TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPEAL BY T A Fisher & Sons Ltd

Appeal Against the refusal of Full Planning Permission
by West Berkshire Council

ON

Land to the rear of The Hollies, Reading Road, Burghfield Common

For

The erection of 32 dwellings including affordable housing, parking and landscaping. Access via Regis Manor Road.

Application Reference no. 22/00244/FULEXT
APPEAL REFERENCE: APP/W0340/W/22/3312261

REBUTTAL PLANNING PROOF OF EVIDENCE

Prepared by
Katherine Miles MRTPI
Director - Pro Vision

MAY 2023

PRO VISION

LAND TO THE REAR OF THE HOLLIES, READING ROAD, BURGHFIELD COMMON

Rebuttal Planning Proof of Evidence

PRO VISION PROJECT NO. 50929

PREPARED BY:

KATHERINE MILES BA (HONS) MSC MRTPI

DIRECTOR

PRO VISION

APPELLANT:

T A FISHER & SONS LTD

DATE:

MAY 2023

PRO VISION

THE LODGE

HIGHCROFT ROAD

WINCHESTER

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APPENDICES

1.0 Introduction

1.1 My name is Katherine Miles and I am a Director at Pro Vision. My qualifications and experience are set out in my Proof of Evidence (CD10.4).

1.2 This Rebuttal Planning Proof of Evidence addresses a number of points in the Proofs of Evidence of Mr Matthew Shepherd (CD11.10) and Mr Arthur Bryan Lyttle (CD11.11) submitted on behalf of West Berkshire Council, and Mr Sean Bashforth on behalf of the Rule 6 Party AWE/MOD (CD13.44).

1.3 This is not intended to be an exhaustive rebuttal, but only deals with points where it is considered appropriate and/or helpful to the Inspector and the Inquiry to respond in writing at this stage. Where a specific point has not been dealt with, this does not mean that the point is accepted, or is no longer an issue.

1.4 The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute. The opinions expressed are my true and professional opinions.

2.0 Policy CS8

2.1 There are various statements in the Council's Planning Proof from Mr Shepherd and in the separate Policy Proof from Mr Lyttle, which set out the Council's stance regarding Policy CS8.

2.2 At the first Paragraph 3.30 of Mr Shepherd's Proof, he states, "*there is today no "Inner Zone" under CS 8 because the Regulations have removed the concept of Inner and Middle Zone and replaced the risk evaluation area with a "DEPZ" and an outer zone".*

2.3 At his second Paragraph 3.28, Mr Shepherd relies on the *"reasoned justification paragraph 5.44"* to support his position that the consultation zones *"cannot be regarded as frozen in time".*

2.4 At his second Paragraph 3.29, Mr Shepherd argues that Policy CS8 would be *"robbed of its purpose"* if it were not applied as the Council has done i.e., referring to Footnote 60 and redrawing and redefining the consultation zones in relation to this application (Mr Shepherd's Paragraph 3.31).

2.5 I note Mr Shepherd asks the Inspector to give full weight to the policy, but to be clear, this is not to the Policy as it is written and as it appears in the Adopted Development Plan, but to the policy as amended (not in any publicly accessible format) by Mr Shepherd and Mr Lyttle in respect of this appeal.

2.6 Similarly, Mr Lyttle argues at his Paragraph 3.5 that since 22 May 2019 the Council has been able to define the extent of the Consultation Zones under REPPIR 2019, and so change the extent of the consultation zones in Policy CS8. At 3.6, Mr Lyttle claims *"the ability of Policy CS8 to change"* arises by virtue of Footnote 60 and paragraph 5.44 of the reasoned justification. I do not agree that Paragraph 5.44 or Footnote 60 provide any support at all to the Council's arguments about re-writing or re-interpreting Policy CS6. And when the policy is considered as a whole, it is in my view quite plain that the inner zone is defined, and is not subject to increase for the purposes of the application of Policy CS8.

2.7 However, these statements give rise to two further questions on which I wish to comment (in addition to the points made about the meaning of Policy CS8 in my main proof and above):

(1) Can a policy in an Adopted Development Plan be changed and if so, how? and
(2) The status of supporting text within a Development Plan Document.

2.8 The PPG considers the role of a Development Plan and states: *"The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise"*[1].

2.9 In respect of the first question, the Planning Practice Guidance states:

> ***"What is required when updating a plan?***
> *A local planning authority can review specific policies on an individual basis. Updates to the plan or certain policies within it must follow the plan-making procedure; including preparation, publication, and examination by the Planning Inspectorate on behalf of the Secretary of State."*[2]

2.10 West Berkshire Council has commenced a review of its Local Plan and, because of the REPPIR 2019 Regulations (CD16.29) has concluded there is a need to update Policy CS8 of the Local Plan. However, the Council cannot simply enact a change to the policy, as it attempts to do so in this appeal. The Council must follow due process as established by the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) (Regulations) 2012. To do as the Council has attempted to do here fundamentally undermines the plan-led system that underpins decision making on planning applications in this country.

2.11 Mr Shepherd and Mr Lyttle also consider that the Council can freely change a policy of the Development Plan after adoption and without any consultation or examination. In this case, they both rely on Paragraph 5.44 of the Core Strategy and Footnote 60, which they argue gives the Council the ability to amend Policy CS8 (CD6.1). As above, this is not in my view a correct understanding of Policy CS8, nor of Paragraph 5.44 or Footnote 60.

2.12 This leads to the second question as to the status of the supporting text / reasoned justification.

2.13 The 2012 Local Planning Regulations made under s17(7) of the 2004 Act require that "*a local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it"*. Case Law in respect of *R. (on the application of Cherkley Campaign Ltd) v Mole Valley DC*[3] is relevant here. In summary, this case held that the supporting text to

[1] Paragraph: 001 Reference ID: 61-001-20190315
[2] Paragraph: 069 Reference ID: 61-069-20190723 Revision date: 23 07 2019
[3] EWCA Civ567 [2014] **Appendix KMR1**

local planning policy was an aid to the interpretation of a policy but was not itself a policy or part of a policy.

2.14 Paragraph 16 of the Judgment of Richards LJ in the Court of Appeal commented:

> *"…in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of the land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy".*

2.15 At Paragraph 21 of the Judgement, Richards LJ said:

> *"The policy is what is contained in the box. The supporting text is an aid to the interpretation the policy but is not itself policy. To treat as part of the policy what is said in the supporting text…is to read too much into the policy".*

2.16 In summary, the requirements of Policy CS8 are what is in the (purple) policy box. The text as it appears in the box can only be changed through a Local Plan Review. In short, whilst I do not dispute that REPPIR 2019 is a material consideration for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, it cannot be used to change the language or meaning of the Adopted Development Plan as suggested by the Council.

2.17 In any event, I draw the Inspectors attention to Section 38(5) of the Planning and Compulsory Purchase Act 2004 which states:

> *"If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document **[F9**to become part of the development plan**]**."*

2.18 The Council prays in aid of Policy CS8 (as amended for this appeal pursuant to the Council's interpretation) to resist development on the Appeal Site. However, the Appeal Site is an allocated site in the Adopted Development Plan. Therefore, on the Council's approach, there is conflict between Policy CS8 and Policy HSA16. The Core Strategy is an earlier Development

Plan Document (DPD) than the Housing Site Allocations DPD, the former being adopted in 2012, and the latter in 2017. Therefore, in line with s38(5), any such conflict must be resolved in favour of Policy HSA16. Or in other words, the delivery of the allocation of this site in the Development Plan must not be prevented on the basis of Policy CS8.

3.0 Genuine Fear

3.1 Paragraph 4.12 of Mr Shepherd's Proof argues that *"genuine fear or concern of activities that have land use consequences can also be a material consideration".*

3.2 Mr Shepherd relies upon a case from 1997 in West Midlands relating to the extension of a bail and probation hostel to support his proposition. I note from the introductory paragraph to that case from the article Mr Shepherd includes at his Appendix 2 (CD11.10), it states *"On appeal, the Inspector found on the evidence, that the apprehensiveness and insecurity of nearby residents was justified because there had been an established pattern of behaviour arising from the hostel in the form of drunken and anti-social behaviour and some of the bailees had committed crimes in the area."* It also states that the Court of Appeal held *"The pattern of anti-social behaviour arose from the use of the land as a bail hostel and did not arise merely because of the identity of the particular occupier or of particular residents".*

3.3 The relevance of this particular case to AWE Burghfield is questionable in my opinion.

3.4 I am however aware that the relevance of public concern to planning decisions was also considered in Gateshead M.B.C. v. Secretary of State for the Environment [1994] (**Appendix KMR2**). That case concerned a proposed clinical waste incinerator where there was public concern about any increase in the emission of noxious substances from the proposed plant. In that case, Glidewell L.J stated:

> *"Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But, if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial-indeed very little development of any kind- would ever be permitted."*

3.5 Having regard to the nature of the operations at AWE Burghfield as described in the evidence of others in this appeal, I consider that Gateshead is a more appropriate case to refer to (from that cited by Mr Shepherd). Also, I note that genuine fear was also a material consideration in the Alvechurch Decision from March 2006 where Inspector B J Sims in APP/E1855/A/05/1172372 (**Appendix KMR3**) considered the erection of a replacement chimney at an animal feed plant. Pollution and odour issues were deemed to be material considerations and at Paragraph 76 public concerns are referred to and included *"bad past experience of alleged pollution from Mayfield Farm and fears that it will worsen if the chimney is permitted".*

3.6 At Paragraph 81, the Inspector refers to the Gateshead Case I note above. Reference is made to *"genuine fear and distrust among many hundreds of local objectors*". The Inspector commented *"…case law is clear that where such matters are regulated by the other statutory code, public fear must be supported by positive evidence in order to be regarded as an overriding material planning consideration."* In that case, the Inspector went on to *"ascribe limited planning weight to the public anxiety widely expressed at the Inquiry".*

3.7 In this appeal, we are dealing with a proposal for housing development and not further expansion of the AWE site. Therefore, if as the Council ask, the Inspector is to have regard to *"the real fear and concern of the general public about longer term radiation effects on real property"* as a material consideration, then it is reasonable that the Inspector also has regard as a material consideration to the extensive safety protocols, controls and oversight in place at AWE Burghfield to mitigate against an incident at its site as discussed in the evidence of others.

3.8 Whilst weight is a matter of judgement, it is my view that there is no evidence of widespread public anxiety in this case and when taking into account that ONR and AWE ensure that risks from activities on site are both As Low As Reasonable Practicable (ALARP) and Tolerable (see Paragraph 10.5 of the Proof of Evidence from Person AW at CD13.42)) and that ONR considers the OSEP to be adequate (see Paragraph 26 of the Proof of Evidence from Mr Ingham), I attach very limited weight to fear as a material consideration.

4.0 Pre-Application Engagement

4.1 At Paragraph 3.4 of Mr Shepherd's evidence (CD11.10), the Appellant is said to have *"ignored" "the clear advice"* of Paragraph 5.41 of the Core Strategy (CD5.64). Mr Shepherd alleges that the Appellant did not tick a box on the application form stating that it had sought pre-application advice before submitting the application to the Council, and that this is *"directly contrary"* to Paragraph 5.41.

4.2 The final sentence of Paragraph 5.41 in the reasoned justification to Policy CS8 advises: *"Applicants considering new development within the land use planning consultation zones provided by the ONR and as shown on the proposals map, are strongly encouraged to enter into early discussions with the Council".* (My emphasis)

4.3 The first point to note is the suggestion in Paragraph 5.41 is plainly superseded where as here there is a subsequent Development Plan Document allocating the site.

4.4 The second point to note is the words I have underlined. It is clearly not required that there must always be discussions with the Council prior to submission of an application in the land use planning zones, just that such discussions are *"strongly encouraged"*. Therefore, it is not possible to be *"directly contrary"* to this aspect of Paragraph 5.41, which in any event is supportive text rather than itself policy as I have discussed above.

4.5 The third point, and the more significant point that I wish to bring to the Inspectors attention in response to Mr Shepherd's criticism, is that whilst it is indeed correct that there was no pre-application enquiry as meant by the question on the Planning Portal Application Form at CD2.25 made to the Council's Development Management team prior to submission of the application, it is not the case that the Appellant had no engagement with the Council prior to submission of the application.

4.6 The context prior to submitting the appeal application in January 2022 was as follows:

- The Appeal Site had been allocated by Policy HSA16 within the HSADPD (CD5.73) in 2017 and that allocation established the principle of development on this site;

- Phase 1[4] of the allocation had already been approved in Outline by the Council in October 2018 (CD5.8) and subsequently Reserved Matters for 28 dwellings had been approved in August 2019 (CD5.9 to CD5.11);
- Outline Planning Permission had been granted for 100 dwellings at Land at Pondhouse Farm to the north of the site (CD5.16) in December 2019;
- The Council had consulted on its Regulation 18 Local Plan which proposed to carry the allocation forward under draft Policy RSA19 (CD7.6). The Reg 18 Plan was published for Consultation on 11 December 2020. As confirmed by Appendix 1 of Mr Bashforth's Proof (CD13.45), AWE had not objected to the rolling forward of the allocation under that draft policy);
- The Council was relying on the delivery of this site in its housing trajectory (AMR CD7.79) at the time of submission of the application (and when it was determined); and
- As set out in the Appellants Statement of Case at Paragraph 3.9, the Appellant did consult the Principal Planning Officer at West Berkshire Council prior to submitting the application. The consultation was submitted in January 2021 (CD5.15), and the response confirmed that the site remained allocated in the Development Plan and the principle of development was established. Caroline Peddie, the Principal Planning Officer stated:

  "Our position is that the HSA DPD allocation remains in the Local Plan, so the principle of development is established. You will probably have seen our current consultation on the emerging Local Plan Review which proposes rolling forward this allocation."

4.7 Therefore, it was clear to the Appellant that the Council's position at the time of submission of the appeal application, and importantly after the Consequences Report had been received, was that in respect of the principle of development on the Appeal Site, this was established by virtue of Policy HSA16, and the allocation of the site was to be rolled forward despite it being within the DEPZ as established by the Council in March 2020 (CD5.19). The Appellant therefore did not anticipate an outcome of refusal as all the evidence available from the Council pointed to its ongoing support for the development on this site.

4.8 Finally, in respect of Mr Shepherds' criticism, it is clear that the Appellant did engage with the Council in the context of Paragraph 5.41 of the Core Strategy, and at the time of submitting

[4] CD5.8 and CD5.9 to CD5.11

the application, the Appellant had a reasonable expectation that the principle of development on the appeal site should not be in question.

5.0 Compliance with Policy HSA16

5.1 Both Mr Shepherd (Paragraph 3.46 at CD11.10) and Mr Lyttle (Paragraph 3.17 at CD11.11) argue that the appeal proposal conflicts with Policy HSA16 (CD5.73) because:

(a) access is not from Reading Road, and
(b) secondary access is not from Stable Cottage; and
(c) the development is not *"masterplanned comprehensively".*

These were not concerns raised in the Council's decision on the Appeal Application, and for the reasons set out below do not merit further discussion in this Inquiry:

(a) Access from Reading Road

5.2 Mr Lyttle at Paragraph 3.17 of his evidence states *"the road specified by the application for access is not that required by Policy HAS 16 but is different".*

5.3 It is correct that the description of development for the Appeal Application refers to "Access via Regis Manor Road". This is because Phase 1 of the delivery of the allocation for 60 houses under Policy HSA16 has been constructed and has delivered the site access to Reading Road. The approved layout of that development is at **Appendix KMR4**. That road serving 28 dwellings has been called "Regis Manor Road".

5.4 It is clear that neither Mr Lyttle nor Mr Shepherd may have reviewed the planning history of this allocation site. This demonstrates that their colleague Mr Dray, then Team Leader of Development Management (now Acting Development Control Manager) stated in his Officers report in respect of application 16/01685 (CD5.8):

6.2.11 The table below provides a summary appraisal of the key issues which have been considered in determining whether this application for just Phase 1 is acceptable, or whether it prejudices the development of Phase 2.

	Issue	Comprehensive Development Implications
1)	Access	The whole development is accessed through Phase 1 onto Reading Road. A private agreement has been reached between the landowners to provide step-in-rights to ensure that Phase 2 can be accessed through Phase 1. Whilst this agreement is welcomed, it is also a public interested to ensure that measures are put in place to ensure that Phase 2 can be accessed if any problems arise in the development of Phase 1. As such, it is considered necessary to secure a planning obligation which enables the Local Planning Authority to stipulate that the access road through Phase 1 is made available if so directed. As such, subject to a suitable planning obligations in a s106 legal agreement, this matter can be resolved under this application.

5.5 The above clearly confirms the Council anticipated this Phase 2 site would be accessed off the road through Phase 1, which connects to Reading Road in accordance with Policy HSA16. The appeal proposal cannot reasonably be held to conflict with Policy HSA16.

(b) <u>A secondary access from Stable Cottage</u>

5.6 Policy HSA16 requires: "*The site will be accessed from Reading Road, with a potential secondary access from Stable Cottage".* Mr Shepherd contends the application is in breach of HSA16 because *"secondary access is not from Stable[s] Cottage".* It is important to read carefully the words of a policy. In this case, the inclusion of the word "potential" in respect of a secondary access is a clear indication to the reader that a secondary access is not required as necessary for the development, it is simply an indication that there may, potentially, be a secondary access from a specified location.

5.7 The Phase 1 application did not propose a secondary access point, and none was required by the Council's Highway Officers in determining that application. In considering the appeal application, the Highways Officer did not require there to be a secondary access (CDX4.9), and there was no mention of this in the Officers Report (CD4.1). The appeal proposal cannot therefore reasonably be held to conflict with Policy HSA16 when no secondary access has been required by the Council.

(c) <u>Comprehensive Masterplanning</u>

5.8 Mr Shepherd at 3.46 states the proposal is in breach of Policy HSA16 because *inter alia* it is not a comprehensive scheme. Earlier in his evidence at 3.42, Mr Shepherd states that the

requirement of Policy HSA16 for a single application was met in respect of the first application, but *"not the current Application/Appeal because it is a second application".* Mr Lyttle makes a similar argument at his Paragraph 3.17 stating that the allocation *"was as a single site and required a comprehensive masterplan for a single scheme. The fact that this has not happened implies that the application subject to this appeal was not in accordance with the approved development plan."*

5.9 I consider it entirely unreasonable for both Mr Shepherd and Mr Lyttle to argue the proposal to be in breach of Policy HSA16 (and GS1 of the HSADPD) when one reads Section 6.2 of the Officers report in respect of the Phase 1 development approved by the Council on part of this allocated site. The pertinent conclusions in respect of the policy requirements from that Officers report are below:

> 6.2.13 The timely delivery of housing on this site in the short term must attract some weight, particularly as the development contributes to the Council's five year housing land supply. Given that the most critical considerations are resolved, it is now considered on balance that the proposal will enable a sufficiently comprehensive and cohesive development to take place. Given the relatively small scale of this allocation, strategic infrastructure considerations do not arise. Most importantly, it appears that the development of Phase 2 will not be prejudiced by granting outline planning permission.

> 6.7.3 Policy HSA16 states that the site will be accessed from Reading Road, with a potential secondary access from Stable Cottage. The proposed development shows full vehicular access being taken from Reading Road in accordance with the Policy. Highways Officers are satisfied with the proposed access in this location, but have identified that the width of carriageway and proposed pedestrian refuge island is insufficient. However, there is sufficient space within the site to address this matter without a material impact on the indicative layout; as such a revised access plan can be secured by condition. Stable Cottage (to the south-west of The Hollies) is located outside the extent of this application site, and is therefore a matter to be considered as part of the Phase 2 development; nothing within this application would prejudice any access being taken from Stable Cottage.

5.10 As such, the ship has clearly sailed and the opportunity to raise objection and cite conflict with Policies HSA16 and GS1 has long passed. As such, it would be unreasonable for the Council to maintain any objection to the proposal on this basis (again not cited in the reasons for refusal).

5.11 I also draw attention to the response from the Applicant to objections submitted to the Council during consideration of the application and included with the original appeal submission. A copy is at **Appendix KMR5** and contains some useful background relating to both the allocation and the access.

6.0 Affordable Housing Need

6.1 Mr Shepherd argues at Paragraph 6.5 of his evidence that *"affordable housing could be situated on an alternative site outside of the DEPZ area and in line with the Emerging Local Plan approach to shaping development over the administrative area of the Council".* At Paragraph 8.3 he suggests that the benefit attached to the affordable housing units on the appeal site should be given reduced weight because *"These affordable units could be delivered elsewhere and where there is no risk or a reduced to future occupiers because the housing type would be outside of the DEPZ."*

6.2 My Proof of Evidence (CD10.4) at Paragraph 6.12 to 6.20 sets out the significant need for affordable housing in the District as identified through the Council's own evidence. I also note from the Annual Monitoring Report (CD7.77) Paragraph 1.14 which states that *"House prices in West Berkshire are high and the provision of affordable housing to meet local needs, particularly for young people and key workers, is one of the Council's priorities."* (My emphasis)

6.3 Mr Shepherd's comments pay no regard to the priority of the Council to meet local needs as emphasised above, and which is also referred to in Policy CS6 of the Core Strategy (CD5.63).

6.4 The Council's Housing Officer comments of 15 March 2022 referred to the Council's Housing Register as of December 2021 and referred also to applicants for housing *"who have expressed an interest in accommodation in and around Burghfield Common."* This confirms that there are persons in need of Affordable Housing in West Berkshire with an expressed need to live in or around Burghfield Common.

6.5 Typically, a desire to live in a certain area will be linked to personal requirements such as:

- Living close to your place of work – There may be applicants that wish to live in Burghfield Common because they work in or around Burghfield Common. Indeed, Mr Bashforth's Proof confirms at Paragraph 2.3 that AWE is one of the largest employers in the local area with c. 7,000 FTE jobs across the AWE Burghfield and AWE Aldermaston sites. It is reasonable to assume that there will be some employees living in the local area.
- Living close to family – There may be applicants who wish to live close to family for the various benefits that can bring i.e. childcare.
- Living close to children's school – There may be applicants with children in existing schools in the area who need to move from an existing affordable home to a larger affordable

home or a home of a different tenure to that which they currently occupy, or who wish to move into the area because of the quality of schools in Burghfield Common.

6.6 Whatever the personal motivations of applicants on the Council's housing register for expressing an interest in accommodation in Burghfield, it is unreasonable for Mr Shepherd on behalf of the Council to suggest those needs could be brushed aside and people could simply be accommodated elsewhere.

6.7 The Council's Housing Officer was approached to provide an update on the housing register with regard to Burghfield Common and the response is provided at **Appendix KMR6**. The response confirmed:

- How many applicants are on the Council's housing register?
  1023

- How many people have expressed a need / desire to be located in / around Burghfield Common?
  209 have expressed an interest in Burghfield, please note they will have also expressed an interest to live in other areas not exclusively Burghfield, so this is really showing a willingness to live in Burghfield rather than a specific need or preference over other areas.

6.8 As such, there is quite clearly a significant need for affordable housing in the Borough, including an expressed interest to live in Burghfield Common from around a quarter of those on the housing waiting list.

7.0 Recent Appeal Decisions

7.1 At Paragraph 4.13 and Table 4.1 of his Proof of Evidence (CD13.44), Mr Bashforth refers to a series of other appeal decisions. I respond as follows:

PINS Reference and Site Name	Commentary
APP/W0340/W/22/3296484 Land at James Lane, Grazeley Green	This was a Written Representations Appeal for the erection of a single dwelling under the Permission in Principle application route. The site was within the countryside. The site was also within the Proposal Map Inner Zone as defined by Policy CS8. I consider the Inspectors decision consistent with my analysis of Policy CS8. I note that the Inspector at Paragraph 14 refers to the lack of evidence to support the Appellants case. This is different to this current appeal, where the Appellant has presented technical evidence which demonstrates the development would not compromise public safety o the ability of the emergency plan to operate. A copy of this decision is at **Appendix KMR7** along with a location plan of the site which confirms it is within the Policy CS8 defined Inner Zone.
APP/X0360/W/21/3275086 Willow Tree House, Shinfield	The relevance of this decision is not explained in Mr Bashforth's evidence. The site lies beyond the extended consultation zone as evidenced by the plan at **Appendix KMR8**, and the application was not refused by the Council for any reason relating to the DEPZ / public safety (see the decision notice at **KMR8**). There was no discussion in this decision on the principle of development within the DEPZ.
APP/X0360/W/21/3271017 Hearn and Bailey Garage, Basingstoke Road, Three Mile Cross AND APP/X0360/W/21/3269974 30 Grazeley Road, Three	These three decisions were all written representations appeals. These three decisions were dealt with by the Kingfisher Grove Inspector at paragraph 21 of his decision (CD8.3). There is no reason to depart from the conclusion of the Inspector in that case, that these decisions i.e. the Diana Close decision, adopted a precautionary approach in the absence of detailed evidence. Unlike this appeal,

Mile Cross AND APP/X0360/W/19/324023 Land to rear of Diana Close, Spencers Wood	where detailed technical evidence is before this Inspector as it was in the Kingfisher Grove decision. As such, I consider these early decisions carry no weight.
APP/X0360/W/21/3269790 Land at Croft Road, Spencers Wood, Shinfield	This was also a written representations appeal, and was in fact also before the Kingfisher Grove Inspector. A copy is included at **Appendix KMR9**. The Inspector recognised that "*The development taken by itself would place minimal additional demands on the emergency services in the event of an incident",* however concern (see paragraphs 19 - 21) was raised about the cumulative effect of unplanned development. This is not the case for this appeal, which seeks permission to bring forward the final phase of development on an allocated site in the Adopted Development Plan. The Inspector noted that all parties agreed that the risk of an incident at AWE Burghfield was low (very small), and there was an even lower risk that it might affect the appeal site. In any event, despite finding that the development would place an additional strain on the emergency services, this was given limited weight by the Inspector because of the low risk and the modest size of the development (paragraph 37).

7.2 In conclusion, there are material differences between the dismissal decisions cited by Mr Bashforth and this current appeal. This Appeal Site is not only allocated in the Adopted Development Plan (a key difference from all the appeals cited), but is also supported by evidence which concludes that the AWE Burghfield site does not represent a significant risk to health or wellbeing for those living in or near the proposed development site, and shows that the increased number of people living in the area will not interfere with the emergency services' ability to provide support to the site in an emergency.

Appendix KMR1 – R. (on the application of Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ567

Neutral Citation Number: [2014] EWCA Civ 567

Case Nos: C1/2013/2619, 2622, 3551 and 3781

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Mr Justice Haddon-Cave
[2013] EWHC 2582 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 7th May 2014

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE UNDERHILL
and
LORD JUSTICE FLOYD

- - - - - - - - - - - - - - - - - - - -

Between :

The Queen on the application of Cherkley Campaign Limited	**Claimant/ Respondent**
- and -	
Mole Valley District Council	**Defendant/ Appellant**
and	
Longshot Cherkley Court Limited	**Interested Party/ Appellant**

(Transcript of the Handed Down Judgment of
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A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

James Findlay QC (instructed by **Sharpe Pritchard**) for the **Appellant**
Douglas Edwards QC and Sarah Sackman (instructed by **Richard Buxton Solicitors**) for the **Respondent**
Christopher Katkowski QC and Robert Walton (instructed by **Berwin Leighton Paisner LLP**) for the **Interested Party**

Hearing dates : 11-12 March 2014

Judgment

As Approved by the Court

Lord Justice Richards :

1. This appeal concerns the grant of planning permission for the development of Cherkley Court and land on the Cherkley Estate near Leatherhead, Surrey, into a hotel and spa complex and an exclusive 18 hole golf course. The whole estate is within the Surrey Hills Area of Great Landscape Value ("the AGLV") and part of the proposed golf course is within the Surrey Hills Area of Outstanding Natural Beauty ("the AONB"). The planning permission was granted on 21 September 2012 by the local planning authority, Mole Valley District Council ("the Council"), to Longshot Cherkley Court Limited ("Longshot"). Cherkley Campaign Limited ("Cherkley Campaign") brought a claim for judicial review to challenge the grant of planning permission. The claim succeeded before Haddon-Cave J who by order dated 22 August 2013 quashed the planning permission. The Council and Longshot both bring appeals against that order, with permission granted by Sullivan LJ. They also appeal against Haddon-Cave J's costs order dated 15 November 2013, but the costs appeals are contingent on the outcome of the main appeals.

2. The facts are set out at paras 5 to 27 of the judgment of Haddon-Cave J. Rather than repeat them here, I will refer to salient features as necessary when considering the issues on the appeal. It is, however, relevant to note at this stage that the decision to grant permission was made by the Council's Development Control Committee ("the Committee") by a bare majority of 10 to 9 after a prolonged decision-making process and that it was contrary to the recommendation in the officers' reports. The grant of permission was accompanied by a lengthy summary of reasons, drafted by the officers, which is quoted in full at para 27 of the judgment below.

3. The issues in the appeal can be considered under the headings of (1) development plan policy, (2) landscape impact, (3) Green Belt policy and (4) reasons.

4. I should say at once that Haddon-Cave J examined the case with great thoroughness and style. He was not at all impressed by the arguments in favour of a golf course development in this area of outstanding natural beauty and/or great landscape value and he expressed himself in strong terms in concluding that the decision of the majority of the Committee suffered from error of law, irrationality and inadequacy of reasons. After initial reading of his judgment I approached the appeals with a disinclination to interfere with it. In the end, however, I have been persuaded by the submissions on behalf of the appellants that he was wrong on each of the issues on which he found against them. In those circumstances I have concluded that his orders cannot stand. My reasons for that conclusion are set out below.

Development plan policy

The relevant policy

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") required the Council to determine the planning application in accordance with the development plan unless material considerations indicated otherwise. By section 54(1), the development plan included "the provisions of the local plan … for the time being in operation in the area".

6. The Mole Valley Local Plan ("the Local Plan"), adopted in October 2000 under the predecessor legislation, contained a section on golf courses. The section comprised "Policy REC12 – Development of Golf Courses" and supporting text (paragraphs 12.70 to 12.81), as follows:

> **"GOLF COURSES**
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> 12.70 There are seven established golf courses in the District concentrated principally around Dorking and Leatherhead. In the Newdigate area a new course has been opened in recent years and another permitted. More generally this part of Surrey is very well served with golf courses. According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District.
>
> 12.71 In considering proposals for new courses, the protection of the District's Green Belt and countryside will be of paramount importance. In this regard it will be important to ensure that a proposal is compatible with retaining and where possible enhancing the openness of the Green Belt and rural character of the countryside. Applicants proposing new courses will be required to demonstrate that there is a need for further facilities.
>
> 12.72 New courses are likely to have an impact on the District's landscape because of their extensive size, formal appearance, considerable earth works and new buildings. The Council will seek to ensure that proposals for golf courses do not reduce the distinctiveness and diversity of the District's landscape. The Council is particularly concerned about the effect on the special landscape qualities of the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value and future golf course proposals will be directed away from these areas of high landscape quality.
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> **POLICY REC12 – DEVELOPMENT OF GOLF COURSES**
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> Proposals for new golf courses and extensions to existing courses will be considered against the following criteria:
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> 1. the impact of the course on the landscape, archaeological remains and historic gardens, sites which are important for nature conservation and identified in Policies ENV9, ENV10, ENV11, ENV12 and ENV13, and the extent to which the proposal makes a positive contribution to these interests;
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> 2. the extent of any built development and facilities and their impact on the character and appearance of

the countryside;

3. courses will not be permitted on Grade 1, Grade 2 or Grade 3a agricultural land;

4. the course should have safe and convenient vehicular access to an appropriate classified road. Proposals generating levels of traffic that would prejudice highway safety or cause significant harm to the environmental character of country roads will not be permitted;

5. the extent to which public rights of way are affected and whether any provision is proposed for new permissive rights of way;

6. the provision of adequate car parking which should be discreetly located or screened so as not to have an adverse impact on the character and appearance on the countryside.

In considering proposals for new golf courses, the Council will require evidence that the proposed development is a sustainable project without the need for significant additional development in the future, such as hotels or conference facilities.

Proposals for new golf courses should be designed to respect the local landscape character. New golf courses in the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value will only be permitted if they are consistent with the primary aim of conserving and enhancing the existing landscape.

12.73 In determining proposals for golf courses and ancillary development, the Council will have regard to the Surrey County Council's guidelines for the development of new golf facilities in Surrey. Account will also be taken of the existing and proposed provision of courses in the area ...."

