy has not been carried forward in the NPPF, and as a result RUR2 is inconsistent with the NPPF and out of date. Mr Lee agrees that the current needs for housing cannot be met on sites within settlement boundaries. That is a further reason why RUR2 is out of date.

- 7.14. Mr Lee seeks to argue, on the basis of the Readshill Quarry decision letter that, as the Council are able to demonstrate a five-year supply of deliverable housing sites, the settlement boundary policy is not out of date. The basis for the inspector's decision should be considered with care. He found, at DL 67, that:

*Provided those settlement boundaries are not preventing the delivery of a supply of housing in line with paragraph 47 of the Framework, which in this case they are not due to the proven existence of a 5-year supply, the policy should not be considered out of date on that point<sup>77</sup>.*

The position in Hart can be distinguished. Settlement boundaries in Hart are preventing the delivery of housing in line with the NPPF. That fact is accepted by Mr Lee<sup>78</sup>. As the Saved Local Plan settlement boundaries are preventing the delivery of housing to meet objectively assessed needs, they are out of date.

- 7.15. RUR 2 is out of date whether because it is based upon and implements the PPG7 policy, or because the settlement boundaries are preventing delivery of housing to meet needs.

#### CON22

- 7.16. CON22 adopts a blanket approach to landscape protection and does not follow the approach in set out in paragraph 170 of the NPPF which places emphasis on valued landscapes. Mr Lee agreed that the policy was inconsistent with the NPPF in that respect but sought to argue that it was not out of date relying on paragraph 127(c) of the NPPF. Paragraph 127(c) does not support Mr Lee's argument as:

- a. It relates to design.
- b. It provides that planning policies and decisions should ensure that developments are sympathetic to local character and history, including landscape setting.

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<sup>75</sup> *Telford and Wrekin v. Secretary of State [2016] EWHC 3073 (Admin)* (Lee Ap.7) – inspector's decision letter paragraph 33 (quoted at paragraph 46 of the judgment) and judgment paragraph 47

<sup>76</sup> ID6: Woolpit DL 91: APP/W3520/W/18/3194926 Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF – referred to by Taylor in XiC,

<sup>77</sup> Lee Ap.8 DL 67

<sup>78</sup> Lee XX – and see the annotated version of Appendix PL10 – ID7

c. It does not relate to, or support, blanket protection of landscape.

7.17. For those reasons CON22 is not consistent with the NPPF.

*Previous Appeal Decisions*

7.18. The Secretary of State should have regard to previous decisions, and to the importance of consistency in decision making, and should only depart from them if reasons are given<sup>79</sup>.

7.19. The question of whether policies RUR 2 and CON 22 are out of date was considered by the Netherhouse Copse inspector.

a. The inspector noted that the reason that the council are able to demonstrate a five-year supply of deliverable housing sites is that planning permissions have been granted for housing developments outside settlement boundaries<sup>80</sup>. That, as the inspector found, is an indication that the policies RUR1 and RUR2 are out of date.

b. The inspector further found that the existence of a five-year housing land supply does not mean that settlement boundaries cannot be out of date (and made no finding on 5YHLS)<sup>81</sup>.

c. He also found that policy CON22 was inconsistent with the NPPF and out of date<sup>82</sup>.

7.20. The Council seek to rely on other appeal decisions to argue that the policies are not out of date. Two of those decisions concern sites in Hart, and postdate the Netherhouse Copse decision letter, Broden Stables<sup>83</sup>, and Warbrook Lane<sup>84</sup>.

a. In the Broden Stables case the inspector took the same view as the Netherhouse Copse inspector<sup>85</sup>; although that decision is subject to challenge<sup>86</sup> it stands unless and until it is quashed.

b. In the Warbrook Lane case the inspector makes reference to the Broden Stables decision letter<sup>87</sup> but does not refer to or distinguish the Netherhouse Copse decision letter. Further the Warbrook Lane inspector appears to have based his decision on reading RUR2 as having two limbs<sup>88</sup>; that understanding of the meaning of the policy, for the reasons set out above, was erroneous.

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<sup>79</sup> *North Wiltshire v. SofS (1993) 63 P&CR 137* at page 145:

"An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

<sup>80</sup> CD23 paragraphs 63 and 64

<sup>81</sup> CD23 paragraph 67

<sup>82</sup> CD23 paragraphs 66 and 67

<sup>83</sup> Lee Ap.4

<sup>84</sup> Lee Ap.9

<sup>85</sup> Lee Ap.4 DL43 – see also DL11

<sup>86</sup> Permission has been granted to proceed with a section 288 TCPA 1990 application – Lee Ap.5

<sup>87</sup> Lee Ap.9 DL11

<sup>88</sup> Lee Ap.9 DL10



Conclusions on development plan policies

7.21. There is no dispute that RUR2 was intended to, and did, implement the PPG7 policy that the countryside be protected for its own sake. That, on its own, must lead to a finding that RUR2 is out of date. Whether or not the appellant is right on the second basis advanced (that the settlement boundaries are out of date as within them insufficient provision can be made for housing), RUR2 is out of date as it is clear that the first argument is made out. CON22 is also out of date. However, the issue of whether CON22 is out of date would be academic if the proposal complies with it. There are no sound reasons to depart from the approach taken by the Netherhouse Copse inspector, and to hold that both RUR2 and CON22 are out of date.

Character and Appearance of the Countryside

*Designations and Policy Approach*

7.22. The appeal site is not subject to any landscape designation, and the Council do not argue that it is a valued landscape. Although the Council refer to policy on gaps the site is not identified as, or subject to a policy relating to, a gap, whether in the adopted local plan or the emerging plan. It is of particular significance that the appeal site is not identified as a gap in emerging local plan policy NBE2.

*Assessment of existing character*

7.23. The Hart Landscape Assessment (1997) is over twenty years old.

- a. It was prepared under different circumstances and when different guidance was in force.
- b. The purpose of the evaluation was to identify the variations in character and quality that exist across the landscape of the district so that appropriate strategies for landscape conservation, management and enhancement can be defined<sup>89</sup>. Its purpose is not to assess the capacity of landscape to accommodate development.
- c. The study divides the district into three categories, A, B, and C<sup>90</sup>. The appeal site lies within areas B and C. The part of the appeal site close to the M3 is placed in category C which is said to refer to 'degraded'<sup>91</sup> landscapes.
- d. The fact that a landscape falls within category B does not preclude development, as is demonstrated by decisions taken on planning applications and appeals. For example, Land North East of Hook, lies within a category B landscape.

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<sup>89</sup> CD17 paragraph 4.1

<sup>90</sup> Paragraphs 4.5 to 4.10 of CD17

<sup>91</sup> CD17 paragraph 4.12

*Assessment of the capacity of the appeal site and surrounding area to accommodate residential development*

*The Council's Assessments*

7.24. The Landscape Capacity Study was prepared to assist in plan preparation:

- a. Its purpose was to assess the relative capacity of the landscape to accommodate development in the rural areas of the District, outside the established settlement boundaries<sup>92</sup>.
- b. In order to undertake that assessment various assumptions were made. It was assumed that there would be 50% residential development, with 50% open space, based on a density of 30 residential dwelling per hectare with dwellings 2 to 2.5 storeys was assumed as a guide for each area<sup>93</sup>.
- c. The appeal site and land to the west has a medium/high capacity to accommodate development<sup>94</sup>.

7.25. The suitability of the appeal site (as distinct from the wider area considered in the Landscape Capacity Study) to accommodate residential development was considered in the sustainability appraisal/strategic environmental assessment (SA/SEA) of the local plan. One of the reasons why Pale Lane ranks second to the preferred option<sup>95</sup> is that the landscape has capacity to accommodate development.

- a. February 2018 SA/SEA: *Landscape - the ranking of the alternatives reflects an understanding that a strategic extension at Pale Lane gives rise to relatively limited landscape concerns*<sup>96</sup>.
- b. August 2018 SA/SEA: *Landscape - the order of preference reflects the extent of sensitivities across the District, and also an understanding that Pale Lane would appear relatively unconstrained in this respect (i.e. would impact to a lesser extent than West of Hook or the non-strategic sites package).*

*Assessment of the Appeal Proposals*

7.26. Mr Smith for the appellant has undertaken a careful analysis of landscape and visual effects.

- a. He identifies a number of adverse landscape and visual effects<sup>97</sup>.
- b. The number of significant negative effects on landscape character are limited. When considering site character areas, it is only LCZ4<sup>98</sup> which is

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<sup>92</sup> CD18 paragraph 1.1

<sup>93</sup> CD18 paragraph 1.2

<sup>94</sup> CD18 page 147. The table at page 23 was corrected by Mr Ratcliffe – ID14. The correction confirms that the assessment of capacity at medium/high was correct.

<sup>95</sup> CD11 page 44 – table at the top of the page

<sup>96</sup> CD11 page 44

<sup>97</sup> Smith Ap D Table D6, Smith Ap E Table E3

<sup>98</sup> The character areas are shown on Smith drawing EC006

assessed as being subject to as significant negative effect. The effect on the Hart Valley character area will not be significant.

c. Of the 24 receptors assessed in Table E3, only one is assessed as experiencing a significant negative effect (Pale Lane – view to the north being assessed as major/moderate for residents).

7.27. It is clear from all the assessments which have been undertaken, whether by the Council's landscape advisers, or by those advising the Appellant (including the assessments at Mr Smith's appendices D and E), that as a result of its visually enclosed nature, the appeal site can accommodate development of the scale proposed with limited localised significant landscape effects, and without giving rise to any significant visual effects on the wider area.

7.28. Although those significant effects, together with the other effects as assessed, must be taken into account in the planning balance, the fact that there are so few may be said to be a reflection of the site's relatively high capacity to accommodate residential development.

#### *Comments on the Council's Case*

7.29. The Council's case on this issue is based upon the application of policy CON22, and to one element of it. In order to engage CON22 it is necessary to establish that development would either:

- a. Adversely affect the character or setting of a settlement; or
- b. Lead to the loss of important areas of open land around settlements

7.30. If either or both of those pre-conditions are met, the policy indicates that development will not be permitted if it falls within one of any four specified circumstances.

7.31. Mr Ratcliffe made plain that the Council do not rely on (b) (loss of important areas of open land). He also said that the Council do not rely on points (i) to (iii) inclusive.

7.32. The matter at issue is whether the proposal would "Otherwise have a serious adverse effect on the character or setting of the settlement". It is important to note that 'otherwise' means otherwise than specified at (i) to (iii).

7.33. That point is narrowed further. As put to Mr Smith in cross-examination, the Council's case is based upon a contention that the proposal would have a serious adverse effect on the setting of the settlement (not the character of the settlement).

7.34. It is not surprising that the Council's case is limited to those matters. The landscape capacity study identifies the appeal site as falling within land which has a medium/high capacity defined as follows:

*Medium / high capacity – the area is able to accommodate larger amounts of development, providing it has regard to the setting and form of existing settlement and the character and the sensitivity of the adjacent character areas. Certain landscape and visual features in the area may need protection.*

7.35. In this case it is the proviso relating to the setting of the settlement which forms the basis of the Council's case.

*Assessment of the points at issue*

7.36. The question at issue is whether the proposed development would cause a serious adverse effect on the setting of the settlement otherwise than by obscuring typical views of the settlement from public vantage points, by obstructing significant public views out of the settlement, or by resulting in the loss of "green fingers" important to the structure and amenity of the settlement.

7.37. The most that can be said is that views of the development will be obtained from Copse Close (the road on the opposite (eastern) side of Fleet Road from Pale Lane) and glimpsed views will be obtained from Fleet Road. It is necessary to consider whether the ability to obtain those views will cause a serious adverse effect on the setting of the settlement.

7.38. Mr Ratcliffe's assessment is not based upon an LVIA, or any assessment based on the GLVIA3 guidance. The assessment, as presented in his evidence in chief, consisted of general observations with reference to photographs and other material before the inquiry.

7.39. Mr Smith, unlike Mr Ratcliffe, has approached the issue in a systematic way. Relying on studies relating to the landscape setting of settlements he derives 5 principles<sup>99</sup>. He then carries out an assessment against those principles:

a. There are no clear cultural or historic links between the appeal site and the settlement<sup>100</sup>.

b. There are no landscape links between the site and the settlement, none of the site penetrates the settlement edge or interlocks with it<sup>101</sup>.

c. There are no clear views towards the settlement edge from the appeal site and clear views from the settlement edge<sup>102</sup>. There are no landscape links between the site and the settlement<sup>103</sup>.

d. There is no easy crossing point of Fleet Road, and although Pale Lane itself offers recreational opportunities, there are no footpaths or bridleways on the appeal site which would allow access to the countryside<sup>104</sup>.

e. The proposal causes no significant effect on the sequential experience of arriving in Fleet on the main routes<sup>105</sup>. There will be some effect on the experience of those using Pale Lane but this will not cause a serious adverse effect on the setting of the settlement (as distinct from particular views along the lane).

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<sup>99</sup> Smith PoE 133

<sup>100</sup> Smith PoE 135

<sup>101</sup> Smith PoE 139

<sup>102</sup> Smith PoE 138

<sup>103</sup> Smith PoE 139

<sup>104</sup> Smith PoE 140

<sup>105</sup> Smith PoE 159

### Conclusion on effects on countryside

7.40. On the basis of Mr Smith's thorough and well-reasoned assessment it is clear that there will be no serious adverse effect on the setting of the settlement, or on the wider area. On a proper analysis it is clear CON22 is complied with.

### Effects on Heritage

#### *Introduction*

7.41. There is a broad level of agreement between the heritage experts.

- a. They both agree that the proposal will cause less than substantial harm to the significance of Pale Lane Farmhouse.
- b. They agree that any harm arises as a result of impact on illustrative historic value.
- c. They both agree that the level of harm is (in broad terms) in the middle of the range of less than substantial harm. Dr Cooper describes the harm as being at the lower end, just below middle. Dr Barker-Mills says that it can be described as middle, but that such description depends on the range of development considered.

7.42. Given that level of agreement the main issue to be resolved is whether the public benefits of the proposal outweigh the less than substantial harm to the significance of the listed building.

### Impact on Pale Lane Farmhouse

#### *Significance*

7.43. There is little dispute as to the significance of the farmhouse.

7.44. Significance is defined in the NPPF as:

*Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. ...*

7.45. Further guidance is given on those matters in Conservation Principles, where reference is made to evidential, historic, aesthetic and communal value<sup>106</sup>.