7. Part of Cherkley Campaign's case before the judge was that the Committee majority (i) failed to apply correctly the requirement in paragraph 12.71 for "need" to be demonstrated and (ii) failed to consider whether the golf course could be "directed away" from the AONB and AGLV in accordance with paragraph 12.72. The judge accepted both arguments: he dealt with need at paras 51-123 of his judgment and with directing away at paras 124-130. In considering the appellants' challenge to those findings I will follow the pattern of the submissions by concentrating primarily on need and coming back at a later stage to deal briefly with directing away.

Whether there was a requirement to demonstrate need

8. The first issue in relation to need is the status and effect of the statement in paragraph 12.71 of the Local Plan that "Applicants proposing new courses will be required to demonstrate that there is a need for further facilities". That issue turns on (i) the relationship between Policy REC12 and the supporting text and (ii) the effect of the 2004 Act and a "saving direction" made under it in respect of Policy REC12.

9. It is helpful to consider first the relevant statutory provisions and guidance at the time when the Local Plan was adopted. Section 36 of the Town and Country Planning Act 1990, in the version in force at the time, provided:

> "36 ... (2) A local plan shall contain a written statement formulating the authority's detailed policies for the development and use of land in their area.
>
> ...
>
> (6) A local plan shall also contain –
>
> (a) a map illustrating each of the detailed policies; and
>
> (b) such diagrams, illustrations or other descriptive or explanatory matter in respect of the policies as may be prescribed,
>
> and may contain such descriptive or explanatory matter as the authority think appropriate."

10. More specific requirements were laid down by the Town and Country (Development Plan) (England) Regulations 1999. In particular, regulation 7 provided:

> **"7. Reasoned justification**
>
> (1) A local plan ... shall contain a reasoned justification of the policies formulated in the plan.
>
> (2) The reasoned justification shall be set out so as to be readily distinguishable from the other contents of the plan."

11. Annex A to Planning Policy Guidance 12 ("PPG12") contained guidance on content and layout:

> "23. **The local plan and UDP Part II** consists of a written statement and a map ('the proposals map'). The written statement should include the authority's policies and proposals for the development and use of land and, in particular, those which will form the basis for deciding planning applications and determining the conditions attached to planning permissions. As with structure plans, policies and proposals should be clearly and unambiguously expressed, with sufficient

precision to enable them readily to be implemented and performance measured.

24. The written statement should also include a reasoned justification of the plan's policies and proposals. A brief and clearly presented explanation and justification of such policies and proposals will be appreciated by local residents, developers and all those concerned with development issues. The reasoned justification should only contain an explanation behind the policies and proposals in the plan. It should not contain policies and proposals which will be used in themselves for taking decisions on planning applications. To avoid any confusion, the policies and proposals in the plan should be readily distinguished form the reasoned justification (for example, by the use of a different typeface)."

12. The approach adopted within the Local Plan itself is consistent with that guidance. Paragraph 1.10 of the Local Plan states:

> "1.10 The Plan's policies are printed in bold type and boxed within a shaded background to distinguish them from the supporting text which provides a reasoned justification for each policy and indicates how it will be implemented by the Council. To interpret the policies fully, it is necessary to read the supporting text."

Policy REC12 is one of the policies there referred to: it is boxed, with a heading in bold text, to distinguish it from the supporting text.

13. The material to which I have referred indicates the relationship between Policy REC12 and the supporting text at the time when the Local Plan was adopted. But it is also necessary to take account of a subsequent change in the statutory regime. The 2004 Act introduced a new development plan making process under which local plans were to be replaced. Paragraph 1 of schedule 8 provided for a three year transitional period from 28 September 2004 after which existing local plans *ceased to have effect*, subject to a power in the Secretary of State to direct "for the purposes of such *policies* as are specified in the direction" (emphasis added) that the old policies should remain in effect until replaced by new policies. The Secretary of State made such a saving direction in respect of certain policies in the Local Plan, including "Policy REC12".

14. In the light of the above, the appellants submit that:

i) Even leaving aside the saving direction, the Local Plan contained no requirement to demonstrate need. The relevant policy was Policy REC12 and on its proper construction it contained no such requirement. Although paragraph 12.71 referred to such a requirement, the paragraph was not part of the policy and its wording was not carried through into the policy.

ii) In any event the saving direction saved only Policy REC12, not paragraph 12.71 or the rest of the supporting text; and the only relevant part of the Local

Plan that continued in force on the expiry of the three year transitional period was Policy REC12.

15. I agree with the first submission and also, subject to a qualification, with the second.

16. Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed *policies* for the development and use of land in the area. The supporting text consists of *descriptive and explanatory matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the polices will be implemented.

17. In this case, therefore, the correct focus is on the terms of Policy REC12. That policy contains no requirement to demonstrate need. It sets out six criteria against which proposals for new golf courses will be considered, none of which relate to need. It provides in addition that the Council will require evidence that the proposed development is a *sustainable* project without the need for significant additional development in the future. It also provides that new golf courses in the AONB and the AGLV will only be permitted if they are consistent with the primary aim of *conserving and enhancing* the existing landscape. None of those matters can be equated with or involves a requirement to demonstrate need and in my view no such requirement can be read into them. The policy must of course be read in the light of the supporting text, given the statutory role of that text as descriptive and explanatory matter and/or reasoned justification for the policy, and also bearing in mind the statement in paragraph 1.10 of the Local Plan that the text indicates how the policy will be implemented by the Council. But making all due allowance for the role thereby performed by paragraph 12.71, I do not see how the paragraph can provide a basis for reading a need requirement into the policy. For whatever reason, the reference to a requirement to demonstrate need was not carried over into the terms of the policy. Nor can paragraph 12.71 operate independently to impose a policy requirement that Policy REC12 does not contain.

18. The relevant provisions of the 2004 Act and the saving direction made under it serve to underline rather than to alter the position as I see it. Subject to the saving direction, the Local Plan ceased to have effect at the end of the transitional period; and the effect of the direction was to save only the *policies* referred to in it, specifically including Policy REC12. It follows that the relevant question when considering the conformity of the proposed development with the Local Plan after the expiry of the transitional period must be whether the development is in accordance with saved Policy REC12. I do not accept, however, the appellants' submissions that the effect of the statute was to blue-pencil the supporting text on the expiry of the transitional period, leaving in place only the text of the policy, so that the policy fell to be interpreted thereafter without regard to the supporting text. To blue-pencil the supporting text would risk altering the meaning of the policy, which cannot have been the legislative intention. It seems to me that the true effect of the statutory provisions was to save not just the

bare words of the policy but also any supporting text relevant to the interpretation of the policy, so that the policy would continue with unchanged meaning and effect until replaced by a new policy. The resulting position in terms of relationship between the saved policy and its supporting text is therefore the same as it was prior to the 2004 Act and the saving direction.

19. The judge took a different view of the effect of paragraph 12.71. He referred at paras 79-81 of his judgment to various competing constructions of what was saved pursuant to a direction under the 2004 Act that specified "policies" should remain in effect on the expiry of the transitional period. The first, which he rejected, was that "policies" referred only to the wording in the policy box. The second was that "policies" included any illustrative map or reasoned justification and any other descriptive or explanatory matter. The third was that "policies" had a narrow meaning, referring to the wording in the policy box, but on the basis that regard could be had to any map or reasoned justification or other descriptive or explanatory matter when interpreting or implementing the policy. He said that it probably did not matter which of the second or third constructions was correct but the third was probably to be preferred. He concluded at para 87 that the saving direction had the effect in law of preserving all the supporting text to Policy REC12, so that appropriate resort could be had to it when interpreting and applying the policy. I would reject the second construction but would accept the third construction. To that limited extent I agree with the judge. I do not agree, however, with the way in which he went on to use the supporting text in the interpretation of the policy.

20. The judge picked this point up later in his judgment, in a passage at paras 104-106 on the "efficacy of supporting text". He said there that if the second construction of the "policies" saved was correct, the supporting text would presumably stand *pari passu* with the wording in the policy box and be of equal efficacy: it was all to be treated as "policy". If the third construction was correct, so that the "policy" was the wording in the box but resort could be had to the supporting text in order to interpret the policy, the effect in law of paragraph 12.71 was in his view as follows:

> "105. In my judgment, it matters not that the wording '... *applicants will be required to demonstrate that there is a need for further [golf] facilities*" appears outside the policy box rather than inside the box. Paragraph 1.10 [of the Local Plan] provides a perfectly rational explanation for the role of the "*supporting text*" outside the box, namely to provide a "*reasoned justification*" for the policies and indicate "*how*" policies will be implemented by the Council, and further states that it is necessary to read the "*supporting text*" in order "*to interpret the policies fully*". It matters not that the requirement to demonstrate "*need*" could equally well have featured in the box and that given the strictures of paragraph 24 of Annex A of PPG12 (that "*the reasoned justification ... should not contain policies and proposals that will be used in themselves for taking decisions on planning applications*") it might have been preferable if it had. It also matters not that Policy REC12 might have been more conventionally drafted .... Reading the wording inside and outside the box as a whole, the intention of

> the framers of the policy is clear: given (a) the apparent sufficiency of golf courses in this part of Surrey and (b) the need to protect the special landscape of the Surrey Hills *etc.*, applicants will have to demonstrate a "*need*" for further such facilities and proposals for new golf courses will be considered against certain listed criteria. As stated above, in the light of (a) and (b), it might reasonably be said that the requirement to demonstrate the "*need*" for further such facilities is simply making explicit what is implicit."

21. It should already be clear why I disagree with that reasoning. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved.

22. It is true that the Council proceeded in practice on the basis that there was a policy requirement to demonstrate need. That was because the officers' report, by reference to the supporting text in paragraph 12.71, treated Policy REC12 as imposing such a requirement. As regards the application of the test, the officers' view was that there was no proven need for additional golf facilities. The majority of the Committee, however, took a different view on that issue. Their summary of reasons for the grant of planning permission included the statement that "the terms of Mole Valley Local Plan policy REC12 and its supporting text were considered to have been met in that a need for the facilities had been demonstrated ...". I will come back to this later. For present purposes it suffices to say that if on the proper interpretation of Policy REC12 there was no requirement to demonstrate need, nothing turns on the fact that the Council proceeded on the basis that there was such a requirement but concluded that it was satisfied.

23. The judge records at para 53 of his judgment that it was initially accepted by all parties at the permission hearing and on the first day of the substantive hearing before him that Longshot had to demonstrate a need for further golf facilities in the particular location pursuant to Policy REC12 and that the issue was simply whether the Council had properly interpreted the requirement of need in this context and whether such a need had reasonably been identified. But Mr Katkowski QC, counsel for Longshot, "pulled a couple of surprise clubs out of his bag" on the second day of the substantive hearing and sought to argue that (1) the requirement in paragraph 12.71 to demonstrate need amounted to "policy" rather than "reasoned justification" and accordingly fell foul of paragraph 24 of Annex A to PPG 12 (see para 10 above) and was unlawful and of no effect, and (2) paragraph 12.71 had not been, and was not capable of being, saved by the Secretary of State's direction and therefore no longer existed in law. Mr Findlay QC, for the Council, adopted both of Mr Katkowski's new submissions. They were strongly resisted by Mr Edwards QC on behalf of Cherkley Campaign. In the event neither submission commended itself to the judge. The first submission has not been renewed before us. The second has been renewed, in part at

least, and has been considered above. It seems to me, however, that the way in which the case was argued before the judge distracted attention from the fundamental question whether Policy REC12, properly interpreted with due regard to the supporting text, required need to be demonstrated. That question was central to the argument before us; and for the reasons I have given I would answer it in the negative.

24. I should mention that the judge took the view that even if a requirement to demonstrate need was not part of the policy matrix under the Local Plan, "the requirement to demonstrate '*need*' in paragraph 12.71 is, at the very least, a material consideration" (para 81 of his judgment; the same point seems to be reflected in part of para 88). I respectfully disagree with that view. I accept of course that need can in principle arise as a material consideration, in particular where it is relied on in support of a departure from policy; but to the extent that the issue of need was canvassed in this case, it was in the context of a particular (and in my view mistaken) understanding of the policy rather than as a justification for a departure from policy. There is no overriding test of need; and if the relevant policy of the Local Plan did not require an applicant for a new golf course to demonstrate a need for further facilities, I do not think that the circumstances were such as to give rise to such a requirement through the route of material considerations.

The meaning of "need"

25. If my analysis so far is correct, it is unnecessary to go on to consider the judge's further findings as to the meaning of "need" and whether the majority of the Committee could rationally have concluded that a need had been demonstrated. I think it helpful to deal with those issues, however, since the points were fully argued and my conclusions in relation to them provide an alternative basis for my overall conclusion that the judge was wrong to accept the case advanced by Cherkley Campaign on the issue of need.

26. At paras 89-106 of his judgment the judge engaged in an elaborate examination of the meaning of "need" in paragraph 12.71 of the Local Plan, looking at dictionary definitions and at the general and specific context, and identifying both a geographical and a qualitative component. He referred to a submission for the Council that it was sufficient to show a need for the golf course in the sense that it would be sustainable and not require non-golfing activities to subsidise it; and a submission for Longshot that it was sufficient that an applicant could demonstrate a demand for a new golf course in the sense of requisite financial backing and membership for it. He concluded:

> "102. I reject Mr Findlay QC and Mr Katkowski QC's constructions of the word '*need*'. They are inimical to the philosophy of planning law. They run counter to the specific context in which the word appears in the Mole Valley Local Plan. They do not accord with common sense. Their approach would be recipe for a planning free-for-all.
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> 103. In my judgment, the word '*need*' in paragraph 12.71 means '*required*' in the interests of the public and the community as a whole, i.e. '*necessary*' in the public interest

> sense. '*Need*' does not simply mean '*demand*' or '*desire*' by private interests. Nor is mere proof of '*viability*' of such demand enough. The fact that Longshot could sell membership debentures to 400 millionaires in UK and abroad who might want to play golf at their own exclusive, 'world class', luxury golf club in Surrey does not equate to a '*need*' for such facilities in the proper public interest sense. Paragraph 12.71 in the Local Plan requires applicants proposing new golf course in the Mole Valley to demonstrate that further golf facilities are '*necessary*' in this part of Surrey in the interests of the public and community as a whole."

27. It is common ground that in relation to the construction and application of planning policy statements the court should be guided by the principles summarised by Lord Reed in *Tesco Stores v Dundee City Council* [2012] UKSC 13, at paras 18-21. Lord Reed referred to considerations suggesting that in principle such policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. But he said that they should not be construed as if they were statutory or contractual provisions. Development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their judgments can only be challenged on the ground that it is irrational or perverse. Nevertheless planning authorities cannot make the development plan mean whatever they would like it to mean. The distinction that Lord Reed drew between interpretation and application is illustrated by the way he described the particular issue in that case:

> "21. A provision in the development plan which requires an assessment of whether a site is 'suitable' for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word 'suitable', in the policies in question, means 'suitable for development proposed by the applicant', or 'suitable for meeting identified deficiencies in retail provision in the area', is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed."

28. I am satisfied that, contrary to a submission by Mr Findlay, the exercise engaged in by the judge in the present case was one of interpretation, not application, of the statement in paragraph 12.71 that applicants proposing new golf courses "will be required to demonstrate that there is a need for further facilities". It seems to me, however, that in holding that it required applicants to demonstrate that further golf facilities were "'*necessary*' in this part of Surrey in the interests of the public and the

community as a whole" he adopted an unduly exacting and narrow interpretation of that statement. The word "need" has a protean or chameleon-like character, as Mr Findlay and Mr Katkowski respectively submitted, and is capable of encompassing necessity at one end of the spectrum and demand or desire at the other. The particular meaning to be attached to it in paragraph 12.71 depends on context. The first and most obvious point to make about context is that Policy REC12 itself contains nothing to support the judge's exacting interpretation. The policy's requirement of evidence that the proposed development is a "sustainable" project without the need for significant additional development in the future is more consistent with a meaning at the other end of the spectrum, i.e. that there is sufficient demand for the project to be sustainable. The policy's reference to a primary aim of conserving and enhancing the existing landscape does not take this point any further. As to the immediate context provided by paragraphs 12.70 to 12.72, the most relevant consideration is the statement in paragraph 12.70 that "According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District". The point there being made appears to be that there is no necessity for further golf courses. But the very fact that, against that background, paragraph 12.71 leaves it open to applicants to demonstrate a need for further facilities suggests that "need" is being used in a different and less exacting sense in paragraph 12.71. Overall I take the view that if any need requirement is to be read into the policy by reference to paragraph 12.71, "need" is to be understood in a broad sense so that the requirement is capable of being met by establishing the existence of a demand for the proposed type of facility which is not being met by existing facilities.

29. In making his finding as to meaning the judge placed emphasis on the general context, namely "the broad horizon of planning law itself" and the fact that "the *raison d'etre* of planning law is the regulation of the private use of land in the public interest" (para 96 of his judgment). He referred back to para 2, where he said this:

> "... The developer argued that proof of private '*demand*' for exclusive golf facilities equated to '*need*'. This proposition is fallacious. The golden thread of public interest is woven through the lexicon of planning law, including into the word '*need*'. Pure private '*demand*' is antithetical to public '*need*', particularly very exclusive private demand. Once this is understood, the case answers itself ...."

Thus his reasoning appears to have been that because planning control is exercised in the public interest, "need" must relate to the interests of the public and/or the community as a whole. I respectfully disagree with that reasoning. I see no reason in principle why a planning policy should not lay down a requirement of need which is capable of being met by a private demand for the facility in question, including a demand that arises outside the local community or area, as in the case of an elite facility catering for a national or even global market. It is not inimical to the philosophy of planning law to lay down such a requirement.

30. Accordingly, I accept the case for the appellants that if, contrary to my primary finding, Policy REC12 is to be read as containing a need requirement, it was an unexacting requirement and was capable in principle of being met by demonstrating an unmet demand for an elite facility of the type proposed.

Whether the Council's conclusion on need was rational

31. The officers' report informed members of the Committee that there was sufficient capacity in existing golf courses to provide for new members wishing to play the sport locally. It went on to explain that the proposed development was targeting the very highest end of the golf market, with exclusive membership sold at a cost that reflected the 5 star facilities. The applicant did not see it as competing for membership with surrounding 2, 3 and 4 star courses. Its financial model included a significant proportion of membership coming from overseas customers who would also use the hotel, and there was already a waiting list of prospective members. The report continued:

> "The applicant argues that need is not an issue and that they are operating within a very specific range of the golf market. Policy REC12 does not draw a distinction between different categories of golf provision. It was written to protect the countryside, particularly sensitive landscapes such as Cherkley, from a proliferation of golf courses. The issue of need is therefore relevant whatever the golf model and market being targeted.
>
> There is no proven need for additional golf facilities from the information available to the Council and the applicant has not indicated otherwise, other than to state that they can sell their product to a targeted market. It might, in any case, be reasonable to judge that the 'high end' market could be catered for in a less sensitive location or where there is an existing ailing course that can be reinvigorated to provide the sort of facilities and course that the membership would be seeking but in a less sensitive location."

32. That passage is far from clear. Whilst saying that there is no proven need for additional golf facilities, it appears to acknowledge that the applicant had put forward a case of need in the sense that the development would cater for a "high end" market; a case which the report meets by making the *different* point that such a market could be catered for in a less sensitive location.

33. The majority of the Committee dealt with the issue in the following paragraph of their summary of reasons for the grant of planning permission:

> "The development was considered to provide opportunities to meet a need for recreation facilities in the countryside and the applicant had been able to demonstrate in the supporting documents, such as the 'Report on Viability of Golf at Cherkley' and the 'Hotel Viability Study', that they would be able to secure enough interest in the facilities to make it viable in the short and long term. Therefore, the terms of Mole Valley Local Plan policy REC12 and its supporting text were considered to have been met in that a need for the facilities had been demonstrated and the character of the countryside could

be safeguarded even within and adjacent to the Area of Outstanding Natural Beauty ...."

34. At paras 118-121 of his judgment the judge found that in that passage the majority of the Committee had failed properly to interpret or understand the true meaning of the word "need" and had misdirected themselves in law in various respects. At para 122 he found that in any event the majority's decision to grant planning permission for further golf facilities at Cherkley was perverse; it simply "*does not add up*"; there was no evidence upon which the majority could properly base a conclusion that there was a need "in the public interest sense" for further golf facilities in this part of Surrey.

35. Those findings were all based on a view as to the meaning of "need" with which, as indicated above, I disagree. If in this context "need" has the broader meaning that I favour, so that it can in principle be demonstrated by evidence of an unmet demand for the type of facility proposed, then in my view the summary of reasons given by the majority of the Committee for finding that need had been demonstrated discloses no error of law and the finding itself was reasonably open on the material available to members. I do not accept submissions by Mr Edwards that the reasons simply fail to address the question of need for a further facility or that they wrongly equate need with viability or sustainability. I also reject his submission that the material before the Committee, which included Longshot's planning statement and briefing note, provided insufficient evidence of unmet demand to enable the majority rationally to conclude that need had been demonstrated. I concentrate on the material before the Committee because that is clearly the basis on which the rationality of the majority's conclusion must be assessed. A further, though minor, concern about the judge's analysis is that he had regard to material that was not before the Committee (see para 111 of his judgment).

The issue of "directing away"

36. A separate issue arising in relation to the Local Plan concerns the statement in paragraph 12.72 that future golf course proposals "will be directed away" from the AONB and AGLV. The judge stated at para 126 of his judgment that this was expressed in "unequivocal mandatory terms" and was a requirement and, moreover, a material consideration. He went on to say that there was little evidence that the majority of the Committee properly addressed their mind to the requirement, and it appeared that they failed to heed the officers' advice that "it is reasonable to conclude that the golf course and its associated facilities could be provided in another location where the landscape is less sensitive and important". It was false to assume that it was necessary to locate a hotel and spa at Cherkley or that Cherkley was the only place where such combined facilities should be located in England. The reasons of the majority entirely failed to address the question of whether the golf course should be directed away from the designated areas. Accordingly he found that "the Council majority further erred in law in that they failed, properly or at all, to consider the policy requirement or material consideration in paragraph 12.72 that the golf course and its associated facilities could be provided in another location where the landscape was less sensitive and important".

37. The appellants' arguments on this issue track certain of the points already considered in relation to the issue of need. It is submitted that the judge was wrong to treat the supporting text in paragraph 12.72 as a mandatory policy requirement that golf

courses be directed away from the AONB and AGLV. Policy REC12 includes no such requirement, and no such requirement can be read into it by reference to the supporting text: on the contrary, Policy REC12 contemplates that new golf courses can be permitted in those areas "if they are consistent with the primary aim of conserving and enhancing the existing landscape". Paragraph 12.72 had no independent policy status even in the Local Plan as originally drafted, and in any event only Policy REC12 itself was saved by the saving direction under the 2004 Act.

38. I accept those submissions, for essentially the same reasons as I have accepted the appellants' submissions to the effect that there was no requirement to demonstrate need. I take the view that "directing away" was not a policy requirement of the Local Plan and that in the absence of a policy requirement the reference to it in paragraph 12.72 did not convert it into a material consideration. Policy REC12 contained provisions aimed specifically at the protection of the landscape. In my view those provisions were taken properly into account by the majority of the Committee, as will be explained when I move to the main landscape issues. No error of law is disclosed by the absence of reference to "directing away" in the summary of reasons.

Landscape impact

39. I turn to consider further issues that arise in relation to landscape impact.

40. The summary of the majority's reasons for granting planning permission stated that the development had been assessed against, *inter alia*, Policy REC12 and the National Planning Policy Framework ("NPPF") and was considered to conform to those policies. In relation to landscape impact it was stated:

> "In coming to its decision and in judging the impact on the Area of Great Landscape Value and Area of Outstanding Natural Beauty, the Development Control Committee were mindful of the Environmental Statement undertaken by the applicant under the EIA Regulations, the Council's assessment of the EA, the details contained in the application, the concerns of officers set out in their report and the requirement under a legal agreement to undertake a Landscape and Ecology Management Plan for the Cherkley Estate. It was judged that the landscaping and mitigation measures contained in the application were sufficient to ensure that the overall landscape character would not be compromised .... It was considered that the design of the proposals met the terms of planning policies designed to protect the biodiversity of the estate and the character of the countryside .... It was noted that the development included suitable measures to protect and enhance the majority of the open countryside of the estate alongside formal playing spaces, whilst introducing management of neglected woodland, retaining hedgerows, managing trees and including new planting that is appropriate to a chalk grassland location. There would also be suitable protection during the construction phase.

> The Committee was mindful that a management plan will be prepared to integrate all the management provisions, from construction through to the maturity of the golf course. Therefore, the development could meet commitments to safeguard and enhance the natural environment within the NPPF ... and REC12 .... The development was considered to provide an opportunity for stable long term management of the estate and investment to safeguard its ecology and landscape."

41. The judge held that (1) the majority failed to apply the tests in paragraph 116 of the NPPF, (2) could not rationally have concluded that the overall landscape character "would not be compromised", (3) failed to have proper regard to the provision in Policy REC12 that new golf courses would only be permitted if they were consistent with the primary aim of conserving and enhancing the existing landscape, and (4) did not have regard to what he described as the requirement in paragraph 12.72 that new golf courses should be "directed away" from the AONB and AGLV. I have already dealt sufficiently with the issue of "directing away". The other three landscape issues on which the judge found that the majority fell into legal error are considered below.

Whether paragraph 116 of the NPPF applied

42. Section 11 of the NPPF is concerned with the conservation and enhancement of the natural environment. Of specific relevance within it are paragraphs 115 and 116 which provide as follows:

> "115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty ....
>
> 116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Consideration of such applications should include an assessment of:
>
> - the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
> - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
> - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

43. As regards the proposed development, the judge found at para 139 of his judgment that only the 15th fairway and 16th tee would be physically located within the AONB; the remainder would be located within the AGLV adjacent to the AONB. He

nevertheless took the view that the golf course as a whole was a "major development" to which paragraph 116 of the NPPF applied and that it was therefore subject to the tests of exceptional circumstances and public interest contained in that paragraph. His reasons were these:

> "147. ... Paragraph 116 of the NPPF is plainly intended to include '*major developments*' which physically overlap with designated areas or visually encroach upon them. In the present case, it would be artificial, and frankly myopic, to focus simply on the one tee and hole physically within the curtilage of the AONB and ignore the other 17 tees and holes course along the border of the AONB. It would also be contrary to the spirit of Section 11 of the NPPF since the policy is pre-eminently concerned with visual perspectives. In my view, the visual impact of the *whole* proposed golf course on the AONB was clearly relevant and a material consideration. It was also relevant that the adjoining AGLV was considered of AONB quality (and might be redesignated in the near future). There is no evidence or indication that the Council majority considered this issue at all ...."

44. The *relevance* of the golf course as a whole for the AONB, including such matters as its impact on visual perspectives, is not in doubt. It forms an aspect of the landscape issues covered *inter alia* by paragraph 115 of the NPPF and Policy REC12 of the Local Plan. The question here, however, is whether the golf course as a whole can properly be regarded as a development to which paragraph 116 of the NPPF applies, so as to be subject to the specific, stringent conditions in that paragraph. On that question I respectfully disagree with the judge. I see no good reason for departing from the language of paragraph 116 itself. The paragraph provides that permission should be refused for major developments "*in*" an AONB or other designated area except where the stated conditions are met: the specific concern of the paragraph is with major developments in a designated area, not with developments outside a designated area, however proximate to the designated area they may be. In this case the only part of the development *in* the AONB would be the 15th fairway and 16th tee. I do not think that the creation of one fairway and one tee of a golf course could reasonably be regarded as a major development *in* the AONB, even when account is taken of the fact that they form part of a larger golf course development the rest of which is immediately adjacent to the AONB.

45. The reasons of the majority of the Committee, whilst stating that the proposed development was considered to conform with the NPPF, did not deal specifically with paragraph 116. The issue had in fact been touched on only briefly in the officers' reports. The first report, written before the publication of the NPPF but at a time when materially the same provision was to be found in PPS7, contained no suggestion that the tests of exceptional circumstances and public interest in paragraph 116 applied. The second report, which took account of the publication of the NPPF, did refer to the terms of paragraph 116. It went on to state that "it is not considered that there are exceptional circumstances for allowing the proposal in such a valued landscape and there is little to suggest that the proposal is in the public interest", and that the proposal was therefore considered to be contrary to the advice contained

within the NPPF. It was therefore implicit that the officers considered the proposal to involve a major development in the AONB. In those circumstances it would have been helpful if the summary of the majority's reasons had indicated the basis on which the views of officers on this issue were rejected, but it was in my judgment legally sufficient to state the majority's conclusion that the development was in conformity with the NPPF. In any event nothing can turn on the omission to refer specifically to paragraph 116 if, as I consider to be the case, that paragraph was not reasonably capable of applying.

Whether the conclusion in relation to landscape character was rational

46. The judge held at para 155 of his judgment that the conclusion of the majority of the Committee that the overall landscape character "would not be compromised" was irrational. He said that it flew in the face of "the unanimous and trenchant views" expressed by the landscape experts that the effects would be "major ... adverse, long-term and permanent" and the changes were "of such magnitude" that the landscape character would be "fundamentally, and probably irreversibly, altered"; and that the planning officers also advised unequivocally that the proposals would be "seriously detrimental" to the visual amenity.

47. It is common ground that the threshold of irrationality is a high one: counsel referred in this respect to *R v Secretary of State for the Home Department, ex parte Hindley* [1998] QB 751, 777A, to which the judge also referred at para 42 of his judgment.

48. The court will be particularly slow to make a finding of irrationality in relation to a planning judgment of this kind, especially when the members who made the judgment had the benefit of a site visit whereas the court has to work on the written material alone. In this case, moreover, the importance of the site visit is emphasised by the fact that temporary scaffolding had been erected to outline the position of the proposed clubhouse, so that members could assess the impact of the building in the wider landscape. It is also worth noting that in addition to a well attended Committee site visit some members had visited the site individually.

49. The judge evidently felt able to form the view he did on the basis of the written material because he considered that the expert evidence and officers' advice were unequivocally to the effect that the development would be harmful to the landscape. The members were of course not bound by the opinions of experts or officers. In any event, however, in the light of passages drawn to our attention by Mr Findlay and Mr Katkowski I do not accept that the expert evidence and officers' advice all pointed in the one direction. There was certainly a body of evidence that the development would be harmful to the landscape, but there was also evidence the other way and it was recognised in the officers' advice that there was a balance to be struck.

50. Thus, the environmental statement in support of the application for planning permission included a chapter addressing the landscape and visual impacts of the new clubhouse and golf course, comprising a baseline study and an assessment of the potential impacts without mitigation and following mitigation. The assessment had been carried out by two experienced chartered landscape architects on the basis of desktop research and site visits. The chapter's conclusions included the following (with original emphasis):

> "6.65 Views to the application site from publicly accessible places are very limited restricted by topography, intervening woodlands and mature hedgerows. There are a limited number of properties in Tyrrell's Wood and Yarm Way which have direct views of the application site. Of the eleven representative viewpoints, the residual visual impacts are **Long-term local Minor Beneficial.**
>
> 6.66 The application site lies with[in] the Green Belt, the Surrey Hills AONB and Area of Great Landscape Value. The proposed golf course will enhance the landscape character of the area with opportunities for woodland management and the creation of extensive areas of species rich grassland as well as the opening of distant views out of the application site from public rights of way and improved access. The residual landscape impacts are considered to be **Long-term, Local Minor Beneficial.**
>
> 6.67 The proposed golf course and club house will not result in any significant adverse landscape and visual impacts during the day or from light spill during the night, and complies with the overarching aim of the AONB policy to conserve and enhance ...."

51. A briefing note for members, dated April 2012, asserted that "Overall, the impact of the formal golf features will not be sufficiently dominant to cause a material change to the landscape character in any of the distant views to the site"; the course would be of natural appearance "enhancing the visual appearance of the landscape"; "The overall landscape character of this private estate will improve with the present open areas of agricultural uniformity enclosed by neglected woodlands, becoming a richer and subtly varied grassland mosaic"; and in relation to the area outside the AONB "the resulting landscape character will be closer in appearance to that of the adjacent AONB".

52. It is right to say that the views expressed in the environmental statement and the briefing note were challenged by others, including the Council's own independent landscape consultant (and the fact that the Council was not prepared to accept the views in the environmental statement but took external professional advice of its own was a factor stressed by Mr Edwards in argument). These matters were discussed at length in a section of the officers' first report on "Landscape implications of the proposed development". But the officers' analysis did not present the evidence as all pointing in one direction. It stated, for example, that "*on balance* the proposals do not enhance the landscape" (emphasis added). The existence of a balance, but at the same time a firm indication that the balance is considered to come down against the proposed development, is also apparent from the summary at the end of the section:

> "There are undoubtedly landscape benefits to be achieved from the proposed development and there is a commitment to manage the components of that landscape in appropriate ways. However, the price to be paid is the imposition of a golf course on over 40% of the open parkland, with all the artificial

elements associated with this form of development such as greens, tees, bunkers and fairways. However well designed, in a highly exposed location such as this, conspicuous from public highways and rights of way, it is very difficult to disguise these features. In such circumstances, the proposal would be contrary to a number of established planning policies and the landscape impacts must be given considerable weight when determining the application.

... The quality of the Northern Parkland is underlined by its status as an AGLV and one independent landscape study suggests that it has characteristics that are the same as the adjacent AONB. The independent landscape assessment commissioned by the Council endorsed this view. This is a landscape of special quality, natural beauty and character that would not be enhanced and conserved by overlaying upon it the features of a golf course.

The impact on the AONB is disputed. The applicant argues that the visual impact on the AONB would be limited and the area of intensively managed turf within and immediately adjacent to the AONB would be confined to 25% of the land. However, both Natural England and the AONB Planning Adviser disagree and they consider that adverse impact on the AONB can be caused by development on the Northern Parkland as well as changes to 40 Acre Field. The independent landscape assessment also raised concerns about the impact within and adjacent to the AONB and the wider landscape and views from other parts of the AONB ....

The policy basis for considering the application is explicit in stating that development proposals should respect or enhance the landscape character and there is considerable evidence to suggest that it does not .... The conclusion is that the proposal would be harmful to the landscape character of the AGLV and AONB ...."

53. The officers were therefore giving strong, evidence-based advice that the development would have a detrimental impact on the landscape, but they did not go so far as to suggest that the expert evidence pointed unanimously and unequivocally in that direction or that the contrary view was not reasonably open to members. Mr Findlay took us to a passage in a witness statement of Mr Gary Rhoades-Brown, the Council's Development Control Manager, in which he made clear that he disagreed with the decision of the majority of the Committee but did not consider that their view on this issue or overall was perverse: he said that officers took the view that "whilst the planning balance clearly favoured refusal there were factors on both sides of the balance and it was open to members to take a different view". Mr Rhoades-Brown's opinion on the issue of perversity is of course legally irrelevant but what he says about factors on both sides of the balance seems to me to be a fair reflection of the position in relation to landscape impact; and whilst in the light of the evidence I see considerable force in the officers' advice, I am not persuaded that the weight of the

evidence and advice was such as to leave no room for members rationally to conclude as a matter of planning judgment, in the light of all the written material and what they had seen on their site visit or visits, that the overall landscape character would not be compromised.

54. In my view, therefore, the judge was wrong to find that the conclusion reached by the majority of the Committee was perverse.

Consistency with the aim of conserving and enhancing the landscape

55. The judge held at paras 156-157 of his judgment that the majority of the Committee failed to have proper regard to the provision in Policy REC12 that new golf courses in the AONB and AGLV would only be permitted if they were consistent with the primary aim of conserving and enhancing the existing landscape. He said that the majority's conclusions that the proposed development would involve change and mitigation was inconsistent with "conserving and enhancing", and that in the light of the "unanimous evidence" from the landscape experts it was difficult to see how the majority could have concluded that the development was consistent with the aim of conserving *and* enhancing (he emphasised the "and"). In his judgment the majority of the Committee "simply failed to understand this policy requirement".

56. Again I take a different view. It seems to me that the majority of the Committee understood the requirements of Policy REC12 and had them properly in mind. They made more than one reference to the policy in their reasons and stated expressly that the development had been assessed against it and was considered to conform to it. They also made clear that they had taken account of the concerns in the officers' report, where the terms of the policy were spelled out. The summary of their reasons uses the language of enhancement as well as protection of the countryside, supporting the view that they had in mind both limbs of the aim set out in the policy (and it is therefore unnecessary to consider a submission by Mr Findlay that on the proper interpretation of the policy the aim is that the landscape should be *either* conserved *or* enhanced). I see no inconsistency between, on the one hand, an acceptance that the development would involve change and mitigation measures and, on the other hand, an assessment that the development would be consistent overall with the aim of conserving and enhancing the landscape; and it is the overall assessment that matters in the application of a policy of this kind. If and in so far as the judge's conclusion was based on his view as to the irrationality of the finding that the overall landscape character would not be compromised, I have already explained above why I do not share that view. Taking everything together, I am persuaded that the majority's decision did not involve any error of law in relation to the "conserving and enhancing" aspect of Policy REC12.

Green Belt policy

57. The whole of the Cherkley Estate is within the Metropolitan Green Belt. The relevant provisions concerning development in the Green Belt are paragraphs 87 to 89 of the NPPF:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

> 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
>
> 89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> - ...
> - provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
> - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
> - ...."

58. At the time of the officers' first report the relevant provisions were contained in Planning Policy Guidance 2 ("PPG2") in materially the same form, save that PPG2 referred to "essential" facilities for sport and recreation rather than to "appropriate" facilities, the term used in paragraph 89 of the NPPF.

59. Section 11.2 of the first report contained a lengthy discussion of the Green Belt issues. It explained that the proposed golf course was *not* considered inappropriate development as it preserved the openness of the Green Belt. The focus was therefore on the buildings. The clubhouse was considered to be acceptable because it provided essential facilities ancillary to the golf course. Certain of the other elements of new build, in particular those involving extensions to existing buildings or the re-use of the floorspace and volume of buildings for which there were extant permissions, were considered to be acceptable either because they were appropriate development which did not have a detrimental impact on the Green Belt or because there were sufficient very special circumstances to justify what was otherwise inappropriate development in the Green Belt. In relation to certain other elements of new build, however, the officers' view was that they would represent inappropriate development and that there were insufficient very special circumstances to justify them. The flavour of that part of the advice is apparent from the following extracts from the report:

> "The other buildings including the partly underground swimming pool, the underground spa and the partly underground maintenance/service hub buildings are also new development in the Green Belt which is, by definition, harmful to the Green Belt.

> ... Whilst the spa would be underground and would therefore have a limited impact on the Green Belt in terms of its built form, it is of a considerable size and would generate a significant amount of activity. The application details that the spa would be available for use by members of the health club, the Golf Club, hotel guests and members of the public by appointment so there would be a considerable amount of use of the spa that would not be associated with the hotel. As such, it is considered that its size and use mean that it would not be ancillary to the hotel.
>
> With regard to the maintenance facility and service hub building, again, this is not a small building and is not solely related to the golf course use. It would have a dual use of servicing all of the uses on site – the hotel, the spa/health club and the cookery school, in addition to the golf course. It is therefore necessary to see if any very special circumstances have been advanced to offset the harm caused to the Green Belt.
>
> ...
>
> Despite the spa's position underground, it is considered that the activity associated with the spa and swimming pool in the Green Belt would be harmful to openness, especially in an area that is isolated and where people would have to rely on the private car rather than public transport to access the site. The new build elements are inappropriate development that is harmful to openness. It is considered that there are insufficient very special circumstances to justify these elements of new development in the Green Belt and as such they fail Green Belt policy tests in PPG2. The golf course maintenance facility and service hub building will have a dual use, and whilst accepting that the service hub element will help to minimise the movement of vehicles around the site, it is considered that this element of the proposal is not genuinely ancillary to the golf course and therefore fails the PPG2 policy test with regard to essential facilities."

All this was reflected in the third reason given for the officers' recommendation that permission be refused:

> "The proposal involves new buildings in the Green Belt including a partly underground indoor swimming pool, an underground spa and a partly underground maintenance facility. These buildings, together with the activity generated by the proposed uses, would represent inappropriate development in the Green Belt, in conflict with the aims of PPG2. There are considered to be no very special circumstances advanced that clearly outweigh the harm caused

by reason of inappropriateness and the level of activity generated by the proposed development ...."

60. The officers' second report drew attention to the publication of the NPPF and to the provisions in it concerning the Green Belt but indicated that it did not alter the advice given in the first report.

61. The summary of reasons given by the majority of the Committee for granting the planning permission included the following passage in relation to the Green Belt policies:

> "The development was considered not to compromise significantly the Green Belt policies contained in the NPPF and the Council's Core Strategy by: re-using existing buildings, utilising floorspace granted under previous, extant permissions and locating additional floorspace underground. The design of the development in terms of siting, scale and detailing was considered to retain substantially the openness of the site sufficiently to overcome concerns set out in the officers' report, having regard to the other benefits that would be achieved."

The concluding paragraph of the reasons is also relevant:

> "Having considered all of the material considerations and objection to the development and the officers' concerns as expressed in their reports, the Committee concluded that, when balancing all of the issues, the development would achieve sufficient economic benefits and contained adequate environmental safeguards, having regard also to the conditions set out in the decision notice and to the Section 106 Agreement, to outweigh any concerns."

62. The judge dealt with this issue at paras 170-195 of his judgment, including his analysis at paras 185-195. He thought it clear that the majority of the Committee had failed to apply the "very special circumstances" test when deciding that the Green Belt policy had not been breached. He said that the test did not feature either expressly or inferentially in the reasons and that it was not clear that the majority had grappled with or addressed the main "concerns" addressed in the report. He considered that the reference to "other benefits" was a far cry from the very special circumstances that need to be demonstrated to justify inappropriate development in the Green Belt, and that it was clear that the majority "simply did not consider whether any '*very special considerations*' existed, let alone whether such considerations '*clearly outweighed*' the harm caused to the Green Belt by the '*inappropriate development*'"; the reference to other benefits represented at best a "'fig-leaf attempt to justify an 'overall planning decision'". He identified what he considered to be other flaws in the majority's decision and reasoning in relation to Green Belt policy. He also observed that applicants had to be able to demonstrate a *need* for the *golf course* in order to show that it was not inappropriate development, and that such need had not been demonstrated. He concluded:

> "In my judgment, the Council majority failed conscientiously to consider the three questions set out above, in particular whether '*very special circumstances*' existed which '*clearly outweighed*' the harm. The Reasons were inadequate. The Council majority at best paid lip-service to the Green Belt policy but did not apply it. The Council majority failed to take a proper policy-compliant approach to Green Belt considerations ...."

63. The judge's observations about the application of the Green Belt policy to the golf course itself were misplaced. It was the agreed position of all parties that the golf course was itself appropriate development, and there is nothing in the policy that required a need to be demonstrated in order to show that it was not inappropriate development.

64. The main thrust of the judge's criticisms of the majority's decision and reasons, however, concerned the applicability of the Green Belt policy to the buildings. As to that, it seems to me that the judge's criticisms are unfair to the majority. Their starting-point will have been the officers' reports which set out fully and clearly the approach to be followed pursuant to the Green Belt policies (referring originally to PPG2, but then to the NPPF following its publication). The reports identified the extent to which the buildings would represent inappropriate development in the Green Belt and the extent to which the officers considered that there did not exist very special circumstances clearly outweighing the harm caused by reason of the inappropriateness and the level of activity generated by the proposed development. The summary of reasons of the majority shows that in finding that the proposed development conformed with the Green Belt policies contained in the NPPF they had addressed themselves to the officers' reports and had considered the concerns expressed in them but they had concluded that those concerns were overcome by the matters referred to. Although the reasons do not use the language of the policies, it seems to me that the proper inference to be drawn is that the majority had concluded that, to the extent that there would be inappropriate development, there existed very special circumstances that clearly outweighed the harm. I do not think that the failure to use the language of the policy can justify the adverse finding made by the judge. There is nothing to show that the majority were applying a different test from that correctly set out in the officers' reports that they were considering. To deal specifically with a point made by Mr Edwards, the fact that the majority referred in the final paragraph of the summary to a general balancing exercise does not mean that when concluding that there was sufficient to "overcome" the officers' concerns in relation to the Green Belt policies they were applying a simple balancing test rather than asking themselves whether there were very special circumstances that *clearly* outweighed the harm.

65. If I am right so far, a further question is whether the majority fell into legal error in concluding that there existed very special circumstances that clearly outweighed the harm. That conclusion depended in part on their assessment that the design of the development would retain substantially the openness of the site (a matter that appears to me to be relevant primarily to the extent of harm) and in part on their assessment of the "other benefits" that would be achieved by the development. Other passages in the summary of reasons identify a number of benefits arising out of the proposed

development, including economic benefits in the form of jobs for local people and accommodation and facilities for visitors to the district. It was open to the members to place weight on such benefits when deciding whether there existed very special circumstances sufficient to justify approval of the inappropriate development. To describe the reference to other benefits as at best a fig-leaf attempt to justify an overall planning decision is unfair. I can see no legal error in the majority's approach to these matters, and the conclusion they reached cannot in my judgment be said to have been irrational.

Reasons

66. As the judge explained at paras 204-206 of his judgment, failure to give adequate reasons was not pursued as a separate ground of challenge before him but was an aspect of the case advanced by Cherkley Campaign under each of the other grounds of challenge. The judge found that the reasons for granting permission were inadequate in respect of the three grounds considered above (need, landscape impact and Green Belt policy) "individually and when read as a whole". He said that they did not comply with the principle in para 15 of the judgment of Sullivan LJ in *R (Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286 that a fuller summary of the reasons may be necessary where the members have granted planning permission contrary to an officer's recommendation. He noted that the officers tasked with drafting the reasons were faced with a very difficult drafting exercise: they had to seek to justify a decision by a bare majority of members which was contrary to their recommendation and their own personal views. In the judge's view, they were tasked with defending the indefensible.

67. *Siraj* was considered and applied in *R (Telford Trustee No.1 Limited and Telford Trustee No.2 Limited) v Telford and Wrekin Council* [2011] EWCA Civ 896. That was a case in which the members of the planning committee followed the recommendation in the officers' report, so that on any view a relatively brief summary of reasons sufficed. If the judgment in the *Telford* case adds anything material to *Siraj*, it is by way of underlining that the requirement is to give a summary of reasons for the grant of permission, not a summary of reasons for rejecting objectors' representations or a summary of reasons for reasons.

68. In *Scottish Widows Plc & Others v Cherwell District Council* [2013] EWHC 3968 (Admin), at paras 34-39, Burnett J rightly emphasised the cautious formulation of Sullivan LJ's observation in *Siraj* that a fuller summary of the reasons may be necessary where members have granted planning permission contrary to their officers' recommendation. He pointed out that the purpose of summary reasons is to enable those concerned about the application to understand why it has been granted in the context of the surrounding circumstances; and on the facts of the case, in the context of a very detailed exposition of conflicting views in the officers' report for one meeting and the clear reasons given in the report for a further meeting, he held that a simple reference in the summary of reasons to compliance with the NPPF was more than enough to enable all concerned to understand why the permission had been granted.

69. It was pointed out to us that the requirement to give a summary of the reasons for the grant of permission was repealed with effect from 25 June 2013 by article 7 of the Town and Country Planning (Development Management Procedure) (England)

(Amendment) Order 2013. But the requirement was in force at the time of the decision here in issue and nothing turns on its subsequent repeal. Both *Telford* and *Scottish Widows* serve to illustrate, however, the limited nature of the requirement while it was in force.

70. Mr Edwards also drew attention to the requirement under regulation 24(1)(c)(ii) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that where an EIA application is determined by a local planning authority the authority shall make available for public inspection a statement containing *inter alia* "the main reasons and considerations on which the decision is based". He did not contend, however, that this imposed a higher duty than the duty to give a summary of reasons under the general planning legislation, and he made clear that his primary case in relation to reasons was not based on the EIA Regulations. Moreover the judge's decision was based on the general duty under planning law, not on the specific duty under the EIA Regulations.

71. The summary of reasons for the grant in this case was exceptionally lengthy, far fuller than would have been necessary if the majority of the Committee had accepted the recommendation in the officers' reports. No doubt the drafting exercise was a difficult one, given the extent to which the majority disagreed with the views expressed in the reports. The end result, however, seems to me to have been an adequate summary. In discussing the issues of need, landscape impact and Green Belt policy I have referred as appropriate to the majority's reasons when reaching my conclusions. The reasons make clear that the proposed development was considered to conform with all relevant policies; they show that consideration was given to the officers' reports as a whole, including the points on which officers had taken a different view; and they provide enough to justify the conclusion that the majority neither erred in law nor acted irrationally in departing from the officers' views and reaching a decision contrary to that recommended. I do not agree with the judge that there was an unlawful deficiency of reasons, whether in relation to the issues individually or when read as a whole.

The costs appeals

72. If my Lords agree with my conclusions on the main appeals, it will lead to the setting aside of the judge's quashing order and his related costs order, with the result that the separate appeals against the costs order will fall away. The parties will have the opportunity to make written submissions as to the costs consequences of the main appeals if they are unable to reach agreement on the issue. Nothing further needs therefore to be said on the subject of costs at this stage.

Overall conclusion

73. I would allow the main appeals by the Council and Longshot and would set aside the judge's quashing order and costs order.

Lord Justice Underhill :

74. I agree.

Lord Justice Floyd :

75. I also agree.

Appendix KMR2 – Gateshead M.B.C. v. Secretary of State for the Environment [1994]

GATESHEAD METROPOLITAN BOROUGH COUNCIL v. SECRETARY OF STATE FOR THE ENVIRONMENT AND NORTHUMBRIAN WATER GROUP PLC

COURT OF APPEAL (Glidewell, Hoffman and Hobhouse L.JJ.): May 12, 1994

Town and country planning—Overlap with pollution control—Incinerator—Planning appeal—Structure plan policy required acceptable environmental impact—Concern over impact on air quality—Whether adequate controls under the Environmental Protection Act 1990—Whether Secretary of State gave adequate reasons for rejecting Inspector's recommendation to refuse permission

The local planning authority, Gateshead M.B.C. ("Gateshead") had refused Northumbrian Water Group plc ("NWG") planning permission for a clinical waste incinerator in a semi-rural location. NWG appealed to the Secretary of State for the Environment. The inspector appointed by the Secretary of State held a public inquiry, and recommended in his report that permission should be refused. Although the inspector was satisfied that an appropriate plant could be built to meet the various standards, the impact on air quality and agriculture in this location was insufficiently defined. Public disquiet regarding fears as to environmental pollution could not be sufficiently allayed to make the development acceptable. The Secretary of State rejected the inspector's recommendation, and granted planning permission. He was satisfied that the available controls under the Environmental Protection Act 1990 (the "E.P.A.") for this proposal were such that there would be no unacceptable environmental impact on adjacent land, as required by structure plan policy. This was a key point in its favour. As a "prescribed process", separate authorisation to carry on the incineration would be required under Part 1 of E.P.A. from Her Majesty's Inspectorate of Pollution ("H.M.I.P.").

The High Court refused Gateshead's application to quash the Secretary of State's decision. Gateshead appealed, arguing that he had not given adequate reasons why he differed from the inspector and that he was wrong to say that the E.P.A. controls were adequate to deal with the risks to human health. In so doing he had misunderstood the powers of H.M.I.P., contravened the precautionary principle and/or reached an irrational conclusion.

Held, dismissing the appeal, that the Secretary of State's reasoning was proper, adequate and intelligible for rejecting the inspector's recommendation. Clearly the control regimes under the Town and Country Planning Act and the E.P.A. overlap. Just as the environmental impact of emissions from a proposed plant is a material consideration in the planning decision, so is the existence of a stringent regime under the E.P.A. for preventing or mitigating that impact. This was not a case in which it was apparent that a refusal of authorisation under the E.P.A. would probably be the only proper decision for H.M.I.P. to make. The Secretary of State was therefore justified in concluding that the areas of concern which led the Inspector to recommend refusal were matters which could properly be decided by H.M.I.P., and that their powers were adequate to deal with those concerns. He was also justified in concluding that the plant met, or could meet, the structure plan criteria. He had not erred in law, nor had he reached a decision which was irrational or in any way outside his statutory powers.

Case referred to:

(1) *Westminster City Council v. Great Portland Estates* [1985] A.C. 661; [1984] 3 W.L.R. 1035; (1984) 128 S.J. 784; [1984] 3 All E.R. 744; (1984) 49 P. & C.R. 34; [1985] J.P.L. 108; (1984) 81 L.S.Gaz. 3501, H.L.

Legislation construed:
Town and Country Planning Act 1990, ss.54A, 72(2) and 79(4); Environment Protection Act 1990, ss.2(1), 6 and 7. The Government White Paper "This Common Inheritance, Britain's Environmental Strategy" (1990, Cm. 1200) and the draft Planning Policy Guidance Note on Planning and Pollution Control (now P.P.G. 23) were also referred to. The relevant provisions are set out in the judgment of Glidewell L.J.

Appeal by Gateshead M.B.C. against the decision of Jeremy Sullivan Q.C., sitting as a Deputy High Court Judge, on September 29, 1993, refusing their application under section 288 of the Town and Country Planning Act 1990, reported at [1994] 67 P. & C.R. 179. Gateshead M.B.C. had challenged the decision of the Secretary of State for the Environment to grant outline planning permission on appeal to Northumbrian Water Group plc ("NWG") for a clinical waste incinerator at Follingsby Lane, Wardley, Gateshead. The inspector, sitting with an assessor, had held a public inquiry into the appeal proposals on a number of days between April 9 and May 1, 1991. He produced a report to the Secretary of State on August 3, 1992, recommending refusal. The Secretary of State disagreed with the recommendation and granted permission, by a decision letter dated May 24, 1993. Although NWG had also made an application under Part I of the Environmental Protection Act 1990 to H.M.I.P., no determination had been made at the time of the inquiry. The facts are set out in the judgment of Glidewell L.J.

David Mole Q.C. and *Thomas Hill* for the appellants.
Stephen Richards and *Richard Drabble* for the first respondent.
William Hicks and *Russell Harris* for the second respondent.

GLIDEWELL L.J. This appeal relates to an activity which, in general terms, is subject to planning control under the Town and Country Planning Act, and to control as a prescribed process under Part I of the Environmental Protection Act 1990. The main issue in the appeal is, what is the proper approach for the Secretary of State for the Environment to adopt where these two statutory regimes apply and, to an extent, overlap?

The Northumbrian Water Group plc ("NWG") wish to construct and operate an incinerator for the disposal of clinical waste on a site some nine acres in extent, comprising about half of the area of the disused Felling Sewage Treatment Works at Wardley in the Metropolitan Borough of Gateshead. Under the Town and Country Planning Act planning permission is necessary for the construction of the incinerator and for the commencement of its use thereafter. The proposed incineration is a prescribed process within section 2 of the Environmental Protection Act 1990 and Schedule 1 of the Environmental Protection (Prescribed Processes etc.) Regulations 1991 as amended. An authorisation to carry on the process of incineration is therefore required by section 6 of the Environmental Protection Act. In this case, the enforcing authority which is responsible for granting such an authorisation is H.M. Inspectorate of Pollution ("H.M.I.P.").

Two applications were made to Gateshead, the Local Planning Authority, for planning permission for the construction of the incinerator. This appeal is only concerned with the second, which was an outline application submitted on October 26, 1991. The application was refused by Gateshead

by a notice dated February 4, 1991, for six reasons which I summarise as follows. The proposal is contrary to the provisions of the approved Development Plan, both the Local Plan and the County Structure Plan; the use of land for waste disposal purposes conflicts with the allocation of neighbouring land for industrial and/or warehousing purposes and could prejudice the development of that land; since there was no national or regional planning framework which identified the volume of clinical waste which was likely to arise, the proposal was premature; the Applicants have failed to supply sufficient information that the plant could be operated without causing a nuisance to the locality; the Applicants have failed to demonstrate that the overall effects on the environment, particularly in relation to health risk, have been fully investigated and taken account of. Then there was finally a ground relating to the reclamation and development of the site stating that no proposals have been submitted demonstrating how contamination arising from its previous use could be treated. That point does not arise in this appeal.

NWG appealed against the refusal to the Secretary of State. An enquiry into the appeal was heard by an Inspector of the Department of the Environment, Mr C. A. Jennings BSc CEng, with the assistance of Dr Waring, a Chemical Assessor, between April 9 and May 1, 1991. The inspector and the assessor reported to the Secretary of State on August 3, 1992. The inspector recommended that permission be refused. The Secretary of State by letter dated May 24, 1993 allowed the appeal and granted outline permission subject to conditions. Gateshead applied to the High Court under section 288 of the Town and Country Planning Act 1990 for an order that the Secretary of State's decision be quashed. On September 29, 1993, Jeremy Sullivan Q.C. sitting as Deputy High Court Judge dismissed the application. Gateshead now appeal to this Court. The relevant provision of the Town and Country Planning Act comprises sections 54A, 72, (2) and 79(4). The effect of those sections is that, in determining the appeal the Secretary of State was requird to decide in accordance with the provisions of the Development Plan unless material considerations indicated otherwise, and to decide in accordance with othr material considerations.

In the Environmental Protection Act 1990, s.2(1) provides:

> The Secretary of State may, by regulations, prescribe any description of process as a process for the carrying on of which after a prescribed date an authorisation is required under section 6 below.

It is agreed that the operation of the incinerator is such a process. By section 6(1):

> No person shall carry on a prescribed process after the date prescribed or determined for that description of process by ....

relevant regulations,

> except under an authorisation granted by the enforcing authority and in accordance with the conditions to which it is subject.

The enforcing authority in this case means, strictly, the Chief Inspector, but in practice H.M.I.P. Section 6(2) provides:

> An application for any authorisation shall be made to the enforcing authority in accordance with Part I of Schedule 1 of the Act ....

Section 6 continues:

> (3) Where an application is duly made to the enforcing authority, the authority shall either grant the authorisation subject to the conditions required, authorisation to be imposed by section 7 below or refuse the application.
> (4) An application shall not be granted unless the enforcing authority considers that the applicant will be able to carry on the process so as to comply with the conditions which would be included in the authorisation.

Section 7(1) deals with conditions which are required to be attached to any authorisation. By s.7(1)(a):

> There shall be included in an authorisation—such specific conditions as the enforcing authority considers are appropriate ... for achieving the objectives specified in subsection (2) below.

Those objectives are:

> (a) ensuring that, in carrying on a prescribed process, the best available techniques not entailing excessive cost will be used—
> (i) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and rendering harmless any such substances which are so released; and
> (ii) for rendering harmless any other substance which might cause harm if released into any environmental medium.

Finally by subsection (4):

> Subject to subsections (5) and (6) below, there is implied in every authorisation a general condition that, in carrying on the process to which the authorisation applies, the person carrying it on use make the best available techniques not entailing excessive cost for ...

precisely the same purposes as those set out in subsection (2). When the inquiry was held an application had been made to H.M. Inspectorate for an authorisation, but that had not yet been determined.

The Development Plan consisted of the approved Tyne and Wear Structure Plan, together with a Local Plan for the area. In the structure plan the relevant policy is numbered EN16. It reads:

> Planning applications for development with potentially noxious or hazardous consequences should only be approved if the following criteria can be satisfied:
> (a) adequate separation from other development to ensure both safety and amenity;
> (b) the availabiliy of transport routes to national networks which avoid densely built-up areas and provide for a safe passage of hazardous materials;
> (c) acceptable consequences in terms of environmental impact.

It was agreed at the inquiry, and is agreed before us, that crieria (a) and (b) are met. The issue revolves around criterion (c), whether the development will have "acceptable consequences in terms of environmental impact".

I comment first about the relationship between control under the Town and Country Planning Act and the Environmental Protection Act. In very broad terms the former Act is concerned with control of the use of land, and the Environmental Protection Act with control (at least in the present respect) of the damaging effect on the environment of a process which causes pollution. Clearly these control regimes overlap.

Government policy overall is set out in a White Paper called "This Common Inheritance, Britain's Environmental Strategy", which is Cm. 1200. The main part of this to which reference was made during the hearing of the appeal and before the Learned Deputy Judge is paragraph 6.39 which reads:

> Planning control is primarily concerned with the type and location of new development and changes of use. Once broad land uses have been sanctioned by the planning process it is the job of the pollution control to limit the adverse effects the operations may have on the environment. But in practice there is common ground. In considering whether to grant planning permission for a particular development a local authority must consider all the effects including potential pollution; permission should not be granted if that might expose people to danger.

There is also an earlier passage which is relevant in paragraph numbered 1.18 headed precautionary action. The latter part of that paragraph reads:

> Where there are significant risks of damage to the environment, the Government will be prepared to take precautionary action to limit the use of potentially dangerous materials or the spread of potentially dangerous pollutants, even where scientific knowledge is not conclusive, if the balance of likely costs and benefits justifies it. This precautionary principle applies particularly where there are good grounds for judging either that action taken promptly at comparatively low cost may avoid more costly damage later, or that irreversible effects may follow if action is delayed.

More specific guidance relating to the application of Planning Control under the Planning Act is to be given a Planning Policy Guidance Note. That was in draft at the time of the enquiry. The Draft of Consultation was issued in June 1992 and, as I understand it, is still in that state. However, reference was made to it during the enquiry and Mr Mole, for Gateshead, has referred us to two paragraphs in particular. These are:

> 125. It is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions). Planning controls are not an appropriate means of regulating the detailed characteristics of industrial processes. Nor should planning authorities substitute their own judgment on pollution control issues for that of the bodies with the relevant expertise and the responsibility for statutory control over those matters.
>
> 126. While pollution controls seek to protect health in the environment, planning controls are concerned with the impact of development on the use of land and the appropriate use of land. Where the potential for harm to man and the environment affects the use of land (*e.g.* by precluding the use of neighbouring land for a particular purpose or by

> making use of that land inappropriate because of, say, the risk to an underlying aquifer) then planning and pollution controls may overlap. It is important to provide safeguards against loss of amenity which may be caused by pollution. The dividing line between planning and pollution control consideration is therefore not always clear-cut. In such cases close consultation between planning and pollution control authorities will be important at all stages, in particular because it would not be sensible to grant planning permission for a development for which a necessary pollution control authorisation is unlikely to be forthcoming.

Neither the passages which I have read from the White Paper nor those from the draft Planning Policy Guidance are statements of law. Nevertheless, it seems to me they are sound statements of common sense. Mr Mole submits, and I agree, that the extent to which discharges from a proposed plant will necessarily, or probably, pollute the atmosphere and/or create an unacceptable risk of harm to human beings, animals or other organisms, is a material consideration to be taken into account when deciding to grant planning permission. The deputy judge accepted that submission also. But the deputy judge said at page 17 of his judgment, and in this respect I also agree with him,

> Just as the environmental impact of such emissions is a material planning consideration, so also is the existence of a stringent regime under the E.P.A. for preventing or mitigating that impact for rendering any emissions harmless. It is too simplistic to say, 'The Secretary of State cannot leave the question of pollution to the E.P.A.'.

The inspector, having considered the advice of his assessor and having set out the evidence and submissions made to him in very considerable detail in his report, concluded that save for the effect of discharges from the plant on air quality and thus on the environment generally, all the other criteria in the Structure Plan Policy and all other possible objections were met. In particular, summarising, first, all the responsible authorities agreed that incineration was the proper solution to the problem of the disposal of clinical waste. It followed also that one or more incinerators for that purpose were needed to be constructed in the area generally. Secondly, this site was at an acceptable distance from a built-up area and the road access to it is satisfactory. Thirdly, the inspector found that the construction of this plant on the site might inhibit some other industrial processes, particularly for food processing, from being established nearby. But it certainly would not inhibit many other industrial processes. Therefore that was not sufficient to justify a refusal. Fourthly, he and the assessor considered in some detail the possible malfunction of the plant. Indeed, we are told that this occupied a major part of the time of the inquiry. In conclusion, the inspector said in paragraph 488 of his report:

> I am therefore satisfied that an appropriate plant could be designed with sufficient safeguards included, such that a reliaibility factor, within usual engineering tolerances, could be achieved.

He summarised his conclusions at paragraphs 505 and 506 of his report. In 505 he said:

> ... I have examined each of the subject areas that led to G.M.B.C.

refusing the application and have come to the following main conclusions:

(1) The maximum emission limits specified by the Appellants accord with the appropriate standards.
(2) It would be possible to design a plant to perform within those limits in routine operation.
(3) It would be possible to design sufficient fail-safe and stand-by systems such that the number of emergency releases could be reduced to a reasonable level.
(4) While some visual detriment would occur from the presence of the stack and some industrialists might be deflected from the locality, neither effect would be sufficient to justify refusal of the proposal on those grounds alone.
(5) The background air quality of the area is ill-defined and comparison with urban air standards for this semi-rural area gives an incomplete picture.
(6) Discharges of chemicals such as cadmium, although within set limits, are unacceptable onto rural/agricultural areas.
(7) In relation to public concern regarding dioxin omissions, the discharge data is only theoretical and insufficient practical experience is available for forecasts to be entirely credible.