#### *Impact on Significance*

7.46. The farmhouse itself will be unaffected. Any impact will arise as a result of development within its setting.

7.47. Dr Barker Mills agrees that there will be no impact on evidential and communal value and little or no impact on aesthetic/architectural value. Dr Barker Mills further agrees that as the farmhouse has no material associative historical value there will be no adverse impact on that aspect of significance.

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<sup>106</sup> CD5 pages 28-31

- 7.48. Dr Barker Mills' analysis is that there will be an adverse impact on one aspect of value, namely illustrative historical value. The listed building provides an illustration of economic history, in particular agriculture in the 18th century.
- 7.49. In determining impact on significance it is necessary to form a view as to the extent to which the proposed development will harm that aspect of the listed building's value. The main attribute which distinguishes a farmhouse from other rural residential buildings is its relationship with the farm. As Dr Cooper pointed out when giving examples of other farmhouses<sup>107</sup> one does not need to see a farmhouse in fields to understand that it was built and used as a farmhouse.
- 7.50. In this case the functional relationship between the farmhouse and the farm has already been lost- it is no longer a farmhouse. It is not occupied by a farmer who farms the surrounding land. The farm buildings are no longer used for agricultural purposes. The clearest indication that a dwelling in a rural area was built and used as a farmhouse is that farm buildings can be seen adjacent or close to it.
- 7.51. In this case:
- a. Pale Lane Farmhouse will be seen in conjunction with the former farm buildings – the clearest possible indication that it was a farmhouse.
  - b. The existing field boundaries are retained and strengthened.
  - c. An open area is to be retained to the south east of the farmhouse.
- 7.52. The photomontages contained in the Heritage Assessment<sup>108</sup> demonstrate how limited the impact of the proposal will be on the ability to appreciate the farmhouse's illustrative value (see in particular views D, C and E at year 15).
- 7.53. Given that the impact on significance is restricted to impact on illustrative historical value, Dr Cooper's assessment that the less than substantial harm is in the middle to lower end of the range may be thought to be conservative.

#### *The Heritage Balancing Exercise*

- 7.54. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("LBA 1990") applies. It states:
- In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, 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.*
- 7.55. As the statutory duty is engaged "considerable importance and weight" should be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise<sup>109</sup>.

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<sup>107</sup> Heaton Moor, and farm houses in villages in Cumbria- Cooper XX 10<sup>th</sup> Jan 2019

<sup>108</sup> CD37 Appendix F

<sup>109</sup> *Barnwell Manor Wind Energy v. Secretary of State [2014] EWCA Civ 137* at paragraph 29

7.56. The NPPF policy states that great weight should be given to the designated heritage asset's conservation (paragraph 192), and that any harm to significance of a designated heritage asset should require clear and convincing justification (paragraph 193).

7.57. When considering clear and convincing justification it can be relevant to consider the evolution of the proposals. In this case it is abundantly clear that the design was informed by heritage advice from the earliest stages and throughout the design process:

- a. Dr Cooper first attended a project team meeting in February 2016.
- b. Dr Cooper produced a thorough report in March 2016.
- c. The first versions of the parameter and other plans were produced in May 2016<sup>110</sup>.
- d. The Design and Access Statement was published in its final form in November 2016.
- e. As Dr Cooper identified<sup>111</sup> the DAS contains multiple references which demonstrates how heritage considerations were taken into account<sup>112</sup>.

7.58. The results of that process are clear. The area to the south and east of the farmhouse is to be kept clear of built development and the hedge to the north and west of the farmhouse is to be strengthened.

7.59. To find that heritage considerations had not informed and influenced the design would be to reject Dr Cooper's evidence on that issue. To do so you would have to have very clear reasons and to state them; there are no such reasons. Dr Cooper gave clear oral evidence on that issue supported by the documents, including his March 2016 report.

7.60. Paragraph 20 of the PPG on Conserving and Enhancing the Historic Environment<sup>113</sup> states:

*"Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework"*

*Benefits*

7.61. The benefits which would flow from the appeal proposal are identified by Mr Taylor.<sup>114</sup> The provision of 700 homes (including 280 affordable homes) with extensive areas of open space, local centre and a primary school will deliver significant economic, environmental and social benefits.

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<sup>110</sup> The March date which appears on the electronic copy of the DAS is the date of the logo not the DAS – information provided to the inquiry on 11<sup>th</sup> Jan 2019 (NCQC on instructions)

<sup>111</sup> Cooper XX on 11<sup>th</sup> Jan 2019

<sup>112</sup> Pages 24,25, 38, 39, 42, 49, 66, 68, 69, 72, 84, and 92 of DAS

<sup>113</sup> Paragraph: 020 Reference ID: 18a-020-20140306

<sup>114</sup> Taylor PoE 5.103 to 5.109, and 5.46

- 7.62. In his proof of evidence, Mr Lee, expresses the view that the provision of housing is not considered to be a significant consideration<sup>115</sup>. He also states that the transport improvements cannot be considered to represent wider public benefits in sustainability terms.<sup>116</sup>
- 7.63. The fact that the Council is able to demonstrate a five-year supply of deliverable housing sites does not support the view expressed by Mr Lee, that as a result, the provision of market and affordable housing is not a significant consideration<sup>117</sup>. As was made plain by the Secretary of State in the Ashby-de-la-Zouch decision letter<sup>118</sup> significant weight should be attached to the provision of market and affordable housing in those areas where the Council are able to demonstrate a five-year supply of deliverable housing sites. Mr Lee's approach to attributing weight to the provision of market housing should be rejected robustly.
- 7.64. The need for affordable housing in Hart has been assessed at 306 affordable homes per year until 2032.<sup>119</sup> The predicted supply is set out in the Affordable Housing Trajectory 6th December 2018<sup>120</sup> is 1633 units over the 16-year period 2016/2017 to 2031/2032 (102 p.a.).
- a. That analysis shows that it is anticipated that 26% of housing will be affordable.
  - b. That 26% figure should be compared with the emerging local plan policy H2 aim that on developments of 11 or more dwellings (gross), or of greater than 1,000 square metres gross residential floorspace irrespective of the number of dwellings, the Council will require no less than 40% of the new homes to be affordable housing.
- 7.65. The extant local plan contains a similar 40% target<sup>121</sup>:
- a. Past performance fell well below that aim or target.
  - b. The Council's 2017 Annual Monitoring Report shows that over the last five years just under 20% of permitted dwellings were affordable<sup>122</sup>.
- 7.66. It must be stressed that the policy objective is that 40% of all homes (on sites where permission is granted for 11 or more dwellings) should be affordable. It is not a policy that provision should be made for 40% of the assessed need<sup>123</sup>.
- 7.67. Given the past record, and predicted future delivery trajectory, both of which indicate delivery of affordable homes which falls way below the assessed need,

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<sup>115</sup> Lee PoE 8.48

<sup>116</sup> Lee PoE 8.49

<sup>117</sup> Lee PoE 8.48

<sup>118</sup> Taylor Rebuttal Ap.2 DL14

<sup>119</sup> Affordable Housing Background Paper paragraph 2.12 – produced during XX of Mr Lee

<sup>120</sup> Put in by Lee in XiC

<sup>121</sup> CD9 ALTGEN13 page 26

<sup>122</sup> Taylor PoE 5.104

<sup>123</sup> This submission is only necessary given the questions put to Taylor in XX, when he was asked to divide the predicted number of affordable housing units by the assessed annual need.



very considerable weight should be afforded to the provision of affordable homes. As Mr Lee said in cross examination, it is probably appropriate to take a different view on weight to the one expressed in his proof of evidence.

7.68. Mr Lee seeks to argue that as the contributions to be made to funding transport improvements are to be secured by planning obligations, and therefore can only be a reason for granting planning permission if they satisfy the requirements of regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”), they are not benefits to be taken into account when undertaking the balancing exercise.

7.69. Regulation 122(2) of the CIL Regulations provides:

*(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

*(a) necessary to make the development acceptable in planning terms;*

*(b) directly related to the development; and*

*(c) fairly and reasonably related in scale and kind to the development.*

7.70. Whether a planning obligation satisfies those tests involves an exercise of planning judgement.<sup>124</sup>

7.71. HCC have agreed that the transport mitigation package is compliant with CIL regulation 122.<sup>125</sup> There is no reason to disagree with the judgement of HCC on that issue. The question to be determined is whether the transport mitigation package meets the regulation 122(2) tests and is also of benefit to the wider public.

7.72. Taking as an example the obligation to enter into a highways agreement in relation to works at the Elvetham Heath double roundabout<sup>126</sup>.

a. The works are necessary to achieve the capacity enhancements to allow the traffic generated by the development to be accommodated and to allow pedestrians safe access to and egress from the development.

b. The works are also directly related to the development in that they serve to accommodate traffic generated by the proposed development.

c. The works are fairly and reasonably related in scale and kind to the development in that they lead to an increase in capacity sufficient to accommodate the traffic generated by the appeal proposal.

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<sup>124</sup> *Amstel v. Secretary of State [2018] EWHC 633 (Admin)* at paragraph 64. It should be noted that in the *Amstel* judgment reference is made at paragraph 62 to *R (Welcome Break) v. Stroud DC [2012] EWHC 140(Admin)*. The passage in the *Welcome Break* judgment was subject to criticism in *R (Working Title Films) v. Westminster CC [2016] EWHC 1855 (Admin)* at paragraph 20.

<sup>125</sup> Transport SoCG 7.1.3

<sup>126</sup> Agreement with HCC clause 15.10 and drawing ITB11215-GA-056 Rev C (at Appendix 2 to the section 106 agreement)

d. In addition, the works will deliver benefits to other highway users; for example, the improvement to highway safety brought about by providing an additional crossing point on Fleet Road, and a footway on the southern side of Fleet Road, will be a benefit to existing residents of Elvetham Heath in addition to accommodating pedestrian movements from the appeal site.

7.73. Similarly, the Community Bus<sup>127</sup> meets the regulation 122(2) tests and will benefit existing residents living in Elvetham Heath.

7.74. Those benefits are recognised by the County Council in the Transport Statement of Common Ground<sup>128</sup>. To fail to take those benefits into account would be a failure to have regard to an important material consideration.

7.75. It is clear that, whilst giving considerable importance and weight to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, the limited harm to the significance of the listed building is far outweighed by the public benefits.

#### Impact on Non-designated heritage assets

7.76. Dr Barker Mills refers to the trackway<sup>129</sup>, the pill box<sup>130</sup> and the former farm buildings<sup>131</sup> as non-designated heritage assets. The policy approach to be adopted is that set out in paragraph 197 of the NPPF; a balanced judgement is to be undertaken. As agreed by Dr Barker Mills a condition can be imposed to secure preservation or recording of the trackway.

7.77. The pill box will be restored and become a cultural and educational resource<sup>132</sup>. As noted in the officers' report<sup>133</sup> it will be conserved. The works to consolidate and repair the pill box and to use it as a cultural and educational resource will allow it to be appreciated and far outweigh any adverse impact arising as a result of development within its original 'field of fire'.

7.78. The farm buildings will still be able to be appreciated as such and there will be little or no impact on their significance as heritage assets.

#### Conclusion on Heritage Impacts

7.79. There is no heritage reason to justify refusal of the appeal application.

#### BMV Agricultural Land

7.80. A detailed analysis of the appeal site's agricultural land quality was submitted with the application<sup>134</sup>. The fact that 32.1ha of the appeal site is classified as Grade 2 or Grade 3a is a relevant factor to take into account. When taking that

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<sup>127</sup> See CD31

<sup>128</sup> Transport SoCG 6.7.5 and 7.1.4

<sup>129</sup> Barker Mills PoE 5.7

<sup>130</sup> Barker Mills PoE 4.23

<sup>131</sup> Barker Mills PoE 4.3

<sup>132</sup> ES 7.8.2 Cooper Ap.9

<sup>133</sup> CD26 page 25

<sup>134</sup> CD41 Table 2

factor into account the decision maker is to be guided by the policy set out in paragraph 170 b) in the NPPF.

- 7.81. Paragraph 170 b) requires that the economic and other benefits of BMV land be recognised<sup>135</sup>. Footnote 53 to the NPPF indicates that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. That footnote does not introduce a requirement that agricultural land can only be developed where it is demonstrated to be necessary, it is an indication of a general preference to be followed. That preference is to be taken into account amongst other considerations, in particular the aim of achieving sustainable development. The policy approach to be followed is that set out in paragraph 170 b).
- 7.82. As agreed by Mr Lee, the 'other benefits' referred to at NPPF paragraph 170 b) are benefits relating to the land's attributes as BMV land<sup>136</sup>. No specific benefit, other than the land's classification, are identified by the Council.
- 7.83. Mr Taylor has obtained evidence of the history of the use of the agricultural land from the Elvetham Estate's land manager. Only one part of the land is considered suitable for arable cropping<sup>137</sup>. Various attempts have been made to use the land shown edged blue and red<sup>138</sup> for arable cropping but they have not been successful; that land is considered to be unsuitable for such use and is used for seasonal grazing<sup>139</sup>. The fact that much of the land is unsuitable for the growing of cereal crops demonstrates that it is of limited economic value.
- 7.84. Given that the land is of limited economic value and that no other benefits arising from its classification as BMV land have been identified, little weight can be given to this factor. That approach is reflected in the fact that the SA/SEA of the local plan includes land which is BMV among the reasonable alternatives. Indeed, in the February 2018 SEA, taking account of impact on land and resources (including BMV agricultural land) the Pale Lane site is ranked second to the preferred option<sup>140</sup>.
- 7.85. The fact that part of the appeal site is BMV should be recognised, but application of the relevant policy does not indicate that planning permission for residential led development should be refused.

### Prematurity

- 7.86. These comments on the prematurity issue incorporate the appellant's comments on the eLP EI's initial findings in his letter of 26 February and a rebuttal of the Council's comments on them.<sup>141</sup>

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<sup>135</sup> Footnote 53 to the NPPF provides further guidance

<sup>136</sup> Lee XX

<sup>137</sup> The area shown edged in green on the aerial photograph at page 5 of Mr Taylor's Rebuttal proof

<sup>138</sup> Marked on the aerial photograph at page 5 of Mr Taylor's Rebuttal proof

<sup>139</sup> Taylor Rebuttal 2.5 and 2.6

<sup>140</sup> CD11 page 44

<sup>141</sup> ID8

7.87. The approach to be taken when considering a prematurity argument is set out in paragraphs 49 and 50 of the NPPF and in the accompanying guidance given in the PPG<sup>142</sup>.