506. I am therefore satisfied that while an appropriate plant would be built to meet the various standards, the impact on air quality and agriculture in this semi-rural location is insufficiently defined, despite the efforts of the main parties at the inquiry, and public disquiet regarding fears as to environmental pollution and in particular dioxin omissions cannot be sufficiently allayed to make the proposed development of a clinical waste incinerator on this site acceptable. I have reached this conclusion in spite of the expectation that all of the conditions suggested would be added to any permission and in spite of the suggestion that the valuable Section 106 agreement could be provided.

Therefore, in paragraph 507 he recommended that the appeal be dismissed.

In his decision letter, the Secretary of State considered environmental impact and the Inspector's conclusions in the passage leading up to the paragraphs to which I have just referred, in paragraphs 19, 20 and 21. In paragraph 19 he said that "the other principal environmental impact would be that of emissions to the atmosphere from the plant". He noted that NWG, for the purposes of assessing the impact, indicated that the maximum emission limits for normal operation to which they were prepared to tie themselves were set out in a document numbered NW9, and that that became part of the description of the plant, the subject of the application permission. The Inspector

> ... also notes the view of the assessor that these limits were in keeping with current United Kingdom prescriptive standards and that H.M.I.P. accepted these limits were a valid starting point for their authorisation procedures under Part I of the Environmental Protection Act 1990. He further notes the Inspector's statement that any emission standards set by H.M.I.P. in a pollution control authorisation for the plant would be lower than those indicated in document NW9. The Secretary of State accepts it will not be possible for him to predict the emission limits

which will be imposed by H.M.I.P. but he is aware of the requirements for conditions which must be included in an authorisation under section 7 of the Environmental Protection Act 1990.

20. The Inspector's conclusion that the impact of some of the maximum emission limits indicated in document NW9 are not acceptable in a semi-rural area is noted. While this would weigh against your clients' proposals, the Secretary of State considers that this conclusion needs to be considered in the context of the Inspector's related conclusions. Should planning permission be granted the emission controls for the proposed incinerator will be determined by H.M.I.P. Draft Planning Policy Guidance on 'Planning and Pollution Controls' was issued by the Department of the Environment for consultation in June 1992. It deals with the relationship between the two systems of control and takes account of many of the issues which concerned the Inspector. While the planning system alone must determine the location of facilities of this kind, taking account of the provisions of the development plan and all other material considerations, the Secretary of State considers that it is not the role of the planning system to duplicate controls under the Environmental Protection Act 1990. Whilst it is necessary to take account of the impact of potential emissions on neighbouring land uses when considering whether or not to grant planning permission, control of those emissions should be regulated by H.M.I.P. under the Environmental Protection Act 1990. The controls available under Part I of the Environmental Protection Act 1990 are adequate to deal with emissions from the proposed plant and the risk of harm to human health.

21. An application for a pollution control authorisation had been made when the inquiry began, but H.M.I.P. had not determined it. However, in view of the stringent requirements relating to such an authorisation under Part I of the Environmental Protection Act 1990, the Secretary of State is confident that the emission controls available under the Environmental Protection Act 1990 for this proposal are such that there would be no unacceptable impact on the adjacent land. He therefore concludes that the proposed incinerator satisfies the criteria in Policy EN16 and is in accordance with the development plan. This is a key point in favour of the proposal.

His overall conclusions are set out in paragraphs 36, 37 and 38 of the decision letter.

36. The Secretary of State agrees that it would be possible to design and operate a plant of the type proposed to meet the standards which would be likely to be required by H.M.I.P. if a pollution control authorisation were to be granted. It is clear that the predicted maximum emission levels set out in document NW9 which your clients were prepared to observe raised some concerns with respect to their impact on a semi-rural area. However the Secretary of State is satisfied that, in the event of planning permission being granted, these concerns could and would be addressed by H.M.I.P. in the pollution control authorisation process. While noting the Inspector's view that emission standards set by H.M.I.P. would be more stringent than those in document NW9, the Secretary of State considers that the standards in document NW9 simply represent the likely starting point for the H.M.I.P. authorisation

> process, and do not in any way fetter their discretion to determine an application for an authorisation in accordance with the legal requirements under the Environmental Protection Act 1990.
> 37. Those issues being capable of being satisfactorily addressed, the remaining issue on which the decision turns is whether the appeal site is an appropriate location for a special industrial use, taking into account the provisions of the development plan. The proposal does not conflict with the development plan and it is clear that its impact in visual and environmental terms on the surrounding land would not be adverse. Its impact on the development potential of the surrounding land is more difficult to assess but, while the Secretary of State accepts the view that an incinerator may deter some types of industry, he also accepts that the overall impact would not be clear-cut and possible deterrence to certain industries is not sufficient to justify dismissing the appeal.
> 38. The Secretary of State therefore does not accept the Inspector's recommendation and for these reasons has decided to allow your clients' appeal.

He therefore granted permission subject to a substantial list of conditions.

Mr Mole's argument on behalf of Gateshead on this appeal falls under two heads. First, the Secretary of State did not give proper or adequate reasons for rejecting the inspector's recommendation and the reasoning which led the inspector to that recommendation. This, submits Mr Mole, is a failure to comply with "relevant requirements". The requirements are to be found set out in the Town and Country Planning Inquiry Procedures Rules 1992, rule 17.1. Thus, this is a ground upon which, provided prejudice be shown to Gateshead (and Mr Mole submits it is) action can be taken to quash the Secretary of State's decision under section 288(1)(b).

It is a commonplace that a decision-maker, including both a Local Planning Authority when refusing permission and particularly the Secretary of State when dealing with an appeal, must give reasons for the decision. The rules so provide. The courts have held that those reasons must be "proper, adequate and intelligible". The quotation is from the speech of Lord Scarman in *Westminster City Council v. Great Portland Estate.*[1] While of courts accepting that it is necessary to look and see whether the Secretary of State's reasons are proper, adequate and intelligible, I do not accept Mr Mole's argument that they are not. In the paragraphs of his decision letter to which I have referred, the Secretary of State says, in effect:

> I note that the Inspector says that the impact of some of the maximum emission limits indicated in document NW9 would not be acceptable in a semi-rural area. But H.M.I.P. will not be obliged, if they grant an authorisation, to adopt those limits. On the contrary, they have already indicated that the limits they would adopt would be lower. Thus, H.M.I.P. will be able to determine what limits will be necessary in order to render the impact of the emissions acceptable, and impose those limits.

That seems to me to be coherent and clear reasoning. It depends upon the proposition which I accept, and I understand Mr Mole to have accepted in argument, that in deciding what limits to impose H.M.I.P. are entitled,

[1] [1985] A.C. 661 at 683.

indeed are required, to take into account the nature of the area in which the plant is to be situated and the area which will be affected by the maximum deposit of chemicals from the stack.

That brings me to Mr Mole's main argument. I summarise this as follows. Once planning permission has been granted, there is in practice almost no prospect of H.M.I.P. using their powers to refuse to authorise the operation of the plant. Thus, whatever the impact of the emissions on the locality will be, H.M.I.P. are likely to do no more than ensure that the best available techniques not entailing excessive costs be used, which may leave the amounts of deleterious substances released at an unacceptable level.

This, submits Mr Mole, could be prevented by refusing planning permission, which would then presumably leave it to NWG, if they were able to do so, to seek additional evidence to support a new application which would overcome the Inspector's concerns. The Secretary of State was thus wrong to say at paragraph 20 of his decision that the controls under the Environmental Protection Act are adequate to deal with the emissions and the risk of human health. By so concluding, the Secretary of State,

(1) misunderstood the powers and the functions of H.M.I.P.;
(2) contravened the precautionary principle, and/or
(3) reached an irrational conclusion.

I comment first that the matters about which the Inspector and his assessor expressed concern were three. First, the lack of clear information about the existing quality of the air in the vicinity of the site, which was a necessary starting point for deciding what impact the emission of any polluting substances from the stack would have. It was established that such substances would include dioxins, furans and cadmium. Secondly, in relation to cadmium though not in relation to the other chemicals, any increase in the quantity of cadmium in the air in a rural area is contary to the recommendations of the World Health Organisation. This, however, would not be the case in an urban area. In other words, an increase would not of itself contravene World Health Organisation recommendations relating to an urban area. Thirdly, there is much public concrn about any increase in the emission of these substances, especially dioxin, from the proposed plant. In the absence of either practical experience of the operation of a similar plant or clear information about the existing air quality, those concerns cannot be met. It was because of those concerns that the Inspector recommended refusal. I express my views as follows. Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial development—indeed very little development of any kind—would ever be permitted.

The central issue is whether the Secretary of State is correct in saying that the controls under the Environmental Protection Act are adequate to deal with the concerns of the Inspector and the assessor. The decision which was to be made on the appeal to the Secretary of State lay in the area in which the regimes of control under the Planning Act and the Environmental Protection Act overlapped. If it had become clear at the inquiry that some of the discharges were bound to be unacceptable so that a refusal by H.M.I.P. to grant an authorisation would be the only proper course, the Secretary of State following his own express policy should have refused planning permission.

But that was not the situation. At the conclusion of the inquiry, there was no clear evidence about the quality of the air in the vicinity of the site. Moreover, for the purposes of deciding what standards or recommendations as to emissions to apply, the Inspector described the site itself as "semi-rural", whilst the area of maximum impact to the east he described as "distinctly rural".

Once the information about air quality at both those locations was obtained, it was a matter for informed judgment (i) what, if any, increases in polluting discharges of various elements into the air were acceptable, and (ii) whether the best available techniques etc., would ensure that those discharges were kept within acceptable limits.

Those issues are clearly within the competence and jurisdiction of H.M.I.P. If in the end the inspectorate conclude that the best available techniques, etc., would not achieve the results required by section 7(2) and 7(4), it may well be that the proper course would be for them to refuse an authorisation. Certainly, in my viw, since the issue has been expressly referred to them by the Secretary of State, they should not consider that the grant of planning permission inhibits them from refusing authorisation if they decide in their discretion that this is the proper course.

Thus, in my judgment, this was not a case in which it was apparent that a refusal of authorisation will, or will probably be, the only proper decision for H.M.I.P. to make. The Secretary of State was therefore justified in concluding that the areas of concern which led to the Inspector and the assessor recommending refusal were matters which could properly be decided by H.M.I.P., and that their powers were adequate to deal with those concerns.

The Secretary of State was therefore also justified in concluding that the proposed plant met, or could by conditions on an authorisation be required to meet, the third criterion in policy EN16 in the Structure Plan, and thus accorded with that plan.

For those reasons, I conclude that the Secretary of State did not err in law, nor did he reach a decision which was irrational or in any other way outside his statutory powers.

I have not in terms referred to much of the judgment given by the deputy judge. This is mainly because the matter was somewhat differently argued before us. Nevertheless, I agree with the conclusions he reached in his careful and admirable judgment. So agreeing and for the reasons I have sought to set out, I would dismiss this appeal.

HOFFMANN L.J. I agree.

HOBHOUSE L.J. I also agree.

Appeal dismissed. Both Respondents to have their costs. Leave to appeal to House of Lords refused.

Solicitors—Sharpe Pritchard; Treasury Solicitors McKenna & Co.

Reporter—William Upton.

Appendix KMR3 – Appeal Decision - APP/E1855/A/05/1172372

10004174 2

Appeal Decision

Inquiry opened on 21 February 2006
Site visit made on 23 February 2006

by B J Sims BSc CEng MICE MRTPI

an Inspector appointed by the First Secretary of State

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Date 30 MAR 2006

Appeal Ref: APP/E1855/A/05/1172372
Mayfield Farm, Canalside, Hopwood, Alvechurch, Birmingham, B48 7AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr M Robbins against Worcestershire County Council.
- The application Ref 407598/MB/LJE, is dated 10 August 2004.
- The development proposed is the erection of a replacement chimney 17 metres high.
- The Inquiry sat for 3 days on 21-23 February 2006.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

General Procedural Matters

1. At the Inquiry applications for costs were made by The Appellant and the Worcestershire County Council [WCC] against each other. These applications are the subject of separate Decisions.

2. Shortly before the Inquiry, WCC, as the determining waste planning authority, withdrew their objections to the appeal and, at the Inquiry, adduced no evidence. However, the proofs of evidence previously submitted by WCC, including a Supplemental Note explaining their position, were left before the Inquiry.

3. The Appellant exercised his option to proceed with the Inquiry, and the appeal was opposed only by unrepresented, interested parties. In particular a group of residents, named Hopwood Against Rendering Movement [HARM] submitted a proof of evidence and took a full part in the cross-examination of the Appellant's witnesses, alongside several elected Members of WCC, Bromsgrove District Council [BDC] and Alvechurch Parish Council [PC], as well a number of representatives of local organisations, businesses and individual objectors.

4. Given the unusual circumstances of the Inquiry I was flexible in allowing interested persons to take part in cross-examination and to contribute to the Inquiry in their own right and, as far as possible, at their convenience. The Appellant co-operated in providing informal sessions outside, and separate from, the Inquiry to inform those with questions about the nature and scale of the current and proposed operations at the appeal site. Whilst this approach was expressly commended by certain of those present, there were also complaints that some individuals did not have an opportunity to address the Inquiry or submit documents.

5. In practice, wherever I gave a specific assurance that a person would be heard at or before a specific time, this was met, and I gave repeated reassurance that any written representation submitted before the close of the Inquiry would be fully considered and taken into account alongside every other written submission made before or during the Inquiry.

6. In the latter connection I have paid full regard to the written submission read out at the Inquiry on behalf of the MP for Bromsgrove, Ms Julie Kirkbride.

7. Despite some confusion during the Inquiry regarding the position of Alvechurch PC, the PC expressly maintain their objections to the appeal.

8. Before identifying the planning issues arising in the appeal, I consider it necessary both as background and as a matter of public record, to set out in some detail matters of the planning status of the appeal site, the proper scope of the appeal and the several submissions made during the Inquiry both in explanation of the position of the main parties and in respect of a request that was made for an adjournment.

Planning Status of the Appeal Site and Scope of the Appeal

9. The history and planning status of Mayfield Farm is important to the determination of this appeal because it affects the scope of the planning considerations properly to be taken into account. The situation is further complicated by the interrelationship between the separate statutory waste planning and pollution prevention and control [PPC[1]] regimes, operated respectively by WCC and BDC.

10. The former commercial pig rearing operations of Mayfield Farm came to an end in March 2001 when the livestock were slaughtered as a result of the Foot and Mouth Disease outbreak of that year. In common with many other farms, pig rearing has not resumed for economic reasons, including the subsequent ban on feeding swill which, by definition, excludes rendered mammalian by-products. Up to that point, Mayfield Farm had for many years, as part of its overall commercial operation, supplied rendered catering and slaughterhouse waste as feed to other pig farms, with fats and oils sold as by-products to the chemical industry. The cooking equipment included an air-cooled condenser and deodorising system, for which planning permission had been granted in 1996, and was vented through the existing 15m chimney. This currently remains on the site, although not in use.

11. On 11 September 2001 BDC issued a Certificate of Lawfulness of Existing Use or Development [CLEUD] under Ref LDC 38/01, that "the preparation and processing of animal feed together with the storage facilities and parking of vehicles and trailers in connection with the animal feed processing use" at Mayfield Farm is lawful, in terms of Section 191 of the Act of 1990 as amended by Section 10 the Planning and Compensation Act 1991, "because the time for enforcement action has expired".

12. However, as a result of the changes in the farming industry in 2001, Mayfield Farm turned to outlets in the pet food market for dry meals derived from lamb and poultry waste. This requires the installation of new cooking equipment compliant with the tighter environmental controls introduced by the PPC Regulations of 2000. The new equipment, including a

[1] Pollution Prevention and Control Act 1999 and Pollution Prevention and Control Regulations 2000

modern thermal oxidiser to control air emissions, has been installed but cannot be operated until the requisite PPC permit is issued by BDC.

13. On 7 February 2003 BDC issued a Certificate of Lawfulness of Proposed Use or Development [CLPUD] under Ref BDC 48/02, that the "use for rendering animal by-products to produce animal feed" at Mayfield Farm is lawful, in terms of Section 192 of the Act of 1990 as amended, "because the proposed use falls within the scope of the CLEUD granted on 11 September 2001".

14. The replacement 17m chimney proposed in this appeal is therefore the sole pre-requisite for the issue of the PPC permit that requires express planning permission from WCC as waste planning authority, although the PPC Regulations will also have to be satisfied in a wide range of technical requirements if planning permission for the chimney is forthcoming. However, the scope of this appeal is clearly limited to the planning effects of the chimney itself.

Explanatory Submissions by the Main Parties

15. At the earliest opportunity on opening the Inquiry I heard submissions explaining the latest position of the Main Parties.

Submissions for WCC

16. The application was expressly for the erection of a replacement chimney and WCC have not sought to go beyond the stated land use and have objected only on three planning grounds. Notwithstanding the failure of WCC to determine the case inside statutory time limits, these putative reasons for refusal were set out in the pre-Inquiry statement, submitted by WCC on 13 April 2005 under Rule 6 of the Inquiries Procedure Rules[2]. They maintained that the development is inappropriate in the Green Belt, has unacceptable visual impact and that the requisite very special circumstances to justify permission had not been demonstrated by the Appellant in terms of need for a chimney of that height to serve the lawful operations on the appeal site.

17. The necessary chimney height of 17m was only confirmed by BDC, as PCC permitting authority, on 5 January 2006, whilst the operational need was only clear from the technical proof of evidence of Entec UK Limited, consultants for the Appellant, submitted four weeks before the Inquiry, answering the outstanding questions posed in the evidence of Environmental Resources Management Limited [ERM], submitted for WCC. The upshot was that WCC were bound at this late stage to accept the existence of very special planning circumstances to justify harm in the Green Belt and consequently formally withdrew their objections by letter dated 14 February 2006. WCC limited their involvement in the Inquiry to legal points and the matter of suggested planning conditions.

Submissions for the Appellant

18. The Appellant nonetheless pursues the appeal by way of the Inquiry in preference to a fresh application to WCC, whereby the process would be further protracted and permission would still not be assured.

[2] Town and Country Planning Appeals (Determination by Inspectors)(Inquires Procedure) Rules 2000. SI 2000 No.1625

19. The Appellant challenges the chronology of the circumstances leading to the changes in the position of WCC and the justification for citing chimney height as a putative reason for refusal, given the separate provisions of the PCC legislation.

Response by the Inspector

20. These submissions served to explain the position of the Main Parties at the opening of the Inquiry. They relate also to the costs applications and are recorded in more detail in the separate Costs Decisions.

21. Given a high level of obvious disquiet and confusion among the many members of the public present, and with the agreement of both the Appellant and WCC, I proceeded to hear submissions by Interested Persons for an adjournment.

Submissions by Interested Persons that the Inquiry should be Adjourned

Submission by HARM

22. The individual objectors to this appeal, who comprise HARM, apply for an adjournment of the Inquiry with reference to Article 6 of the European Convention on Human Rights - the Right to a Fair Trial - as incorporated into national law by way of the Human Rights Act [HRA] 1998.

23. The Inspector is asked to adjourn the proceedings as the position of residents is prejudiced both by activities of the Appellant and the failures of both BDC and WCC in managing the original application.

24. The Appellant has had some two years to make his case since formulating the original application in 2004, during which time he has been ambiguous about the height of the chimney, initially proposed to be 25m tall. The subsequent application remitted to WCC for determination was for a 17m chimney. WCC requested justification for the stack height and this had still not been forthcoming when a duplicate application was submitted nearly a year after the first. The Appellant had never explained how the shorter chimney could be justified but withdrew the 25m proposal. WCC were minded to refuse permission on lack of information to justify the development. Reference is here made to correspondence between WCC, BDC and HARM.

25. Similar tactics applied by the Appellant to the current application meant that only on 5 January 2006, two years after the original application and the month before this Inquiry, could BDC model the emission data and satisfy themselves that a 17m chimney would suffice. This gave inadequate time for WCC and third parties to look at the latest information and take appropriate legal and technical advice to ensure a fair and balanced response.

26. Through calculated and aggressive dissimulation and deliberate confusion the Appellant has held back information until the last minute to frustrate the proper authorities and third parties in reaching a focussed stance for or against the proposal. This has forced WCC, who had agreed to represent the public view against the professional resources of the Appellant, to drop their objections only three working days before the Inquiry. That is not long enough for HARM to react to the proposal, now that it has finally been clarified. HARM have taken expensive legal advice in the past but, having so far relied on WCC, have latterly avoided doing so.

27. For these reasons a substantial adjournment of at least three months is justified to enable HARM to mount a legal and planning case on issues of Green Belt, Landscape, Waste Management and PPC with respect to the use of Best Available Techniques [BAT] in terms of relevant guidance, and also matters of odour and noise, the latter known to be an outstanding concern to BDC environmental health staff in connection with the thermal oxidiser.

Submission by Cllr Dr G Lord, Leader WCC

28. It is suggested that the Inquiry be postponed for three months because the elected WCC Planning and Regulatory Committee have not had the time to understand and assimilate, or the opportunity to review, the new evidence contained in submitted rebuttal proofs, including with respect to "very special circumstances" in terms of Green Belt Policy. Comparison is made with the Kidderminster Incinerator Inquiry in 2002, wherein WCC had expressly refused the application and where it had been held that objection based on public perception of risk was justified. In this instance WCC officers had not even informed their own Council Leader of their late change of position and withdrawal of objections. The submission of HARM is supported, given that the late evidence was not even to hand when that organisation were last able to take legal advice.

Submission by Cllr B Fuller, Member of Bromsgrove DC

29. Concern exists at two levels: democratic process and local representation. BDC are, in effect, mere consultees in the democratic process in which WCC have hitherto rejected the application and opposed this appeal. The new evidence has not been considered by everybody concerned, whereby the due process of taking into account the views of local people cannot be complete without the adjournment sought. It must be borne in mind that many times more than the 100 or so residents present at the Inquiry would have attended, had the Inquiry been held in the evening; and it must be recognised also that WCC is not an amorphous organisation but a body elected by those people to represent them. In practice, local residents had contributed beyond their means to the work of HARM in opposing the effects of the development at the appeal site and have trusted WCC to "carry their banner". The late withdrawal by WCC from the Inquiry had denied them their natural right to be heard under the HRA. Accordingly the submissions for a substantial adjournment are supported.

Response by the Appellant

30. The Appellant exercises his proper right to appeal on failure of WCC to determine the application and jurisdiction now lies with the Inspector. The three month adjournment sought might facilitate discussion between officers and Members but, in light of the withdrawal of WCC objections, that is merely an internal matter for the Councils concerned. That the democratically elected WCC, as a whole, have changed their position is no fault of the Appellant, who enjoys the same right to a fair and timely hearing under the HRA as objectors. Neither is it the Appellant's fault if there have been problems of public perception in relation to his proposals or with regard to the several relevant statutory controls.

31. The example of the Kidderminster Incinerator case could always have been cited as a material consideration, irrespective of the matters now referred to.

32. It is a matter of fact that the application that leads to this appeal was clearly made for a 17m chimney in August 2004 and it is reasonable to expect that the legal advice taken by HARM should have made this clear to them. In the circumstances, the allegations by HARM that the Appellant has misled the community should be withdrawn.

33. It is for the Inspector to judge the materiality of the effects of the lawful development on the appeal site in relation to the proposal for the replacement chimney to serve the thermal oxidiser, which is accepted to represent BAT to deal with odour and other emissions. The further expert assessment sought by HARM would be an inappropriate waste of time because the planning regime controls only planning effects and not pollution. That includes noise, which has never been raised as a planning issue regarding the chimney, but will be addressed in the PPC permit.

34. However, as an aid to public information and understanding, copies of the recent rebuttal proofs are available to interested persons, including for informal discussion with the Appellant's team outside the Inquiry.

35. In making their submissions for an adjournment, third party objectors are employing "Fabian" tactics to delay a decision on the appeal. Proper procedures have been followed and it would be wrong and unfair to adjourn, save perhaps for one day or so to enable all parties to study the latest evidence.

Preliminary Ruling

36. After a short recess I made a preliminary ruling summarised as follows:

37. It is incumbent upon the Inspector to ensure a fair hearing, with every party able to respond to all the evidence against their respective cases, so long as it is material to identifiable planning issues, and thus avoid infringement of their democratic rights and the HRA.

38. Whilst acknowledging public anger and frustration, I set aside comments relating to the motivation of the Appellant and interrelationship of elected BDC and WCC Members and their officers in the period leading up to this Inquiry. The Inquiry must move forward from the position in which it now finds itself.

39. That is, to consider a long-standing proposal for a 17m chimney to facilitate a lawful rendering operation, which is also subject to separate PPC control under the jurisdiction of BDC. Matters of odour, health or noise would only ever come into the planning balance if they were judged likely to be unacceptable even when the operations on the appeal site are in full compliance with PPC permit conditions.

40. Notwithstanding the assumption, held till the week prior to the Inquiry, that WCC would represent the interests of HARM and the public at large, the proposal has been clear for some time and anyone had the opportunity to raise issues of adverse impacts. In practice, opposition to the appeal has centred on the methodology of the thermal oxidiser as BAT.

41. That said, it is right that interested persons, no longer in effect represented by their elected Council, should be able to pursue planning issues hitherto covered in the WCC evidence, still before the Inquiry. For it is open to the Inspector to come to a different conclusion from WCC or the Appellant on the planning balance in the case, in particular those regarding Green Belt policy and visual impact, although comparison with any previous planning appeals would be a matter for evidence in any event.

42. The best way to facilitate the requisite proper hearing at minimum delay and public cost is to hear first the evidence of the Appellant without adjournment and subject to questions by the Inspector and cross-examination by interested persons, leaving open whether an adjournment might still be necessary for further preparation and recall of witnesses in due course.

43. In short, the question of an adjournment was deferred and, in practice, there was an opportunity overnight for interested persons to become better acquainted with the evidence.

Further Submissions by HARM and Cllr Fuller

44. On the second day of the Inquiry, after completion of the evidence for the Appellant, both HARM and Cllr Fuller maintained their view that the Inquiry should be adjourned to allow time for the wider concern of the public to be to better co-ordinated, as they deserve, whereas interested persons had so far struggled to oppose the skilled professional legal, technical and planning team supporting the Appellant in a one-sided Inquiry.

45. More expert evidence is needed on matters of odour control, type of fuel oil to be used and air quality modelling. HARM would wish further to pursue Green Belt policy, PPC guidance, fitness of the thermal oxidiser for its purpose, noise pollution and other outstanding PPC concerns, as well as legal opinion regarding Article 8 of the HRA - the Right to Respect for Private and Family Life.

46. A minimum three month adjournment would be in the best interests of natural justice.

Further Response by the Appellant

47. Interested persons have only a discretionary role in these proceedings with regard to cross examination and the submission of evidence and have been afforded a high degree of tolerance by the Inspector to do so. Yet the only application for adjournment comes from unrepresented third parties, whilst the Appellant stands to incur additional expense. This is a material, albeit not overriding consideration.

48. With respect to the reasons claimed for an adjournment, the position became clear four weeks before the Inquiry. Since then, the evidence had been in the public domain, including the important withdrawal of the third putative reason for refusal regarding the provision of information on need for the 17m chimney.

49. The application details have been public for two years, including on the BDC website. Moreover, following the preliminary ruling by the Inspector, the evidence adduced and the questions asked by the Inspector and interested persons have together indicated that the real concern of the community lies with the separate PPC regime. At the same time, there has been an opportunity for the public to be informed of the rendering process. Moreover, it is clear that local people are only too well aware of the evidence on Green Belt and visual impact issues.

50. There is thus no basis to anticipate that the reliability of the submitted technical evidence would be further tested, even following a long adjournment and, even if it were found to be in error, the proper forum available for such scrutiny remains the PPC regime, where HARM, Cllr Fuller and others can raise their concerns over such as odour emission, fuel, and air quality. HARM have evidently had reasonable access to Public Interest Lawyers who conducted the cited correspondence with WCC on their behalf.

51. The Inspector is reminded that, in the *Gateshead*[3] case, it was held that, where matters are regulated by other statutory codes and whilst public fear or perception of risk is material to planning, it must be justified by positive evidence of harm.

52. It remains inappropriate to adjourn the Inquiry.

Final Ruling

53. I ruled, in summary, as follows:

54. I have regard to the fact that any question relating to the necessary height of the chimney in relation to pollution control was withdrawn by WCC some time before the Inquiry. Aside from Green Belt issues and visual impact, this left only a comparison between the thermal oxidiser and a wet process, both of which require a chimney as proposed.

55. In the light of the further submissions, and the evidence and cross examination so far heard at the Inquiry, there is no indication that the main outstanding public concerns are not able to be addressed by PPC procedures. I must balance the rights of the public with those of the Appellant for a fair and timely hearing and it does not appear at all likely to me that a long adjournment would result in new evidence relevant to planning being adduced.

56. I am satisfied that, by proceeding to hear the remaining evidence and submissions without substantial adjournment, I will afford all parties a fair hearing on the relevant planning issues and that I shall acquire the information I need to make a proper decision on the appeal.

57. The applications for an adjournment are therefore refused.

Main Issues

58. I consider that the main planning issues to be considered in the appeal are:

    58.1 whether the proposed chimney should be regarded as inappropriate development in the West Midlands Green Belt,

    58.2 whether the proposed chimney would have an effect on the openness of the Green Belt and to what extent, compared with the existing chimney to be demolished,

    58.3 whether the proposed chimney would have any other visual effect, compared with the existing chimney,

    58.4 whether, compared with the existing lawful development at the appeal site, the proposed development has any implications for pollution or public health, including public perception of risk, that are not addressed by separate PPC legislation,

    58.5 the degree of need that exists for the new chimney in relation to the legitimate business interests of Mayfield Farm and in respect of compliance with PPC permit requirements, and

    58.6 whether there are material considerations or benefits in favour of the development sufficient to outweigh any harm by adverse impact or inappropriateness in the Green

[3] *Gateshead Metropolitan BC v SSE [1994] 1 PLR 85* – Glidewell LJ

Belt, the latter needing to amount to very special circumstances in the overall balance of planning judgement.

Planning Policy

National Guidance

59. National planning policy on Green Belts is contained in Planning Policy Guidance 2 [PPG2], wherein para 3.4 makes new buildings inappropriate in the Green Belt, other than for qualifying uses which would not include the appeal development. Paras 3.8 and 3.9 say that re-use of buildings, including associated, non-extensive surrounding development, is not inappropriate, subject to no materially greater impact on the essential openness of the Green Belt and to consideration of mitigating conditions. Para 3.12 states that engineering and other operations are also inappropriate development unless they too maintain openness.

60. More generally, Planning Policy Statement 1 [PPS1] covers sustainable development including protection of the environment. Planning Policy Guidance 4 [PPG4] on industrial development, in para 13, includes the provision that development in support of national objectives should not be unjustifiably obstructed. The Appellant makes the fair point that this could apply to the function of the proposed chimney to meet the objectives of the national PPC regime. PPS7 protects the countryside whilst also, at para 30, encouraging farm diversification as a potentially beneficial "very special circumstance" to justify inappropriate development in the Green Belt.

61. With specific reference to pollution, PPS23 contains, at para 10, the principle that land use planning should proceed on the assumption that the pollution control regime will be properly applied and enforced and should act to complement and not duplicate it. This is echoed in PPS10 on waste at para 27, carrying forward the long-established, similar provision of the former PPG10. At para 1.51, Annex 1 to PPS23 notes that local planning authorities should be alert to the possibility that a refusal of planning permission for a facility required for mandatory PPC might lead to the closure of the plant concerned.

Development Plan

62. The law requires compliance with the statutory development plan unless material considerations indicate otherwise. The development includes the Regional Spatial Strategy in the form of Regional Planning Guidance 11 [RPG11], the Worcestershire Structure Plan [WSP] adopted in 2001 and the Bromsgrove District Local Plan [BDLP] adopted in 2004.

63. Several policies of the development plan generally support farm diversification whilst requiring compliance with other policies. Polices SD.2 and CTC.1 of the WSP and DS13 of the BDLP protect the environment and landscape character from any detrimental impact of development. Polices D38 and D39 of the WSP and DS2 of the BDLP control development in the Green Belt in similar terms to national guidance in PPG2.

64. In addition WCC and HARM quote WSP polices WD.1-3 on the control and location of waste facilities, especially the requirement for them to be compatible with their surroundings, with safe traffic access, avoiding environmental and landscape harm.