7.88. Paragraph 49 of the NPPF states:

*However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:*

*a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*

*b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

7.89. Prematurity arguments are unlikely to justify refusal unless both conditions are met. Even if both conditions are met it does not follow that planning permission should be refused on prematurity grounds. Paragraph 14 of the PPG states:

*However, in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

*(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and*

*(b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

7.90. The issues for determination are:

- a. Is the development proposed so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.
- b. Is the emerging plan at an advanced stage.
- c. If (a) and (b) are satisfied, is it clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits,

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<sup>142</sup> See in particular paragraph 14 of the PPG on Determining a Planning Application. Paragraph: 014 Reference ID: 21b-014-20140306

taking the policies in the Framework and any other material considerations into account.

- 7.91. In relation to (a) above, the Council's point is based upon an assertion of general inconsistency with the emerging plan and a contention that the preferred strategy would be disrupted. 91% of the housing supply has already been completed or has planning permission or a resolution to grant permission<sup>143</sup>. As a result, granting a further planning permission would not disrupt the preferred strategy.
- 7.92. The provision of the 700 homes on this site would also deliver the shortfall of 230 houses identified by the EI over the Plan period. Such an urban extension would also be in accord with other such extensions (such as the Berkeley Homes development west of Hitches Lane or the Netherhouse Copse development) that have been approved in the last few years. It would not affect the proposed spatial strategy.
- 7.93. There would be no harm in delivering additional market, and thus also affordable housing. The EI does not say that this would lead to an imbalance between homes and jobs and unsustainable commuting patterns, merely that it *could*. Such housing would contribute to the policy imperative of significantly boosting the supply of homes (NPPF paragraph 59). Policy SS1 sets out a minimum not a maximum number of homes to be delivered. There are numerous instances (set out in the appellant's comments on this issue) where appeal Inspectors have not found housing requirement numbers in Plans to be a cap or ceiling.
- 7.94. For those reasons condition (a) identified at paragraph 7.89 above<sup>144</sup> is not satisfied and the prematurity argument should be rejected without the need to consider issues (b) and (c).
- 7.95. Insofar as condition (b) (is the plan at an advanced stage?) falls for consideration it is conceded that the eLP is now more likely to be considered at an advanced stage. However, there is still a need for the Council to produce sound and legally compliant SA/SEA and Main Modifications. Contrary to what the EI appears to suggest, the Council cannot rely at the modification and adoption stage on the pre-submission SA/SEA.
- 7.96. If, contrary to those submissions, it is held that the proposals undermine the plan process (for example by allowing development outside existing settlement boundaries) it will be necessary to consider the paragraph 14 PPG balance. That is not merely part of the overall balancing exercise, as the paragraph 14 policy indicates that a 'tilted' balance should be applied when considering the prematurity issue.

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<sup>143</sup> Taylor PoE 5.77

<sup>144</sup> The development proposed is so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan

7.97. Despite making reference to that balance in the reason for refusal, the Council's planning witness did not undertake that balance in his evidence to the inquiry<sup>145</sup>. Mr Taylor did consider the application of that policy<sup>146</sup>.

7.98. In this case, for the reasons set out above, the adverse impacts of granting permission are limited, whereas the benefits are significant. It is not a case where it could be said that adverse impacts would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Indeed, upon examination the adverse impacts relied upon by the Council have little substance (the preferred strategy will not be disrupted or otherwise adversely affected).

#### Conclusion on Prematurity

7.99. The Council's remaining two points from their statement of case are not made out as:

- a. The proposal will not undermine the plan making process;
- b. Despite the emerging plan having possibly reached an advanced stage, the Council have not yet produced a sound and legally compliant SA/SEA or Main Modifications; and
- c. If there would be some harm to the plan making process, and if the plan has reached an advanced stage, the adverse impacts would not significantly and demonstrably outweigh the benefits.

#### Issues Raised by Third Parties

7.100. The Stop Elvetham Chase Development group raises the following main additional points:

- a. Lack of parking capacity at Fleet Railway Station.
- b. Failure to undertake a proper assessment of off-site highway impacts, in particular at the Elvetham Heath double roundabout.
- c. Impact on the safety of children travelling to school.
- d. Impact on quality of life.
- e. The disadvantages of expanding Calthorpe Park School.
- f. The lack of capacity in existing health centres, in particular the Fleet Medical Centre.
- g. Prejudice to delivery of a new settlement

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<sup>145</sup> When asked about this point in XX, Mr Lee sought to rely on the officers' report

<sup>146</sup> Taylor PoE 5.68 and 5.69

## *Transport*

- 7.101. Mr Gower-Jones raises a concern that there will be inadequate capacity to accommodate demand for parking at Fleet Station. Such a concern could only give rise to a reason to refuse the application for planning permission if the lack of parking spaces would result in an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe<sup>147</sup>. Even if it was concluded that there was a lack of parking spaces (which for the reasons set out below is not the case) such a finding would not justify refusal of planning permission as there is no evidence of any adverse impact on highway safety or of impact on the road network arising as a result of such a deficiency.
- 7.102. Mr Gower-Jones' analysis is based upon the predicted demand figures set out in the Transport Assessment Addendum ("TAA") and upon a contention that fewer parking spaces at The Station Public House than assumed are available to commuters.
- a. The predicted demand figures are based upon survey information relating to existing users of Fleet Railway Station<sup>148</sup>. To arrive at the lower figure (of demand for 30 spaces) it has been assumed that journeys to the station by car will match existing proportions<sup>149</sup>. To arrive at the higher figure (of demand for 56 spaces) it has been assumed that the proportion of existing travellers who arrive on foot, will arrive by car<sup>150</sup>. The higher assumption is very conservative.
  - b. Those assumptions take no account of the proposal to provide a community bus. The bus will serve the appeal site and Elvetham Heath<sup>151</sup>. It will have a capacity of 16 people. Six services will operate in the morning peak hour. The total capacity will be 96 people<sup>152</sup>. If only just over half of the bus seats were taken by those who would otherwise arrive by car (whether travelling from the appeal site or from Elvetham Heath) there would be no net increase in parking demand at the station.
  - c. The patronage figures for commuter trips on the Hartley Wintney community bus demonstrate how effective such a service can be<sup>153</sup>. That community bus (which is connected with a development of some 158 units at Dilly Lane) provides three trips in each peak period. The Hartley Wintney commuter service is very popular carrying approximately 700 trips per month (approx. 32 per working day)<sup>154</sup>. The proposed Elvetham Chase/Elvetham Heath service will have 6 services in the morning peak linking with train departure times from Fleet Station<sup>155</sup>, and is likely to carry a greater number of passengers than the successful Hartley Wintney service.

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<sup>147</sup> NPPF paragraph 109

<sup>148</sup> CD30 3.4.5 to 3.4.7

<sup>149</sup> TAA CD 30 paragraph 3.4.6

<sup>150</sup> TAA CD 30 paragraph 3.4.7

<sup>151</sup> CD31 Image 3.1

<sup>152</sup> CD31 Table 3.1 – indicative morning peak timetable

<sup>153</sup> CD31 paragraph 3.2

<sup>154</sup> Ibid.

<sup>155</sup> CD31 Table 3.1 on page 5

d. Further, Mr Gower-Jones's assessment is based upon an assumption that the full number of parking spaces at the Station PH are not available to commuters. If those spaces are available (as indicated in the TAA) the capacity issue he identifies would not arise.

7.103. Hampshire County Council (HCC) have not expressed concern about the station parking issue. That is not surprising given the factors set out above.

7.104. Mr Gower-Jones also raised a concern about the approach taken to the assessment of impact on the Elvetham Heath double roundabout in the transport assessments.

a. Mr Gower-Jones raised a concern that the flow figures assumed in the appellant's TA and TAA were different from those assumed in the modelling for the Netherhouse Copse scheme. As recorded in the Transport Statement of Common Ground<sup>156</sup> the appellant's transport consultants prepared a new model of the Elvetham Heath double roundabout. That model was validated against observed queues. The analysis takes account of the traffic generated by the Netherhouse Copse development<sup>157</sup>. HCC are content with the modelling work undertaken and there is no reason to disagree with them.

b. One concern raised by Mr Gower-Jones related to the reference (at 6.3.25 of the TAA<sup>158</sup>) to a reduction in queue length from 228 to 74 vehicles. The 228 figure should have been 130. The reference to 228 in paragraph 6.3.25 is a typographical error, as is quite apparent when one considers table 6.8. That error did not mislead the highway authority; the Transport Statement of Common Ground (at paragraph 6.7.5) records the correct figures.

7.105. Ms Davies expressed concern about the safety of pupils travelling to and from Calthorpe Park School. The concerns relate, in the main, to existing conditions. If the appeal proposals proceed improvements will be made, including the provision of an additional footway on Fleet Road on the approach to and exit from the Elvetham Heath Double roundabout. In addition, the crossing point on the railway bridge will be improved, and a toucan crossing provided on Hitches Lane<sup>159</sup>. Those proposals will bring about improvements, including enhanced provision for pedestrians.

### *Health Facilities*

7.106. Health facilities:

a. It is for the relevant NHS commissioning body to determine the sum required to provide additional facilities and where that money is to be spent.

b. The North East Hampshire and Farnham CCG have undertaken that task. It is the CCG who have determined that £630,000 is required. It will have to

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<sup>156</sup> Paragraph 1.2.1(r) on page 4

<sup>157</sup> Transport SoCG 6.3.3

<sup>158</sup> CD30 page 47

<sup>159</sup> Drawing ITB11215-GA-056 Rev C which can be found at Appendix 2 to the section 106 agreement with HCC



decide where it is to be spent. It has indicated that the preferred solution is to expand the existing premises at Branksomewood Health Centre and at Richmond Surgery<sup>160</sup>.

c. If the CCG's preferred solution is adopted the concerns relating to Fleet Medical Centre will not arise.

### *Education*

7.107. Mr Riley expressed a concern about potential expansion of Calthorpe Park School.

a. The District Council have decided not to rely on reason for refusal 4 in the event that the appellant enters into a planning obligation to secure the primary and secondary school contributions<sup>161</sup>.

b. A planning obligation has been agreed with the County Council. That planning obligation secures payment of the required sums of money and allows the County Council to spend the money on extending Calthorpe School or contributing to the first phase of a new secondary school.

c. The issue for this inquiry is whether adequate provision has been made to fund educational infrastructure requirements arising from the proposed development – it is plain that it has.

d. It is for the County Council to determine where that infrastructure is to be provided. The primary school will be provided on the appeal site (as the land is to be transferred to HCC). The planning obligation will allow HCC to decide where secondary education places are made available; they as education authority are best placed to make that decision taking into account school size and other considerations.

### *Quality of Life*

7.108. Ms Robson expressed concern about quality of life issues. Many of the matters raised may be said to go to 'sustainability' and should be considered in the light of the agreement between the appellant and HCC that the site is an accessible location<sup>162</sup> and offers a number of strategic benefits to local sustainable travel. The site is well located in relation to existing services and facilities and will provide opportunities for new and existing residents to enjoy substantial areas of open space. That will enhance the quality of life of many, in particular those in need of affordable housing.

### *Conclusions regarding third party comments*

7.109. There is no clear evidence to demonstrate that demand for parking at Fleet Railway Station will exceed supply, and if it does, no evidence to demonstrate

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<sup>160</sup> Letter from North East Hampshire and Farnham Clinical Commissioning Group 21 December 2018, second page- Appendix 2 to the HDC CIL Compliance Statement

<sup>161</sup> SoCG 7.31. A contribution will also be made to Special Educational Needs facilities – clause 17.3 of the section

<sup>162</sup> Transport SoCG 5.1.1

that any unacceptable impact on highway safety would occur, or that any residual cumulative impact on the road network will be severe.

7.110. The TA and TAA include a thorough assessment of off-site highway impacts, in particular at the Elvetham Heath double roundabout. HCC are satisfied with the work undertaken. The proposed improvements to the road network are likely to result in safer pedestrian facilities which can be used by children travelling to school.

7.111. There will be opportunities for enhancements to quality of life including access to open space, enhanced public transport (the community bus), enhanced pedestrian facilities, and improved road network. The location of additional health and educational infrastructure is a matter for the relevant public bodies.

### The Balancing Exercise

#### The Development Plan

7.112. Two policies are relied upon by the Council, RUR2 and CON22. As set out above, the proposal does not accord with RUR2 in that development is proposed outside the settlement boundaries drawn up for the 1996 Local Plan. For the reasons already given, the proposal complies with CON22. It is accepted that conflict with RUR2 causes the proposal to fail to comply with the development plan when considered as a whole<sup>163</sup>.

#### Other material considerations

##### *The NPPF*

7.113. Heritage policies in the NPPF fall into the category of policies which indicate that development should be restricted. In this case application of the heritage policies (in particular paragraph 196) does not indicate that development should be restricted, as the public benefits outweigh the less than substantial harm.

7.114. An AA under the Habitats Regulations is necessary if the Secretary of State is considering granting permission. Given the provision of the onsite SANG and the contribution to off-site Strategic Access Management and Monitoring (SAMM) of the Themes Basin Heaths Special Protection Area (SPA), the appellant maintains that such an AA should conclude that the proposal, whether alone or in combination with other plans or projects, would not adversely affect the integrity of the SPA.

##### *BMV Agricultural Land*

7.115. The economic and other benefits of BMV agricultural land are to be recognised. In this case those benefits are limited, and such recognition does not indicate that the proposal should be refused.

##### *The Emerging Local Plan and Prematurity*

7.116. For the reasons set out above, application of the policies relating to prematurity do not indicate that permission should be refused.

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<sup>163</sup> See Netherhouse Copse DL paragraph 89, CD23, and Taylor PoE 5.99

### *Other Factors*

7.117. In cross examination of Mr Taylor it was suggested that his balancing exercise was deficient as he had not referred to the 'absence of need'. It is curious that Mr Taylor was criticised for failing to refer to some factor which is said to be absent. If it was necessary to identify every factor which was absent the list would be very long. Mr Taylor does not rely upon a need to provide market housing to satisfy a local plan requirement. He does rely on the benefits of providing market housing and the need to provide affordable housing.

### *The Benefits*

7.118. The benefits are very substantial. The market housing will make a significant contribution to boosting significantly the supply of housing. The boost to the supply of market housing is still to be regarded as significant in an area where the Council can demonstrate a five-year supply of deliverable housing sites. Current policies have failed to ensure an adequate supply of affordable housing to meet the accommodation requirements of those in need. Future policies also fail to meet that need. As a result, the provision of 280 affordable housing units is a very important benefit. The open space will be available to a wide range of people from the proposed development and beyond. Land is provided for a primary school – that will bring wider benefits.