Reasons

Green Belt

Appropriateness

65. In considering the inappropriateness or otherwise of the chimney in the Green Belt, I am urged by the Appellant expressly to follow a decision matrix beginning with whether it should be regarded as an "engineering or other operation" in terms of PPG2 para 3.12, having regard to the terms of the General Permitted Development Order[4] [GPDO]. The latter refers to development comprising installation or replacement of plant for an industrial process. Secondly, I am asked to consider whether the development would comprise re-use of a building in terms of PPG2 para 3.8. It is submitted for the Appellant that, if neither of these descriptions applies, then the development could only be regarded as comprising a "building" in terms of PPG2 para 3.4.

66. WCC interposed caution with reference to the definition of a "building" in Section 336(1) of the Act of 1990 as including any part of a building but excluding plant or machinery comprised within it; WCC maintained that it would be a matter of fact and degree whether the chimney was comprised within the building housing the rendering process. However, the Appellant responded that any interpretation that the development consisted of a new building would make PPG2 para 3.8 otiose as any development would fall under the purview of para 3.4.

67. The Appellant asserts that the chimney would clearly be an engineering operation whereby, helpfully, the absence of any express permission for the existing chimney is explained in terms of the GPDO. The Appellant further asserts that the development is therefore not inappropriate in the Green Belt on grounds that it does no material net harm its openness.

68. However, in the event that the chimney is not regarded as an engineering operation, the Appellant claims that it would comprise the re-use of a building, as contemplated by PPG2 and PPS7. That would be on the basis of being a necessary adjunct to the re-use of the rendering building to house the thermal oxidiser, and thus appropriate as a small ancillary development to the lawful operation of the site. As such, the Appellant submits, it would equally have no significant net effect on openness, given also that its appearance could be mitigated by suitable painting secured by planning condition, in line with PPG2 para 3.9.

69. To my mind simple logic, as generally supported by the terms of statute cited above, is that the chimney comprises an engineering or other operation which may be regarded as appropriate to the Green Belt if it has no net effect on its essential openness. The chimney, set on its own concrete base, would be a free-standing structure, only functionally related to the adjacent building. In that sense it could also be regarded as associated with acceptable re-use of a building in the Green Belt but must still have no material effect on openness to qualify as appropriate. Either way therefore, the distinction between the tests of PPG2 paras 3.8 and 3.12 becomes academic in the present case. However, I share the view of the Appellant, whilst taking account of the caution expressed by WCC, that it would not be right simply to regard the chimney as a building, as WCC in effect do, without reasoned justification, in their written evidence. As matter of judgement in the particular circumstances, it does not appear to me that the chimney would have a sufficiently close

[4] Town and Country Planning (General Permitted Development) Order 1995 Part 8 Class B.1(b)

physical association with the thermal oxidiser for it to be seen as "comprised within" the building housing it, in terms of the Section 336 definition.

Openness

70. I turn now to the fundamental consideration of openness and in this I also question the reasoning of the Appellants. For it seems to me that to claim, as they do, that the chimney does no net harm to openness with reference to its painted finish in comparison with the light metallic existing chimney is to confuse three separate considerations: first, the amount of physical reduction in openness; second, the degree of harm that reduction would cause the Green Belt; and third the potential to control the appearance of the chimney.

71. With respect to the first consideration, the plain elevation of the proposed chimney would be more than twice the area of that of the existing chimney and its volume would be well over four times greater. Moreover, I gather the existing chimney is redundant and could be removed at any time but, even if not, it is plain fact that the existing chimney would occupy measurable additional space, including above the general level of surrounding buildings. Thereby, the openness of the Green Belt would be reduced. I give little weight to the potential for other chimneys to be erected up to 15m height, as permitted development under Class B.1(b) of the GPDO, as I consider the present proposal on merit and there is nothing to say that such other development would take place. Accordingly I conclude that the development would be inappropriate in the Green Belt in terms of both national and adopted local policy and would require very special circumstances to outweigh that harm and any other adverse planning impact, and so justify the permission now sought.

72. However, with respect to the second consideration, it is strongly material to the overall balance of planning circumstances that the degree of harm to the Green Belt as a whole must be minor, as a matter of common sense.

73. With respect to the third consideration, the colour of the chimney relates not to the question of openness but to the visual effect of the chimney, which I next consider.

Visual Effect

74. The Appellant admitted at the Inquiry that his evidence of visual impact was limited to an estimated zone of influence drawn closely round the appeal site to include certain public locations. However, the photographic evidence of HARM, borne out by my own observations, is that the chimney would be visible from a greater number of both private and public viewpoints. These include the far side of Redditch Road to the south and the rear of houses fronting its junction with the main A441 in Hopwood village. From the north, the chimney could be seen through intervening trees along the towing path in the adjacent Worcester and Birmingham Canal conservation area, as well as from the permanent residential site at Waterside Orchard on Bittell Farm Road. Also in more distant views, for example from Wast Hill Lane away to the north east, the existing chimney can be seen above the surrounding vegetation.

75. In my opinion, the larger proposed chimney, together with its emission plume visible on occasions, would potentially be more distinct within the landscape. I accept that it could be camouflaged to some extent by a carefully chosen paint finish, also to reduce the reflection of light. In that respect it would be an improvement on the pale coloured existing chimney. However, in many light conditions it would still be seen rising above the appeal site. I

consider that, even compared with the existing chimney, the proposed development would have a small but significant adverse visual impact on the landscape, as perceived from within the village of Hopwood and in the surrounding countryside. This would be contrary to the provisions of the development plan and national policy I have quoted that protect the character of the landscape and the environment.

Pollution

76. I come now to consider the question of pollution but the extent to which this matter bears upon the planning decision I have to make is restricted. The main public concerns surrounding this proposal for a new chimney to serve existing lawful development in practice relate to bad past experience of alleged pollution from Mayfield Farm and fears that it will worsen if the chimney is permitted. However, it is plainly not for me to question how Mayfield Farm became the subject of the CLEUD and CLPUD establishing the lawful rendering operation there, but to consider what effects could result from the chimney itself. In doing so, I must be guided by the explicit provision of recent national policy in PPSs 10 and 23 that the new PPC regime is assumed to be effective in ensuring that the thermal oxidisation process served by the chimney would comply in all respects with statutory pollution controls. Only if there were judged to be unacceptable residual impacts would pollution matters overlap into the balance of material planning considerations. It is in this limited connection that I now examine matters of pollution and public health.

Odour and other Emissions

77. It was not disputed at the Inquiry that the thermal oxidiser is BAT for the control of odour and other emissions from the rendering process. Expert advice supplied to BDC as PPC authority, as well as that adduced by the Appellant, is that a 17m chimney is sufficient to ensure that 95-98% of such emissions will be removed at source and 100% at the site boundary, whereby there would be no odour and no unacceptable gaseous emissions associated with the proposed chimney. Thus, properly operated by trained personnel in accordance with PPC permit conditions, the thermal oxidiser must be assumed to accord with Sector Guidance Note 8 [SG8] on rendering[5]. This up-to-date advice is accepted as being based on the present state of medical knowledge with regard to the effects of emissions such as the gaseous oxides of sulphur and nitrogen as well as particulate matter, PM10.

78. There is local concern that the predictions for dispersal of air emissions from the chimney are based on broad meteorological data, whereas Hopwood lies in a hollow subject to frequent temperature inversion and fog, suggesting that dispersal would be impeded in certain, frequently occurring, weather conditions. It was also pointed out that, in a diagrammatic summary of a typical rendering process, SG8 at Fig 3.1 indicates the provision of odour treatment separate from the thermal oxidiser, whereas in this instance these would be combined and use re-circulated air from the building in the interest of efficiency. Despite the misgivings of local objectors that the chosen system departs from the typical example and relies on a general meteorological database, I see no reason on the expert evidence to doubt that it would function properly.

[5] Sector Guidance Note IPPC SG8 – Integrated Pollution Prevention and Control - Secretary of State's Guidance for the A2 Rendering Sector.

79. Moreover, if, in the event, that proved not to be the case, then it is for the PPC regime, and not the planning system, to use its extensive regulatory powers to close the plant until it could comply with all permit requirements. In a similar connection, I note that emissions from the chimney can vary according to the type of fuel oil employed to run the thermal oxidiser, but again I am satisfied that this is within the control of the PPC permit system, whereby changes in fuel would be subject to specific approval.

80. There is further especial concern with reference to known medical evidence that PM10 exacerbates existing respiratory disease in humans, especially the most vulnerable child and elderly sufferers within this particular community. However, it should be borne in mind that the separate PPC regime can update permits to tighten controls if future medical evidence indicates this to be necessary.

81. I respect the undoubtedly genuine fear and distrust among many hundreds of local objectors who are dependent on PPC controls to protect them in the face of their past experiences of Mayfield Farm as well as other waste facilities, notably at Balloon Site Farm, also in Hopwood[6]. However, case law[7] is clear that where such matters are regulated by the other statutory code, public fear must be supported by positive evidence in order to be regarded as an overriding material planning consideration. I am not persuaded that such planning evidence exists in this case and therefore can only ascribe limited planning weight to the public anxiety widely expressed at the Inquiry, including for the local MP and extensive fishing, sailing and hotel business interests that were strongly represented.

82. Overall, I consider there to be no planning objection to the proposed chimney with respect to odour and other emissions.

Noise

83. Noise is potentially a material planning consideration even after compliance with PPC controls, for example as a result activity or machinery giving rise to disturbance to sensitive nearby houses even where the noise limits imposed by PPC permit conditions are not exceeded. In this case however, it was open to WCC to pursue this line of argument in dealing with the application and appeal but significantly there is no mention of noise pollution in their submitted evidence. The only indication at the Inquiry that noise might be a problem is hearsay evidence from HARM that the BDC environmental health officer has outstanding concerns to resolve over the roar of the thermal oxidiser before any PPC permit is issued, and local fear that noise would escape via open doors.

84. Notably BDC, as statutory consultees in the application and appeal, adduce no evidence of noise as a planning consideration. As noise from the thermal oxidiser as part of a lawful operation is only indirectly associated with the proposed chimney, and given that the PPC regime is available to impose noise control measures and emission limits, I find no planning objection on grounds of noise or disturbance in this case.

Need

85. It follows from the same evidence that leads to the conclusion that the 17m chimney is adequate for PPC purposes that it is also necessary to the operation of the thermal oxidiser

[6] Appeal Ref P1805/C/05/2001235
[7] *Gateshead Metropolitan BC v SSE [1994] 1 PLR 85* – Glidewell LJ

as BAT to serve the lawful operation of Mayfield Farm. That is the essence of the claimed need for the development. The fact that it aids industrial farm diversification broadly in line with national and local policy in PPG4 and PPS7 in support of the farming industry, and that dismissal could lead to closure of the plant as foreseen in PPS23 Annex 1, must also count toward the degree of proven need in this case.

Other Considerations

86. I have noted wide concern about lorry traffic from Mayfield farm causing alleged danger and damage on the highway, especially inconvenient to residents and visitors to Canalside which gives access to the Farm. However, data submitted to the Inquiry indicate that the present and future operations of the site to include the new rendering process would generate virtually the same amount of lorry traffic. Traffic associated with the lawful development on the site is not directly related to the present appeal in any event.

87. I recognise that HARM and others would wish to pursue, via this appeal, issues of the appropriate location of waste development, such as that carried on at Mayfield Farm, with reference to the waste policies of the WSP. But again, that would be inappropriately to question existing development.

88. I have considered every matter raised whether orally or in writing in connection with the appeal, including that the commencement of the rendering operation would bring the benefit of some four additional jobs to Mayfield Farm. Otherwise I find no other consideration to be of such importance as to affect my decision.

Overall Planning Balance

89. The proposed chimney is development of a kind inappropriate to the Green Belt because it would reduce its openness. The development would also have an adverse visual impact on the landscape, contrary to established planning policy. However, the degree of harm to openness and visual amenity is limited, given control over colour and finish secured by planning condition. Moreover, on the requisite assumption that the PPC regime would act properly to control polluting emissions from the chimney, there is no evidence to justify objection on grounds of pollution by way of odour, toxic emissions or noise, and there would be no related traffic impact.

90. Furthermore there is a proven technical need for the chimney to facilitate the preferred lawful operation of a thermal oxidiser as part of the diversification of Mayfield Farm in support of the rural economy, with the added benefits of waste reduction, saleable by-products and a small increase in employment.

91. In my overall judgment, this proven need for the development, together with resultant benefit to the community at large, amount to the very special circumstances required as a matter of policy to justify permission in the face of the comparatively slight harm the chimney would cause to the openness and landscape of the West Midlands Green Belt.

Conditions

92. To ensure that impacts on the openness of the Green Belt and visual amenity of the area are minimised, it is necessary to impose conditions that the proposed chimney be not erected until the existing chimney has been removed as proposed, details of the colour and finish of the proposed chimney have been approved, the chimney does not exceed the dimensions

necessary to meet PPC permit conditions and that the chimney will be removed if the related lawful rendering operations cease.

93. However, I do not consider that landscaping conditions, suggested by WCC, are necessary as these would not significantly mitigate the visual impact of the chimney. Nor do I think a suggested condition to maintain vehicles and plant on the site is relevant to the development, nor necessary in addition to PPC controls. For the same reason I refrain from imposing further stipulations regarding the type of fuel oil to be used for the thermal oxidiser, or the hours of operation of the site, or noise control measures.

Conclusions

94. For the reasons given above, I conclude that the appeal should be allowed, subject to the necessary conditions.

Formal Decision

95. I allow the appeal, and grant planning permission for the erection of a replacement chimney 17 metres high at Mayfield Farm, Canalside, Hopwood, Alvechurch, Birmingham, B48 7AA, in accordance with the terms of the application, Ref 407598/MB/LJE, dated 10 August 2004, and the plans submitted therewith, subject to the following conditions:

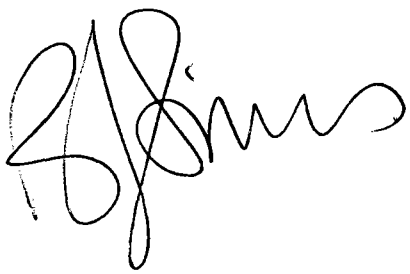
1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.

2) The chimney shall not be erected until the existing chimney at Mayfield Farm has been removed.

3) The chimney shall not be erected until details of its colour and finish have been submitted to and approved in writing by the county planning authority and the development shall be carried out in accordance with the details approved.

4) The chimney shall not exceed 17 metres in height above ground level nor exceed 950 millimetres in width.

5) On cessation of operations permitted by certificates reference LBC38/01 and BDC48/02 the chimney shall be removed.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Cahill	of Queens Counsel instructed by Mr P Horridge of Stansgate Planning Consultants, agents for the Appellant
He called	
Mr P G Horridge BScHons DipTP FRICS MRTPI	Partner – Stansgate Planning Consultants
Mr D L Hall BSc MSc MIAQM	Senior Consultant Entec UK Limited

INTERESTED PERSONS:

Mr J Roberts	representing HARM [Hopwood Against Rendering Movement] 7 Redditch Road, Hopwood, Worcestershire, B48 7TL
Cllr Dr G Lord	Leader and Member of Worcestershire County Council Alvechurch Division
Cllr B Fuller	Member of Bromsgrove District Council Hillside Ward
Cllr Mrs J Luck	Member of Bromsgrove District Council Hillside Ward
Cllr R Dent	representing Julie Kirkbride MP Member of Bromsgrove District Council
Cllr J Molloy	Member of Alvechurch Parish Council 16, The Square, Alvechurch, B48 7LA
Dr A Armond	representing himself and many other residents 36A Bittell Road, Barnt Green, B45 8LY
Mr G Brittain	representing Barnt Green Fishing and Sailing Clubs Hawthorne, Aqueduct Avenue Alvechurch, B48 7BP
Mrs G Simpson	representing Residents for Waterside 84 Waterside Orchard, Hopwood, B48 7AE
Mr B Clark	General Manager, Corus Hotel Birmingham South Redditch Road, Hopwood, B48 7AL
Mr D Blakeston	28 Red Lion Street Alvechurch, B48 7LF
Mr P Birch	8 Buckleys Green Alvechurch, B48 7SC
Mr J Moore	Willow Tree Cottage, Ash Lane Hopwood, B48 7TS
Ms A Adams	The Clockhouse, Bittell Farm Road Barnt Green, B45 8BP

Ms G Wetton	43 Blythe Way Alvechurch, B48
Mr Hutchings	10 Bittell Farm Road Barnt Green, B45 8LY
Miss F Rixon	8 The Drive, Hopwood, B48 7AH also representing Mr A Ogden, 9 The Drive, Hopwood, B48 7AH
Miss J Bovett	Lea End House, Ash Lane, Hopwood, B48 7BD representing Mrs S Cartwright, Swallows Fold, Stonehouse Farm Hopwood, B48 7BA
Miss S Whitehand	12 Fierhill Road Barnt Green, B48 8LG

FOR THE WORCESTERSHIRE COUNTY PLANNING AUTHORITY:

Mr C Rumney	of Counsel instructed by WCC Head of Legal Services
He called	No witnesses but contributed on legal points and suggested conditions accompanied by
Miss K Berry	of Environmental Resource Management Limited consultants to WCC submitted proofs prior to withdrawal of WCC objections but contributed only on suggested conditions

DOCUMENTS

Document	1.1-3	Lists of persons present at the Inquiry
Document	2	Letter of Notification of the Inquiry and Circulation List
Document	3	Letters from Interested Persons handed in at the Inquiry
Document	4	Statement of Common Ground
Document	5	Withdrawal of WCC objections
Document	6	Confirmation of objections by Alvechurch PC
Document	7	Statement by Julie Kirkbride MP read by Cllr Dent
Document	8	Letter from Mr A Ogden read by Miss Rixon
Document	9	Transcript of Statement by Miss Rixon
Document	10	Transcript of Statement by Dr Armond
Document	11	Transcript of Statement by Mr Brittain
Document	12	Letter from Mrs S Cartwright read by Miss Bovett
Document	13	Mr Horridge - proof
Document	14	Mr Horridge - appendices
Document	15	Mr Horridge - supplementary rebuttal proof
Document	16	Mr Horridge - letters from NHS and press article
Document	17	Mr Hall - proof and appendices
Document	18	Mr Hall - rebuttal proof
Document	19	Details of present and proposed operations at appeal site
Document	20	Calculation of PM10 emissions
Document	21	BDC current position on noise emissions
Document	22	Balloon Site Farm Appeal decision P1805/C/05/2001235
Document	23	DEFRA approval for Intermediate Category 3 plant.
Document	24	Miss Berry - proof
Document	25	Miss Berry – supplemental note
Document	26	Mr Roberts - proof and appendices for HARM

PLANS

Plan	A.1	1:1250 scale location plan
Plan	A.2	1:500 scale location plan
Plan	A.3	1:100 scale elevations

PHOTOGRAPHS – see Documents 14 and 26

Appendix KMR4 – Approved Access Plan from application 16/01685/OUTMAJ in respect of the HSA16 allocation

PRO VISION

KEY:

- RED LINE BOUNDARY
- ACCESS FROM READING ROAD
- ACCESS INTO PHASE 2 LAND
- EXTENT OF DEVELOPABLE AREA
- LANDSCAPE BUFFER TO BOUNDARY WITH THE HOLLIES NURSING HOME
- 1m BUFFER OFF PONDHOUSE COPSE TO ANY PRIVATE GARDEN BOUNDARY, TO PREVENT ENCROACHMENT AND ACCESS INTO THE WOODLAND BY FUTURE OCCUPANTS
- INDICATIVE ALIGNMENT OF ROAD AND SERVICE MARGINS

Hermit's Hill Cottage

Hermit's Hill

Primrose Croft

READING ROAD

Hollies (Nursing Home)

Haycroft

Stable Cottage

READING ROAD

HILLSIDE

Bleak Cottage

Tara

10

1

6

0 m 10 m 20 m 30 m 40 m 50 m 100 m

Scale

N

REV	DATE	CHANGES	BY	CHK	ISSUE FOR
A	11.07.18	FIRST ISSUE	MP	JH	PLANNING
B	16.07.18	ROAD INDICATED	PW	MP	PLANNING
C	18.07.18	NOTE ADDED	PW	MP	PLANNING

OMEGA PARTNERSHIP

Omega Partnership Limited, Architects and Urban Designers
Unit 6, AC Court, High Street, Thames Ditton, Surrey, KT7 0SR
T: 01372 470 313 W: www.omegapartnership.co.uk

client

project
READING ROAD,
BURGHFIELD COMMON

description
DEVELOPMENT PARAMETER PLAN

scale
1:500 @ A1

date
JULY 2018

status
PLANNING

2610-A-1200-C

Appendix KMR5 – Response to comments regarding access

App Ref: 22/00244/FULEXT
Land R/o The Hollies, Burghfield Common
Response to Consultation Comments regarding Right of Access to the site

We note that a number of residents objection letters and consultation comments from Burghfield Parish Council have been received which are questioning the proposed access to the application site via Regis Manor Road.

We therefore set out below the planning and legal status that we trust will inform all parties of the true position in this regard.

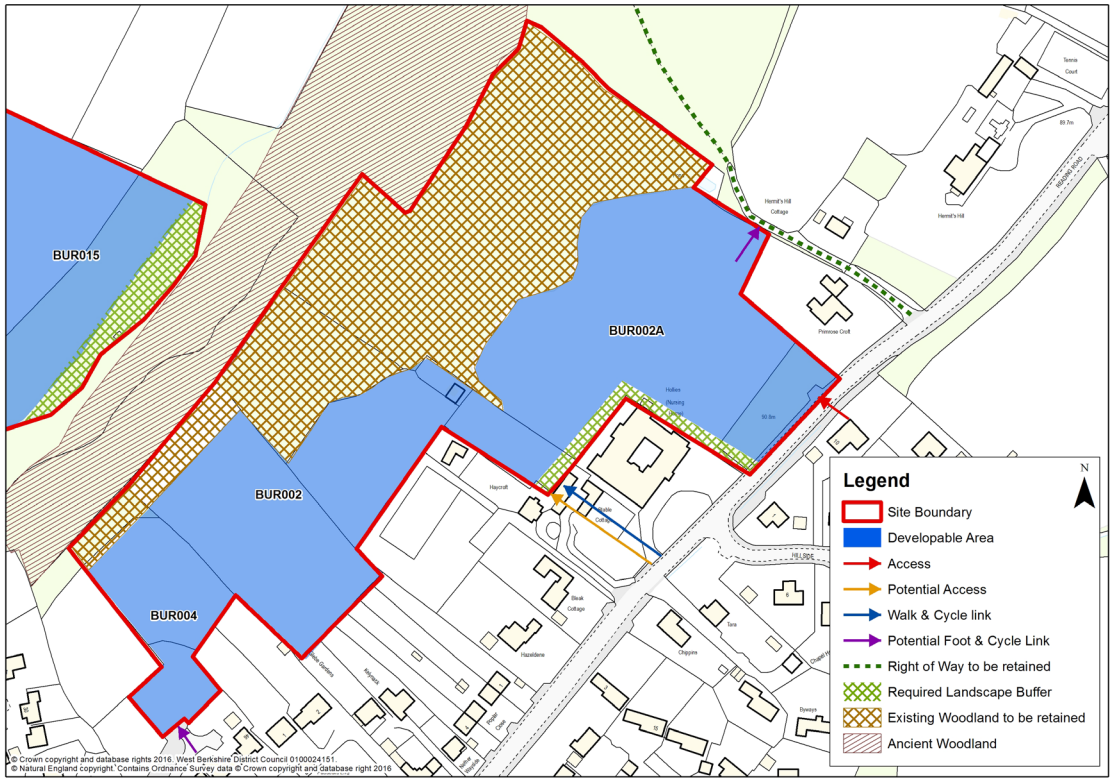
Background to the 2017 Allocation

All the land comprising what is now Regis Manor Road (site references BUR002A) together with all the land under this application (site references BUR002 & BUR004) were allocated for residential development by West Berkshire Council within their Housing Site Allocations Development Plan Document (DPD) adopted in May 2017 and which now forms part of the Development Plan for the district.

This allocation (Policy HSA 16 - Land to the rear of The Hollies Nursing Home, Reading Road and Land opposite 44 Lamden Way, Burghfield Common) required the land to be considered together as one site with a developable area of approximately 2.7 hectares. The sites were required to be master planned comprehensively and provide for approximately 60 dwellings with a mix of dwelling types and sizes with access from Reading Road. The plan attached to this allocation is shown below with the red arrow denoting the new single point of vehicular access from Reading Road.

Policy HSA 16 was fully endorsed by Burghfield Parish Council.

<u>Plan Extract from Policy HSA 16</u>



This allocation was promoted and secured by the landowners of the current application site.

The land comprising what is now Regis Manor Road was eventually sold with the benefit of the allocation to Crest Nicholson (Crest).

Crest's Planning Application and Permission

Crest subsequently sought planning permission for their part of the allocation which was to be brought forward in advance of the remainder, which now forms the land included in this application. Planning permission was secured for the front section of the site which included the requirement to provide an access to adoptable standards linking the public highway (Reading Road) to the boundary of this application site.

During the course of Crest's planning application, their planning consultant wrote to West Berkshire Council in January 2018 saying '*with regards to preventing a ransom situation as a result of the phased delivery of the development the applicant would be willing to enter into a s.106 agreement which includes an obligation to deliver the access to the 'Phase 2' boundary to base course by an agreed trigger. The drawings submitted in support of this application illustrate the extent of the proposed highway and serve to demonstrate the link through to the adjacent land'.*

The drawings submitted with their application were indicative only in relation to the current application site, however they included a Parameters Plan and an Masterplan as set out below:

Crest – Illustrative Site Wide Masterplan

This illustrative Masterplan shows how the wider allocation could be developed with access via their development, although importantly this was undertaken without the detailed knowledge of site levels which the current full application incorporates; hence the road layout is different.

Crest eventually secured Outline Planning Permission for 28 dwellings under reference 16/01685/OUTMAJ. Condition 5 of that planning permission states:

The reserved matters submitted pursuant to condition 1 (condition 1 being details of the appearance, landscaping, layout and scale) shall be in accordance with the Development Parameters Plan (Ref:2610-A-1200-C).

Crest – Approved Development Parameters Plan

As can be seen above, the Parameters Plan clearly indicates access being delivered into the 'Phase 2' land referenced by the blue arrow on the plan.

Furthermore, Crest's outline planning permission was subject to a planning obligation with West Berkshire Council under s.106 of the of the Town and Country Planning Act 1990.

Schedule 4 of this legal obligation requires Crest to comply with the following: *'to allow any access as may reasonably be required by the Phase 2 landowners over that road for the planning and delivery of the balance of the allocation (subject to entering into an appropriate licence arrangement to set out terms) pending adoption of the road; and to dedicate the full length of the estate road to the boundary of the Property adjoining Phase 2'.*

Crest subsequently entered into a s.38 Agreement and s.278 Agreement with West Berkshire Highways to ensure the access road was constructed to adoptable standards although Crest have yet to trigger the formal adoption protocols.

Furthermore, in August 2018, Crest entered into an Access Agreement with the landowners of the land now subject to this current application (Phase 2 of the allocation).

This agreement grants the owners of the land and their successors in title a right to pass and repass over the Estate Road forming part of the Crest Nicholson development once constructed and further rights to connect to this Estate Road.

In summary, it is clear that the intention of all parties including the landowners, West Berkshire Council and Burghfield Parish Council from the very outset was to secure a single point of access for the entire allocation from Reading Road. Furthermore, all the land subject to this current application benefits from all necessary rights over the access road now constructed secured by way of a specific legal agreement between Crest and the landowning parties.

We understand that some of the new residents of Crest's development are objecting to the application on the basis that there are no such legal rights. This is demonstrably inaccurate and misleading.

We note that some of the residents on Regis Manor Road are claiming that Crest did not properly inform them of the potential for the access road to service Phase 2 of the wider allocation. We cannot say what Crest may or may not have informed their purchasers as to the position at the point of purchase. However, all the planning documents mentioned above are a matter of public record and the s.106 Agreement and Access Agreement were registered as charges against Crest's land registry title. Therefore, any competent conveyancer acting for a prospective buyer or mortgage lender would have access to these documents and would no doubt advise their client accordingly.

We trust the above provides sufficient clarification on this matter.

Appendix KMR6 – Response from Council's Housing Officer regarding Affordable Housing Need

From: Emma Craig
To: Katherine Miles
Subject: RE: Affordable Housing in West Berkshire [Filed 23 May 2023 09:36]
Date: 23 May 2023 08:35:53

Hi Katherine

Apologies, I had been waiting for an answer to question 2 from a colleague but unfortunately that isn't available at the time I'm responding, I will chase and send it over as soon as I am able.

- How many applicants are on the Council's housing register?
  - 1023

- How long does it take to find a home after joining the list?
  - Unavailable at present

- How many people have expressed a need / desire to be located in / around Burghfield Common?
  - 209 have expressed an interest in Burghfield, please note they will have also expressed an interest to live in other areas not exclusively Burghfield, so this is really showing a willingness to live in Burghfield rather than a specific need or preference over other areas.

- Is there any detail as to the required mix/tenure in Burghfield Common?
  - The policy compliant tenure split based on 32 overall is:
    - Social rent 70% = 9
    - First Homes 25% = 3
    - Shared 5% = 1

Based on 32 homes and the local need the unit mix would be split as follows, however due to the sale price restriction on First Homes we would not expect the mix as set put below;

Burghfield	1 Bedroom	2 Bedrooms	3 Bedrooms	4+ Bedrooms
Social Rent	2-3	2-3	2-3	1
Shared Ownership	0	1	0	0
First Homes	1	1-2	1	0

Many thanks, Emma

Emma Craig
Housing Development and Enabling Officer
Housing Service, Development and Regulation, West Berkshire Council, Market Street, Newbury, RG14 5LD

07717 172256 | 01635 503933 | ext 3933 | emma.craig1@westberks.gov.uk
www.westberks.gov.uk

From: Katherine Miles [mailto:KatherineM@pro-vision.co.uk]
Sent: 19 May 2023 10:15
To: Emma Craig <Emma.Craig1@westberks.gov.uk>
Subject: RE: Affordable Housing in West Berkshire

Hi Emma

Thanks for responding. Today or Monday would be great. Appreciated, thank you.

Kind regards

Katherine

Katherine Miles BA (Hons) MSc MRTPI | **T** 01962 677 044 | **DD** 01962 587629 | **M** 07471 901078
Director

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THE LODGE, HIGHCROFT ROAD, WINCHESTER, SO22 5GU
www.pro-vision.co.uk

Information for visiting our office

From: Emma Craig <Emma.Craig1@westberks.gov.uk>
Sent: 19 May 2023 10:08
To: Katherine Miles <KatherineM@pro-vision.co.uk>
Subject: RE: Affordable Housing in West Berkshire

Hi Katherine,

Apologies I will endeavour to look at this today or Monday, I have a considerable number of tasks currently which is meaning it is taking longer than I would have hoped.

Best regards, Emma

Emma Craig
Housing Development and Enabling Officer
Housing Service, Development and Regulation, West Berkshire Council, Market Street, Newbury, RG14 5LD
07717 172256 | 01635 503933 | ext 3933 | emma.craig1@westberks.gov.uk
www.westberks.gov.uk

From: Katherine Miles [mailto:KatherineM@pro-vision.co.uk]
Sent: 19 May 2023 09:22
To: Emma Craig <Emma.Craig1@westberks.gov.uk>
Subject: RE: Affordable Housing in West Berkshire

Dear Emma

Further to my email below, are you able to advise please if you can assist with this request and when we can expect to receive the information?

Kind regards

Katherine

Katherine Miles BA (Hons) MSc MRTPI | **T** 01962 677 044 | **DD** 01962 587629 | **M** 07471 901078
Director
PRO VISION
PLANNING | ARCHITECTURE | URBAN DESIGN | ECOLOGY

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Information for visiting our office

From: Katherine Miles
Sent: 15 May 2023 16:31
To: 'Emma Craig' <Emma.Craig1@westberks.gov.uk>
Subject: RE: Affordable Housing in West Berkshire [Filed 15 May 2023 16:31]

Good afternoon Emma

Thanks for the reply. My request relates to a current planning appeal. You provided comments on the application in March 2022 (ref. 22/00244/FULEXT). There is no issue over the AH provision which is being secured via a Unilateral Undertaking, but I would like to ensure we have the uptodate position on need for the appeal, hence my queries below.

Kind regards

Katherine

Katherine Miles BA (Hons) MSc MRTPI | **T** 01962 677 044 | **DD** 01962 587629 | **M** 07471 901078
Director

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Information for visiting our office

From: Emma Craig <Emma.Craig1@westberks.gov.uk>
Sent: 10 May 2023 11:58
To: Katherine Miles <KatherineM@pro-vision.co.uk>
Subject: RE: Affordable Housing in West Berkshire

Good Afternoon,

Could you advise if this is to aid a planning application you are working on, otherwise I would suggest submitting an FoI and it will get allocated to the correct team.