### Conclusions on the Planning Balance

7.119. It is clear that policy RUR2, based as it is on the protection of countryside for its own sake, is out of date. As a result, that policy can only (at highest) be given moderate weight and the development plan ceases to be the decisive factor in determining the appeal application.

7.120. It is highly important to note that the significant benefits that would flow from granting planning permission can be obtained without breaching the relevant countryside protection/landscape policy. It is also clear that those benefits outweigh the less than substantial harm to the significance of Pale Lane Farmhouse. The issue then becomes whether the other factors relied upon by the Council (BMV agricultural land and prematurity) are sufficient to deprive the public at large of the benefits of the scheme, in particular providing market and affordable housing.

7.121. It cannot be said that those adverse impacts should be afforded such weight as to significantly and demonstrably outweigh the benefits.

## **8. Written Representations**

8.1. The following organisations have commented on the application and raise no objections subject to appropriate conditions and planning obligations: HCC in respect of highways, education, flood risk and archaeology; Natural England; Network Rail; and Thames Water.

8.2. Elvetham Heath Parish Council objects on the grounds that: local residents overwhelmingly rejected this urban extension to Fleet in consultation responses to the eLP; concern that local roads such as Elvetham Heath Way will become a 'rat-run' to the M3 and will not be able to accommodate additional traffic from the proposed development in terms of capacity; unsafe route to Calthorpe Park

secondary school for children from the development that would involve crossing the busy A323 at the dangerous railway bridge crossing; increased demand for commuter car parking spaces at Fleet and Winchfield railway stations that cannot be accommodated because existing spaces are already full in the working week and there are no plans to increase them; the existing two secondary schools in Fleet (Calthorpe Park and Court Moor) are already at capacity as are local health facilities and parking facilities at Fleet Medical Centre are woefully inadequate already.

- 8.3. Fleet Town Council objects on the same grounds as those above and: housing on this site would be unsustainable because it is not a walkable distance from facilities in Fleet – it would merely become a commuter enclave; there is insufficient local employment for future residents of the development; the M3 would cause noise and air pollution to the houses proposed nearest to it; residents attempting to access Winchfield railway station will place peak traffic on minor rural roads; and proposed contributions to local infrastructure are insufficient.
- 8.4. Hartley Wintney Parish Council objects essentially for the same reasons as the above neighbouring local Councils. The development of this site is not part of the spatial strategy in either the DP or the eLP and is the subject of huge local objection. It would allow the creeping coalescence of and loss of significant green gaps between Fleet, Hartley Wintney (HW), Hook and Odiham. The LPA already has considerably more than a 5YHLS and there is no need for this site to be developed. It also points out that the Hartley Wintney Neighbourhood Plan (HWNP) has passed Regulation 14 of the Neighbourhood Planning Regulations<sup>164</sup> and states that any development within the Parish should be limited to no more than 50 dwellings on any one site whereas the appeal scheme proposes 400 dwellings within the parish boundary.
- 8.5. Winchfield Parish Council (which abuts the site's western boundary) agrees with the LPA's case and objects on the above and following grounds: the proposal is contrary to eLP Policy NBE1 as well as DP Policies RUR2 and CON22; it does not meet the economic dimension of sustainable development because it is not in the right place at the right time nor the environmental dimension because it would not enhance or protect the natural environment and would encourage use of the car; the LPA's housing trajectory (MM75 of the eLP) shows that cumulative housing completions/projections will comfortably exceed the housing requirement for every year up to and including 2031/32; agricultural land should not be developed unless necessary and the proposal is unnecessary given a HLS of 9.74 years; the appellant's Transport Addendum does not adequately assess the impact on Pale Lane.
- 8.6. The Campaign to Protect Rural England North East Hampshire District Group objects on the grounds that the proposal is contrary to the DP, the eLP and the HWNP. It would undermine public confidence in the plan-led system. It would comprise an entirely unnecessary and harmful incursion into and suburbanisation of the open countryside poorly related to the commercial and employment

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<sup>164</sup> Note that the Reg 16 consultation of this Neighbourhood Plan is open until 11 March 2019 and so no date has been set for a referendum yet

facilities of Fleet to which it would be poorly connected by footways and cycleways. It would breach a natural physical boundary to the settlement (the A323).

- 8.7. 'Stop Elvetham Chase Development Group' objects to the proposal. It was formed in November 2016 and represents the views of 985 HDC residents (followers on its Facebook page). Its objections are essentially set out in the Appellant's Case above and the Group and other residents were represented by four speakers at the Inquiry (see Appearances below) who addressed objections concerning transport/highways, the capacity of local schools including the objection to the further expansion of Calthorpe Park school, quality of life in the area, the safety of children travelling to school, health infrastructure and the perceived anti-democratic nature of the proposal.<sup>165</sup>
- 8.8. The Hartley Wintney Preservation Society objects to the proposed development. Its aim is to protect and enhance the character of HW and oppose any unsuitable or unnecessary development. It comprises 210 subscription paying members. It objects on the following grounds: there is adequate brownfield land to satisfy HDC's need in the eLP period so greenfield sites like this are not required; allowing it to be developed would involve creeping urbanisation resulting in merging the distinctive settlements of HW and Fleet; the development would aggravate the proper working of the A30/A323 roundabout in HW; and the strain on local infrastructure already identified above.
- 8.9. Winchfield Court Residents Limited objects to the proposal. It represents 32 shareholders, approximately 75 residents at Winchfield Court, the converted Victorian workhouse at Winchfield Hurst about ¾km south of the site accessed off Pale Lane. It objects for reasons already set out above and because it considers that the appellants have failed to demonstrate that legally enforceable arrangements are in place with third party landowners to undertake necessary improvements and long-term maintenance of ditches and watercourses including those running under the M3 and the railway embankment to prevent ground water flooding.
- 8.10. At application stage there were 6 letters of support and 663 objections on the following grounds: increase in traffic; no planned increase in public services (apart from the new primary school); proposal not needed due to other recent developments; environmental issues; flooding concerns; greenfield sites should not be developed when brownfield land is available; lack of public consultation; noise; air pollution; housing including 'affordable housing' won't be affordable; railway station car parks already at capacity; highway safety issues for cyclists and walkers on Pale Lane; and prematurity.
- 8.11. At appeal stage there were 40 objections from individual local residents and businesses on the same grounds as set out in the above paragraphs.

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<sup>165</sup> These objections are summarised in ID9

## 9. Conditions

9.1. The Council put forward a list of 24 conditions, which was agreed with the appellant at the Inquiry. The appellant confirmed in writing that it agrees to the pre-commencement conditions.<sup>166</sup> Should the Secretary of State decide to allow the appeal I consider all these conditions to be necessary and otherwise meet the tests in paragraph 54 of the NPPF and the PPG. The reasons for each condition are as set out in the Schedule below.

## 10. Obligations

10.1. Two separate sets of Section 106 planning obligations dated 13 February 2019 have been submitted by the appellant (S106)<sup>167</sup>. The first is a signed and sealed Agreement between the appellant, the landowners and HCC. The second set comprises two alternative signed Unilateral Undertakings (UUs) by the appellant and landowners in favour of HDC.

10.2. Regulation 122 of the *Community Infrastructure Regulations* (CIL Regs) states that planning obligations must address the following three tests:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development

Regulation 123 states (at present) that not more than five individual contributions which provide for the funding or provision of a project can be collected.

10.3. Two CIL compliance statements have been submitted, the first in relation to the Agreement with HCC and the second in relation to the UUs in favour of HDC.<sup>168</sup> These statements demonstrate compliance with the CIL Regs, as detailed below.

### *The Agreement*

10.4. The Agreement covers all the matters pertaining to HCC's function as education and highway authority for the area. Regarding education, the provisions/financial contributions in the Agreement are for the Day Nursery, the Primary school, Secondary school and for Special Educational Needs and Disabilities (SEND). As education authority HCC has a duty to ensure there are sufficient places for early years, primary and secondary school pupils in its area. The parties agree that 700 dwellings would yield 56 Early Year places, 235 Primary school pupils, 164 Secondary school pupils and 8 pupils with SEND.

10.5. The Early Years provision will be secured by safeguarding a designated area in the proposed Local Centre for use as an early years' nursery or privately-run children's nursery for up to 60 school places. The Primary school will be provided by reserving the part of the site indicated in the illustrative masterplan as the site

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<sup>166</sup> ID12

<sup>167</sup> ID17

<sup>168</sup> Ibid.

(not less than 2ha) for a new two-form entry school and transferring it to HCC with an index-linked sum of £4,884,143 for its construction. Secondary school provision will be secured by an index-linked contribution of £4,596,480, which would either be spent on the expansion of and/or additional places at Calthorpe Park Secondary School or towards the first phase of a new secondary school within 3 miles of the site. SEND needs from the development would be addressed by an index-linked contribution of £428,011 to be used by HCC towards the expansion of existing or provision of new SEND facilities or services within 10 miles of the site.

10.6. Regarding the necessity test in the CIL Regs, the above education facilities are currently at capacity and without expansion will not be able to accommodate the children from the development. The provision of the above facilities relates specifically to the likely increase in the number of children proposed by the development and the associated costs and so the other two tests in Reg 122 are also met.

10.7. In respect of highways, the main parties agree (in the Transport Statement of Common Ground - TSoCG) that a comprehensive package of off-site improvements are necessary to mitigate the effects of these 700 new homes on the existing road and transport network. These are set out below.

Delivery of safe and suitable access to the site: -

- Delivery of three-arm roundabout to Fleet Road including pedestrian and cycling facilities
- Delivery of an access improvement to Pale Lane to facilitate further vehicle access, improved walking and cycling connections, a bus connection to the site and improved access to Edenbrook Country Park and Calthorpe Park School

Mitigating off-site traffic impacts: -

- Delivery of improvements at the Oatsheaf signalised crossroads junction in Fleet town centre
- Delivery of improvements at the Elvetham Heath double roundabout next to the railway bridge
- A contribution of £1,225,000 towards the delivery of:
  - (a) Fleet Rail Station Roundabout improvements (costed at £100,000)
  - (b) An enlarged roundabout at the A30/A323 junction in Hartley Wintney (costed at £650,000)
  - (c) Works to the Pale Lane rail arch and the rural network affected by the development traffic (costed at £250,000)
  - (d) Delivery of a Framework Travel Plan (FTP) to reduce car-based travel demand from the site

- (e) Delivery of a Construction Traffic Management Plan to control, manage, and mitigate the construction stage impacts of the development

Maximising Sustainable Transport Opportunities: -

- Implementation of a full Travel Plan comprising a package of measures designed to encourage sustainable access to the site in line with the FTP
- Provision of £50 bus vouchers and £50 cycle purchase vouchers to each new home to reduce car-based travel demand and promote sustainable travel
- Creation of a bus link through the site to facilitate the potential diversion of the No 7 bus to improve public transport connectivity, along with delivery bus stops on Fleet Road and within the site
- Delivery of a 10-year Community Bus scheme to provide a shuttle bus from the site to Fleet station via Elvetham Heath to the specifications set out in the S106 or the payment of a bus and rail contribution to HCC of £200,000
- Payment (as part of the £1,225,000 contribution above) towards the delivery of:
  - (a) A signalised crossing on Fleet Road between the proposed site access roundabout and the Elvetham Heath double roundabout (costed at £100,000)
  - (b) Improved pedestrian and cycling facilities on the route between the Elvetham Road/Church Road junction and Fleet town centre (costed at £25,000)
  - (c) Improved pedestrian and cycle facilities on four routes between the site and Elvetham Heath centre (two routes), the site and Calthorpe Park School and the site and Fleet town centre (costed at £100,000)

10.8. This package of improvements is necessary to mitigate the predicted impacts of the development to ensure that it provides safe and suitable access for all people, takes up opportunities for sustainable travel modes and ensures that it does not result in a severe residual cumulative impact as set out in NPPF paragraphs 108 and 109 and in order to comply with HDLP Policy T14. It identifies works that are directly related in form and function to the predicted impact of the proposed development, mitigating the impacts of traffic generated by the development and encouraging improved access by modes other than the private car. It is reasonably related in scale and kind to the development, being based on the specific and proportionate costs required to deliver the works that are shown to be needed to mitigate the development's impacts. The highway improvement works are documented in the Agreement by reference to specific proposal plans for each junction etc.

10.9. None of the above education or highway projects has had more than five contributions, so CIL Reg 123 is also complied with.



### *The Unilateral Undertakings (UUs)*

10.10. There are two alternative UUs. Scheme A contains the requirement for the affordable housing (AH) units to be first offered to one of (five) of HDC's preferred Registered Provider partners. The Council prefers one of these five because it has found their homes to be well managed and maintained. Scheme B still requires the AH units to be offered to a Registered Provider but not one of the Council's preferred partners. Given that there are five partners to choose from I see no reason why Scheme A should not be the preferred UU because the appellant would still have a choice of five and there is a cascade mechanism within the terms of the UU if a preferred Provider does not come forward. In any case, whichever Scheme is chosen, the other Scheme shall cease to have effect.

10.11. The UUs secure the following:

- A £630,000 index-linked healthcare contribution towards the adaptation and extension of the existing premises at the nearby Branksomewood healthcare centre and Richmond Surgery
- An indicative £441,840 contribution towards Strategic Access Management and Monitoring (SAMM) of the Thames Basin Heath Special Protection Area (SPA) in accordance with the Interim Avoidance Strategy for the SPA
- The provision of a 14ha SANG with no occupation of any dwelling until the SANG works have been completed, and its long-term management and maintenance
- A £200,000 index-linked SANG default reserve fund for the Council to recover any costs associated with inspecting the SANG and undertaking any works where there has been a breach of the SANG Delivery and Management Plan if this is not rectified by the SANG Management Company
- A £1,662,693 index-linked SANG Maintenance and Management contribution to fund the long-term management and maintenance of the SANG land in accordance with the SANG Delivery and Management Plan
- A £38,000 index-linked contribution towards the monitoring and laying out of the SANG land
- 280 or 40% of the dwellings to be AH units, including 65% rental tenure and 35% intermediate tenure with suitable proportions provided and transferred to a Registered Provider with nomination rights to HDC
- Provision of the retail unit within the Local Centre prior to occupation of the 400<sup>th</sup> dwelling
- The submission of a Tree Works Plan and an Open Space Plan prior to commencement of development on each phase and its implementation and transfer of the open space to a management company at the end of the maintenance period

- A site wide Landscape Management Plan when the first of the reserved matters applications is submitted and its full implementation from occupation of each phase of the development

10.12. These provisions are all necessary to make the proposed development acceptable in planning terms, in particular to comply with HDLP Policies GEN1, ALTGEN13, CON1, CON2 and RUR35 and Policy NRM6 of the South East Plan, and to overcome the reasons for the Council's third and fourth refusal reasons. They are directly related and proportionate in scale and kind to the development because they provide for facilities in the local area at a level proportionate to the requirement generated by the 700 homes in the scheme. The Council has confirmed that no more than five contributions have been received for the healthcare improvements. It has entered into numerous agreements relating to the provision of SAMM contributions in respect of the Thames Basin Heaths, but these are not contributions for 'infrastructure' as defined in the CIL Regs. The other provisions relate to the site itself. CIL Reg 123 is therefore complied with.<sup>169</sup>

## 11. Inspector's Conclusions

\* [ ] refers to paragraphs above in the main Parties Cases' or this Section

### The Weight to be Attached to Relevant Development Plan Policies

11.1. As indicated above, HDLP Policies RUR2 and CON22 are the most relevant policies in the DP. RUR Policies in the HDLP relate to the rural economy and countryside. Policy RUR1 (Definitions of areas covered by RUR policies) states that the policies in this section of the plan apply to a number of rural settlements and to the open countryside.

11.2. Policy RUR2 (Development in the open countryside - general) states:

*Development in the open countryside, outside the defined settlement boundaries, will not be permitted unless the local planning authority is satisfied that it is specifically provided for by other policies in the Local Plan, and that it does not have a significant detrimental effect on the character and setting of the countryside by virtue of its siting, size and prominence in the landscape.*

11.3. The site is in the open countryside outside any defined settlement boundary. The proposed development is not specifically provided for by other policies in the HDLP. The appellant accepts that RUR2 is not complied with and that this causes the proposal to fail to comply with the DP as a whole. **[7.4 b]**

11.4. However, the appellant maintains that moderate or at least much reduced weight should be given to this conflict with the DP. That is because: this policy is predicated on the outdated PPG7 approach of protecting the countryside for its own sake contrary to the NPPF; the HDLP covers the period from 1996 to 2006 and had a lower housing requirement than the current objectively assessed housing need (OAN); and it has not been possible to meet this OAN without allowing housing development outside the settlement boundaries defined in the HDLP. **[7.4, 7.9-7.15]**

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<sup>169</sup> Further details are set out in the Council's CIL Regs Statement in ID17

- 11.5. The Council agrees that only moderate weight should be afforded to RUR2 because the settlement boundaries are out of date in that they do not reflect current OAN or the current housing requirement set out in the eLP. But 'moderate weight' does not mean insubstantial weight. The fact that the HDLP is time expired is irrelevant in itself. Whilst the explanatory text of RUR2 refers to the old PPG7 principle of protecting the countryside for its own sake, NPPF paragraph 170 b) states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic beauty of the countryside. In my judgement major urban development of open countryside cannot possibly comprise such 'recognition'. The wording of the latter half of RUR2 specifically considers this point and therefore sits full square with the NPPF. National policy does not preclude restrictions on development in open countryside. **[6.11-6.12]**
- 11.6. The Council's current housing requirement of 423 dpa derives from the current SHMA, part of the evidence base for the eLP, and from the EI's interim findings in his letter of 26 February.<sup>170</sup> Under this requirement and even under the previous lower requirement set out in the HDLP it was necessary in the past for the Council to grant housing permissions outside of the RUR1&2 defined settlement boundaries because it did not have a 5YHLS. But that is not the case now: there is no dispute between the parties that the Council can demonstrate a 9.2YHLS. By any reckoning that figure comprises a healthy HLS. The fact that permissions have been granted in the past, both by the Council and on appeal, outside settlement boundaries was because the Council has not always been able to demonstrate a 5YHLS – but that is irrelevant because it can now.
- 11.7. For these reasons, whilst I acknowledge both parties' positions that only moderate weight should be afforded to Policy RUR2, I agree with them that failure to accord with it means that there is failure to comply with the DP as a whole. Determination must be made in accordance with the DP unless material considerations indicate otherwise. I deal with such considerations below.
- 11.8. In respect of Policy CON22, I acknowledge that there may be some inconsistency with the wording of Section 15 of the NPPF, particularly in terms of the hierarchical approach set out in paragraph 171 and the need to protect valued landscapes in paragraph 170 a), hence the Council's concession that it can only be afforded moderate weight. **[6.13]**
- 11.9. However, its stated aim of preventing development which would adversely affect the character or setting of a settlement or lead to the loss of important land around one is not incompatible with recognising the intrinsic character and beauty of the countryside set out in NPPF paragraph 170 b) or the NPPF as a whole. Even if I was to find compliance with Policy CON22, for the above reasons the appellant still acknowledges that there is a failure to comply with the DP as a whole. Whether such a failure is outweighed by other material considerations in this case is a matter considered in the Planning Balance below. **[6.13]**

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<sup>170</sup> Derived from Hart's OAHN plus Surrey Heath's unmet need: 382+41=423 dpa

### Effect on the Countryside and/or the Settlement of Fleet

- 11.10. The appeal site is not a designated landscape, is not within or part of a gap between or next to settlements protected by any policies within the HDLP or eLP and is not a 'valued landscape' in terms of paragraph 170 a) of the NPPF. **[7.22]**
- 11.11. However, there are two points at issue here. First, whether, in the words of the text of Policy RUR2, the proposed development would have a significant detrimental effect on the character and setting of the countryside by virtue of its siting, size and prominence in the landscape. And secondly, whether it would, in the words of Policy CON22 adversely affect the character or setting of a settlement or lead to the loss of important areas of open land around settlements, in terms of subsection iv) of the Policy.

### *Effect on the Landscape as a Receptor*

- 11.12. The Appellant has produced two Landscape and Visual Impact Appraisals (LVIA), the first as part of the Environmental Statement (ES) and the second by Mr Smith as part of his landscape evidence on behalf of the appellant for this appeal. Mr Smith adopted a more reasoned approach than the original LVIA in that he acknowledged that the development of the green fields of the site for residential use would result in at least negative landscape effects. His methodology is sound in that it follows the guidance within GLVIA3<sup>171</sup>. **[7.26, 6.17]**
- 11.13. The site is located wholly within the *Hart Valley* Character Area as set out in the Hart Landscape Character Assessment (HLCA)<sup>172</sup>. The appellant criticises this Assessment because it was prepared in 1997 under different circumstances and guidance and because it does not assess the capacity of the landscape to accommodate development as the more recent Landscape Capacity Study (LCS)<sup>173</sup> does. **[7.23-7.25]**
- 11.14. However, that does not negate the HLCA's conclusions that much of the site is categorised as a Category B Landscape, which has attractive qualities and a strong sense of place, qualities which are desirable to conserve as acknowledged by Mr Smith. That landscape is in good condition and is of good scenic quality. This applies to the southern and eastern part of the site, notwithstanding that the northern part adjacent to the M3 is considered to be a Category C or 'degraded' landscape due to the adjacent presence of the motorway, and the moto-cross track on the far western part of the site is also a detracting element. **[6.15-6.16]**
- 11.15. The appellant also points out that there is no preclusion of development on Category B landscapes and that the Council has failed to take into account the LCS's conclusion that the appeal site and the land to the west has a medium/high capacity to accommodate development. Furthermore, this conclusion is reflected in the Council's original SA/SEA of February 2018 and in its updated version of August 2018, which both rank the site as the second preferred option for

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<sup>171</sup> CD4

<sup>172</sup> CD17

<sup>173</sup> CD18

residential development in terms of its landscape impact compared to all seven options. **[7.25]**

11.16. Be that as it may, that does not mean that there is no effect on the landscape. As set out above, the appellant's own evidence concedes that there will be. This could hardly be otherwise when developing green fields into a suburban housing estate, in this case 30.8ha of open countryside or 52% of the site. **[6.17-6.20]**

11.17. The site is relatively visually self-contained in that it is bound to the north by the M3, the south by the railway line embankment and the east by the A323 and hence the impact of the development would be localised and would not affect the whole of the Hart Valley Character Area. The scheme would preserve the woodlands and some of the field hedgerow boundaries within the site and the proposed SANG would be an improvement in landscape terms on the moto-cross track. **[7.26]**

11.18. But much if not the majority of the southern and eastern part of the site would be developed for suburban housing in the proposed scheme. This part of the site (referred to as LCZ4 by the appellant) would suffer a major negative landscape effect. Built development in this area would extend much further westwards into the countryside than that in the Berkeley Homes development to the south of the railway line. It is also the case that the northern part of the site (LCZ1) would suffer a moderate negative effect. The enclosed agricultural fields on the site (one of the individual landscape elements) would also suffer a major negative effect, and the aesthetic and perceptual aspects of the site's landscape would suffer either a moderate or major negative effect.<sup>174</sup> **[6.17.6.19]**

#### *Visual Effects*

11.19. Again, Mr Smith's methodology for assessing visual effects of the development is satisfactory and complies with GLVIA3 and he acknowledges that replacing fields with new buildings should be assessed as having a negative or at best neutral visual effect. He concludes that the only significant visual impact would be for residents of Pale Lane Farmhouse in the view to the north in Year 1 before the landscape screen had established itself.

11.20. I disagree that this viewpoint would be the only one significantly affected. Whilst I agree that the site is relatively visually self-contained there would be other important views that would be significantly affected. There would be a view of the acoustic fence from drivers on the M3 at least in the first few years following completion of the development assuming of course that planting was actually carried out on the M3's southern verge/embankment. Such planting is not a foregone conclusion because this lies outside the site boundary.

11.21. There would also be permanent views of the housing on the southern part of the site from the railway line atop its embankment, which could not effectively be screened by planting, especially since the highest dwellings would be on the part of the site closest to the railway. I note that Mr Smith ascribes a Low Value to such views by rail passengers because they are transient.<sup>175</sup>

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<sup>174</sup> Smith Appendix D, Table D6 p36

<sup>175</sup> Smith Appendix E, Table E1

- 11.22. But such views from the train windows would be wide and extensive at a point where the train is slowing to approach Fleet or not yet at full speed after it has left it. The distance between Fleet and Winchfield stations is not great and trains do not reach their full speed here. Many people use this mainline and the visual impression the development would give would be to extend westwards a built-up area that begins at Frimley Green, the southern edge of Camberley, and continues most of the way to this extended western part of Fleet. Many train travellers will be regulars on this line but many also will be new. Train travellers are more at leisure to appreciate views than car drivers who must concentrate on the traffic.
- 11.23. Consequently, I do not agree that views of the site by rail passengers have a Low Value or that their Susceptibility is Low. Hence their Susceptibility is at least Medium if not High. The Magnitude of Change is certainly High, not Medium. This means that the Visual Effects, even in Year 15, are at least Moderate if not Major.<sup>176</sup>
- 11.24. Whilst I agree that drivers on the M3 are more likely to be concentrating on their driving than looking at the scenery, I note that such views have not even been assessed by the appellant. Motorways generally and this section of the M3 in particular have relatively flat gradients and are relatively straight such that drivers have long views of features at the side of them. In this case that would include the 3.5m high acoustic fence, at least until any planting on the verge has screened it. Such fences are more common features on the side of motorways now but they signal that there is housing development behind them and the fences themselves contribute to an overt sense of urbanisation, which would inevitably be the case here.
- 11.25. Great Bog Copse and the landscaped planting belts proposed along the A323 would in time screen much of the development. But this would not be the case at the proposed roundabout access, which would open up views of the development from passing vehicles by removing a 120m length of historic hedgerow, and that new junction itself would be an urban feature signalling the presence of a large extension to the town. Whilst I agree that pedestrians would be shielded on the footpath by vegetation from the development there would be likely to be views of it from the upper windows of houses at The Mounts. There would also be a perception of the houses on the northern part of the site from the new development at Copse Close on the opposite side of the A323 from Pale Lane.
- 11.26. The Council's landscape witness, Mr Ratcliffe, argued that the tops of the houses on the northern part of the site would also be seen from certain points on the A323 between the M3 and Hartley Wintney. Given that this is the highest part of the site and would have 2½ storey development that would exhibit the highest density on the site it seems likely to me that this would be the case, for instance by residents at Reeds Cottage or Shepherds Cottage or by footpath users next to the latter. Even if enhanced planting along the site's northern boundary was to strengthen the existing tree screen there would still be likely to be a perception of the new development at night from these locations and from this stretch of the

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<sup>176</sup> Ibid, Table E3, VP8

A323 due to its light spillage, which would be an adverse visual impact. **[6.21-6.22]**

- 11.27. Mr Smith acknowledges moderate negative impacts for pedestrians and vehicle users on Pale Lane. But in my view the importance of this rural lane to walkers and cyclists has been underestimated. I saw for myself that it is well used by such groups, which is not surprising given its location on the edge of the town. I acknowledge that the proposals would close off the Lane to vehicular traffic and allow its dedicated use by cyclists and pedestrians. But that does not gainsay the fact that its southern stretch within the site would be dominated by the housing either side of it – it would lose much of its rural character and ambience.
- 11.28. So, whilst the site is relatively visually self-contained, for instance by the railway embankment, it is this feature that makes views of the bulk of the proposed housing at the southern part of the site prominent from this important public transport corridor. The new access would signal the presence of this major urban extension and allow clear and prominent views into the site from the A323, the main road entering Fleet from the west. Even from the A323 north of the M3 there would be likely to be a perception of urban development in the narrow countryside gap between Fleet and Hartley Wintney at least at night. Pale Lane would lose much of its rural character and hence amenity for walkers and cyclists. I consider these adverse visual impacts to be significant.