Kind regards, Emma

Emma Craig
Housing Development and Enabling Officer
Housing Service, Development and Regulation, West Berkshire Council, Market Street, Newbury, RG14 5LD
07717 172256 | 01635 503933 | ext 3933 | emma.craig1@westberks.gov.uk
www.westberks.gov.uk

From: Katherine Miles [mailto:KatherineM@pro-vision.co.uk]

Sent: 05 May 2023 14:37
To: Emma Craig <Emma.Craig1@westberks.gov.uk>
Subject: Affordable Housing in West Berkshire

Good afternoon

I am undertaking some research and would be grateful if you could confirm:

- How many applicants are on the Council's housing register?
- How long does it take to find a home after joining the list?
- How many people have expressed a need / desire to be located in / around Burghfield Common?
- Is there any detail as to the required mix/tenure in Burghfield Common?

I look forward to hearing from you.

Kind regards

Katherine

Katherine Miles BA (Hons) MSc MRTPI | **T** 01962 677 044 | **DD** 01962 587629 | **M** 07471 901078
Director

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Appendix KMR7 – Appeal Decision - APP/W0340/W/22/3296484 and location of appeal site

The Planning Inspectorate

Appeal Decision

Site visit made on 10 October 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/W0340/W/22/3296484
Land at James Lane, Grazeley Green, Reading RG7 1NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
- The appeal is made by N Bale against the decision of West Berkshire District Council.
- The application Ref 22/00258/PIP, dated 2 February 2022, was refused by notice dated 5 April 2022.
- The development proposed is erection of 1no. dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages. The first stage (permission in principle) establishes whether a site is suitable in principle. The second stage (technical details consent) is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.

3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. An applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum net number of dwellings as part of the application. In this instance, permission in principle has been sought for one dwelling on the appeal site. I have determined the appeal accordingly.

Main Issue

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

Reasons

5. The appeal site comprises part of an open and undeveloped field. There is some residential development nearby, fronting onto James Lane and the access track adjacent to the site leads to a block of commercial development. However, the site is predominantly surrounded by fields in an area which is rural in character.

6. The appeal site is within the open countryside as defined by local policy. Policies within the West Berkshire Core Strategy (2006 - 2026) Development Plan Document (Adopted July 2012) (CS) and the West Berkshire Council Housing Site Allocations (2006-2026) Development Plan Document (Adopted May 2017) (HSA) seek to direct new housing towards sustainable locations within and adjacent to settlements. This is not a blanket approach to resisting new housing outside of defined settlements, as a number of policies allow for new housing in the countryside, subject to specified exceptions and criteria.

7. Policy C1 of the HSA states that limited infill development may be considered in settlements in the countryside with no defined boundary, subject to criteria. Policy C1 pre-dates the National Planning Policy Framework (the Framework). However, as set out in the Framework, policies should not be regarded as out-of-date simply because they were adopted before the Framework. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Weight is a matter for the decision maker to judge in the circumstances of the case. Policy C1 remains broadly consistent with the Framework in seeking to deliver most new homes in locations within settlements, where there is access to services and facilities. I therefore afford substantial weigh to any conflict with Policy C1.

8. The proposal would be relatively near a row of 6 dwellings formed from a change of use of a rural building. There are also a few other scattered dwellings in the area. However, due to the separation distances the proposal would not form part of a close knit cluster and it would not front onto an existing highway. The proposal would be within a currently open and undeveloped field, rather than being a small infill plot. In addition, it would create an entirely new frontage, rather than extending an existing frontage. As such, the proposal would not comply with the criteria set out under Policy C1 of the HAS to qualify as an exception for a new dwelling in the countryside.

9. The introduction of a dwelling to the site and the associated use of the land for residential purposes, would inevitably domesticate it, resulting in an urbanising visual impact and extending built form further into the open countryside. Regardless of the lack of any specific landscape designation, and the presence of commercial development to the north of the site, this encroachment would significantly reduce the open and rural qualities of the site and its surroundings, to the detriment of the landscape and the character and appearance of the area. While specific planting and soft landscaping measures, secured at technical design stage, could lessen the impact of the proposal to an extent, it would not overcome the impact of the encroachment into the open countryside.

10. The site is over a mile from the nearest settlement with very limited public transport. Whilst it may be possible to walk or cycle to access services and facilities, given that the surrounding roads have no footway and limited streetlighting, it is likely that the occupants of the proposed dwelling would rely on private motor vehicles. This is the least sustainable form of transport.

11. Paragraph 80 of the Framework seeks to avoid the development of isolated homes in the countryside unless one of a number of specific criteria are met. In this regard, I am aware of the High Court Judgement[1] relating to the interpretation of paragraph 55 as was, now paragraph 80, of the Framework.

[1] Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

12. In this case, the proposal would not be spatially isolated as there are a small number of other dwellings nearby, so would not result in the creation of an isolated home in the countryside, which the Framework seeks to avoid. Nevertheless, the proposal would be remote by virtue of the distance from services and facilities and the reliance on private car journeys. In addition, whilst the site may not be isolated in terms of paragraph 80 of the Framework, as set out above, the proposal does not comply with Policy C1 in relation to dwellings in the countryside.

13. West Berkshire has two nuclear establishments. The risk of a nuclear incident is low, but in the interest of public safety, Policy CS8 of the CS seeks to ensure that any new development can be accommodated under off-site emergency plans in the event of an emergency. The appeal site is within the specified 'inner zone', where Policy CS8 sets out that residential development is likely to be refused planning permission when the Office for Nuclear Regulation (ONR) has advised against it.

14. The proposal would lead to an increase, albeit small, in the number of people living in the designated Detailed Emergency Planning Zone of the Atomic Weapons Establishment in Burghfield and hence the number of people who would need to be covered by off-site emergency plans. Both the ONR and West Berkshire Council's Emergency Planning Service were consulted and advised against the proposed development, having given consideration to the specific impacts on the Off-Site Emergency Plan. There is little detail to support the appellant's conclusion that one dwelling would not compromise the ability to enact emergency planning or evacuation of the resultant population, should the need arise, or that the development would not place undue pressure on emergency services. Based on the evidence before me I cannot rule out that the proposal would place unacceptable additional pressure on the Off-Site Emergency Plan.

15. I note reference to the permission granted on appeal[2] for the conversion of a building to six dwellings. In that case the Inspector, in the planning balance, concluded that factors weighing in favour of that proposal included securing the long-term financial viability of an existing business and its jobs. It appears that there was an overall reduction in the number of people on site (which included workers) even though the scheme provided 6 dwellings. In this case, the proposal would introduce additional people to the area and the two cases are not comparable.

16. An Environment Agency flood zones map provided by the Council indicates that parts of the site are located within flood zones 2 and 3. While the appellant disagrees, they have not provided evidence showing the site lies outside the flood zones. I have not been provided with a Flood Risk Assessment, or any information to indicate that the sequential test (and as appropriate the exception test) could be passed.

17. A dwelling is a more vulnerable use in terms of flooding. The ability to adequately protect it and ensure the proposal would not add to flood risk elsewhere, is fundamental to the principle of providing an acceptable new dwelling in the proposed location. Consequently, in this case, I consider flooding to be a matter for consideration under permission in principle rather than something which could be left to the technical details consent stage.

[2] APP/W0340/A/12/2178573. The appellant has confirmed the reference and decision date as January 2013.

18. For the reasons set out, I conclude that in principle, the site is not suitable for residential development, having regard to its location, the proposed land use and the amount of development. It would be contrary to Policies ADPP1, ADPP6, CS1, CS14 and CS19 of the CS and Policy C1 of the HSA. Together, amongst other things, these policies seek to limit housing development within the open countryside and ensure that development respects and enhances locally distinctive landscape and the character and appearance of the area. It would also be contrary to Policies CS8 and CS16 of the CS which seek to ensure that development is protected from any nuclear emergency and flood risk.

19. However, as the appeal relates to permission in principle, no details of the design of the proposed dwellings have been submitted. I therefore find no specific conflict with Policy C3 of the HSA which focuses on ensuring that design takes account of the local building character.

Other Matters

20. The extant planning permission for a stable and equine store building to the southwest of the site does not impact on my reasoning.

Conclusion

21. For the above reasons, having considered the development plan as a whole, and all other relevant material considerations, the appeal should be dismissed.

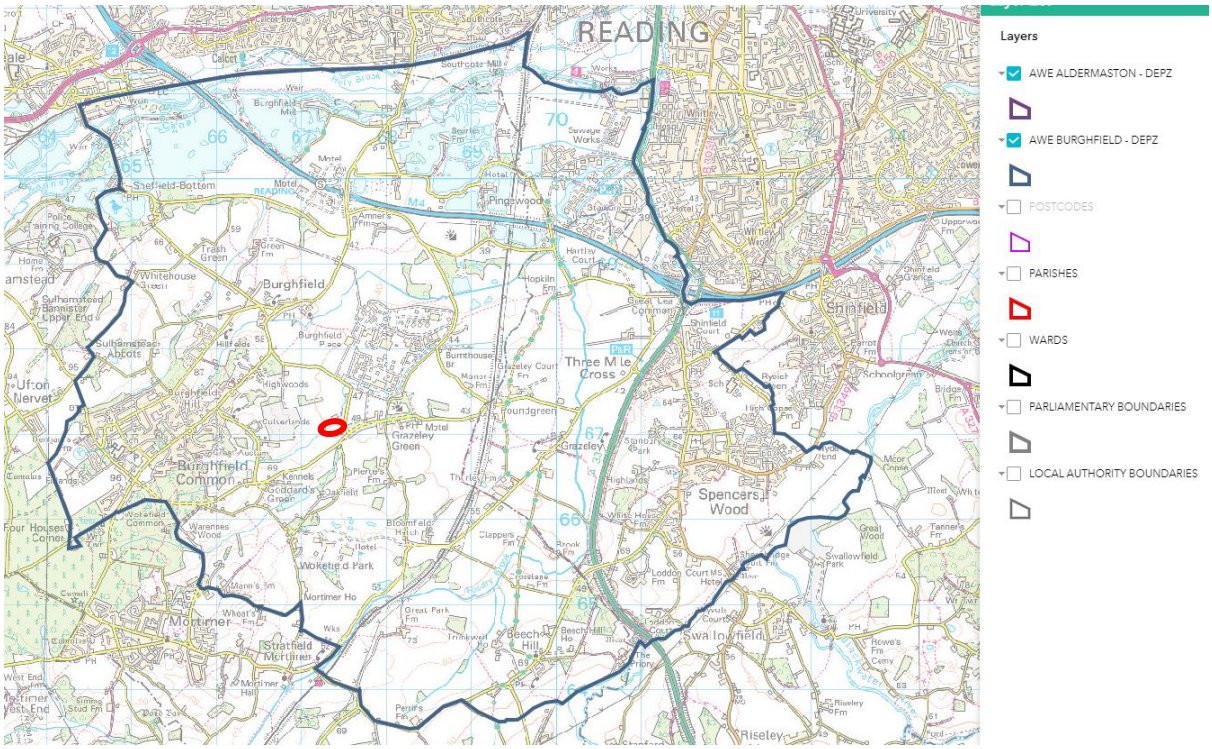
Helen Davies

INSPECTOR

Appendix KMR7 – Appeal Decision - APP/W0340/W/22/3296484

Location of land at James Lane, Grazeley Green, Reading, RG7 1NB (Image: Google Maps (2023))

Extract of Site Location Plan submitted with application 22/00258/PIP (appeal ref. APP/W0340/W/22/3296484) (Mark Leedale Plannning (2022))



Extract of the 'AWE Detailed Emergency Planning Zones' noting the location of West Berkshire Council application ref. 22/00258/PIP (appeal ref. APP/W0340/W/22/3296484) in relation to the AWE Burghfield and the DEPZ (West Berkshire Council)

Appendix KMR8 – Appeal Decision - APP/X0360/W/21/3269790 and location of appeal site

The Planning Inspectorate

Appeal Decision

Hearing Held on 16 and 17 November 2021

Site Visits made on 15 (unaccompanied) and 17 (accompanied) November 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/X0360/W/21/3275086
Willow Tree House, Brookers Hill, Shinfield RG2 9BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Trevor & Lisa Collins, P Byfield & Kahn Properties Limited & E Rube against the decision of Wokingham Borough Council.
- The application Ref 203560, dated 18 December 2020, was refused by notice dated 16 April 2021.
- The development proposed is full application for a mixed use development comprising the proposed erection of 23 dwellings and community hall with vehicular access off Brookers Hill and pedestrian and cycle access from Hollow Lane together with open space and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matters

2. During the Hearing I was provided with a copy of a deed of agreement to provide planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) (the S106 Agreement). This deals with securing contributions to infrastructure, affordable housing, employment skills, biodiversity net gain and highways works.

3. At the Hearing, the appellants agreed to include provisions to secure the installation of the noise attenuation barrier and measures for the ongoing maintenance of both it and the proposed open space being provided on the site. To enable the S106 Agreement to be redrafted to address these matters and due to the large number of signatories to the S106 Agreement, I allowed extra time for the conclusion of these matters after the Hearing. I will discuss this S106 Agreement in more detail later in this decision.

4. Since planning permission was refused, a number of amendments were made to the scheme. These were submitted as part of the appeal. The amendments included changes to the layout and footpaths, removal of a woodland path, increased green space facilitated by a reduction in a 'public art' area, amended landscaping proposals based on alternative site re-grading, provision of additional cycle storage and refuse collection points. Whilst these amendments are numerous, they do not fundamentally alter the scheme. Furthermore, these amended drawings were available to interested parties as part of the notification of the appeal. I am therefore satisfied that interested parties have had the opportunity to consider and respond to these.

5. During the appeal process, in seeking to address the highways reason for refusal, a number of technical changes to the site layout were required which resulted in further amendments to the scheme. Given the technical nature of these changes, I am satisfied that these do not materially change the scheme. I have therefore proceeded to deal with the appeal on the basis of the amended plans submitted with the appeal and those plans subsequently amended and provided as Revision 5[1].

6. The planning application was refused for 8 reasons. The Council's third reason for refusal referred to the absence of sufficient information in relation to the proposals impact on ecology and biodiversity. During the appeal the appellants undertook further survey works and provided contributions to securing a biodiversity net gain through the proposed development. At the Hearing, the Council verbally confirmed that, subject to the imposition of appropriate conditions and securing biodiversity net gain through a legal agreement, this addressed its objection.

7. The Council refused the scheme on the grounds that insufficient information had been provided to demonstrate that the scheme would not have an unacceptable impact on highway safety with regards to the provision of adequate parking, providing a safe internal layout for pedestrians or promoting sustainable transport options. Prior to the Hearing, the appellants agreed with the Council measures for mitigation and addressing highway concerns. These would be secured through a combination of conditions and a planning obligation to secure highway works through a Section 278 Agreement under the Highways Act 1980. The Council confirmed that this addressed its reason for refusal as set out in reason 4 of the decision notice.

8. In terms of highway safety, the Council additionally set out under its fifth reason for refusal that it had not been demonstrated that the proposed noise barrier would not have a detrimental effect on the safe operation of the M4 motorway. This was on the basis of the response from National Highways (formerly Highways England) objecting to the scheme on the grounds that it had insufficient details to determine its effect on the M4 motorway.

9. During the Hearing, a condition to secure the approval of details of the noise barrier was discussed. Subject to the imposition of conditions securing approval of details of the proposed noise attenuation barrier and drainage systems and a construction management plan, National Highways confirmed in writing that it no longer objected to the scheme. The Council has however, not confirmed that it no longer objects to the scheme on this basis. I discuss this matter later in my decision.

10. The fifth reason for refusal also set out that it had not been demonstrated that the proposed noise attenuation barrier could adequately protect against road traffic noise from the M4 motorway without significant impact to residential amenity of future occupiers. In particular, the Council was concerned that this could not be addressed without windows having to be kept fixed shut. The appellants confirmed at the hearing that all windows would be openable at all times. The Council confirmed that on this basis, its reason for refusal in this regard had been addressed.

[1] Plans Ref: ITB15419-GA-001G, 009E, 011E, 014A and 016C

11. The Council's sixth, seventh and eighth reasons for refusal referred to the absence of a signed S106 Agreement to make the development acceptable in planning terms. However, the unsigned agreement provided to me at the Hearing addressed those matters set out under these reasons for refusal. The Council confirmed that, subject to securing the required signatories to the agreement, this addressed their concerns on these issues and removed its objection to the appeal in respect of these reasons for refusal. Since this completed legal agreement has been provided, I have proceeded on the basis that the Council is no longer pursuing its objections to the scheme on these matters.

12. Since the Hearing was closed, the Council published its annual Five Year Housing Land Supply Statement at 31 March 2021 on 7 January 2022. This superseded the Five Year Housing Land Supply Statement at 31 March 2020, published 14 January 2021 which formed the basis of the discussion at the Hearing. I sought the comments of both the parties on the revised Housing Land Supply Statement (HLSS). I have determined the appeal on the basis of the most recent HLSS.

13. On 14 January 2022 the Government published the Housing Delivery Test (HDT) Results for 2021. I wrote out to the parties for their views on this. I have taken their comments into account in my decision.

14. The Government launched its First Homes scheme in England, as set out in its Written Ministerial Statement of 24 May 2021. This came into effect on 28 June 2021 with a transition period which ended on 28 December 2021. I sought the views of both parties on the implications, if any, of this national policy in relation to the appeal.

Main Issues

15. The main issues are:

- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on protected trees; and
- whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Character and appearance

16. The appeal site is located adjacent to the settlement of Shinfield and within the designated 'South of the M4 Strategic Development Location' (SDL). The SDL is 1 of 4 such areas within the Borough designated for growth. Within this context, the appeal site is included in the built-up area of Shinfield, although it lies outside the defined development limits.

17. The appeal site is approximately 2.4 hectares. It is an irregular shape and falls into 2 distinct sections. The southern section of the site which has a frontage to Brookers Hill comprises Willow Tree House and its gardens including an area of unmanaged orchard and woodland and trees. These provide enclosure of the site, largely screening existing development from

view. This gives the site a sylvan character which makes a positive contribution to the area. Development along this stretch of Brookers Hill is largely confined to the north side of the road, characterised by large, detached properties set within spacious grounds, similar to the appeal property. Beyond, on the opposite side of Brookers Hill, there are open fields. This contributes to the semi-rural character of the area.

18. Within the site, the ground rises up from Brookers Hill towards a wooded ridge. The northern section of the site lies beyond this. This part of the site slopes steeply down towards the M4 motorway which runs along its northern boundary. The large gardens to Brookers Hill properties form a boundary to its southern edge with an area of undeveloped land forming part of its south-eastern boundary with a small housing development off Brookers Hill beyond. Towards its eastern end there is a commercial building, a number of commercial shipping containers and an access onto Hollow Lane which runs between the Shinfield Arms and residential properties fronting this road.

19. The northern section of the site is an area of undeveloped grassland flanked by woodland and has a more open and rural character than the southern section. This is however limited in extent due to the hard edge formed by the M4 motorway. From here, it is viewed in the context of close-boarded acoustic timber fencing to the adjacent site and with the commercial buildings and containers visible through the trees and boundary vegetation separating the site from the M4 motorway corridor.

20. The scheme seeks the formation of a new access road, which would traverse the site from Brookers Hill. Six detached dwellings would be provided within the southern section of the site. Towards the top of the slope, a row of pairs of semi-detached houses would be constructed with an area of open space including a play area to the west. Two small blocks of flats would be located on the opposite side of the access road and adjacent to a new single-storey community building with car parking to its west. This would be adjacent to the boundary with the M4 motorway.

21. Along the northern edge of the site, and set in slightly from the boundary, a 240 metre long and 8 metre high 'Eco-Barrier' would be constructed to provide separation and acoustic screening from the M4 motorway. The eco-barrier would be an ivy covered steel structure forming a green wall between the trees and vegetation along the motorway corridor and the proposed buildings on the site.

Effect on the landscape character

22. The appeal site lies within the Spencers Wood Settled and Farmed Clay area an area of overall moderate quality as described in the Wokingham Borough Landscape Character Assessment (WBLCA). The WBLCA recognises that the area has a rural character but is strongly influenced by its proximity to Reading. The area itself is formed as a clay ridge that separates it from other landscape areas. It is characterised by a range of distinctive features which include pastoral land use within a wooded setting as well as displaying remnants of historic parklands and the sense of elevation and views provided across the adjacent lowland landscapes.

23. The appeal site displays some of the characteristics of this landscape area in the form of small-scale woodland and the northern section of the site

contributes to the undeveloped slopes of the clay ridgeline. This part of the site is visible for a short section travelling along the M4 corridor, from both a footbridge to the west and the Shinfield Road bus and cycle bridge to the east over the motorway.

24. The lower parts of the site are screened from view by boundary trees and vegetation along the M4 corridor outside the appeal site. A large cantilevered sign over the motorway significantly restricts views of the site from some sections of the footbridge, although it remains visible from its far side on the opposite side of the motorway. The views from the Shinfield Road bridge are significantly more open, where the contribution of undeveloped slopes and woodland to the rural character on the edge of the settlement can be seen.

25. The eco-barrier would be a substantial structure both in terms of its height and length. Once fully vegetated it would have a solid appearance. It would be partially screened in views from the motorway and bridges by the existing trees and vegetation on the sites northern boundary many of which would be a similar height or taller. Whilst this would go some way towards reducing its visual impact, the solid and impenetrable appearance of the eco-barrier, would make this a prominent feature running along a significant stretch of the motorway.

26. The ivy clad and verdant appearance of the eco-barrier would have a less harsh appearance than the timber fencing which characterises much of this stretch of the motorway including the adjacent site. However, it would be more than double the height of this fencing and would significantly reduce views into the site from the motorway. The enclosure of the site in this manner would significantly detract from the existing open character of the site. It would also have an enclosing effect on this stretch of the motorway.

27. The eco-barrier would only be visible from a limited number of viewpoints. It would be experienced over a relatively short period of time due to the speed of traffic travelling along the motorway. However, it would draw the eye due to its excessive length and height. Nonetheless, I agree that the harm would be relatively localised with a degree of seasonality, with the proposal less prominent during summer months when trees between the eco-barrier and the motorway are in leaf. As such, the proposed development would give rise to significant rather than substantial harm to landscape character.

28. The eco-barrier would provide some screening of the proposed development to the northern slopes. However, the proposed houses at the top of the slope, the green roof of the community building and parts of the proposed access road would be visible beyond this. This would erode the rural character of the site, diminishing its contribution to the undeveloped slopes north of the ridgeline and the landscape character.

29. The scheme proposes the retention of a modest area of open land at the top of the slope and to the west of the proposed housing with a wooded backdrop. This area would be visible beyond the eco-barrier similar to how the slopes are currently visible above the tree tops along the motorway verge, although with the eco-barrier providing a much less permeable view. Whilst this would retain some of the open character of the site, the undeveloped area would be much reduced and viewed in the context of the proposed houses and the new road. This would not therefore mitigate the loss of the rural character of the site.

30. In order to develop the appeal site, it is evident that extensive ground works would be required to provide the appropriate levels for the development so that the roads and buildings could be constructed. This would require a substantial amount of cut and fill development to create a series of terraces within the slope. This would fundamentally change the character of the slope. Whilst a portion of the most visible part of the site which can be seen above the existing boundary trees would be retained as open and sloping land, the changes to the slope would appear engineered and urbanising, which would be harmful to its natural and undeveloped character.

31. Views of the surrounding lowlands beyond the motorway are only possible from the higher parts of the site. These would be mostly retained and possible beyond the eco-barrier, although this would appear as an intervening feature in those views. However, as the motorway is also an intrusive feature within those views, the eco-barrier would have a negligible impact on the quality of those views.

32. Within the southern section of the site, the removal of trees and the formation of an additional access to Plots 1 and 2 would open up the site to views from Brookers Hill and the surrounding area. The proposed development of 6 houses would be prominent due to the reduced tree cover. The arrangement of houses would have a more suburban form which would be out of character with the low density, unobtrusive and dispersed pattern of development along this section of Brookers Hill. This would cause significant harm to the semi-rural and sylvan character and appearance of the area.

Settlement Separation

33. Policy CP19 of the Wokingham Borough Core Strategy Development Plan Document 2010 (the CS) sets out the requirement that development South of the M4 should include measures to retain separation of settlements from each other. This includes settlements both to the south of the M4 within the SDL as well as those to the north of the M4. The South of M4: Development Brief Supplementary Planning Document (the SPD) expands on this, explaining that this is to retain the character of the existing settlements and wider surrounding landscape. To achieve this, the CS defines settlement separation by means of a series of broad zigzag lines on a map running east to west and north to south.

34. Of relevance to the appeal, one of the zigzag lines runs along the M4 corridor broadly following its alignment, extending beyond the settlement of Three Mile Cross to the west and Shinfield to the east. This indicates the area of separation being protected between settlements south of the M4 and those to the north within the greater Reading area. The appeal site lies mostly within the area covered by this zigzag line.

35. The M4 motorway is a major lit highway corridor. Whilst this provides a clear physical and visual barrier between greater Reading and Shinfield, on its own it would not be sufficient to maintain a suitable gap between the settlements. However, in combination with the substantial area of undeveloped woodland directly to the north of the M4 opposite the appeal site, it separates the built-up area of Greater Reading and Shinfield.

36. The appeal site, in forming part of the undeveloped northern slopes of the clay ridgeline, also contributes to the separation of these settlements. The

enclosure of the site by both the M4 motorway to the north and development to the south and east, including the existing commercial building and containers on site and the rooftops of development beyond, does however limit its contribution.

37. Development of the site would cause some reduction in the gap between the settlement areas north and south of the M4. However, with an undeveloped area of slope retained and some screening by both the boundary vegetation and the eco-barrier, a visible green gap, albeit reduced, would continue to exist. Together with the area of woodland to the north of the M4, the extent of harm in terms of settlement separation that would arise from this would be moderate.

38. In coming to this view, I have taken into account the Council's conclusions in its recent grant of planning permission at Hogwood Park[2] on the grounds that the site was landlocked by SDL development and Park Lane and would not result in urban sprawl beyond the site into the wider countryside.

39. I have also had regard to the conclusions in respect of the approved development at Ashridge Farm, Wokingham[3]. In this case, it was accepted that the proposal would not result in the proliferation of development away from development limits into open countryside nor would it compromise the separate identity of settlements with the A329(M) forming the barrier for development in north Wokingham. This scenario is similar to that of the appeal scheme.

40. Whilst I appreciate that in both these 2 cases there were other benefits of the schemes, nevertheless the principle of roads and other development forming an enclosure of the site has been accepted. It seems to me that with these elements in place, some separation would be retained, the identify of Shinfield would be adequately protected and it would not merge into Greater Reading.

41. The Council has drawn my attention to a dismissed appeal[4] at Shinfield Glebe site some 350m south of the appeal site where the Inspector considered the extent of development would be harmful to the sensitive edge of the settlement location, leading to greater coalescence of Shinfield and greater Reading. However, that site was much larger than the appeal site with very little enclosure on any of its boundaries.

42. Unlike the appeal scheme where there is woodland opposite, the urban area within Greater Reading to the north of the M4 corridor extends right up to the motorway. Consequently, the only separation between the settlements was provided by the motorway and a relatively narrow area of open land to the south of the Shinfield Glebe site. This represented a much more intrusive and significant encroachment into the countryside and closing of a settlement gap than the appeal scheme.

43. Overall, whilst I do not find that the scheme would undermine settlement separation, I nevertheless conclude that it would cause significant harm to the character and appearance of the area in regards to its effect on landscape character. It would therefore conflict with Policies CP3 and CP11 of the CS, Policies CC02 and TB21 of the Managing Development Delivery Local Plan

[2] Council Ref 163547
[3] Council Ref 201515
[4] APP/X0360/A/10/2133804

2014 (the MDD LP) and Policy 2 of the Shinfield Neighbourhood Plan 2017 (the SNP). These policies together seek development appropriate to the character of the area, that protects the separate identity of settlements and maintains the quality of the environment, retaining or enhancing the character and features that contribute to the landscape. It would also not accord with the Borough Design Guide SPD 2012 (the BDG) which seeks the same.

The effect on trees

44. There are numerous trees within the southern section of the site and along the ridge. These give the site a sylvan character, particularly to its southern section and provide a wooded backdrop to the northern part of the site. Collectively the trees and woodland make a positive contribution to the landscape of the area. These are subject to a Tree Preservation Order (TPO)[5] which comprises a combination of individual, groups and an area of trees.

45. The appellants have provided an Arboricultural Assessment and Method Statement (AAMS). The AAMS, which categorised trees based on guidance in British Standards[6], identifies that most of the trees and groups of trees on site are considered to be either Category C grade and of low quality. There are a few individual trees and one group of trees within the site plus some off-site trees that are considered to be of moderate quality and classified as Category B. A small number of trees are Category U trees which are not suitable for retention.

46. The proposal would require the removal of 2 category B trees, a mature Norway spruce (T25) and a mature false acacia (T41), as well as several category C trees and groups of trees. The most significant area of tree removal would be to the southern section of the site. Here a large number of trees and groups of trees would be removed in order to both form the proposed access road running along the boundary with the adjacent property to the west, Foxglade; and to provide open garden space to the proposed dwellings in this part of the site.

47. There are a few trees within the grounds of Foxglade along its boundary with the appeal site. However, they are spaciously positioned and would not, on their own, provide a commensurate density of tree cover to that which currently exists. As I have set out in my reasoning above, this would significantly open up the site, and would erode the sylvan and semi-rural character of this area.

48. A limited number of trees would be removed from the belt of trees running across the ridgeline of the site. This includes a category B tree. The removal of these trees would effectively thin the line of tree cover, potentially forming a break within the canopy. This would detract from the wooded character of the ridgeline. This would be visible from the surrounding area and harmful to the landscape character of the site.

49. Within the area of woodland separating the 2 sections of the site, I observed that there are significant variations in ground level with evidence of some trees growing within embanked areas. The AAMS acknowledges that a number of these will require protection in the form of no-dig surfacing. Whilst this may provide some mitigation from harm where the ground is level, the AAMS is

[5] Tree Preservation Order No. 1682/2019
[6] BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

less clear on how protection would be provided for those trees growing at different levels close to where the proposed access road would run.

50. I have not been provided with details of existing levels in this area nor how the access road would be constructed. It seems to me that, with trees growing at different levels in combination with the ground works to form the required level area and width for the access road, there is likely to be some disturbance to the ground in this part of the site. This would be either through excavation or the piling of additional soil within the root protection area (RPA) of the trees to be retained. This could result in harm to the long-term health of the trees either through root damage from exposure or starving the trees of oxygen. Insufficient details have been provided in this regard. Had I been minded to allow the appeal, the imposition of a suitably worded condition to require further details and control over works associated with levelling the ground could provide some mitigation of this.

51. The off-site category B trees along the south-eastern site boundary to the northern section of the site are also protected as an individual and group of trees under the TPO. One of these, a poplar tree (T45), would be located at the end of the rear gardens to the proposed houses on Plots 11-13 and a protected group of poplars (G47) at the rear of Plots 14-18. Due to the differences in ground levels and the presence of these trees, it is proposed to construct a retaining wall at the rear of these gardens to accommodate the change in levels.

52. At the Hearing, the Council raised concerns about how this wall would be constructed so as to minimise any harm to these trees. The submitted tree protection plan indicates that the retaining wall would extend around the RPAs of these trees. This should minimise harm to these trees and a suitably worded condition could ensure their protection during construction.

53. The gardens to these properties are relatively small and with the overhanging tree canopies, the amount of useable space is reduced. This may give rise to pressure from future occupants to reduce or remove these trees to provide more space. I accept that any such works would require permission due to the protection afforded these trees, however, it may be difficult to resist such requests given the circumstances.

54. I am told that the TPO was only put on the site in May 2019 when the Council became aware of the proposed development of the site. A significant part of the TPO, covering the entire southern section of the appeal site and the area of woodland along the ridge to the north of this, is an 'area category' TPO. The Planning Practice Guidance (PPG)[7] sets out that this type of TPO can be used to protect individual trees dispersed over an area. It is intended for short-term rather than long-term protection as a temporary measure until the trees on the site can be fully assessed and classified.

55. I have not been made aware that any further assessment of the trees has been undertaken. Whilst I recognise that this is a requirement, it does not alter the protection which these trees currently benefit from. I have found that the trees collectively make a positive contribution to the area and that their loss or works that may adversely affect their long term health would be harmful to the character and appearance of the area.