#### *Effect on the Setting of Fleet*

- 11.29. The appellant argues that the site makes no particular contribution to the character of Fleet and has no particular links to it, either cultural/historic, landscape or visual, in terms of key views into or out of it, opportunities to access the countryside at the settlement edge or a clear sense of experiencing the settlement in its landscape setting. **[7.36-7.39]**
- 11.30. However, drivers of vehicles heading south on the A323 currently perceive the clear boundary of the western edge of Fleet behind the screen planting on the east side of the road south of the M3 bridge, and the crisp transition between town and country. This would change significantly if the site is developed. **[6.26]**
- 11.31. I acknowledge that the Berkeley Homes development and the new Hart Leisure Centre as well as the Edenbrook SANG extend into what was countryside to the west of Hitches Lane south of the railway line. But built development does not extend nearly as far west as envisaged here and breaching the A323 at this point would have the significantly harmful effect of destroying this clear and hard edge to the town, weakening its countryside setting and dissipating the effect of Elvetham Heath as a carefully planned suburb of Fleet. This is because the eastern fields of the site are lower than the road level, a large section of road front hedgerow would be removed at the new roundabout access junction and it is unlikely that the proposed planting belts would prevent views of the new housing in the winter. **[6.24-6.27]**
- 11.32. I have also indicated above that users of the M3 and the A323 north of it would perceive what would be a major suburban extension of Fleet into the countryside as well as residents of dwellings here and walkers on the footpath. There would be a major visual change to this side of the town for railway

travellers. Contrary to Mr Smith<sup>177</sup> I consider that development of the appeal site would change significantly the sequential experience of arriving in Fleet – from one of open fields to a high and dense housing development at the southern part of the site.

11.33. Consequently, I conclude that the open countryside of the site does contribute to the crisp western rural setting of Fleet and that the proposed development would significantly detract from it.

#### *Conclusion Regarding Effects on the Countryside and the Settlement of Fleet*

11.34. The effects of the development on the landscape character of the site would be significant and adverse, notwithstanding that it would not affect the *Hart Valley Character Area* as a whole. Its visual effects, although localised, would still be prominent and significantly adverse. And it would have a major adverse effect on the western setting of Fleet because it would unacceptably diffuse the clear and crisp transition between town and country in this location.

11.35. The proposed development would, for the above reasons, have a significant detrimental effect on the character of the countryside because of its siting, size and prominence in the local landscape and lead to the loss of an important area of open land around Fleet contrary to HDLP Policies RUR2 and CON22.

#### Harm to Heritage Assets

11.36. The appellant acknowledges that the proposal would result in 'less than substantial' harm to Pale Lane Farmhouse, a Grade II listed building (LB) in terms of the impact on its setting. This is despite the fact that the Farmhouse itself would be unaffected. **[7.41 a]**

11.37. That view is based on the 3-stage assessment that its heritage witness, Dr Cooper, undertook based on the methodology identified in the Highways Agency's Design Manual for Roads and Bridges.<sup>178</sup> When I asked why he had used this methodology I was told that it was frequently used in order to assess the overall impact on the significance of heritage assets.

11.38. The judgement from Dr Cooper's assessment is that the Farmhouse would exhibit Medium Value, that the Magnitude of Change would be Moderate/Major, which would translate into a Moderate/Large significance of impact. But it is important to note here that impact on setting is included in terms of magnitude of change and that this is judged by Dr Cooper to be moderate to major. A Moderate/Major magnitude of impact on setting is defined in the methodology as significantly or totally altered. He concludes, even taking into account the mitigation measures, that the impact would be Moderate in scale – that is the impact on the significance of the listed building, not just the impact on its setting. That can only be the reason for the appellant acknowledging that the proposal would result in less than substantial harm. Such harm must still be given considerable importance and weight.

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<sup>177</sup> Smith PoE, Para 154

<sup>178</sup> Cooper PoE, paras 5.03-5.08



- 11.39. The appellant argues that there will be no impact on the LB's evidential and communal value, little or no impact on its aesthetic/architectural value and no material associative historical value. Dr Barker-Mills, the LPA's heritage witness, only maintained that the LB is important for its illustrative historical value in that it provides a good illustration of the economic history of agriculture in the area in the 18th century. Nonetheless, it can only be the impact of the proposed development on this aspect of the Farmhouse's value that results in the appellant agreeing with the Council that it would result in less than substantial harm to the LB. This being the case, the fact that the Farmhouse has been severed from its original farm and its out-buildings converted to commercial uses is not of major consequence. **[7.47-7.48]**
- 11.40. I agree with the appellant that the mitigation measures would help to some extent to minimise the impact of the development on the LB's setting. These measures are essentially to keep the field on the opposite side of Pale Lane as open land and planting a thick tree screen to the north of the Farmhouse and its outbuildings to screen it from the houses on the northern part of the site. But such mitigation measures would only be partially successful. That is because it may be necessary to level the field opposite to create a useable playing field for the primary school and the tree screen itself would have the effect of physically and visually severing the farmhouse from its historical farming context, i.e. the fields to the north in this instance. **[6.30-6.31]**
- 11.41. But the central point here, to which I again return, is the appellant's admission that despite these mitigation measures the development would still result in less than substantial harm to the significance of the Farmhouse.
- 11.42. NPPF paragraph 196 states that where a development would 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. The relevant part of the PPG makes clear in this heritage balancing exercise that public benefits could be anything that delivers economic, social or environmental progress as described in the NPPF. Consequently, the benefits of the scheme in terms of the heritage balance are the same as those in the overall Planning Balance and I address them below accordingly.

#### Loss of Best and Most Versatile Agricultural Land (BMV)

- 11.43. NPPF paragraph 170 b) states that planning policies and decisions should contribute to and enhance the natural and local environment by *"recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland."* **[7.80]**
- 11.44. The appeal site contains 23ha (out of 59.3ha) of BMV, consisting of Grade 2 and 3a agricultural land. That land is envisaged in the illustrative masterplan as the part of the site where the bulk of the built development (the housing, local centre and the school) would be located. **[6.38]**
- 11.45. NPPF Footnote 53 is attached to paragraph 171 in the sentence stating that land should be allocated with the least environmental or amenity value, but it is undoubtedly concerned with the quality of agricultural land: *"where significant*

*development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.*" The appellant does not dispute its validity in the context of this appeal but points out that it only indicates a general preference to be followed – it does not preclude the development of BMV (i.e. Grade 1, 2 and 3a agricultural land). **[7.81, 6.40]**

11.46. The Council did not identify any benefits of the BMV land on the site apart from its economic benefits. The appellant's evidence convinces me that in current economic situations only part of the site<sup>179</sup> is economically viable for arable cropping. The rest of the agricultural land on the site is only used for seasonal grazing. But I agree with the Council that is a function of current economic circumstances and that agricultural land is a long-term asset – once built on it will never be available again. For instance, it is far from clear what implications future political and economic changes (e.g. Brexit) would have on the viability of such land for food production. **[7.82, 6.39-6.40]**

11.47. Footnote 53 clearly sets out the sequential approach to the development of agricultural land, the corollary being that non-BMV land is preferred over BMV land. Whilst I agree with the appellant that the Footnote's wording does not prevent the development of BMV land, it nonetheless clearly sets out a test of necessity. For the reasons set out below (on Prematurity) there is no need for the 700 homes proposed by this development, and so it is not necessary to lose 23ha of BMV land.

11.48. I note the appellant's argument that Pale Lane is ranked second to the preferred option (Option 1b) in the February 2018 submission draft of the SA/SEA despite the presence of BMV land. However, in this context, I also note the EI's point (in his paragraph 25) that Option 1b (i.e. including the new Murrell Green/Winchfield settlement) is ranked the same as Option 1a (that omits it and includes mainly consented schemes and those on brownfield land such as Hartland Village), which is not robust. In other words, the EI is signalling that eLP options that preclude large areas of BMV land are to be preferred over those that include them. To approve these 700 additional new homes, which is contrary to the eLP's spatial strategy and for which there is no need, would not therefore meet the test of necessity in Footnote 53. **[7.84, 6.40]**

11.49. For these reasons I conclude that the loss of 23ha of BMV land in these circumstances would be contrary to established policy in the NPPF.

#### Prematurity<sup>180</sup>

11.50. It is necessary to satisfy both tests in NPPF paragraph 49 in order to establish that the proposal would be premature, i.e. the tests in sub-paragraphs a) and b) as set out in full above. **[7.88, 6.33]**

11.51. In terms of b) (whether the eLP is at an advanced stage), the appellant concedes that it is likely to be. Its contention that the Council has not produced a legally compliant SA/SEA is a matter for the ELP Examination, although the

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<sup>179</sup> That portion outlined green in the annotated aerial photo in Taylor Rebuttal PoE, para 2

<sup>180</sup> The main parties' arguments on this issue are principally contained in their submissions in relation to the EI interim findings – ID8

appellant acknowledges that the EI appears to suggest that the Council can rely on the pre-submission SA/SEA. That is clearly the case, as set out in paragraph 32 of his letter of 26 February. I see no reason to demur from his view. There is no reason to suggest, and no evidence has been produced, to conclude that sound and legally compliant Main Modifications will not be produced; in any case that is also a matter for the eLP Examination.

- 11.52. The EI has indicated that the eLP's OAHN is likely to be sound and that the Plan's spatial strategy would deliver the required housing including that of Surrey Heath, the adjoining Borough's, unmet need. The Council, at its Cabinet meeting on 14 March, agreed to the EI's proposed modifications to the eLP, crucially including the deletion of Policy SS3, which seeks to deliver the proposed new settlement at Murrell Green/Winchfield. Consequently, I conclude that the ELP is at an advanced stage.
- 11.53. In terms of a) (would the proposal undermine the plan-making process by pre-determining decisions about major development central to the eLP), there is no doubt that this proposal for 700 new homes is a large scheme, as conceded by the appellant's witness. The Council argues that these further 700 homes would result in 40% more homes on 'new land' than required. Whilst the figure may not now be as high as that, because the requirement is likely to rise as a result of the EI's finding that the eLP should also provide for Surrey Heath's unmet need, it would still be a major proportion of such additional new land. **[6.35]**
- 11.54. The appellant evidences that 91% of the housing supply in the Plan period has already been completed or has planning permission or is the subject of a resolution to grant planning permission. Again, that figure may now be slightly less owing to the higher requirement now envisaged by the Council's agreement to take on Surrey Heath's unmet supply. Nonetheless, 700 new dwellings would still amount to a high proportion of dwellings on top of the figure for homes completed, with permission or with a resolution to grant. ( $700/5,776=12\%$ ). **[7.91]**
- 11.55. It would also represent a high proportion in regard to the 5YHLS. The 9.2YHLS is likely to be reduced as a result of the new requirement for 423 dpa, albeit not significantly – there would still be a supply of well in excess of 5 years. So, the 5-year requirement would be  $423 \times 5 = 2,115$ ; 700 houses would be 33% of that 5YHLS, albeit the delivery of this site would take longer than 5 years. It would still also amount to over 9% of the total housing requirement of the District ( $700/7,614=9.19\%$ ), which is clearly a substantial proportion for a single permission to provide.
- 11.56. More importantly, the EI has agreed the spatial strategy in the eLP is capable of delivering 423 dpa for the length of the recommended extended Plan period (2014-2032 instead of 2016), apart from a shortfall of 230 dwellings in the last year of the Plan, which he does not consider to be significant as it can be dealt with by a necessary review of the Plan. That agreed spatial strategy does not include this site, although it was considered as an option in the SA. There is no ceiling to additional housing delivery and the proposal would be likely to boost significantly the supply of homes in the District. But there is simply no need for these 700 homes to meet the EI's enhanced housing requirement. Allowing the proposed development through this appeal would predetermine the location of a

significant urban extension that the plan-making process has decided is inappropriate for the District. The planning system should be genuinely plan-led, as set out in NPPF paragraph 15. The proposal is antithetical to that mandate.

11.57. The EI has also stated (paragraph 10 of his 26 February letter) that the uplift of 41 dpa to encompass Surrey Heath's unmet need means that more affordable housing would also be delivered in Hart and to uplift the requirement beyond 423 dpa *"would result in open market dwellings being provided when there is no evidence of any need, which could lead to an imbalance between homes and jobs and unsustainable commuting patterns."* I agree with the Council that the EI's views in this respect limits the weight that can be given to the 700 additional – but un-needed – market and affordable homes.

11.58. In my judgement it would be hard to find a clearer demonstration of a proposed development that would, if granted, undermine the plan-making process – which is at an advanced stage – by predetermining a decision that would clearly be central to and at odds with the eLP's spatial strategy, which the EI has indicated he is likely to find sound without the need for the new greenfield settlement at Murrell Green/Winchfield. For these reasons I conclude that the proposed development would be premature.

11.59. The appellant correctly points out that the relevant pages of PPG require the tilted balance to be applied in regard to prematurity. It is necessary to determine whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the NPPF and any other material considerations into account. However, and as I set out under heritage impacts above, the benefits of the scheme in terms of the prematurity argument are the same as those in the overall Planning Balance and consequently I address them below. **[7.89, 7.98]**

#### The Planning Balance

11.60. As I have referred to above, there are three balancing exercises relevant to this case. That is in relation to the heritage balance as per NPPF paragraph 196, that referred to immediately above in relation to prematurity, and the overall planning balance of harms and benefits. The benefits in each balance are the same. **[6.41]**

#### *The Benefits [7.61-7.75]*

11.61. The social benefits comprise 700 new homes of appropriate sizes, 280 of which would be affordable; land and a funding contribution to erect a new primary school; land for a pre-school centre; a contribution to expand Calthorpe Park secondary school or contribute to an alternative new secondary school; a proportionate contribution towards local health care; a neighbourhood centre with local shops; 14.5ha of open space including LEAPs, NEAPs, woodland trails, footpaths and cycleways; 28.5ha of publicly accessible open space for use as outdoor recreation and informal play space (including dual use of this land as a SANG).

11.62. Given the NPPF's mandate to boost significantly the supply of housing I give significant weight to the provision of both the market and affordable homes, despite the lack of current need for them. Whilst the education provision would

be welcome it would primarily be mitigation in terms of providing facilities for the children who would live on the proposed development, so I give that limited weight. Likewise, the provision of local shops, which would only be necessary because of the development. The open space including the SANG would also primarily be mitigation for the development, but since it would be available for the public to use it would perforce benefit existing residents in the local area and I consequently attach moderate weight to this benefit.

- 11.63. The economic benefits would be in the form of direct employment benefits as well as indirect multiplier effects in the construction of the scheme and subsequently in the primary school and neighbourhood shops and play school, and the increased expenditure by residents of the scheme in shops and services in Fleet and its environs. I attribute limited weight to these benefits because they will always arise from a development of this size wherever it is located. They must be tempered against any harm arising.
- 11.64. Other economic/social benefits include off-site highway improvements: the reconfiguration of the Pale Lane crossroads, at the junction of Fleet Road and Hartley Wintney High Street, the improvements at the double roundabout next to the railway line at Elvetham Heath, and the new footpath along Fleet Road linking the site to Elvetham Heath and Calthorpe Park secondary school. I agree that many of these improvements would benefit existing users including existing school children in terms of making the walk to school safer. But I attribute no more than moderate weight to these benefits because they are only necessary because of the proposal in the absence of which they would not need to come forward.
- 11.65. The environmental benefits comprise the retention and long-term protection and management of otherwise ephemeral habitats of value for plants and invertebrates, habitat creation in the form of the SANG, enhancing the value of the adjacent railway line as a habitat, and the creation of the 'green spine' running through the site and linking the existing woodlands. Whilst these are welcome, they attract limited weight because they comprise mitigation for the proposed development. Likewise, the preservation of the World War Two pill box and the incorporation of heritage information and interpretation into the public realm and open spaces of the development. The creation of sustainable drainage systems and works to culverts in the area including those running under the railway line and M3 attract very little weight because such works are only necessary due to the proposed development.
- 11.66. In summary, the proposed new homes (both market and affordable) are significant benefits of the scheme. The proposed open space including the SANG and most of the off-site highway improvements would be moderate benefits of the scheme because, although primarily providing mitigation, they would also benefit other residents of the wider area and not just those from the site. All the other identified benefits are limited because they would, in terms of the main economic benefits, be simply a benefit of the scale of the proposal that must be tempered against any harm arising from its location, or otherwise simply be unnecessary to be provided in the absence of the proposed development.

### *The Harm*

11.67. The appellant agrees that “considerable importance and weight” should be given to the desirability of preserving the setting of LBs when carrying out the heritage balancing exercise. It also acknowledges that the proposal would result in ‘less than substantial’ harm to Pale Lane Farmhouse in terms of the impact on its setting. I have concluded that the development would result in less than substantial harm to the significance of the Farmhouse. **[11.41]**

11.68. I have concluded that the proposed development would be premature, that it would unnecessarily result in the loss of 23ha of BMV land, have a significant detrimental effect on the character of the countryside because of its siting, size and prominence in the local landscape and lead to the loss of an important area of open land around Fleet contrary to HDLP Policies RUR2 and CON22. **[11.5, 11.9, 11.34, 11.49 and 11.58]**

11.69. As part of these considerations I have found that the additional 700 homes are not needed to meet the updated housing requirement identified by the EI, despite the NPPF’s exhortation to significantly boost the supply of homes.

### *The Balance*

11.70. The appellant accepts that HDLP Policy RUR2 is not complied with and that this causes the proposal to fail to comply with the DP as a whole. I acknowledge that only moderate weight should be given to conflict with this Policy because the settlement boundaries in the HDLP are out of date in that they do not reflect current OAN or the current housing requirement set out in the eLP and the explanatory text of RUR2 refers to the old PPG7 principle of protecting the countryside for its own sake, as agreed by the main parties.

11.71. In respect of Policy CON22, I acknowledge that there may be some inconsistency with the wording of Section 15 of the NPPF, particularly in terms of the hierarchical approach set out in paragraph 171 and the need to protect valued landscapes in paragraph 170 a). Hence both Policies can be said to be out of date.

11.72. But I turn first to the heritage balance. The Council can demonstrate a healthy 5+YHLS and there is no need to deliver an additional 700 homes in this location at this time. As such the public benefits of the proposal do not outweigh the less than substantial harm to Pale Lane Farmhouse.

11.73. The prematurity balance is a tilted one. But, for the same reasons and as set out in the text above covering the prematurity issue, I conclude that the harm by reason of prematurity would significantly and demonstrably outweigh the benefits set out above, when assessed against the policies in the Framework taken as a whole.

11.74. I now address the main planning balance. This is not the tilted balance because I have found that harm to heritage outweighs the above benefits. Hence I must consider the main balance under NPPF paragraph 11 d) i) rather than ii).

11.75. Planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic beauty of the countryside, which is what Policies RUR2 and CON22 require. So whilst these Policies are out of date I

conclude that conflict with them means conflict with the DP as a whole. For the reasons explained above the proposal would fail to comply with these DP policies.

11.76. NPPF paragraph 47 sets out that planning law requires that applications be determined in accordance with the DP, unless material considerations indicate otherwise. There is a need to significantly boost the supply of homes and the District's newly established housing requirement is not a ceiling that should prevent further housing delivery above that level. But there is no need to do so by providing an additional 700 homes on this site because that would be a significant scheme in a location that has been specifically excluded from the eLP's spatial strategy, which the EI has indicated he is likely to find sound in principle. To allow this additional significant development in this location would be inimical to the plan-led process exhorted by the NPPF, especially given the other significant harms identified, because it would not deliver homes in the right place at the right time.

11.77. The benefits as set out above would not overcome the significant harm to the setting and thereby the significance of the Farmhouse, the character of the local countryside and countryside setting of Fleet, the unnecessary loss of BMV land and the premature nature of the proposal. As such the adverse impacts of the development would outweigh the benefits. Even if the tilted balance were to apply, I would still conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

## 12. Other Matters

### Appropriate Assessment (AA) under the Habitats Regulations<sup>181</sup>

12.1. Following the Court of Justice of the European Court (CJEU) ruling in *People over Wind v Coillte Toranta*<sup>182</sup> it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of a project on a European Site (including SPAs). Such measures should only be considered as part of an AA. The competent authority for conducting the AA here is the Secretary of State. This AA is required to consider whether the proposals, including any mitigation measures, alone or in combination with other proposals, would adversely affect the integrity of the Thames Basin Heaths SPA (TBHSPA).

12.2. Regulation 63(1) of the Habitats Regulations 2017 sets out a staged process for assessing the implications of a plan or project on a European Site. Stage 1 is to assess whether such a project is likely to have a significant effect on such a site, either alone or in combination with other plans or projects. Given the size of the appeal site, the nature and scale of the proposed development and the surrounding environmental resources it was decided to conduct an Environmental Impact Assessment (EIA) scoping process. As part of this Natural England (NE) recommended that because of the potential for significant effects on five designated sites in the vicinity further assessment should take place in the form

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<sup>181</sup> Matters pertaining to this are set out in more detail in the SoCG Addendum, January 2019 – ID10

<sup>182</sup> Case C 323/17, April 2018, at paragraph 40

of an EIA, and that an AA would be required. NE was also consulted on the design of the SANG.

- 12.3. An Environmental Statement (ES) under the EIA Regs was submitted as part of the application. This identifies that the TBHSPA is designated for its breeding bird populations of Dartford Warbler, Nightjar and Wood Lark, and that given the proximity of the site to the SPA (i.e. within 5km) there is potential for impacts on these protected species through increased recreational pressure from additional residents and their pets, dogs in particular. Thus, it has been found that the proposed development is likely to have a significant effect on the SPA, which triggers Stage 2, the requirement for an AA.
- 12.4. These pressures would be avoided through the provision of a 14ha SANG on the appeal site including a SANG Delivery and Management Plan and an appropriate SAMM contribution in order to fund management and monitoring measures set out in the Council's adopted 2010 *Interim Avoidance Strategy for the Thames Basin Heaths Special Protection Area*.
- 12.5. The Council and NE, following the scoping opinion, discussed with the appellant the structure and location of the SANG and the protection and management of Parkfield Copse, an Ancient Woodland and Site of Importance for Nature Conservation (SINC), and the arable field margin SINC within the site and these were incorporated into the application's design for the SANG, the Delivery and Management Plan, the Ecology Strategy and the Code of Construction Practice, all as set out within the ES.
- 12.6. In the light of the above mitigation, the ES concluded that there would be no significant residual effects resulting from the proposed development. NE formally withdrew its holding objection to the application in a letter dated 23 October 2018 in which it stated: "The identified impacts on the Thames Basin Heaths Special Protection Area can be appropriately mitigated with measures secured via planning conditions or obligations.."
- 12.7. For the above reasons I consider that the above measures – the provision of the SANG and SAMM and related matters prior to occupation of the first dwelling on the site – would be sufficient to ensure that the proposed development will not have an adverse effect on the integrity of the Thames Basin Heaths SPA. These measures, to be delivered through conditions and the S106 obligations, would comply with 'saved' HDLP Policies CON1 and CON2 and Policy NRM6 of the South East Plan and would satisfactorily overcome the Council's third refusal reason.

#### Matters Raised by Local People

- 12.8. Section 8 above covers a range of concerns raised by a range of residents and businesses. At the Inquiry four spokespeople covered a range of issues on behalf of the Stop Elvetham Chase Development Group (SECDG), as detailed in Section 7 above by the appellant. I address these issues briefly by topic below.

#### *Highways and Transport*

- 12.9. SECDG argue that the development would generate an additional parking requirement at Fleet railway station that cannot be satisfied because there is no



room for extending the current station car parking, which is regularly full to capacity, any further.

- 12.10. I agree with the appellant that the proposed community bus service, to be secured through the S106, is likely to defer at least some if not all the need for additional commuter car parking spaces at the station. Even if that is not the case, I was able to observe on more than one occasion during my stays in the area that the station car park retained some vacant spaces. I also observed on several occasions that there were several vacant spaces, even after 9am, in the part of The Station Public House's car park specifically reserved for commuters. Contrary to the suggestion of the SECDG it was clear which part of the pub's car park was reserved for this purpose and how to pay for such spaces. I also agree with the appellant that no evidence was provided by the residents of any adverse impact on highway safety, even if the argued dearth of parking spaces for commuters at the station were to exist.
- 12.11. SECDG raised concerns that the traffic flow figures were different in the appellant's TA and TAA from those assumed in the Netherhouse Copse appeal scheme but the model was validated against observed queue lengths. One of the queue length figures in the TAA raised by Mr Gower-Jones was found to be a typographical error but this was in fact corrected in the TSoCG.
- 12.12. Ms Davies expressed concern for the safety of pupils walking and cycling to Calthorpe Park School across the Elvetham Heath double roundabouts. But I agree with the appellant that the highway improvement measures here will benefit both children coming from the development and existing students of the school who live north of the railway line.
- 12.13. Crucially HCC as Highway Authority raise no concerns about any of these issues, and indeed are a party to the S106 that delivers the range of highway and transport improvements identified above.

#### *Health Facilities*

- 12.14. SECDG argued that there is no space to expand Fleet Medical centre. That may well be the case, but that is why the Clinical Commissioning Group for the area has decided that the preferred solution to accommodate the residents of the 700 new dwellings is to expand the nearby existing Branksomewood Health Centre and Richmond Surgery.

#### *Education*

- 12.15. Many residents have argued that extending Calthorpe Park School still further is simply unsustainable because it would be one of the largest schools in the wider area. But this a matter for HCC as Education Authority and is adequately covered in the S106 Agreement because the contribution towards Secondary education resulting from the requirements of the proposal could either be spent there or could be used to help fund a new Secondary school, within 3 miles of the site.

#### *Quality of Life and Other Issues*

- 12.16. I agree with the appellant that many of the quality of life impacts of the development raised by Ms Robson for the SECDG and by other residents relate to

the 'sustainability of the site including the view that the proposal would ride roughshod over the eLP's spatial strategy. I have adequately covered these matters in the main text above.

12.17. A variety of other matters are also raised by objectors but none of them are significant enough of themselves to warrant a dismissal of the proposal.

### **13. Recommendation**

13.1. For the reasons set out above I recommend that the appeal be dismissed.

13.2. Alternately, if the Secretary of State considers that the material considerations identified above outweigh the failure of the proposed development to comply with the development plan as a whole, then it is recommended that the appeal is allowed with the conditions in the Schedule below and the obligations in the S106.

*Nick Fagan*

INSPECTOR

## Schedule of Conditions

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.

REASON: To meet the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

2. Application 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.

REASON: To meet the requirements of Section 92 of the Town and Country Planning Act 1990.

3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: To meet the requirements of Section 92 of the Town and Country Planning Act 1990.

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

### Framework Plans

Property Plan Boundary on OS, Drawing No 4231\_001\_B (prepared by Jasplan Services)

Land Use Parameter, Drawing No 4928\_114\_G (prepared by LDA Design)

Building Heights Parameter, Drawing No 4928\_115\_H (prepared by LDA Design)

Access and Movement Parameter, Drawing No 4928\_116\_J (prepared by LDA Design)

Landscape Parameter, Drawing No 4928\_117\_H (prepared by LDA Design)

Building Density Parameter, Drawing No 4928\_118\_G (prepared by LDA Design)

Construction Phasing Plan, Drawing No 4928\_119\_E (prepared by LDA Design)

### SANG

SANG Proposal, Drawing No 2640-LA-10 rev P7 (prepared by Allen Pyke Associates)

SANG General Arrangement, Drawing No 2640-LA-15 rev P6 (prepared by Allen Pyke Associates)

SANG Planting Plan, Drawing No 2640-PP-01 rev P6 (prepared by Allen Pyke Associates)

Access Drawings

Fleet Road Access Works, Drawing No ITB11215-GA-023 Rev J (prepared by i-Transport)

Pale Lane Access Works, Drawing No ITB11215-GA-047 Rev A (prepared by i-Transport)

REASON: For the avoidance of doubt.

5. Prior to the commencement of the development hereby approved, a phasing plan identifying all phases of development shall be submitted to and approved in writing by the Local Planning Authority. All phases of the development shall be completed and carried out in accordance with the phasing plan unless otherwise agreed with the Local Planning Authority.

REASON: To ensure satisfactory development and to maintain control over the provision of housing types in the interests of providing an appropriate housing mix.

6. Prior to the commencement of each phase of development a Construction Method Statement for that phase shall be 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 details of:

- 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 hoardings including decorative displays and facilities for public viewing, where appropriate;
- v) Wheel washing facilities and the dispersal of water;
- vi) Measures to control the emission of dust and dirt during construction;
- vii) Details of the site office / compound;
- viii) A construction traffic management plan, to include details of how the site will be accessed and from which point(s), any works required to provide new access or upgrading of existing access routes, construction traffic routes, haul roads, parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a programme for construction;
- ix) Site waste management; and
- x) Details of the control measures for air quality, biodiversity, waste management and lighting.

REASON: In the interests of highway safety and neighbouring amenity.

7. No development shall take place until the developer has entered into a Section 278 of the Highways Act 1980 agreement relating to the provision of the vehicular access to the site. The access shall thereafter be provided in accordance with the

approved details prior to first occupation, unless other timing for implementation is agreed in writing with the highway authority.

REASON: in the interest of highway safety and to satisfy policies GEN1 and T14 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

8. As part of the Reserved Matters for each phase of development, details of proposed shared pedestrian and cycle ways, along with way-finding signage, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided prior to first occupation of the relevant phase of development. Routes shall be in accordance with Figures 30-34 of the Design and Access Statement and designed to segregate footways and cycle ways off the main carriageway by introducing swales or other adequate landscaping between both routes.