[7] Paragraph: 029 Reference ID: 36-029-20140306

56. I appreciate that the proposal includes significant tree planting, indicated to be a net gain of some 87 new native trees. In the long term this would certainly provide some mitigation for the loss of trees on the site. However, in the short to medium-term the loss of trees would harm the character of the site, reducing its contribution to the wider area. Furthermore, these trees would not replace those lost along the western site boundary as this area would be occupied by the access road. The reduction in tree cover here would be permanent and harmful for the reasons I have set out.

57. I conclude that the proposed development would have a significant adverse effect on protected trees. In this respect, it would conflict with Policies CC03 and TB21 of the MDD LP and Policy 2 of the SNP which together seek the protection and retention of existing trees and features that contribute to the landscape. For the same reasons, it would also not accord with the BDG. I have found no conflict with Policy 6 of the SNP referred to in the decision notice as this relates to trees in the context of ancient woodland which is not relevant to the appeal scheme.

Other Considerations

Planning Policy Context

58. The development plan includes the CS, the MDD LP and the SNP. The Council is in the process of preparing a new Local Plan, but this is at an early stage and has not been submitted for examination. It therefore carries limited weight at this time.

59. Paragraph 11 d) of the National Planning Policy Framework (the Framework) sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, 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 doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

60. The Framework does not provide any definition of what constitutes 'most important' however, the wording is clear it refers to the policies most important in the determination of the application rather than the appeal that need to be considered. This means that it is those policies relating to the consideration of the whole scheme rather than those matters in dispute at the appeal that should be included. Other policies may be relevant but would not necessarily be the most important.

61. In accordance with the approach established through case law[8], a consideration of which policies are the most important must be made and an assessment about whether these are out-of-date. It is for the decision-maker to consider whether the 'basket' of most important policies as a whole is out-of-date, a matter which I return to in my conclusions below.

[8] Wavendon Properties Ltd vs SSCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)

The most important policies

62. The parties do not agree which are the most important policies for determining the appeal. At the hearing it was agreed by both parties that Policies CP9 and CP11 of the CS, Policies CC02 and TB21 of the MDD LP and Policy 1 of the SNP would be most important policies for determining the appeal. In addition, the Council considers that Policy CP3 of the CS and Policy 2 of the SNP should be included.

63. Policy CP3 sets out general principles for development. As the design of the proposed development in the context of the site constraints and its relationship to the surrounding area is an important factor, I consider that Policy CP3 is one of the most important policies. For the same reasons, I consider that Policy 2 of the SNP which sets out general design principles should be included as one of the most important policies.

64. The list of most important policies put forward by the parties are focussed on the location of development, landscape character and design. In terms of locational factors, I consider Policy CP19 of the CS is also most important as it sets out the expectations of development within the South of the M4 SDL. In respect of trees and landscaping, Policy CC03 of the MDD LP is also most important.

65. In addition to those referred to above, I consider that a number of the policies included within the reasons for refusal would also be most important policies. This includes Policies CP1 of the CS and CC01 of the MDD LP which secure sustainable development and Policy CP2 of the CS which relates to inclusive communities and the provision of community facilities.

66. The scheme includes residential development and proposals for a mix of housing types and affordable housing, therefore Policies CP5 of the CS and TB05 of the MDD LP are most important.

67. A community facility and 23 residential properties are proposed. Policies CP6 of the CS, CC07 of the MDD LP and Policies 4 and 5 of the SNP which manage travel demand and secure car parking are most important policies for assessing the effects of the scheme on the highway network and travel patterns.

68. The appeal scheme proposes the development of an area of land that is semi-improved grassland and woodland. The scheme would extend built development into this area which would remove some of this habitat. Consequently, I consider Policies CP7 of the CS and TB23 of the MDD LP and Policy 7 of the SNP which seek the protection of biodiversity and mitigation against its loss are also most important policies.

69. Due to the proximity of the appeal site and the proposed dwellings to the M4 motorway, the effect of noise on the proposed development is a significant factor. For this reason, I consider Policy CC06 of the MDD LP which relates to noise impacts and mitigation is also a most important policy.

70. Policy TB12 of the MDD LP and Policy CP4 of the CS which seek to secure employment skills and infrastructure in association with the development are relevant but not the most important.

71. Having regard to the above, I consider that the most important policies in the determination of the application are: Policies CP1, CP2, CP3, CP5, CP6, CP7, CP9, CP11 and CP19 of the CS; Policies CC01, CC02, CC03, CC06, CC07, TB05, TB21 and TB23 of the MDD LP; and Policies 1, 2, 4, 5 and 7 of the SNP.

Whether the most important policies are out-of-date

72. Paragraph 219 sets out that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their degree of consistency with the Framework. Such an approach has been established through case law[9] where it has been held that there are a number of reasons why a policy may be considered out-of-date but the age of a policy is not decisive in this matter.

73. The parties agree that policies CP1, CP2, CP7 and CP19 of the CS, policies CC01, CC03, CC06, CC07, TB05, TB21 and TB23 of the MDD LP and Policies 1, 2, 4, 5 and 7 of the SNP are consistent with the Framework and should be attributed full weight. There is some dispute between the parties as to whether the remaining most important policies are consistent with the Framework, namely Policies CP3, CP5, CP6, CP9 and CP11 of the CS and Policy CC02 of the MDD LP.

74. Policy CP3 is a generic policy which sets out general principles for development. I have not been alerted to any significant inconsistencies with the Framework and whilst I accept that some wording may demonstrate minor inconsistencies, as found by the Inspector in the Land East of Finchampstead Road appeal[10], overall I do not find this policy to be out-of-date.

75. Policy CP5 includes a provision that residential proposals of at least 5 dwellings will provide 50% affordable housing, where viable. This policy does not accord with paragraph 64 of the Framework and therefore is out-of-date.

76. Policy CP6 is a criteria-based policy which indicates that permission will be granted if road safety is enhanced, adverse effects on the network mitigated and highway problems are not causes. It is a permissive policy which does not state that permission will be refused if these provisions are not met. Although there is a difference in wording between this policy and paragraph 110 of the Framework, the approach of the policy is not inconsistent with the Framework.

77. Policies CP9, CP11 and CC02 are restrictive policies, which amongst other things, set out a settlement hierarchy, require development to occur within development limits, apart from allowing for some limited development including affordable housing on rural exception sites. The housing requirement set out under Policy CP17 of the CS reflects the revoked South East Plan. This has been superseded by the Local Housing Need (LHN) figure of 768 dwellings per annum plus a 5% buffer (806) compared to the CS requirement under Policy CP17 of an average of 623 dwellings per annum from April 2021.

[9] Bloor Homes Ltd v SSCLG [2014] EWHC 745 (Admin) and Gladman Developments v SS & Central Bedfordshire Council [2019] EWHC 127 (Admin)
[10] Appeal Ref: APP/X0360/W/19/3235572

78. The Council has set out that the defined development limits are not specifically drawn up to deliver a simple quantum of development. It has also confirmed that the housing numbers upon which these limits were based, in this case those set out under Policy CP17, are not a ceiling. Whilst this is accepted, it is nevertheless evident that the Council is reliant on several sites outside development limits in order to deliver a sufficient supply of housing. Together these sites would deliver 420 dwellings and just over 10% of the Council's 5 year housing requirement.

79. Of the dwellings permitted outside development limits and included in the Council's 5 year housing land supply (5YHLS), some 306 dwellings would be within the SDLs where significant investment in infrastructure has taken place or is programmed to be delivered as part of future housing. In these cases, the Council has stated that in granting permission a 'normal balance' was taken weighing up material considerations against any policy conflict. The remaining approvals were granted on appeal when the Council could not demonstrate a 5YHLS. This indicates that the policies can and are applied flexibly.

80. Recent HDT results show the Council is performing well in delivering its housing requirements and has significantly exceeded its annual requirement since 2018, with delivery at 189% in 2021. This indicates that the Council's strategy for housing and other growth, as set out within Policies CP9, CP11 and CC02 and the policies relating to SDLs, can be applied flexibly to deal with changing circumstances including changes to housing requirements.

81. Nevertheless, it is clear that the policies are unable to deliver the housing requirement without having to be applied flexibly and reasonably often, in order to meet housing requirements. Given the extent of development outside settlement limits and my findings that the Council cannot currently demonstrate a 5YHLS, which I discuss in more detail later in my decision, I conclude that Polices CP9, CP11 and CC02 are all out-of-date and inconsistent with the Framework. This accords with a recent judgment, *Eastleigh BC v SSHCLG*[11], where it was held that development plan policies were not consistent with the Framework where compliance with a 5YHLS had been achieved, in part, by greenfield planning permissions outside settlement boundaries.

82. These matters have also been considered in various appeals within the Borough where Inspectors have reached differing conclusions. Most recently, Inspectors for appeals at Land east of Finchampstead Road, Wokingham and Land north of Nine Mile Ride, Finchampstead[12] concluded that since the Council was relying on sites outside settlement limits for its 5YHLS, then Policies CP9, CP11 and CC02 are all out of date.

83. I am aware that the Inspectors in both the Land to the rear of 6 Johnsons Drive, Finchampstead appeal[13] and Land at Lodge Lane, Hurst appeal[14], which pre-dated the Finchampstead Road and Nine Mile Ride appeals, concluded that these policies were not out of date.

[11] Eastleigh Borough Council v SSHCLG [2019] EWHC 1862 (Admin)
[12] APP/X0360/W/19/3238048
[13] APP/X0360/W/18/3205487
[14] APP/X0360/W/18/3194044

84. In the Johnsons Drive appeal, the Inspector found that the Council could demonstrate a 5YHLS even when deducting those sites outside the settlement boundary. Within the Hurst Lane appeal, there was no dispute that the Council could not demonstrate a 5YHLS, although it was not specified whether any of this would have been made on land outside settlement boundaries. The circumstances are therefore different to those before me where the Council acknowledges reliance on sites outside settlement boundaries and I have found a 5YHLS does not exist.

85. In coming to this view, I am also mindful of case law[15] which confirmed that the weight to be given to restrictive policies could be reduced where settlement boundaries were drawn up on the basis of out-of-date housing requirements. In this case, the settlement boundaries were drawn up in the context of a much lower housing requirement although I acknowledge that housing requirement was not set as a ceiling.

86. The Council has referred me to an appeal decision[16] at Land off Moseley Road, Hallow, Worcestershire where the Inspector concluded that since the Council could demonstrate in excess of a 5YHLS, its policy restricting development outside settlement boundaries was up-to-date. However, there is nothing to suggest that the 5YHLS was in dispute or whether it relied on the delivery of housing development outside defined settlement boundaries. For this reason, a comparison with the circumstances of the appeal before me is not possible. I therefore give this appeal decision limited weight.

87. It has been established through the *Eastleigh BC v SSHCLG* judgment that the Framework adopts a more nuanced approach requiring that planning decisions should contribute to and enhance the natural and local environment by meeting a series of objectives which includes the recognition of the intrinsic character and beauty of the countryside. Similarly, the Secretary of State[17] in determining an appeal for the redevelopment of Wheatley Campus of Oxford Brookes University confirmed that 'recognition' and 'protection' are not the same being distinguishable terms, finding that the restrictive policies seeking blanket protection of the natural environment were not consistent with the Framework.

88. The type of restrictive approach that protects land outside of defined settlements as set out within Policies CP11 and CC02 does not, in my view, accord with the more nuanced approach advocated by the Framework. This also makes these policies out of date.

89. I acknowledge the benefits and the certainty that a plan-led approach to development provides, as recognised in the *Gladman Development Ltd v Daventry DC* [18] judgment. I also recognise that the Council has taken steps to address issues arising within the Borough that have affected planned housing delivery, notably in relation to the extension of the Detailed Emergency Planning Zone around AWE Burghfield. I also appreciate that it can be unfair for landowners to seek to short-cut the plan-led process when the Council considers development needs are being met.

[15] Suffolk Coastal District Council v Hopkins Development Ltd [2017] UKSC 37
[16] APP/J1860/W/17/3192152
[17] APP/Q3115/W/19/3230827
[18] Gladman Developments Limited v Daventry District Council and SSCLG [2016] EWCA Civ 2246

90. However, I have found that, at present, the Council cannot demonstrate a 5YHLS and that a reasonable proportion of its HLS is on sites outside development limits. It is therefore not unreasonable that landowners seek to promote their sites through the planning application process.

91. Consequently, I have found that 4 of the 22 most important policies are out-of-date. I will return to the matter of whether the 'basket' of policies itself is out-of-date and therefore whether the appeal scheme complies with the development plan as a whole in my final conclusions.

Housing Land Supply

92. The Council's latest HLSS for the period 1 April 2021 to 31 March 2026 is based on an assessment of LHN using the standard methodology and includes a 5% buffer as required by the Framework. The LHN identifies an annual need of 768 dwellings which including the 5% buffer equates to 4,032 dwellings over the 5 year period.

93. As of 1 April 2021, the HLSS sets out the Council has a 5.10 years supply of deliverable housing sites. This equates to an annual rate of 806 dwellings and a total deliverable supply of 4,115 dwellings. This represents a surplus of 83 dwellings.

94. The appellants dispute this on the basis that the Council has included sites that came forward beyond the base date and, through the inclusion of a windfall allowance for larger sites, has double counted its supply. It is the appellants' view that the Council has a deliverable supply of 3,742 dwellings and therefore a shortfall of 290 dwellings from its total housing requirement. This equates to a 4.64 years housing land supply.

95. The Framework sets out within its glossary that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. It goes on to give examples under a) and b) of the categories of sites which are capable of meeting that definition. Under a) this includes all sites with detailed planning permission; and under b) those sites which have outline planning permission for major development and whether there is clear evidence that housing completions will begin on site within 5 years.

96. It is clear from a recent High Court Consent Order[19] that the examples given in categories a) and b) are not exhaustive of all the categories of sites which are capable of meeting the definition and that whether a site does or does not meet the Framework definition is a matter of planning judgement on the evidence available.

97. I have been referred to an appeal at Land on East Side of Green Road, Woolpit, Suffolk[20] where the Inspector concluded that in order to meet the definition of deliverable, a site would need to have a resolution to grant permission within the assessment period, that is by the cut-off date for the assessment period. The Inspector took the view that to include sites granted planning permission after the cut-off date but before the publication of the assessment, in that case the Annual Monitoring Report, would be erroneous.

[19] East Northamptonshire Council v SSHCLG, Case Number: CO/917/2020
[20] APP/W3520/W/18/3194926

This was due to it overinflating the supply without a corresponding adjustment of need.

98. Whilst the findings of this Inspector are noted, I do not find it is that clear cut. The PPG sets out that to demonstrate a 5YHLS, the local planning authority should use the latest available evidence. To my mind, whilst this may include formal land availability assessments or the Annual Monitoring Report, it does not suggest that a base-line or cut-off date means no further evidence can be taken into account if is available.

99. In coming to this view, I have had regard to an appeal[21] at Woburn Sands, Buckinghamshire where the Secretary of State also concurred with the view of the Inspector that it is acceptable, in relation to an assessment of housing land supply, that evidence can post-date the base date provided that it is used to support sites identified as deliverable as of the base date. It was also held in that appeal that a proforma can, in principle, provide clear evidence of a site's deliverability. This approach is reasonable and I have no reason to disagree.

100. At the Hearing, the Council emphasised that it is a delivering authority. Certainly, in terms of its recent record of housing delivery, as demonstrated in the HDT results, the Council has been strongly performing at 189% for 2021, 200% for 2020 and 175% for 2019. However, evidence of housing completions indicates that until 2019/20 housing delivery had fallen short of meeting the cumulative housing requirements set out within the CS.

101. Nevertheless, based on current projections, the Council anticipates that over the remaining CS plan period to 2026, an additional 1,965 dwellings will be delivered over the minimum requirement. This equates to a significant boost in housing of 14.9% above plan levels. Whilst I do not have firm evidence to confirm this, housing delivery in recent years does suggest that the CS housing figures may be exceeded.

102. The Council has a specialist delivery team and a dedicated officer for each of the SDLs. Through this, the Council gathers information regarding sites and forthcoming applications which inform its housing delivery analysis. On this basis, the Council considers its information to be both up to date and robust. In support of its position, the Council has asserted that evidence on housing delivery given at the Hearing on sites that are no longer contested demonstrates the reliability of this engagement and the intelligence gleaned from it. Whilst I accept this, I do not find that on its own, this is sufficient to provide the firm evidence of deliverability which, to my mind, must additionally be backed up by other information.

103. It has been argued that reliance on sites outside defined settlement boundaries or development limits to demonstrate a 5YHLS may, in some circumstances, indicate that certain policies relating to housing land supply carry less weight. I have discussed this earlier on in my decision. However, this does not mean that sites outside development limits with planning permission cannot be included within the calculation of 5YHLS in accordance with the relevant tests of deliverability. This approach has been confirmed in the judgment in *Gladman Developments Limited v Daventry DC*. I have

[21] APP/Y0435/W/17/3169314

therefore taken such sites into account in my assessment of the Council's 5YHLS.

104. In the context of the above and taking into account that the test of deliverability is about a realistic prospect not certainty and that the onus to demonstrate delivery lies with the Council, I now turn to look at the disputed sites within the HLSS.

Ashridge Farm, Warren House Road, Wokingham

105. This site is within the North Wokingham SDL. A scheme for 153 dwellings was granted full planning permission on 25 June 2021. Build out rates have been indicated by the developer operating on the site who has confirmed they will be delivered within years 2, 3 and 4 of the 5 year period. The latest available evidence confirms these have permission and that the new homes are being marketed for sale on David Wilson Homes' website. Whilst this certainly indicates deliverability, this was not the case at base date when the site had no permission at all.

106. In my view, this site did not meet the definition of deliverable having neither full nor outline permission at base date. Whilst I accept that evidence can be taken into account post base-date, this should only be the case where the site was considered deliverable at that point which was the not case here. For this reason, I conclude that the 153 dwellings should be excluded from the trajectory.

Land at 1 Barkham Road, Wokingham

107. This site is a brownfield site with a proposal for 14 dwellings. At base date, there was a resolution to grant planning permission subject to the completion of a legal agreement. I have nothing before me to show this has now been resolved. This degree of uncertainty could in my view put back the potential start date of a development by some time or may act as an impediment to development. For this reason, whilst I acknowledge that this would be a small site and should be deliverable within 5 years, I do not consider it appropriate to include this development within the calculation of overall supply. These 14 dwellings should be removed from the calculation.

Land at Hogwood Farm, Sheerlands Road, Arborfield

108. This is part of a larger scheme for 1,500 dwellings which has outline planning permission. Phases 1 and 2, delivering 178 and 235 dwellings respectively, have been subject to reserved matters and approved. A further reserved matters application in respect of 135 dwellings has been validated by the Council on 22 November 2021. The Council considers 73 dwellings arising from this would be deliverable in years 4 and 5.

109. The scheme is being brought forward by one developer who is a national housebuilder. Phase 1 is due to complete in year 3 and the Council has assumed that the 73 dwellings would be completed in the subsequent years. They have based this assessment on the Council working closely with the developer which has helped them understand the forthcoming projects. However, I note that in the proforma responses to the Council, the developer has not provided any information in respect of the timing of this phase of the development.

110. Notwithstanding the findings of the Inspector in the Nine Mile Ride appeal, I have been provided with no firm evidence that indicates that the use of modular housebuilding has speeded up delivery. Nevertheless, I recognise that the development would benefit from the completion of the Nine Mile Ride Extension – South which would provide the highways infrastructure to enable this development to come forward. The reserved matters for this road scheme have been granted permission and the road it expected to be fully built out within 2022.

111. In view of the expected completion of the road and phase 1 of development, on balance, I consider it is likely that this third phase of development will commence during the 5 year period. Taking into account delivery rates for both phases 1 and 2, the assumptions made by the Council in this regard do not appear unreasonable. For this reason, I consider that these 73 dwellings should be included within the trajectory.

Land to West of Shinfield

112. The disputed housing forms part of a larger scheme comprising 3 parcels of land for which outline planning permission was granted for 1,275 dwellings on 8 November 2012. This parcel of land relates to 137 dwellings remaining to be delivered following reserved matters. Of these the Council considers 25 dwellings will be delivered within the 5 year period. The Council has indicated that there have been 3 developers operating on the site and given the size of the permission, its location within an SDL and indications of expected delivery they consider its inclusion is justified.

113. An EIA Screening was submitted which the Council has referred to providing evidence of progress. The appellant disputes this as the EIA Screening did not indicate a time frame. Nevertheless, at the time the HLSS was published a reserved matters application had been approved for the 25 dwellings and it was therefore the latest available evidence relating to a site which did have outline permission at base-date.

114. The Council has adopted a cautious approach and proposed these would be delivered within year 4 which is reasonable. I find that these 25 dwellings should be included as part of the overall supply.

Land east of Gorse Ride South, south of Whittle Cross and north and south of Billing Avenue, Finchampstead

115. This site has planning permission for 249 dwellings, granted on 19 February 2021. It includes demolition of existing housing resulting in a net gain of 71 dwellings. The Council has projected that 44 of these will be delivered within the 5 year period. The scheme will be brought forward in 3 phases.

116. The majority of this site is within the Council's ownership but a number of properties and land holdings are in third party ownership. Negotiations are being undertaken to acquire the properties and a Compulsory Purchase Order (CPO) application was made to acquire any others. The CPO has been rejected and in order to acquire these properties for the development, the Council would be likely to need to again apply for a CPO. Furthermore, condition number 35 of the planning permission requires a legal agreement to be signed by the owners before development commences.

117. I have no evidence that this legal agreement has been signed and, in view of some of the landowners' resistance to the development, there is no certainty that this will be completed. This degree of uncertainty could in my view put back the potential start date of a development by some time or may prevent the development from coming forward in the manner proposed.

118. I appreciate that the site has been included on the brownfield register and budget allocated to its redevelopment, the Council's commitment to the development is not disputed. However, given the position in relation to land acquisition and securing a legal agreement, I do not consider there is robust evidence that these dwellings will be delivered. The 44 dwellings should therefore be excluded.

Windfalls

119. Paragraph 71 of the Framework sets out that where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. The parties dispute the windfall allowance from large sites.

120. A large windfall site is an unidentified site that delivers 10 or more dwellings. The Council has provided evidence that the average build out time for a large windfall is just over 2 years and that between 1998/99 and 2020/21 there was an average of 51 net completions from large sites. More recently, the Council has suggested that over the last 5 years, the average windfall delivery from large sites has been 116 dwellings per annum. On this basis, the Council has included a windfall allowance of 32 dwellings per annum for large windfall sites to be delivered in years 4 and 5.

121. The appellants have argued that the large windfall allowance which includes both large prior approvals and non-allocations means that there is a pool of 933 dwellings with permission (excluding sites the appellants have disputed). This would equate to a build rate of 186.6 dwellings per annum and a rate that has only been achieved in 2 years, 2018/19 and 2019/20. They also consider that the inclusion of a large site delivering 120 dwellings at land west of Beech Hill Road, Spencers Wood, which was allowed on a greenfield site outside a settlement boundary when the Council could not demonstrate a 5YHLS, does not represent the type of windfalls that would normally come forward. This therefore skews the figures.

122. The appellants contend that this scenario is unrealistic based on past delivery rates and that any additional windfall allowance should be excluded as it would represent double-counting as concluded by the Nine Mile Ride Inspector.

123. I recognise that the build rates would represent a significant uplift in delivery. However, there is evidence of high levels of housing delivery within the Borough as borne out in the recent HDT results. The evidence indicates that windfall sites can and do get developed relatively quickly. It therefore seems to me that should one or two such sites come forwards within year 1 or 2, it is quite feasible that they would be completed by the end of the 5 year period. On that basis, I do not consider the Council has been unrealistic in its assumptions around windfalls coming forward in years 4 and 5. I also concur that an annual rate of 32 dwellings is modest and not unreasonable. In coming to that view, I am mindful that were I to allow this appeal, the appeal

site would be one such windfall which the appellants have, in their evidence, indicated would be built out within 5 years.

124. I appreciate that I have reached a different conclusion on this matter to the Nine Mile Ride Inspector. However, it seems that she did not have evidence before her on delivery rates which have been provided in this case.

Overall findings on HLS

125. Based on my assessment above, I find that 211 dwellings should be taken out of the trajectory. By my calculation, this would mean the Council can demonstrate that 3,904 dwellings would be deliverable. This amounts to a shortfall of 128 dwellings against the 5 year requirement and a 4.84 year supply of deliverable sites.

Benefits

Affordable housing

126. Policy CP5 of the CS requires a minimum of 35% affordable housing on schemes of 5 dwellings or more within the SDL. The appeal scheme would provide 17 affordable housing units, representing 74% affordable housing. All of these would be delivered on site.

127. The Berkshire and South Bucks Strategic Housing Market Assessment 2016 (SHMA) provides an assessment of affordable housing needs. This identified an annual net need for the period 2013-36 for 441 affordable dwellings. This represents over 51% of the total housing need for the Council for this period. A subsequent appraisal of affordable housing need was undertaken in 2020 as part of the LHN Assessment. The identified an annual average figure of 407 affordable homes, which represented 51% of the minimum LHN figure.

128. In the period April 2013 to March 2020, 1,831 affordable homes were delivered, equivalent to an annual average rate of just under 262 affordable dwellings per year since 2013. There is evidence that delivery has increased in recent years, with a small surplus against the annual requirement having been delivered in just 2 of the 7 years, 41 affordable dwellings in 2017/18 and 5 in 2019/20. Consequently, the cumulative shortfall against need amounts to 1,256 affordable dwellings.

129. There is clear evidence that Wokingham has an affordability problem and that delivery of affordable housing has fallen well below need. The provision of 74% of the dwellings as affordable and more than double the affordable housing requirement is a positive aspect of the scheme. However, this has to be viewed in terms of its wider contribution to the supply of affordable housing. The scheme would deliver just over 4% of the total annual need for affordable housing and would make a modest contribution to supply. However, in the context of significant under-delivery over a number of years, this modest contribution would amount to a significant benefit of the scheme.

130. I appreciate that the Council considers that 1,769 affordable housing units can be delivered through the local plan process. I also appreciate that there are some large schemes coming forward within the SDLs. This includes one at Spencers Wood where I was told a contribution of £18 million to affordable housing was agreed and another for a development of some 1,800 dwellings of which 500 would be affordable in the South Wokingham SDL at land South

of the railway. However, I heard that this site is not due to deliver until after March 2025. The existence of these schemes do not therefore alter my view on the benefits to be attributed to the provision of affordable housing.

131. I have been referred to a decision[22] by the Secretary of State at Moor Lane, Woodthorpe, York where the Inspector recognised the value in terms of national policy of a contribution of 5% excess over policy. In that case the Inspector considered that the excess contribution to the supply of affordable housing should be given disproportionate value because of the overall deficiency of supply. The Secretary of State agreed with the Inspector. However, I am also mindful that that scheme would have delivered 516 residential units and was of a scale much greater than the scheme before me.

132. The Nine Mile Ride Inspector also recognised the affordability issues within the Borough. That scheme would have provided some 59 affordable dwellings, again significantly more than the appeal scheme. The Inspector recognised this as an important benefit to which she attributed substantial weight.

133. Both these appeals to which I have been referred would have delivered significantly higher numbers of affordable housing units than the appeal scheme. For this reason, I do not accord greater weight to the provision of affordable housing than the significant weight I have stated.

134. For the avoidance of doubt, the Government's First Homes affordable housing scheme does not apply in respect of this appeal. It does not apply to applications where there has been significant pre-application engagement and which are determined before 28 March 2022. Substantive pre-application discussions and engagement between the main parties relating to the proposed quantity and tenure mix of affordable housing has already taken place and this forms the basis of the completed S106 agreement. The main parties share my view that First Homes affordable housing is not required.

Accessible location

135. The appeal site is located on the edge of the settlement which has a modest range of services and facilities, including a few convenience shops, a public house, school and healthcare facilities. It is also close to both the footbridge across the M4 and Shinfield Road bridge providing access to additional facilities north of the M4. The submitted Transport Assessment indicates that most of these facilities would be over 15 minutes' walk from the site and around 5 minutes' cycle ride. However, the footbridge incorporates some steps and may not be accessible to those with reduced mobility. The scheme would also provide improved linkages between Brookers Hill and Hollow Lane. In terms of walking and cycling, access to the site would therefore be modest.

136. There is a bus stop close to the eastern access of the site on Shinfield Road which provides frequent services to Reading as well as Wokingham and Arborfield Garrison. On this basis, future occupants would have reasonable access to services and facilities by means other than the private car. This leads me to conclude that the accessibility of the site carries moderate weight.

[22] APP/C2741/W/19/3233973

Provision of a community hall

137. The scheme would provide a community hall which would be for the Tamu Pye Lhu Sangh UK Community group (the TPLS) and the wider Gurkha community. The TPLS is a charitable organisation which I am told has been looking for a site since 2015 to be used as a community hub. The charity requires a freehold tenure to provide them with security, a minimum size with sufficient parking and access to outdoor space for meetings and social events as well as being close to major public transport hub and the strategic highway network. I was also told that the members of the group are particularly keen on basketball and that the proposed facility would provide flexible space to accommodate this.

138. I have been provided with very limited information about the TPLS. Whilst I accept that the TPLS may be seeking their own premises, no evidence such as correspondence from the TPLS or indeed anything to connect this group with the appeal proposal was submitted to support this. There is no substantive evidence of any search for sites having been undertaken nor anything from the TPLS setting out their specific requirements.

139. The Council has questioned the need for an additional community hall as there is a recently built community hall within Shinfield as well as other schemes coming forward that would provide access to community space locally. I appreciate that the TPLS may require their own freehold premises and that the community hall may be able to provide a hub and facility to support and conserve the culture of this group, but there is nothing substantive before me to confirm this.

140. In the absence of firm evidence that this community building would be for them and with the recent and forthcoming provision of other community facilities locally, I am not persuaded that there is a need for this building. I therefore give this limited weight.

Living conditions of adjoining occupiers

141. The provision of the eco-barrier would reduce noise from the M4 motorway to existing dwellings on Brookers Hill. The appellants' submitted noise report[23] has assessed that for the garden facades of these houses facing towards the motorway, occupants would experience a noise reduction of between 4 to 6 dBA and at the end of their gardens where existing noise levels would be higher, a greater reduction of around 8 to 12 dBA.

142. This would improve the living conditions for these occupiers with subsequent health and well-being benefits. I accept that the M4 motorway has been in existence for some considerable period and that existing occupants would be both used to it and would have most likely purchased their properties in full knowledge of the motorway and the noise arising from it. Nonetheless, it seems that any reduction in noise disturbance from this source would be a benefit to occupiers. I therefore give this moderate weight.

[23] SBS Environmental Noise Barrier Design Study – Willow Tree House, Shinfield Noise Impact Assessment and Barrier Design, 3 December 2020

Biodiversity

143. The appeal site is considered to be in poor to moderate condition in terms of biodiversity. The appeal scheme provides an opportunity to enhance the existing habitats on the site. There was some debate at the Hearing as to whether the site should be managed for biodiversity or simply left to evolve with the possibility of turning into lowland mixed woodland in time. Nevertheless, both parties agreed that through the proposed management of the habitats, there would be enhancement to biodiversity and that this carried moderate weight. I have no reason to disagree with this.

Economic and social benefits

144. During construction and subsequent occupation of the development, there would be a number of economic benefits in relation to employment, supply of goods, use of services and spending money within the local economy. Those associated with construction would be time limited, however, longer term benefits would result from future occupants. Additional financial benefits would be accrued from the New Homes Bonus and CIL contributions. These benefits together carry moderate weight.

145. The proposal would add to the supply of housing, providing a mix of housing to meet housing needs including affordable housing as I have already discussed. In addition, the scheme would provide public open space which would provide health and well-being benefits to the local community. These social benefits of the scheme would carry moderate weight.

Other Matters

146. As noted above a Planning Obligation has been completed that would make contributions towards infrastructure, affordable housing employment skills, biodiversity net gain, securing highways works, provision of and maintenance of both public open space and the noise attenuation barrier.

147. In each case I am satisfied that the Obligation meets the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and complies with the tests set out in paragraph 56 of the Framework. Since they are to ensure that effects of the development are mitigated, I consider them to be neutral in the final balance.