REASON: To provide adequate pedestrian and cycle links to the site and adequate pedestrian and cycle ways within the site in the interest of sustainability and pedestrian and cycle safety.

9. As part of the Reserved Matters for each phase of development, adequate communal Bin Storage Areas and Bin Collection Points, in accordance with Hart DC Waste and Recycling Department's standards, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided prior to first occupation of the relevant phase of development.

REASON: To avoid blockage of the public highway by communal bins and for the proposal to be compliant with policies GEN1 and T14 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996- 2006.

10. As part of the Reserved Matters for each phase of the development, a General Traffic and Parking Management Scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. The General Traffic and Parking Management Scheme shall include the plan of the development and its phases and shall detail the basis of the arrangements for future management and maintenance of traffic and parking restrictions, including the method of enforcement, of the proposed streets within the development. As part of the submission of the reserved matters for each phase of development, details of the lining and signing for traffic and parking management of roads and footpaths of each phase shall be submitted to and approved in writing by the Local Planning Authority, in strict accordance with general arrangements approved under the General Traffic and Parking Management Scheme. The approved details of the lining and signing for managing the traffic and parking for each phase shall be implemented on completion of the finished road surface in each phase, and with any Traffic Regulation Order that may be deemed required being implemented by the Local Highway Authority and funded at the Developer's cost. Each phase of the Traffic and Parking Management Scheme shall be managed as approved until such

a time as a Section 38 agreement of the Highways Act 1980 has been entered into, or consent has been given to the local authority, or a private company has been established, to undertake the relevant parking and traffic enforcement actions. The Traffic and Parking Management Scheme shall include plans determining the traffic and parking management regime for each street of the development, which at least shall include some, or all, of the following elements:

- on-street and off-street parking controls [waiting, loading/unloading, disabled or other special parking places, pavement and verge parking restrictions or waiting];
- speed limits;
- Heavy Goods Vehicles and other weight or height restrictions;
- direction signing;
- traffic calming;
- movement restrictions;
- controlled and uncontrolled pedestrian crossing facilities; and
- any lining, signing and traffic regulation orders required to implement the above in accordance with statutory policy by the Local Highway Authority, if any.

REASON: To ensure that the estate streets serving the development are kept clear of congestion, parking and obstruction by traffic, in the interest of residential and highway safety.

11. As part of the Reserved Matters stage for each phase of the development, an Estate Street Phasing and Completion Plan for that phase shall be submitted to and approved in writing by the local planning authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards under which estate streets serving each phase of the development will be completed. No dwellings within each separate phase of the development shall be occupied until the estate streets affording access to those dwellings have been completed in accordance with the Estate Street Phasing and Completion Plan.

REASON: To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available for use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

12. As part of the Reserved Matters for each phase of development, details of the proposed arrangements for future management and maintenance of the proposed streets within that phase shall be 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 Section 38 of the Highways Act 1980 or a private Management and Maintenance Company has been established. A copy of a completed agreement between the applicant and Hampshire County Council under

Section 38 of the Highways Act 1980, or under the Private Street Works code of the Highways Act 1980 with details of a private management and maintenance company confirming funding, management and maintenance regimes shall be submitted to the Local Planning Authority to discharge this condition.

REASON: To ensure that the estate streets serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential and highway safety; and to ensure a satisfactory highway infrastructure serving the development.

13. No development in any phase shall commence until plans showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the height of any retaining walls within the application site have been submitted to and approved, in writing, by the Local Planning Authority for that part of the site. The development shall be completed and retained in accordance with the details so approved.

REASON: To ensure the provision of an accessible development.

14. No development in any phase shall commence until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water from highways, and details of a programme for the making up of roads and footways for that part of the site have been submitted to and approved by the Local Planning Authority in writing before development in any phase commences. The development shall be completed in accordance with the details so approved.

REASON: In the interests of highway and pedestrian safety

15. No dwelling shall be occupied until the approved cycle parking serving that dwelling has been provided on site. The cycle parking shall be retained thereafter for its intended purpose.

REASON: To ensure the provision of sustainable transport measures.

16. No development shall take place in any phase until details of how it is intended to relocate any spoil or arisings caused by the development of that part of the site, either on or off site, have been submitted to and approved in writing by the Local Planning Authority. The works shall take place in accordance with the approved details.

REASON: In the interests of amenity and to ensure a satisfactory development.

17. The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment - November 2016, C85284/RE001-C, produced by John Newton & Partners – Consulting Engineers and the mitigation measures detailed within that document. The mitigation measure(s) in relation to each phase shall be fully implemented prior to occupation of that phase and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

REASON: In order to prevent any on or off-site drainage and/or flooding issues and to accord with policy GEN11 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

18. Development other than that required to be carried out as part of an approved scheme of remediation shall not commence until parts 1-4 of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part 4 has been complied with in relation to that contamination.

#### 1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The developer shall submit the written report to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The report of the findings must include:

a survey of the extent, scale and nature of contamination; an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

#### 2. Submission of Remediation Scheme.

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared. The developer shall submit the detailed remediation scheme in writing to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure



that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

### 3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

### 4. Reporting of Unexpected Contamination.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified the developer shall undertake an investigation and risk assessment in accordance with the requirements of part 1. Where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part 2, which the developer shall submit in writing to the Local Planning Authority for approval and works shall not continue until approval has been received. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be submitted to and approved in writing by the Local Planning Authority in accordance with part 3 of this condition.

REASON: To ensure a safe environment for future users of the site and to accord with policy GEN9 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

19. The development hereby approved shall be carried out for each phase in accordance with the methodology and mitigation measures in relation to that phase detailed in Chapter 6 (Ecology and Nature Conservation) of the submitted Environmental Statement (November 2016).

REASON: To ensure appropriate biodiversity gain as part of the development.

20. The Suitable Alternative Natural Greenspace (SANG) which shall serve the development hereby permitted will be made available for public use prior to the first occupation of the residential development hereby permitted and shall be maintained thereafter in accordance with the approved Management Plan.

REASON: In the interests of protecting nature conservation value of the Thames Basin Heaths Special Protection Area and to accord with policy CON1 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006 and policy NRM6 of the South East Plan.

21. Prior to the commencement of development in any phase details of the means of protection, including method statements where appropriate, for all trees, hedges, hedgerows and shrubs in that phase, unless indicated as being removed, shall be submitted to, and approved in writing by the Local Planning Authority. The trees, hedges, hedgerows and shrubs shall be retained and protected in accordance with the approved details for the duration of works on the site and retained for at least five years following occupation of the approved development. Any such vegetation immediately adjoining the site shall be protected on the site in a similar manner for the duration of works on the site. Any vegetation within the site which is removed without the Local Planning Authority's consent, or which dies or becomes, in the Authority's opinion, seriously damaged or otherwise defective during such period shall be replaced and/or shall receive remedial action as required by the Local Planning Authority. Such works shall be implemented as soon as is reasonably practicable and, in any case, replacement planting shall be implemented by not later than the end of the following planting season, with others of the same size, species, numbers and positions unless the Local Planning Authority gives consent in writing to any variation.

REASON: To protect existing trees and vegetation in the interests of amenity and to accord with policy CON8 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

22. No works shall take place on land to which Reserved Matters relate in any phase 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. The assessment should initially take the form of a geophysical survey in order to map anomalies of possible archaeological origin within the site, followed by the excavation of trial trenches that are located across these anomalies, with further trenching located across the remainder of the development area in order to check for features missed by the geophysics.

REASON: To assess the extent, nature and date of any archaeological deposits that might be present and the impact of the development upon these heritage assets, in accordance with policy CON11 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

23. No works shall take place on land to which Reserved Matters relate in any phase until the applicant has secured the implementation of a programme of archaeological mitigation of impact, based on the results of the trial trenching, in accordance with a Written Scheme of Investigation that has been submitted to and approved in writing by the Local Planning Authority.

REASON: To mitigate the effect of the work associated with the development upon any heritage assets and to ensure that information regarding these heritage assets is preserved by record for future generations, in accordance with policy CON11 of

the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

24. Following completion of archaeological fieldwork a report shall be prepared in accordance with an approved programme including where appropriate post-excavation assessment, specialist analysis and reports, publications and public engagement. The report shall be submitted in writing to the Local Planning Authority.

REASON: To contribute to our knowledge and understanding of our past by ensuring that opportunities are taken to capture evidence from the historic environment and to make this publicly available, in accordance with policy CON11 of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006.

## APPEARANCES

### FOR THE APPELLANT

Neil Cameron QC, Landmark Chambers, London *instructed by Cripps LLP, Tunbridge Wells (Beth Gascoyne)*

He called\*:

- Jeremy Smith, Director, SLR Consulting Ltd – Landscape
- Malcolm Cooper, Director, Malcolm A Cooper Consulting - Heritage
- David Churchill, Partner, Carter Jonas LLP - Prematurity
- Nicholas Taylor, Partner & Head of Planning, Carter Jonas LLP – Planning

*\*For details of these witnesses' qualifications see ID11*

### FOR THE LOCAL PLANNING AUTHORITY

Timothy Leader, Counsel, St Johns Chambers, Bristol *instructed by Emma Whitaker, HDC Planning Manager*

He called:

- Andrew Ratcliffe, Landscape Manager, HDC – Landscape & Countryside Impact
- Dr Nigel Barker-Mills – Heritage
- Daniel Hawes, Planning Policy manager, HDC – Prematurity
- Peter Lee, Planning Team Leader, HDC – BMV & Planning

### LOCAL PEOPLE

For and on behalf of Stop Elvetham Chase Development Group (SECDG) and Elvetham Heath Parish Council:

- Tony Gower-Jones – Traffic and Highways
- Christopher Riley – Education
- Katie Davies – Safety of school children etc
- Marilyn Robson – Quality of Life issues

Other local people:

- Cllr Sara Kinnell – Ward Cllr

## **DOCUMENTS**

### CORE DOCUMENTS LIST

#### National Policy and Guidance (Folder 1)

CD1 – Relevant NPPF extracts

CD2 – Relevant PPG extracts

CD3 – Technical consultation on updates to national policy & guidance (2018)

CD4 – GLVIA3 (bound hard copy present at Inquiry)

CD5 – Historic England (HE) Conservation Principles

CD6 – HE GPA3 – Setting of Heritage Assets 2<sup>nd</sup> Edition

CD7 – HE GPA2 – Managing Significance in Decision Taking in the Historic Environment

#### Local and Parish Policy (Folder 1 to CD13, Folder 2 CD14 onwards)

CD8 – Relevant extracts from the South east Plan (2009)

CD9 – Relevant extracts from the Hart District Local Plan

CD10 – Refined Options for Delivering new Homes (February 2016)

CD11 – SA of the Hart Local Plan (the eLP) (February 2018)

CD12 – SA of the eLP, Post Submission Interim SA Report (August 2018)

CD13 – eLP – Proposed Submission Draft (February 2018), submitted June 2018

CD14 – Proposed Modifications to eLP, version 3 (December 2018)

CD15 – Relevant extracts from the Hartley Wintney Neighbourhood Plan

CD16 – Hampshire Integrated Character Assessment (2010): two extracts: for 2C Lodden valley and Western Forest of Eversley & 1B North east Plantations and Heath

CD17 – Hart Landscape Character assessment (1997) – extract for LCA11, Hart Valley (the whole documents was available at the Inquiry sitting)

CD18 – Hart Landscape Capacity Study (2016)

CD19 – HE Historic Farmsteads and Landscape Character in Hampshire

CD20 – HE Pale Lane Farmhouse list description (18 October 2018)

#### Planning Applications, Appeals and Case Law

CD21 – Pale lane farmhouse 1994 application and plans

CD22 – Pale Lane Farmhouse November 2017 extension proposals

CD23 – Appeal decision for land north of Netherhouse Copse

CD24 – *Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes [2017] UKSC 37*

CD25 – *Barwood Stategic Land II LLP v East Staffordshire Borough Council & Anor [2017] EWCA Civ 893*

Application Documents\*

*\*For full list of plans and drawings listed from CD42 onwards below see documents themselves*

CD26 – Delegated Officers Report

CD27 – Decision Notice

CD28 – Planning Obligations draft S106 Heads of terms (November 2016)

CD29 – Transport assessment

CD30 – Transport Assessment Addendum

CD31 – Community Bus Proposal

CD32 – Framework Travel Plan

CD33 – Site Wide Drainage Assessment (November 2016)

CD34 – Flood Risk Assessment (November 2016)

CD35 – Design and Access Statement (November 2016)

CD36 – SANG and delivery management Plan (October 2017)

CD37 – Heritage Assessment (Malcom Cooper, November 2016)

CD38 – Ecology Assessment

CD39 – Arboricultural Implications Report (November 2016)

CD40 – Tree Survey Schedule

CD41 – Agricultural Land Classification and Soil Resources (August 2016)

CD42 – Plans & Drawings as existing

CD43 – Plans & Drawings as Proposed

CD44 – SANG Plans

CD45 – Proposed Access Works

CD46 – Letter to HDC explaining extension of red line boundary dated 22 November 2017

CD47 – Drawings of proposed highway works (also in S106)

Appeal Documentation

CD48 – Statement of Common Ground (SoCG)

CD49 – Transport Statement of Common Ground (TSoCG)

INQUIRY DOCUMENTS (IDs)

ID1 – List of Conditions agreed between the main parties

ID2 – Opening Statement by LPA

ID3 – Closing Submissions by LPA

ID4 – Opening Submissions by Appellant

ID5 – Closing Submissions by Appellant together with additional legal cases cited

ID6 – Woolpit appeal decision

ID7 – Annotated 5YHLS Statement showing sites outside of settlement boundaries

ID8 – Examining Inspector's interim findings on eLP dated 26 February 2019, HDC Cabinet Report and Minutes of meeting on 14 March, comments on the EI letter by the LPA of 22 March and comments of the Appellant of 27 March, all 2019.

ID9 – Summaries of SECDG case presented at Inquiry sitting

ID10 – Statement of Common Ground Addendum, January 2019

ID11 – Appearances on behalf of the Appellant – details of witnesses' qualifications

ID12 – Written confirmation of Appellant to pre-commencement conditions

ID13 – Affordable Housing Trajectory, 6 December 2018

ID14 – Revised Table/Matrix of Landscape Capacity

ID15 – Report on Examination of Rushmoor Local Plan, 14 January 2019

ID16 – Affordable Housing Background Paper, March 2017

ID17 – S106 Agreement, alternative Unilateral Undertakings, & relevant summaries and CIL Compliance Statements



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.