148. The Council has maintained its objection to the eco-barrier on the basis that it does not consider a structure of this size and in close proximity to the motorway should be dealt with by a condition. My attention has been drawn to an appeal[24] at Land west of Grasslands, Cooper Close, Smallfield where a similar acoustic barrier was proposed adjacent to the M23 motorway and where the Inspector found it acceptable to deal with the matter by the submission of details secured through a condition. National Highways have confirmed that they would accept the details being submitted as a condition. I have no substantive grounds to disagree with either the Smallfield Inspector or National Highways. In these circumstances, had I allowed the appeal, I would have imposed a condition to secure this.

[24] APP/M3645/W/15/3135733

Planning Balance

149. I am required to make a judgement as to whether the most important polices, the 'basket', taken as a whole are to be regarded as out of date for the purposes of this decision. Of these, I consider Policies CP9 and CP11 of the CS, Policies CC02 and TB21 of the MDD LP and Policy 1 of the SNP, which relate to location of development and character and appearance, have the greatest bearing on my decision. I therefore give these polices more weight when considering the overall 'basket'.

150. Within these, I have found some inconsistency with the Framework and I have found that the development limits, as set out under Policy CC02 of the MDD LP, and applied through Policies CP9 and CP11 of the CS should be regarded as out of date. This is due to the Council's reliance on sites outside of these limits to deliver its housing requirement and because I have found that the Council cannot currently demonstrate a 5YHLS.

151. When taken as a whole, this means that, in this appeal, the basket of most important policies is out of date. For this reason, I consider that the presumption in favour of sustainable development (the tilted balance) as advocated within the paragraph 11d) of the Framework would apply.

152. In addition, the Council cannot demonstrate a 5 year supply of deliverable housing sites. This also triggers the tilted balance under paragraph 11 of the Framework.

153. The shortfall in the Council's 5YHLS is very modest. Furthermore, in the context of the Council's strong performance on housing delivery as demonstrated through the HDT results, whilst the development limit boundaries are considered out of date for the purposes of this appeal, I do not find that the Council's strategy for housing growth is failing to deliver in its entirety. In the context of housing delivery, the Council is therefore meeting the Government's objectives to significantly boost the supply of housing. For this reason, whilst the presumption in favour of sustainable development applies, this only weighs moderately in favour of the development.

154. The appeal site lies outside the settlement limits of Shinfield although within the South of the M4 SDL where the Council has highlighted that significant investment in infrastructure has taken place or is programmed to be delivered as part of future housing. I therefore find the locational conflict would carry moderate weight.

155. The proposed development would cause significant harm to the character and appearance of the area, the landscape and trees on the site. These adverse impacts are matters of very substantial weight and importance in the planning balance.

156. The scheme would make a small contribution to housing within the Borough. In the context of the absence of a 5YHLS, this carries moderate weight. The provision of affordable housing is a significant benefit of the scheme which I accord significant weight. Additional benefits of the scheme include the provision of housing in an accessible location, providing a mix of housing, public open space, contributions to biodiversity gains, improvements to living conditions of nearby occupants and a range of economic benefits both during construction and subsequent occupation of the proposed development. These

all carry moderate weight. The provision of a community hall carries limited weight.

157. As I have identified above, the proposal would give rise to significant harm in respect of the character and appearance of the area and harm to protected trees to which I attribute substantial weight. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

158. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Douglas Bond	Planning Consultant and Agent
John Seymour	Landscape Architect
Giles Parker	Acoustic Consultant
Steve Jenkins	iTransport, LLP
Edward Mather	Colony Architects
Chris Allder	Arboriculture
Karen Jones	Solicitor, Plan B Solicitors
Daniel Clark	Land Agent
Eleanor Frew	Ecologist

FOR THE LOCAL PLANNING AUTHORITY:

Chris Howard	Delivery Manager
Vincent Healy	Solicitor, Wokingham Borough Council
Ian Church	Team Manager, Growth and Delivery Team
Duncan Fisher	Ecologist
Victoria Higgins	Housing Policy Officer
Bridget Crafer	Landscape Officer
Gordon Adam	Borough's Highway Officer

HEARING DOCUMENTS

HD1 Drawings 556-02-16 Proposed Ground Floor Key Plan P5, 556-02-16 Proposed site plan P5, 556-02-20 Proposed parking plan P5, 556-02-12 proposed Block Plan Pt 1 P5, 556-02-12 proposed Block Plan Pt 2 P5, 556-02-12 proposed Block Plan Pt 3 P5,

HD2 Appeal Decision – Land west of Grasslands, Cooper Close, Smallfield Surrey, APP/M3645/W/15/3135733

HD3 Horley image from adjacent road

HD4 Email dated 17/11/21 including correspondence dated 8/12/2015 including written representations on behalf of Highways England in respect of the Horley eco-barrier

HD5 Information relating to discharge of Condition 15 ref APP/M3645/W/15/313573

POST-HEARING DOCUMENTS

PHD1 Copy of Deed of Agreement to Provide Planning Obligations pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 11 Local Government Act 1972 (undated and unsigned – to supersede all versions submitted during the Hearing)

PHD2 Revised list of conditions incorporating changes in relation to trees, highways and ecology

PHD3 Email from appellants dated 23 November 2021 setting out changes to condition and confirming acceptance of pre-commencement conditions

PHD4 Email correspondence dated 23 November 2021 confirming that, subject to the imposition of agreed conditions, National Highways no longer objects to the appeal proposal for the installation of the eco-barrier.

PHD5 Copy of plan 556-04-10 Proposed Site Sections a-a b-b P5

PHD6 Email dated 23 November 2021 from the appellants confirming that drawing only includes added dimensions and no change to the scheme design.

PHD7 Updated Tree Protection Plan, Ref 20212-3

PHD8 Updated Arboricultural assessment & method statement

PHD9 Copy of executed S106 Agreement dated 16.12.21

PHD10 Wokingham Borough Council 5 Year Housing Land Supply Statement at 31 March 2021 and Appendix 4 – SDL Progress maps

PHD11 WBC Post Hearing Statement on Housing Land Supply

PHD12 Further Planning Hearing Statement (Housing Land Supply) January 2022 and appendices (DB31, DB32 and DB33)

PHD13 Joint response from both main parties regarding First Homes

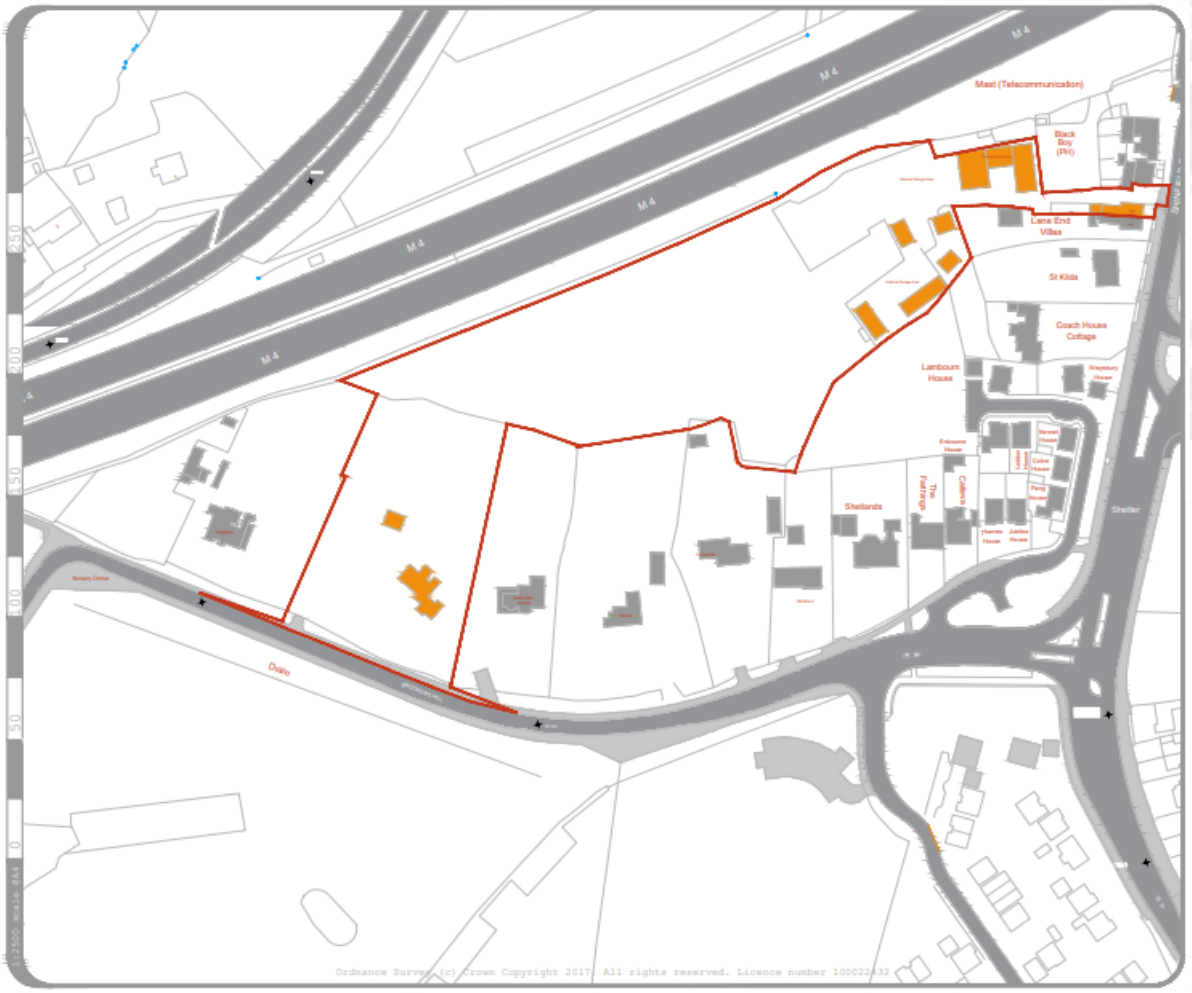
PHD14 Email dated 4 February 2022 from the appellant commenting on WBC Post Hearing Statement

PHD15 WBC response to appellant's statement – WBC Post Hearing Statement Feb 2022 and appendices

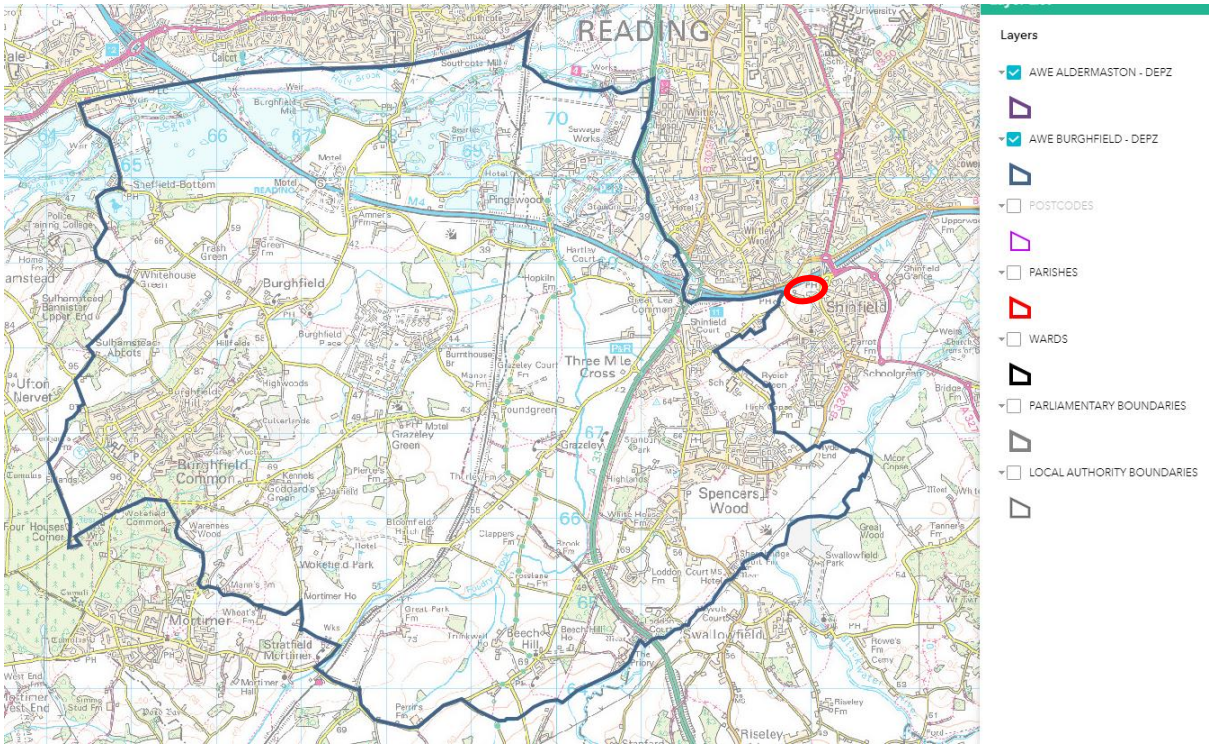
PHD16 Rebuttal to LPA Statement Feb 2022 and appendices (DB3, DB5, DB9 and DB34)

Appendix KMR8 – Location of application 203560 in Wokingham Borough

Location of land at and to the rear of Willow Tree House, Brookers Hill, Shinfield RG2 9BX (Image: Google Maps (2023))



Extract of Site Location Plan submitted with application 203560 (Colony Architects (2019))



Extract of the 'AWE Detailed Emergency Planning Zones' noting the location of Wokingham Borough Council application ref. 203560 in relation to the AWE Burghfield DEPZ (West Berkshire Council)

Appendix KMR9 – Appeal Decision - APP/X0360/W/21/3269790

The Planning Inspectorate

Appeal Decision

Site visit made on 15 June 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/X0360/W/21/3269790
Land at Croft Road, Spencers Wood, Shinfield, Reading RG2 9EY

- 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 Millen Homes Ltd against the decision of Wokingham Borough Council.
- The application 203108, dated 13 November 2020, was refused by notice dated 8 January 2021.
- The development proposed is the erection of 3 detached dwellings on land at Croft Road, Spencers Wood.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Millen Homes Ltd against Wokingham Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application is made in outline with access, appearance, layout and scale to be considered at this stage. Landscaping is reserved for later approval.

4. The appellant has submitted a revised site layout plan, transport plan and arboricultural impact assessment to that on which the Council made its decision[1]. The revised plans show a more central position for the access to Croft Road. The Council considers the revised access should not be taken into account as part of the appeal. According to the appellant the revisions were submitted to the Council prior to it making its decision, although the Council deny having received them. As the revisions seek to address one of the reasons for refusal and the Council has had the opportunity to comment on them, having regard to the 'Wheatcroft principles[2]' I consider it is reasonable for me to take the revised plans and assessment into account.

5. Subsequent to the Council's decision a unilateral undertaking has been submitted that would secure financial contributions towards mitigation measures in relation to the Thames Basin Heaths Special Protection Area, and financial contributions towards a bus strategy and a travel awareness initiative. I comment on these obligations later in my reasoning.

[1] Site Layout Plan R2, Transport Plan R2 and revised arboricultural impact assessment and method statement by Tracy Clarke Tree Consultancy, December 2021
[2] Bernard Wheatcroft Ltd v SSE [JPL 1982 p37]

6. I was unable to gain access to the property on my site visit. However, I was able to view the site from the road and I am satisfied that I was able to see everything I needed to determine the appeal.

Main Issues

7. The main issues are the effect of the development on:

    - the suitability of the site having regard to the spatial policies of the development plan and the impact on the character and appearance of the countryside;
    - the emergency off-site plan for the Atomic Weapons Establishment site at Burghfield;
    - highway safety;
    - accessibility to facilities and services;
    - the Thames Basin Heaths Special Protection Area;
    - affordable housing.

Reasons

Location and countryside

8. Policy CC02 of the Wokingham Borough Managing Development Delivery Local Plan 2014 (the 'Local Plan') sets the limits of planned development within the wider South of the M4 Strategic Development Location identified in Policy CP19 of the Wokingham Borough Core Strategy 2010 (the 'Core Strategy').

9. The appeal site is adjacent to but outside the defined development limits for the expanded settlement of Spencers Wood as shown on the Policies Map. Policy CP11 of the Core Strategy states that in order to protect the separate identity of settlements and maintain the quality of the environment, proposals outside of development limits will not normally be permitted except where various criteria are met. The appeal proposal does not fall within any of those criteria.

10. The site and other land on the eastern side of Croft Lane is shown variously as part of the 'existing settlement' or 'existing development' in the South of the M4 Strategic Development Location supplementary planning document, 2011 ('the supplementary planning document'). However, this does not translate into the definition of the built up parts of the settlement or development locations within the Local Plan and as shown on the Policies Map, which designates the site as part of the countryside. As the Local Plan forms part of the development plan, and post-dates the supplementary planning document, I place greater weight upon it.

11. Having regard to the purposes of Policy DP11, development on the appeal site would not materially reduce the separate identity or sense of separation between settlements because the site is surrounded by other parcels of land and would not encroach into the visually important break between settlements made by the open agricultural fields between Spencers Wood and Shinfield.

12. In terms of its impact on the quality of the environment, the land east of Croft Lane forms part of a loose scatter of dwellings in extensive grounds

interspersed with small pockets of undeveloped land, including the appeal site. The loose scatter of dwellings differs from the more recent, higher density, residential development that has taken place on the western side of the road. This development has been designed so that it maintains a soft edge to the countryside with buildings set back from the road, hedges and trees retained along the road frontage and backed by areas of open space, including what appears to be a swale opposite the site. This design approach has helped to retain the character and appearance of Croft Road as a narrow country lane bounded on either side by trees and hedging.

13. The proposed development would introduce a more built up character to the eastern side of Croft Road. Although the buildings would have reasonable spacing between them, the amount of building, driveways, hard surfaces and domesticated gardens would result in a more suburban character to this side of the road, eroding the semi-rural character of this part of the countryside.

14. The revised position of the access point would however obviate the need to remove any of the mature trees along the road frontage. Although the access point would be slightly wider than and in a different position to the existing field access it would be similar to other accesses along Croft Road. Landscaping is a matter reserved for later approval, but sufficient space would exist to accommodate planting to replace any hedging or understorey that might be lost for sight lines such that the verdant nature of the road frontage could be maintained.

15. I conclude that the site lies outside the defined development limits. It does not fall within any of the exceptions listed in Policy CP11 of the Core Strategy or criterion 3 of Policy CC02 of the Local Plan and the proposed development would therefore conflict with the spatial strategy of the Council as set out in Policies CP1, CP9, CP11 and CP19 of the Core Strategy, Policies CC01 and CC02 of the Local Plan and Policy 1 of the Shenfield Parish Neighbourhood Plan 2017 which seek to concentrate new residential development in existing settlements or allocated development sites.

16. The proposal would introduce new buildings and development into the countryside with a consequent erosion of its rural character and appearance. That erosion would be limited because it would not harm the separate identity of settlements. It would also only have a localised impact on the character and appearance of the countryside because of the relatively contained nature of the site and its surroundings, and the retention of trees and foliage along Croft Road. Nevertheless, that limited erosion to the quality of the environment would conflict with Policies CP3 and CP11 of the Core Strategy, Policy TB21 of the Local Plan and Policy 2 of the Shinfield Parish Neighbourhood Plan 2017, which set out general design principles for new development and require it to avoid having a detrimental impact on the landscape.

Emergency plan

17. The site lies within the Detailed Emergency Planning Zone for the Atomic Weapons Establishment at Burghfield. The zone has recently been expanded to include land containing the appeal site. The assessment that led to the extension of the zone has been upheld in a recent High Court judgement[3]. The extent of the zone used for emergency planning purposes has been determined

[3] Crest Nicholson et al v West Berks DC [2021] EWHC 289 (Admin)

by the emergency planning authority (in this case West Berkshire District Council) on the basis of the assessment by the Atomic Weapons Establishment and taking into account local geographic, demographic and practical issues of how to respond in the event of an emergency. The appellant has criticised the extent of the zone beyond the minimum area recommended by the Atomic Weapons Establishment but that is not a matter that can be addressed in the context of this appeal and I see no good reason to depart from the area designated by the emergency planning authority.

18. The Council states that the Emergency Planning Officer and Office for Nuclear Regulation object to additional residential dwellings in the Detailed Emergency Planning Zone as a matter of principle because it would increase the number of people living within the zone and place greater strain on the emergency services in the event of a incident. The appellant has responded[4] by highlighting the very small risk to future occupants on the appeal site given the modest size of the development, its distance from Burghfield, and the limited additional demands that would be placed on the emergency services. It has also shown how occupants sheltering in the dwellings could be further protected using an air filtration system.

19. The development taken by itself would place minimal additional demands on the emergency services in the event of an incident. However, the cumulative effect of unplanned development such as the appeal scheme within the Detailed Emergency Planning Zone could have a significant effect on their ability to respond. The potential demand on the emergency services is already greater with the recent expansion of the Detailed Emergency Planning Zone encompassing a larger existing and planned population, and additional residential development on top of this would further strain their resources.

20. I have some sympathy with the appellant that the effect of the emergency plan is very restrictive given what is accepted by all parties as a low risk of an incident at Burghfield and the even lower risk that it might affect the appeal site. Nevertheless, the regulations[5] require the emergency planning authority to plan for the possibility of radiation emergencies with extremely low likelihoods of occurring but with significant or catastrophic consequences. The emergency plan is the result of this more precautionary approach to such risks.

21. I conclude that the development, when taken in combination with other residential development in the Detailed Emergency Planning Zone, could place undue strain on the ability of the emergency services to respond to a radiation leak from Burghfield. The risk is very small but not insignificant. The development would therefore conflict with criterion 1 of Policy TB04 of the Local Plan, which requires that development will only be permitted where an increase in the number of people living on the site can be safely accommodated, having regard to the emergency services and the emergency plan.

Highway safety

22. The revised access arrangements would enable access to the site with adequate sight lines to Croft Road without the need to remove any of the

[4] Radiological Impact Assessment, Mike Thorne and Associates Ltd, January 2021 and further addendum note, June 2021
[5] Radiation (Emergency Preparedness and Public Information) Regulations 2019

mature trees along the road frontage. It has also been widened to 4.1m to enable the safe entry and exit of vehicles, including larger vans.

23. If necessary, there is sufficient space to widen the internal shared driveway within the site to enable the passage of two cars at the same time, and to include a visitor parking bay. The submitted plans indicate that cycle storage and electric vehicle charging points would be included in the development. All these features could be secured by conditions. The access and internal driveway would provide both vehicular and pedestrian access to the site as a shared surface.

24. An appeal for 2 dwellings on the site was dismissed in 2002, partly because of concerns about additional traffic causing a highway safety hazard to users of Croft Road because of its narrow width and lack of footways or useable verges[6], and concerns at the substandard geometry of the junction of Croft Road with the B3349 Hyde End Road. Since this decision was made, Croft Road has been truncated to prevent through vehicular traffic and it now serves as an access road to the properties along it, as well as route for pedestrians, cyclists and horse riders. The modest amount of traffic that would be generated by the proposed development, and the much reduced vehicle movements along Croft Road and using the junction with Hyde End Road amount to materially different circumstances to those considered in the previous appeal. The Council has not sought to argue that additional traffic movements along Croft Road or using the junction with Hyde End Road would result in a highway safety hazard and having regard to the current situation, I reach a similar view.

25. I conclude that the revised access arrangements would ensure safe entry and egress to and from the site for its occupants and would not endanger highway safety for other users of Croft Road. The other matters referred to above relating to internal parking and access arrangements and provision of cycle and electric vehicle charging points could be secured by conditions. Consequently, the development would accord with Policies CP1, CP3 and CP6 of the Core Strategy and Policy TB06 of the Local Plan in so far as they relate to highway safety and the free flow of traffic.

Accessibility to services and facilities

26. According to the Council the nearest shops are 1.5km and 1.8km from the site, the nearest secondary school 1.15km and the nearest primary school 1.8km. The appellant has assessed the distance to the nearest secondary school to be 1.1km and to the nearest primary school as 1.4km. While these distances are beyond the 10 minutes/800m walking distance often used to assess convenient access to services and facilities[7], and largely beyond the preferred maximum distance of 1.2km[8], it is pertinent that immediately opposite the site on the western side of Croft Road the Council has permitted a strategic housing allocation, and other smaller residential developments that take access from Croft Road have also recently been permitted and built.

27. There is very little difference in locational terms between these permitted schemes and the appeal site. The allocation and subsequent permission for these developments implies that the Council considered them to be sustainably

[6] APP/X0360/A/02/1085427
[7] Department for Transport Manual for Streets and Wokingham Borough Design Guide supplementary planning document
[8] Chartered Institution of Highways and Transportation: guidelines for providing for journeys on foot, 2000

located with adequate access to services and facilities. Croft Road is a shared surface without footways but for the reasons given above I do not consider that to be a deterrent to its use by pedestrians or cyclists. There is a bus stop within 250m giving access to services and facilities in neighbouring villages and the nearest town of Reading. The appellant is also willing to contribute towards a bus strategy and a travel awareness initiative that the Council has put in place to encourage the use of public transport as an alternative to the private motor car. These contributions would be secured through the unilateral undertaking and I place weight on them in helping to encourage a modal shift towards more sustainable forms of transport.

28. The Council has drawn attention to two other appeal decisions which reached conclusions on accessibility of development to services and facilities[9]. These relate to different sites with different relationships to a range of local services and facilities, not only in terms of the distances involved but also the attractiveness of walking routes to and from them. From the information contained in the decision notices, it appears that neither was immediately adjacent to an allocated housing site. Because of these differences, and the need to gauge accessibility in the light of a range of factors, not just distances, I give these decisions limited weight.

29. The appellant has drawn attention to a recent decision by the Council in which permission was refused for a residential development on Croft Road to the north of the appeal site, but not on the grounds of poor accessibility to services and facilities. I have no explanation from the Council as to why this site should differ from the appeal site. I note the development was smaller and in a slightly different position, but not significantly so from the perspective of accessibility to services and facilities.

30. Taking all these matters into consideration, while I recognise that the distances to the majority of local services and facilities are further away than normally considered convenient for walking, they are not excessively so. The proximity of the appeal to large allocations of new housing, which by implication must have been considered sustainably located, and the willingness of the appellant to contribute towards a bus strategy and travel awareness initiative, persuade me that the site is sufficiently accessible to local services and facilities by modes of transport other than the motor car so as not to conflict with Policies CP1, CP2, CP3, CP6 and CP11 of the Core Strategy, Policies CC01 and CC02 of the Local Plan, and Policy 4 of the Shinfield Neighbourhood Plan 2017, all of which promote sustainable forms of travel.

Thames Basin Heaths Special Protection Area

31. The site lies within the zone of influence of the Thames Basin Heaths Special Protection Area, which is of national and international importance for its rare bird species. The proposed development could, when taken in combination with other development in the area, have a significant adverse impact on the Special Protection Area through additional recreational pressure causing disturbance to the rare bird species.

32. The Council, in partnership with other organisations, has developed an avoidance strategy aimed at mitigating the potential harm to the Special Protection Area from new residential development. The appellant has agreed to

[9] APP/X0360/W/18/3205487 and APP/X0360/W/19/3235572

make financial contributions towards the mitigation strategy as part of the submitted unilateral undertaking.

33. While it would appear that the avoidance strategy, and the contributions which would support its implementation, would overcome the potential harm to the Special Protection Area, it has not been necessary for me to carry out an appropriate assessment as required by the Conservation of Habitats and Species Regulations 2017, as I have found the scheme to be unacceptable for other reasons.

Affordable housing

34. Policy CP5 of the Core Strategy requires all residential proposals of at least 5 dwellings or a net site area of at least 0.16 ha outside development locations to provide a minimum of 40% affordable housing. However, this policy pre-dates the latest version of the National Planning Policy Framework, which states at paragraph 63 that the provision of affordable housing should not be sought for residential developments that are not major developments (10 or more dwellings), other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).

35. While there is no doubt a general need for affordable housing in the area, I have not been provided with any evidence of that need, or whether the strategic development taking place in Spencers Wood meets the local requirements for affordable housing.

36. As Policy CP5 conflicts with the more recent policy in the Framework, it carries limited weight. In the absence of any evidence to the contrary, I conclude that the requirements of Policy CP5 are outweighed by the later policy in paragraph 63 of the Framework and there is therefore no need for the proposed development to provide an element of affordable housing.

Conclusion

37. I have found that the proposed development would conflict with the spatial strategy of the Council, to which I give considerable weight, and would erode the semi-rural character of the countryside, to which I give more limited weight because of its localised impact. I have also found that the proposal would place additional strain on the emergency services for responding to an incident at the Atomic Weapons Establishment at Burghfield, but only give this limited weight in my decision because of the low risk and the modest size of the development.

38. I have also found that, subject to the revised access arrangements, there would be no harm to highway safety, that the site is sufficiently accessible to local services and facilities by modes of transport other than the motor car, and the scheme does not need to include an element of affordable housing. These are neutral considerations in the appeal.

39. Balanced against the conflicts, I acknowledge the benefit of adding an additional 3 units of accommodation to the housing stock in the area, and the temporary economic benefit during their construction. However, there is no dispute that the Council can demonstrate an adequate housing land supply and is delivering housing at a rate in excess of that required by national policy. In these circumstances the addition of further housing is only of limited benefit.

40. Bringing all these considerations together, I conclude that the development would cause harm to matters of acknowledged importance, and that harm is not outweighed by the benefits the development would bring. It would therefore conflict with the development plan when taken as a whole. There are no material considerations that lead me to a different view.

41. I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

Appendix KMR10 – AWE request for anonymity

Pinsent Masons

BY EMAIL

FAO: Robert Wordsworth
Planning Inspectorate
3rd Floor Temple Quay House,
2 The Square,
Bristol,
BS1 6P

Your Ref 3312261
Our Ref: 669439.07017

DDI: +441216265718

E: hanna.virta@pinsentmasons.com

20 April 2023

Dear Mr Wordsworth

WEST BERKSHIRE PLANNING APPLICATION REF 22/00244/FULEXT
APPEAL REF APP/W0340/W/22/3312261
AWE PLC – APPLICATION FOR ANONYMITY AND USE OF PSEUDONYM FOR EXPERT WITNESS

AWE plc (AWE) seeks the Planning Inspector's consent to anonymise the personal details (name and address) of its safety expert witness to protect the identity of its expert witness.

AWE's safety expert witness is able to appear in person and give evidence at the Inquiry therefore closed proceedings pursuant to section 321 of the Town and Country Planning Act 1990 are not required. However, AWE's security arrangements require the AWE safety expert's personal details are anonymised in their proof of evidence and for their name to be replaced with a pseudonym, such as "X/Y".

AWE makes this request by analogy to Civil Procedure Rule 39.2(4), which provides that the identity of any party or witness to court proceedings may, at the Court's discretion, be held back where non-disclosure is necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.

For the Inspector's reference, an order for anonymity was granted by the High Court to AWE's safety expert witness (a different individual but for the same reasons), in connection with recent judicial review proceedings where AWE appeared as an Interested Party (*Crest Nicholson Operations Limited v West Berkshire District Council* [2021] EWHC 289 (Admin) see paragraphs 62 and 63).

AWE's grounds for making this request are based on reasons of national security, as well as the protection of the safety and security of the expert witness. In summary:

(1) AWE's expert witness has been contracted to carry out various tasks for AWE since 1994. The fact the expert witness has performed such roles for AWE is not in the public domain.

(2) The fact the expert witness has carried out these roles means the witness has direct knowledge and has had access to highly sensitive information concerning the nuclear weapons programme carried out at AWE Burghfield (and also at AWE Aldermaston).

(3) The individual continues to work for AWE on various safety case matters.

(4) If the expert witness had to reveal their name in their witness statement this would be the first public identification of them in this role.

(5) Carrying out an open source (public domain) search of the expert witness does not identify that the witness has carried out this work for AWE. Revealing the witness's name would reveal the witness's home address and other personal details.

Disclosure of this information would be damaging to the interests of national security as well as prejudicial to the personal safety and security of AWE's expert witness. Anonymising the safety expert's personal details and the use of a pseudonym in their proof of evidence is a proportionate response to mitigate the risks to AWE and national security identified above and will ensure evidence can be considered in public. AWE submits that the Inspector has the power to grant anonymity pursuant to rule 15 of the Town and Country Planning (Inquiries Procedure) Rules 2000 where the Inspector is granted a wide discretion to determine matters of procedure at the Inquiry.

AWE respectfully requests that its request to anonymise the personal details of its safety expert witness and to use a pseudonym in their proof of evidence is granted, for the reasons set out above.

The Ministry of Defence reserves its position in respect of its national security witness.

Yours sincerely

Hanna Virta
Senior Associate
for Pinsent Masons LLP